

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BRANDIN L. SOUDOM,)	
)	
Petitioner,)	
)	
vs.)	Case No. 5:25-cv-03167-JWL
)	
CRYSTAL CARTER, Warden,)	
FCI-Leavenworth,)	
)	
Respondent.)	
_____)	

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Brandin L. Soudom (“Petitioner”) for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that his detention at FCI Leavenworth in Leavenworth, Kansas, is improper because his removal is not significantly likely in the reasonably foreseeable future. In compliance with the Court’s Order to Show Cause, Doc. 3, Crystal Carter, in her official capacity as the Warden of FCI Leavenworth (“Respondent”) respectfully submits this response.

STATEMENT OF FACTS

The following facts are based on the declaration of Carly A. Schilling, a Deportation Officer for ICE Enforcement and Removal Operations (“ERO”) of the United States Department of Homeland Security (“DHS”). Exhibit 1, Schilling Decl. ¶¶ 1-3. Petitioner is a native and citizen of South Africa who entered the United States on April 15, 1999, as a nonimmigrant with authorization to remain in the United States until January 8, 2000. *Id.* ¶¶ 5-6. Petitioner was granted an extension until June 2, 2003. *Id.* ¶ 6. On February 18, 2015, DHS placed Petitioner in removal proceedings upon the issuance of a Notice to Appear (“NTA”), Form I-862, charging him as removable from the United States pursuant to section 237(a)(1)(B) of the Immigration and

Nationality Act (“INA”) for remaining in the United States for a time longer than permitted. *Id.* ¶ 7.

Petitioner appeared before the Chicago, Illinois Immigration Court on March 25, 2015. *Id.* ¶ 8. Petitioner was granted release on bond and was subsequently released from ICE custody. *Id.* Petitioner failed to appear at a scheduled hearing held on September 12, 2017, and was ordered removed from the United States *in absentia*. *Id.* ¶ 9. On or about October 8, 2024, Petitioner was encountered by ICE at the Shelby County Jail in Shelbyville, Kentucky. *Id.* ¶ 14. Petitioner was taken into ICE custody as result of his outstanding removal order. *Id.*

Under 8 U.S.C. § 1231(a)(1)(A), a noncitizen who has been ordered removed generally shall be removed from the United States within 90 days. *Id.* ¶ 11. If removal has not been effected at or near the 90-day mark, ERO conducts a File Custody Review, also known as a Post-Order Custody Review (“POCR”), to determine the necessity of continued custody. *Id.* Factors to be considered include a detained individual’s flight risk, any danger the individual may pose to the community, any threat to national security, and whether there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* Relevant officers and directors will either concur in the assessment to continue detention or request the release of the noncitizen. *Id.* If the period of detention reaches 180 days, a Transfer Checklist will be completed concerning follow-up actions to obtain a travel document or other assessments after the initial 90-day POCR and every 90 days thereafter. *Id.* ¶ 12. The checklist is transferred to the ERO/ICE Headquarters POCR Unit, which makes the ultimate decision on an individual’s continued detention. *Id.*

South Africa requires a travel document for anyone being removed who is not in possession of a valid passport. *Id.* ¶ 13. On October 10, 2024, ERO received Petitioner’s passport. *Id.* ¶ 15. The passport, however, expired on December 30, 2022. *Id.* On October 21, 2024, a fingerprint appointment was scheduled in an effort to obtain a renewed travel document. *Id.* ¶ 17. On October

31, 2024, a travel document request was sent to the South African Embassy. *Id.* ¶ 18. On November 12, 2024, the South African Embassy stated that Petitioner’s identity could not be verified, and that additional documentation was necessary. *Id.* ¶ 19.

On December 16, 2024, the South African Embassy returned Petitioner’s travel document application due to illegibility of fingerprints. *Id.* ¶ 20. On December 19, 2024, an updated travel document application was sent to the South African Embassy. *Id.* ¶ 21. On January 4, 2025, ERO conducted a File Custody Review to determine whether to continue with Petitioner’s detention. *Id.* ¶ 22. On January 16, 2025, Petitioner was served with a Decision to Continue Detention letter, which advised Petitioner that a decision had been made to continue with his detention. *Id.* ¶ 23.

ERO contacted the South African Embassy on January 4, 2025, January 24, 2025, and January 27, 2025, for updates on Petitioner’s travel document application. *Id.* ¶ 24. ERO contacted ICE’s Removal and International Operations (“RIO”) on February 12, 2025, March 6, 2025, and April 7, 2025, for assistance in obtaining a status update on Petitioner’s travel document application. *Id.* ¶ 25. On April 9, 2025, the South African Embassy advised that it takes a minimum of six months for Petitioner’s identity to be verified. *Id.* ¶ 26. On April 15, 2025, another travel document request was sent to the Assistant Attaché for Removals at RIO. *Id.* ¶ 27. On April 16, 2025, ERO conducted a 180-day review interview with Petitioner. *Id.* ¶ 28. On April 23, 2025, Petitioner was served with a Decision to Continue Detention letter. *Id.* ¶ 29.

On or about July 2, 2025, Petitioner was interviewed by the South African Embassy regarding the travel document application. *Id.* ¶ 30. On September 16, 2025, ERO was notified by the ERO Attaché to the U.S. Embassy in Pretoria, South Africa that the travel document request has been approved. *Id.* ¶ 31. Now that the travel document has been approved, ICE will proceed with arranging for Petitioner’s removal to South Africa in the coming weeks. *Id.* ¶ 32.

ARGUMENT

“The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal.” *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, *6 (D. Kan. July 13, 2020). To obtain habeas corpus relief, a petitioner must demonstrate that “[h]e is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).

Petitioner is detained pursuant to the INA. Under the INA, an alien shall be removed if the alien is present in the United States in violation of the INA. 8 U.S.C. § 1227(a)(1)(B). Here, Petitioner violated the INA by remaining in the United States longer than permitted. Schilling Decl. ¶ 7. After Petitioner failed to appear at a scheduled hearing held on September 12, 2017, Petitioner was ordered removed from the United States *in absentia*. *Id.* ¶ 9. Pursuant to 8 C.F.R. § 1240.15, there is no appeal from a removal order issued *in absentia*, making the immigration judge’s order a final order of removal.

Upon the entry of a final removal order, “the Attorney General ‘shall detain the alien’ during the 90-day removal period established under 8 U.S.C. § 1231(a)(2).” *Zhiriakov*, 2020 WL 3960442, at *8 (citations omitted). “Generally, the government is required to remove the alien held in its custody within the 90-day removal period.” *Garcia Uranga v. Barr*, No. 20-3162-JWL, 2020 WL 4334999, *4 (D. Kan. July 27, 2020) (citing 8 U.S.C. § 1231(a)(1)(A)-(B)). Nevertheless, “[i]f removal cannot be carried out within the removal period, inadmissible aliens may be detained beyond the removal period under certain circumstances.” *Id.* (citing 8 U.S.C. § 1231(a)(6)).

Specifically, “the detention of an alien subject to a final order of removal for up to six months is presumptively reasonable in view of the time required to accomplish removal.” *Zhiriakov*, 2020 WL 3960442, at *8 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). “Beyond that period, if the alien shows that there is ‘no significant likelihood of removal in the

reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Garcia Uranga*, 2020 WL 4334999, at *4 (quoting *Zadvydas*, 533 U.S. at 701). “The six-month presumption” thus “does not mean that every alien must be released after that time, but rather an alien may be detained ‘until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.’” *Zhiriakov*, 2020 WL 3960442, at *8 (quoting *Zadvydas*, 533 U.S. at 701).

Here, Petitioner was ordered removed from the United States in September 2017, but Petitioner was not in ICE custody at that time due to Petitioner failing to appear after having been released on bond. Schilling Decl. ¶¶ 8-9. Once Petitioner was detained by ICE on October 8, 2024, ICE began taking active steps to have Petitioner removed from the United States. *See id.* ¶¶ 14-30. Within weeks of Petitioner’s detention, a fingerprint appointment was scheduled and a travel document request was sent to the South African Embassy. *Id.* ¶¶ 16-18. Although the travel document application was returned due to illegibility of fingerprints on December 16, 2024, an updated travel document application was sent to the South African Embassy just three days later. *Id.* ¶¶ 20-21. ICE continued to actively work to have Petitioner removed from the United States from January through April 2025. *Id.* ¶¶ 24-27. On April 9, 2025, the South African Embassy advised that it takes a minimum of six months for Petitioner’s identity to be verified. *Id.* ¶ 26.

On or about July 2, 2025, Petitioner was interviewed by the South African Embassy regarding the travel document application. *Id.* ¶ 30. On September 16, 2025, ERO was notified by the ERO Attaché to the U.S. Embassy in Pretoria, South Africa that the travel document request has been approved. *Id.* ¶ 31. Now that the travel document has been approved, ICE will proceed with arranging for Petitioner’s removal to South Africa in the coming weeks. *Id.* ¶ 32.

Although Petitioner asserts that his removal is not significantly likely in the reasonably foreseeable future, his only evidence in support of his claim is a November 2024 letter from the

South African Embassy. Pet., Doc. 1, p. 13. That letter specified, however, that Petitioner could be issued an ID Book if he completed necessary forms and had his fingerprints taken. *Id.* After additional information was submitted, Petitioner was interviewed by the South African Embassy regarding the travel document application and ERO was notified on September 16, 2025, that Petitioner's travel document was approved. Schilling Decl., ¶¶ 21, 30-31

As such, ICE is proceeding with arrangements for Petitioner's removal to South Africa. *Id.* ¶ 32. Although Petitioner has been detained for a period greater than six months, it is expected that he will be removed in the coming weeks. *Id.* "The six-month presumption does not mean that every alien must be released after that time, but rather an alien may be detained 'until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Zhiriakov*, 2020 WL 3960442, at *8 (quoting *Zadvydas*, 533 U.S. at 701). Here, ICE worked diligently to obtain a travel document for Petitioner within the constraints of the identity verification process required by the South African Embassy. Now that Petitioner's travel document has been approved, Petitioner is significantly likely to be removed in the coming weeks.

Because of this high likelihood of removal and Petitioner's previous failure to appear, Respondent respectfully requests that the Court deny Petitioner's habeas petition so that Petitioner can be removed expeditiously.

CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 18, 2025 the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties. I further certify that I caused a copy of the foregoing and the notice of electronic filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

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/s/ Audrey D. Koehler

Audrey D. Koehler

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