**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MINNESOTA**

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| **John BROWN**,  Petitioner,  v.  **William BARR**, U.S. Attorney General;  **Chad WOLF**, Acting Secretary, Department of Homeland Security;  **Matthew ALBENCE**, Acting Director, Immigration and Customs Enforcement;  **Shawn BYERS**, Acting Director, St. Paul Field Office, Immigration and Customs Enforcement; and  **Joel BROTT**, Sheriff, Sherburne County,  Respondents. | Civil Action No: 20-cv-  **PETITION FOR WRIT OF HABEAS CORPUS**  **8 U.S.C. § 1231**  **28 U.S.C. § 2241** |

1. **INTRODUCTION**
2. Respondents are unlawfully detaining Petitioner, John Brown (“Mr. Brown”), under the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231. Respondents are currently unlawfully and unreasonably subjecting Mr. Brown to prolonged and indefinite post-order detention, with no likelihood of removal in the reasonably foreseeable future. Mr. Brown was ordered removed on December 30, 2019, and his removal order became administratively final on January 29, 2020. Respondents have detained Mr. Brown for 190 days under § 1231, in excess of the statutory removal period and the presumptively reasonable period under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Respondents claim that they possess a valid travel document for Mr. Brown, which Mr. Brown has never seen and cannot confirm. Respondents further claim that Mr. Brown will be removed on a charter flight to Somalia in September, which Mr. Brown questions given the COVID-19 pandemic.
3. Mr. Brown entered the United States as a refugee on May 27, 2014, after the terrorist organization Al-Shabaab tried to recruit him and threatened to kill him in Somalia. His status was adjusted to that of a lawful permanent resident (LPR) on June 30, 2016. Mr. Brown was detained on September 17, 2019, after being convicted of corruption or solicitation of a minor in violation of North Dakota Cent. Code § 12.1-20-05. He then applied for asylum, withholding of removal, and protection under the Convention Against Torture because he feared returning to Somalia due to the attempted recruitment and threats he received from Al-Shabaab. His asylum, withholding, and CAT application was denied on December 31, 2019, because he was convicted of an aggravated felony that the Immigration Judge found to be a particularly serious crime, and he could not show that he would more likely than not be tortured in Somalia. His removal order became administratively final on January 30, 2020, when the period to submit an appeal expired.
4. Mr. Brown has been detained by Respondents since September 17, 2019. He was detained from that time until his removal order became administratively final pursuant to § 1226(c), for 135 days. He has been detained by Respondents for a total of 325 days. His current detention pursuant to § 1231 has persisted for 190 days with no end in sight.
5. On or about April 29, 2020, ICE conducted a 90-day custody review for Mr. Brown. Despite the ongoing COVID-19 pandemic, ICE appears to have determined that removal was likely in the reasonably foreseeable future on the basis of the final order of removal and ICE’s purported possession of a valid travel document. At that time, ICE had no tangible plans for a removal flight. Mr. Brown has not seen the travel document, nor does he have any evidence that it exists.
6. On or about July 22, 2020, Mr. Brown completed an interview with ICE as a part of his 180-day review. Mr. Brown has not received a decision on this review but believes ICE will decide to continue his custody, as he is still detained.
7. All official government sources Mr. Brown is aware of—including the United States Department of State—indicate that Somalia is currently not allowing international flights. While Kenya—likely the last stop for any removal flight before Mogadishu—has resumed international flights, its border with Somalia is closed. It is unclear to Mr. Brown how Respondents expect to execute his removal given Somalia’s measured response to the pandemic, or if the plans for a chartered flight in September are merely wishful thinking.
8. If the flight is unable to return Mr. Brown to Somalia in September, Mr. Brown expects that ICE will continue to detain him in anticipation of another flight the following month or several months later, and, as the global health crisis persists, ICE will continue to push its flight plans back and detain Mr. Brown. Given the uncertainty about the removal flight plans, Mr. Brown is faced with indefinite and prolonged detention.
9. The Supreme Court has held that it is presumptively reasonable for the government to detain a noncitizen with a final order of removal for six months or less. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). “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.* “[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700.
10. Here, the removal period began to run on January 30, 2020, the date the removal order became administratively final. § 1231(a)(1)(A). Mr. Brown’s detention during this removal period has exceeded 180 days. Despite ICE’s custody determination on April 29, 2020, there is no substantial likelihood of removal in the reasonably foreseeable future, because ICE has been unable to execute Mr. Brown’s removal order over the last 180 days, on information and belief that the Somali Embassy is closed due to the COVID-19 pandemic, and on information and belief that Somalia is not allowing international flights due to the COVID-19 pandemic. Mr. Brown expects Respondents to claim that a charter flight to Somalia is in the process of being planned for September. This plan is purely speculative, especially given the fact that COVID-19 cases continue to rise in the United States and in Somalia. Stated intent to carry out Mr. Brown’s removal in two months is not sufficient, without more, to show that removal is substantially likely to occur in the reasonably foreseeable future. The charter flight plan is still in its infancy and is overly optimistic as COVID-19 continues to spread globally. Indeed, Respondents can only point to the month of September—next month—as the window of time for the flight, and, as of August 3, 2020, could not provide any more specific information in response to an inquiry from a Magistrate Judge in this District. *See* Supplemental Declaration of Deportation Officer William J. Robinson, *Yusuf v. Barr*, No. 20-cv-1091 (ECT/DTS) (D. Minn. Aug. 3, 2020), ECF No. 34; Report and Recommendation & Order, *id.*, at \*17 (D. Minn. June 15, 2020), ECF No. 31 (ordering Respondents to provide more information about September flight by August 3, 2020).
11. To remedy this unlawful detention, Mr. Brown seeks declaratory and injunctive relief in the form of immediate release from detention on reasonable conditions determined by ICE pursuant to 8 C.F.R. § 241.5.
12. Mr. Brown also requests that this Court order Respondents to produce a copy of any valid travel document they possess for him, and evidence demonstrating the likelihood of an upcoming flight to Somalia.[[1]](#footnote-2)
13. **JURISDICTION AND VENUE**
14. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (federal employee mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). Because Mr. Brown seeks to challenge his custody as a violation of the Constitution, laws, or treaties of the United States, jurisdiction is proper in this court. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness of their detention. *See* *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (“[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases.”); *Moallin v. Cangemi*, 427 F.Supp.2d 908, 920–21 (D. Minn. 2006).
15. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e)(1)(B), and 2241(d) because Mr. Brown is detained within this District. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because some of the Respondents are headquartered within this District.
16. **PARTIES**
17. Petitioner John Brown is a native and citizen of Somalia. Mr. Brown was admitted to the United States at New York, New York, on May 27, 2014, as a refugee. Mr. Brown came to the U.S. after Al-Shabaab kidnapped him, tried to recruit him, and threatened to kill him. He adjusted status to a lawful permanent resident (LPR) on June 30, 2016, under INA section 209(a). On August 6, 2019, he was convicted for the offense of corruption or solicitation of a minor in violation of North Dakota Century Code section 12.1-20-05. He was then detained by ICE on September 17, 2019, pursuant to a warrant for alien arrest based on his conviction. He applied for asylum, withholding, and protection under the Convention Against Torture, but his application was denied on December 31, 2019. His order of removal was finalized on January 30, 2020, after the period to submit appeals expired. He has been held in continued post-order detention since that time.
18. Respondent Jefferson Beauregard Sessions III is being sued in his official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the Board of Immigration Appeals and the immigration judges as a subunit—the Executive Office for Immigration Review. Attorney General Sessions shares responsibility for implementation and enforcement of the immigration laws, including detention statutes, along with Respondent Nielsen. Attorney General Sessions is a legal custodian of Mr. Brown. Attorney General Sessions’ official address is 950 Pennsylvania Avenue NW, Washington, D.C. 20530.
19. Respondent Chad Wolf is being sued in his official capacity as the Acting Secretary of the Department of Homeland Security. In this capacity, Acting Secretary Wolf is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the St. Paul ICE Field Office, and is legally responsible for pursuing Mr. Brown’s detention and removal, and as such is a legal custodian of Mr. Brown. Acting Secretary Wolf’s official address is 245 Murray Lane SW, Washington, D.C. 20528.
20. Respondent Matthew Albence is being sued in his official capacity as the Acting Director of Immigration and Customs Enforcement, a sub-unit of the Department of Homeland Security. In that capacity, Acting Director Albence has supervisory capacity over ICE personnel in Minnesota, and he is the head of the agency that retains legal custody of Mr. Brown. Acting Director Albence's official address is 500 12th Street SW, Washington, D.C. 20536.
21. Respondent Peter Berg is being sued in his official capacity as the Field Office Director for the St. Paul Field Office for ICE within DHS. In that capacity, Field Director Berg has supervisory authority over the ICE agents responsible for detaining Mr. Brown. The address for the St. Paul Field Office is 1 Federal Drive, Suite 1601, Fort Snelling, Minnesota 55111.
22. Respondent Joel Brott is being sued in his official capacity as the Sheriff of Sherburne County, Minnesota. In that capacity, Sheriff Brott is responsible for the Sherburne County Jail—a detention facility under contract with ICE and the physical location where Mr. Brown is currently in custody. The address for Sherburne County Jail is 13880 Business Center Drive NW, Elk River, Minnesota, 55330.
23. **EXHAUSTION**
24. Mr. Brown has exhausted his administrative remedies as required by law. Judicial action is his only remedy. Mr. Brown is being detained despite his removal being significantly unlikely in the foreseeable future. Mr. Brown completed a custody review with ICE, which ignored evidence favoring release under 8 C.F.R. § 241.4 and arbitrarily decided to continue detaining him. There is no appeal process for custody decisions in this situation. He is collaterally challenging his removal at the BIA, which has not yet rendered a decision. As a result, there is currently no removal order that Mr. Brown can appeal through the judicial review provisions of 8 U.S.C. § 1252.
25. No statutory exhaustion requirement applies to Mr. Brown’s claim of unlawful detention.
26. The immigration court does not have jurisdiction to order Mr. Brown released.
27. No administrative remedies currently exist under the law to challenge post-order detention where there is no reasonable likelihood that removal will occur in the foreseeable future.
28. **FACTUAL ALLEGATIONS & PROCEDURAL HISTORY**
29. Petitioner, John Brown, is a 28-year-old native and citizen of Somalia. *See* Ex. A at 1, 3; Ex. D at 1–2, 3.
30. Mr. Brown is a member of the Bantu ethnic group and minority clan in Somalia. *Id.* at 3.
31. In 2010, “several masked al-Shabaab members took [Mr. Brown] by force from inside his home.” *Id.* They took him “to the jungle near Kismayo and detained him there for about five or six days while they attempted to recruit him.” *Id.* at 4. He was repeatedly beaten, and the attackers “told him if he refused to join, they would kill him.” *Id.* He finally “escaped at night by running through the jungle.” *Id.* Mr. Brown believed he was targeted because he is Bantu. *Id.*
32. He left Somalia soon after, going to Kenya, Mozambique, and then South Africa. *Id.*
33. One of Mr. Brown’s brothers “was shot and killed by al-Shabaab in 2017 because he was a police officer working for the government of Somalia. Another brother . . . was driving a car when al-Shabaab stopped him and tortured him, in Kismayo in 2019.” *Id.* at 4.
34. Mr. Brown applied to come to the United States, and entered the United States as a refugee on May 27, 2014. He adjusted his status to that of a lawful permanent resident on June 30, 2016, retroactive to his date of entry. Ex. A at 3; Ex. D at 4.
35. On January 28, 2019, Mr. Brown was arrested and charged in Dickinson, North Dakota with solicitation of a minor, in violation of North Dakota Cent. Code § 12.1-20-05(2). On August 6, 2019, Mr. Brown was convicted and sentenced to 3 years, suspended. Ex. D at 4, 6, 7.
36. Mr. Brown is pursuing postconviction relief, seeking to withdraw his guilty plea and vacate the conviction because he was provided misinformation by his defense attorney about the immigration consequences of his guilty plea, in violation of *Padilla v. Kentucky*, 559 U.S. 356 (2010).
37. On September 17, 2019, DHS detained Mr. Brown and initiated removal proceedings against him by filing a Notice to Appear (NTA). Ex. A; *see also* Ex. B; Ex. C; Ex. D at 1–2.
38. The Immigration Judge (“IJ”) sustained the two charges of removability lodged against him. Ex. D at 1; *see also* Ex. A at 3. Because of this determination, Mr. Brown was subjected to the mandatory detention provisions of 8 U.S.C. § 1226(c)(1).
39. Mr. Brown filed applications for asylum, withholding of removal, and protection under Article III of the Convention Against Torture. However, the IJ found that he had been convicted of a “particularly serious crime” as defined by 8 U.S.C. § 1231(b)(3)(B)(ii), barring him from eligibility for asylum and withholding of removal. Ex. D at 5–8.
40. On December 30, 2019, the IJ denied all applications for relief and ordered Mr. Brown removed to Somalia. Ex. D at 14.
41. Mr. Brown did not file a notice of appeal before the expiration of the appeal deadline. As a result, his removal order became administratively final on January 30, 2020. *See* Ex. E.
42. On April 29, 2020, ICE held a 90-day custody review. ICE decided to continue Mr. Brown’s detention at that time on the basis that “ICE is in receipt of the necessary travel documents to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest.” Ex. F at 1.
43. On July 22, 2020, ICE held a telephonic interview with Mr. Brown for his 180-day custody review. Ex. G. Petitioner has still not received a decision on this review. *Id*.
44. Mr. Brown has been detained by Respondents for 190 days since his removal order became administratively final. Respondents have, to date, been unable to execute Mr. Brown’s removal and do not have definite plans to do so in the near future.
45. Mr. Brown has complied with all requests by Respondents and has fully cooperated with Respondents’ efforts to remove him.
46. Mr. Brown has not seen the travel documents that Respondents claim to possess for him and has no evidence that a travel document exists except for statements made by Respondents. He does not know when it was issued or when it expires.
47. Mr. Brown has been told by Respondents that he would be removed to Somalia on a chartered flight sometime in the month of September 2020.
48. On August 3, 2020, ICE informed another court in this District that a chartered flight is scheduled for “mid-September.” Supplemental Declaration of Deportation Officer William J. Robinson, *Yusuf v. Barr*, No. 20-cv-1091, at \*2, ¶ 7(ECT/DTS) (D. Minn. Aug. 3, 2020), ECF No. 34 [“Robinson Declaration”]; Report and Recommendation & Order, *id.*, at \*17 (D. Minn. June 15, 2020), ECF No. 31 (ordering Respondents to provide more information about September flight by August 3, 2020). ICE provided no further information about the flight.
49. In that same filing, ICE stated without citation, explanation, or evidence that “Somalia does not have a ban on international travel for returning citizens.” Robinson Declaration at \*2, ¶ 5. ICE further stated that “the Government of Kenya lifted international travel restrictions on August 1, 2020. Kenya is the point from which ICE conducts departures to Somalia.” *Id.* at ¶ 6.
50. On March 18, 2020, the Federal Government of Somalia implemented flight restrictions, including a suspension of international flights. *See* U.S. Embassy in Somalia, “COVID-19 Information” (updated July 29, 2020), *available at* https://so.usembassy.gov/covid-19-information/ (accessed Aug. 6, 2020).
51. Some news sources have reported that international flights into Somalia, at the Aden Abdulle International Airport in Mogadishu, resumed on August 3, 2020. *See, e.g.*, Abdulkadir Khalif, “Somalia Resumes International Flights Today,” Daily Nation (Aug. 3, 2020), *available at* https://www.nation.co.ke/kenya/news/africa/somalia-resumes-international-flights-today--1911370 (accessed Aug. 6, 2020).
52. However, this reopening has not yet been reported by foreign governments. For example, the U.S. Embassy website has not updated its COVID-19 guidance. U.S. Embassy in Somalia, “COVID-19 Information”; *see also* Travel.State.Gov, “Somalia” (alert posted July 28, 2020), *available at* https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Somalia.html#/ (accessed Aug. 6, 2020). The United Kingdom still reports that “[t]here are no passenger flights to Somalia (excluding Somaliland)” and “[t]he Somali authorities have banned all international passenger flights until further notice.” U.K. Foreign & Commonwealth Office, “Somalia – Entry Requirements,” *available at* https://www.gov.uk/foreign-travel-advice/somalia/entry-requirements (accessed Aug. 6, 2020); U.K. Foreign & Commonwealth Office, “Somalia – Coronavirus,” *available at* https://www.gov.uk/foreign-travel-advice/somalia/coronavirus (accessed Aug. 6, 2020). The Australian government similarly reports that “[a]ll international and domestic passenger flights are banned until further notice,” which the government notes is “still current” as of August 7, 2020, Australian time. Australian Dep’t of Foreign Affairs & Trade, “Somalia – COVID-19 and Travel,” (current at Aug. 7, 2020), *available at* https://www.smartraveller.gov.au/destinations/africa/Somalia (accessed Aug. 6, 2020).[[2]](#footnote-4)
53. Magistrate Judge Schultz has elsewhere noted that

As recently as May 28 . . . the United States Embassy in Somalia warned that a decision to pass on a charter flight for U.S. citizens leaving Mogadishu that day “is, for all intents and purposes, a decision to shelter in place for the duration of the COVID-19 pandemic. There is no guarantee that future flights will be available.” This admonition by the U.S. Embassy is clear evidence that [the Petitioner’s] removal to Somalia is not likely in the reasonably foreseeable future.

Report & Recommendation and Order, *Yusuf v. Barr*, No. 20-cv-1091 (ECT/DTS), at \*10 (D. Minn. June 16, 2020), ECF No. 31 (quoting U.S. Embassy, “COVID-19 Information”). Magistrate Judge Schultz also offered skepticism that the flight would occur in September. *Id.* at \*14.

1. Since early in the pandemic and as of the date of this filing, the Somali Embassy in Washington, D.C., has suspended all in-person Consular services and is closed to the public. Embassy of the Federal Republic of Somalia, “Embassy of Somalia – DC,” *available at* http://somaliembassydc.net/index.html (accessed Aug. 6, 2020).
2. As of the date of this filing, Mr. Brown has spent 325 days in ICE custody, with 190 days of post-order detention.
3. Mr. Brown has exhausted his administrative remedies. No other court of competent jurisdiction has the authority to order the release of Mr. Brown.
4. **LEGAL FRAMEWORK**
   1. **STATUTORY & REGULATORY FRAMEWORK**
5. Under 8 U.S.C. § 1231, noncitizens with a final order of removal shall be removed from the United States within a period of 90 days. 8 U.S.C. § 1231(a)(1)(A).
6. The beginning of the 90-day removal period is determined by the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

*Id.* at § 1231(a)(1)(B).

1. During the removal period, the noncitizen may be detained, and may not be released under any circumstances if found inadmissible or deportable on criminal or national security grounds. § 1231(a)(2).
2. If the noncitizen is not removed during the 90-day period, he or she “shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien”:

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien’s nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien’s conduct or activities that the Attorney General prescribes for the alien.

§ 1231(a)(3).

1. The removal period may be extended beyond 90 days and the noncitizen may remain detained if the noncitizen frustrates his or her removal. § 1231(a)(1)(C).
2. Alternatively, the noncitizen may be detained beyond the 90 days if he or she is inadmissible under § 1182 or removable under various sections of § 1227, or determined to be a risk to the community or unlikely to comply with the order of removal. § 1231(a)(6); 8 C.F.R. § 241.4(a).
   1. **PROLONGED DETENTION**
3. The Due Process Clause of the Fifth Amendment requires that “[n]o person shall . . . be deprived of liberty . . . without due process of law.” “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). In the context of immigration detention, at a minimum, detention must “bear[] a reasonable relation to the purpose for which the individual [was] committed.” *Id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). If “detention’s goal is no longer practically attainable,” detention becomes unreasonable and therefore violates the Fifth Amendment right to due process. *Id.*
4. The Fifth Amendment Due Process Clause also requires that Respondents follow procedures that are adequate to establish that detention is both statutorily and constitutionally valid. *See* *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) (“due process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.”).
5. Under the canon of constitutional avoidance, no immigration detention statute should be construed in a way that would violate the Constitution where it is “fairly possible” to avoid doing so. *Zadvydas*, 533 U.S. at 689.
6. In *Zadvydas*, the Supreme Court held that, while the statute provides for a removal period of 90 days, post-order detention up to 180 days was presumptively reasonable. *Id.* at 701. After six months, the burden is on the government to rebut a showing by the noncitizen “that there is no significant likelihood of his removal in the reasonably foreseeable future.” *Id.* “[W]hat constitutes the ‘reasonably foreseeable future’ shrinks as the total period of postremoval confinement grows.” *Moallin v. Cangemi*, 427 F. Supp. 2d 908, 915 (D. Minn. 2006).
7. **CAUSES OF ACTION**

**COUNT ONE: VIOLATION OF 8 U.S.C. § 1231 – PROLONGED DETENTION**

1. Petitioner re-alleges and incorporates by reference the paragraphs above.
2. Mr. Brown’s detention has exceeded and will continue to exceed the six-month presumptive threshold under *Zadvydas*, as he has now been detained for 190 days under § 1231, and a total of 325 days in Respondents’ custody.
3. Although Respondents purportedly possess a valid travel document for Mr. Brown, there is no substantial likelihood of removal in the reasonably foreseeable future due to the ongoing COVID-19 pandemic which has led to the current closure of the Somali Embassy and the restriction on international flights into Somalia.
4. Therefore, 8 U.S.C. § 1231 does not authorize detention of Mr. Brown as removal is no longer likely to occur in the reasonably foreseeable future.

**COUNT TWO: VIOLATION OF FIFTH AMENDMENT**

**SUBSTANTIVE DUE PROCESS**

1. Petitioner re-alleges and incorporates by reference the paragraphs above.
2. The Fifth Amendment Due Process Clause protects against arbitrary and indefinite detention by the executive branch. *Zadvydas*, 533 U.S. at 699.
3. Due process requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals. *See* *Zadvydas*, 533 U.S. at 690-91. As removal is no longer reasonably foreseeable for Mr. Brown—in fact, it is a near impossibility due to the COVID-19 pandemic—and Respondents can only offer a vague plan for removal in at least a month from now, his detention is arbitrary and unreasonable, and therefore in violation of the Fifth Amendment’s guarantee of Due Process.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner asks this Court for the following relief:

1. Assume jurisdiction over this matter;
2. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
3. Pursuant to 28 U.S.C. § 2243 issue an order directing the Respondents to show cause within 3 days why the writ of habeas corpus should not be granted;
4. Order Respondents to produce to the Court and Petitioner any valid travel document for Petitioner in their possession;
5. Order Respondents to produce to the Court and Petitioner evidence demonstrating their ability to execute a removal flight to Somalia in September 2020;
6. Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody on an Order of Supervision with any conditions deemed necessary pursuant to 8 C.F.R. § 241.5; and
7. Grant any and all further relief this Court deems just and proper.

DATED: August 6, 2020 Respectfully submitted,

/s *John Bruning*

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1. Petitioner would have no objection to such documents being produced under seal or a protective order. Petitioner makes this request for an order compelling production, in no small part, due to Magistrate Judge Schultz’s “serious concerns about Respondents’ candor” in a recent post-order detention case involving a Somali national. Report and Recommendation & Order, *Yusuf v. Barr*, No. 20-cv-1091 (ECT/DTS), at \*14 (D. Minn. June 16, 2020), ECF No. 31 (“Given the events to date, the Court is skeptical the September charter flight will in fact occur. Officer Robinson says a charter ‘is in the planning process,’ but he does not say how far along those plans are or even if the Somalian government is part of the planning process.”). [↑](#footnote-ref-2)
2. Magistrate Judge Schultz has previously viewed the Australian government’s webpage as evidence that removal flights to Somalia are unlikely in the reasonably foreseeable future. Report & Recommendation, *Yusuf v. Barr*, No. 20-cv-1091 (ECT-DTS), at \*6 (D. Minn. June 2, 2020), ECF No. 23, *vacated*, ECF No. 28. [↑](#footnote-ref-4)