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12 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 EASTERN DIVISION
14

15 SUNDAY KAYODE KUNKUSHI,

16 Petitioner,

17 v.

18 WARDEN, Desert View Annex;
ERNESTO SANTACRUZ, JR, Acting
Field Office Director of Los Angeles
19 U.S. Immigration and Customs
Enforcement Field Office; KRISTI
20 NOEM, Secretary of the U.S.
Department of Homeland Security; and
21 PAMELA BONDI, Attorney General of
the United States, in their official
22 capacities,

23 Respondents.
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No. 5:25-cv-01608-SRM-PVC

**FEDERAL RESPONDENTS'
RESPONSE TO ORDER TO SHOW
CAUSE FOR PETITION FOR WRIT
OF HABEAS CORPUS;
DECLARATION OF CHRISTOPHER
JENSON**

Honorable Serena R. Murillo
United States District Judge

Honorable Pedro V. Castillo
United States Magistrate Judge

I. INTRODUCTION

Sunday Kayode Kunkushi (“Petitioner”), a citizen of Nigeria and a convicted drug trafficker, is currently being detained following a final order of removal and is in the process of being returned to Nigeria. Petitioner was detained on June 4, 2025, under 8 U.S.C. §1231(a). On June 27, 2025, he filed his petition for a writ of habeas corpus. Dkt. 1 (“Petition” or “Pet.”).

Petitioner alleges that he was taken into ICE custody and detained approximately seven years ago following a final removal order, but he was then ultimately released under Order of Supervision because both he and the federal government were unable to arrange for his travel back to Nigeria. While Petitioner acknowledges he is subject to a final order of removal from the United States, he asserts there is no significant likelihood that he will be removed in the reasonably foreseeable future to Nigeria, and thus, he claims that his continued detention is unlawful, pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner requests that the Court issue an order directing Immigration and Customs Enforcement (“ICE”) to release him immediately from immigration custody.

As set forth below, Petitioner fails to state a claim for habeas relief. Petitioner has been lawfully detained pursuant to Section 1231(a) and has not satisfied (and cannot satisfy) his burden of establishing that there is no significant likelihood of his removal in the reasonably foreseeable future. In fact, as set forth in the attached declaration, Petitioner’s deportation is imminent considering ICE has already requested and is in the process of receiving Petitioner’s travel documents from the government of Nigeria.

Accordingly, the Court should deny Petitioner’s petition for writ of habeas corpus and dismiss this action in its entirety.

II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

Petitioner is a native and citizen of Nigeria. Declaration of Christopher Jenson (“Jenson Decl.”) ¶ 3. On or about February 17, 2014, Petitioner was admitted to the United States as a nonimmigrant with authorization to remain in the United States for a temporary period not to exceed August 16, 2014. *Id.* However, Petitioner did not leave

1 the United States and overstayed his temporary visitor visa. Pet. ¶ 19.

2 On or about May 11, 2018, over three and a half years after Petitioner was to leave
3 the country, Petitioner was convicted of Attempted Transportation of Marijuana for Sale
4 and was sentenced to 64 days in jail. Jenson Decl. ¶ 4; Pet. ¶ 20. Soon after, on or about
5 May 13, 2018, Petitioner was taken into ICE custody and detained at the ICE Detention
6 Facility in Yuma, Arizona. Jenson Decl. ¶ 5. On or about December 19, 2018, the
7 Immigration Judge (“IJ”) denied Petitioner’s applications for relief and ordered him
8 removed to Nigeria. *Id.* ¶ 6. Petitioner appealed this decision to the Board of
9 Immigration Appeals (“BIA”). *Id.* On May 22, 2019, the BIA dismissed Petitioner’s
10 appeal of the IJ decision. *Id.* ¶ 7, Ex. A. On or about June 4, 2019, Petitioner filed a
11 Petition for Review in the Court of Appeals for the Ninth Circuit, which was ultimately
12 denied on about July 14, 2020. *Id.* ¶¶ 8, 10. On or about November 14, 2019, Petitioner
13 was released to the Mohave County Sheriff’s Department to participate in a hearing
14 before the Mohave County Superior Court. *Id.* ¶ 9.

15 On or about August 4, 2020, Petitioner was taken back into ICE custody and
16 detained at the ICE Detention Facility in Yuma, Arizona. *Id.* ¶ 11. After Petitioner was
17 returned to ICE custody, ICE sought travel documents to facilitate his return to Nigeria.
18 *Id.* ¶ 12. Beginning in October 2020, the Nigerian government began informing ICE that
19 the travel document would be issued (*id.* ¶ 12), and on or about November 10, 2020, ICE
20 determined that there would be a charter removal flight to Nigeria on December 15,
21 2020. *Id.* ¶ 14. However, the Nigerian government did not provide Petitioner’s travel
22 documents until on or about December 16, 2020, the day after the scheduled charter
23 flight to Nigeria. *Id.* ¶ 16. This travel document was only valid for 30 days. *Id.* On
24 January 5, 2021, ICE reviewed Petitioner’s custody status pursuant to *Fraihat v. ICE*,
25 No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), vacated 2022 WL 20212706
26 (C.D. Cal. Sept. 16, 2022), and on January 6, 2021, Petitioner was released from ICE
27 detention and placed under Order of Supervision with GPS monitoring. *Id.* ¶ 18.

28 On June 4, 2025, over four years after Petitioner was released and placed under

1 Order of Supervision, ICE took Petitioner back into custody in Los Angeles, California
2 pursuant to 8 U.S.C. § 1231(a) and transferred him to the Adelanto Processing Center
3 where he remains pending removal from the United States. *Id.* ¶ 19. Petitioner's diabetes
4 is being treated while at the Adelanto Processing Center (Pet. ¶ 38) and there is no
5 evidence of any complaints or concerns regarding any medical condition since his re-
6 detention on June 4, 2025. Jenson Decl. ¶ 20.

7 On June 27, 2025, Petitioner filed the instant petition for a writ of habeas corpus.
8 Petitioner also filed an application for an order to show cause why his Petition should
9 not be granted. Dkt. 5 ("OSC"). On July 1, 2025, the Court issued a scheduling order,
10 ordering Respondents to file a response by July 15, 2025, and Petitioner to file a reply by
11 July 22, 2025. Dkt. 9.

12 On July 10, 2025, ICE requested a re-issuance of travel documents for Petitioner
13 from the Nigerian consulate. Jenson Decl. ¶ 21. On July 14, 2025, a Notice of
14 Revocation of Supervision was served on Petitioner. *Id.* ¶ 22. Since ICE anticipates that
15 a travel document for Petitioner will be issued within normal processing times for the
16 government of Nigeria, ICE will be able to promptly effectuate Petitioner removal to his
17 home country in the reasonably foreseeable future. *Id.* ¶ 23.

18 **III. ARGUMENT**

19 "When a final order of removal has been entered against an alien, the Government
20 must facilitate that alien's removal within a 90-day 'removal period.'" *Thai v. Ashcroft*,
21 366 F.3d 790, 793 (9th Cir. 2004) (citation omitted); 8 U.S.C. § 1231(a)(1)(A). The
22 removal period begins on the latest of the following:

23 (i) The date the order of removal becomes administratively final.

24 (ii) If the removal order is judicially reviewed and if a court orders a stay of the
25 removal of the alien, the date of the court's final order.

26 (iii) If the alien is detained or confined (except under an immigration process), the
27 date the alien is released from detention or confinement.

28 8 U.S.C. § 1231(a)(1)(B); see also *Khotessouvan v. Morones*, 386 F.3d 1298, 1300 n.3

(9th Cir. 2004) (stating that the 90-day removal period commences on “the date the order of removal becomes final; the date a reviewing court lifts its stay following review and approval of the order of removal; or the date the alien ordered removed is released from non-immigration related confinement.”). During the 90-day removal period, continued detention is required until the alien is removed from the country. 8 U.S.C. § 1231(a)(2). Where removal cannot be accomplished within the 90-day removal period, continued detention is authorized by 8 U.S.C. § 1231(a)(6).

In *Zadvydas*, 533 U.S. at 682, the Supreme Court held that 8 U.S.C. § 1231(a)(6) did not authorize the Immigration and Naturalization Service (“INS”) (the successor agency to the Department of Homeland Security) to detain a removable alien indefinitely beyond the 90-day statutory “removal period;” rather, the Supreme Court construed the statute to contain an implicit “reasonable time” limitation. The Supreme Court held that “the statute, read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.” *Id.* at 682, 689. The Court concluded that, for the sake of uniform administration in the federal courts, six months was a presumptively reasonable period of detention which should be read into the statute.

An alien is not entitled to habeas relief after the expiration of the presumptively reasonable six-month period of detention under § 1231(a)(6) unless he can show the detention is “indefinite,” or, that there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701; *see Clark v. Suarez-Martinez*, 543 U.S. 371, 377-78 (2005) (extending *Zadvydas* to aliens detained under § 1231(a)(6) and inadmissible under § 1182). The Ninth Circuit has explained that the *Zadvydas* language requires an alien to show that “he is stuck in a ‘removable-but-unremovable limbo,’ as the petitioners in *Zadvydas* were[;]” that is, the alien must show he “is unremovable because the destination country will not accept him or his removal is barred by our own laws.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). If the alien meets this burden, the government must respond with

1 sufficient rebuttal evidence. *Zadvydas*, 533 U.S. at 701.

2 Here, Petitioner has been detained since June 4, 2025, and he has not shown there
3 is “good reason to believe that there is no significant likelihood of removal in the
4 reasonably foreseeable future” as required by *Zadvydas*. Petitioner is incorrect that ICE
5 will not likely be able to remove him in the reasonably foreseeable future because ICE
6 has requested a reissuance of Petitioner’s travel documents on July 10, 2025. Jenson
7 Decl. ¶ 21. Further, a Notice of Revocation of Supervision was served on Petitioner on
8 July 14, 2025. *Id.* ¶ 22.

9 Courts in this District regularly find that a “habeas petitioner’s assertion as to the
10 unforeseeability of removal, supported only by the mere passage of time, [is] insufficient
11 to meet the petitioner’s burden to demonstrate no significant likelihood of removal under
12 the Supreme Court’s holding in *Zadvydas*.” *Muthalib v. Kelly*, 2017 WL 11696616, at *3
13 (C.D. Cal. Apr. 19, 2017) (collecting cases). “This is particularly so where the only
14 impediment to removal is the issuance of the appropriate travel document.” *Id.* (citing
15 *Nasr v. Larocca*, 2016 WL 3710200 (C.D. Cal. June 1, 2016), *report and*
16 *recommendation adopted*, 2016 WL 3704675 (C.D. Cal. July 11, 2016)). Thus,
17 Petitioner has not met his burden under *Zadvydas* that there is “good reason to believe
18 that there is no significant likelihood of removal in the reasonably foreseeable future.”
19 *Zadvydas*, 533 U.S. at 701.

20 **IV. CONCLUSION**

21 Respondents respectfully request that the Court deny the petition for writ of
22 habeas corpus and dismiss the action without prejudice.

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1 Dated: July 15, 2025

Respectfully submitted,

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11 **Certificate of Compliance under L.R. 11-6.2**

12 Counsel of record for the United States, certifies that this brief contains 1,728
13 words, which complies with the word limit of L.R. 11-6.1.
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