IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRIC OF KANSAS

Mayom Poul Boj, *Petitioner*, v. **Samuel Olson**, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement; **Kristi Noem**, Secretary, Department of Homeland Security; **Todd Lyons,** Acting Director, Immigration and Customs Enforcement; **Pamela Bondi,** Attorney General, U.S. Department of Justice **Crystal Carter**, Warden, FCI Leavenworth Detention Facility, Kansas *Respondents*.	Civil No.: 26-cv-3009-JWL

PETITIONER'S TRAVERSE IN REPLY TO RESPONDENTS' RESPONSE TO § 2241 HABEAS PETITION

INTRODUCTION

Petitioner, Mayom Poul Boj, was granted deferral of removal under the Convention Against Torture (CAT) on May 16, 2025. Yet despite this order granting him relief from removal, he remains in immigration custody over 9 months later, with no end in sight. Release is appropriate because his removal is not reasonably foreseeable, and nothing in Respondents' response undermines that claim. Accordingly, this Court should order Mr. Boj's release.

ARGUMENT

I. Mr. Boj is entitled to release under *Zadvydas* as he faces indefinite detention, and his removal is not reasonably foreseeable.

In *Zadvydas*, the Supreme Court held that the statute governing the post-removal period, 8 U.S.C. § 1231, does not authorize the Attorney General to detain a noncitizen indefinitely, but only for the period "reasonably necessary to secure the noncitizen's removal." *Zadvydas v. Davis*, 533 U.S. 678 (2001). The period "reasonably necessary to bring about removal is presumptively six months." *Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *8 (S.D.N.Y. Feb. 6, 2023) (citing *Zadvydas*, 533 U.S. at 701). Once the six-month period expires, and once the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 699.

A noncitizen bringing a *Zadvydas* challenge need not show "the absence of any prospect of removal" but merely that removal is not reasonably foreseeable. *Id.* at 702. The *Zadvydas* Court also recognized that "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701; *see also Ali v. Byers*, No. CV 23-177-DLB, 2024 WL 188445, *3 (E.D. Ky. Jan. 17, 2024) (recognizing that petitioner's "continued detention is subject to the due process standards set forth in *Zadvydas*").

Mr. Boj has demonstrated that his removal is not reasonably foreseeable, and the government has provided no evidence to rebut that showing. Mr. Boj was granted deferral of removal under CAT on May 16, 2025, over nine months ago. Dkt. 1-2. This order prohibits his removal to Sudan, the only country DHS designated for removal. More than nine months later and even in the face of Mr. Boj's Petition, the government has been unable to effectuate his removal to any other country.

Of note, ICE has not requested that Mr. Boj fill out applications for travel documents to any country, nor speak to any consulate. Without such requests, his removal is not reasonably foreseeable. Moreover, Respondents concede that their efforts to remove Petitioner to alternative countries "have not succeeded," yet they argue indefinite detention is warranted while they "continu[e] to look for alternatives" and "work[] to effectuate removal." Dkt. 6, p. 2. Indeed, Respondents provide absolutely no timeline for when removal will occur or when removal is even anticipated to occur. This Court has repeatedly found similar statements from Respondents insufficient to demonstrate that removal is reasonably foreseeable. *See e.g.*, *Gonzalez Gutierrez v. Carter*, No. 25-3233-JWL, 2025 WL 3454295, at *2 (D. Kan. Dec. 2, 2025); *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679, at *3 (D. Kan. Sept. 29, 2025); *Zhuzhiashvili v. Carter*, 802 F. Supp. 3d 1337, 1340 (D. Kan. 2025).

Also notable in its response is that Respondents do not indicate which countries, if any, the government is currently pursuing for removal. Dkt. 6-1, p. 6-7. Rather, Respondents indicate that Guatemala refused to accept Mr. Boj in May 2025, over nine months ago, and that requests sent to El Salvador in June 2025, over eight months ago, have been unanswered. *Id.*, p. 6. Since then, it was only *after* Mr. Boj filed his Petition for Habeas Corpus – one day after, in fact – that Respondents sent a Travel Document Request (TDR) for South Sudan to ICE/ERO Headquarters

and the TDR was approved by headquarters. Respondents concede the TDR has not yet been sent to South Sudan, and further state that ICE "will continue is efforts to identify alternative countries to which Petitioner can be removed." *Id.*, p. 7. Thus, it has been over eight months since the government has even made a request to another country relating to Mr. Boj. This Court has found similar statements unpersuasive to justify ongoing detention. *See e.g.*, *Zhuzhiashvili*, 802 F. Supp. 3d at 1340 (granting petition and noting that "[i]t does not appear that officials have made an actual request to a third country in the nearly seven months since the removal order became final, despite the assurance to petitioner's attorney that such requests would be made; nor have respondents or their declarant even identified a single country to which removal might be possible."); *Manago v. Carter*, No. 25-3183-JWL, 2025 WL 2841209, at *3 (D. Kan. Oct. 7, 2025) (similar).

The government's own response confirms that, over nine months since his removal order became final, travel documents have not been obtained, and no country has agreed to accept Mr. Boj. Dkt. 6-1, p. 2, 6-7. It also confirms that it has been over eight months since a request has been made to any other country to accept Mr. Boj. Under *Zadvydas,* this establishes a strong reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. Respondents have failed to rebut that showing, and as a result, Mr. Boj's detention is unlawful. Where, as here, the government cannot show that removal from the United States is reasonably foreseeable, release is required.

Respondents further argue that for individuals removable under 8 U.S.C. § 1231(a)(1)(A), as Mr. Boj is here, ERO conducts a File Custody Review to determine the necessity of continued custody. Dkt. 6-1, p. 8. Respondents assert that factors to be considered include a detained individual's flight risk, any danger the individual may pose to the community, any threat to national security, and whether there is significant likelihood of removal in the reasonably

foreseeable future. From this, Respondents conclusorily assert that "ERO Chicago completed a 90-day PCR and determined it would continue to detain Petitioner." Dkt. 6-1, p. 6. Notably, Respondents do not present any evidence that Mr. Boj is a flight risk, a danger to the community, a threat to national security, or that there is a significant likelihood of removal in the reasonably foreseeable future. Respondents' reliance on this single conclusory sentence is not proof of flight risk or a public-safety concern and is unsupported by the evidence.

To the extent the government now asserts that Mr. Boj is a danger to the community or flight risk, that claim is wholly unsupported. Mr. Boj's convictions stem from incidents relating to his mental health conditions and substance abuse, and for which he has served his sentences. Dkt 1-3; Dkt. 1-4. Notably, Mr. Boj did not have access to or seek appropriate and consistent mental health care when those incidents occurred. Dkt 1-3; Dkt. 1-4. While in prison in 2023, he underwent a psychological evaluation and was diagnosed with schizophrenia. Dkt. 1-4. He also has received formal diagnoses of schizophrenia, PTSD, major depressive disorder, substance abuse disorder, and other psychiatric conditions. Dkt 1-3; Dkt. 1-4. Importantly, Mr. Boj also underwent treatment, during which he demonstrated a commitment to recovery, was compliant, and made progress in all interventions. Dkt. 1-4. He now reports that he recognizes his mistakes and has been able to maintain sobriety for years through his detention. Dkt. 1-3. Mr. Boj served his sentences, accepts full responsibility for his past, and does not deny his mistakes. *Id.* But those mistakes do not define who he is today, nor do they indicate he is a present danger to the community.

Mr. Boj is also not a flight risk. He has lived in the United States since 2002 and came here with refugee status. Dkt 1-3. The family he has resides in the United States. *Id.* He has no meaningful connection to any country besides the United States, and he has already been granted protection from removal to Sudan. *Id.* Thus, Mr. Boj has every reason to remain in the United

States lawfully and comply with any supervision conditions ICE may impose, *id.*, and the government has not set forth any evidence that he is a flight risk.

Mr. Boj also has a strong release plan that mitigates any risk of flight. Upon release, he will follow the post-release plan his attorney put in place for him, so that he can have resources to obtain therapy for his mental health conditions and to help refrain from drugs and alcohol. Dkt. 1-3; *see* Exh. V, Petitioner's Release Plan. Mr. Boj plans to live in Kentucky, and he will have access to organizations that will provide a range of mental health and medical support. Exh. V.

Faced with similar fact patterns, several courts, including this Court, have ordered release, recognizing that the statute does not permit an individual's indefinite detention. *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679, at *3 (D. Kan. Sept. 29, 2025) (granting petition under similar facts, where the petitioner had been detained for nine months with a final order and "officials have still not been able to remove him or even to schedule his removal"); *Gonzalez Gutierrez v. Carter*, No. 25-3233-JWL, 2025 WL 3454295, at *2 (D. Kan. Dec. 2, 2025) (similar); *Manago v. Carter*, No. 25-3183-JWL, 2025 WL 2841209, at *3 (D. Kan. Oct. 7, 2025) (similar); *see also Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *6-8 (D.N.J. June 24, 2025) (granting petition and ordering release where the Court found there was no significantly likelihood of removal in the reasonably foreseeable future because the petitioner was granted withholding of removal, cannot be removed to his country of origin, ICE has historically low success rates in removing similar individuals, and multiple requests to other countries to accept a third-country removal were denied); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *8 (D. Md. Sept. 8, 2025) (same). For the reasons discussed here and in his underlying Petition, this Court should do the same and order Mr. Boj's immediate release.

II. Mr. Boj is entitled to notice and an opportunity to be heard prior to any third country removal efforts.

As discussed above, Mr. Boj has established that his removal is not reasonably foreseeable and he is therefore entitled to release. However, to the extent the government continues to pursue removal to a third country, Mr. Boj has demonstrated that he is entitled to notice and an opportunity to respond to any such removal efforts. Dkt. 1, p. 16-20, 22-23. Respondents argue this Court "should not address" these arguments "because doing so would run the risk of contradicting the ultimate decision of the First Circuit or the Supreme Court in *D.V.D. [v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass.)]." Dkt. 6, p. 15. Further, Respondents argue that this Court does not have jurisdiction to consider Petitioner's third country removal claims. These arguments fail.

As an initial matter, and as both parties acknowledge, the Supreme Court stayed the class-wide preliminary injunction in *D.V.D.* and that stay remains in effect. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). As a result of the Supreme Court's order, class members are not currently afforded the relief specified in the District Court's preliminary injunction. Thus, *D.V.D.* does not afford Mr. Boj the relief he requests here. Indeed, following the Supreme Court's decision, DHS swiftly resumed removals to third countries.[1]

As a result, Mr. Boj remains at risk of removal without notice and an opportunity to be heard *before* a decision is reached in *D.V.D.* Petitioner further notes a very recent decision issued in *D.V.D.* on February 25, 2026 by the District Court. *D.V.D., et al. v. U.S. Dep't of Homeland*

[1] *See e.g.*, PBS News, *U.S. completes deporting 8 men from various nations to South Sudan after weeks of legal battles*, Jul. 5, 2025, https://www.pbs.org/newshour/politics/u-s-completes-deporting-8-men-from-various-nations-to-south-sudan-after-weeks-of-legal-battles; Reuters, *The US said it had no choice but to deport them to a third country. Then it sent them home*, Aug. 3, 2025, https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/ .

Sec., No. 1:25-cv-10676 (D. Mass. February 25, 2026). While the District Court stayed its judgment for 15 days or until the First Circuit rules on any motion for an administrative stay or stay pending appeal, the District Court found the March and July ICE memoranda unlawful and found class members are entitled to meaningful notice and opportunity to be heard. *Id.* at *81. Also notable as it relates to Mr. Boj's Petition and the government's response indicating that it is obtaining approval to make efforts to seek removal to South Sudan, the District Court in *D.V.D.* discussed this precise issue given that six of the class members were placed on a flight to South Sudan. *Id.* at *10. The District Court noted that the government "placed at least six class members on a flight to South Sudan, 'a nascent, unstable country to which the United States [had] recently told its citizens not to travel because of "**crime, kidnapping,** and **armed conflict**,'" without any meaningful notice or opportunity to raise a CAT claim, in what could only be described as a 'flagrant,' willful violation of this Court's order." *Id.* (citing *D.V.D. v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223, 229-34 (D. Mass. 2025) (emphasis in original)).

Here, Respondents indicate they most recently inquired into removal there because they assert Mr. Boj's parents were born in what is now South Sudan. Dkt. 6-1, p. 6. The May 16, 2025 IJ order prohibits removal to the adjacent country of Sudan, where Mr. Boj fears return because [redacted] Despite the IJ granting Mr. Boj's application for CAT deferral of removal based on these fears, and other District Court orders recognizing that South Sudan is a "nascent, unstable country," Respondents argue their inquiry into removal to South Sudan is enough to establish that removal is reasonably foreseeable and that no notice or opportunity to be heard is warranted. Clearly, South Sudan is a country not immune from the crisis, violence, and potential torture to which Mr. Boj may be subject. Rather, South

Sudan itself is in crisis, with spillage of the violence of Sudan into South Sudan, return of conflict in the country, and armed conflict between various political groups and ethnic groups, thus putting Mr. Boj at risk of violence, crime, and potentially persecution because of [redacted] *See* Exh. W, Center for Preventive Action, *Instability in South Sudan*; Exh. X, U.S. Dep't of State, *Travel Advisory: South Sudan* (Nov. 13, 2025); Exh. Y, U.S. Dep't of State, *Joint Statement from Troika Capitals on South Sudan* (Dec. 18, 2025); Exh. Z, United Nations Security Council, Letter dated 25 November 2025 from the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 (2015) addressed to the President of the Security Council (Nov. 26, 2025). Indeed, this has been recognized by other District Courts, *D.V.D., et al. v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-10676 at *10 (D. Mass. February 25, 2026), thus highlighting the importance of notice and an opportunity to be heard for Mr. Boj.

Furthermore, Mr. Boj has never lived in South Sudan; he has only ever lived in Khartoum, Sudan (Dkt. 1-3), a city nearly 300 miles away from the closest city in South Sudan. He also has no family members left in Sudan, and his mother was born in Abyei, where there is ongoing conflict as it is an area disputed between Sudan and South Sudan. *Id.* Given the IJ's May 2025 order, and that Respondents are inquiring with a country which itself is in crisis and which is adjacent to the country where Mr. Boj fears returning because of persecution based on [redacted] this is further reason Mr. Boj's Petition should be granted and the government required to provide Mr. Boj with adequate notice and an opportunity to be heard before any third country removal occurs.

Further, Mr. Boj seeks relief that is not available through the *D.V.D.* litigation. Due process and the INA require he has a meaningful opportunity to seek withholding of removal, a claim not at issue in *D.V.D.* Dkt. 1, p. 18-23 (raising a claim under the INA, in addition to the due process

clause and Convention Against Torture). The *D.V.D.* case raises claims only under the Convention Against Torture. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass.).

Finally, considering the same arguments Respondents present here, courts have recognized that the government's "position contradicts the position they have taken in *D.V.D.* itself." *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *21 (W.D. Wash. Aug. 21, 2025). In *Nguyen*, the Court explained that "the government is arguing in *D.V.D.* that injunctive relief cannot be granted to the class, and may only be pursued (if at all) through individual cases, while arguing here that Petitioner's individual claim should be barred because his injunctive claims should be adjudicated as part of the *D.V.D.* class." *Id.* Accordingly, the *Nguyen* court found that "[t]he contradiction in these arguments" "undermines Respondents' position." *Id.*

Respondents' jurisdictional arguments also fail. Respondents argue that Mr. Boj's claims are barred by the jurisdiction-stripping provisions of 8 U.S.C. § 1252. Such arguments misconstrue Mr. Boj's claim. Mr. Boj does not ask this Court to review a CAT claim or a removal order. Rather, he asks that, prior to removal to a third country to which he has no ties, he be given notice of the country designated for removal and an opportunity to be heard. Such a request complies with the government's obligations under the INA, Due Process Clause, and binding treaty obligations. Thus, Mr. Boj's request is for this Court to enjoin the government from removing him in violation of these obligations, as is permitted under current ICE guidance allowing for third country removals with no notice to the noncitizen.

Against this backdrop, several district courts have issued the relief requested here, *D.V.D.* litigation notwithstanding. *See e.g.*, *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *8 (N.D. Cal. Aug. 6, 2025) (prohibiting the government from "arresting, detaining, or removing" the petitioner to a third country "without notice and a hearing."); *J.R. v. Bostock*, No.

2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025) (prohibiting the government from removing petitioner to "any third country in the world absent prior approval from this Court"); *Delkash v. Noem*, No. 5:25-CV-01675-HDV-AGR, 2025 WL 2683988, at *6 (C.D. Cal. Aug. 28, 2025) (prohibiting the government from removing petitioner "to a third country without notice and an opportunity to be heard"); *Santamaria Orellana v. Baker,* No. CV 25-1788-TDC, 2025 WL 2841886, at *11 (D. Md. Oct. 7, 2025). Mr. Boj's claims are further supported by the Supreme Court's decision in *Trump v. J.G.G.*, 604 U.S. ____ (2025), where the Court explained that the putative class plaintiffs there had to seek relief in individual habeas actions (as opposed to injunctive relief in a class action) against the implementation of Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-citizens to a third country.

Respondents further offer no argument on the merits of Mr. Boj's claim that he is entitled to notice and an opportunity to be heard prior to removal to a third country. And with good reason. The Due Process Clause, the INA, and binding international treaty obligations require the government to provide such protections. Dkt. 1, p. 13-15. As such, Mr. Boj requests that this Court not only order Respondents to release him, but also order them to provide him adequate notice and an opportunity to be heard prior to removal to a third country.

CONCLUSION

None of Respondents' arguments prove sufficient to justify Mr. Boj's ongoing, unlawful detention in immigration custody. Because Mr. Boj's ongoing detention violates the Due Process Clause, the INA, and binding treaty obligations, this Court should grant his Petition and order his immediate release. Further, this Court should declare that if the government purports to identify any third country willing to accept Mr. Boj, that the government be required to provide Mr. Boj adequate notice and an opportunity to be heard regarding removal to that country

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