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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 SUNDAY KAYODE KUNKUSHI,

12 Petitioner,

13 v.

14 WARDEN, DESERT VIEW ANNEX,
15 et al.,

16 Respondents.
17

Case No. EDCV 25-1608 SRM (PVC)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE**

18 This Report and Recommendation is submitted to the Honorable Serena R.
19 Murillo, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-
20 07 of the United States District Court for the Central District of California.
21

22 **I.**

23 **INTRODUCTION**
24

25 On June 27, 2025, Sunday Kayode Kunkushi (“Petitioner”), a detainee housed at
26 the ICE processing center in Adelanto, California, and represented by counsel, filed a
27 habeas petition under 28 U.S.C. § 2241. (“Petition,” Dkt. No. 1). On the same day,
28 Petitioner filed an Application for Order to Show Cause, in effect seeking expedited

1 consideration of his Petition. (Dkt. No. 5). On July 1, the Court ordered Respondents to
2 respond by July 15 and gave Petitioner until July 22 to file his reply. (Dkt. No. 9). The
3 Court also ordered Respondents not to remove Petitioner “from this jurisdiction pending
4 the resolution of his Petition.” (*Id.*). Respondents filed their response on July 15, 2025.
5 (“Response, Dkt. No. 11). On July 22, Petitioner filed his Reply. (Dkt. No. 12).
6

7 On September 5, 2025, Respondents filed a “Notice of Petitioner’s Scheduled
8 Removal.” (“Notice of Removal,” Dkt. No. 13). According to the Notice of Removal,
9 Petitioner is scheduled to be removed from the United States to Nigeria on September 16,
10 2025, which Respondent argues will render his Petition moot. (*Id.*). On September 9,
11 Petitioner filed a “Notice of Filing a Motion to Reopen & a Motion for Emergency Stay
12 with the Agency,” informing the Court that he filed a motion to reopen and an emergency
13 motion to stay his removal with the Board of Immigration Appeals on September 3.
14 (“BIA Notice,” Dkt. No. 15).
15

16 On September 10, 2025, the Court held a status conference, during which the Court
17 heard arguments on Respondents Notice of Removal and Petitioner’s BIA Notice. (Dkt.
18 No. 16). The Court reiterated its Order that Petitioner is not to be removed from this
19 jurisdiction until his habeas Petition is resolved. (*Id.*).
20

21 For the reasons discussed below, it is recommended Petitioner’s habeas Petition be
22 DENIED WITHOUT PREJUDICE.
23

24 II. 25 BACKGROUND 26

27 Petitioner is a native and citizen of Nigeria. (Dkt. No. 11, Declaration of
28 Christopher Jenson (“Jenson Decl.”) ¶ 3). On or about February 17, 2014, Petitioner was

1 admitted to the United States as a non-immigrant with authorization to remain in the
2 United States for a temporary period not to exceed August 16, 2014. (*Id.*) On or about
3 May 11, 2018, Petitioner, who remained in the United States without authorization, was
4 convicted of Attempted Transportation of Marijuana for Sale and sentenced to 64 days in
5 jail. (*Id.*, Jenson Decl. ¶ 4). Thereafter, Petitioner was taken into ICE custody. (*Id.*,
6 Jenson Decl. ¶ 5). On or about December 19, 2018, an Immigration Judge (“IJ”) denied
7 Petitioner’s applications for relief and ordered him removed to Nigeria. (*Id.*, Jenson Decl.
8 ¶ 6). On May 22, 2019, the Board of Immigration Appeals (“BIA”) dismissed Petitioner’s
9 appeal of the IJ decision. (*Id.*, Jenson Decl. ¶ 7 and Exh. A). On or about July 14, 2020,
10 Petitioner’s Petition for Review in the Court of Appeals for the Ninth Circuit was denied.
11 (*Id.*, Jenson Decl. ¶ 10).

12
13 Thereafter, ICE sought travel documents to facilitate Petitioner’s removal to
14 Nigeria. (*Id.*, Jenson Decl. ¶ 12). After the Nigerian government informed ICE in
15 October 2020 that Petitioner’s travel documents would be issued, a charter removal flight
16 to Nigeria was scheduled for December 15, 2020. (*Id.*, Jenson Decl. ¶ 14). However, the
17 Nigerian government did not provide Petitioner’s travel documents until December 16,
18 2020, the day after the scheduled charter flight to Nigeria. (*Id.*, Jenson Decl. ¶ 16).
19 Thereafter, Petitioner remained in ICE custody until January 6, 2021, when he was
20 released under the Intensive Supervision Appearance Program (“ISAP”) with an Order of
21 Supervision and GPS monitoring. (*Id.*, Jenson Decl. ¶ 18).

22
23 On June 4, 2025, Petitioner was re-detained by ICE for removal from the United
24 States. (*Id.*, Jenson Decl. ¶ 19). On July 10, 2025, ICE requested a re-issuance of travel
25 documents to remove him to Nigeria. (*Id.*, Jenson Decl. ¶ 21). On July 14, 2025, ICE
26 served him with a Notice of Revocation of Supervision. (*Id.*, Jenson Decl. ¶ 22). On
27 August 18, 2025, ICE officials received Petitioner’s travel documents to Nigeria that were
28 issued by the Embassy of Nigeria on July 22, 2025. (Dkt. No. 13, Jenson Decl. ¶ 3 and

1 Exh. B). Petitioner is scheduled to be removed from the United States by commercial
2 flight to Nigeria that is set to depart on September 16, 2025. (*Id.*, Jenson Decl. ¶ 4).
3 Currently, Petitioner remains in ICE custody at Desert View Annex in Adelanto, CA,
4 awaiting removal.

5
6 **III.**
7 **JURISDICTION**
8

9 A district court may grant a writ of habeas corpus when the petitioner “is in
10 custody in violation of the Constitution or laws or treaties of the United States.” 28
11 U.S.C. § 2241(c)(3). Although district courts lack jurisdiction over immigration matters
12 generally, the Ninth Circuit has held that “district courts retain jurisdiction under 28
13 U.S.C. § 2241 to consider habeas challenges to immigration detention that are sufficiently
14 independent of the merits of [a] removal order.” *Lopez-Marroquin v. Barr*, 955 F.3d 759
15 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211–12 (9th Cir. 2011)). Thus,
16 district courts have jurisdiction under 28 U.S.C. § 2241 to review habeas petitions by non-
17 citizens challenging the lawfulness of their detention. *Zadvydas v. Davis*, 533 U.S. 678,
18 699 (2001).

19
20 **IV.**
21 **DISCUSSION**
22

23 Petitioner contends that he should be released from ICE detention because there is
24 no “significant likelihood of removal in the reasonably foreseeable future,” and his
25 detention violates constitutional due process protections. (Petition at 7-12 (citing
26 *Zadvydas*)).
27
28

1 Title 8 U.S.C. § 1231 provides the framework for detention of non-citizens after
2 they have been “ordered removed.” Section 1231(a)(1) requires the Attorney General to
3 attempt to effectuate removal within a 90-day “removal period.” Detention is mandatory
4 during that 90-day removal period. 8 U.S.C. § 1231(a)(2). Under 8 U.S.C.
5 § 1231(a)(1)(B), the removal period begins on the latest of the following:

6
7 (i) The date the order of removal becomes administratively final.

8
9 (ii) If the removal order is judicially reviewed and if a court orders a stay of the
10 removal of the alien, the date of the court's final order; or

11
12 (iii) If the alien is detained or confined (except under an immigration process), the
13 date the alien is released from detention or confinement.

14
15 After that 90-day removal period concludes—in what is referred to as the “post-
16 removal period”—the government’s detention authority shifts to § 1231(a)(6). *See Diouf*
17 *v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011) (“If the alien is not removed during
18 the removal period, continued detention is authorized, in the discretion of the Attorney
19 General, by § 1231(a)(6).”). This provision authorizes detention beyond the 90-day
20 removal for an inadmissible or criminal non-citizen, or one whom the Attorney General
21 has determined will be a risk to the community or unlikely to comply with the order of
22 removal. *See* 8 U.S.C. § 1231(a)(6). The Supreme Court has held that § 1231(a)(6) “does
23 not permit indefinite detention,” but does give the government the authority to detain
24 removable non-citizens for a “presumptively reasonable period” of six months. *Zadvydas*,
25 533 U.S. at 689, 701.

26
27 When detention exceeds this 6-month period, the non-citizen has the initial burden
28 to “provide[] good reason to believe that there is *no significant likelihood of removal in*

1 *the reasonably foreseeable future.*” *Id.* at 701 (emphasis added). If the non-citizen
2 satisfies the initial burden, then the Government “must respond with evidence sufficient to
3 rebut that showing.” *Id.* If the Government fails to meet its burden, then the non-citizen
4 must be released from detention. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018).

5
6 For Petitioner, the 90-day removal period began on July 16, 2020, when the Ninth
7 Circuit denied his stay of removal. (Dkt. No. 11, Jenson Decl. ¶ 10). Respondent
8 concedes that Petitioner was detained in ICE custody from August 4, 2020, until January
9 6, 2021 (approximately five months), when he was released on ISAP. (*Id.* at 2).
10 Petitioner was re-detained on June 4, 2025, and currently remains in ICE custody awaiting
11 deportation (over three months). (*Id.* at 2–3). Because Petitioner’s total detention time is
12 greater than six months, the government is beyond the “presumptively reasonable period”
13 of detention under *Zadvydas*. See *Nguyen v. Scott*, 2025 WL 2419288, at *7 (W.D. Wash.
14 July 30, 2025) (“Having been detained already for a cumulative year and a half after an IJ
15 ordered his removal ..., Petitioner’s continued detention is not ‘presumptively
16 reasonable’” under *Zadvydas*). Nevertheless, the initial burden is on Petitioner to
17 demonstrate that there is no significant likelihood he will be removed in the reasonably
18 foreseeable future, and he has not met that burden here. See *Zadvydas*, 533 U.S. at 701.

19
20 At the time the habeas petition was filed, Petitioner argued that he was not likely to
21 be removed to Nigeria “in the reasonably foreseeable future,” noting that he was not
22 removed to Nigeria in 2021 after ICE failed to secure travel documents in a timely manner
23 and claiming that, since that time, he had “twice sought travel documents from the Nigeria
24 consulate without success.” (Dkt. No. 1, Petition at 11). That argument is moot now that
25 his travel documents have been issued by the Embassy of Nigeria and received by ICE.
26 (See Dkt. No. 13, Jenson Decl. ¶ 3 and Exh. B). Moreover, the likelihood of Petitioner
27 being removed “in the reasonably foreseeable future” is “significant,” as Petitioner is
28 scheduled to be removed from the United States by commercial flight to Nigeria on

1 September 16, 2025. (*Id.*, Jenson Decl. ¶ 4). Because Petitioner’s removal to Nigeria is
2 imminent, he is not entitled to release under *Zadvydas*. See, e.g., *Gehano v. Renaud*, 2021
3 WL 3668534, at *5-6 (W.D. Wash. July 7, 2021) (finding petitioner’s removal was
4 significantly likely to occur in the reasonably foreseeable future because “[p]etitioner was
5 issued travel documents by the Ethiopian government” and ICE was “in the process of
6 planning new charter flights to Ethiopia ... and exploring whether [p]etitioner might be
7 authorized to be removed on a commercial flight”); *Muthalib v. Kelly*, 2017 WL
8 11696616, at *3 (C.D. Cal. Apr. 19, 2017) (holding petitioner failed to show there was no
9 significant likelihood of removal in the reasonably foreseeable future where the
10 government provided sworn statements “that Ghana agreed to issue travel documents for
11 his removal” and “that ICE is prepared to remove him upon receipt of the travel
12 documents”). Thus, Petitioner’s habeas Petition must be denied.

13
14 Although Petitioner fails, at this time, to meet his initial burden of showing no
15 significant likelihood of his removal in the reasonably foreseeable future, the Court
16 recognizes that Petitioner has not yet been removed from United States and
17 “circumstances may change.” *Muthalib*, 2017 WL 11696616, at *4. Accordingly, this
18 action is dismissed without prejudice to Petitioner filing another habeas petition if it later
19 appears that his removal is no longer reasonably foreseeable.

V.

RECOMMENDATION

For the reasons discussed above, IT IS RECOMMENDED that the District Court issue an Order: (1) accepting and adopting this Report and Recommendation, (2) denying the Petition for Writ of Habeas Corpus, (3) directing that Judgment be entered dismissing this action without prejudice; and (4) striking the ORDER that Petitioner is not to be removed from this jurisdiction (Dkt. Nos. 9 & 16).

DATED: September 11, 2025



PEDRO V. CASTILLO
UNITED STATES MAGISTRATE JUDGE