

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

Ayyub Haytham Jamil Hanna,)	
)	
Petitioner,)	
)	
vs.)	Case No. 25-cv-03203-JWL
)	
Crystal Carter, Warden,)	
FCI-Leavenworth, et al.)	
)	
Respondents.)	
)	

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Ayyub Haytham Jamil Hanna (“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. 2, 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 Marissa Saenz, a Deportation Officer for Enforcement and Removal Operations (“ERO”), Immigration and Customs Enforcement (“ICE”), of the Department of Homeland Security (“DHS”). Exhibit 1, Saenz Decl. ¶¶ 1-3. Petitioner is a native and citizen of Iraq. *Id.* ¶ 5. Petitioner was initially admitted to the United States on or about September 23, 2003. *Id.* ¶ 6. On or about July 11, 2011, Petitioner was granted Lawful Permanent Resident status. *Id.* ¶ 6.

On August 9, 2017, Petitioner was convicted in the Circuit Court of Cook County, Illinois for the offense of Aggravated Criminal Sexual Assault/Bodily Harm in violation of 720

ILCS 5/11-1.30(a)(2). *Id.* ¶ 7. Petitioner was sentenced to 10 years imprisonment. *Id.*

On or about February 8, 2018, DHS initiated removal proceedings against Petitioner while in state custody at the Stateville Correctional Center in Joliet, Illinois. *Id.* ¶ 8. Petitioner was issued A Notice to Appear charging Petitioner as removable from the United States pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(F), a crime of violence as defined in 18 U.S.C. § 16. *Id.* Petitioner submitted an application for relief from removal. *Id.* ¶ 9. On or about December 3, 2020, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief. *Id.* ¶ 10. No appeal was taken from the IJ's decision by either party. *Id.*

On or about December 6, 2024, Petitioner was released from Illinois state custody on parole. *Id.* ¶ 13. Petitioner was taken into ICE custody on January 31, 2025, in an effort to effectuate the outstanding removal order to an alternative third country. *Id.* ¶ 14. Pursuant to 8 U.S.C. § 1231(a)(1)(A), an alien who has been ordered removed, shall be removed from the United States within 90 days. At or near 90 days post removal order, if an alien has not been removed, a Post-Order Custody Review ("POCR") is conducted to determine the necessity of continued custody. *Id.* ¶ 15. On or about March 3, 2025, a Notice to Alien of Interview for Review of Custody Status was issued indicating to Petitioner that his custody status would be reviewed on or about April 24, 2025. *Id.* ¶ 16. On or about April 30, 2025, the custody review decision was submitted to management for review, recommending that ICE continue with Petitioner's detention. *Id.* ¶ 17. On or about July 24, 2025, a Notice to Alien of Interview for Review of Custody Status was served on Petitioner. *Id.* ¶ 18. On July 25, 2025, Petitioner was interviewed regarding his custody status. *Id.* ¶ 19. A decision continuing detention has not yet been made. *Id.* ¶ 20.

Since being taken into ICE custody, DHS has attempted to remove Petitioner to

alternative countries, including Belize, Guatemala, and Mexico, with no success. *Id.* ¶ 21. ICE will continue its efforts to effectuate Petitioner's removal and will update the Court on any further developments in this matter. *Id.* ¶ 22.

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).

Under the INA, an alien shall be removed if the alien commits certain deportable offenses, including crimes of violence and theft offenses as defined under INA § 101(a)(43)(F) and (G). 8 U.S.C. §§ 1101(a)(43)(F), (G). Here, Petitioner's conviction in the Circuit Court of Cook County, Illinois for the offense of Aggravated Criminal Sexual Assault/Bodily Harm in violation of 720 ILCS 5/11-1.30(a)(2) rendered him removable. Saenz Decl. ¶ 8; *see also* 8 U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. §§ 1101(a)(43)(F). As such, Petitioner was ordered removed from the United States on December 30, 2020. Saenz Decl. ¶ 10.

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).

Although Petitioner asserts that his removal is not significantly likely in the reasonably foreseeable future, Petitioner does not allege any facts in support of this claim other than the fact that he has not yet been removed. Doc. 1, pg. 1. Because Petitioner has alleged no facts from which the Court could determine that Petitioner is not significantly likely to be removed in the reasonably foreseeable future, he has failed to meet his burden under *Zadvydas*, and his habeas petition should be denied.

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. 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).

Petitioner has only been in ICE custody since January 31, 2025, because he was serving his state court sentence for Aggravated Criminal Sexual Assault/Bodily Harm. *See Saenz Decl.* ¶¶ 7, 14. Petitioner’s detention has not become unreasonable as ICE has worked diligently to secure Petitioner’s removal from the United States. Although eight months have passed, during those months, ICE has contacted and requested Petitioner’s removal to at least three countries within the limited time that Petitioner been in ICE custody, and it continues to work diligently to identify additional third countries to which Petitioner might be removed. Because of this diligence and because Petitioner has alleged no facts from which the Court could determine that Petitioner is not significantly likely to be removed to a third country in the reasonably foreseeable future, the Court should deny Petitioner’s habeas petition.

CONCLUSION

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

Respectfully submitted,

RYAN A. KRIEGSHAUSER
United States Attorney
District of Kansas

/s/ Brian E. Vanorsby
Brian E. Vanorsby, KS #27606
Assistant United States Attorney
United States Attorney's Office
District of Kansas
301 N. Main, Suite 1200
Wichita, Kansas 67226
PH: (316) 269-6481
FX: (316) 269-6484
Email: audrey.koehler@usdoj.gov
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that on October 24, 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:

Ayyub Haytham Jamil Hanna, # 
FCI Leavenworth Inmate Mail
P.O. Box 1000
Leavenworth, KS 66048

/s/ Brian E. Vanorsby
Brian E. Vanorsby