IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

NELSON JOSE ALEXANDRE FILHO, Petitioner, v. C. CARTER, Warden, FCI Leavenworth; TODD LYONS, ICE Acting Director; MARKWAYNE MULLIN, DHS Secretary; and PAMELA BONDI, Attorney General, Respondents.	)	Case No. 26-3050-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

Respondents hereby respond to Petitioner's habeas petition brought pursuant to 28 U.S.C. § 2241 and the Court's Order to Show Cause (Doc. 4). On March 13, 2026, Petitioner Nelson Jose Alexandre Filho filed a petition for habeas corpus pursuant to 28 U.S.C. § 2241.[1] Petitioner, a noncitizen, alleges his detention by U.S. Immigration and Customs Enforcement ("ICE") is improper because his removal is not significantly likely in the reasonably foreseeable future. The Court should deny the habeas petition because the presumptively reasonable six-month period has not yet passed and there is a significant likelihood of removal in the reasonably foreseeable future.

STATEMENT OF FACTS

The following facts are based on the declaration of Joseph L. Carroll, a Deportation Officer for ICE Enforcement and Removal Operations ("ERO") of the United States Department of Homeland Security ("DHS"). Exhibit A, Carroll Decl. ¶¶ 1-4. Petitioner is a native and citizen of Brazil. *Id.* ¶ 5.

[1] Although Petitioner was housed at FCI Leavenworth when his habeas petition was filed, he is now housed at the Midwest Regional Reception Center, also in Leavenworth, Kansas. Exhibit A, Carroll Decl., ¶ 27.

A. Pre-Final Order of Removal History

Petitioner was admitted to the United States at Washington, D.C. on or about May 24, 2018, with permission to remain in the United States until November 23, 2018. *Id.* ¶ 6. On or about December 5, 2018, Petitioner filed a Form I-539N with U.S. Citizenship and Immigration Services ("USCIS") requesting to extend/change nonimmigrant status until May 22, 2019. *Id.* ¶ 7. On or about May 20, 2019, Petitioner filed a second Form I-539N with USCIS requesting to extend/change nonimmigrant status until November 21, 2019. *Id.* ¶ 8. On or about June 13, 2019, USCIS denied Petitioner's Form I-539N filed on or about December 5, 2018. *Id.* ¶ 9. On or about November 7, 2019, USCIS denied Petitioner's Form I-539N filed on or about May 20, 2019. *Id.* ¶ 10.

On or about January 24, 2020, Petitioner was placed in removal proceedings through issuance of the Notice to Appear ("NTA"), charging him as removable from the United States pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act ("INA"). *Id.* ¶ 11. On or about September 22, 2022, Petitioner failed to appear and the Immigration Judge ordered Petitioner removed from the United States *in absentia*. *Id.* ¶ 12.

B. Recent Activity

On or about September 9, 2025, Petitioner was served a Form I-205, Warrant of Removal/Deportation and taken into ICE custody. *Id.* ¶ 13. Petitioner was targeted for arrest by ICE because he had pending criminal charges and a final order of removal. *Id.* On or about October 3, 2025, Petitioner filed a Motion to Reopen with the Immigration Court. *Id.* ¶ 14. On or about October 10, 2025, the Immigration Judge denied Petitioner's Motion to Reopen. *Id.* ¶ 15. On or about October 20, 2025, Petitioner submitted a request for DHS to join in a Motion to Reopen

based on Petitioner being a class member of the Calderon Settlement. *Id.* ¶ 16. DHS declined to join because Petitioner's request was incomplete. *Id.*

On or about November 10, 2025, Petitioner filed an appeal of the Immigration Judge's decision with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 17. On or about December 4, 2025, Petitioner submitted a new request for DHS to join in a Motion to Reopen based on Petitioner being a class member of the Calderon Settlement. *Id.* ¶ 18. In accordance with the Calderon Settlement Agreement, DHS reviewed the request and declined to join in the motion. *Id.* On or about March 20, 2026, the BIA dismissed Petitioner's appeal and upheld the Immigration Judge's decision. *Id.* ¶ 19.

On or about April 2, 2026, Petitioner was served a renewed Form I-205, Warrant of Removal/Deportation following the final order of removal. *Id.* ¶ 20. On or about April 2, 2026, ICE Removal and International Operations ("RIO") advised ERO that Petitioner has a Brazilian passport and can be removed immediately. *Id.* ¶ 24. Petitioner can be removed to Brazil with that travel document on the next available flight. *Id.* ¶ 25. ICE is working to schedule Petitioner on the next available charter flight to Brazil, which is tentatively scheduled for April 15, 2026. *Id.* ¶ 26. As of today's date, Petitioner remains detained in ERO custody pursuant to 8 U.S.C. § 1231(a)(2), and housed at the Midwest Regional Reception Center in Leavenworth, Kansas. *Id.* ¶ 27. Immigration and Customs Enforcement will continue its efforts to effectuate Petitioner's removal and will update the Court on any further developments in this matter. *Id.* ¶ 28.

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, *6 (D. Kan. July 13, 2020) (citation

omitted). 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).

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, *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 v. Davis*, 533 U.S. 678, 701 (2001)). "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 first argues that his statutory removal period expired on December 22, 2022, and that his removal is therefore neither imminent nor inevitable. Pet., Doc. 1, ¶¶ 36, 37. Petitioner's order of removal was entered *in absentia*, however, after Petitioner failed to appear. Carroll Decl., ¶ 12; *see also* Doc. 1, ¶ 3. As such, Petitioner's allegations regarding the three years

prior to Petitioner's detention have no bearing on whether Petitioner's removal is now significantly likely to occur in the reasonably foreseeable future. Further, although Petitioner also argues that his pending appeal to the BIA could "materially alter Petitioner's removability and eligibility for relief," that appeal has now been dismissed by the BIA. *Compare* Doc. 1, ¶ 38 *with* Carroll Decl., ¶ 19. Thus, again, Petitioner's allegation has no bearing on whether Petitioner's removal is now foreseeable.

The regulations implementing the INA provide that "*[e]xcept in cases involving in absentia orders*, the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case." 8 C.F.R. § 1003.23(b)(1)(v) (emphasis added). Here, as noted above, Petitioner's order of removal was entered *in absentia*. Carroll Decl., ¶ 12. After he was detained for removal in September 2025, Petitioner filed a Motion to Reopen his removal proceedings in October 2025, and appealed the Immigration Court's decision in November 2025. *Id.* ¶¶ 14, 17. As such, the regulations provided for a stay of Petitioner's removal until the motion to reopen was resolved. *See* 8 C.F.R. § 1003.23(b)(1)(v).

Since Petitioner's appeal was resolved, ICE RIO advised ERO that Petitioner has a Brazilian passport and can be removed immediately. Carroll Decl., ¶ 24. As such, Petitioner can be removed to Brazil and ICE is working to schedule Petitioner on the next available charter flight to Brazil, which is tentatively scheduled for April 15, 2026. *Id.* ¶¶ 25-26. Although Respondents disagree with Petitioner's assertion that his detention from September 9, 2025, through the date of the BIA's dismissal of his appeal should be counted toward Petitioner's presumptively reasonable removal period, regardless, there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. Petitioner has a Brazilian passport and ICE is actively working to schedule his removal. As such, the Court should conclude that Petitioner's detention has not

become unconstitutionally prolonged or indefinite and should deny Petitioner's request for habeas relief.

Additionally, although Petitioner alleges that he was arrested without a warrant, Petitioner was served a Form I-205, Warrant of Removal/Deportation and taken into ICE custody on September 9, 2025. Carroll Decl., ¶ 13. As such, the Court should reject Petitioner's claim that he was subjected to warrantless arrest.

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 April 6, 2026, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to the following ECF participants:

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