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

10
11 NAHOM HAFTOM BERHE,

12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary of
15 the Department of Homeland Security; *et*
16 *al.*,

17 Respondents.

Case No.: 26-cv-02828-JES-VET

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

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21 **I. INTRODUCTION**

22 Nahom Haftom Berhe (“Petitioner”) has filed a petition for a Writ of Habeas
23 Corpus pursuant to 28 U.S.C. § 2241. Petitioner requests the Court to order his
24 immediate release from custody. However, Petitioner’s request is not ripe for review.
25 An evidentiary hearing on the petition is not necessary. Respondents therefore request
26 the Court deny the habeas petition.

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II. BACKGROUND

Petitioner is a citizen and national of Ethiopia. Exhibit 1¹ (Form I-213). Petitioner was originally admitted into the United States on or about April 24, 2016, under a non-immigrant visa. *See id.*; Declaration of Detention Officer Edgar Olvera (“Olvera Decl.”) at ¶ 6. Petitioner was supposed to depart the United States by October 23, 2016, but Petitioner never departed. *See* Exhibit 1. On June 1, 2025, Petitioner was re-encountered by Immigration and Customs Enforcement (ICE) and taken into custody after Petitioner was arrested for driving while intoxicated. *See* Olvera Decl. at ¶ 7. On June 6, 2025, Petitioner was issued a Notice to Appear for removal proceedings (NTA). *See id.*; Exhibit 2 (NTA).

On December 19, 2025, an immigration judge ordered Petitioner be removed from the United States, but granted Petitioner’s application for statutory withholding of removal under Immigration and Naturalization Act (INA) § 241(b)(3). *See* Olvera Decl. at ¶ 8; Exhibit 3 (Order of the Immigration Judge). Neither the Petitioner nor the government filed an appeal. *Id.* at 9. On January 20, 2026, the appeal period expired. *Id.* As such, the removal order became administratively final at that time. *See* Exhibit 3. On January 22, 2026, ICE began to identify a third country for Petitioner’s removal. *Id.* at ¶ 10. On February 27, 2026 and March 24, 2026, ICE followed up with HQ-Removal and International Operations (RIO) on avenues to remove Petitioner to a third country. *See id.* at ¶¶ 11-12. Once a third country is identified for removal, ICE will provide Petitioner written notice of the third country, at least 24 hours prior to removal. *Id.* at ¶ 15. If Petitioner claims fear of removal to the identified third country, Petitioner will be referred to an asylum officer for further assessment. *Id.*

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

III. ARGUMENT

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

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

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

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

- (i) The country from which the alien was admitted to the United States.

1 (ii) The country in which is located the foreign port from which the alien
 2 left for the United States or for a foreign territory contiguous to the United
 States.

3 (iii) A country in which the alien resided before the alien entered the
 4 country from which the alien entered the United States.

5 (iv) The country in which the alien was born.

6 (v) The country that had sovereignty over the alien's birthplace when the
 alien was born.

7 (vi) The country in which the alien's birthplace is located when the alien
 is ordered removed.

8 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
 9 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
 10 country whose government will accept the alien into that country.’” *Id.* (quoting
 11 § 1231(b)(2)(E)(vii)).

12 Here, Petitioner was granted withholding of removal to Ethiopia—his country of
 13 birth and citizenship. Apart from Ethiopia, there appears to be no other country that
 14 would meet the definitions under subsections (i) through (vi), and Petitioner has made
 15 no showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET,
 16 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) (“A prisoner bears the burden of
 17 demonstrating that ‘he is in custody in violation of the Constitution or laws or treaties
 18 of the United States.’”) (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because
 19 removal to the above enumerated countries is “impracticable, inadvisable, or
 20 impossible,” ICE may remove Petitioner to a third country that will accept Petitioner’s
 21 removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

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

1 to detain Petitioner for purposes of executing his removal order to a third country. *See*
2 Olvera Decl. at ¶¶ 10-13.

3 Here, Petitioner's removal order became final on January 20, 2026, when both
4 Petitioner and the government opted not to appeal the immigration judge's decision.
5 *See* Olvera Decl. at ¶ 9; 8 C.F.R. § 1241.1. Petitioner has thus been in post-final order
6 detention, under 8 U.S.C. § 1231(a), for three months and twenty-one days, which is
7 well within the six months of post-removal confinement that *Zadvydas* found to be
8 presumptively reasonable. *See Zadvydas*, 533 U.S. at 700–01. This means that
9 Petitioner's claim of prolonged detention would not be ripe until, at the earliest, July
10 20, 2026. *See id.* Moreover, since Petitioner's removal order became final, ICE is
11 working diligently to identify a third country for removal. *See* Olvera Decl. at ¶¶ 10-13.
12 *See also Zadvydas*, 533 U.S. at 700 (instructing district courts "to listen with care when
13 the Government's foreign policy judgments, including, for example, the status of
14 repatriation negotiations, are at issue, and to grant the Government appropriate leeway
15 when its judgments rest upon foreign policy expertise."). Once a third country is
16 identified, ICE will provide Petitioner with written notice at least 24 hours prior to
17 removal, which will give Petitioner time to speak to an attorney and make a claim of
18 fear of removal to the identified third country. *See* Olvera Decl. at ¶¶ 14-15.

19 On this record, Petitioner cannot show that there is no significant likelihood of
20 removal in the reasonably foreseeable future, and it would be premature to reach that
21 conclusion before permitting ICE an opportunity to complete its diligent efforts to affect
22 his removal. "[E]vidence of progress, albeit slow progress, in negotiating a petitioner's
23 repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably
24 lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB) slip op., at 7 (S.D. Cal. June 2,
25 2003) (finding that petitioner's one-year and four-month detention does not violate
26 *Zadvydas* given respondent's production of evidence showing governments'
27 negotiations are in progress and there is reason to believe that removal is likely in the
28 foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No. 19cv1250 WQH

1 AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) (“the record at this stage in the
2 litigation does not support a finding that there is no significant likelihood of Petitioner’s
3 removal in the reasonably foreseeable future.”) [Exs. 35-39.]; *Marquez v. Wolf*, Case
4 No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition because
5 “Respondents have set forth evidence that demonstrates progress and the reasons for
6 the delay in Petitioner’s removal”).

7 To the extent Petitioner is challenging ICE’s decision to detain him for the
8 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
9 (“Except as provided in this section and *notwithstanding any other provision of law*
10 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
11 *corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or
12 on behalf of any alien arising from the decision or action by the Attorney General to
13 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
14 under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination*
15 *Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus
16 special attention upon, and make special provision for, judicial review of the Attorney
17 General’s discrete acts of commencing proceedings, adjudicating cases, and executing
18 removal orders—which represent the initiation or prosecution of various stages in the
19 deportation process.”) (simplified); *Limpin v. United States*, 828 Fed. App’x 429 (9th
20 Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g)
21 “because claims stemming from the decision to arrest and detain an alien at the
22 commencement of removal proceedings are not within any court’s jurisdiction”).

23 **B. An Evidentiary Hearing is Not Necessary**

24 Respondents contend that since Petitioner’s habeas claim is not ripe for review,
25 an evidentiary hearing on the petition is not necessary.

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1 **IV. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request that the Court
3 deny the relief requested in the petition.

4 DATED: May 11, 2026

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