

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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SOMAH K.R.,<sup>1</sup>

Case No. 25-CV-3082 (JWB/JFD)

Petitioner,

v.

**REPORT AND  
RECOMMENDATION**

PAMELA BONDI, U.S. Attorney  
General; KRISTI NOEM, Secretary of  
the Department of Homeland Security;  
SAM BERG, Field Office Director for  
the Minneapolis Field Office; and  
WARDEN of Freeborn County Detention  
Center,

Respondents.

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Petitioner Somah K.R. challenges his continued immigration detention in a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. Petitioner asserts that his continued detention is unconstitutional because it exceeds the presumptively reasonable six-month detention period recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and there is no significant likelihood of removal in the reasonably foreseeable future. (Pet. at 1, Dkt. No. 1.) Petitioner has been detained by U.S. Immigration and Customs Enforcement (“ICE”) since July 11, 2024. Petitioner claims he has been detained under 8 U.S.C. § 1231(a) since September 16, 2024—the date an immigration judge (“IJ”) found him

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<sup>1</sup> This District has adopted a policy of using the first name and last initial of any nongovernmental parties in immigration cases.

removable from the United States but deferred removal under the United Nations Convention Against Torture (“CAT”). Respondents counter that Petitioner’s detention under § 1231(a) began only recently, after remand proceedings in his immigration case concluded with a new removal order by the IJ on October 6, 2025. Therefore, Respondents argue, Petitioner’s detention falls within the mandatory 90-day removal period of § 1231(a)(1)(A) and (a)(2)(A).

For the reasons set forth below, the Court finds that Petitioner’s detention is mandated by § 1231(a)(1)(A) and (a)(2)(A). In addition, the Court has recently been informed of events creating a significant likelihood of Petitioner’s removal in the reasonably foreseeable future. Therefore, regardless of the date Petitioner’s § 1231(a) detention began, his petition should be denied.

## **I. Background**

### **A. Pre-Habeas-Petition Proceedings**

Petitioner was born in Ghana and is a citizen of Liberia. (Pet. at 3, Dkt. No. 1; Deportation Officer William J. Robinson Decl. ¶ 4, Dkt. No. 8.) Petitioner entered the United States as a refugee in 2007 and became a lawful permanent resident in 2013. (Robinson Decl. ¶¶ 5–7.) In 2021 and 2022, Petitioner was convicted of several felonies: aggravated robbery in the first degree and assault with a dangerous weapon (Robinson Decl. ¶ 11 & Ex. 2), aggravated robbery in the first degree (Robinson Decl. ¶ 14 & Ex. 3), and felony mail theft (Robinson Decl. ¶ 10 & Ex. 1). Petitioner was incarcerated at the Minnesota Correctional Facility in Stillwater, Minnesota. (Robinson Decl. ¶ 18 & Ex. 5.)

During Petitioner's incarceration, the Department of Homeland Security ("DHS") served him with a Notice to Appear, charging him with removability pursuant to section 237(a)(2)(A)(ii) and (iii) of the Immigration and Nationality Act ("INA"). (Robinson Decl. ¶¶ 15–16 & Ex. 4.) Petitioner filed claims for relief seeking asylum, withholding of removal, and deferral of removal. (Robinson Decl. ¶ 17 & Ex. 6.) Upon Petitioner's release from state custody on July 11, 2024, ICE placed him under administrative arrest and retained him in custody pursuant to section 236(c) of the INA. (Robinson Decl. ¶ 18 & Ex. 5.) Petitioner requested a bond hearing, but for unknown reasons, one was not held. (Robinson Decl. ¶ 19.)

On September 16, 2024, an IJ ordered Petitioner removed to Liberia or, alternatively, Ghana. (Robinson Decl. ¶ 20 & Ex. 6.) The IJ also granted Petitioner a deferral of removal to Liberia under the CAT. (Robinson Decl. ¶ 20 & Ex. 6.) The DHS appealed the deferral of removal to the Board of Immigration Appeals ("BIA"). (Robinson Decl. Ex. 7 at 7–8,<sup>2</sup> Dkt. No. 10.) In a decision dated July 16, 2025, the BIA remanded the matter to the IJ for further proceedings regarding Petitioner's eligibility for deferral of removal under the CAT and for the entry of a new decision. (Robinson Decl. Ex. 7 at 5–6.)

### **B. Post-Habeas-Petition Proceedings**

Petitioner filed his federal habeas petition two weeks after the BIA's decision, on July 30, 2025. Petitioner argued that his continued detention is unconstitutional because it

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<sup>2</sup> The Court cites to the page numbers assigned by CM/ECF.

exceeds the presumptively reasonable six-month detention period recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and there is no significant likelihood of removal in the reasonably foreseeable future. (Pet. at 5.) Petitioner claimed that he has been detained under 8 U.S.C. § 1231(a) since September 16, 2024, when the IJ ordered him removed from the United States. (Pet. at 7.)

In their answer to the petition, Respondents disagreed that the September 16, 2024 order was a final order of removal. Respondents asserted that immigration proceedings were ongoing and that the IJ had indicated at a prehearing conference that he intended to issue a new decision by October 19, 2025. (Resp'ts' Answer at 4, Dkt. No. 7.) The Court asked Respondents to file a supplemental answer by October 24, 2025, to update the Court on the status of the IJ's forthcoming decision. (Order at 2, Dkt. No. 11.)

In Respondents' supplemental answer, they advised the Court that the IJ had issued an order on October 6, 2025, for Petitioner to be removed from the United States to Liberia or, alternatively, Ghana. (Robinson Suppl. Decl. ¶ 6, Dkt. No. 13; Robinson Suppl. Decl. Ex. 8 at 16, Dkt. No. 13-1.) Unlike the first removal order, the October 6 removal order denied Petitioner a deferral of removal under the CAT. (Robinson Suppl. Decl. ¶ 6 & Ex. 8 at 16.) Petitioner had 30 days to appeal the October 6 removal order to the BIA or the order would be final. (*See* Robinson Suppl. Decl. Ex. 8 at 1.) The order was served on Petitioner on October 7, 2025, the day after it was issued. (Robinson Suppl. Decl. Ex. 8 at 2.)

In Respondents' supplemental answer, they also provided an email dated October 16, 2025, from Petitioner's counsel in his immigration case to DHS' counsel, expressing

Petitioner's intent to waive his right to appeal the October 6 removal order. (Robinson Suppl. Decl. ¶ 7 & Ex. 10 at 5.) Petitioner's counsel asked DHS' counsel to include the email with an anticipated motion to the BIA. (Robinson Suppl. Decl. Ex. 10 at 5.)

Respondents further advised the Court in their supplemental answer that an IJ held a bond hearing on September 24, 2025, and denied bond under 8 U.S.C. § 1226(c) due to Petitioner's aggravated robbery conviction. (Robinson Suppl. Decl. ¶ 5 & Ex. 11 at 3.) One last development was that DHS withdrew its appeal of the first removal order because it had been mooted by the October 6 removal order. (Robinson Suppl. Decl. ¶ 8 & Ex. 10.)

After reviewing the supplemental answer, the Court issued an order asking Respondents to confirm whether Petitioner had conclusively waived his right to appeal the October 6 removal order. (Dkt. No. 15.) Respondents filed a Second Supplemental Declaration of Deportation Officer William J. Robinson on November 14, 2025. (Dkt. No. 17.) Officer Robinson confirmed that Petitioner had not appealed the October 6 removal order. (Robinson 2d Suppl. Decl. ¶ 5 & Ex. 13.) In addition, the Embassy of Liberia has issued a travel document for Petitioner. (Robinson 2d Suppl. Decl. ¶ 9.) In a third declaration filed on November 19, 2025, Respondents advised the Court that Petitioner was transferred to a facility in Louisiana in preparation for his removal from the United States. (Robinson 3d Suppl. Decl. ¶ 5, Dkt. No. 19.)

Respondents argue that Petitioner's order of removal is now final and that the basis for his detention changed from 8 U.S.C. § 1226(c) to 8 U.S.C. § 1231(a)(1)(A) and § 1231(a)(2)(A). Those statutory provisions mandate detention for a 90-day period. Respondents therefore ask that the petition be denied.

Petitioner did not file a reply to Respondents' answer, nor has he filed anything in this case since the petition was filed. The Court learned on November 12, 2025, that at some point after he filed the petition, Petitioner was moved from the Freeborn County Jail to the Kandiyohi County Jail. (*See* Dkt. No. 16.) Respondents re-mailed their original answer, supplemental answers, and supporting documents to Petitioner at the Kandiyohi County Jail address. (Dkt. Nos. 16, 18.) The Clerk of Court also re-mailed to Petitioner a court order that was returned as undeliverable. According to Respondents, Petitioner was recently transferred from the Kandiyohi County Jail to a facility in Alexandria, Louisiana.

## **II. Discussion**

Title 8 U.S.C. § 1226(a) governs the detention of noncitizens not subject to a final order of removal. Once a final order of removal is issued, the “removal period” of 8 U.S.C. § 1231(a) begins, giving the Attorney General 90 days to remove the noncitizen from the United States. 8 U.S.C. § 1231(a)(1)(A). Detention is mandatory during the 90-day period. 8 U.S.C. § 1231(a)(2)(A).

The 90-day removal period begins on the latest of the following dates:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). Subsection (1) applies here.

By using the term “administratively,” Congress intended to focus on the *agency's* review process, not the judicial review process. *Johnson v. Guzman Chavez*, 594 U.S. 523,

534 (2021). Thus, once the BIA has reviewed the removal order or the time to do so has expired, a removal order is “administratively final” for purposes of § 1231(a) detention. *Id.* at 534–35; 8 U.S.C. § 1101(a)(47)(A), (B). In *Guzman Chavez*, noncitizens with final orders of removal were removed from the United States, and they re-entered without authorization. 594 U.S. at 534. Their final removal orders were reinstated, and they were detained. *Id.* The noncitizens asserted their detention was governed by 8 U.S.C. § 1226; DHS argued that 8 U.S.C. § 1231 controlled. The Supreme Court determined that a reinstated removal order is administratively final when it first became so, and it does not lose its administrative finality because a noncitizen later initiates withholding-only proceedings.<sup>3</sup> *Id.* at 535, 539. Thus, the petitioners’ detention was governed by § 1231(a).

*Guzman Chavez* is not on point because that case involved habeas petitioners with reinstated removal orders, whereas this case involves a habeas petitioner whose case was appealed and remanded at the agency level. There was no question in *Guzman Chavez* that the noncitizens had final orders of removal and, indeed, had already been removed pursuant to those orders. 594 U.S. at 534. That is not the case here. Petitioner had not already been removed from the United States once, nor did he have a reinstated removal order. Rather, Petitioner’s immigration case was ongoing. The DHS appealed the IJ’s ruling that Petitioner was eligible for deferral of removal under the CAT, and the BIA remanded the matter to the IJ for the entry of an entirely new decision. That decision, issued on October

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<sup>3</sup> Withholding-only proceedings are limited to an IJ’s decision about whether the noncitizen is eligible for the withholding of removal. *Guzman Chavez*, 594 U.S. at 531. The parties may not raise any other issues. *Id.*

6, 2025, included an order on Petitioner's removability, as well as the deferral of removal, and Petitioner could have appealed any aspect of the October 6 order to the BIA. The agency's review proceedings in Petitioner's case were not administratively final on September 16, 2024.

Another case cited by Petitioner, *Nasrallah v. Barr*, 590 U.S. 573 (2020), is also not applicable here. The issue there was the scope of appellate judicial review of a BIA order denying relief under the CAT. *Id.* at 575. "The narrow question before the Court is whether, in a case involving a noncitizen who committed a crime specified in § 1252(a)(2)(C), the court of appeals should review the noncitizen's factual challenges to the CAT order (i) not at all or (ii) deferentially." *Id.* at 576. In concluding that judicial review of factual challenges to CAT orders was not precluded, the Court discussed the differences between CAT orders and final orders of removal. *Id.* at 582–83. But this case is not about the scope of appellate judicial review, and *Nasrallah* did not involve the detention of noncitizens under § 1231(a).

Respondents argue that the October 6, 2025 removal order is now final and that Petitioner's detention is mandatory under the 90-day removal period of 8 U.S.C. § 1231(a)(1)(A). The Court agrees.

Under 8 C.F.R. § 1241.1(c), an order of removal becomes final when the time allotted for an appeal expires. Petitioner had 30 days to appeal the October 6 order. Accounting for the extra day for service, Petitioner's time to appeal under § 1241.1(c) expired on November 6, 2025. Petitioner did not file an appeal, timely or otherwise.

Under 8 U.S.C. § 1241.1(b), an order of removal becomes final when an individual waives his right to appeal. Petitioner's immigration counsel informed DHS counsel by email on October 16, 2025, that Petitioner intended to waive his right to appeal the October 6 removal order, and she asked DHS counsel to include the email in a forthcoming motion to the BIA. Although the October 16 email alone might not have sufficed as a waiver of appeal, the Court finds that the email and Petitioner's failure to timely appeal, together, were sufficient to constitute a waiver of the right to appeal.

Thus, under either subsection (b) or (c) of § 1241.1, the October 6 removal order is final, and Petitioner is in the custody of the Attorney General pursuant to 8 U.S.C. § 1231(a)(1)(A). That statutory provision governs the detention of individuals subject to a final order of removal.

Under 8 U.S.C. § 1231(a)(1)(A) and § 1231(a)(1)(B)(i), the Attorney General has 90 days from "[t]he date the order of removal becomes administratively final" to remove Petitioner from the United States. Detention is mandatory during the 90-day removal period. 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien."); *see Zadvydas*, 533 U.S. at 683 ("After entry of a final removal order and during the 90-day removal period, . . . aliens must be held in custody.") The October 6 removal order became administratively final on November 6, 2025. Petitioner's detention is well within the 90-day removal period.

The mandatory nature of Petitioner's current custody under § 1231(a)(2)(A) moots his habeas petition. *See, e.g., Maria W. v. Garland*, No. 24-CV-213 (ECT/DTS), 2024 WL 5494517, at \*2 (D. Minn. Apr. 18, 2024); *Goaner W. v. Sec'y of Homeland Sec.*, No. 18-

CV-1811 (NEB/BRT), 2019 WL 11648600, at \*3 (D. Minn. May 10, 2019), *aff'd sub nom. Weang v. Sec'y of Dep't of Homeland Sec.*, 792 F. App'x 416, 2020 WL 583163 (8th Cir. 2020); *Vincent N. v. Barr*, No. 19-CV-0181 (DWF/HB), 2019 WL 1937531, at \*2 (D. Minn. Apr. 10, 2019), *R. & R. adopted*, 2019 WL 1935973 (D. Minn. May 1, 2019). Consequently, dismissal without prejudice is appropriate. *Goaner W.*, 2019 WL 11648600, at \*1.

Recent events compel the Court to briefly discuss an alternative scenario. Even if Petitioner had been detained under § 1231(a) since September 16, 2024, the Court would recommend dismissal. The Embassy of Liberia has issued a travel document for Petitioner, and he has been transferred to a facility in preparation for his removal. The Court therefore finds there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future. Therefore, Petitioner is not entitled to release under *Zadvydas*.

Accordingly, based on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that Petitioner Somah K.R.'s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (Dkt. No. 1) be **DISMISSED WITHOUT PREJUDICE**.

Dated: November 20, 2025

s/ John F. Docherty  
JOHN F. DOCHERTY  
United States Magistrate Judge

**NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* D. Minn. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).