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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 SAYMAN TEKESTE ABRAHA,

12 Petitioner,

13 v.

14 JEREMY CASEY, Warden,

15 Respondent.
16

Case No.: 26-cv-02781-AGS-VET

**RESPONSE IN OPPOSITION TO
PETITION FOR WRIT OF HABEAS
CORPUS**

17
18 **I. INTRODUCTION**
19

20 Sayman Tekeste Abraha ("Petitioner") has filed a petition for a Writ of Habeas
21 Corpus pursuant to 28 U.S.C. § 2241. Petitioner requests the Court to order his
22 immediate release from custody. However, Petitioner's request is not ripe for review.
23 Respondent therefore requests the Court deny the habeas petition.

24 **II. BACKGROUND**

25 Petitioner is a citizen and national of Eritrea. Exhibit 1¹ (Form I-213). Petitioner
26 originally entered the United States on or about March 15, 2025. *See id.*; Declaration of
27

28 ¹The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel

1 Detention Officer Edgar Olvera (“Olvera Decl.”) at ¶ 6. On August 15, 2025, Petitioner
2 was interviewed by an asylum officer, received a positive credible fear assessment, and
3 was issued a Notice to Appear (NTA). Olvera Decl. ¶ 9; Exhibit 2. On January 13, 2026,
4 an immigration judge ordered Petitioner be removed from the United States, but granted
5 Petitioner’s application for statutory withholding of removal to Eritrea. Olvera Decl. at
6 ¶ 10; Exhibit 3 (Immigration Judge Removal Order). Neither the Petitioner nor the
7 government filed an appeal. *Id.* at 11. As such, on February 12, 2026, the date the appeal
8 period expired, the removal order became administratively final. *Id.* Since that time,
9 ICE has been actively trying to identify a third country for Petitioner’s removal, other
10 than Eritrea. *Id.* at ¶ 12. ICE has recently been successful in removing noncitizens to
11 third countries as authorized by INA § 241(b)(2)(E)(vii). *Id.* Once a third country is
12 identified, ICE will provide Petitioner with notice prior to his removal. *Id.* at ¶ 13.

13 III. ARGUMENT

14 A. Petitioner’s Detention is Lawful and He Has Not Established That There 15 is No Significant Likelihood of Removal in the Reasonably Foreseeable 16 Future

17 Petitioner’s petition should be denied because he is properly detained under 8
18 U.S.C. § 1231(a). Respondents are working expeditiously to identify a third country in
19 order to effect Petitioner’s removal. Petitioner has not met his burden of rebutting the
20 presumptively reasonable period of detention. “Section 241(a) of the Immigration and
21 Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of
22 noncitizens who have been ordered removed from the United States.” *Johnson v.*
23 *Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien ordered
24 removed must be detained for 90 days pending the government’s efforts to secure the
25 alien’s removal through negotiations with foreign governments. *See* 8 U.S.C. §
26 1231(a)(2) (the Attorney General “shall detain” the alien during the 90-day removal
27 period under subsection (a)(1)).

28 Section 1231(a)(6) “authorizes further detention if the Government fails to
remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

1 Detention authority under this statute, however, is limited to “a period reasonably
 2 necessary to bring about the alien’s removal from the United States” and “does not
 3 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month
 4 period of post-removal detention constitutes a “presumptively reasonable period of
 5 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month
 6 period unless “there is no significant likelihood of removal in the reasonably foreseeable
 7 future.” *Id.*

8 If an individual ordered removed “is not removed to his or her country of choice
 9 or citizenship, he or she shall be removed to any of the following countries” listed in 8
 10 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007).
 11 The enumerated countries are:

- 12 (i) The country from which the alien was admitted to the United States.
- 13 (ii) The country in which is located the foreign port from which the alien
 14 left for the United States or for a foreign territory contiguous to the United
 States.
- 15 (iii) A country in which the alien resided before the alien entered the
 country from which the alien entered the United States.
- 16 (iv) The country in which the alien was born.
- 17 (v) The country that had sovereignty over the alien's birthplace when the
 alien was born.
- 18 (vi) The country in which the alien’s birthplace is located when the alien
 19 is ordered removed.

20 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
 21 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
 22 country whose government will accept the alien into that country.’” *Id.* (quoting
 23 § 1231(b)(2)(E)(vii)).

24 Here, Petitioner was granted withholding of removal to Eritrea—his country of
 25 birth and citizenship. Apart from Eritrea, there appears to be no other country that would
 26 meet the definitions under subsections (i) through (vi), and Petitioner has made no
 27 showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025
 28 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) (“A prisoner bears the burden of

1 demonstrating that ‘he is in custody in violation of the Constitution or laws or treaties
2 of the United States.’”) (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because
3 removal to the above enumerated countries is “impracticable, inadvisable, or
4 impossible,” ICE may remove Petitioner to a third country that will accept Petitioner’s
5 removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

6 As illustrated in various habeas filings in this district, recent developments in
7 international relations between the United States and several other countries have made
8 probable ICE’s removal of immigrants, like Petitioner, that it previously was unable to
9 remove to third countries. *See, e.g., Varona v. Noem et al.*, 25-cv-3328-JES-SBC, ECF
10 No. 1 at 6 (S.D. Cal. Nov. 26, 2025) (“The Trump administration reportedly has
11 negotiated with at least 58 countries to accept deportees from other nations.”). Against
12 this backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues
13 to detain Petitioner for purposes of executing his removal order to a third country. *See*
14 *Olvera Decl.* at ¶ 12.

15 Here, Petitioner’s removal order became final on February 12, 2026, when both
16 Petitioner and the government opted not to appeal the immigration judge’s decision.
17 *See Olvera Decl.* at ¶ 11; 8 C.F.R. § 1241.1. Petitioner has thus been in post-final order
18 detention, under 8 U.S.C. § 1231(a), for two months and twenty-six days, which is well
19 within the six months of post-removal confinement that *Zadvydas* found to be
20 presumptively reasonable. *See Zadvydas*, 533 U.S. at 700–01. This means that
21 Petitioner’s claim of prolonged detention would not be ripe until, at the earliest, August
22 12, 2026. *See id.* Moreover, since Petitioner’s removal order became final, ICE has
23 working diligently to identify a third country for removal. *Olvera Decl.* at ¶¶ 11-12. *See*
24 *also Zadvydas*, 533 U.S. at 700 (instructing district courts “to listen with care when the
25 Government’s foreign policy judgments, including, for example, the status of
26 repatriation negotiations, are at issue, and to grant the Government appropriate leeway
27 when its judgments rest upon foreign policy expertise.”).

1 On this record, Petitioner cannot show that there is no significant likelihood of
2 removal in the reasonably foreseeable future, and it would be premature to reach that
3 conclusion before permitting ICE an opportunity to complete its diligent efforts to affect
4 his removal. “[E]vidence of progress, albeit slow progress, in negotiating a petitioner’s
5 repatriation will satisfy *Zadvydas* until the petitioner’s detention grows unreasonably
6 lengthy.” *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D. Cal. June 2,
7 2003) (finding that petitioner’s one-year and four-month detention does not violate
8 *Zadvydas* given respondent’s production of evidence showing governments’
9 negotiations are in progress and there is reason to believe that removal is likely in the
10 foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH
11 AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) (“the record at this stage in the
12 litigation does not support a finding that there is no significant likelihood of Petitioner’s
13 removal in the reasonably foreseeable future.”) [Exs. 35-39.]; *Marquez v. Wolf*, Case
14 No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition because
15 “Respondents have set forth evidence that demonstrates progress and the reasons for
16 the delay in Petitioner’s removal”).

17 To the extent Petitioner is challenging ICE’s decision to detain him for the
18 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
19 (“Except as provided in this section and *notwithstanding any other provision of law*
20 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
21 *corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or
22 on behalf of any alien arising from the decision or action by the Attorney General to
23 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
24 under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination*
25 *Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus
26 special attention upon, and make special provision for, judicial review of the Attorney
27 General’s discrete acts of commencing proceedings, adjudicating cases, and executing
28 removal orders—which represent the initiation or prosecution of various stages in the

1 deportation process.”) (simplified); *Limpin v. United States*, 828 Fed. App’x 429 (9th
2 Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g)
3 “because claims stemming from the decision to arrest and detain an alien at the
4 commencement of removal proceedings are not within any court’s jurisdiction”).

5 **IV. CONCLUSION**

6 For the reasons stated herein, Respondent respectfully requests that the Court
7 deny the relief requested in the petition.

8 DATED: May 8, 2026

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