UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Abdirashid A.,

Petitioner,

Civil No. 0:25-cv-02532 (LMP/ECW)

v.

James McHenry, U.S. Attorney General, et al.,

Defendants.

RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Abdirashid Ahmed's application for a writ of habeas corpus is premature and without merit. Having been detained on May 20, 2025, Petitioner's detention has been ongoing for less than two months—well within the time during which detention is presumptively constitutional under *Zadvydas v. Davis*, 533 U.S. 678 (2001). What's more, his removal is substantially likely to occur in the reasonably foreseeable future, given that Somalia has issued Petitioner's travel document. The Court should deny the petition and dismiss the case.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Somalia. Pet. ¶ 6, ECF No. 1; Declaration of John D. Ligon ("Ligon Decl.") ¶ 4. He entered the United States in February 2000 as a refugee. Pet. ¶ 12; Ligon Decl. ¶ 4.

Petitioner was convicted on two counts of vehicular homicide in Hennepin County District Court in October 2008 and sentenced to 41 and 48 months of imprisonment. Ligon Decl. ¶ 7; *see also* Pet. ¶ 13. The government arrested Petitioner at the state prison in Stillwater and issued a notice to appear in January 2011, initiating immigration proceedings against him. Ligon Decl. ¶ 8; Pet. ¶ 14. Petitioner was released in February 2011. Ligon Decl. ¶ 11; Pet. ¶ 14. But soon after, Petitioner again committed another serious felony, driving while intoxicated, in October 2011. Ligon Decl. ¶ 13. And again in 2018. *Id.* The government issued Petitioner a notice to appear in September 2019, resulting in a final order of removal dated February 18, 2022. *Id.* ¶¶ 14–17.

Petitioner was released on an order of supervision in May 2022 because, at the time, Somalia was not issuing travel documents for removals. *Id.* ¶ 18. But Somalia has since resumed issuing travel documents for removals, and the government therefore detained Petitioner again on May 20, 2025. *Id.* ¶ 19; Pet. ¶¶ 1, 11, 20. The government provided Petitioner a notice of revocation of his

release, explaining that Somalia is reviewing his case for issuing a travel document. Pet. ¶ 22.

Petitioner now challenges his detention, asserting that it is unconstitutional and deprives him of due process. Pet. ¶ 25.

ARGUMENT

I. Scope of Review

Judicial review of immigration matters, including immigration detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over [non-citizens] is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation" and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S.

524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.").

Petitioner challenges his continued detention pending removal. He does not challenge his final order of removal, nor could he. Jurisdiction over a challenge to a final order of removal lies exclusively with the appropriate circuit court of appeals. *See* 8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (exclusive jurisdiction to review final orders of removal is with the circuit, not district, court). For the reasons discussed below, the petition is premature and without merit.

II. Petitioner's detention is constitutional.

Petitioner argues that his detention pending removal to Somalia is unconstitutional. He is detained because immigration officials, who have reviewed his ongoing custody, have determined that there is a significant likelihood of his removal to Somalia in the reasonably foreseeable future. Ligon Decl. ¶ 19. Since Petitioner's release in May 2022, Somalia has resumed issuing travel documents for removals, and the government has obtained a travel document for Petitioner in the short time since he was detained in May 2025. *Id.*

¶¶ 19–22. Because Petitioner's detention has been brief and there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future, his habeas petition should be dismissed.

A. Petitioner's detention is presumptively constitutional under *Zadvydas*.

Petitioner's constitutional and statutory attack on his brief detention fails. Petitioner has been in post-removal-order detention since May 20, 2025, when ICE took him into custody. *See* 8 U.S.C. § 1231(a)(2) (detention in cases of post-final-order of removal). Under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained indefinitely pending removal. 533 U.S. at 699-700.

Zadvydas set a temporal marker: after final order of removal detentions of six months or less are presumptively constitutional. 533 U.S. at 701. While some immigration-habeas claims are "fact intensive and often difficult," this Court has explained that "[t]he same is not true of claims brought prior to the six-month period established by *Zadvydas* having elapsed." *Brian B. v. Tollefson*, Case No. 24-cv-2884 (NEB/ECW), 2024 WL 4029657, at *1 (D. Minn. July 26, 2024), *R. & R. adopted* 2024 WL 4026259 (Sept. 3, 2024). ICE detained Petitioner on May 20, 2025—less than a month before he filed his petition for a writ of habeas corpus. Pet., ¶¶ 1, 11, 20. His detention is therefore well within the six-month period during which

his detention is presumptively constitutional, and the Court should dismiss the case for that reason alone.

B. Petitioner's removal is significantly likely in the reasonably foreseeable future.

Petitioner could not succeed, even if he could articulate his challenge under the *Zadvydas* framework. He contends "that his removal to Somalia is unlikely to occur in the reasonably foreseeable future," rendering his detention unlawful. Pet. ¶ 25. And he charges the government with violating its regulations by bringing him back into detention after Somalia resumed issuing travel documents for removals. *Id.* ¶ 28. This claim, too, must fail.

After the Court's decision in *Zadvydas*, the U.S. Department of Homeland Security promulgated comprehensive regulations to implement the *Zadvydas* mandate. *See* 8 C.F.R. §§ 241.4, 241.13, 241.14, 66 Fed. Reg. 56967-01, 56969 (Nov. 14, 2001). *Accord Alexander v. U.S. Attorney General*, 495 F. App'x 274, 277 (3d Cir. 2012) ("*Zadvydas* is not the only word on post-removal detention; regulations promulgated around the time of, and after, the *Zadvydas* decision established a series of processes for determining whether an alien should be released from custody after the expiration of the ninety-day removal period."). These regulations govern immigration detention of aliens subject to a final order of removal and establish a systemized process for detention reviews. Section 241.13 addresses the substantial-likelihood-of-removal-in-the-reasonably-foreseeable-future standard

established in *Zadvydas*. It provides numerous factors relevant to the standard, including the "ongoing nature of the Service's efforts to remove this alien," and states that "[w]here the Service is continuing its efforts to remove the alien, there is no presumptive period of time within which the alien's removal must be accomplished, but the prospects for the timeliness of removal must be reasonable under the circumstances." 8 C.F.R. § 241.13(f).

Petitioner misinterprets § 241.13(i), which, he says, requires the government to obtain his travel document before detaining him. Pet., ¶ 21. This assertion is unsupported by the text of the regulation. Rather, the regulation allows the government to revoke a non-citizen's release if it "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

That occurred here. Ligon Decl. ¶ 19 (citing Somalia's resuming "issuing travel documents for removals"). Indeed, Somalia has since issued the travel document, showing Petitioner's impending removal is imminent. Petitioner's detention and the subsequent issuance of his travel document soon after satisfies *Zadvydas*. *See, e.g., Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) (new repatriation procedure in place was sufficient to show removal substantially likely in reasonably foreseeable future); *Jaiteh v. Gonzales*, No. 07-cv-1727 (PJS/JJG), 2008 WL 2097592, at *3 (D. Minn. Apr. 28, 2008), *report and recommendation adopted*, 2008

WL 2074163 (May 14, 2008) ("[W]here a foreign country ordinarily accepts repatriation, and that country is acting on an application for travel documents, most courts conclude the alien fails to show no significant likelihood of removal."). *Cf. Zadvydas*, 533 U.S. 684-85 (detainee was stateless); *Jama v. ICE*, 01-cv-1172 (JRT/AJB), 2005 WL 1205160, at *4 (D. Minn. May 20, 2005) (habeas relief granted where failed deportation attempt occurred, and court concluded that it "may well be impossible" under the conditions in Somalia at that time). Here, Petitioner is not stateless, and, far from "impossible," his removal to Somalia is likely, given the progress ICE has made in effectuating her removal.

Petitioner's continued detention satisfies constitutional due process, as explained in *Zadvydas*. He is not being detained indefinitely, has a valid travel document, and immigration officials have shown that he is likely to be removed soon. *See, e.g., Joseph K. v. Berg*, No. 18-cv-3125 (DWF/HB), 2019 WL 13254377, at *3-4 (D. Minn. Mar. 15, 2019), *R. & R. adopted*, 2019 WL 13254378 (May 3, 2019); (recommending denial of habeas petition while removal to Liberia had taken ten months); *Nadin K. v. Barr*, No. 18-cv-3223 (PJS/BRT), 2019 WL 13254351, at *3 (D. Minn. Mar. 11, 2019), *R. & R. rejected as moot*, 2019 WL 23387804 (May 17, 2019) (same). Petitioner is significantly likely to be removed in the reasonably foreseeable future. Accordingly, his Petition should be denied.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition without an evidentiary hearing.

Dated: July 7, 2025

Respectfully submitted,

JOSEPH H. THOMPSON
Acting United States Attorney

/s/Lucas B. Draisey
BY: LUCAS B. DRAISEY
Assistant United States Attorney
Attorney ID Number 0401625
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
lucas.draisey@usdoj.gov