

District Judge John H. Chun
Magistrate Judge Grady J. Leupold

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAYANN DWAYNE ATKINSON,

Petitioner,

v.

IMMIGRATION COURT DEPARTMENT OF
HOMELAND SECURITY,

Respondent.

Case No. 2:25-cv-00484-JHC-GJL

GOVERNMENT'S RETURN
MEMORANDUM AND MOTION TO
DISMISS

Noted for Consideration:
May 27, 2025

I. INTRODUCTION

Respondent (the "Government"), by and through their attorneys, Teal Luthy Miller, Acting United States Attorney for the Western District of Washington, Michelle R. Lambert and Alixandria K. Morris, Assistant United States Attorneys for that District, respectfully moves to dismiss the 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus filed by Petitioner Kayann Dwayne Atkinson. Dkt. No. 1. Petitioner challenges his detention pending removal from the United States as unconstitutional and unlawful.

Dismissal is appropriate because Petitioner, who is a noncitizen subject to an order of removal, is properly detained under Section 241 of the Immigration and Naturalization Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner is not entitled to habeas relief because he was detained

pursuant to the statutorily required 90-day detention removal period at the time that he filed his petition, and during the “presumptively reasonable” six-month detention period announced by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 700–01 (2001), rendering his challenge premature. Accordingly, the Government respectfully requests that the Court deny the petition and grant the Government’s Motion to Dismiss. This motion is supported by the pleadings and documents on file in this case, the Declaration of Deportation Officer George Chavez (“Chavez Decl.”), and the Declaration of Alixandria K. Morris (“Morris Decl.”) with exhibits attached thereto and submitted herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

The INA contains a complex scheme of authorities governing the detention and release of noncitizens during and following their removal proceedings. These periods are generally referred to as “pre-order” (meaning before the entry of a final order of removal) and “post-order” (meaning after the entry of a final order of removal). Compare 8 U.S.C. § 1226 (authorizing pre-order detention) with § 1231(a) (authorizing post-order detention). Once a final order of removal has been entered, a noncitizen enters what Congress has called the “removal period.” 8 U.S.C. § 1231(a)(1). During this period of 90 days, Congress has directed that the Secretary of Homeland Security “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for removal and to protect the community from dangerous noncitizens while removal is being achieved, Congress directed:

During the removal period, the [Secretary of Homeland Security]¹ shall detain the [noncitizen]. *Under no circumstance during the removal period shall the*

¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining aliens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security. See also 6 U.S.C. § 251.

1 [Secretary] release [a noncitizen] who has been found inadmissible under section
2 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or
3 1227(a)(4)(B) of this title.

4 8 U.S.C. § 1231(a)(2) (emphasis added).

5 Unlike § 1231(a)(2), § 1231(a)(6) does not mandate detention and does not place any
6 temporal limit on the length of detention under that provision:

7 [A noncitizen] ordered removed who is inadmissible under section 1182,
8 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
9 who has been determined by the [the Secretary of Homeland Security] to be a risk
10 to the community or unlikely to comply with the order of removal, *may* be detained
11 *beyond the removal period* and, if released, shall be subject to the terms of
12 supervision in paragraph (3).

13 8 U.S.C. § 1231(a)(6) (emphasis added).

14 During the removal period, the United States Immigration and Customs Enforcement
15 (“ICE”)² is charged with attempting to effectuate removal of a noncitizen from the United States.
16 8 U.S.C. § 1231(a)(1). If a noncitizen cannot be removed to the country designated in his removal
17 order because the country refuses to accept the noncitizen, the noncitizen has been granted relief
18 from removal to that country, the country refuses to recognize the noncitizen as its citizen, or
19 another reason, Congress has directed ICE to pursue removal to alternate countries. *See* 8 U.S.C.
20 §§ 1231(b)(2)(D), (E); § 1231(b)(3); 8 C.F.R. §§ 241.13(a), 241.15. Once a potential third country
21 for removal is identified, an application for travel documents is normally presented to that country.
22 *See* 8 C.F.R. § 1231(b).

23
24 ² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority
to execute removal orders.

1 In this case, Petitioner is the subject of an order of removal that recently became final on
2 February 24, 2025. Chavez Decl. ¶ 13; Morris Decl., Ex. A (Order of the Immigration Judge).

3 **B. Petitioner Kayann Atkinson**

4 Petitioner, a 44-year-old Jamaican native and citizen, first entered the United States in May
5 1992. Morris Decl., Ex. C (Excerpted A-File - Digital), pgs. 1-3. On March 27, 2007, Petitioner
6 was convicted of indecent assault and battery on a person 14 years or over in violation of
7 Massachusetts G.L.c. 265, § 13H: Indecent Assault and Battery Upon a Person Fourteen or Older.
8 *Id.*, pg. 4. On August 15, 2012, Petitioner was charged with aggravated assault and battery in
9 Massachusetts. *Id.* Again, less than two years later, on March 31, 2014, Petitioner was charged
10 with rape, aggravated assault and battery in Massachusetts. *Id.* Petitioner has also been charged
11 with failing to register as a sex offender multiple times. *Id.* These crimes—two crimes involving
12 moral turpitude, not arising out of a single scheme of misconduct—served as the basis for ICE
13 seeking deportation and removal. Chavez Decl. ¶¶ 4-6; 8 U.S.C. 1227 (a)(2)(A)(ii).

14 On February 5, 2024, Petitioner was detained and served with a Notice to Appear. *Id.* ¶ 6.
15 Petitioner was primarily detained at the Moshannon Valley Processing Center in Clearfield
16 County, Pennsylvania. *Id.* Although a bond hearing was requested for February 28, 2024, the
17 request was later withdrawn. *Id.* ¶ 7. Petitioner was subject to mandatory detention pursuant to 8
18 U.S.C. § 1226(c)(1)(B), so it was not possible for him to have been eligible for bond. *Id.* On August
19 30, 2024, an immigration judge denied all relief and ordered Petitioner removed. *Id.* ¶ 8. Petitioner
20 filed an appeal. *Id.* ¶ 9. On February 4, 2025, Petitioner was transferred to the Northwest ICE
21 Processing Center (NWIPC). *Id.* ¶ 12.

22 On February 24, 2025, the Board of Immigration Appeals (BIA) dismissed the appeal. *Id.*
23 ¶ 13. At this time, Petitioner's detention shifted from pre-order detention under 8 U.S.C. § 1226(c)
24 to post-order detention under 8 U.S.C. § 1231(a)(2). *See* 8 U.S.C. § 1231(a)(2) (describing

detention during the removal period); 8 U.S.C. § 1231(a)(1)(B)(i) (noting that the removal period starts when the removal order is administratively final); 8 U.S.C. § 1101(a)(47) (defining removal order). Accordingly, the 90-day removal period here lasts until May 25, 2025, during which time Petitioner may not be released from detention. 8 U.S.C. § 1231(a)(2); 8 C.F.R. § 1241.1(a); 8 C.F.R. § 241.1.

Although Petitioner filed a Petition for Review (“PFR”) with the Third Circuit Court of Appeals on March 24, 2025 (Case No. 25-cv-1546), no stay of removal appears to have been issued related to that matter. Chavez Decl. ¶ 14.

ICE is currently in the process of sending a formal travel document request to the Consulate of Jamaica on behalf of Petitioner. *Id.* ¶ 15. The government of Jamaica has continued to process travel documents for their citizens, so DHS has every reason to believe that the government of Jamaica will ultimately issue travel documents for Jamaica. *Id.* ¶ 16. Accordingly, the Government respectfully requests that this Court dismiss the petition to allow the Government time to obtain a travel document during the presumptively reasonable period as set forth by the Supreme Court.

III. ARGUMENT AND AUTHORITY

A. Petitioner’s challenge to his post-order detention must be dismissed as premature.

Until May 25, 2025, Petitioner’s detention is mandated by 8 U.S.C. § 1231(a)(2) and comports with constitutional standards. And even after the expiration of the initial 90-day removal period, Petitioner’s continued detention is presumed reasonable until August 2025. Petitioner has provided the Court with no reason that it should ignore that presumption, and this Court must therefore dismiss the petition as premature.

1. Section 1231(a)(2) prohibits the relief Petitioner seeks.

Petitioner fails to state a basis for habeas relief because the plain language of 8 U.S.C. § 1231(a)(2) requires his detention during the current 90-day removal period. *See* 8 U.S.C.

1 § 1231(a)(2). The Immigration Judge issued Petitioner's final removal order on August 30, 2024.
2 Morris Decl., Ex. A. Petitioner filed an appeal. On February 24, 2025, the BIA dismissed the
3 appeal. Morris Decl., Ex. B; Chavez Decl. ¶ 13. On March 24, 2025, Petitioner filed a Petition for
4 Review (PFR) at the Third Circuit; however, the Third Circuit has not issued a stay of removal.
5 *See Kayann Atkinson v. Attorney General United States of America*, No. 25-1546 (3d Cir. filed
6 March 24, 2025); *see also* Chavez Decl. ¶ 14.

7 Accordingly, the 90-day removal period designated in 8 U.S.C. § 1231(a)(2) does not end
8 until May 25, 2025. Thus, Petitioner sought habeas relief during the 90-day removal period and
9 the petition should be dismissed. *Khotessouvan v. Morones*, 386 F.3d 1299, 1301 (9th Cir. 2004)
10 (affirming dismissal of habeas petition filed during 90-day removal period); *Muhamd v. ICE Field*
11 *Office Director*, 20-cv-605-RAJ, 2020 WL 6318686, at *1 (W.D. Wash. Oct. 28, 2020) (explaining
12 that detention is mandatory during 90-day removal period). Considering the limited time and
13 legitimate purpose of the 90-day removal period, the Ninth Circuit has repeatedly found that
14 detention during the removal period "passes constitutional scrutiny," even in cases when a
15 noncitizen's removal "is not reasonably foreseeable." *See Khotessouvan*, 386 F.3d at 1299; *see also*
16 *Rodriguez v. Hayes*, 591 F.3d 1105, 1116 (9th Cir. 2010) (recalling that "Section 1231(a)(2) poses
17 no due process issues, regardless of whether removal of the detained [noncitizen] is foreseeable,
18 because the statute authorizes detention for only the ninety-day removal period and therefore does
19 not create any danger of unconstitutionally indefinite detention.").

20 ***2. Post-order detention authorized by statute and limited to a definite period does not***
21 ***raise a constitutional claim.***

22 Petitioner is also unable to state a constitutional claim for habeas relief because post-order
23 detention of a noncitizen for up to six months is presumptively reasonable. The Supreme Court
24 has adopted six months as a "presumptively reasonable period of detention" *after* which a

1 noncitizen could bring a constitutional challenge to his detention. *Zadvydas*, 533 at 701.
2 Petitioner's six-month "presumptively reasonable period of detention" runs from February 24,
3 2025 (the date the removal order became final due to BMI's denial of his appeal) through August
4 23, 2025. Since Petitioner has not been detained for six months after his administrative removal
5 order became final, his petition raises no constitutional claim for habeas relief based on the length
6 of his detention.

7 ***3. A noncitizen's interest in liberty does not raise a serious constitutional question until***
8 ***his detention has become indefinite or permanent.***

9 The Supreme Court in *Zadvydas* recognized that as detention becomes prolonged, a
10 noncitizen's liberty interest grows and may eventually outweigh Congress's interest in detaining
11 a noncitizen to facilitate his removal. The six-month period established in *Zadvydas* reflects the
12 earliest moment at which these conflicting interests might raise serious constitutional issues. *See*
13 *Zadvydas*, 533 U.S. at 701 (directing that "[a]fter this six-month period, once the noncitizen
14 provides good reason to believe that there is no significant likelihood of removal in the reasonably
15 foreseeable future, [that] the Government must respond with evidence sufficient to rebut that
16 showing"). As the length of detention grows, a sliding scale of burdens is applied to assess the
17 continuing lawfulness of an alien's post-order detention. *Id.* (stating that "for detention to remain
18 reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably
19 foreseeable future' conversely would have to shrink").

20 Since *Zadvydas*, the Supreme Court has reaffirmed the presumptively reasonable six-
21 month detention period. For example, in *Jama v. ICE*, 543 U.S. 335 (2005), the Supreme Court
22 considered the complicated removal of a noncitizen to Somalia, a country with no strong central
23 government and continuing instability. The Court discussed approvingly the three steps of "the
24 country-selection process" to be followed by ICE in trying to remove Jama, and it also

1 acknowledged that these steps may ultimately fail and force ICE to try its last resort – third country
2 removal. *Id.* In that case, though, where the Supreme Court discussed the potential for aliens being
3 in a “removable-but-unremovable limbo,” it never suggested that noncitizens should be released
4 before ICE had fully explored its “last resort” option. *Jama*, 543 U.S. at 338-348. Instead, the
5 Supreme Court noted approvingly that Jama’s potential release “into American society after six
6 months” would be the appropriate protection of his liberty interest. *Id.* at 347-348 (*citing Zadvydas*,
7 533 U.S. 678; *Clark v. Martinez*, 543 U.S. 371 (2005)); *see also Bah v. Cangemi*, 548 F.3d 680,
8 684-685 (8th Cir. 2008) (“Under *Zadvydas* [a noncitizen] who has been detained for more than six
9 months can obtain release by showing that there is ‘no significant likelihood of removal in the
10 reasonably foreseeable future,’ which then requires the government to respond with evidence
11 sufficient to rebut that showing.” (*quoting Zadvydas*, 533 U.S. at 701)).

12 Because Petitioner’s detention has been for a short period and has not exceeded the
13 *Zadvydas* six-month threshold, Congress’s interest in exploring possibilities for him is significant
14 enough that Petitioner’s liberty interest does not raise a serious constitutional question.

15 **B. This Court should deny the petition because Petitioner cannot overcome the**
16 **presumption that his detention is reasonable.**

17 This Court should deny the relief requested because Petitioner cannot meet his burden. The
18 burden is on Petitioner *after the six-month presumptively reasonable detention period* to provide
19 “good reason to believe that there is no significant likelihood of removal in the reasonably
20 foreseeable future.” *Zadvydas*, 533 U.S. at 701. The ultimate likelihood of any noncitizen’s
21 removal is not ascertainable at the moment a removal order becomes final. ICE must take steps,
22 along with the noncitizen’s efforts, to effectuate removal, including working with the appropriate
23 foreign countries and interviewing the noncitizen and his family members. This is the implicit
24 basis for the presumptively reasonable detention period. Here, Petitioner’s post-removal detention

1 started on February 24th, less than three months ago. ICE has started the process of obtaining his
2 travel documents and is currently working on submitting its formal request to the Jamaican
3 Consulate. *See* Chavez Decl. ¶ 15. As noted by the Deportation Officer, the country of Jamaica
4 has continued to process travel documents for their citizens, and the agency believes that one will
5 be issued for Petitioner. *Id.* ¶ 16.

6 Because ICE is pursuing Petitioner's removal and Petitioner's detention furthers
7 Congress's goal of ensuring his presence for removal, Petitioner has failed to meet his burden, and
8 his petition should be denied.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Government respectfully requests that the Court deny
11 Petitioner's petition for writ of habeas corpus and dismiss this matter in its entirety without an
12 evidentiary hearing.

1 DATED this 28th day of April, 2025.

2 Respectfully submitted,

3 TEAL LUTHY MILLER
4 Acting United States Attorney

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12 *Attorneys for Respondent*

13 I certify that this memorandum contains 2,471
14 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE


I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on this date, I electronically filed the foregoing along with the Declaration of George Chavez with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on this date, I arranged for service of the foregoing along with the Declaration of George Chavez on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Kayann Dwayne Atkinson, *Pro Se Petitioner*

A: 
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DATED this 28th day of April, 2025.

s/ Hung Nguyen

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