

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

MOHAMMAD A. BIN NUR HUSSEIN,)	
)	
Petitioner,)	
)	
vs.)	Case No. 5:25-cv-03240-JWL.
)	
PAMELA BONDI, Attorney General,)	
KRISTI NOEM, Secretary of the)	
Department of Homeland Security,)	
SAMUEL OLSON, U.S. ICE Field Office)	
Director for the Chicago Field Office,)	
and Warden of Immigration Detention)	
Facility,)	
)	
Respondents.)	
_____)	

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Mohammad A. Bin Nur Hussein (“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. 2, Pamela Bondi, Attorney General of the United States, Kristi Noem, Secretary of the Department of Homeland Security, Samuel Olson, ICE Chicago Field Office Director, and the Warden of Immigration Detention Facility (collectively “Respondents”) respectfully submit this response.

Petitioner alleges: (1) his detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, because more than 180 days have passed since he received a final order of removal and his removal to Burma (Myanmar) or any other country is not significantly likely to occur in the reasonably foreseeable future, (2) his detention violates Due Process because he is not likely to be removed in the reasonably foreseeable future, and (3) his

Due Process rights have been violated because he has been denied an opportunity to demonstrate that he should not be detained.

The Court should deny the habeas petition because Petitioner's detention does not violate 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*, and his detention does not violate the Due Process Clause. Further, Petitioner's procedural due process claim should be denied as Petitioner is not entitled to a bond hearing and he has been served with a Notice to Alien of File Custody Review, indicating Petitioner's custody status will be reviewed on December 9, 2025.

STATEMENT OF FACTS

The following facts are taken from the Declaration of Sydney Milum, a Deportation Officer for Enforcement and Removal Operations at United States Immigration and Customs Enforcement ("ICE"). Exhibit 1, Sydney Milum Decl., ¶¶ 3. Petitioner is a native of Malaysia and a citizen of Burma. *Id.* ¶ 5. Petitioner was admitted to the United States at New York, New York, on or about January 29, 2013. *Id.* ¶ 6. On or about December 8, 2022, Petitioner was convicted in the Milwaukee County, Wisconsin Circuit Court for the offense of Robbery with Use of Force in violation of Wisconsin Statutes § 943.32(1)(a) and the offense of Recklessly Endangering Safety in the second degree in violation of Wis. Stat. § 941.30(2). *Id.* ¶ 7. Petitioner was sentenced to two years imprisonment. *Id.*

On or about March 7, 2023, Petitioner was placed in removal proceedings. *Id.* ¶ 8. A Notice to Appear was issued charging Petitioner as removable from the United States pursuant to sections 237(a)(2)(A)(ii) and (iii) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1227(a)(2)(A)(ii) and (iii), for having been convicted of two crimes involving moral turpitude and an aggravated felony as defined in INA § 101(a)(43)(U), 8 U.S.C. § 1101(a)(43)(U) (a crime relating to an attempt or conspiracy to commit an offense described in INA § 101(a)(43), 8 U.S.C. § 1101(a)(43)). *Id.* On February 16, 2024, DHS lodged an additional charge of

removability under INA § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(iii), for having been convicted of a crime of violence as defined in 18 U.S.C. § 16. *Id.* ¶ 9.

On or about March 25, 2024, Petitioner filed an application for relief with the Immigration Court. *Id.* ¶ 10. The Immigration Court held a hearing on April 24, 2025, to consider Petitioner's application for relief, and at the conclusion of the hearing, Petitioner was ordered removed from the United States, but the Immigration Judge granted Petitioner's application for relief. *Id.* ¶ 11. No appeal was taken of the Immigration Judge's decision by either party, making the order final upon the lapse of the appeal period. *Id.* ¶¶ 11, 13.

After the Immigration Judge's decision, DHS sought to remove Petitioner to Canada, but without. *Id.* ¶ 16. On September 16, 2025, ICE's Removal and International Operations ("RIO") headquarters reached out to the Department of State to inquire about other potential countries to which Petitioner could be removed. *Id.* ¶ 17. ICE, in conjunction with USCIS, is currently working on a travel document request to Malaysia. *Id.* ¶ 19. ICE will continue efforts to identify alternative countries to which Petitioner can be removed. *Id.* ¶ 20

On or about November 26, 2025, ERO served Petitioner with a Notice to Alien of File Custody Review indicating that Petitioner's custody status would be reviewed on December 9, 2025. *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).

I. Petitioner's detention does not violate 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*, and does not violate his substantive due process rights.

Under the INA, an alien shall be removed if the alien commits certain deportable offenses, including commission of an aggravated felony. 8 U.S.C. § 1227(a)(2)(A)(iii). Petitioner was convicted of two crimes involving moral turpitude and an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(U) (a crime relating to an attempt or conspiracy to commit an offense described in 8 U.S.C. § 1101(a)(43)). Milum Decl., ¶ 8. DHS also lodged an additional charge of removability under 8 U.S.C. § 1227(a)(2)(iii) for Petitioner having been convicted of a crime of violence as defined in 18 U.S.C. § 16. *Id.* ¶ 9. Petitioner was ordered removed from the United States on or about April 24, 2025. *Id.* ¶ 11; Doc. 1-2, pp. 3-6.

As a general matter, aliens ordered removed “may designate one country to which [he or she] wants to be removed,” and DHS “shall remove the alien to [that] country.” 8 U.S.C. § 1231(b)(2)(A). If, however, the 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.* §§ 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 Enft*, 543 U.S. 335, 341 (2005).

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 has not demonstrated “good reason to believe” there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner essentially argues that removal to a third country is unlikely because more than six months has passed and because his aggravated felony negatively impacts the likelihood of his acceptance in countries with similar laws. Doc. 1-1, ¶ 2. “The mere fact that the requisite six months have now elapsed, however, is not sufficient to meet petitioner’s burden.” *Olmedo v. United States Immigr. & Customs Enft*, No. 25-3159-JWL, 2025 WL 2821860, at *2 (D. Kan. Oct. 3, 2025) (citing *Zadvydas*, 533 U.S. at 701). Further, Petitioner’s allegation that he cannot be removed to third countries because of his criminal convictions is unsupported. “Speculation and conjecture are not sufficient to carry [Petitioner’s] burden, nor is a lack of visible progress” in Petitioner’s removal “sufficient, in and

of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future.” *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, *3 (S.D. Tex. Oct. 21, 2024) (citation modified). Finally, that efforts to remove Petitioner to Canada were not successful, does not mean that other third countries similarly will not accept Petitioner. ICE is currently working on a travel document request to Malaysia and will continue its efforts to identify alternative countries to which Petitioner may be removed. Milum Decl., ¶¶ 19-20. “Because ICE is still actively pursuing” Petitioner’s removal “and his detention furthers Congress’s goal of ensuring his presence for removal,” Petitioner “is, therefore, not entitled to release under *Zadvydas*.” *Bains v. Garland*, No. 2:23-cv-00369-RJB-BAT, 2023 WL 3824104, *4 (W.D. Wash. May 16, 2023).

Even if Petitioner has made an initial showing that removal is unlikely, Respondents have now rebutted it. ICE has acted diligently by attempting to remove Petitioner to countries other than Burma. *See supra* SOF. While attempts to remove Petitioner to Canada were not successful, ICE is currently working on a travel document request to Malaysia, and ICE has taken steps to look for alternative countries as it reached out to its RIO Headquarters on or about September 16, 2025, to inquire about alternative removal locations for Petitioner. Milum Decl., ¶¶ 17, 19. ICE will continue its efforts to identify alternative countries to which Petitioner can be removed.

For the above reasons, Petitioner’s statutory and substantive due process claims should be dismissed. *See, e.g., Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, *5-6 (W.D. Okla. Aug. 27, 2024) (explaining that “Courts, including this one, have held that a petitioner’s failure to establish that his detention violates *Zadvydas* negates a substantive due process claim.”), *adopted*, 2025 WL 486679, *1-4 (W.D. Okla. Feb. 13, 2025).

II. Petitioner is not entitled to a bond hearing and is scheduled for a File Custody Review on December 9, 2025.

Petitioner claims in his procedural due process count that Respondents have failed to acknowledge or act upon his administrative request for release in a timely manner, and that there is no administrative mechanism for Petitioner to demand a decision. Doc. 1, p. 8-9.¹

First, to the extent Petitioner is requesting a bond hearing, he is not entitled to any such hearing because he is removable for having committed an offense covered by 8 U.S.C. § 1227(a)(2)(A)(iii). See Doc. 1-2, p. 3; Milum Decl., ¶¶ 8-9. “Congress has required detention (without a bond hearing) for some categories of aliens[.]” *Olmos v. Holder*, 780 F.3d 1313, 1315 (10th Cir. 2015). Indeed, 8 U.S.C. § 1226(c)(1)(B) states that the Attorney General “shall” take into custody any alien who “is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title.” This means “[t]he Attorney General must detain aliens in Paragraphs ‘A’ through ‘D’ without a bond hearing.” *Olmos*, 780 F.3d at 1325; see also *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 n.2 (2021) (explaining that aliens “may generally apply for release on bond,” but there is an “exception” for “certain criminal aliens” under § 1226(c)). Petitioner fits this description, as he was convicted of Robbery with Use of Force in violation of Wisconsin Statutes § 943.32(1)(a) and the offense of Recklessly Endangering Safety in the second degree in violation of Wis. Stat. § 941.30(2)), and he was found removable under 8 U.S.C. § 1227(a)(2)(A)(iii) for having committed an aggravated felony. Milum Decl., ¶ 8; Doc. 1-2, p. 3.

¹ Count III also asserts “[t]he failure of Respondents to provide a neutral decision-maker to review the continued custody of Petitioner violates Petitioner’s right to procedural due process.” Doc. 1, p. 8. The Court considered and rejected a similar argument in *Garcia Uranga v. Barr*, No. 20-3162-JWL, 2020 WL 4334999, at *8 (D. Kan. July 28, 2020): “As for Petitioner’s claim that procedural due process requires that the POCR be conducted by an unbiased and neutral arbitrator, Petitioner has not demonstrated that he is entitled to habeas relief on that ground, and the Court has found no support for it.” The same reasoning applies to the case at bar.

Second, to the extent Petitioner seeks a File Custody Review, such review is already set to occur on December 9, 2025, and Petitioner received notice of such review on or about November 26, 2025. Milum Decl., ¶ 18. Finally, any alleged non-compliance with file custody review procedures should not result in release, but rather, in further process. *See, e.g., Olmedo*, 2025 WL 2821860, at *3 (ordering petitioner be afforded process denied by violation); *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, *12 (W.D. Tex. Mar. 23, 2020) (recognizing “the remedy for a procedural due process violation is substitute process”).

Petitioner’s request that he be released due to a lack of process should be denied.

CONCLUSION

For the foregoing reasons, the Court should dismiss Petitioner’s habeas Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 3, 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:

Mohammad Ali Bin Nur Hussein, # 
Leavenworth-FCI
Inmate Mail/Parcels
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/s/ Sarah Burch Macke _____
Sarah Burch Macke

