IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ADAM BENSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 25-3257-JWL
	)	
ICE of KANSAS CITY, MO	)	
	)	
Respondent.	)	
	)	

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Adam Benson ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained at the Chase County Detention Center, pending removal from the United States. He seeks (1) release from detention, (2) cancelation of his Final Order of Removal, and (3) permanent resident status on the basis that his original administrative immigration proceedings were inadequate and that his current detention began without notice and that he has not been given a hearing prior to removal. In compliance with the Court's Order to Show Cause, Doc. 3, U.S. Immigration and Customs Enforcement ("ICE" or "Respondent") respectfully submit this response. The § 2241 habeas petition should be denied. First, Petitioner cannot show that the original immigration proceedings were inadequate and the time to challenge these decisions, in the appropriate court, has long passed. Second, Petitioner has received appropriate due process more recently, despite his refusal to cooperate with ICE officials. Finally, to the extent it is alleged, Petitioner cannot provide a showing there is no significant likelihood of removal in the reasonably foreseeable future.

STATEMENT OF FACTS

The following facts are based on the declaration of Christian McCall, a Deportation Officer for ICE Enforcement and Removal Operations ("ERO") of the United States Department of Homeland Security ("DHS"). Exhibit 1, McCall Decl. ¶¶ 1-3. Petitioner is a native and citizen of Liberia. *Id.* ¶ 5. Petitioner entered the United States on or about September 10, 1992 at New York, New York. *Id.* ¶ 6. On or about February 20, 2004, Petitioner was convicted in the Circuit Court of Jackson County, Missouri, for the offense of trafficking in drugs, second degree, in violation of RS-MO-558.011.1(2). He was sentenced to 5 years in prison. *Id.* ¶ 8. On November 24, 2004, Petitioner was taken into ICE custody and issued a Notice to Appear ("NTA," Form I-862), thereby placing him in removal proceedings before an Immigration Judge. *Id.* ¶ 9. The NTA alleged, in part, that Petitioner is a native and citizen of Liberia and removable from the United States under Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"), for committing an aggravated felony. *Id.* ¶ 10. On January 12, 2005, Petitioner appeared before the Immigration Judge for his initial master calendar hearing. The Immigration Judge continued Petitioner's case to January 19, 2005, giving Petitioner time to hire an attorney to represent him in his removal proceedings. *Id.* ¶ 11. On January 19, 2005, Petitioner appeared, *pro se*, before the Immigration Judge for his second master calendar hearing. The Immigration Judge sustained the aggravated felony charges of removability. The Petitioner did not want to apply for any relief from removal. As a result, the Immigration Judge ordered Petitioner to be removed from the United States to Libera. *Id.* ¶ 12. No appeal was taken by either party and Petitioner did not file a motion to reopen. *Id.* ¶ 13,14. On April 28, 2005, the Petitioner was released from ICE custody on supervision and ordered to report in person each month. *Id.* ¶ 15.

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, ERO conducts a File Custody Review, also known as a Post-Order Custody Review ("POCR"), to determine the necessity of continued custody. When conducting a 90-day POCR, some factors that are considered are the following: a detained individual's flight risk, any danger the individual may pose to his or her community, threat to national security, and whether there is significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"). Based on this information, a recommendation will be made to management as to whether the individual should remain in custody. Those managers, including the Supervisory Deportation and Detention Officer, Assistant Field Office Director, Deputy Field Office Director and the Field Office Director, will either concur in the assessment to continue detention or request release of the alien. *Id.* ¶ 16.

In cases where an alien has been detained pursuant to a final order for 180 days, a Transfer Checklist will be 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. The Transfer Checklist contains information, such as the alien's biographical information, whether there is a judicial stay in effect, whether there is a habeas petition pending at the time of review, whether the particular case is a national security case, whether the alien has medical or psychological issues, and whether and how often an Embassy person has been contacted for the status of a travel document. This checklist is then transferred to the ICE/ERO Headquarters POCR Unit, which makes the ultimate decision on the individual's continued detention beyond the 180 days, or every 90 days thereafter, based on the SLRRFF. *Id.* ¶ 17.

On June 18, 2025, the Petitioner reported to the ERO office in Kansas City, Missouri.

During a records check, it was discovered that Petitioner had a final order of removal dated January 19, 2005. Petitioner was subsequently taken into ICE custody. *Id.* ¶ 18. On July 14, 2025, the Petitioner had an interview with the Liberian consulate in which he refused to answer questions, causing the interview to be cut short. However, the Liberian consulate indicated they would continue to prepare the travel documents for the Petitioner. *Id.* ¶ 19. On July 31, 2025, the Petitioner was transferred to special housing following the Petitioner encouraging other detainees to disobey correctional staff. *Id.* ¶ 20. On September 21, 2025, ERO provided Petitioner travel document forms that are required to be completed to obtain a travel document for Petitioner's removal from the United States. Petitioner, however, refused to complete the forms. *Id.* ¶ 21. On September 21, 2025, Petitioner was served a Notice to Alien for File Custody Review, explaining that his custody status would be reviewed and notifying him of his opportunity to submit evidence to support his release from ICE custody. Petitioner refused to sign. *Id.* ¶ 22. On September 21, 2025, Petitioner was served the Form I-229(a), Warning for Failure to Depart, but he refused to sign it. *Id.* ¶ 23. On September 23, 2025, Removal and International Operations ("RIO") issued travel documents for Petitioner and mailed the documents to the case officer. *Id.* ¶ 24. Petitioner's removal to Liberia was scheduled for October 26, 2025. However, removal was rescheduled to November 3, 2025, due to a delay of the accompanying officer's travel visa. *Id.* ¶ 25. Removal was again rescheduled to December 4, 2025, due to delay of the accompanying officer's travel visa. *Id.* ¶ 26. On December 4, 2025, Petitioner was scheduled to be removed via commercial air to Liberia. On December 4, 2025, the Petitioner failed to comply with removal operations. *Id.* ¶ 27. On December 12, 2025, ERO served Petitioner with a Notice of Failure to Comply Pursuant to 8 C.F.R. § 241.4(g) letter regarding his failure to comply and advised him of the potential consequences of continued noncompliance and obstruction of ERO's removal efforts. The

Petitioner refused to sign. *Id.* ¶ 28. ICE will continue its efforts to arrange Petitioner's removal to Liberia. *Id.* ¶ 29.

Petitioner filed his § 2241 petition on December 1, 2025. Doc. 1.

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 commission of an aggravated felony. 8 U.S.C. § 1227(a)(2)(A)(iii). 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).

An alien subject to a final order of removal may be released pursuant to an order of supervision in certain circumstances. 8 C.F.R. §§ 241.4, 241.5. But, an order authorizing release "may be revoked in the exercise of discretion when, in the opinion of the revoking official . . . it is appropriate to enforce a removal order." 8 C.F.R. §§ 241.4(l)(2)(iii).

Here, Petitioner was convicted of an aggravated felony related to drug trafficking, on or about February 20, 2004. McCall Decl., ¶ 8. As such, Petitioner was ordered removed from the United States on or about January 19, 2005. *Id.* ¶ 12. No appeal or motion to reopen regarding the removal order was filled. *Id.* ¶¶ 13,14. Petitioner was then released from ICE custody on April 28, 2005, and ordered to report in person each month. *Id.* ¶ 15. On June 18, 2025, Petitioner's prior release on supervision was revoked and Petitioner was taken into custody. *Id.* ¶ 18

I. The Immigration Judge's Removal Order is Valid and Enforceable.

In January 2005 Petitioner appeared before an immigration judge who sustained the aggravated felony charges of removability. *Id.* ¶ 12. Although he ultimately proceeded *pro se*, this order was made after Petitioner was given time to hire counsel. *Id.* ¶ 11. Petitioner did not want to apply for any relief from removal in 2005. *Id.* ¶ 12. No appeal or motion to reopen was filed by Petitioner in these proceedings. *Id.* ¶¶ 13,14. As a result, the order of removal is valid and enforceable. 8 C.F.R. § 1003.23(b)(1); 8 C.F.R. § 1003.38(b).

Moreover, removal orders can only be reviewed in the Court of Appeals. 8 U.S.C § 1252(a)(5), (b)(9), and (g). Even indirect challenges to removal orders are the purview appellate courts. *See, e.g., Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1274-75 (10th Cir. 2018).

II. More Recently ICE Has Also Satisfied Petitioner's Due Process Rights.

Petitioner also takes issue with the fact that he has not more recently received a hearing or otherwise been given the opportunity[1] to challenge his removal. Petitioner's argument is misplaced given that no such process is required. An alien "may be returned to custody" if the revoking official, in his or her discretion, believes that (1) "[t]he purposes of release have been served;" (2) "[t]he alien violates any condition of release;" (3) "[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien;" or (4) "[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2)(i)-(iv).

Additionally, although subsection (l)(1) provides that an "alien will be notified of the reasons for revocation of his or her release" and "afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification," it does not provide an entitlement to a formal hearing as Petitioner asserts. *Id.* § 241.4(l)(1). Because Petitioner's supervision was properly revoked for the purpose of enforcing the removal order against him and because Petitioner was not entitled to a hearing as he suggests, Petitioner's claim for relief should be denied. *Id.* § 241.4(l)(2)(iii).

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[1] Petitioner states he was denied a "hearing" and/or "opportunity" to dispute his Final Order of removal and the current efforts by Respondent to remove him. Given that Petitioner is proceeding *pro se*, it is unclear at times which time frame he is referring to and the actual claims he asserts. In an effort to fairly and fully present the issues to the Court, Respondent raises and addresses arguments that may be relevant even if not articulately raised by Petitioner.

It is worth nothing that on September 21, 2025, Petitioner was served with a Notice to Alien for File Custody Review, explaining that his custody status would be reviewed and notifying him of his opportunity to submit evidence to support his release from ICE custody. McCall Decl. ¶ 22. Petitioner refused to sign the document. *Id.* Likewise, on the same date Petitioner was served the Form I-229(a), Warning for Failure to Depart, but he refused to sign it. *Id.* ¶ 23. Petitioner cannot take issue with the alleged lack of process he has received when he has also chosen not to participate or willfully obstructed the work of Respondent. In other words, even if an interview had taken place, it is unlikely Petitioner would have cooperated in a productive manner.

Petitioner does not contend he has suffered prejudice from the lack of a hearing or other "opportunity" to challenge his removal. Moreover, Petitioner is being afforded the opportunity to challenge the removal in the current suit and make any arguments he views as applicable. Recently in *Olmedo v. United States Immigration and Customs Enforcement, 2025 WL 2821860, at *3 (D. Kan. Oct. 3, 2025) (Lungstrum, J.)*, this Court held that failure of process did not warrant release. Instead, the proper remedy was substitute process which under the current case would result in the Court ordering ICE to conduct an interview.

III. Petitioner has not shown removal is unlikely, or alternatively, Respondents can rebut any such showing.

To the extent Petitioner takes issue with his prolonged detention, it is worth noting that he has been detained just over six months, beginning on June 18, 2025. McCall Decl. ¶ 18. Petitioner was scheduled to be removed to Liberia on December 4, 2025, but refused to cooperate or board the plane. *Id.* ¶ 27. This is just the latest example of noncooperation by Petitioner as detailed above. Given that travel documents to Liberia have been secured it is highly likely that Petitioner will be removed in the near future, if he chooses to cooperate. Petitioner's noncooperation tolls

the time frame related to reasonableness. 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). Petitioner acted in noncompliance as recently as December 4, 2025, when he refused to board a plane to Liberia.

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 December 31, 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 a copy of the Response has been mailed, first class, by the United State Mail to:

Adam Benson
[redacted]
Chase County Detention Center
PO Box 639
Cottonwood Falls, KS 66845

/s/ Wendy A. Lynn
WENDY A. LYNN