IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

YOSEF PAULOS,

Petitioner,

v. Case No. 25-3266-JWL

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, TODD LYONS, Acting Director of Immigration and Customs Enforcement, CRYSTAL CARTER, Warden, FCI Leavenworth, BRADLEY MACNAIR, Deportation Officer, and PAM BONDI, Attorney General of the United States,

Respondents.

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Yosef Paulos ("Petitioner"), for a writ of habeas corpus under 28 U.S.C. § 2241. The United States is in the process of removing Petitioner under 8 U.S.C. § 1231(b)(3). The habeas petition should be denied.

I. Nature of the Case

Petitioner asks the court to release him from detention because he has been detained for more than 180 days, no definite travel documents have been secured for the Petitioner, and Petitioner does not believe his removal is possible in the reasonably foreseeable future. Petitioner's claim for release is based on the following allegations: (1) violations of due process and statutory limitation under *Zadvydas v. Davis*; (2) removal is not reasonably foreseeable because the respondents have not secured travel documents and detention cannot be indefinite; and (3) continued detention violates the Fifth Amendment Due Process Clause. Petitioner requests immediate release from physical custody.

II. Background

Petitioner's status:

1. Petitioner is a native of Eritrea and citizen of Sudan. Exhibit 1, McNary Decl. ¶¶ 5, 8; Doc. 1, ¶ 14.

2. On or about February 28, 1985, Petitioner was admitted to the United States at New York, New York. McNary Decl. ¶ 5; Doc. 1, ¶ 16.

3. On June 17, 1986, Petitioner adjusted his status to Lawful Permanent Resident ("LPR"). McNary Decl. ¶ 5.

4. On or about June 5, 2018, Petitioner was convicted in the United States District Court in the Eastern District of Missouri, for the offense of conspiracy to commit offenses against the United States, in violation of 18 U.S.C. 371. He was ordered to pay $43,585.00 in restitution to the Internal Revenue Service and sentenced to probation for a term of five years. McNary Decl. ¶ 6.

Removal

5. On August 2, 2018, 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. McNary Decl. ¶ 7; Doc. 1, ¶ 20.

6. The NTA alleged, in part, that Petitioner is a native of Eritrea and a citizen of Sudan and removable from the United States under Sections 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"), for committing an aggravated felony. McNary Decl. ¶ 8.

7. On August 20, 2018, Petitioner appeared before the Immigration Judge for his initial master calendar hearing. The Immigration Judge continued Petitioner's case to September 6, 2018, giving Petitioner time for his attorney to prepare for hearing. The September 6, 2018, hearing was continued to September 20, 2018. McNary Decl. ¶¶ 9, 10.

8. On September 20, 2018, Petitioner appeared before the Immigration Judge for a master calendar hearing. The Immigration Judge sustained the aggravated felony charges of removability. The Immigration Judge continued Petitioner's case to October 10, 2018, for Petitioner to file application for relief. McNary Decl. ¶ 11.

9. The Immigration Court scheduled a merits hearing on December 3, 2018, to consider Petitioner's application for relief. McNary Decl. ¶ 12.

10. On December 3, 2018, Petitioner withdrew his application for relief and requested a removal order. The Immigration Judge ordered Petitioner removed to Sudan, and in the alternative, to Eritrea. Petitioner waived appeal. McNary Decl. ¶ 13; Doc. 1, ¶ 21.

ICE Custody and Post Removal Order

11. On February 27, 2019, Petitioner was released from ICE Custody on supervised release following an unsuccessful attempt to obtain Petitioner's travel documents to Eritrea. McNary Decl. ¶ 16; Doc. 1, ¶ 22.

12. On or about June 9, 2025, Petitioner was arrested by ICE and his prior order of supervision was revoked. McNary Decl. ¶ 17; Doc. 1, ¶ 23.

13. On or about June 27, 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. McNary Decl. ¶ 19.

14. On or about June 27, 2025, Petitioner was served the Form I-229(a), Warning for Failure to Depart. McNary Decl. ¶ 20.

15. On or about July 9, 2025, ERO sent a travel document request to Removal and International Operations ("RIO"). McNary Decl. ¶ 21.

16. On or about July 11, 2025, RIO submitted the travel document request to the Department of State and Eritrean embassy for travel document acquisition. McNary Decl. ¶ 22; .

17. 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 on October 23, 2025. McNary Decl. ¶ 23.

18. On or about October 23, 2025, ERO interviewed Petitioner regarding his custody status. McNary Decl. ¶ 24; Doc. 1, ¶ 29.

19. On or about November 4, 2025, ERO requested an update regarding Petitioner's travel documents. McNary Decl. ¶ 25.

20. On or about November 5, 2025, ERO was notified the travel document request was still pending with Eritrea. McNary Decl. ¶ 26.

21. As of today's date, a travel document has not been received by ERO. McNary Decl. ¶ 27.

22. On or about November 26, 2025, ERO began attempting to schedule Petitioner for travel to Eritrea. However, ERO has been advised that the layover countries that the Petitioner would have to travel through will not allow him to pass without a travel document. ERO is waiting for a travel document or a workable route before proceeding. McNary Decl. ¶ 28.

23. As of today's date, a removal date has not been scheduled. Petitioner's removal remains pending as ERO continues its efforts to finalize removal plans. McNary Decl. ¶ 29.

III. Argument

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). "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).

A. Petitioner fails to show a violation under *Zadvydas v. Davis* and fails to show that his removal is not reasonably foreseeable (Claim 1 and Claim 2)

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, as in this case, 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).

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." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). If the alien is not removed during this 90-day period, 8 U.S.C. § 1231(a)(6) "authorizes further detention." *Id.* In this case, Petitioner was not removed within this 90-day period, instead he was released on supervision. McNary Decl. ¶ 16. Petitioner's supervision was revoked June 9, 2025, and he was placed back into custody. McNary Decl. ¶ 17; Doc. 1, ¶ 23.

Petitioner relies on the language in *Zadvydas*, which "doubted the constitutionality of detention for more than six months." *Id.* at 701. However, the Court also recognized that "not every alien not removed must be released after six months…until it has been determined that there is no significant likelihood of removal in the reasonable future." *Id.* Once Petitioner makes this showing, the "Government must respond with evidence sufficient to rebut that showing." *Id.* This 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.* The presumptively reasonable

removal period under *Zadvydas* can be lengthened or "interrupted." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.4 (11th Cir. 2002).

A "mere delay" in obtaining travel documents "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." *Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *4 (W.D. Okla. Aug. 27, 2024), *adopted*, 2025 WL 486679, at *1-4 (W.D. Okla. Feb. 13, 2025). 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, at *4 (W.D. Wash. May 10, 2024).

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).

The fact that the requisite six months have now elapsed is not sufficient to meet petitioner's burden. *See Zadvydas*, 533 U.S. at 701 ("This 6-month presumption, of course, does not mean that every alien not removed must be released after six months."). Petitioner admits, and Respondent shows, that officials continue their efforts to remove him to his country of origin, or alternatively, to his country of citizenship. McNary Decl., ¶¶ 21, 22, 26, 27, 28, 29. Respondent continues efforts to schedule Petitioner for travel using Form I-269. McNary Decl. ¶ 28. Alternatively, Respondent

continues to work on securing travel documents or a workable travel route. McNary Decl. ¶¶ 28, 29.

Petitioner has not demonstrated "good reason to believe" that there is no significant likelihood of removal in the reasonably foreseeable future. Here, Petitioner was taken into custody on June 9, 2025. McNary Decl. ¶ 17. Once Petitioner was detained, ICE began taking active steps to have Petitioner removed from the United States. *See id.* ¶¶ 21-29. These efforts include the submission of travel documents, ¶ 22, requesting an update, ¶ 25, and attempting to schedule travel. ¶ 28.

Petitioner's detention has not become indefinite as ICE has worked diligently to secure Petitioner's removal from the United States. *Zadvydas* does not stand for the proposition that aliens must be released after six months have passed, "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). Indeed, *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. And, a delay beyond six months does not become presumptively *unreasonable*. *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.'") (citation omitted).

In this matter, officials have diligently sought travel documents for Petitioner. *See Soudom v. Warden*, No. 25-3063-JWL, 2025 WL 1594822, at *2 (D. Kan. May 23, 2025) (finding "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 has been detained only slightly longer than six months since the beginning of his detention. Petitioner has not shown a violation of *Zadvydas* nor has he shown that his detention is unreasonably indefinite.

B. Petitioner has not shown his continued detention violates the Fifth Amendment Due Process Clause

Petitioner asserts his detention violates 8 U.S.C. § 1231(a)(6) and *Zadvydas* also violates his substantive due process rights. Doc. 1, ¶¶ 43, 44 (Claim 3). "The Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person…of…liberty…without due process of law." *Zadvydas*, 533 U.S. at 690.

Because Petitioner has not shown a viable *Zadvydas* claim, he cannot show a violation of due process. *See, e.g., Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, *5-6 (W.D. Okla. Aug. 27, 2024) ("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).

Many other cases support this conclusion. *See H.N. v. Warden*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, *3 (M.D. Ga. Sept. 15, 2021) ("As for any separate substantive due process challenges to the length of his detention, *Zadvydas* forecloses those claims."); *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, *7 & n.3 (W.D. Tex. Mar. 23, 2020) ("[T]he

record does not support Petitioner's claim that his detention threatens to be either indefinite or potentially permanent so as to implicate *Zadvydas* and substantive due process concerns."); *Singh v. Barr*, No. 19-CV-732, 2019 WL 4415152, *3 (W.D.N.Y. Sept. 16, 2019) ("Conversely, if detention is valid under *Zadvydas*, it cannot violate substantive due process."); *Jovel-Jovel v. Contreras*, No. H-18-1833, 2018 WL 11473467, *4 (S.D. Tex. Oct. 30, 2018) ("[I]f detention is no longer than reasonably necessary to effectuate removal, it will comport with § 1231(a)(6), *Zadvydas*[,] as well as substantive due process protections.") (citation modified); *Nasr v. Larocca*, No. CV 16-1673-VBF(E), 2016 WL 2710200, *5 (C.D. Cal. June 1, 2016) ("[W]here Petitioner has failed to meet his burden to show there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*, Petitioner also has failed to prove that his continued detention violates due process.") (citation modified).

Petitioner cannot show that his detention has become indefinite. "[N]ot every procedural misstep or difficulty raises anything like a constitutional issue. Procedural due process protects a right to a fundamentally fair proceeding; but few proceedings are perfect and one can have real errors, including ones that adversely affect a party's interests, without automatically violating the Constitution." *Matias v. Sessions*, 871 F.3d 65, 71 (1st Cir. 2017).

Petitioner "is entitled only to the Fifth Amendment guarantee of fundamental fairness, or in other words, only to procedural due process, which provides the opportunity to be heard at a meaningful time and in a meaningful manner." *Alzainati v. Holder*, 568 F.3d 844, 851 (10th Cir. 2009) (citation modified).[1] In this situation, the Tenth Circuit has stated "[t]o prevail on a due process claim, an alien must establish not only error, but prejudice." *Id.* Accordingly, "[i]n order

[1] *Alzainati* was abrogated in part on other grounds by *Wilkinson v. Garland*, 601 U.S. 209, 217-18 (2024). *See Torres-Martinez v. Garland*, No. 23-9549, 2024 WL 2076194, *2 & n.2 (10th Cir. May 9, 2024) (explaining the effect of *Wilkinson* on *Alzainati*).

to prevail on his due process challenge" in the BIA context, a petitioner "must show he was prejudiced by the actions he claims violated his Fifth Amendment rights." *Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004); *see also Novitskiy v. Holder*, 514 F. App'x 724, 727 (10th Cir. 2013) (relying on *Berrum-Garcia* to conclude a lack of prejudice meant "Petitioner has failed to demonstrate a due process violation"). Petitioner has shown no such prejudice here.

Although Petitioner argues that his continued detention violates due process, petitioner is not entitled to any process beyond that granted in the applicable immigration statutes. *Esahaqzada*, 25-3145-JWL. Petitioner also does not allege that his detention violates any statute. Petitioner's Fifth Amendment claim is subject to dismissal.

IV. Conclusion

The Respondents respectfully request the Court dismiss or deny the petition for the reasons stated above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail, postage prepaid, addressed to the following non-CM/ECF participant:

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