IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOHAN NGUN LING,

Petitioner,

v.

Case No. 26-3031-JWL

PAMELA BONDI, *Attorney General;*
KRISTI NOEM,[1] *Secretary, U.S. Department of Homeland Security*;
TODD LYONS, *Acting Director, U.S. Immigration and Customs Enforcement*;
and
SAMUEL OLSON, *Field Office Director, U.S. Immigration and Customs Enforcement*;

Respondents.

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Johan Ngun Ling ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. The United States is in the process of removing Petitioner to a third country because an Immigration Judge granted his application for Convention Against Torture (CAT) deferral of removal. 8 C.F.R. §§ 208.18; 1208.18. The habeas petition should be denied.

Petitioner asks the Court to release him from detention at FCI Leavenworth based on the allegation that Respondent have violated the Immigration and Nationality Act (INA) because there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas v. Davis*, 533 U.S. 678 (2001). The claim should be denied under *Zadvydas* because Petitioner has

[1] Pursuant to Fed. R. Civ. P 25(d) Kristi Noem's successor will be automatically substituted as a party once the transition has been made.

not shown that removal is unlikely. Petitioner's deferral of removal to Myanmar does not make him unremovable, and there is no competent evidence that the third country removal process is unreasonably lengthy. DHS has acted diligently by attempting to remove Petitioner since his order of removal became final. These efforts by DHS are ongoing and DHS is working to effectuate removal.

STATEMENT OF FACTS

The following facts are part of the Declaration of Joseph L. Carroll, a Deportation Officer for Enforcement and Removal Operations ("ERO") at United States Immigration and Customs Enforcement ("ICE"). Exhibit ("Ex.") 1, Carroll Declaration ¶¶ 1-4.

Petitioner is a native and citizen of Burma/Myanmar. *Id.* ¶ 5. Petitioner was admitted to the United States on or about April 1, 2013. He became a lawful permanent resident on January 27, 2015. *Id.* ¶ 6. On or about October 8, 2014, Petitioner was convicted in Marion Superior Court at Marion County, Indiana for the offense of Operating a Vehicle while Intoxicated in a manner that endangers a person in violation of IN Code 9-30-5-2(b). *Id.* ¶ 7. On or about October 18, 2017, Petitioner was convicted in Marion Superior Court at Marion County, Indiana for the offense of Operating a Vehicle while Intoxicated: Endangering a Person in violation of IN Code 9-30-5-2(a)(b). *Id.* ¶ 8. On or about November 22, 2024, Petitioner was convicted in the Marion Superior Court at Marion County, Indiana for the offense of Sexual Misconduct with a Minor committed by person at least 21 years old in violation of IN Code 35-42-4-9(b)(1). Petitioner was sentenced to a term of imprisonment of 1,095 days. *Id.* ¶ 9.

On or about February 7, 2025, Petitioner was placed in removal proceedings through the issuance of a Notice to Appear ("NTA"), charging him as 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 § 101(a)(43)(A), 8 U.S.C. § 1101(a)(43)(A), a law relating to Murder, Rape, or Sexual Abuse of a Minor. *Id.* ¶ 10. On or about May 5, 2025, Petitioner submitted an application for relief from removal. *Id.* ¶ 11. On or about July 3, 2025, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief from removal to Burma/Myanmar. Appellate rights were waived by both parties, making the order final. *Id.* ¶ 12. Pursuant to 8 C.F.R. § 1241.1(b), an order of removal made by the Immigration Judge at the conclusion of proceedings shall become final upon waiver of appeal by the respondent. *Id.* ¶ 13.

The Petitioner is in the Post Removal process. ERO conducted a File Custody Review, also known as a Post-Order Custody Review ("POCR"), at or near 90 days post removal order to determine the necessity of continued custody. A determination was made based on a number of factors, to include removal in the reasonably foreseeable future as well as any danger the Petitioner may pose to the community, to continue custody of the Petitioner. *Id.* ¶ 14. On or about July 31, 2025, local ERO contacted ERO Headquarters Removal and International Operations ("HQ RIO") regarding third country removal options. *Id.* ¶ 15. On or about August 8, 2025, local ERO emailed HQ RIO requesting options for third country removal. *Id.* ¶ 16. On or about September 16, 2025, HQ RIO contacted the Department of State for assistance with third country placement. HQ RIO submitted the Petitioner's name for consideration for removal to a third country. Once the Petitioner meets the parameters for a certain third-country removal agreement, the Petitioner's name will be elevated to the third-country through the Department of State for final acceptance. *Id.* ¶ 17. Third country removal agreements are negotiated by the Department of State. *Id.* ¶ 18. On or about January 16, 2026, local ERO noted that removal to a third country was pending. *Id.* ¶ 20. On or about January 21, 2026, local ERO sent an inquiry to HQ RIO's desk officer for

Burma inquiring about the third country removal. *Id.* ¶ 21. On March 10, 2026, HQ RIO's desk officer for Burma advised that the Petitioner has been elevated for third country removal through the Department of State and efforts to effectuate Petitioner's removal are ongoing. *Id.* ¶ 22. Once Petitioner is accepted by a third country for removal, DHS will follow the Secretary of Kristi Noem's March 30, 2025, memorandum, *Guidance Regarding Third Country Removals* prior to effectuating the Petitioner's removal. *Id.* ¶ 23. This memo is attached as Exhibit 2.

ARGUMENT

28 U.S.C. § 2241(a) vests each district court with the power to grant a writ of habeas corpus. Such a writ "shall not extend to a prisoner" unless "[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). The Court of Appeals reviews legal issues in connection with a § 2241 habeas petition *de novo*, while factual findings are reviewed for clear error. *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012).

I. Petitioner's claim under *Zadvydas* should be denied because he has not shown that removal is unlikely, or alternatively, Respondents can rebut any such showing

Under *Zadvydas*, upon the entry of a final removal order "the Government ordinarily secures the alien's removal during a subsequent 90-day statutory 'removal period,' during which time the alien normally is held in custody." 533 U.S. at 682. If the alien is not removed during this 90-day period, 8 U.S.C. § 1231(a)(6) "authorizes further detention." *Id. Zadvydas* held that a six month period of detention is presumptively reasonable. *Id.* at 701. "After this 6-month period, once the alien 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." *Id.* The presumption does not mean that "every alien not removed must be released after

six months," but instead that the alien may be held in confinement until "it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Here, the claim for relief should be denied because Petitioner has not provided "good reason" to believe there is no significant likelihood of removal in the foreseeable future. Petitioner's deferral of removal does not make him unremovable. "[W]ithholding of removal is a form of country specific relief," so "nothing prevents DHS from removing the alien to a third country other than the country to which removal has been withheld or deferred." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021) (citation modified).

The field office for Enforcement and Removal Operations (ERO) for ICE has been working diligently with ERO Headquarters Removal and International Operations (HQ RIO) for ICE to effectuate Petitioner's removal. HQ RIO has, in turn, coordinated with Department of State who negotiates third country removal agreements. Recently, HQ RIO's desk officer for Burma advised that Petitioner has been elevated for third country removal through the Department of State and efforts to effectuate Petitioner's removal are ongoing.

In essence, Petitioner is arguing that removal to a third country is unlikely because it hasn't happened yet. That is not enough. *See Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, at *3 & n.32 (M.D. Pa. Oct. 2, 2024) ("[T]he fundamental basis of [petitioner's] argument appears to be that his removal is unlikely simply because it has not occurred to this point[.]") (citation modified). Stated differently, "[s]peculation and conjecture are not sufficient to carry this burden, nor is a lack of visible progress" in Petitioner's removal "sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future." *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, at *3 (S.D. Tex. Oct. 21, 2024) (citation modified). "Because ICE is still actively pursuing" his removal "and his detention furthers Congress's goal

of ensuring his presence for removal," Petitioner is "not entitled to release under *Zadvydas*." *Bains v. Garland*, No. 2:23-cv-00369-RJB-BAT, 2023 WL 3824104, at *4 (W.D. Wash. May 16, 2023).

In the same vein, a "mere delay" in obtaining travel documents "does not trigger the inference that an [individual] will not be removed in the reasonably foreseeable future because the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals." *Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *4 (W.D. Okla. Aug. 27, 2024), *adopted*, 2025 WL 486679, at *1-4 (W.D. Okla. Feb. 13, 2025). 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." *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, at *4 (W.D. Wash. May 10, 2024).

All of this means Petitioner has not shouldered his initial burden of proof under *Zadvydas*. *See Reyna-Salgado v. Noem*, No. 25-3172-JWL, ECF 6 at 4 (D. Kan. Oct. 3, 2025) (finding the petitioner had not "met his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future," in part because he conceded "officials have made attempts to remove him to three alternative countries"); *Soudom v. Warden*, No. 25-3063-JWL, 2025 WL 1594822, at *2 (D. Kan. May 23, 2025) (denying relief where the petitioner did not carry his initial burden, in part because "[t]he letter on which petitioner relies does not foreclose the possibility of his removal"); *Ogole v. Garland*, No. 24-3198-JWL, 2025 WL 548452, at *2 (D. Kan. Feb. 19, 2025) (denying relief where the petitioner did not carry his initial burden by asserting "his country has a 'freeze on deportation,'" as this argument was "made without supporting evidence" and belied by other facts in the record).

Even if Petitioner had shifted the burden under *Zadvydas* (which he has not), the facts discussed above satisfy Respondents' rebuttal obligation. *See Abedi v. Carter*, No. 25-3141-JWL, ECF 11 at 4-5 (D. Kan. Oct. 6, 2025) (denying a habeas petition in part because "even in the few months since petitioner's detention, officials have been active in seeking petitioner's removal, and such activity changes the ultimate likelihood of petitioner's removal in the reasonably foreseeable future"), *appeal filed*, ECF 13 (Oct. 6, 2025); *Soudom*, 2025 WL 1594822, at *2 (finding the respondents "sufficiently rebutted" any initial showing, in part because "immigration officials have diligently sought the necessary travel documentation for petitioner from South Africa since his detention").

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 March 12, 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.

/s/ Christopher Allman
CHRISTOPHER ALLMAN