

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 0:25-cv-03939 (ECT/LIB)

OUMAR KONATE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**FEDERAL RESPONDENT'S  
RESPONSE TO  
PETITIONER'S WRIT FOR  
HABEAS CORPUS**

Federal Respondent United States of America respectfully files this Response to Petitioner Oumar Konate's Petition for a Writ of Habeas Corpus. In his Petition, Konate argues that his detention after a final order of removal is unconstitutional because there is not a significant likelihood of his removal in the reasonably foreseeable future. Konate's Petition should be denied. Not only is his removal reasonably foreseeable, but his removal to the Republic of the Congo is scheduled to occur later this month.

**FACTUAL BACKGROUND**

Petitioner Oumar Konate is a citizen of the Republic of the Congo. Campbell Decl. ¶ 5 On June 10, 2002, the legacy U.S. Immigration and Naturalization Service admitted Konate at New York JFK International Airport as a nonimmigrant visitor. *Id.* Konate entered the United States using fraudulent documents. *Id.*

On July 1, 2003, Immigration and Customs Enforcement issued Konate a Notice to Appear, form I-862, charging removability under sections 212(a)(7)(A)(i)(I) and 237(a)(1)(A) of the INA as an alien present in the United States without valid documents

and an alien admitted to the United States without valid documents. *Id.* ¶ 6. On April 6, 2005, an immigration judge ordered Konate removed from the U.S. to the Republic of the Congo. *Id.* ¶ 7, Ex 1. On November 6, 2012, ICE arrested Konate in order to effectuate the removal order against him. *Id.* ¶ 8. On December 10, 2012, ICE requested a travel document from the Embassy of the Republic of the Congo (the Embassy). *Id.* ¶ 9. The Embassy denied the travel document in March 2013. *Id.* ¶ 10. In November 2013, ICE released Konate under an Order of Supervision. *Id.* ¶ 11, Ex. 2.

On April 1, 2025, ERO St. Paul arrested Konate and served him a Notice of Revocation of Release, citing a renewed likelihood of removal to the Republic of the Congo as a change in circumstances. *Id.* ¶ 12, Ex. 3. On April 9, 2025, ERO St. Paul contacted the Embassy to make another request for a travel document. *Id.* ¶ 13. On May 21, 2025, ERO St. Paul received a travel document from the Embassy. *Id.* ¶ 14. On June 25, 2025, ERO St. Paul attempted to repatriate Konate to the Republic of the Congo. *Id.* ¶ 15. Konate refused to board the aircraft. Escorting officers advised him that failing to comply with removal efforts would place him in Failure to Comply status, and that he would remain in custody until he complied with removal efforts. He continued to refuse to board the aircraft. *Id.*

On July 29, 2025, ERO St. Paul served Konate an I-229(a) outlining his obligation to comply with removal efforts. *Id.* ¶ 17. On August 18, 2025, Konate's travel document expired. *Id.* ¶ 18. On October 20, 2025, ERO St. Paul received a second travel document from the Embassy. *Id.* ¶ 21. ERO St. Paul plans to repatriate Konate to the Republic of the Congo on November 20, 2025. *Id.*

## ARGUMENT

### A. Jurisdiction, Burden of Proof, and Scope of Review.

Judicial review of immigration matters, including immigration detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“[T]he power over aliens is of a political character and therefore subject only to narrow judicial review.”). The Supreme Court has thus “underscore[d] the limited scope of inquiry into immigration legislation,” and “has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”).

Here, Konate’s sole challenge is to his continued civil immigration detention

pending his removal. Konate does not challenge his final order of removal, nor could he. Jurisdiction over a challenge to a final order of removal lies exclusively with the appropriate circuit court of appeals. *See* 8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (exclusive jurisdiction to review final orders of removal is with the circuit, not district, court).

Konate is detained because immigration officials, who have reviewed his ongoing custody, have specifically determined that there is a significant likelihood of Konate's removal to the Republic of the Congo in the reasonably foreseeable future. ICE has received necessary approvals for his removal itinerary. Campbell Decl. ¶ 21. ICE has scheduled his removal for later this month. *Id.*

**B. Legal and Statutory Authority for Detention.**

On April 1, 2025, ERO St. Paul revoked Konate's Order of Supervision and arrested him, citing a renewed likelihood of removal to the Republic of the Congo as a change in circumstances. Campbell Decl. ¶¶ 12, 13; *see* 8 U.S.C. § 1231(a)(2) (detention in cases of post final order of removal). Under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained *indefinitely* pending removal. 533 U.S. at 699-700. *Zadvydas* established a temporal marker: post-final order of removal detentions of six months or less are presumptively constitutional. 533 U.S. at 701. Detentions longer than six months comport with due process if a "significant likelihood of removal in the reasonably foreseeable future" exists. *Id.* As the Supreme Court explained:

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. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the “reasonably foreseeable future” conversely would have to shrink. *This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an 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.* (emphasis added).

Thus, under *Zadvydas*, a habeas petitioner has the initial burden of demonstrating that there is no significant likelihood of his or her removal in the reasonably foreseeable future. *Id.* If the petitioner does so, the government must rebut that showing. *Id.*

After the Court’s decision in *Zadvydas*, the U.S. Department of Homeland Security promulgated comprehensive regulations to implement the *Zadvydas* mandate. See 8 C.F.R. §§ 241.4, 241.13, 241.14, 66 Fed. Reg. 56967-01, 56969 (Nov. 14, 2001). *Accord Alexander v. U.S. Attorney General*, 495 F. App’x 274, 277 (3d Cir. 2012) (“*Zadvydas* is not the only word on post-removal detention; regulations promulgated around the time of, and after, the *Zadvydas* decision established a series of processes for determining whether an alien should be released from custody after the expiration of the ninety-day removal period.”). These regulations govern immigration detention of aliens subject to a final order of removal and establish a systemized process for detention reviews.

Section 241.4 of the regulations requires that a detainee be given a post-order

custody review before the 90-day statutory removal period expires, if removal cannot be accomplished during the 90-day period. 8 C.F.R. § 241.4(k)(1)(i). Numerous considerations factor into this initial custody review, including the detainee's criminal history. 8 C.F.R. § 241.4(f). To release a detainee at this point, DHS must conclude, among other things, that he or she is "not likely to pose a threat to the community following release." 8 C.F.R. § 241.4(e).

Section 241.13 addresses the substantial likelihood of removal in the reasonably foreseeable future standard established in *Zadvydas*. It provides numerous factors relevant to the standard, including the "ongoing nature of the Service's efforts to remove this alien," and states that "[w]here the Service is continuing its efforts to remove the alien, there is no presumptive period of time within which the alien's removal must be accomplished, but the prospects for the timeliness of removal must be reasonable under the circumstances." 8 C.F.R. § 241.13(f).

**C. DHS Fully Complied with the Regulatory Requirements In Revoking Petitioner's Release.**

Petitioner argues that his detention does not comply with applicable regulatory requirements. *See* ECF 1, p. 7. That argument is meritless. Though Petitioner claims he was not given adequate notice that his Order of Supervision was revoked, his assertion is belied by Declaration of Deportation Officer Christopher Campbell, Campbell Decl. ¶ 12, and the Notice of Revocation provided to Konate (Ex. 3). Indeed, elsewhere in the Petition, Konate appears to allude to having received the Notice and understanding the basis for his detention. *See* ECF 1, p. 7.

The Petition does not identify any problem with the Notice, which mirrored requirements set forth in the regulation. *Compare* 8 C.F.R. § 241.13(i)(2) *with* Ex. 3. The Notice of Revocation identified changed circumstances, namely the fact that ICE “has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case.” Campbell Decl. ¶ 12, Ex. 3.

Konate has no allegations in his Petition to rebut ICE’s finding that his removal is significantly likely to occur in the reasonably foreseeable future. Petitioner failed to dispute the government’s basis for revocation at his interview or to provide any evidence or information that would rebut the likelihood of his removal in the reasonably foreseeable future though he was given the *opportunity* to do so. That is all the regulation requires. 8 C.F.R. 241.13(i)(3). “The regulation only mandates that upon revocation of release, the petitioner must be given an initial opportunity to dispute the government’s justification for revocation. There is no requirement that ICE give any advance notice of the informal interview . . . .” *Doe v. Smith*, 324 F. Supp. 3d 214, 223 (D. Mass. 2018) (denying petition for writ of habeas corpus following revocation).

Here, Konate did receive a “meaningful opportunity” to respond to ICE’s invocation of changed circumstances and re-detention. The Notice Konate received specifically stated that “[b]ased on the recent discussions with the government of the Congo, there is now a significant likelihood of your removal in the reasonably foreseeable future.” Ex. 3. In fact, ICE has received a travel document for Konate. Campbell Decl. ¶ 21. Therefore, Konate’s removal is reasonably foreseeable. Since Federal Respondents have complied with the applicable regulatory requirements, his Petition should be dismissed.

**D. Petitioner's Detention Does Not Violate Due Process.**

The Court should also deny Konate's habeas petition because there is no due process violation in this case. Konate cannot make the initial showing required at step one of the *Zadvydas* analysis. Moreover, Respondent has presented evidence confirming that Konate's removal is likely to occur in the foreseeable future.

Konate fails to satisfy the threshold requirement that he "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. One illustrative case, *Andrade*, involved a petitioner who had been detained for more than three years when his habeas appeal reached the Fifth Circuit. *Andrade v. Gonzales*, 459 F.3d 538, 543-44 (5th Cir. 2006), cert. denied, 549 U.S. 1132, 127 S. Ct. 973, 166 L. Ed. 2d 739 (2007). The *Andrade* Court noted that *Zadvydas* "creates no specific time limits on detention," rather an 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.* (citing 533 U.S. at 701). It found that, since "[t]he alien bears the initial burden of proof in showing that no such likelihood of removal exists" and "ha[d] offered nothing beyond his conclusory statements suggesting that he will not be immediately removed . . . following the resolution of his appeals," "[h]is constitutional claim [wa]s meritless." *Id.* (citing *Zadvydas*, 533 U.S. at 701). In the present case, Konate fails to make any argument that there is no significant likelihood of removal in the reasonably foreseeable future. Because Konate cannot make the threshold showing under *Zadvydas*, the Court should deny his habeas petition.

Konate fares no better at the second step of the *Zadvydas* analysis. The record evidence rebuts any notion that there is no significant likelihood of his removal to the Republic of the Congo in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701. In general, courts have found no significant likelihood of removal under *Zadvydas* in five circumstances:

1. where the detainee is stateless, and no country will accept him;
2. where the detainee's country of origin refuses to issue a travel document;
3. where there is no repatriation agreement between the detainee's native country and the United States;
4. where political conditions in the country of origin render removal virtually impossible; and
5. where a foreign country's delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue.

*Joseph K.*, 2019 U.S. Dist. LEXIS 248455, at \*8-9 (citations omitted). Konate's petition does not allege that any of these circumstances are present.

When the record shows such "diligent and reasonable efforts to obtain travel documents," and "the alien's native country ordinarily accepts repatriation, and that country is acting on an application for travel documents, most courts conclude that there is a significant likelihood of removal in the foreseeable future." *Ahmed v. Brott*, 2015 U.S. Dist. LEXIS 45346, at \*15 (D. Minn. Mar. 17, 2015) (citations and internal quotation marks omitted). To the extent ICE encounters delays in obtaining a travel document, such delays would not be "sufficient to trigger an inference that there is no significant likelihood

of removal; they simply show that the bureaucratic gears are slowly grinding away.” *Id.* (citations, alterations, and internal quotation marks omitted).

Here, diligent and reasonable efforts have been made to obtain a travel document for Konate. In fact, on May 21, 2025, ICE received a travel document for Konate. ICE attempted to repatriate him to the Republic of the Congo on June 25, 2025, but Konate refused to board the aircraft. Konate’s travel document expired on August 18, 2025. On October 20, 2025, ICE received a second travel document for Konate. ICE plans to repatriate Konate to the Republic of the Congo on November 20, 2025. There is no question that there is a significant likelihood of Konate’s removal in the reasonably foreseeable future.

Equally important, Konate’s current detention serves a clear purpose by “assuring [his] presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. The Supreme Court long ago recognized that detention to facilitate removal is a legitimate governmental objective. *See Wong Wing*, 163 U.S. at 235 (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character and while arrangements were being made for their deportation.”). Konate detention has a definitive end in sight: his removal to the Republic of the Congo. Based on the record evidence, Respondents have rebutted any presumption that Konate’s raised regarding the likelihood of his removal in the foreseeable future. Because the due process standards set forth in *Zadvydas* are satisfied, Konate is not entitled to habeas relief.

### CONCLUSION

For the foregoing reasons, Federal Respondent respectfully request that this Court

deny the Petition without an evidentiary hearing.

Dated: November 13, 2025

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