IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ABRAHIM BUSH ABRAHIM MANAGO, Petitioner,	)	
vs.	)	Case No. 5:25-cv-03183-JWL
CRYSTAL CARTER, et al., Respondents.	)	

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Abrahim Bush Abrahim Manago ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained in FCI Leavenworth in Leavenworth, Kansas, pending removal from the United States. In compliance with the Court's Order to Show Cause, Doc. 5, Crystal Carter, in her official capacity as the Warden of FCI Leavenworth; Ricardo Wong, in his official capacity as Chicago Field Office Director for U.S. Immigration and Customs Enforcement; Todd Lyons, in his official capacity as Acting Director of U.S. Customs and Immigration Enforcement; Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security; and Pamela Bondi, in her official capacity as Attorney General of the United States (collectively "Respondents") respectfully submit this response.

STATEMENT OF FACTS

The following facts are part of the Declaration of Bradley W. McNary, a Deportation Officer for Enforcement and Removal Operation (ERO), Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS). Exhibit 1, Bradley W. McNary Decl. ¶¶ 1-2. Petitioner is a native and citizen of Sudan. *Id.* ¶ 5. Petitioner unlawfully

entered the United States on or about July 10, 2024 near Lukeville, Arizona. *Id.* ¶ 6. He was subsequently encountered by Customs and Border Protection ("CBP"), taken into custody, and detained pending expedited removal pursuant to INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). *Id.*

On October 27, 2024, Petitioner was placed in removal proceedings through issuance of a Notice to Appear ("NTA"), charging him as inadmissible to the United States pursuant to sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1182(a)(6)(i) and 1182(a)(7)(A)(i)(I). *Id.* ¶ 7. On or about November 12, 2024, Petitioner filed an application for relief with the Immigration Court. *Id.* ¶ 8. The Immigration Court held a hearing on January 28, 2025 to consider his application for relief. *Id.* ¶ 9. At the conclusion of the hearing, Petitioner's application for relief was granted by the Immigration Judge. *Id.* No appeal was taken of the Immigration Judge's decision by either party. *Id.*

On or about April 24, 2025, ERO conducted a File Custody Review to determine whether to continue with Petitioner's detention. *Id.* ¶ 14. On or about May 2, 2025, Petitioner was served with a Decision to Continue Detention letter, which advised Petitioner that a decision has been made to continue with his detention. *Id.* ¶ 15. On or about June 6, 2025, Petitioner was served with a Notice to Alien of Interview for Review of Custody. *Id.* ¶ 16. He was interviewed regarding his custody status on or about June 23, 2025. *Id.* On or about September 12, 2025, Petitioner was served with a Decision to Continue Detention letter, which advised Petitioner that a decision has been made to continue with his detention. *Id.* ¶ 17.

Since the Immigration Judge's order, DHS has attempted to remove Petitioner to four alternative countries, including to Chad, Egypt, Saudi Arabia and South Sudan, with no success. *Id.* ¶ 18. ICE will continue its efforts to identify alternative countries to which

Petitioner can be removed. *Id.* ¶ 19.

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) (citation omitted). 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 was inadmissible at the time of entry. 8 U.S.C. § 1227(a)(1)(A). Here, Petitioner unlawfully entered the United States on or about July 10, 2024. McNary Decl. ¶ 6. As such, Petitioner was ordered removed from the United States on January 28, 2025, and his order of removal became final on February 27, 2025. *Id.* ¶ 9; 8 C.F.R. § 1241.1. Because Petitioner has not met his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future, his habeas petition should be denied.

I. Petitioner has not shown that there is no significant likelihood of removal in the reasonable foreseeable future.

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).

As a general matter, if an alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien [last] resided[.]" *Id.* 8 U.S.C. § 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005).

Here, Petitioner has been detained post-order of removal for approximately seven months. McNary Decl. ¶ 9. During that time, ICE has worked diligently to effectuate Petitioner's removal, including by attempting to remove Petitioner to four alternative countries. *Id.* ¶ 18. Although ICE has not yet been successful in removing Petitioner from the United States, *Zadvydas* does not stand for the proposition that aliens must be released after six months have passed, "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). Indeed, *Zadvydas* rejected the Ninth Circuit's conclusion that the government was required to release an alien from detention where "its conclusion may have rested solely upon the 'absence' of an 'extant or pending' repatriation agreement without giving due weight to the likelihood of successful future negotiations." *Zadvydas*, 533 U.S. at 702.

Repatriation may take months even when removal to a third country is not sought. *See, e.g.*, *Zheng v. Cater*, No. 25-cv-3132, Docs. 3, 11 (D. Kan. 2025). As such, it is reasonable that the active process of negotiating removal to a third country may also take beyond the "presumptively reasonable" six-month timeframe. *See Bains v. Garland*, No. 23-cv-369, 2023 WL 3824104, at *4 (W.D. Wash. May 16, 2023), *report and recommendation adopted*, 2023 WL 3818458 (W.D. Wash. June 5, 2023) (although addressing removal to a specific country, concluding that "[b]ecause ICE is still actively pursuing his removal and his detention furthers Congress's goal of ensuring his presence for removal, [the petitioner] has failed to meet his burden and is, therefore, not entitled to release under *Zadvydas*.").

And, a delay beyond six months does not become presumptively *unreasonable*. *Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *4 (W.D. Okla. Aug. 27, 2024), *report and recommendation adopted*, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025) ("But a mere delay does not trigger the inference that an [individual] will not be removed in the reasonably foreseeable future because 'the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals.'") (citation omitted). Rather, Petitioner must show that "there is 'no significant likelihood of removal in the reasonably

foreseeable future'" to warrant release. *Garcia Uranga*, 2020 WL 4334999, at *4 (quoting *Zadvydas*, 533 U.S. at 701). Here, Petitioner fails to do so.

Although he has alleged that he has not yet been removed and that he cannot return to Sudan, these allegations do not show that removal is not significantly likely in the reasonably foreseeable future. *See Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, *3 (M.D. Pa. Oct. 2, 2024) (rejecting argument that "because eight months have passed" and because travel documents had not yet issued, the petitioner must be released) (citing *DonMartin v. Lowe*, No. 1:17-cv-01766, 2017 WL 5990114, at *2 (M.D. Pa. Dec. 4, 2017); *Abdelrahman v. ICE's Interim Field Off. Dir.*, No. 4:05-cv-1916, 2005 WL 3320841, at *2 (M.D. Pa. Dec. 7, 2005)). Recognizing, however, the Court's recent decision in *Vargas v. Noem*, No. 25-3155-JWL, Doc. 6 (D. Kan. Sept. 29, 2025), Respondents note that, unlike in *Vargas*, ICE has identified specific alternate countries to which it has sought to remove Petitioner and Petitioner does not have a known criminal record potentially limiting the number of countries willing to accept him. As such, the Court should conclude that Petitioner has not shown that there is no significant likelihood of removal in the reasonably foreseeable future, or alternatively, that Respondents have rebutted any presumption that removal is not significantly likely in the reasonably foreseeable future.

Moreover, to the extent that Petitioner would attempt to delay removal by asserting a "fear of removal" to any countries that would accept him, that delay must be attributed to Petitioner, not Respondents. *Roman v. Garcia*, No. 6:24-CV-01006, 2025 WL 1441101, at *3 (W.D. La. Jan. 29, 2025) ("As other courts have stated, ordinary delays associated with processing an alien's claim for withholding or asylum do not normally trigger the concerns raised by *Zadvydas*."), *report and recommendation adopted sub nom. Lobaton v. Garcia*, No. 6:24-CV-01006, 2025 WL 1440056 (W.D. La. May 19, 2025) (citing *Euceda v. Evans*, No. 1:17-cv-256, 2017 WL 1534197, at *1

(E.D. Va. Apr. 24, 2017); *Mancera v. Kreitzman*, No. 16-cv-89, 2016 WL 1249600, at *4 (E.D. Wis. Mar. 29, 2016)).

II. Respondents have complied with the relevant regulations.

Petitioner alternatively argues that he should be released under 8 C.F.R. § 241.4 because he alleges that he was not personally interviewed pursuant to 8 C.F.R. § 241.4(i)(3)(i) or notified of the outcome of his custody review. Pet., Doc. 1, ¶¶ 31-32. Petitioner was interviewed regarding his custody status on or about June 23, 2025, however, and has twice been served with a Decision to Continue Detention—once on May 2, 2025, and again on September 12, 2025. McNary Decl. ¶¶ 15-17. Even if Petitioner's interview had not been conducted, "the remedy for a procedural due process violation is substitute process." *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, *12 (W.D. Tex. Mar. 23, 2020). As such, release is not an appropriate remedy for Petitioner's alleged violation. Because Respondents complied with 8 C.F.R. § 241.4 and because that regulation does not provide a basis for Petitioner's release, Petitioner's argument related to 8 C.F.R. § 241.4 is without merit.

III. Petitioner's Administrative Procedure Act claim is barred.

Petitioner also purports to bring a claim under the Administrative Procedure Act (APA). But, the APA provides that only "[a]gency action made reviewable by statute" and "final agency action for which there is no other adequate remedy in a court are subject to judicial review" under the APA. 5 U.S.C. § 704. Here, Petitioner's allegations relating to his APA claim are identical to those raised in his habeas claim. Because Petitioner has an adequate remedy under 28 U.S.C. § 2241, his APA claim is barred.

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 October 1, 2025, the foregoing was electronically filed with the Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ *Audrey D. Koehler*
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