UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 26-cv-3507-JMB-DTS

Mohamoud Cumar MOHAMED,

Petitioner,

v.

Todd BLANCHE, *et al.*,

Respondents.

RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner filed his Verified Petition for Writ of Habeas Corpus ("Petition") under 28 U.S.C. § 2241 to test the lawfulness of his present detention with the U.S. Immigration and Customs Enforcement. He alleges two grounds for relief. Because of his prior order of removal and subsequent departure from the United States before filing an appeal with the Board of Immigration Appeals, his order of removal on April 8, 2026 is currently administratively final as a matter of law under 8 C.F.R. §§ 1003.3(e), 1241.1(b), 241.1(b). Respondents have ninety days from his departure from the United States, or i.e. waiver of appeal, to execute his final order of removal under the mandatory detention period provided under 8 U.S.C. § 1231(a)(2)(A), so any possible *Zadvydas* claim Petitioner may bring is premature at this time.

BACKGROUND

All facts not specifically admitted hereunder are denied. The following background derives from the Petition, the Declaration of Deportation Officer Benjamin Northwood ("Northwood Decl."), and its accompanying exhibits.

A. Background

Mohamoud Cumar Mohamed (Petitioner) is a native and citizen of Somalia. Northwood Decl. ¶ 4. He was born in the Qoryoley region of Somalia. Ex. C. He is a [redacted]. *Id.* On or about February 25, 2023, he entered the United States without inspection. Northwood Decl. ¶ 4.

B. Immigration History

a. Petitioner's Removal Proceedings

On February 27, 2023, the Department of Homeland Security ("DHS") personally served Petitioner with Form I-862, Notice to Appear, charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(I). Ex. C. On April 8, 2026, the immigration court found him removable as charged and directed Somalia as the country of removal. Northwood Decl. ¶ 5; Ex. C. With it, the immigration judge also denied Petitioner's other claims to relief from removal. Ex. C.

b. Departure from the United States and Illegal Entry into Canada

On April 16, 2026, Petitioner entered Canada from the United States of America, not at a port of entry. Ex. E, at 3 ("I solemnly declare that I entered Canada from the USA on this date: 2026/04/16 … in this area between official POEs: Manitoba – in between POEs").

c. Deportation from Canada

On April 30, 2026, the Government of Canada issued an exclusion order against Petitioner. Ex. E, at 18. On April 30, 2026, the Canada Border Service Agency (CBSA) returned Petitioner to the Pembina, North Dakota Port of Entry. Northwood Decl. ¶ 7.

d. Since Petitioner's Return to the United States

On May 1, 2026, United States Customs and Border Patrol ("CBP") turned Petitioner over to U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"). Northwood Decl. ¶ 8. On May 2, 2026, Petitioner filed an appeal with the BIA. Northwood Decl. ¶ 9. Petitioner remains detained at the Kandiyohi County Jail. Northwood Decl. ¶ 10.

ARGUMENT

Petitioner alleges two claims for relief. First, Petitioner alleges that Respondents are detaining Petitioner without due process. Second, Petitioner alleges that Respondents arrested Petitioner in violation of the Fourth Amendment. Respondents will consider both in turn.

I. Respondents did not violate the Fifth Amendment or the Fourth Amendment, especially because Petitioner characterizes these issues under pre-removal detention analysis when he has a final order of removal.

Petitioner first mischaracterizes the issuance of both an I-200 and an I-205 for Petitioner as being dispositive of the detention authority invoked here. The difference between the two warrants is meaningful, but this Court has become accustomed to seeing both warrants issued before. The I-205 alone justifies the arrest of an individual after removal proceedings are complete. *Inti C.-L. v. Blanche*, No. 26-cv-2777 (PJS/SGE),

ECF No. 10, at *4 (D. Minn. June 9, 2026); *see also* 8 C.F.R. § 241.2(a) ("A Form I-205, Warrant of Removal, based on the final administrative removal order in the alien's case…").

Petitioner would be factually and legally incorrect to claim that there has not been an "affirmative waiver of appeal" of his final order of removal. Regulatory law makes it abundantly clear that departure from the United States constitutes waiver of an appeal. 8 C.F.R. § 1003.3(e) ("Departure from the United States of a person who is the subject of deportation proceedings, prior to the taking of an appeal from a decision in his or her case, shall constitute a waiver of his or right to appeal.") Further, an order becomes administratively final "upon waiver of appeal by the [noncitizen]" 8 C.F.R. § 1241.1(b). Petitioner provides no evidence that he did not affirmatively waive his appeal. Instead, Petitioner concedes that he did an act exactly contemplated by the regulation as constituting a waiver of appeal for purposes of administratively finality of an order of removal. Petitioner concedes that both in his Petition, but also to immigration officials of the Government of Canada. Ex. E, at 3 ("I solemnly declare that I entered Canada from the USA on this date: 2026/04/16.")

As a matter of law, Petitioner waived his appeal to the BIA before he attempted his filing with the BIA. Even, *arguendo*, if this were not explicit in the regulatory text, courts uphold this legal waiver. *Aguilera-Ruiz v. Ashcroft*, 348 F.3d 835, 837 (9th Cir. 2003) (any voluntary departure, no matter how "brief, casual, and innocent" constitutes waiver of appeal of a deportation order); *Aleman-Fiero v. INS*, 481 F.2d 601, 602 (5th Cir. 1973)

(voluntary departure while subject to a deportation order automatically withdraws an appeal of a deportation order); *see also* Exec. Office for Immigration Review, U.S. Dep't of Justice, Executive Office for Immigration Review Policy Manual, Part III, ch. 3.13(a) (Mar. 18, 2026), https://www.justice.gov/eoir/policy-manual-eoir/part-III/bia/chapter-3-13.

Petitioner claims that Respondents detained Petitioner "pursuant to an invalid I-205," but otherwise provide no evidence to overcome explicit regulatory text on the legal waiver of Petitioner's appeal the moment he chose to enter Canada. Nor are Respondents retroactively claiming mandatory detention under 8 U.S.C. § 1225(b)(2). Respondents cannot when there is a final order of removal following Petitioner's waiver on April 16, 2026. Ex. E, at 3; *see* 8 C.F.R. § 1241.1(b).

Pre-removal detention authorities and their related arguments are moot at the point the parties enter into the § 1231 detention framework. *Alier D. v. Secretary of Dep't of Homeland Security*, No. 18-cv-1645 (NEB/HB), 2018 WL 5847244, at *2 (D. Minn. Nov. 8, 2018) ("The shift of the government's authority to detain the petitioner from § 1226 to § 1231 renders moot his claim based on pre-removal detention."); *Lee S. v. Immgr. and Customs Enforcement*, No. 20-cv-1583 (JRT/BRT), 2020 WL 7711344, at *3 (D. Minn. Dec. 29, 2020) ("Petitioner's due process claim … [is] now moot, as pre-removal due process claims are analyzed distinctly from post-removal claims when ascertaining the reasonability of a noncitizen's detention.") Nor does the mere fact that both a Form I-200 and Form I-205 issued, *Chay T. v. Mullin*, No. 26-cv-2908 (LMP/ECW), 2026 WL

1870619, at *2 (D. Minn. June 30, 2026). The only fact that matters for purposes of the Fourth Amendment and Due Process is that a correct warrant issued, and it did. Ex. D.

Section 1231 Generally

Section 1231 establishes the framework Congress chose for aliens who have already been ordered removed. During the removal period, detention is mandatory. 8 U.S.C. § 1231(a)(2). After that period, Congress authorized continued detention for specified categories of aliens, including inadmissible aliens, criminal aliens, and aliens who have been determined to be a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6). The Supreme Court in *Zadvydas v. Davis* construed that post-removal-period authority to contain an implicit reasonableness limitation: detention may continue for the period reasonably necessary to accomplish removal, and six months is presumptively reasonable. 533 U.S. 678, 689, 701 (2001).

That framework defeats the petition here. Petitioner's detention is governed by § 1231, not a pre-removal detention authority. That statute applies after an alien has been ordered removed and the removal order has become final. Once that occurs, the Government must remove the alien within the statutory removal period, and detention during that period is mandatory. 8 U.S.C. § 1231(a)(1)(A), (a)(2). Petitioner therefore cannot recharacterize this case as one involving pre-final-order detention. Section 1226 governs detention while removal proceedings remain pending and before a removal order becomes final. Section 1231 governs detention after finality while the Government works to execute the removal order. Because Petitioner is already subject to a final order of

removal, the relevant question is not whether Petitioner would prefer a different custody framework, but whether Petitioner's present custody is authorized under § 1231 and the limits recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Measured from the current detention period, Petitioner's claim is premature. ICE re-detained Petitioner on , and Petitioner filed this habeas action on April 30, 2026, after only 29 days of current post-final-order detention. Northwood Decl. ¶ 7, Ex. E, at 3. That period is less than the six months *Zadvydas* treats as presumptively reasonable, and that's also within the 90-day removal period. Petitioner therefore cannot obtain habeas relief until he has been in detention in excess of 90 days. Petitioner has not made that showing.

ADDITIONAL MATTERS

The Court ordered Respondents to make states as to (1) the immigration court's jurisdiction over Petitioner; (2) a statement concerning whether Petitioner is, or may be, a class member of any pending or certified immigration class action suit; and (3) a statement concerning whether the absence of a warrant preceding Petitioner's arrest necessitates Petitioner's immediate release.

Because Petitioner has been ordered removed by an immigration judge, the immigration court would need to re-gain jurisdiction over Petitioner by reopening removal proceedings or filing a new notice to appear. Respondents wish to execute his final order of removal at this time, not reopen removal proceedings. DHS records do not indicate Petitioner is a member of any pending or certified immigration class action suit at this time. Therefore, Respondents cannot make any representations that he is or is not a

member of an immigration class action suit. Respondents attach the warrant for removal that has yet to be executed as Exhibit D.

CONCLUSION

Respondents respectfully request that the Petition be denied in full.

Dated: August 11, 2026

Respectfully submitted,

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