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7 Attorneys for Respondents

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 PATRIS LABULO,

11 Petitioner,

12 v.

13 KRISTI NOEM, Secretary of the
14 Department of Homeland Security, et al.,

15 Respondents.
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Case No. 25-cv-03602-BAS-SBC

TABLE OF EXHIBITS

EXHIBITS:

1. Form I-213, Record of Deportable/Inadmissible Alien, dated August 3, 2020
2. Notice to Appear, dated August 5, 2020
3. Board of Immigration Appeals Opinion, dated November 10, 2021
4. Order of the Immigration Judge, dated January 12, 2022
5. Board of Immigration Appeals Opinion, dated May 10, 2022
6. Form I-213, Record of Deportable/Inadmissible Alien, dated August 18, 2025
7. Order Granting Motion for Reconsideration, *Kim v. Ashcroft*, Case No. 02-cv-1524-J-LAB, ECF No. 25 (S.D. Cal. June 2, 2003)
8. Order, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 (S.D. Cal. Aug. 15, 2019)

Dated: December 30, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Matthew Riley
MATTHEW RILEY
Assistant United States Attorney
Attorney for Respondents

EXHIBIT 1

U.S. Department of Homeland Security

Subject ID : ██████████

Record of Deportable/Inadmissible Alien

Family Name (CAPS) LOBULO, PATRIS MARKO DARIO		First	Middle	Sex M	Hair BLK	Eyes BRO	Complexion MED
Country of Citizenship SUDAN	Passport Number and Country of Issue	File Number ██████████		Height 69	Weight 261	Occupation	
U.S. Address ██████████				Scars and Marks			
Date, Place, Time, and Manner of Last Entry Unknown Date, NYC, RE6 - ADJ OF REFUGEE			Passenger Boarded at				
Number, Street, City, Province (State) and Country of Permanent Residence							
Date of Birth ██████████	Age: 30	Date of Action 08/03/2020	Location Code BKI/SFR				
City, Province (State) and Country of Birth SUDAN		AR <input checked="" type="checkbox"/>	Form: (Type and No.) Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>				
NIV Issuing Post and NIV Number		Social Security Account Name					
Date Visa Issued		Social Security Number					
Immigration Record NEGATIVE				Criminal Record See Narrative			
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)						Number and Nationality of Minor Children None	
Father's Name, Nationality, and Address, if Known ██████████ NATIONALITY: SOUTH SUDAN			Mother's Present and Maiden Names, Nationality, and Address, if Known ██████████ NATIONALITY: SOUTH SUDAN				
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Systems Checks CIS Pos	Charge Code Words(s) See Narrative			
Name and Address of (Last/Current) U.S. Employer		Type of Employment	Salary	Employed from/to 1hr			
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)							
<p>OTHER ALIASES KNOWN BY:</p> <p>-----</p> <p>LOBULO, PATRIS MARKO</p> <p>Subject Health Status</p> <p>-----</p> <p>The subject claims good health.</p> <p>Current Administrative Charges</p> <p>-----</p> <p>07/30/2020 - 237a2Aiii - Aggravated Felony: 101(a) (43) (F) Crime Of Violence</p> <p>Previous Criminal History</p> <p>-----</p> <p>On 10/03/2019, the subject was arrested for the crime of "Aggravated Assault - Weapon" which resulted in a conviction on 10/03/2019. The subject was sentenced to 3 year(s).</p> <p>At/Near</p> <p>-----</p> <p>... (CONTINUED ON I-831)</p>							
Alien has been advised of communication privileges _____ (Date/Initials)			D ZAMORA Deportation Officer (Signature and Title of Immigration Officer)				
Distribution:		Received: (Subject and Documents) (Report of Interview)					
		Officer: D ZAMORA					
		on: August 3, 2020 (time)					
		Disposition: Warrant of Arrest/Notice to Appear					
		Examinee Officer: LOWES, D 3259					

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name LOBULO, PATRIS MARKO DARIO	File Number  Event No: 	Date 08/03/2020
Bakersfield, CA		
Record of Deportable/Excludable Alien: METHOD AND LOCATION OF APPREHENSION:		
<p>LOBULO, Patris Marko Dario (DOB , A , a citizen and national of South Sudan, came to the attention of Immigration & Customs Enforcement (ICE) pursuant to referral from the Criminal Alien Program (CAP) operations at North Kern State Prison.</p>		
<p>On August 3, 2020, I, Deportation Officer (DO) Zamora encountered LOBULO while in the custody of North Kern State Prison in Delano CA. I identified myself as an ICE officer and conducted a consensual interview with LOBULO. LOBULO freely admitted to being a national/citizen of South Sudan.</p>		
ALIENAGE AND REMOVABILITY: LOBULO is a native and citizen of South Sudan since birth, who entered the United States as a Lawful Permanent resident (RE6) on July 22, 2004 at New York, New York.		
LOBULO disclaims any other equities, ties, or petitions pending before the U.S. Department of Homeland Security or the U.S. Citizenship and Immigration Service on his behalf. Records checks of appropriate systems showed no pending petitions.		
LOBULO stated that his Father  is deceased and was a citizen and national of South Sudan, his father never had immigration status in the United States.		
LOBULO stated that his mother  is deceased and was a citizen and national of South Sudan, his fa never had immigration status in the United States.		
CRIMINAL HISTORY (convictions): LOBULO was on October 03, 2019, convicted in the Superior Court of California County of Los Angeles, West District Court for the offense of PC 245 (A) (1), in violation of Assault with a Deadly Weapon; You were sentenced to a term of imprisonment of three years.		
A search of The California Appellate Courts came back negative for any appeals.		
HEALTH AND HUMANITARIAN ASPECTS: LOBULO claims to have no medical issues and is not taking any medication.		
LOBULO claims no gang affiliation.		
LOBULO did get a criminal enhancement with his criminal convictions listed above due to a gang enhancement charge.		
LOBULO stated he does have fear of persecution or torture should he be removed from the United States to his country of citizenship.		
LOBULO did not claim to have any appeals pending for his convictions. A check of the Appellate Courts Case Information showed no appeal of her convictions.		
At no point, did LOBULO make any claim to US citizenship.		
At no point, did LOBULO claim to serve in the United States Military.		
Signature <div style="text-align: center;">D ZAMORA</div>	Title <div style="text-align: center;">Deportation Officer</div>	

U.S. Department of Homeland Security

Alien's Name LOBULO, PATRIS MARKO DARIO	File Number [REDACTED] Event No: [REDACTED]	Date 08/03/2020
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LOBULO was advised of his rights to communicate with his Consulate.

DISPOSITION:
LOBULO will be processed as a Notice to Appear.

Other Identifying Numbers

ALIEN- [REDACTED]

Signature D ZAMORA	Title Deportation Officer
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EXHIBIT 2

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [REDACTED]
Event No: [REDACTED]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED]

File No: [REDACTED]

In the Matter of:

Respondent: PATRIS MARKO DARIO LOBULO AKA: LOBULO, PATRIS MARKO currently residing at

[REDACTED ADDRESS] (Number, street, city, state and ZIP code) (Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of SUDAN and a citizen of SUDAN;
3. You were admitted to the United States on August 11, 2005 as a lawful permanent resident;
4. You were, on October 03, 2019, convicted in the Superior Court of California County of Los Angeles, West District Court for the offense of PC 245 (A)(1), in violation of Assault with a Deadly Weapon;

See Continuation Page Made a Part Hereof

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(F) of the Act, a crime of violence (as defined in section 16 of Title 18, United States Code, but not including a purely political offense) for which the term of imprisonment ordered is at least one year.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

300 N. Los Angeles St. Rm 4330, Los Angeles, CA 90012.
(Complete Address of Immigration Court, Including Room Number, if any)

on To be set. at To be set. to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

[Signature]
(Signature and Title of Issuing Officer) (Sign in ink)

Date: August 5, 2020

Bakersfield, CA
(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

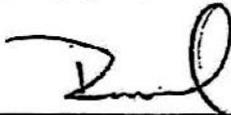
U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

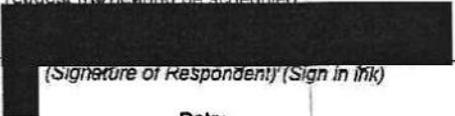
Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

 09/8
(Signature and Title of Immigration Officer) (Sign in ink)


(Signature of Respondent) (Sign in ink)

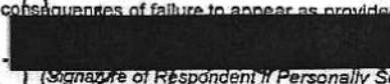
Date: _____

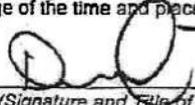
Certificate of Service

This Notice To Appear was served on the respondent by me on August 5, 2020, in the following manner and in compliance with section 239(a)(1) of the Act.

- in person by certified mail, returned receipt # _____ requested by regular mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the English language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.


(Signature of Respondent if Personally Served) (Sign in ink)


(Signature and Title of officer) (Sign in ink)

Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 260 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opo/foia-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the above-mentioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

U.S. Department of Homeland Security

Continuation Page for Form I-862

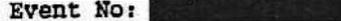
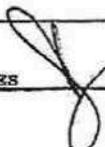
Alien's Name LOBULO, PATRIS MARKO DARIO	File Number  Event No: 	Date 08/03/2020
THE SERVICE ALLEGES THAT YOU: ----- 5. You were sentenced to a term of imprisonment of three years.		
Signature  D 3259 LOWES	Title SDDO	

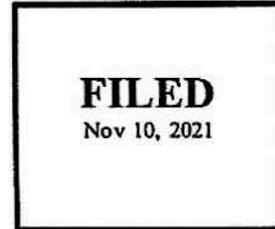
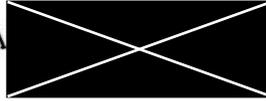
EXHIBIT 3

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Patris Marko Dario LOBULO, A
Respondent



ON BEHALF OF RESPONDENT: Serena Faye Salinas, Esquire

ON BEHALF OF DHS: Margaret G. Jacobo, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Otay Mesa, CA

Before: Saenz, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Saenz

SAENZ, Appellate Immigration Judge

The respondent, a native and citizen of Sudan, appeals from the Immigration Judge's May 25, 2021, decision denying his applications for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"). The Department of Homeland Security ("DHS") opposes the appeal. The appeal will be dismissed in part and the record remanded to the Immigration Court.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's claims for statutory withholding of removal and withholding of removal under the CAT after concluding the respondent's 2019 conviction for assault with a deadly weapon, in violation of section 245(a)(1) of the California Penal Code, was a particularly serious crime which barred him from such relief (IJ at 5-9).¹ Specifically, the Immigration Judge concluded this based on the nature of the offense as a crime of violence aggravated felony, the underlying facts of the applicant's conviction as established by the

¹ The Immigration Judge found that this conviction is an aggravated felony under section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F), which bars the respondent from asylum eligibility. The respondent does not contest this on appeal.

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respondent's generally credible testimony and a police report, and the respondent's sentence (IJ at 5-8). The Immigration Judge also denied the respondent's claims for deferral of removal under the CAT as to Sudan after concluding the record did not establish it was more likely than not the respondent would be tortured by, or with the consent or acquiescence of, a public official. However, the Immigration Judge granted deferral of removal under the CAT as to South Sudan, finding that the respondent met his burden to establish a likelihood of torture and of government consent or acquiescence to that torture (IJ at 9-14).

On appeal, the respondent argues the Immigration Judge erred in her particularly serious crime analysis for not considering the respondent's mental illness as a factor motivating his criminal behavior and for giving significant weight to the police report when the respondent did not have an opportunity to cross examine the preparer of the report or the witnesses whose statements were in the report (Respondent's Br. at 9-14, Respondent's Supp. Br. at 2-3).² The respondent argues that the report is not reliable and that the lack of opportunity for cross examination is a violation of the respondent's due process rights as enumerated in *Alcaraz-Enriquez v. Garland*, 13 F.4th 848 (9th Cir. 2021) ("*Alcaraz-Enriquez II*") (Respondent's Supp. Br. at 2-3). As in *Alcaraz-Enriquez II*, the respondent preserved this argument by making timely objections to the use of the police report (Tr. at 80-81). Further, the respondent argues the Immigration Judge erred in her consideration of the evidence and conclusion to deny deferral of removal under the CAT as to Sudan (Respondent's Br. at 15-18).

Regarding the respondent's withholding of removal claims, the record will be remanded to the Immigration Court. We begin by noting the respondent's allegation the Immigration Judge did not consider the respondent's mental illness in conducting her particularly serious crime analysis is not supported by the record. The Immigration Judge's decision does indicate she considered the respondent's mental illness as it existed at the time of conviction (IJ at 8-9).

However, given the intervening change in law of *Alcaraz-Enriquez II*, this issues in this case are most effectively resolved by remanding the record so the Immigration Judge may issue a new decision on the respondent's withholding of removal claims after considering this decision and make any necessary subsequent factual and legal findings. Upon remand the Immigration Judge should allow the parties the opportunity to update the record and may conduct additional proceedings if necessary. We take no position as to the ultimate outcome of this matter.

With regard to the respondent's arguments regarding protection under the CAT, we will adopt and affirm the decision of the Immigration Judge, both to deny deferral of removal as to Sudan and to grant deferral of removal as to South Sudan. *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The respondent has not identified any clear factual error, or legal error, in the findings made by the Immigration Judge, and we discern none. In addition, DHS did not contest the Immigration Judge's grant of protection as to South Sudan. DHS Br. at 1-2.

Accordingly, the following orders will be entered.

² We accept the respondent's supplemental brief on certification.

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ORDER: The appeal relating to protection under the CAT is dismissed.

FURTHER ORDER: The record is remanded for entry of a new decision on the respondent's application for withholding of removal under the Act consistent with this order.

EXHIBIT 4



of 43
**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT**

Respondent Name:

LOBULO, PATRIS MARKO DARIO

To:

Salinas, Serena Faye

750 B Street

Suite 2230

San Diego, CA 92101

Alien Registration Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

01/12/2022

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 01/12/2022.
The oral decision in this case is the official opinion, and the immigration court issued this summary for the convenience of the parties.

Both parties waived the issuance of a formal oral decision in this proceeding.

I. Removability

The immigration court found Respondent removable inadmissible under the following Section(s) of the Immigration and Nationality Act (INA): 237(a)(2)(A)(iii)

II. Applications for Relief

Respondent's application for:

A. Asylum/Withholding/Convention Against Torture

- Asylum was granted denied withdrawn.
- Withholding of Removal under the INA was granted denied withdrawn.
- Withholding of Removal under the Convention Against Torture was granted denied withdrawn.
- Deferral of Removal under the Convention Against Torture was granted denied withdrawn.
- Respondent knowingly filed a frivolous application for asylum after notice of the consequences.

B. Cancellation of Removal

- Cancellation of Removal for Lawful Permanent Residents under INA § 240A(a) was granted denied withdrawn.
- Cancellation of Removal for Nonpermanent Residents under INA § 240A(b)(1) was granted denied withdrawn.
- Special Rule Cancellation of Removal under INA § 240A(b)(2) was granted denied withdrawn.

C. Waiver

- A waiver under INA § was granted denied withdrawn.

Adjustment of Status under INA § was granted denied withdrawn.

E. Other

III. Voluntary Departure

Respondent's application for pre-conclusion post-conclusion voluntary departure was granted denied withdrawn.

Further information regarding voluntary departure is attached.

IV. Removal

Respondent was ordered removed to Sudan.

In the alternative, Respondent was ordered removed to South Sudan.

V. Other

Proceedings were terminated administratively closed.

Respondent was advised of the limitation on discretionary relief for failure to appear as ordered.

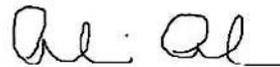
Respondent's status was rescinded under INA § 246.

Other:

On remand, Court finds Respondent has been convicted of a particularly serious crime and is not eligible for withholding of removal. Court's May 25, 2021 decision on Convention Against Torture applications was adopted and affirmed by BIA and remains unchanged:

Deferral of Removal under the Convention Against Torture to Sudan DENIED.

Deferral of Removal under the Convention Against Torture to South Sudan GRANTED.



Immigration Judge: Anderson, Amelia 01/12/2022

Appeal: Department of Homeland Security: waived reserved

Respondent: waived reserved

Appeal Due: 02/11/2022

Certificate of Service

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By: Mange, DejaRenee , Court Staff

Date: 01/12/2022

EXHIBIT 5

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Patris Marko Dario LOBULO, A 

Respondent

FILED
May 10, 2022

ON BEHALF OF RESPONDENT: Serena Faye Salinas, Esquire

ON BEHALF OF DHS: Margaret G. Jacobo, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Otay Mesa, CA

Before: Manuel, Temporary Appellate Immigration Judge¹

MANUEL, Temporary Appellate Immigration Judge

This case was last before the Board on November 10, 2021, when we dismissed the respondent's appeal relating to protection under the regulations implementing the Convention Against Torture ("CAT")² and remanded the record for further proceedings with respect to the respondent's application for withholding of removal under section 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(b)(3)(A). The respondent, a native and citizen of Sudan, has appealed the Immigration Judge's January 12, 2022, decision denying his applications for withholding of removal under the INA and protection under the CAT.³ The Department of Homeland Security ("DHS") opposes the appeal. The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

² The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994).

³ As in her previous decision of May 25, 2021, the Immigration Judge denied the respondent's CAT application as to Sudan but granted his CAT application as to South Sudan. DHS did not appeal the grant of deferral of removal to South Sudan under the CAT.

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With respect to the respondent's arguments regarding the Immigration Judge's denial of deferral of removal to Sudan under the CAT, we already adopted and affirmed the Immigration Judge's May 25, 2021, decision as to this application for relief in our previous decision (BIA at 2; Respondent's Br. at 3-5). *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The respondent's arguments in his appellate brief again do not identify any clear factual error, or legal error, in the findings made by the Immigration Judge, and we will not disturb our prior decision insofar as it adopted the Immigration Judge's decision denying the respondent's application for deferral of removal to Sudan under the CAT.

With respect to the Immigration Judge's finding that the respondent's 2019 conviction for assault with a deadly weapon in violation of section 245(a)(1) of the California Penal Code, was a particularly serious crime which barred him from withholding of removal under the INA, we had found that the Immigration Judge's decision indicated she had considered the respondent's mental illness at the time of conviction in making this determination (IJ at 8-9, May 25, 2021; BIA at 2). However, we remanded the record for further proceedings regarding the particularly serious crime issue in light of the Ninth Circuit's intervening precedential decision of *Alcaraz-Enriquez v. Garland*, 13 F.4th 848 (9th Cir. 2021) ("*Alcaraz-Enriquez II*"),⁴ and the respondent's argument that her lack of opportunity to cross examine the preparer of a police report or the witnesses whose statements were in the report violated her right to due process.

At the remanded proceeding, the Immigration Judge found that the evidence as a whole, including a supplemental police report filed by the respondent (Exh. 25), showed that the facts and circumstances of the conviction demonstrate the severity of the crime, and even without consideration of the police report, the conviction documents, the elements of the crime, the involvement of a deadly weapon, the fact that it's a crime against a person or persons, and the 3-year sentence all indicate that it was a particularly serious crime. On appeal, the respondent now simply states that "[i]n assessing whether the circumstances [of the respondent's] crime are so serious as to justify removal to Sudan, a country where there is a significant risk of persecution, the conviction at issue is not so serious under these circumstances to justify denying [the respondent] relief" (Respondent's Br. at 3).

In her decision of May 25, 2021, the Immigration Judge gave extensive consideration to the respondent's mental health problems in conducting her particularly serious crime analysis, as we noted in our prior decision (IJ at 8-9, May 25, 2021; BIA at 2). See *Gomez-Sanchez v. Sessions*, 892 F.3d 985 (9th Cir. 2018). On remand, the Immigration Judge again found the respondent's crime to be particularly serious, even without considering the police report to which the respondent

⁴ The Supreme Court of the United States vacated and remanded the Ninth Circuit's decision in *Alcaraz-Enriquez II* in *Garland v. Ming Dai*, 141 S. Ct. 1669 (2021). Following remand, the Ninth Circuit in *Alcaraz-Enriquez v. Garland*, 19 F.4th 1224 (9th Cir. 2021) ("*Alcaraz-Enriquez III*"), again found that the DHS's lack of effort to procure for cross-examination the witnesses whose testimony was embodied in a probation report relied on by the Board for purposes of a "particularly serious crime" determination was prejudicial error.

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had objected (Exh. 11). We agree with the Immigration Judge that the reliable, relevant information regarding the respondent's crime shows that it was particularly serious.

Except for per se particularly serious crimes,⁵ we analyze whether a crime is particularly serious on a case-by-case basis, looking to such factors as the nature of the conviction, the circumstances and underlying facts of the conviction, the type of sentence imposed, and whether the type and circumstances of the crime indicate the alien will be a danger to the community. *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007), *aff'd sub nom., N-A-M- v. Holder*, 587 F.3d 1052 (10th Cir. 2009), *cert. denied*, 562 U.S. 1141 (2011); *see Gomez-Sanchez v. Sessions*, 892 F.3d 985, 991 (9th Cir. 2018); *Anaya-Ortiz v. Holder*, 594 F.3d 673, 679 (9th Cir. 2010). A crime is more likely to be considered particularly serious if it is against a person. *Matter of N-A-M-*, 24 I&N Dec. at 343.

Here, we agree with the Immigration Judge that the nature of the crime, which is a crime against persons and an aggravated felony crime of violence pursuant to section 101(a)(43)(F) of the INA, 8 U.S.C. § 1101(a)(43)(F); the conviction record indicating that the respondent assaulted an individual with a knife; and the 3-year sentence the respondent received for his conviction, taken together, establish that this was a particularly serious crime, even when the respondent's mental illness is taken into account (IJ at 8-9, May 25, 2021, discussing the respondent's mental illness; IJ at 1-7, January 12, 2022; Tr. at 101-170, 224-232; Exh. 9 at 8-31; Exh. 10 at 2, 34-36; Exh. 12 at 109-295). With respect to the respondent's argument on appeal that the circumstances of the crime are not so serious as to warrant his removal to a country in which he faces a risk of persecution, the conditions in the country to which the respondent faces removal are not a factor in assessing the seriousness of the respondent's crime. Accordingly, the respondent is ineligible for withholding of removal under the INA, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁵ See section 241(b)(3)(B) of the INA, 8 U.S.C. § 1231(b)(3)(B).

EXHIBIT 6

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name LOBULO, PATRIS MARKO DARIO	File Number XXXXXXXXXX Event No: XXXXXXXXXX	Date 08/18/2025
The subject claims good health.		
Current Administrative Charges ----- 08/18/2025 - 237a2Aiii - Aggravated Felony		
Previous Criminal History ----- On 10/03/2019, the subject was arrested for the crime of "Aggravated Assault - Weapon" which resulted in a conviction on 10/03/2019. The subject was sentenced to 3 year(s).		
RECORDS CHECKED ----- CIS Pos EARM Pos TECS Neg CLAIM Neg NCIC Pos		
TYPE OF EMPLOYMENT ----- Occupation Not Reported		
AT/NEAR ----- SAN DIEGO, CALIFORNIA		
Record of Deportable/Excludable Alien: ----- Name: LOBULO, Patris Marko Dario A File XXXXXXXXXX FBI#: XXXXXXXXXX SID: XXXXXXXXXX		
ENCOUNTER DATA On August 18, 2025, LOBULO entered the Edward J. Schwartz Federal Building in San Diego demanding to speak with a Non-Detain Unit (NDU) Supervisor on the 2nd floor. LOBULO became agitated and started a disturbance outside the NDU lobby area. LOBULO was then placed into custody, CART and BOND cancel per NDU and escorted down to the basement for further processing. During the encounter LOBULO stated he was a citizen and national of SUDAN. Records checks indicated that LOBULO was granted lawful permanent residence status (RE6) on January 27, 2005. LOBULO has a final order of removal on May 10, 2022, for the conviction of an Aggravated Felony.		
ENTRY DATA: LOBULO is a native and citizen of South Sudan since birth, who entered the United States as a Lawful Permanent resident (RE6) on January 27, 2005, at New York, New York.		
IMMIGRATION HISTORY: On XXXXXXXXXX , was born in Sudan. LOBULO is a native and citizen of South Sudan since		
Signature E 11847 LEE LEE <i>Lee Lee</i>	Title Deportation Officer	

2 of 3 Pages

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name LOBULO, PATRIS MARKO DARIO	File Number [REDACTED] Event No: [REDACTED]	Date 08/18/2025
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birth, who entered the United States as a Lawful Permanent resident (RE6) on January 27, 2005, at New York, New York.

On March 20, 2017, LOBULO applied for Application for Naturalization, N-400 with U.S. Citizenship and Immigration Services (USCIS). On April 05, 2017, USCIS rejected his application.

On March 07, 2022, LOBULO applied for Application for Temporary Protected Status, I-821 with U.S. Citizenship and Immigration Services (USCIS). On January 17, 2023, USCIS denied his application.

On May 10, 2022, an Immigration judge revoked LOBULO RE6 status and ordered him removed.

CRIMINAL HISTORY:

LOBULO was on October 03, 2019, convicted in the Superior Court of California County of Los Angeles, West District Court for the offense of PC 245 (A) (1), in violation of Assault with a Deadly Weapon; You were sentenced to a term of imprisonment of three years.

CHARGES OF REMOVABILITY:

LOBULO is inadmissible into the United States under Section 237(a) (2) (A) (iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a) (43) (F) of the Act, a crime of violence (as defined in section 16 of Title 18, United States Code, but not including a purely political offense) for which the term of imprisonment ordered is at least one year.

DISPOSITION:

LOBULO is inadmissible into the United States under Section 237(a) (2) (A) (iii) of the INA, as amended. The subject was processed as Bag and Baggage. Subject will be transported to the Otay Mesa Detention Facility for further processing.

Other Identifying Numbers

ALIEN- [REDACTED]
 State Criminal Number/State Bureau Number- [REDACTED] (UNITED STATES)
 U.S. Social Security Number- [REDACTED]

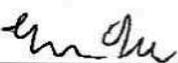
Signature E 11847 LEE LEE 	Title Deportation Officer
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EXHIBIT 7



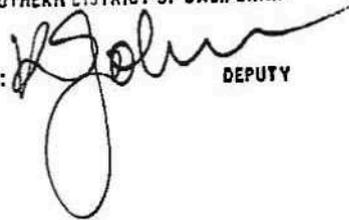
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3:02-CV-01524 KIM V. ASHCROFT
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FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KININE KIM,

Petitioner,

v.

JOHN ASHCROFT, ET AL.

Respondents.

CASE NO. 02CV1524-J (LAB)
A ~~XXXXXXXXXX~~

ORDER GRANTING MOTION
FOR RECONSIDERATION

On August 5, 2002, Petitioner Kinine Kim, represented by counsel, filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. He challenged his custody by the Immigration and Naturalization Services ("INS") alleging that he has been indefinitely detained in violation of 8 U.S.C. § 1231(a)(6) and sought release from custody under the conditions of supervision set out in 8 U.S.C. § 1231(a)(3). The Court initially denied the Petition without prejudice as to refile and later granted the refiled Petition and ordered that Petitioner be released on bond. Respondent timely filed its Motion to Alter or Amend the Judgment pursuant to Rule 59(a), (e). For the reasons set forth below, the Motion is granted, the renewed Petition for Writ of Habeas Corpus is denied and Respondent may continue to detain Petitioner. The Court grants Petitioner leave to refile his petition in six months if he has not been removed at that time and is able to plead facts sufficient to satisfy *Zadvydas v. Davis*,

25 - 1 -

1 533 U.S. 678 (2001).

2 *Background*¹

3 Petitioner is a Cambodian national and refugee from Thailand who became a permanent
4 resident on February 10, 1983. The state of California convicted him of assault with a firearm
5 upon a person in violation of the California Penal Code § 245A(2); second degree burglary in
6 violation of California Penal Code § 459; and driving with a suspended/revoked driver's
7 license and failing to pay the \$792 fine. When he filed his Petition on August 5, 2002, he had
8 been in the custody of the Immigration and Naturalization Service ("INS") since November
9 19, 2001 and had been the subject of a final order of removal since January 17, 2002.
10 Petitioner's January 22, 2002 request for a travel document from the Cambodian government
11 was denied on January 25, 2002. The Cambodian government denied the application because
12 it had no repatriation agreement with the United States. On March 22, 2002, the United States
13 and the Cambodian government signed a "Memorandum Between the Government of the
14 United States and the Royal Government of Cambodia for the Establishment and Operation
15 of a United States-Cambodia Joint Commission on Repatriation," (hereinafter
16 "Memorandum"), providing procedures for the repatriation of each other's nationals to their
17 home state. After the Memorandum was signed, Petitioner filed a new application for travel
18 documents on April 8, 2002. He was interviewed by Cambodian officials in early October
19 2002. At the time Petitioner filed, the Cambodian government had not decided whether to
20 repatriate him.

21 In its Answer to the Petition, Respondent requested a stay of the proceedings pending
22 the INS' review of Petitioner's circumstances to determine if there was a significant likelihood
23 of removal in the reasonably foreseeable future pursuant to interim rules that have since been
24 codified at 8 C.F.R. § 241.13. The Court found that although the six month period during
25 which detention is presumptively reasonable had passed, that Petitioner had not met his burden
26 of showing good reason why there is no significant likelihood of removal in the reasonably

27 ¹ These facts are set forth in the Court's Order Denying Petition Without Prejudice and
28 are reiterated here for convenience.

1 foreseeable future. The Court denied the Petition without prejudice as to refiling if, within 45
2 days, the Government of Cambodia had not responded or had denied repatriation.

3 Petitioner renewed his Petition after the 45 days had passed. This time, the Court
4 granted the Petition, stating that although the United States and Cambodian governments were
5 cooperating to repatriate Cambodian nationals detained by the INS, that

6 Respondent ha[d] not made a sufficiently strong showing that Petitioner's
7 repatriation [was] likely in the foreseeable future given that Petitioner ha[d] been
8 in INS custody since November 19, 2001 and that his order of removal ha[d]
been final since January 17, 2002.

9 *Order Granting Petition for Writ of Habeas Corpus* (March 3, 2003) at 2.

10 Respondent raises two distinct but related issues, contending that the Court
11 impermissibly shifted the burden of proof to the Respondent and that application of the correct
12 standard requires that the Petition be denied because "the passage of time alone is not
13 sufficient to require the release of an alien detainee." *Mem. of P & A.* at 2. According to
14 Respondent, the burden remains with the alien to *prove* that his removal is not significantly
15 likely in the foreseeable future." *Id.* (emphasis added). The Court acknowledges that its March
16 3, 2003 Order imprecisely recited the standard, but disagrees with Respondent's contentions
17 that the alien must *prove* that removal is not significantly likely in the foreseeable future and
18 that the length of detention alone is always insufficient to show that there is good reason to
19 conclude that there is no significant likelihood of removal in the reasonably foreseeable future.
20 The Court nonetheless agrees with Respondent that continued detention is authorized under
21 *Zadvydas*.

22 *Discussion*

23 The Attorney General has the discretion to arrest and detain certain classes of aliens,
24 including those who like Petitioner, who are removable because they have been convicted of
25 specified crimes, pending a decision on whether the alien is to be removed from the United
26 States. 8 U.S.C. § 1226(a)(2), (c). Generally, an alien must be removed within 90 days of an
27 issuance of a final order of removal. 8 U.S.C. § 1231(a)(1). However, "under no circumstance
28 during the removal period" shall the Attorney General release an alien who has been found

1 inadmissible because he has committed certain crimes specified and defined in sections
2 1182(a)(2), (3) or section 1227(a)(2), (a)(4)(B). 8 U.S.C. § 1231(a)(2). In *Zadvydas v. Davis*,
3 533 U.S. 678 (2001), the United States Supreme Court rejected the Government's argument
4 that section 1226(a)(2) authorized indefinite detention and read into the section as implicitly
5 limiting an alien's post-removal period detention to a period reasonably necessary to bring
6 about that alien's removal from the United States. *Id.* at 690.

7 Contrary to Respondent's argument, *Zadvydas* does not impose on the alien the burden
8 of *proving* that his removal is not significantly likely in the foreseeable future. Rather,
9 *Zadvydas* creates a burden-shifting procedure setting forth the burdens of proof for when
10 removal is reasonably foreseeable. Once the presumptively reasonable six-month period of
11 detention has expired, the alien must "provide [] good reason to believe that there is no
12 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701; *Xi v. United*
13 *States I.N.S.*, 298 F.3d 832, 840 (9th Cir. 2002). *Zadvydas* thus sets forth what the alien must
14 plead and does not impose an evidentiary burden. *Fahim v. Ashcroft*, 227 F. Supp.2d 1359
15 (2002)(holding that petitioner did not allege a significant likelihood that his removal is unlikely
16 in the foreseeable future). Once the alien has provided "good reason," the Respondent "must
17 respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *Xi*, 298
18 F.3d at 840. The burden is therefore on Respondent to produce admissible, credible evidence
19 concerning the likelihood of removal in the foreseeable future. While the Court did not
20 specifically define "reasonably foreseeable future," it did set some parameters that guide our
21 understanding of the phrase. The alien must allege something more than that there is no
22 pending repatriation agreement and must consider the likelihood of successful future
23 negotiations, but the alien does not have to show "the absence of *any* prospect of removal."
24 *Id.* at 702 (emphasis in original).

25 The original Petition alleged that Petitioner had been in custody for longer than the
26 presumptively reasonable six month period and that it was not certain that he would be
27 removed in the reasonably foreseeable future because the Cambodian government had denied
28 travel documents for Cambodian detainees in San Diego because they, like Petitioner, were

1 born in Thailand, and because Cambodian government officials had informed Petitioner during
2 his interview that he was not likely to receive travel documents because he was born in
3 Thailand. The Petitioner lodged documents showing that the other Cambodians were denied
4 travel documents for reasons other than those alleged by Petitioner, and the Court found that
5 the alleged statements by the Cambodian government officials were inadmissible hearsay.
6 Respondent produced evidence showing that the United States and Cambodian governments
7 were making progress in arranging for the repatriation of Cambodian nationals. Specifically,
8 the two countries had entered into the Memorandum on March 22, 2002. Moreover, Petitioner
9 had been interviewed by Cambodian government officials. The Memorandum had already
10 resulted in the removal of a number of Cambodian nationals. Thus, there were no institutional
11 barriers to repatriation.

12 The Court denied the original Petition subject to renewal because "Petitioner has not
13 shown good reason why there is no significant likelihood of removal in the reasonably
14 foreseeable future." *Order Denying Petition for Writ of Habeas Corpus* (Dec. 6, 2002) at 5.
15 The amended Petition, filed on February 4, 2003, alleged that the Cambodian government had
16 still not responded to Respondent's request for travel documents for the Petitioner and that
17 Petitioner remained in custody. In other words, Petitioner argued that the passage of time alone
18 demonstrated that Respondents were not able to effectuate his repatriation in the reasonably
19 foreseeable future.

20 In response to Petitioner's allegations in the amended Petition, Respondent filed an
21 amended Return and new evidence in the form of a declaration by an INS official stating that
22 two additional groups of Cambodians had in fact been repatriated since the original Return was
23 filed. Respondent argued that the renewed Petition should be denied because "the process is
24 functioning and . . . there is [no] evidence that Petitioners in particular have been rejected by
25 the Cambodian government." *Amended Return* at 4. In a footnote, Respondent stated that
26 another flight had been scheduled to Cambodia, "demonstrating that the March 22, 2002
27 memorandum is producing significant results in terms of an established removal process." *Id.*
28 n. 4.

1 In *Fahim v. Ashcroft*, 227 F. Supp.2d 1359 (2002), another district court held that the
2 petitioner had not met his burden of alleging a significant likelihood that his removal is
3 unlikely in the foreseeable future. The facts of that case are strikingly similar to those here.
4 The petitioner “relie[d] on the bare fact that the Egyptian consulate ha[d] not yet issued any
5 travel documents for him despite the efforts of the INS to secure them” and on his family’s
6 statement that the Egyptian consulate had not responded to their inquiries. *Id.* at 1365. The
7 petitioner alleged “that it is unknown whether the Egyptian government will ever issue the
8 requested travel documents.” *Id.* The district court found that those bare allegations were
9 speculative and insufficient because they did not include allegations of institutional or
10 individual barriers to repatriation. Evidence showed that Egypt was in fact repatriating
11 nationals and “the lack of visible progress since the INS requested travel documents from the
12 Egyptian government” was not sufficient to show no significant likelihood of removal in the
13 foreseeable future.

14 In reaching its conclusion, the *Fahim* court relied heavily on the rationale set forth in
15 an opinion issued from this district. See *Khan v. Fasano*, 194 F. Supp.2d 1134 (S.D. Cal.
16 2001)(Keep, J.). *Khan* held that new information presented in support of a motion for
17 reconsideration showed that progress was being made for the petitioner’s deportation and that
18 institutional barriers were therefore not present. *Id.* at 1136. The court rejected petitioner’s
19 argument that the lack of visible progress showed that there are individual barriers. In the
20 court’s view, the lack of visible progress “simply show[ed] that the bureaucratic gears of the
21 INS are slowly grinding away. Progress, however slow, is being made on his individual case:
22 travel documents have been requested and there is scheduled a meeting with the Pakistani
23 Consulate to discuss [petitioner’s] status.” *Id.* at 1137. The court also noted that the newly-
24 formed HQPDU, as a specialized unit within the INS, was entitled to significant deference
25 from the judiciary.” *Id.*

26 ///

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1 Both the *Khan* and *Fahim* courts contrasted the facts of their cases with those of the
2 petitioners in *Zadvydas*. In *Zadvydas*, the Supreme Court addressed a situation where the
3 petitioners were nationals of countries with which the United States had no repatriation
4 agreement and the petitioners “faced detention that appeared to be ‘indefinite and potentially
5 permanent.’” *Khan*, 194 F. Supp.2d at 1136; *Fahim*, 227 F. Supp.2d at 1366. There was,
6 therefore, “virtually no hope of repatriating [them] back to [their] native land[s].” *Fahim*, 227
7 F. Supp.2d at 1366.

8 This Court agrees with the *Khan* and *Fahim* courts that evidence of progress, albeit slow
9 progress, in negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s
10 detention grows unreasonably lengthy.² At some point in time, however, lengthy detention
11 demands almost immediate repatriation or release on bond. What “counts as the ‘reasonably
12 foreseeable future’” shrinks as the period of prior postremoval confinement grows. *Zadvydas*,
13 533 U.S. at 401. While the Court is unable to say precisely when detention becomes
14 unreasonably lengthy given the degree of certainty regarding removal, the Court is confident
15 that Petitioner’s detention has not yet reached that point. Petitioner has been in custody
16 following his state prison sentence since November 19, 2001, or approximately one year and
17 four months at the time the Court granted the Petition. Petitioner’s one year and four month
18 detention does not violate *Zadvydas* given Respondent’s production of evidence showing that
19 the United States and Cambodian governments’ negotiations are in progress and there is,
20 therefore, reason to believe that removal is likely in the foreseeable future.

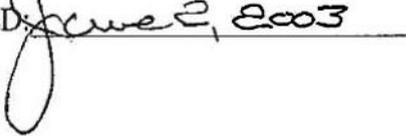
21 *Conclusion*

22 For the reasons set forth below, the Motion for Reconsideration is GRANTED, the
23 renewed Petition for Writ of Habeas Corpus is DENIED and Respondent may continue to
24 detain Petitioner. The Court grants Petitioner leave to refile his petition six months from the
25

26 ² The Court notes that the *Khan* court concluded that the petitioner had failed to meet his
27 burden of providing good reason to believe that there is no significant likelihood of removal in the
28 reasonably foreseeable future. *Khan*, 194 F. Supp.2d at 1137. This Court believes that conclusion
misstates the petitioner’s burden, which is one of pleading not of proving.

1 date stamped "Filed" on this Order if he has not been removed at that time and is able to plead
2 facts sufficient to satisfy *Zadvydas v. Davis*, 533 U.S. 678 (2001).

3 **IT IS SO ORDERED.**

4 DATED: June 2, 2003
5 


NAPOLEON A. JONES, JR.
United States District Judge

7 cc: All Parties
8 Robert Plaxico
9 Office of the United States Attorney
10 Federal Office Building
11 880 Front Street room 6293
12 San Diego California 92101-8893
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EXHIBIT 8

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMAN HABTAI SEREKE,
Petitioner,
v.
DHS,
Respondent.

Case No.: 19-cv-1250-WQH-AGS

ORDER

HAYES, Judge:

The matter before the Court is the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 filed by Petitioner Aman Habtai Sereke. (ECF No. 1).

I. BACKGROUND

Petitioner is a native and citizen of Eritrea who is currently detained at the Otay Mesa Detention Center. (Ex. A, ECF No. 3-1 at 4). On January 10, 2018, Petitioner applied for asylum at the San Ysidro port of entry. (Ex. A, ECF No. 3-1 at 4). On January 11, 2018, Immigration and Customs Enforcement (ICE) took Petitioner into custody. (Wu Decl. ¶ 4, ECF No. 3-1). On September 12, 2018, an immigration judge ordered Petitioner removed, and appeal was waived. (Ex. C, ECF No. 3-1 at 11).

On July 5, 2019, Petitioner filed the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, naming the Department of Homeland Security (DHS) as Respondent. (ECF No. 1). Petitioner seeks release from custody on the grounds that his detention has been unlawfully prolonged because immigration authorities have failed to remove him.

1 On July 11, 2019, the Court issued an Order to Show Cause why the Petition should
2 not be granted. (ECF No. 2). The Court ordered that a return be filed by July 23, 2019,
3 and that any traverse be filed by July 30, 2019. *Id.*

4 On July 22, 2019, Respondent filed a return. (ECF No. 3).

5 On July 22, 2019, Petitioner filed exhibits to the Petition. (ECF No. 4).

6 The record reflects no additional filings.

7 II. DISCUSSION

8 Petitioner alleges that immigration authorities have been unable to remove him to
9 Eritrea because of difficult diplomatic relations with the Eritrean government and the
10 Eritrean consulate's failure to issue travel documents. (ECF No. 1 ¶ 6). Petitioner alleges
11 that on June 24, 2019, a deportation officer brought Petitioner a document stating that
12 Petitioner would be released. *Id.* ¶ 8. Petitioner alleges that on June 26, 2019, the
13 deportation officer brought Petitioner a document stating that Petitioner's detention would
14 continue. *Id.* Petitioner alleges that he was served a document containing errors regarding
15 Petitioner's immigration history. *Id.* Petitioner claims that his indefinite detention is
16 unjustified and violates the Due Process Clause of the Fifth Amendment. *Id.* ¶ 9. Petitioner
17 requests that he be released from immigration custody and alleges that "[u]pon his release,
18 [P]etitioner will reside to . . . Austin, TX." *Id.* ¶¶ 1, 10.

19 Respondent contends that habeas relief is not warranted. Respondent contends that
20 Petitioner's removal is significantly likely in the reasonably foreseeable future, because
21 Petitioner's removal will occur in the coming months when Petitioner's travel documents
22 are renewed and Petitioner's travel arrangements are finalized. Respondent asserts that on
23 June 24, 2019, ICE issued Petitioner a Release Notification before becoming aware that
24 previous issues with immigration removals to Eritrea had been resolved. (ECF No. 3 at 3
25 n.2). Respondent asserts that on June 24, 2019, ICE issued Petitioner a Decision to
26 Continue Detention containing an erroneous reference to an appeal. *Id.* at 3 n.1.

27 A federal court may grant a petition for writ of habeas corpus pursuant to 28 U.S.C.
28 § 2241 if a petitioner can demonstrate that he "is in custody in violation of the Constitution

1 or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3). “Ordinarily, when
2 an alien is ordered removed from the United States, the Attorney General is obliged to
3 facilitate that individual’s actual removal within 90 days, a period called the ‘removal
4 period.’” *Xi v. U.S. Immigration & Naturalization Serv.*, 298 F.3d 832, 834 (9th Cir. 2002)
5 (quoting 8 U.S.C. § 1231(a)(1)). The statute requires the Attorney General “to detain an
6 individual who has been ordered removed on certain specified grounds” and “authorizes
7 detention beyond the removal period.” *Id.* at 835 (citing §§ 1231(a)(2), (6)). However,
8 “the statute ‘does not permit indefinite detention.’” *Id.* at 836 (quoting *Zadvydas v. Davis*,
9 533 U.S. 678, 689 (2001)). In *Zadvydas*, the Supreme Court stated, “In our view, the
10 statute, read in light of the Constitution’s demands, limits an alien’s post-removal-period
11 detention to a period reasonably necessary to bring about that alien’s removal from the
12 United States.” 533 U.S. at 689.

13 In *Xi*, the Court of Appeals stated that “under the parameters established in
14 *Zadvydas*, [a petitioner’s] continued detention is permissible if his removal is reasonably
15 foreseeable.” 298 F.3d at 839 (citation omitted). The petitioner “has the burden to provide
16 ‘good reason to believe that there is no significant likelihood of removal in the reasonably
17 foreseeable future’” and “the government must then ‘respond with evidence sufficient to
18 rebut the detainee’s showing.’” *Id.* at 839–840 (quoting *Zadvydas*, 533 U.S. at 701
19 (alteration omitted)). The petitioner’s allegations must go beyond “the absence of an extant
20 or pending repatriation agreement” and give “due weight to the likelihood of successful
21 future negotiations”; however, the allegations need not demonstrate “the absence of any
22 prospect of removal.” *Zadvydas*, 533 U.S. at 702; *see also Fahim v. Ashcroft*, 227 F. Supp.
23 2d 1359, 1365 (N.D. Ga. 2002) (“[B]are allegations are insufficient to demonstrate a
24 significant unlikelihood of . . . removal in the reasonably foreseeable future.”). Courts have
25 determined that alleging a “lack of visible progress since the request of travel documents”
26 does not show a “significant likelihood of removal; it simply shows that the bureaucratic
27 gears of the INS are slowly grinding away.” *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137
28 (S.D. Cal. 2001); *see also Fahim*, 227 F. Supp. 2d at 1366; *Novikov v. Gartland*, No. 5:17-

1 CV-164, 2018 WL 4100694, at *2–3, *adopted*, No. 5:17-CV-164, 2018 WL 4688733 (S.D.
2 Ga. Sept. 28, 2018). The government may rebut the detainee’s showing with “evidence of
3 progress . . . in negotiating a petitioner’s repatriation.” *Kim v. Ashcroft*, 02cv1524-J(LAB),
4 at 8 (S.D. Cal. June 2, 2003) (citing *Khan*, 194 F. Supp. 2d at 1134; *Fahim*, 227 F. Supp.
5 2d at 1359). In such cases, it may be appropriate to deny the petition for habeas corpus
6 without prejudice and with leave to refile at a later date if the petitioner is still not removed.
7 *See Khan*, 194 F. Supp. 2d at 1138; *Kim*, 02cv1524-J(LAB); *Novikov*, 2018 WL 4100694,
8 at *3.

9 In this case, the evidence provided by the government includes the declaration of
10 Alice Wu, a Detention and Deportation Officer with the DHS ICE, Enforcement and
11 Removal Operations (ERO). (Wu Decl. ¶ 1, ECF No. 3-1). Wu states in the declaration:

12 6. On September 21, 2018, ERO San Diego field office submitted a travel
13 document (TD) packet to the Embassy of Eritrea. On October 1, 2018, RIO
14 presented this TD packet at the Embassy of Eritrea in Washington D.C. and a
15 TD was issued on December 28, 2018. However, for some months, ICE has
16 encountered difficulties in executing removal orders to Eritrea due to the
17 inability to secure a travel itinerary that met with the approval of all
18 governments involved in getting Eritrean nationals ordered removed from the
19 United States back to Asmara, Eritrea.

20 7. In late June of 2019, the Department of State notified ICE that the issues
21 with travel to Eritrea had been resolved and commercial flights could be
22 resumed for aliens ordered removed from the United States. The TD issued in
23 December 2018 has since expired. On July 12, 2019, the ICE ERO San Diego
24 office confirmed that Petitioner’s travel document (TD) is in process for
25 renewal with the Eritrean Embassy. While the government of Eritrea is
26 working on issuance of a new TD, ICE will prepare an itinerary for Mr.
27 Sereke’s removal from the United States via commercial airline.

28 Mr. Sereke’s removal is significantly likely in the reasonably foreseeable
future. ICE anticipates that his removal will take place in approximately two
months from the date the TD is issued.

25 *Id.* ¶¶ 6–7.

26 Respondent has set forth evidence that demonstrates progress and the reasons for the
27 delay in Petitioner’s removal. Respondent has shown that the Eritrean government
28

1 previously issued travel documents within three months of the government's submission.
2 Respondent has shown that, as of July 12, 2019, the renewal of Petitioner's travel
3 documents is in progress. Respondent has shown that Petitioner's removal is anticipated
4 within two months of the issuance of travel documents. The Court concludes that the
5 record at this stage in the litigation does not support a finding that there is no significant
6 likelihood of Petitioner's removal in the reasonably foreseeable future. *See Zadvydas*, 533
7 U.S. at 701; *see also Fahim*, 227 F. Supp. 2d at 1366 ("In short, petitioner has not alleged
8 facts indicating that Egypt will never issue him papers nor has he alleged any reasons why
9 Egypt . . . would not ultimately comply with a request from the United States Government
10 in this particular instance."); *Khan*, 194 F. Supp. 2d at 1138 ("Progress, however slow, is
11 being made on his individual case: travel documents have been requested . . ."); *Novikov*,
12 2018 WL 4100694, at *3 ("Novikov does not explain how the past lack of progress in the
13 issuance of his travel documents means that Ukraine will not produce the documents in the
14 foreseeable future."). The Court concludes that dismissal without prejudice is proper in
15 this case based on the possibility that Petitioner's continued detention could give rise to a
16 plausible claim for relief. *See Khan*, 194 F. Supp. 2d at 1138 (granting leave to refile if
17 removal was not effectuated within six months); *Novikov*, 2018 WL 4100694, at *3
18 (recommending dismissal without prejudice).

19 III. CONCLUSION

20 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus pursuant to
21 28 U.S.C. § 2241 is denied without prejudice and with leave to refile in the event that
22 Petitioner is not removed in the next five months, or in the event that circumstances change
23 and Petitioner can demonstrate entitlement to relief.

24 Dated: August 15, 2019


25 Hon. William Q. Hayes
26 United States District Court
27
28