IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

HERITIER TWIZERE,

Petitioner,

v.

MARCELLO VILLEGAS,

Respondent.

Civil Action No. 1:25-CV-00077-H

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

In his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Heritier Twizere appears to seek release from detention pending his removal from this country by the United States Immigration and Customs Enforcement (ICE). The Court should deny his request for habeas relief because Petitioner fails to show that he is entitled to the relief he seeks.

I. Facts

On or about October 11, 2018, Petitioner entered the United States as a refugee. Petitioner's refugee documents show he was born in the Democratic Republic of the Congo, and the documents contain Petitioner's Rwandan refuge card. App. pp. 3-4, at ¶ 6.

On August 6, 2019, the Dallas police department arrested Petitioner for aggravated sexual assault of a child under 14 years old. App. pp. 7; 10. On September 21, 2023, Petitioner pled guilty to a reduced charge of injury to a child with intent of bodily injury under § 22.04(F) of the Texas Health and Safety Code. App. p. 14. The court sentenced Petitioner to five years' deferred adjudication probation. *Id.*

On December 4, 2023, Petitioner was placed into immigration proceedings with the issuance of a Notice to Appear. App. p. 21. On March 27, 2024, an immigration judge ordered that Petitioner be removed to the Democratic Republic of the Congo ("DRC"), and in the alternative, to Rwanda. App. pp. 27-30. Petitioner filed an appeal to the Board of Immigration Appeals ("BIA"). On August 22, 2024, the BIA dismissed the appeal. App. p. 34. On May 8, 2025, Petitioner filed a motion for bond with the immigration court. On May 13, 2025, the IJ dismissed the motion finding the court had no jurisdiction to grant a bond due to Petitioner's final order of removal. App. p. 37.

Petitioner's case was then sent to the Dallas Field Office Enforcement and Removal Operations ("ERO") for execution of the removal order. On September 12, 2024, Dallas ERO received Petitioner's file and began working on a travel document request to the DRC. App. pp. 3-4, at ¶ 6. On November 20, 2024, the travel document packet was forwarded to Headquarters Removal International Operations ("HQ RIO") for review, and on February 17, 2025, the travel document request packet was sent to the DRC Consulate. *Id.* at ¶ 7.

On May 11, 2025, a telephonic interview of Petitioner was scheduled with the DRC Consulate and on the following day, that interview took place and was completed. App. p. 4, at ¶ 8. On May 16, 2025, the DRC Embassy informed HQ RIO that Petitioner told them he was Rwandan and therefore declined to issue travel documents. *Id.* at ¶ 9. HQ RIO has requested that the Embassy officials reconsider this decision. *Id.*

On May 21, 2025, HQ RIO and the Dallas ERO Field Office began working on a travel document request to be sent to the Rwandan Embassy. *Id.* at ¶ 10. On May 27, 2025, the travel document request was sent to the Rwandan Embassy and was received at the

Embassy on June 2, 2025. *Id.* The travel document request packet included Petitioner's Rwandan refugee card, which contains Petitioner's name and photograph. *Id.*

II. Relevant Law

The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day period within which to remove the alien from the United States following the entry of the final order. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Section 1231(a)(6) also provides, in pertinent part, that an alien who is inadmissible to the United States or one who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period. 8 U.S.C. §1231(a)(6).

In *Zadvydas*, the United States Supreme Court held that section 1231(a)(6) "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States" but "does not permit indefinite detention." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute." *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701.

Therefore, to establish a prima facie claim for habeas relief under the *Zadvydas* rationale, the alien must first establish that he has been in post-order custody for more than six months at the time the habeas petition is filed. *See Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011). Next, the alien must provide a good reason to believe that there

is no significant likelihood of removal in the reasonably foreseeable future. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001).

The "reasonably foreseeable future" is not a static concept. Rather, it is fluid and country-specific, depending in large part on the diplomatic relations between the United States and the subject country that will receive the removed alien. The mechanisms for obtaining a temporary travel document from another country are manifold and include functional considerations of rapport and diplomacy, which are beyond the control of ICE. Indeed, one court has aptly observed:

> Clearly, it is no secret that the bureaucracies of second and third world countries, and not a few first world countries, can be inexplicably slow and counter-intuitive in the methods they employ as they lumber along in their decision-making. To conclude that a deportable alien who hails from such a country must be released from detention, with the likely consequence of flight from American authorities back into the hinterlands, simply because his native country is moving slow, would mean that the United States would have effectively ceded its immigration policy to those other countries. The Court does not read the holding of *Zadvydas* as requiring such an extreme result.

Fahim v. Ashcroft, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002).

Additionally, a "lack of visible progress" in the removal process "does not in and of itself meet [the petitioner's] burden of showing that there is no significant likelihood of removal." *Id.* at 1366. "It simply shows that the bureaucratic gears of the [federal immigration agency] are slowly grinding away." *Khan*, 194 F. Supp. 2d at 1137; *Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003).

"*The burden is on the alien to show that there is no reasonable likelihood of repatriation.*" *Khan*, 194 F. Supp. 2d at 1136 (emphasis in original). Conclusory allegations are insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted); *Akinwale*, 287 F.3d at 1052. If the alien does "provide[] 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." *Zadvydas*, 533 U.S. at 701.

III. Petitioner Is Not Entitled To Habeas Relief

Petitioner fails to establish a *prima facie* claim for relief under *Zadvydas*. First, while Petitioner has been in custody more than six months, he has failed to provide reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. According to ERO officers who regularly deal with Rwanda, Petitioner will be removed in the reasonably foreseeable future. App. pp. 4-5, at ¶ 11. The travel document request contains a copy of Petitioner's Rwandan refugee card, which is strong evidence of Petitioner's citizenship. *Id.* Based on Rwanda's acceptance of flights, and the record of

acceptance of Rwandan citizens to Rwanda, Petitioner's removal is significantly likely in the reasonably foreseeable future. App. p. 5, at ¶ 12. While Petitioner has not yet been issued a travel document, "[a] 'lack of visible progress' in his immigration case 'does not in and of itself meet his burden of showing that there is no significant likelihood of removal.' [Citation omitted]. 'It simply shows that the bureaucratic gears of the [federal immigration agency] are slowly grinding away.'" *Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. 2003) (quoting *Khan*, 194 F. Supp. 2d at 1137). Petitioner's general allegation of "stateless" is woefully insufficient to meet his burden of proof under *Zadvydas*.

Because progress is actually being made towards Petitioner's removal, Petitioner cannot meet his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. *See Khan*, 194 F. Supp. 2d at 1136–37 (denying habeas relief where travel documents had been requested and there was an upcoming scheduled meeting with the subject country to discuss several individuals, including the petitioner); *Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government was taking affirmative steps to obtain Vietnamese travel documents).

IV. Petitioner Is Not Entitled To Release

Judicial review of immigration matters, including of detention issues, is limited. *See I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420,

434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over aliens is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 420 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79 82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention because the authority to detain is elemental to the authority to deport and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.").

The Court's review is limited to the constitutionality of Petitioner's detention and not the merits of removal proceedings before the IJ or the BIA. The INA states, "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney

General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e); *see also Demore v. Kim*, 538 U.S. 510, 517 (2003) (finding that Section 1226(e) precludes review of Attorney General's discretionary decisions to detain alien in a particular case).

As noted above, federal district courts lack subject-matter jurisdiction over claims directly or indirectly challenging a removal order. *See Nicholas L. L. v. Barr*, Case No. 19-cv-2543 (ECT/TNL), Doc. No. 22 (Oct. 7, 2019 Opinion & Order). "[A] petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. 1252(a)(5). That judicial review will consider "all questions of law and fact, including interpretation and application of constitutional and statutory provisions" related to the order of removal. 8 U.S.C. 1252(b)(9).

Nor does this prohibition apply only to review of a final order as such. In the exercise of its constitutional power to define federal jurisdiction, in 1996, Congress repealed the existing scheme for judicial review of immigration-court proceedings and replaced it with a more restrictive scheme as reflected in newly-enacted section 1252(g). *See Reno v. American-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471, 474 (1999). Congress later amended section 1252(g) to clarify that the statute's proscription against jurisdiction specifically applies to habeas actions, such as the one Petitioner now brings before this Court. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). Thus, section 1252(g) now provides:

> Except as provided in this section and notwithstanding any other provision of law, (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1261 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 Act.

8 U.S.C. § 1252(g) (emphases added).

In his petition, Petitioner seeks release pending determination of his habeas petition.

Based on the jurisdictional provisions discussed above, this Court lacks jurisdiction to review his denial of bond. Respectfully, therefore, the Court may not release Petitioner and should dismiss the petition.

V. Conclusion

Petitioner fails to show that there is no significant likelihood of his removal in the reasonably foreseeable future. His detention, therefore, is lawful. Additionally, he cannot challenge the denial of bond in a habeas petition. Accordingly, the Court should dismiss or otherwise deny the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On June 20, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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