

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

ZEE KDEE YA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 5:25-cv-03263-JWL
	)	
C. CARTER, Warden, FCI Leavenworth,	)	
f/n/u WENDLER, Deportation Officer, ICE,	)	
TODD LYONS, Acting Director, ICE,	)	
PAMELA BONDI, Attorney General, and	)	
KRISTI NOEM, Secretary of Homeland	)	
Security,	)	
	)	
Respondents.	)	
	)	

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

This matter is before the Court on the petition of Zee Kdee Ya (“Petitioner”) for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained at FCI Leavenworth in Leavenworth, Kansas, pending removal from the United States. Doc. 1. In compliance with the Court’s Order to Show Cause, Doc. 3, C. Carter, Warden, FCI Leavenworth; f/n/u Wendler, Deportation Officer, ICE; Todd Lyons, Acting Director Immigration and Customs Enforcement; Pam Bondi, Attorney General of the United States; and Kristi Noem, Secretary of Homeland Security (“Respondents”) respectfully submit this response.

**STATEMENT OF FACTS**

The following facts are part of the Declaration of Eric K. Swanson, a Deportation Officer (“DO”) for Enforcement and Removal Operations (“ERO”) at United States Immigration and Customs Enforcement (“ICE”), of the Department of Homeland Security (“DHS”). Swanson Decl., Exhibit 1, ¶¶ 1-3. Petitioner is a native and citizen of Burma. *Id.* ¶ 5. On or about June 13, 2013, Petitioner was admitted to the United States at Los Angeles, California, as a Lawful Permanent Resident. *Id.* ¶ 6. On January 18, 2023, the Petitioner was convicted in the Allen

Superior Court in Fort Wayne, Indiana for the offenses of child solicitation by a person at least (21) years of age, in violation of Indiana Code 36-42-4-6(a)(1), and confinement where the victim is under 14 years of age, in violation of Indiana Code 36-42-3-3(a). *Id.* ¶ 7. Petitioner was sentenced to a prison term of four years consecutive for each offense, with two years suspended, and the remaining two years subject to probation. *Id.*

On or about February 22, 2023, ICE lodged a detainer on Petitioner. *Id.* ¶ 8. At the time of Petitioner's detention, he was still subject to two years' probation for his criminal conviction. *Id.* ¶ 9. On or about November 14, 2024, Petitioner was taken into ICE custody and detained at the Clay County, Indiana jail in Brazil, Indiana. *Id.* ¶ 10. He was also issued a Notice to Appear ("NTA," Form I-862), thereby placing him in removal proceedings before an Immigration Judge. *Id.* The NTA alleged, in part, that Petitioner is a native and citizen of Burma and removable from the United States under Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, for committing an aggravated felony. *Id.* ¶ 11. On January 6, 2025, Petitioner appeared before the Immigration Judge for his initial master calendar hearing. *Id.* ¶ 12.

The Immigration Judge continued Petitioner's case to February 4, 2025, giving Petitioner's attorney time for case preparation. *Id.* ¶ 12. On February 4, 2025, Petitioner appeared in custody, represented, before the Immigration Judge for his second master calendar hearing. *Id.* ¶ 13. The Immigration Judge sustained the aggravated felony charge of removability. *Id.* The Petitioner filed his application for relief from removal.

The Immigration Judge continued the Petitioner's case to March 27, 2025, for hearing on Petitioner's application for relief. *Id.* The Immigration Court held a hearing on March 27, 2025, to consider Petitioner's application for relief. *Id.* ¶ 14. At the conclusion of the hearing, Petitioner was ordered removed from the United States to Burma, but the Immigration Judge granted his application for relief to removal to that specific country. *Id.* Appellate rights were reserved, and

any appeal of the Immigration Judge's decision was due to the Board of Immigration Appeals ("BIA") within 30 calendar days. *Id.* 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.*

On or about September 16, 2025, Removal and International Operations ("RIO") reached out to the Department of State regarding third country removal. *Id.* ¶ 18. On or about October 2, 2025, DO Tristian Cole reached out to RIO for an update on third country removal. *Id.* ¶ 19. On or about October 3, 2025, ERO received a response from RIO indicating RIO was currently evaluating third country removal options. *Id.* ¶ 20. On or about October 9, 2025, ERO served Petitioner with a Notice to Alien of File Custody Review indicating that Petitioner's custody status would be reviewed. *Id.* ¶ 21. On or about October 10, 2025, Petitioner was served the Form I-229(a), Warning for Failure to Depart. *Id.* ¶ 22.

On or about December 2, 2025, ERO transferred Petitioner from the Leavenworth federal correctional institution to the Chase County, Kansas jail in Cottonwood Falls, Kansas, after he was found in possession of and/or manufacturing a weapon. *Id.* ¶ 23. ICE will continue its efforts to identify alternative countries to which Petitioner can be removed. *Id.* ¶ 24.

### 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).

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).

As a general matter, if an 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.* 8 U.S.C. § 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 Enf’t*, 543 U.S. 335, 341 (2005).

Here, Petitioner was ordered removed from the United States on March 27, 2025, but Petitioner was granted withholding of removal to his home country. Swanson Decl., ¶ 14.

Petitioner now argues that his detention has become unconstitutionally indefinite in violation of 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*, and the Fifth Amendment. Doc. 1. Petitioner asserts that ICE has been unable to remove him to a third country and has not provided information to him about concrete steps taken toward his removal. *Id.* at p. 2. But Petitioner presents no evidence that removal is unlikely beyond the fact that he has been granted withholding of removal and has not yet been successfully removed. This does not meet Petitioner's burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" as is required by *Zadvydas*. See *Zadvydas*, 533 U.S. at 701; see also *Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, \*3 & n.32 (M.D. Pa. Oct. 2, 2024) (citing favorably an order noting that "the fundamental basis of petitioner's argument appears to be that his removal is unlikely simply because it has not occurred to this point") (alteration omitted).

As recognized by the Supreme Court in *Zadvydas*, the "6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Zadvydas*, 533 U.S. at 701. Instead, "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); see also *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.'") (alteration and citation omitted); *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, \*3 (S.D. Tex. Oct. 21, 2024) ("Speculation and conjecture are not sufficient to carry [Petitioner's] burden, 'nor is a lack of visible progress'

in his removal sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future.”) (citation omitted).

Even when the government “has not identified a specific date by which it expects a travel document to issue,” it remains true that “uncertainty as to when removal will occur does not establish that detention is indefinite.” *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, \*4 (W.D. Wash. May 10, 2024). As such, the Supreme Court in *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.

Here, ICE contacted the Department of State regarding third country removal and is continuing its efforts to identify alternative countries to which Petitioner can be removed.<sup>1</sup> “Because ICE is still actively pursuing” Petitioner’s removal “and his detention furthers Congress’s goal of ensuring his presence for removal,” Petitioner is 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).

### CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.<sup>2</sup>

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<sup>1</sup> Although Respondents understand the Court’s requests for greater detail on ICE’s removal efforts in recent habeas cases, *see, e.g., Hassan, v. Welsh*, No. 25-3239-JWL, 2026 WL 21234, at \*3 (D. Kan. Jan. 5, 2026) (“This failure is especially disheartening in light of this Court’s repeated complaints about the lack of such detail and the use of similar boilerplate language in the Government’s submissions.”), Respondents do not have additional detail to provide the Court at this time and assert that Petitioner has not met his burden to establish indefinite detention.

<sup>2</sup> If the Court grants Petitioner’s habeas petition, Respondents note that Petitioner may still be subject to probation for his criminal conviction in Indiana. Swanson Decl., ¶¶ 7, 9.

Respectfully submitted,

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Attorneys for Respondents

**CERTIFICATE OF SERVICE**

I certify that on January 7, 2026, 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 will cause a copy of the foregoing filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

Zee Kdee Ya  
Chase County Detention Center  
301 S. Walnut  
Cottonwood Falls, KS 66845

*Pro se Petitioner*

/s/ Christopher Allman  
CHRISTOPHER ALLMAN