

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

YOHANA GABRIEL AMOM,

Petitioner,

v.

Case No. 25-3205-JWL

C. CARTER, Warden, FCI-Leavenworth,

Respondent.

**RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE**

This matter is before the Court on the *pro se* petition of Yohana Gabriel Amom (“Petitioner”) for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, an alien subject to an order of removal, asks the Court to release him from detention at the Federal Correctional Institution in Leavenworth, Kansas (“FCI-Leavenworth”). He asserts he should be released under 8 U.S.C. § 1231(a) and *Zadvydas v. Davis*, 533 U.S. 678 (2001), alleging that there is no likelihood of removal in the reasonably foreseeable future to what he calls his home country of the Republic of Sudan (“Sudan”). He also asserts he should be released under the procedural component of the Due Process Clause of the Fifth Amendment, alleging that he has not had a sufficient opportunity to make a credible fear showing under the Convention Against Torture (“CAT”) before being removed to the separate nation of the Republic of South Sudan (“South Sudan”), which he calls a “third country.” ECF 1 at 6-7, 10-24. The Court has ordered a response from the Warden of FCI-Leavenworth (“Respondent”). ECF 2.<sup>1</sup>

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<sup>1</sup> Respondent preserves for purposes of appeal the point that Petitioner has not named anyone from the United States Department of Homeland Security (“DHS”), United States Immigration and Customs Enforcement (“ICE”), or United States Citizenship and Immigration Services (“USCIS”). The Court previously rejected this argument in *Batzogs v. Carter*, No. 25-3127-JWL, 2025 WL 2550321, at \*2 n.1 (D. Kan. Aug. 14, 2025).

The habeas petition should be denied. Petitioner's *Zadvydas* claim fails because (1) it is premature, asserted before six months have elapsed from the date on which Petitioner's removal order became final; (2) Petitioner has not shouldered his initial burden to show that removal is unlikely in the reasonably foreseeable future, as a travel document has been obtained and a removal flight to South Sudan was previously scheduled; and (3) even if Petitioner had made the required initial showing, Respondent has now rebutted it. Petitioner's claim based on an alleged lack of due process in advance of his removal to South Sudan fails because (1) to the extent Petitioner is seeking to stop removal to South Sudan, the Court lacks subject matter jurisdiction to adjudicate his claim; (2) to the extent Petitioner is asserting due process deficiencies, orders issued in a similar case by the United States District Court for the District of Massachusetts granting class certification, preliminary injunctive relief, and further remedial relief have been stayed by the United States Supreme Court and are currently unenforceable; (3) even if those Massachusetts court orders were operative, the government substantially complied with them here by interviewing Petitioner and determining he did not qualify for relief from removal to South Sudan; and (4) Petitioner has not filed a motion for a temporary restraining order ("TRO") or a preliminary injunction requiring additional procedures, undoubtedly because such a motion would have been unsuccessful.

#### **STATEMENT OF FACTS**

The following facts are part of the Declaration of Bradley McNary, a Deportation Officer for Enforcement and Removal Operations ("ERO") at ICE. Exhibit ("Ex.") 1, Declaration of Bradley McNary ¶¶ 1-4. Some facts alleged in the habeas petition (ECF 1) are included as well.

South Sudan separated from Sudan in 2011. Ex. 1 ¶ 5 n.1; *see also* ECF 1 at 20-22. Petitioner claims he is a citizen of Sudan, noting that he was born in Khartoum, the northern capital

city. Ex. 1 ¶ 5 n.1; *see also* ECF 1 at 11, 20; ECF 1-5 at 1. However, in July 2025, the Embassy of Sudan advised that Petitioner is not, in fact, a citizen of Sudan. Ex. 1 ¶ 24. He is currently a citizen of South Sudan. *Id.* ¶ 5. This updated ERO's information on Petitioner, who previously had been identified as a citizen of Sudan. ECF 1-2 at 1. In early August 2025, a travel document request was submitted to the Embassy of South Sudan. Ex. 1 ¶¶ 5 & n.1, 24. Within a week, the Embassy of South Sudan interviewed Petitioner and ERO received a travel document for him from South Sudan. *Id.*; Ex. 2. The travel document for Petitioner from South Sudan is valid until November 7, 2025. Ex. 1 ¶ 27; Ex. 2. The travel document confirms that although Petitioner was born in Khartoum, his nationality is "South Sudanese." Ex. 2.

Petitioner initially entered the United States at New York, New York around September 1999. *Id.* ¶ 6; *see also* ECF 1 at 11. He was granted Lawful Permanent Resident status in March 2003. Ex. 1 ¶ 7; *see also* ECF 1 at 11. In September 2009, he was convicted in state court in Missouri of theft/stealing in violation of state law. Ex. 1 ¶ 8. In February 2020, he was convicted in municipal court in Kansas City, Missouri for stealing in violation of a city ordinance. *Id.* ¶ 9. In April 2024, he was convicted in state court in Missouri of Endangering the Welfare of a Child in violation of state law. *Id.* ¶ 10.

In January 2025, Petitioner was placed in removal proceedings through issuance of a Notice to Appear charging him as removable from the United States pursuant to section 237(a)(2)(A)(ii) of the Immigration and Nationality Act ("INA") for having committed two or more crimes involving moral turpitude. *Id.* ¶ 11 (citing 8 U.S.C. § 1227(a)(2)(A)(ii)); *see also* ECF 1 at 11, 12. Later that month, DHS lodged an additional charge of removability against Petitioner under section 237(a)(2)(E)(i) of the INA for having been convicted of a crime of child abuse, child neglect, or child abandonment. Ex. 1 ¶ 12.

In February 2025, Petitioner filed applications for relief with an Immigration Court. *Id.* ¶ 13. The Immigration Court held a hearing to consider his applications in March 2025. *Id.* ¶ 14. Petitioner alleges that the relief he sought included, *inter alia*, asylum, withholding of removal, and protection under the CAT. ECF 1-4 at 1.<sup>2</sup> Later in March 2025, the Immigration Court issued a decision denying Petitioner’s applications for relief and ordering his removal from the United States to Sudan. Ex. 1 ¶ 15; *see also* ECF 1 at 12, 20; ECF 1-4 at 1-3; Ex. 3 at 1, 9-10. The Immigration Court discussed Petitioner’s extensive criminal history:

The respondent has numerous serious negative factors that weigh against a favorable exercise of discretion, specifically his criminal record in the United States. The respondent testified that he has been arrested in the United States approximately 13 times. He has nine criminal convictions and four charges that are still outstanding. . . . The respondent’s criminal convictions include multiple DUIs, stealing, endangering the welfare of a child, assault, property damage, and resisting arrest. The respondent’s DUIs include incidents with his young child in the vehicle. One DUI involved his BAC level to be .490, which is more than six times the legal limit. Another DUI involved his BAC level to be .364, more than four times the legal limit. After his fourth DUI conviction, the respondent was incarcerated in the Missouri Department of Corrections. After his release, the respondent was charged with four additional crimes which are pending. These arrests include: Obstructing or Resisting Public Safety Officer and Endangering the Welfare of a Child; Domestic Assault; Resisting Arrest; Property Damage.

Ex. 3 at 5. The Immigration Court concluded Petitioner was not “a person of good moral character” and his “long criminal history and his choices over the past 17 years greatly outweigh his future promises to obey the law.” *Id.* at 6, 9.

Appellate rights were reserved, and any appeal of the Immigration Court’s decision was due to the Board of Immigration Appeals (“BIA”) within 30 days. Ex. 1 ¶ 16. In April 2025, Petitioner filed an appeal with the BIA. *Id.* ¶ 17. In June 2025, though, Petitioner sent a letter to the BIA asking that his appeal be withdrawn. *Id.* ¶ 18. Given Petitioner’s request, the BIA issued

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<sup>2</sup> ECF 1-4 contains selected pages from the Immigration Court’s March 2025 amended order. A redacted copy of this order with all pages included is attached to this Response as Exhibit 3.

a decision on July 8, 2025, recognizing the withdrawal of the appeal and returning the record to the Immigration Court without further action. *Id.* ¶ 19. This rendered final the Immigration Court’s order. *Id.* ¶ 20; *cf.* ECF 1 at 12 (incorrectly asserting that the Immigration Court order became final on April 19).

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. Ex. 1 ¶ 21. If an alien has not been removed at or near 90 days after a removal order, ERO conducts a File Custody Review, also known as a Post-Order Custody Review (“POCR”), to determine the necessity of continued custody. *Id.* When conducting a 90-day POCR, 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.*

If an alien has been detained pursuant to a final removal order for 180 days, a Transfer Checklist generally is completed with information related to follow-up actions taken to obtain a travel document after the initial 90-day POCR and every 90 days thereafter. *Id.* ¶ 22. The Transfer Checklist is transferred to the ICE/ERO Headquarters POCR Unit, which makes the ultimate decision on the individual’s continued detention beyond 180 days, or every 90 days thereafter. *Id.* This decision is based on whether there is a significant likelihood of removal in the reasonably foreseeable future. *Id.*

On or around June 27, 2025 – approximately 11 days before the Immigration Court order became final on July 8 – Petitioner was interviewed to obtain a travel document from Sudan. *Id.* ¶ 23; *see also* ECF 1 at 13. As noted, the Embassy of Sudan indicated on or around July 10 that Petitioner is not a citizen of Sudan. Ex. 1 ¶ 24; *see also* ECF 1 at 14. A travel document request for Petitioner was submitted to the Embassy of South Sudan on or around August 1. Ex. 1 ¶ 25.

He was interviewed by the Embassy of South Sudan on or around August 6. *Id.* ¶ 26. A travel document for Petitioner from South Sudan that is valid for a limited time was received on or around August 8. *Id.* ¶ 27; Ex. 2.

On or around September 5, 2025, Petitioner sought to challenge his removal to South Sudan. Ex. 1 ¶ 28. He alleges he received verbal notice, rather than written notice, of his potential removal to South Sudan. ECF 1 at 10. Approximately 17 days later, on or around September 22, Petitioner was interviewed by an officer from USCIS to assess whether Petitioner would meet the threshold to pursue an application for relief from removal. Ex. 1 ¶ 29. USCIS concluded that Petitioner did not meet the requisite standard for the relief he sought. *Id.* Accordingly, he was scheduled for removal to South Sudan on October 5. *Id.* ¶ 30. On October 3, Petitioner told the escorting Deportation Officers that he would refuse to board the aircraft for his removal mission. *Id.* ¶ 31. The same day, he was served with a Notice of Failure to Comply, advising Petitioner that continued actions to prevent removal may subject him to criminal prosecution under 8 U.S.C. § 1253(a). *Id.* ¶ 32. His scheduled removal for October 5 was cancelled, but ICE is continuing efforts to effectuate his removal. *Id.* ¶¶ 33-34.

### **THE *D.V.D.* LITIGATION**

Because this case implicates *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass. 2025), a summary of that matter is warranted, even though the government does not agree with various trial court findings. On April 18, 2025, the district court presiding over the *D.V.D.* litigation certified a class and entered a preliminary injunction requiring the government to follow certain procedures before removing aliens to third countries. *Id.* at 364, 386, 392, 394. The district court certified the following class:

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings)

whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

*Id.* at 378. The district court determined that class treatment was appropriate in part because the lawsuit challenged “a single alleged practice—Defendants’ system-wide policy or practice of designating aliens for removal to a third country without first providing those aliens notice and an opportunity to apply for protection from removal to that country[.]” *Id.* at 383 (citation modified). The district court found that Executive Branch directives issued in February and March 2025 did not provide sufficient process to such aliens. *Id.* at 367-68, 384-85, 389-91.

In granting the motion for a preliminary injunction, the *D.V.D.* district court held the plaintiffs were “likely to succeed in showing that Defendants have a policy or practice of executing third-country removals without providing notice and a meaningful opportunity to present fear-based claims, and that such policy constitutes a deprivation of procedural due process.” *Id.* at 387, 390-91. The district court found that other preliminary injunction factors favored the plaintiffs as well, including irreparable harm and the balance of the equities or the “public interest.” *Id.* at 391-92. The district court therefore ordered that:

[P]rior to removing any alien to a third country, *i.e.*, any country not explicitly provided for on the alien’s order of removal, Defendants must (1) provide written notice to the alien—and the alien’s immigration counsel, if any—of the third country to which the alien may be removed, in language the alien can understand; (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for CAT protections; (3) move to reopen the proceedings if the alien demonstrates “reasonable fear”; and (4) if the alien is not found to have demonstrated “reasonable fear,” provide meaningful opportunity, and minimum of 15 days, for that alien to seek to move to reopen immigration proceedings to challenge the potential third-country removal.

*Id.* at 392-93. The government made several jurisdictional arguments in *D.V.D.*, all of which the district court rejected. *Id.* at 370-78.

After the government appealed the district court's decision in *D.V.D.* on April 22, 2025, the plaintiffs moved for a TRO preventing the government from removing aliens to third countries without the ordered procedures. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1323697, at \*1 (D. Mass. May 7, 2025). The district court determined this relief was already provided by the existing preliminary injunction. *Id.* The district court later held a hearing, after which it found the government did not comply with the preliminary injunction by failing to provide six alien class members with a meaningful opportunity to present CAT claims before initiating removal to South Sudan:

[T]he non-citizens at issue had fewer than 24 hours' notice, and zero business hours' notice, before being put on a plane and sent to a country as to which the U.S. Department of State issued the following warning: "Do not travel to South Sudan due to **crime, kidnapping, and armed conflict.**" *South Sudan Travel Advisory*, U.S. Department of State, Mar. 8, 2025, <https://perma.cc/XQN7-VXHV> (emphasis in original). As detailed on the record during today's hearing, further facts regarding the unavailability of information, the hurried and confused notice that the individuals received, language barriers, and attorney access compound and confirm this Court's finding that no reasonable interpretation of the Court's Preliminary Injunction could endorse yesterday's events.

*D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21, 2025); *see also id.* (stating that an alien must be given at least 10 days to "raise a fear-based claim for CAT protection prior to removal"). The district court issued a separate order spelling out the remedy for this alleged non-compliance. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1453604, at \*1-2 (D. Mass. May 21, 2025).

Less than a week later, on May 26, 2025, the *D.V.D.* district court denied government motions for reconsideration and to stay the court's rulings pending appeal. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223, 227-36 (D. Mass. 2025). The district court continued to emphasize State Department comments about South Sudan, including one which warned that "[v]iolent crime, such as carjackings, shootings, ambushes, assaults, robberies, and kidnappings

are common throughout South Sudan, including [its capital,] Juba. Foreign nationals have been the victims of rape, sexual assault, armed robberies, and other violent crimes.” *Id.* at 230. The district court reiterated that the six class members in question had been placed on a plane with virtually no notice and “had no opportunity to learn anything about South Sudan, a nascent, unstable country to which the United States recently told its citizens not to travel[.]” *Id.* at 233 (citation modified).

The government then applied to the United States Supreme Court for a stay of the *D.V.D.* district court’s rulings pending an appeal to the First Circuit and any Supreme Court certiorari. On June 23, 2025, that application was granted. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025). Three justices dissented, arguing in part that the government should not be allowed to continue to remove aliens to third countries like South Sudan without the procedures ordered by the district court. *Id.* at 2153-63. When the district court subsequently held that its May 21 remedial order remained in effect as to the six class members slated for removal to South Sudan, the government filed a motion with the Supreme Court seeking clarification. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2629 (2025). On July 3, 2025, the Supreme Court granted the government’s motion, holding that both the district court’s April 18 preliminary injunction order and its May 21 remedial order were stayed and unenforceable. *Id.* at 2629-30. Two justices dissented, again highlighting conditions in South Sudan. *Id.* at 2630-33.

### ARGUMENT

28 U.S.C. § 2241(a) vests each district court with the power to grant a writ of habeas corpus. Such a writ “shall not extend to a prisoner” unless “[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). The Court of Appeals reviews legal issues in connection with a § 2241 habeas petition *de novo*, while factual

findings are reviewed for clear error. *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012).

**I. Petitioner’s premature *Zadvydas* claim fails because he has not shown removal is unlikely, or alternatively, Respondents can rebut any such showing**

Under *Zadvydas*, upon the entry of a final removal order “the Government ordinarily secures the alien’s removal during a subsequent 90-day statutory ‘removal period,’ during which time the alien normally is held in custody.” 533 U.S. at 682. If the alien is not removed during this 90-day period, 8 U.S.C. § 1231(a)(6) “authorizes further detention.” *Id.* *Zadvydas* held that a six month period of detention is presumptively reasonable. *Id.* at 701. “After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.* The presumption does not mean that “every alien not removed must be released after six months,” but instead that the alien may be held in confinement until “it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

Here, Petitioner’s *Zadvydas* claim should be denied for at least three reasons. First, the claim is being asserted too soon. Petitioner’s removal order became final on July 8, 2025. *See supra* Statement of Facts (“SOF”). Six months will not have passed from that date until January 8, 2026. Petitioner implicitly recognizes this, asking the Court “not to deny his Petition as premature” because he has “not yet reached 180-days.” ECF 1 at 9-10. The law in this District does not support Petitioner’s request. *See Reyna-Salgado v. Noem*, No. 25-3138-JWL, 2025 WL 2550346, at \*1 (D. Kan. Aug. 11, 2025) (“Petitioner’s removal order became final on February 21, 2025, less than six months ago, and therefore petitioner’s detention remains presumptively reasonable . . . . Thus, this petition is premature.”) (citation modified); *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, at \*9 (D. Kan. July 13, 2020) (“The order for Petitioner’s removal

became administratively final on April 17, 2020, when the BIA dismissed his appeal of the removal order. Petitioner has not been detained in excess of the presumptively reasonable six-month period.”). Other cases likewise undermine Petitioner’s request. *See, e.g., Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002) (affirming dismissal because the six-month period “must have expired” before the filing of a habeas petition “in order to state a claim under *Zadvydas*”).

Petitioner’s behavior further supports a ruling that his habeas petition is premature. Petitioner initially sought relief in the Immigration Court with respect to Sudan. *See supra* SOF. It follows that part of the alleged “delay” in this matter is associated with Petitioner’s efforts to secure “withholding or asylum,” which efforts “do not normally trigger the concerns raised by *Zadvydas*.” *Roman v. Garcia*, No. 6:24-CV-01006, 2025 WL 1441101, at \*3 (W.D. La. Jan. 29, 2025). Then, Petitioner interfered with his removal to South Sudan by refusing to board the aircraft for the mission. *See supra* SOF. The law provides that “[t]he removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period” if the alien “conspires or acts to prevent the alien’s removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(C); *see also Madej v. Garland*, No. 22-3303-JWL, 2023 WL 1396195, at \*2 (D. Kan. Jan. 31, 2023) (invoking § 1231(a)(1)(C) where the petitioner “repeatedly refused to sign documents and complete applications” to obtain a passport).

Second, Petitioner has not demonstrated “good reason to believe” that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner’s removal to South Sudan is not just theoretically possible – it was scheduled to occur on October 5, 2025. *See supra* SOF. Prior to that date, ICE consulted with the Embassy of South Sudan and obtained a travel document. *Id.* The only thing preventing removal is Petitioner’s refusal to cooperate, which may subject him to criminal prosecution. *Id.* These facts defeat any attempt by Petitioner to

shoulder his initial burden of proof under *Zadvydas*. See *Soudom v. Warden*, No. 25-3063-JWL, 2025 WL 1594822, at \*2 (D. Kan. May 23, 2025) (denying relief where the petitioner did not carry his initial burden, in part because “[t]he letter on which petitioner relies does not foreclose the possibility of his removal”); *Ogole v. Garland*, No. 24-3198-JWL, 2025 WL 548452, at \*2 (D. Kan. Feb. 19, 2025) (denying relief where the petitioner did not carry his initial burden by asserting “his country has a ‘freeze on deportation,’” as this argument was “made without supporting evidence” and belied by other facts in the record).

Third, even if Petitioner had shifted the burden under *Zadvydas* (which he has not), the facts discussed above easily satisfy Respondent’s rebuttal obligation. See *Soudom*, 2025 WL 1594822, at \*2 (finding the respondents “sufficiently rebutted” any initial showing, in part because “immigration officials have diligently sought the necessary travel documentation for petitioner from South Africa since his detention”); *Drame v. Gonzales*, No. 16-3257-JWL, 2017 WL 978120, at \*3 (D. Kan. Mar. 14, 2017) (finding the respondents met their burden “by showing that the Senegal Embassy now has issued the necessary travel document and that a tentative travel plan is in place to remove petitioner within this month”). Petitioner’s *Zadvydas* claim should be summarily denied.

## **II. Petitioner’s claim based on an alleged lack of sufficient process for removal to South Sudan is misguided and does not justify release**

No matter how Petitioner’s argument that he has not received sufficient process for removal to South Sudan is interpreted, it fails to set forth a basis for relief. If Petitioner is asserting he cannot be removed to South Sudan because of alleged due process deficiencies, his claim fails for lack of subject matter jurisdiction. If Petitioner is asserting the alleged lack of process is inconsistent with the Due Process Clause of the Fifth Amendment, his claim fails because he did receive process. The Supreme Court’s rulings in *D.V.D.* mean that there is no obligation to offer

the procedures discussed by the district court in that case, and even if such procedures were required, the government substantially complied via a USCIS interview prior to any attempted removal of Petitioner to South Sudan.<sup>3</sup>

**A. To the extent Petitioner is seeking to stop removal to South Sudan, he cannot establish subject matter jurisdiction**

To the extent Petitioner is arguing he cannot be removed to South Sudan, subject matter jurisdiction is lacking. Any attempt to prevent removal is foreclosed by 8 U.S.C. § 1252(g). That portion of § 1252 states:

(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

If Petitioner, “in effect, asks this court to review a removal order,” the Court “lacks jurisdiction to do so.” *Alegria-Zamora v. U.S. Dep’t of Homeland Sec.*, No. 18-2102-DDC-GLR, 2018 WL 1138280, \*2 (D. Kan. Mar. 2, 2018) (relying on § 1252(g)); *see also Abedi v. Carter*, No. 25-3141-JWL, ECF 7 at 4 (D. Kan. Oct. 6, 2025) (“The Court agrees with respondents that an injunction prohibiting the government from removing petitioner would effectively constitute a challenge to the government’s authority to remove petitioner, and the Court therefore lacks jurisdiction to issue the requested injunction against removal.”) (CourtLink copy attached as Ex. 4).

Any attempt to halt removal in the district court is inconsistent with 8 U.S.C. § 1252(a)(5) as well. That portion of § 1252 states:

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<sup>3</sup> If Petitioner is asserting that supposedly required procedures will make his removal to South Sudan unlikely under *Zadvydas*, his claim fails for similar reasons: he already received process and the district court’s *D.V.D.* decision presents no barrier to his removal or his continued detention. *See infra* Argument § II.B.

## (5) Exclusive means of review

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e). For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms “judicial review” and “jurisdiction to review” include habeas corpus review pursuant to section 2241 of Title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

Several courts have acknowledged that “§ 1252 does not bar habeas relief as to claims that are independent of a removal order,” but courts have also held that “the jurisdiction-stripping provisions apply to *indirect* challenges to the merits of a removal order.” *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1274-75 (10th Cir. 2018) (citation modified); *see also Abedi*, No. 25-3141-JWL, ECF 7 at 4 (citing this passage from *Gonzalez-Alarcon* with approval). Once more, if Petitioner’s argument is construed as an attempt to avoid removal to South Sudan, his claim can only be reviewed by the Court of Appeals.

**B. To the extent Petitioner is asserting purported due process inadequacies, his claim is factually and legally unsupported**

For at least three reasons, this Court should not accept Petitioner’s assertion that he must be released because he received an insufficient opportunity to object to removal to the “third country” of South Sudan. First, at this juncture, the district court’s decision in *D.V.D.* does not require additional procedures before removal or otherwise require Petitioner’s release from custody. As discussed above, the district court expressly considered the situation in South Sudan when it issued a remedial order requiring certain procedures for aliens being removed to that country and another order denying government motions, all of which followed the court’s initial order certifying a class and entering a preliminary injunction. *See D.V.D.*, 778 F. Supp. 3d at 364-

93 (Apr. 18, 2025); *D.V.D.*, 2025 WL 1453640, at \*1-2 (May 21, 2025); *D.V.D.*, 2025 WL 1453604, at \*1-2 (May 21, 2025); *D.V.D.*, 786 F. Supp. 3d at 227-36 (May 26, 2025). The Supreme Court took into consideration the district court's findings pertaining to South Sudan and *still* stayed the district court's preliminary injunction and remedial orders. *Dep't of Homeland Sec.*, 145 S. Ct. at 2153-63 (June 23, 2025); *Dep't of Homeland Sec.*, 145 S. Ct. at 2629-33 (July 3, 2025). As a result, the procedures ordered by the district court are unenforceable at this time. Hence, *D.V.D.* presents no barrier to Petitioner's removal to South Sudan, much less a barrier to Petitioner's continued detention at FCI-Leavenworth while ICE attempts to effectuate the removal.

Second, even if the district court's preliminary injunction and remedial orders in *D.V.D.* were operative, the government has substantially complied with them in this case. The district court's orders required (1) written notice to the alien and any counsel of an impending third country removal; (2) a meaningful opportunity with 10 days to raise credible fear claims under the CAT; (3) action by the government to reopen immigration proceedings upon a demonstration of reasonable fear; and (4) a meaningful opportunity with 15 days for the alien to seek to reopen immigration proceedings upon a negative fear determination. *D.V.D.*, 778 F. Supp. 3d at 392-93 (Apr. 18, 2025); *D.V.D.*, 2025 WL 145360, at \*1 (May 21, 2025); *D.V.D.*, 2025 WL 1453604, at \*1 (May 21, 2025).

In the matter at hand, any deviations from the procedures ordered by the *D.V.D.* district court were immaterial. The government provided verbal notice to Petitioner of his impending removal to South Sudan, rather than written notice. *See supra* SOF. Nevertheless, approximately 17 days after Petitioner sought to challenge his removal to South Sudan, he was interviewed by a USCIS officer. *Id.* The USCIS officer concluded Petitioner did not meet the requisite standard for relief. *Id.* Petitioner's removal to South Sudan was scheduled to occur approximately 11 days later.

*Id.* The difference between 11 days and 15 days is hardly significant, and in any event, due to Petitioner's intransigence, his removal did not take place on the scheduled date of October 3, 2025.

*Id.* Petitioner thus has had more than 15 days to seek to reopen immigration proceedings. Stated differently, the government substantially complied with the procedures contemplated by the district court in *D.V.D.* Moreover, while his removal order refers to Sudan instead of South Sudan, Petitioner is (or has become) a citizen of South Sudan. *Id.* That makes it difficult to classify South Sudan as a "third country" for Petitioner.

Third, Petitioner has not filed a motion for a TRO or a preliminary injunction requiring additional procedures. Had he done so, the motion would have been denied. In *Manago v. Carter*, No. 25-3183-JWL, 2025 WL 2576755 (D. Kan. Sept. 5, 2025), the petitioner filed not just a habeas petition but also a TRO motion that "relie[d] heavily" on *D.V.D. Id.* at \*1 (citation modified). The Court treated the TRO motion "as requesting only that limited relief regarding notice and an opportunity to object" to removal to Sudan, as the petitioner had an order withholding removal to that country. *Id.* So construed, the Court denied the TRO motion, in part because (1) the Court felt "it should refrain from issuing any injunction that could ultimately conflict with the outcome" of *D.V.D.*; (2) the Court was "disinclined to issue the same injunction as the one issued by the *D.V.D.* court that already covers petitioner;" and (3) by issuing a stay, the Supreme Court in *D.V.D.* "sent a strong signal that temporary injunctive relief of the type sought here is not appropriate." *Id.* at \*2-3.<sup>4</sup>

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<sup>4</sup> This Court noted that if the petitioner's TRO motion were treated as seeking an order precluding removal, such relief "would not be warranted." *Manago*, 2025 WL 2576755, at \*1 n.1. The Court reinforced that "an injunction generally prohibiting the government from removing petitioner would effectively constitute a challenge to the government's authority to remove petitioner, and therefore it is not sufficiently clear that the Court would have jurisdiction to issue such an injunction." *Id.*

**CONCLUSION**

For the foregoing reasons, the habeas petition should be denied.

Respectfully submitted,

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**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, and the foregoing was also forwarded via United States mail, postage prepaid, by placing it in the mailbox, addressed to:

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