IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

YONA FETWI SAMA, Petitioner, vs. CRYSTAL CARTER, Warden, FCI-Leavenworth; KRISTI NOEM, *Department of Homeland Security Secretary;* Unknown Deportation Officer; TODD LYONS, Acting ICE Director; and PAM BONDI, U.S. Attorney General, Respondents.	)	Case No. 26-3017-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Yona Fetwi Sama ("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, Kristi Noem, unnamed Deportation Officer, Todd Lyons, and Pam Bondi, 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, Deportation Officer for Enforcement and Removal Operations (ERO), Immigration and Customs Enforcement (ICE), of the Department of Homeland Security. *See* Declaration of Deportation Officer Marissa Saenz, attached as Exhibit 1 (Saenz Decl.).

Petitioner is a native and citizen of Eritrea who was admitted to the United States on or about July 18, 2007, and who became a lawful permanent resident on July 30, 2009. *Id.* ¶¶ 5-6.

On or about February 19, 2020, Petitioner was convicted in the Second Judicial Circuit Court at Minnehaha County, South Dakota for the offense of Simple Assault Recklessly Causes Bodily Injury in violation of SDCL 22-18-1(2). *Id.* ¶ 7.

On or about February 21, 2020, Petitioner was convicted in the Second Judicial Circuit Court at Minnehaha County, South Dakota for the offenses of (1) Discharge Firearm at Occupied Structure or Motor Vehicle in violation of SDCL 22-14-20, (2) Simple Assault – Dangerous Weapon in violation of SDCL 22-18-1(3), (3) Grand Theft – Receiving Stolen Property – Firearm in violation of SDCL 22-30A-17(2), and (4) Tamper with Witness to Withhold Information or Testimony in violation of SDCL 22-11-19(2). *Id.* ¶¶ 8-11. On or about December 14, 2021, Petitioner was convicted in the U.S. District Court for the District of South Dakota, Southern Division, for the offense of Felon in Possession of a Firearm in violation of 18 U.S.C 922(g)(1). *Id.* ¶ 12.

On or about March 21, 2025, Petitioner was placed in removal proceedings through the issuance of a Notice to Appear ("NTA"), charging him as removable from the United States (1) 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 8 U.S.C. § 1101(a)(43)(C), illicit trafficking in firearms or destructive devices as defined in 18 U.S.C. § 921 or in explosive materials as defined in 18 U.S.C. § 841(c); (2) pursuant to 8 U.S.C. § 1227(a)(2)(A)(ii), for having committed two or more crimes involving moral turpitude; and (3) pursuant to 8 U.S.C. § 1227(a)(2)(C), for having been convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, in violation of any law, any weapon, part, or accessory which is a firearm or destructive device as defined in 18 U.S.C. § 921(a). *Id.* ¶ 13.

On or about May 5, 2025, Petitioner submitted an application for relief from removal. *Id.* ¶ 14. On or about June 11, 2025, the Immigration Judge issued a decision denying Petitioner's applications for relief and ordering him removed from the United States to Eritrea. *Id.* ¶ 15. On or about June 27, 2025, Petitioner filed an appeal of the Immigration Judge's decision with the Board of Immigration Appeals (BIA). *Id.* ¶ 17. Petitioner sent a letter to the BIA on or about July 16, 2025, asking that his appeal be withdrawn, and on July 24, 2025, the BIA issued a decision granting the withdrawal of the appeal and returning the record to the Immigration Court without further action. *Id.* ¶¶ 18-19.

On or about July 30, 2025, Petitioner completed an application for a travel document. *Id.* ¶ 23. On or about August 1, 2025, a travel document request was submitted to ICE's Removal and International Operations ("RIO"), and on or about August 11, 2025, ICE RIO submitted Petitioner's travel document request to the Department of State and U.S. Embassy located in Asmara, Eritrea. *Id.* ¶¶ 24-25. On or about August 29, 2025, ICE RIO confirmed that the Petitioner's travel documents were still pending. *Id.* ¶ 26.

On or about October 2, 2025, ICE RIO was notified that the Eritrean MFA Department of Immigration & Nationality was unable to find information regarding the Petitioner. *Id.* ¶ 27. The Government of the State of Eritrea requested additional information and any identification documents available. *Id.*

On or about October 16, 2025, local ERO requested and reviewed Petitioner's parents' files. *Id.* ¶ 28. Local ERO located the Petitioner's grandparents' full names in the parents' files, but were unable to locate any identification documents, and emailed an updated Eritrean National ID application with updated information including Petitioner's grandparents' full names to ICE RIO. *Id.* ¶ 28. On or about October 22, 2025, ICE RIO submitted the updated Eritrean National ID application to the Embassy of Eritrea in Washington, D.C. *Id.* ¶ 29.

Local ERO contacted ICE RIO on November 25, 2025, and December 19, 2025, for assistance in obtaining a status update on Petitioner's travel document application. *Id.* ¶ 31. On or about December 19, 2025, ICE RIO advised that a travel document was still pending and that a follow-up request would be sent to the Embassy of Eritrea. *Id.* ¶ 32. Local ERO contacted ICE RIO on January 16, 2026, and February 13, 2026, to obtain a status update on Petitioner's travel document application. *Id.* ¶ 35. On February 19, 2026, ICE RIO informed local ERO that ICE is still waiting for the issuance of a travel document, but that ICE RIO provided the Embassy of Eritrea with a list of applicants, including Petitioner, awaiting travel documents to expedite the processing of those requested travel documents. *Id.* ¶ 35.

DO Saenz is aware of at least two noncitizens that ICE was able to successfully obtain travel documents and remove to Eritrea. *Id.* ¶ 38. In one instance, the travel documents were provided to ICE by the Embassy of Eritrea in Washington, D.C., within approximately four months. *Id.* In the other stance, the noncitizen had travel documents in his possession prior to detention. *Id.* DO Saenz is not aware of any reason that would prevent ICE from being able to obtain travel documents for this Petitioner. ICE will continue its efforts to effectuate Petitioner's removal and will update the Court on further developments in this matter. *Id.* ¶ 37.

On or about October 24, 2025, a File Custody Review was conducted and a decision to continue detention was submitted to the Supervisory Detention and Deportation Officer ("SDDO") for review. *Id.* ¶ 30. The SDDO forwarded the File to the Assistant Field Office Director ("AFOD") for review. *Id.* ¶ 30. On or about December 29, 2025, a Notice to Alien of File Custody Review was served on Petitioner, indicating to Petitioner that his custody status would be reviewed on or about January 20, 2026. *Id.* ¶ 33. Petitioner was scheduled for an interview regarding his custody status on January 20, 2026. *Id.* ¶ 34. The deportation officer

assigned to do the interview, however, was reassigned to a different unit, and the interview is now scheduled for February 26, 2026. *Id.* ¶ 33

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 argues that he has presented good reason to believe there "is no significant likelihood of removal in the reasonably foreseeable future, due to lack of response or refusal from Eritrean's government to issue Petitioner a travel document, Laissez-passer or a passport" to date, and alleges, without support, that "Eritrea has a well-documented history of refusing acceptance of its own nationals, particularly those returning involuntarily." Doc. 1, ¶¶ 36, 53. Petitioner's allegation regarding Eritrea's history of refusing its own nationals is without context and unsupported. Petitioner's remaining argument is essentially because he has not received a travel document yet, one is not likely to be received in the reasonably foreseeable future.

To deny a Petition, however, Courts, including this Court, do not require 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 Eritrea or provide any supported reason for why Eritrea would deny a travel document for Petitioner.

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 July 16, 2025, request to withdraw his appeal and the BIA's July 24, 2025, decision returning the record to the Immigration Court, Respondents have worked diligently to secure Petitioner's removal to Eritrea. Within a week after the BIA's decision, Petitioner had completed an application for a travel document, and on or about August 1, 2025, a travel document request was submitted to ICE's RIO. RIO submitted Petitioner's travel document request to the Department of State and U.S. Embassy located in Asmara, Eritrea, shortly thereafter. In October, RIO was notified that the Eritrean MFA Department of Immigration & Nationality was unable to find information regarding the Petitioner and that the Government of the State of Eritrea requested additional information and for any identification documents available. ICE promptly sought to provide the requested information but was unable to locate identification documents. Instead, on or about October 22, 2025, ICE RIO submitted an updated Eritrean National ID application to the Embassy of Eritrea in Washington, D.C., with updated information including Petitioner's grandparents' full names. In December, ICE RIO advised local ERO that a follow-up request would be sent to the Embassy of Eritrea. And on February 19, 2026, ICE RIO provided the Embassy of Eritrea with a list of applicants, including Petitioner, awaiting travel documents to expedite the processing of those requested travel documents. DO Saenz is aware of two noncitizens that ICE was able to successfully remove to Eritrea, and in one instance where the travel documents were provided to ICE by the Embassy of Eritrea in Washington, D.C., it took approximately four months to obtain the travel documents. Approximately four months have passed since ICE RIO submitted an updated Eritrean National

ID application. DO Saenz is not aware of any reason that would prevent ICE from being able to obtain travel documents for this Petitioner. In sum, ICE is working diligently to obtain a travel document for Petitioner and while ICE awaits a response from the Embassy of Eritrea, nothing suggests that the request for a travel document will be denied or that there is no significant likelihood of removal in the reasonably foreseeable future.

Finally, although Petitioner also purports to bring substantive due process claims, such claims are based on the same allegations as Petitioner's *Zadvydas*-based claims and likewise fail.[1] *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

[1] In paragraph 27 of the Petition, Petitioner claims that he has not been provided "with any interview opportunity with ICE to challenge his prolonged detention." Doc. 1, p. 2. Petitioner does not cite the authority under which he believes he is entitled to an interview, does not include any claim relating to a lack of interview in the Claims for relief section, and does not otherwise elaborate on this allegation. Petitioner was scheduled for an interview in January, but the deportation officer assigned to do the interview was reassigned and the interview has been rescheduled to February 26, 2026. To the extent Petitioner shows further process to which he is entitled, Respondents posit that the proper remedy is to order further process and not release.

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.").

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 26, 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