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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABDOURAHMANE BALDE,

Petitioner,

v.

MARKWAYNE MULLIN, et al.,

Respondents.

Case No. 26-cv-2457-TWR-DEB

RETURN IN OPPOSITION TO
PETITIONER'S HABEAS
PETITION

I. INTRODUCTION

Petitioner Abdourahmane Balde has filed a habeas petition. ECF No. 1. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Guinea, not of the Congo as he continues to claim. Declaration of Deportation Officer Alexander Emberate (Decl.) at ¶ 13. Petitioner originally illegally entered the United States on or about December 27, 2024, without inspection. *Id.* at ¶ 4. He was placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) and taken into Immigration and Customs Enforcement (ICE)

1 custody pursuant to 8 U.S.C. § 1225(b)(1)(B). Ex. 2 (NTA). An immigration judge
2 affirmed the negative credible fear finding on December 27, 2024. *Id.* at ¶ 7. The
3 expedited removal order therefore became final on that date. ICE worked to remove
4 Petitioner to the Congo. *Id.* at ¶¶ 8-9. Petitioner refused to assist with completion of the
5 travel document request. *Id.* at ¶¶ 9-10. ICE made the request to the Congo on June 3,
6 2025, but received no response. *Id.* at ¶ 11. On March 4, 2026, ICE contacted the
7 Republic of Guinea who confirmed Petitioner as a national of their country and issued
8 a travel document on April 2, 2026. *Id.* at ¶¶ 12-15. On April 29, 2026, Petitioner
9 refused to enter the airport to a removal flight to Guinea. *Id.* at ¶ 16. ICE has now
10 scheduled Petitioner on a charter flight for removal to Guinea on May 26, 2026. *Id.* at
11 ¶ 17. Petitioner remains mandatorily detained pursuant to 8 U.S.C. § 1231(a).

12 III. ARGUMENT

13 A. Petitioner's detention is lawful, and he has not established that there is no 14 significant likelihood of removal in the reasonably foreseeable future.

15 ICE's authority to detain noncitizens who are subject to a final order of removal
16 is governed by 8 U.S.C. § 1231(a). When an alien has been found to be unlawfully
17 present in the United States and a final order of removal has been entered, the
18 government ordinarily secures the alien's removal during a subsequent 90-day statutory
19 "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General
20 "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

21 The Supreme Court held in *Zadvydas* that when removal is not accomplished
22 during the 90-day removal period, the statute "limits an alien's post-removal-period
23 detention to a period reasonably necessary to bring about the alien's removal from the
24 United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689.
25 The Supreme Court has held that six months constitutes a "presumptively reasonable
26 period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief
27 where the presumptively reasonable six-month period has not yet elapsed. *See*
28 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,

1 2025) (“The government is entitled to its six-month presumptive period before
2 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-*
3 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
4 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not
5 been detained for more than six months. Petitioner has been in detention since May 29,
6 2025; therefore, his two-month detention is lawful under *Zadvydas*.”) (citations
7 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
8 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
9 the release based on changed circumstances, “the revocation would merely restart the
10 90-day removal period, not necessarily the presumptively reasonable six-month
11 detention period under *Zadvydas*”).

12 Even after the period of presumptive reasonableness has run, release is not
13 required under *Zadvydas* unless “there is *no* significant likelihood of removal in the
14 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
15 Supreme Court instructed, “the habeas court must ask whether the detention in question
16 exceeds a period reasonably necessary to secure removal. It should measure
17 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*
18 *alien’s presence at the moment of removal*.” *Id.* at 699 (emphasis added). In so holding,
19 the Supreme Court recognized that detention is presumptively reasonable pending
20 efforts to obtain travel documents, because the noncitizen’s assistance is often needed
21 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
22 executable warrant of removal becomes a significant flight risk, especially if he or she
23 is aware that it is imminent.

24 The Supreme Court also instructed that detention could exceed six months: “This
25 6-month presumption, of course, does not mean that every alien not removed must be
26 released after six months. To the contrary, an alien may be held in confinement until it
27 has been determined that there is no significant likelihood of removal in the reasonably
28 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good

1 reason to believe that there is no significant likelihood of removal in the reasonably
2 foreseeable future, the Government must respond with evidence sufficient to rebut that
3 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
4 alien to show, after a detention period of six months, that there is ‘good reason to believe
5 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
6 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
7 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

8 Petitioner has been detained over six months since his removal order became
9 final on December 27, 2024. His claim still fails because there is a significant likelihood
10 of removal in the reasonably foreseeable future. ICE has received a travel document
11 from Guinea and scheduled a second flight for his removal on May 26, 2026. Decl. at ¶
12 17. It was only Petitioner’s non-compliance with removal efforts which prevented his
13 removal. Petitioner falsely claimed to be a national of the Congo upon entry to the
14 United States and continues to do so today causing ICE to attempt removal to a country
15 to which Petitioner had no right to travel. *See* ECF No. 1. In addition, Petitioner refused
16 to prepare the request to travel to the Congo causing months of delay and then, when
17 his true nationality was determined, he refused to enter the airport for removal. Decl. at
18 ¶¶ 9, 10, 16.

19 Petitioner’s conduct in refusing to leave the United States is akin to an individual
20 who seeks to undermine and frustrate the removal process by failing to cooperate with
21 ICE. In addition, 8 U.S.C. §1231(a)(1)(C) provides that “the removal period shall be
22 extended beyond a period of 90 days and the alien may remain in detention during such
23 extended period if the alien ... conspires or acts to prevent the alien’s removal subject
24 to an order of removal.” In *Pelich v. I.N.S.*, 329 F.3d 1057 (9th Cir. 2003), the Ninth
25 Circuit analyzed section 1231(a)(1)(C) in the context of the government’s detention of
26 a noncitizen past the presumptively reasonable six months recognized by *Zadvydas*
27 where the noncitizen refused to cooperate with the Immigration and Naturalization
28 Service’s (INS) efforts to remove him:

1 There is significant evidence in the record that, unlike the detainees in
2 *Zadvydas*, Pelich himself is responsible for his plight. Pelich has
3 steadfastly refused to fill out a Polish passport application, which directly
4 impedes Poland's ability to determine whether Pelich qualifies for Polish
5 travel documents. In the January letter, the Polish consulate explicitly
6 reserved its determination of Pelich's citizenship status pending review of
7 the information requested in the letter, including the passport application.
8 Compounding the dilemma is the fact that Pelich has provided the INS
9 with conflicting information regarding his name, his parents' names, his
10 parents' birthplaces and residences, his birthplace and his nationality.

11 . . . The risk of indefinite detention that motivated the Supreme Court's
12 statutory interpretation in *Zadvydas* does not exist when an alien is the
13 cause of his own detention. Unlike the aliens in *Zadvydas*, Pelich has the
14 "keys[to his freedom] in his pocket" and could likely effectuate his
15 removal by providing the information requested by the INS. . . .

16 . . .

17 Since Pelich falls within the category of non-cooperative detainee, he
18 cannot legitimately object to his continued detention when that very
19 detention is caused by his own conduct. Pelich could likely effectuate his
20 own removal (and free himself from detention) by providing the Polish
21 government with the requested information. It naturally follows that his
22 detention is not destined to be indefinite. To the contrary, Pelich's behavior
23 places him within that class of aliens properly detained pursuant to 8
24 U.S.C. § 1231(a)(1)(C).

25 *Pelich*, 329 F.3d at 1059–60.

26 The Ninth Circuit later held:

27 [C]onsistent with *Zadvydas* and *Pelich*, that when an alien refuses to
28 cooperate fully and honestly with officials to secure travel documents from
a foreign government, the alien cannot meet his or her burden to show there
is no significant likelihood of removal in the reasonably foreseeable future.
We cannot know whether an alien's removal is a "remote possibility," until
the alien makes a full and honest effort to secure travel documents. A
particular alien may have a very good chance of being removed, but if that
alien is refusing to cooperate fully with officials to secure travel
documents, neither the INS nor a court can sensibly ascertain the alien's
chance of removal. . . . We conclude that 8 U.S.C. § 1231(a)(1)(C),
interpreted mindful of the concerns underlying *Zadvydas* and *Pelich*,

1 authorizes the INS's continued detention of a removable alien so long as
2 the alien fails to cooperate fully and honestly with officials to obtain travel
3 documents.

4 *Lema v. I.N.S.*, 341 F.3d 853, 856–57 (9th Cir. 2003); *see also Parra v. Perryman*,
5 172 F.3d 954, 958 (9th Cir. 1999) (“A criminal alien who insists on postponing the
6 inevitable has no constitutional right to remain at large during the ensuing delay, and
7 the United States has a powerful interest in maintaining the detention in order to ensure
8 that removal actually occurs”); *Ford v. Quarantillo*, 142 F. Supp. 2d 585, 588 (D.N.J.
9 2001) (in deciding propriety of continued detention, the court determined whether the
10 alien’s “continued detainment [was] the result of his conspiring or acting to prevent his
11 removal”); *Moro v. I.N.S.*, 58 F. Supp. 2d 854, 859 (N.D. Ill. 1999) (8 U.S.C.
12 § 1231(a)(1)(C) “places a burden of good-faith cooperation on aliens in securing their
13 removal”); *Castillo-Gradis v. Turnage*, 752 F. Supp. 937, 941 (S.D. Cal. 1990)
14 (requiring release “absent a showing of . . . delay caused by the alien’s own actions”)
15 (citing *Dor v. District Director*, 891 F.2d 997, 1003 (2d Cir. 1989) (refusing to order
16 release when petitioner was “largely responsible for the very delay of deportation of
17 which he complain[ed]”)); *See Matevosyan v. Warden, Desert View Annex Detention*
18 *Facility*, No. CV-24-01570-PA (DFM), 2025 WL 978153, at *7 (C.D. Cal. Feb. 24,
19 2025), *adopted by* 2025 WL 975009 (C.D. Cal. March 31, 2025) (“Given Petitioner’s
20 lack of cooperation, he cannot satisfy his burden under *Zadvydas* to show that there is
21 no significant likelihood of removal in the reasonably foreseeable future.”). Petitioner
22 should not receive a windfall in the form of release simply because he refuses to remove
23 himself from the United States.

24 To the extent Petitioner is challenging ICE’s decision to detain him for the
25 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
26 (“Except as provided in this section and *notwithstanding any other provision of law*
27 *(statutory or nonstatutory), including section 2241 of Title 28, or any other habeas*
28 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have

jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent the initiation or prosecution of various stages in the deportation process.”); *Limpin v. United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court’s jurisdiction”).

Because Petitioner cannot meet his burden to show there is no good reason to believe he will be removed in the reasonably foreseeable future and Petitioner is primarily responsible for the delay to this point in his removal, this Court should deny this petition.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petitioner’s petition.

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