IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DANIEL KHUNGBIK, Petitioner, vs. CRYSTAL CARTER, Warden, FCI-Leavenworth; AARON J. WENDLER, Deportation Officer; TODD LYONS, ICE Acting Director; PAM BONDI, Attorney General; and KRISTI NOEM, DHS Secretary, Respondents.	)	Case No. 26-3016-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Daniel Khungbik ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that his detention at FCI Leavenworth in Leavenworth, Kansas, is improper because his removal is not likely in the reasonably foreseeable future. In compliance with the Court's Order to Show Cause, Doc. 3, Crystal Carter, Aaron J. Wendler, Todd Lyons, Pam Bondi, and Kristi Noem, all in their respective official capacities, ("Respondents") respectfully submit this response.

STATEMENT OF FACTS

The following facts are based on the declaration of Marissa Saenz, a Deportation Officer for ICE Enforcement and Removal Operations ("ERO") of the United States Department of Homeland Security ("DHS"). Exhibit 1, Saenz Decl. ¶¶ 1-3. Petitioner is a native and citizen of Burma (officially, the Republic of the Union of Myanmar)[1] who was admitted to the United States on or about August 21, 2007. *Id.* ¶¶ 5-6. Petitioner's status was adjusted to that of lawful permanent resident on or about February 26, 2009. *Id.* ¶ 6.

[1] The Republic of the Union of Myanmar is often colloquially referred to as Burma.

On or about April 6, 2021, Petitioner was convicted in the Circuit Court of Jackson County, Missouri, of two counts of domestic assault in the third degree in violation of RSMO § 565.074. *Id.* ¶ 7. On July 9, 2021, Petitioner was taken into ICE custody and issued a Notice to Appear ("NTA"), thereby placing him in removal proceedings before an Immigration Judge. *Id.* ¶ 8. The NTA alleged, in part, that Petitioner was removable from the United States pursuant to Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony as defined in INA Section 101(a)(43)(F), a law relating to a crime of violence. *Id.* ¶ 9. Petitioner was also charged as removable under Section 237(a)(2)(E)(i) of the INA for having committed a crime of domestic violence. *Id.*

Petitioner filed an application for relief with the Immigration Court on or about August 3, 2021, and a hearing was held on the application August 31, 2021. *Id.* ¶¶ 10-11. On September 1, 2021, the Immigration Judge issued a written decision denying Petitioner's application for relief and ordering his removal to Burma. *Id.* ¶ 12. Petitioner appealed the Immigration Judge's decision and on February 1, 2022, the Board of Immigration Appeals declined to remand proceedings and dismissed Petitioner's appeal. *Id.* ¶¶ 13-14. On February 23, 2022, Petitioner was released from ICE custody on supervised release following unsuccessful efforts to obtain a travel document to Burma. *Id.* ¶ 17.

On or about June 23, 2025, Petitioner was taken into ICE custody, and his prior order of supervision was revoked. *Id.* ¶ 18.

On or about July 10, 2025, ERO contacted Removal and International Operations ("RIO") for assistance with obtaining a travel document. *Id.* ¶ 19. ERO received travel document application documents on or about July 16, 2025, for service on Petitioner, and so that Petitioner could complete the application. *Id.* ¶ 20. Petitioner initially refused to assist in

completing the application but later complied and filled in the required information on July 24, 2025. *Id.* ¶ 21. On or about July 28, 2025, the travel document application was emailed to RIO for review, and on or about September 3, 2025, the travel document application packet was mailed to RIO that RIO could then submit the travel document request to the Embassy of the Republic of the Union of Myanmar.. *Id.* ¶¶ 22-23.

On or about January 7, 2026, the Myanmar embassy emailed ERO and requested an interview with Petitioner. *Id.* ¶ 24. On or about January 13, 2026, Petitioner met virtually with personnel from the embassy of Myanmar. *Id.* ¶ 25. On or about January 13, 2026, Petitioner met virtually with personnel from the embassy of Myanmar. *Id.* ¶ 25. At the conclusion of the meeting, ERO was advised by embassy of Myanmar personnel that the travel document request will be sent to the Myanmar embassy headquarters for fulfillment, which generally means that the travel document interview was successful and that issuance of the travel document is forthcoming. *Id.* The fulfillment process typically takes approximately thirty days from the date of interview. *Id.* As of this filing, a travel document has not yet been received by ERO, and a removal date has not yet been scheduled. *Id.* ¶¶ 26-27.

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, at *6 (D. Kan. July 13, 2020). To obtain habeas corpus relief, a petitioner must demonstrate that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner challenges the length of his detention, arguing that his continued detention violates his due process rights and the principles established in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

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, at *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*, 533 U.S. at 701). "Beyond that period, if the alien shows that there is 'no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.'" *Garcia Uranga*, 2020 WL 4334999, at *4 (quoting *Zadvydas*, 533 U.S. at 701). "The six-month presumption" thus "does not mean that every alien must be released after that time, but rather an alien may be detained 'until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Zhiriakov*, 2020 WL 3960442, at *8 (quoting *Zadvydas*, 533 U.S. at 701).

Here, Petitioner has not shown there is "no significant likelihood of removal in the reasonably foreseeable future." Petitioner's argument on this point is that as of the filing of his Petition, "no travel documents [have] been secured, no flights have been scheduled, and no confirmation [has] been received from any foreign country that is willing to accept the

Petitioner."[2] Doc. 1, p. 2. To deny a Petition, however, Courts, including this Court, do not require flights to have been scheduled, travel documents to be in hand, or even for a country to have affirmatively stated the Petitioner may be removed to that country. *See, e.g.*, *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, at *4 (W.D. Wash. May 10, 2024) (recognizing 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"); *Soudom v. Warden, FCI-Leavenworth*, No. 25-3063, 2025 WL 1594822, at *1-2 (D. Kan. May 23, 2025) (finding petitioner detained for more than six months had failed to meet his burden under *Zadvydas* where travel document had not yet been obtained and letter cited by Petitioner did not foreclose the possibility of removal but suggested steps necessary to accomplish such removal). Petitioner does not deny he is a citizen of Burma or provide any reason for why the Myanmar embassy would not fulfill the travel document request.

Even if Petitioner could meet his initial burden to show his removal is not likely to occur in the reasonably foreseeable future, Respondents have rebutted that showing. Since Petitioner's order of supervision was revoked and Petitioner was taken into ICE custody on or about June 23, 2025, Respondents have worked diligently to secure Petitioner's removal to Burma and appear close to effectuating that removal. Within weeks of Petitioner being taken into ICE custody in 2025, ERO contacted RIO for assistance in obtaining a travel document to Burma. ERO soon received the travel document application documents for service on Petitioner and after Petitioner filled in the required information on such paperwork, ERO sent the travel document

[2] To the extent Petitioner suggests his time detained in 2021/2022 should be included in the total number of days he has been detained, this Court has rejected this argument previously and should do so here. *Abedi v. Carter*, No. 25-3141-JWL, 2025 WL 3209009, at *1 (D. Kan. Oct. 6, 2025) ("The Court has previously rejected the argument that the Supreme Court's six-month presumptively-reasonable period of detention under Zadvydas does not restart upon detention of an alien previously released on an OSUP.") (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25, 2025)).

application/packet to RIO. That Petitioner's removal is likely to occur in the foreseeable future is confirmed by the fact that in January 2026, personnel from the Embassy of the Republic of the Union of Myanmar requested an interview with and then met virtually with Petitioner. At the conclusion of the January 13, 2026, meeting between Petitioner and Myanmar embassy personnel, ERO was advised by the embassy of Myanmar personnel that the travel document request will be sent to the Myanmar embassy headquarters for fulfillment, which generally means that the travel document interview was successful and that issuance of the travel document is forthcoming. Typically, the fulfillment process takes *approximately* thirty days from the date of interview. Substantial progress has been made toward obtaining a travel document for Petitioner and his removal is likely to occur in the reasonably foreseeable future.

Finally, although Petitioner also purports to bring due process claims, such claims are based on the same allegations as Petitioner's *Zadvydas*-based claims and likewise fail. *See Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *5-6 (W.D. Okla. Aug. 27, 2024), *report and recommendation adopted,* No. CIV-24-464-SLP, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025) ("Courts, including this one, have held that a petitioner's failure to establish that his detention violates *Zadvydas* negates a substantive due process claim."); *Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, at *6 (W.D. Okla. Dec. 18, 2007) ("Petitioner fails to elaborate on the details of any procedural due process claim; rather, he appears to base such claim on an entitlement to release pursuant to *Zadvydas*, which has already been rejected in addressing his statutory claim."); *see also Nasr v. Larocca*, No. CV 16-1673-VBF(E), 2016 WL 3710200, at *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."); *H.N. v. Warden*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *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, at *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, at *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, at *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.").

Because of the likelihood of Petitioner's removal in the reasonably foreseeable future, Respondent respectfully requests that the Court deny Petitioner's habeas petition.

CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 17, 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 caused a copy of the foregoing and the notice of electronic filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

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/s/ *Sarah Burch Macke*
Sarah Burch Macke