UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

KHALED SALAH ABU-HAMDAH, Petitioner, v. MIGUEL VERGARA, *et al.*, Respondents.	§ § § § § § § §	Civil Action No: 1:25-cv-00142

MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

Before the Court is pro se Petitioner Khaled Salah Abu-Hamdah's "Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241" (Abu-Hamdah's "§ 2241 Petition"), Respondents' "Response to Petition for Writ of Habeas Corpus and Motion for Summary Judgment" (the Government's "Motion for Summary Judgment"). Dkt. Nos. 1, 12. For the reasons discussed herein, it is recommended that the Court: (1) **GRANT** the Government's Motion for Summary Judgment; (2) **DISMISS WITHOUT PREJUDICE** Abu-Hamdah's § 2241 Petition; (3) **DECLINE** to issue Abu-Hamdah a certificate of appealability; and (4) **DIRECT** the Clerk of Court to **CLOSE** this case.

I. FACTUAL AND PROCEDURAL BACKGROUND

Abu-Hamdah is a Palestinian resident who was born in Jerusalem and has a temporary Jordanian passport, but does not have citizenship with any country. Dkt. No. 1 at 1–4; Dkt. No. 12 at 1, 3. In 1993, Abu-Hamdah was admitted to the United States as a Lawful Permanent Resident but was later convicted of second-degree murder in Florida. Dkt. No. 1 at 4; Dkt. No. 12 at 3; Dkt. No. 12-1 at 1–2. Abu-Hamdah was first removed in 2009 after serving his sentence. Dkt. No. 1 at 4; Dkt. No. 12 at 2–3; Dkt. No. 12-1 at 2.

Many years later, around July 2024, Abu-Hamdah returned to the United States and was criminally charged with illegal re-entry, to which he pled guilty. Dkt. No. 1 at 4, Dkt. No. 12 at 3; Dkt. No. 12-1 at 2. After receiving a time-served sentence, Abu-Hamdah was released into immigration custody on October 17, 2024, whereupon his 2009 removal order was reinstated. Dkt. No. 1 at 4; Dkt. No. 12 at 3; Dkt. No. 12-1 at 2. Soon after, Abu-Hamdah sought asylum under the Convention Against Torture ("CAT") and was referred to U.S. Citizenship and Immigration Services ("USCIS") for a reasonable fear interview. Dkt. No. 1 at 4–5; Dkt. No. 12 at 3; Dkt. No. 12-1 at 2. After finding that Abu-Hamdah had established a reasonable fear of torture if removed to Palestine, USCIS referred his case to an immigration judge for a merits-determination of whether to withhold removal based on asylum eligibility. Dkt. No. 1 at 5; Dkt. No. 12 at 3; Dkt. No. 12-1 at 2.

On March 24, 2025, the Immigration judge denied Abu-Hamdah's applications to withhold removal; Abu-Hamdah waived his right to appeal the immigration judge's decision on April 2, 2025. Dkt. No. 1 at 5; Dkt. No. 7; Dkt. No. 12 at 3; Dkt. No. 12-1 at 2. On May 14, 2025, Immigration and Customs Enforcement ("ICE") issued Abu-Hamdah a written decision explaining that it would continue to hold him in custody under the reinstated removal order because removal would occur in the foreseeable future. Dkt. No. 12; Dkt. No. 12-1 at 2. Despite ICE missing several self-imposed deadlines to remove him, Abu-Hamdah remains in immigration custody. *See* Dkt. No. 12 at 3, 7; Dkt. No. 12-1 at 3; Dkt. No. 14-1 at 3; Dkt. No. 15-1.; Dkt. No. 16-1 at 3. In the instant § 2241 Petition, Abu-Hamdah argues that his continued detention is unlawful under the Fifth Amendment's Due Process Clause, as interpreted by *Zadvydas v. Davis*, and the statutory framework governing removal of unauthorized immigrants. 533 U.S. 678 (2001); U.S. Const. amend. V; 8 U.S.C. § 1231(a)(1); Dkt. No. 1 at 9–10.

II. LEGAL STANDARDS

A. Rule 56 Summary Judgment

The Court shall grant summary judgment when the movant shows there is no genuine dispute of material fact and that they are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Summary judgment is designed to "isolate and dispose" of factually unsupported claims which "no reasonable jury" would resolve in the claimant's favor. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Apache Deepwater, L.L.C. v. W&T Offshore, Inc.*, 930 F.3d 647, 653 (5th Cir. 2019) (citing Fed. R. Civ. P. 50(a)(1)), *cert. denied*, 140 S. Ct. 649 (2019).

The Court is not limited to the pleadings at summary judgment and may consider "affidavits, depositions, motions, answers to interrogatories, stipulations and any other material properly before it." *Munoz v. Int'l All. of Theatrical Stage Emp. & Moving Picture Mach. Operators of U. S. & Canada*, 563 F.2d 205, 207 n.1 (5th Cir. 1977). The Court must view that evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in their favor. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (per curiam); *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992).

B. Federal Subject Matter Jurisdiction: Standing and Ripeness

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts presume that any given case lies outside this limited jurisdiction, and the party seeking to invoke jurisdiction has the burden of showing otherwise. *Id.* at 377; *Aetna Cas. & Sur. Co. v. Hillman*, 796 F.2d 770, 775 (5th Cir. 1986). Accordingly, federal courts have an independent obligation to examine their own subject matter jurisdiction, even sua sponte. *Rivero v. Fid. Invs., Inc.*, 1 F.4th 340, 344 (5th Cir. 2021), *cert. denied*, 142 S.Ct. 1670 (2022) (quoting *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006)).

The United States Constitution limits federal jurisdiction to the resolution of "Cases"

and "Controversies." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559 (1992); U.S. Const. art. III, § 2, cl. 1. Standing is an "essential and unchanging part" of the Constitution's case-or-controversy requirement. *Lujan*, 504 U.S. at 559. Standing requires, in part, an "actual or imminent" injury, *i.e.*, one that is "ripe for decision." *Id.* at 560; *Shields v. Norton*, 289 F.3d 832, 835 (5th Cir. 2002), *cert. denied sub nom. Schuehle v. Norton*, 537 U.S. 1071 (2002). For a claim to be ripe, it must have "matured sufficiently to warrant judicial intervention." *Contender Farms, L.L.P. v. U.S. Dep't of Agric.*, 779 F.3d 258, 267 (5th Cir. 2015) (internal quotations omitted). A premature claim for relief is not judicially ripe and falls outside the federal courts' limited jurisdiction. *Shields*, 289 F.3d at 835; *see also Sample v. Morrison*, 406 F.3d 310, 312 (5th Cir. 2005) (per curiam) (noting that standing and ripeness are "essential components of federal subject-matter jurisdiction.").

Without subject matter jurisdiction, federal courts have no authority to adjudicate a case and must dismiss it. *Goodrich v. United States*, 3 F.4th 776, 779 (5th Cir. 2021); Fed. R. Civ. P. 12(h)(3). Dismissal for lack of subject matter jurisdiction is without prejudice. *Carver v. Atwood*, 18 F.4th 494, 498 (5th Cir. 2021).

C. 28 U.S.C. § 2241: Habeas Review of Final Orders of Removal

The district courts may grant writs of habeas corpus to persons in federal custody in violation of federal law. 28 U.S.C. § 2241(a), (c)(1), (c)(3). This power extends to immigrant detainees in custody beyond the statutorily mandated removal period. 8 U.S.C. § 1231(a)(1)(A); *Zadvydas*, 533 U.S. at 688; *see also Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 336 (S.D. Tex. 2020) (Ellison, J.) ("Habeas corpus has been recognized as an appropriate vehicle through which noncitizens may challenge the fact of their civil immigration detention.").

Federal regulations authorize immigration judges to issue orders of removal, which become administratively final once the Board of Immigration Appeals has acted or the time

to seek review of a removal order expires. *See generally* 8 C.F.R. § 1241.1; *Texas v. United States*, 524 F. Supp. 3d 598, 614 (S.D. Tex. 2021) (Tipton, J.). Furthermore, the Attorney General is authorized to reinstate a prior order of removal as to any previously removed immigrant who later illegally re-enters the United States. 8 U.S.C. § 1231(a)(5). Such reinstated orders are considered administratively final. *Johnson v. Guzman Chavez*, 594 U.S. 523, 534 (2021). Generally, the Government has 90 days to execute a final removal order and actually remove the unauthorized immigrant. 8 U.S.C. § 1231(a)(1)(A).

Though § 2241 proceedings "remain available as a forum for statutory and constitutional challenges to post-removal-period detention," the detainee's ability to seek habeas relief is subject to certain time constraints. *Zadvydas*, 533 U.S. at 688. When the Government fails to execute a removal order within the ninety-day period to do so, any continued detention must be limited to a period "reasonably necessary" to effectuate removal; indefinite detention is not permitted. *Id.* at 689.

This does not mean that any amount confinement after the removal period is unlawful; rather, the Government's obligation to rebut a presumption of indefinite detention does not activate until after detention has been ongoing longer than six months following entry of the removal order, and only after the immigrant detainee first makes a showing that "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Up to six months of immigration detention after entry of a final removal order is, thus, "presumptively reasonable." *Id.*; *Chance v. Napolitano*, 453 F. App'x 535, 536 (5th Cir. 2011) (per curiam).

In arriving at the six-month presumption, the United States Supreme Court acknowledged the sensitive interplay of separation of powers concerns and national interests in the immigration context. *See Zadvydas*, 533 U.S. at 700. The six-month presumption, then, reflected a reasoned judgment that earlier review of post-removal-period detention posed too great a risk to institutional interests to properly warrant judicial scrutiny.

III. DISCUSSION

A. Abu-Hamdah is not entitled to relief from immigration detention because his detention is presumptively reasonable and his claim is not ripe for review.

The parties agree upon all the material facts. As relevant here, they diverge only in their conclusions concerning the legal effect of Abu-Hamdah's asylum proceedings on the Government's removal obligations. Abu-Hamdah maintains that the removal period began to run on the date of his reinstated removal order, October 17, 2024, and that the presumptively reasonable six-month detention period has elapsed. Dkt. No. 1 at 9. On this view, Abu-Hamdah's asylum proceedings "[do] not affect the calculation of in custody time for purposes of the six-month standard under *Zadvydas*[.]" Dkt. No. 5 at 1. By contrast, the Government contends that the "*Zadvydas* presumption does not apply" because Abu-Hamdah's asylum proceedings tolled the six-month period, and it has been less than six months since those proceedings ended. Dkt. No. 12 at 6. The record and available caselaw best support the Government's position.[1]

In the context of the Government's removal obligations, the Fifth Circuit first addressed the legal effect of an immigrant detainee's voluntary conduct which delays removal in *Balogun v. I.N.S.*, 9 F.3d 347 (5th Cir. 1993). In that litigation, a magistrate judge found that a Nigerian national had deliberately withheld information and obstructed immigration authorities from obtaining travel documents from the Nigerian embassy in order to impede

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[1] In support of his argument, Abu-Hamdah alerts the Court to the Supreme Court's recent decision in *Riley v. Bondi*, in which the Supreme Court clarified that "withholding-only proceedings do not disturb the finality of an otherwise final order of removal." 145 S. Ct. 2190, 2201 (2025); Dkt. No. 5 at 2. Abu-Hamdah reads *Riley* as suggesting that the "incarceration period should be calculated...from the reinstatement of his prior expedited removal order, October 17, 2024." Dkt. No. 15 at 2. The Court rejects this interpretation. *Riley* implicates the administrative finality of removal orders, which is relevant to when the removal period *begins* to run. *See* 8 U.S.C. § 1231(a)(1)(B)(i). *Riley* does not speak to what circumstances may equitably toll, *i.e.*, *stall* the removal period following some stipulated final removal order.

his removal. *Id.* at 349, 351. Though it reversed the district court's grant of summary judgment for the Government on procedural grounds, the Fifth Circuit held that "if it is shown that petitioner by his conduct has intentionally prevented INS from effecting his deportation, the six-month period should be equitably tolled until petitioner begins to cooperate with the INS in effecting his deportation or his obstruction no longer prevents the INS from bringing that about." *Id.* at 351–52. In arriving at that conclusion, the Fifth Circuit favorably cited caselaw from various other district courts and the Second Circuit which broadly stood for the view that "[t]he six-month period is tolled if the alien 'hampers' his deportation by, for example, initiating litigation regarding the validity of the deportation order." *Id.* at 350–51 (collecting cases).

The *Balogun* decision was later applied in *Lawal v. Lynch*, a case from this district, again involving a Nigerian national who allegedly obstructed his removal by falsely claiming to have renounced his Nigerian citizenship and by filing an application for asylum within the six-month detention period. 156 F. Supp. 3d 846, 850 (S.D. Tex. 2016) (Rosenthal, J.). The district court dismissed the petitioner's *Zadvydas* claims, in part, because the asylum application "prolonged his detention and delayed his removal, equitably tolling the six-month detention period." *Id.* at 854.

Here, the parties agree that Abu-Hamdah's reinstated removal order became administratively final on October 17, 2024. Dkt. No. 1 at 9; Dkt. No. 12 at 2–3. The undisputed evidence further shows that Abu-Hamdah almost immediately thereafter challenged his removal by seeking asylum under the CAT and was referred for a reasonable fear interview on October 24, 2024. Dkt. No. 1 at 4–5; Dkt. No. 12-1 at 2. The asylum process ran its course, matured into a merits hearing before an immigration judge, and did not terminate until Abu-Hamdah waived his right to appeal the immigration judge's adverse decision on April 2, 2025. Dkt. No. 1 at 5; Dkt. No. 12-1 at 2.

As Abu-Hamdah correctly observes, the removal period *began* to run on October 17, 2024, the date of the reinstated removal order. *See* 8 U.S.C. § 1231(a)(1)(B)(i); *see also Guzman Chavez*, 594 U.S. at 534 ("[T]he removal period begins when an alien is ordered removed, and the removal order becomes administratively final.") (internal quotations omitted); *accord Roman v. Garcia*, No. 6:24-CV-01006, 2025 WL 1441101, at *3 (W.D. La. Jan. 29, 2025) ("Here, Petitioner has been in her removal period for purposes of *Zadvydas* since January 24, 2023, when her 2018 removal order was reinstated."), *report and recommendation adopted sub nom. Lobaton v. Garcia*, No. 6:24-CV-01006, 2025 WL 1440056 (W.D. La. May 19, 2025). However, the removal period was effectively tolled by Abu-Hamdah's asylum application challenging his removal to Palestine. As the regulatory framework for asylum claims based on a fear of torture makes clear, it is the asylum seeker who initiates the process by "express[ing] a fear of returning to the country of removal," which triggers various non-discretionary duties on the part of immigration officials to evaluate the asylum seeker's claims. *See generally* 8 C.F.R. § 208.31 (describing various actions which immigration officials "shall" perform after the asylum seeker expresses a fear of removal to the target country).

As the district court held in *Lynch*, here too Abu-Hamdah's voluntary challenge to removal through the asylum process, "prolonged his detention and delayed his removal," thereby "equitably tolling the six-month detention period." *Lynch*, 156 F. Supp. 3d at 854. Because this obstruction to removal was not lifted until April 2, 2025, the removal period did not resume running until that date, meaning Abu-Hamdah has only been in civil immigration detention for between 145 to 152 days,[2] within the presumptively reasonable six months. The

[2] Determining the duration of immigration custody for purposes of *Zadvydas* requires knowing when Abu-Hamdah first expressed a fear of torture sufficient to initiate the asylum process. Though it is unclear when the asylum process formally began, there is no question that it was underway at the latest by October 24, 2024, when Abu-Hamdah was referred for a reasonable fear interview. Even if the Court assumed that the

Government has met its burden of showing it is entitled to judgment as a matter of law that Abu-Hamdah's detention comports with the statutory and constitutional framework governing immigrant removal. Summary Judgment that Abu-Hamdah's detention is lawful should be **GRANTED**.

Additionally, for the reasons explained in *Zadvydas*, judicial intervention at this stage is premature and the Court lacks subject matter jurisdiction to adjudicate Abu-Hamdah's claim. *See Zadvydas*, 533 U.S. at 700; *Contender Farms*, 779 F.3d at 267; *see also Chance*, 453 F. App'x at 536 ("Chance had not been in post-removal-order detention longer than the presumptively reasonable six-month period[.] Consequently, the district court did not err in finding that his challenge to his continued post removal detention was premature."). Accordingly, Abu-Hamdah's claim is not ripe and is independently subject to dismissal for lack of subject matter jurisdiction.

IV. CERTIFICATE OF APPEALABILITY

Per Rule 11(a) of the "Rules Governing Section 2254 Cases" (the "Habeas Rules"), a district court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."[3] Habeas Rule 11(a). A certificate of appealability shall not issue unless a habeas petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requires "showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different

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process was formally initiated on October 24 instead of October 17, that would only shorten the tolling period by seven days, resulting in a time-in-immigration-custody calculation of 152 days.

[3] Per Rule 1(b), "[t]he district court may apply any or all of [the Habeas Rules] to" non-§ 2254 habeas corpus petitions. Habeas Rule 1(b); *see also McLean v. Tate*, No. CV H-20-2822, 2021 WL 6007123, at *3 n.4 (S.D. Tex. Nov. 30, 2021) (Bray, J.) ("The district court may apply Rules Governing Section 2254 to actions filed under 28 U.S.C. § 2241."), *report and recommendation adopted*, No. CV H-20-2822, 2021 WL 5999286 (S.D. Tex. Dec. 17, 2021) (Hughes, J.).

manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Said differently, where claims have been dismissed, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* Where claims have been dismissed on procedural grounds, the petitioner must show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* at 478. District courts may deny certificates of appealability sua sponte without requiring further briefing or argument. *Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (per curiam). A certificate of appealability should not issue in this case because jurists of reason would not find it debatable that Abu-Hamdah's detention is lawful under the governing legal framework or that his claim is premature, and that he is, therefore, not entitled to relief.

V. RECOMMENDATION

For the foregoing reasons, it is recommended that the Court: (1) **GRANT** the Government's Motion for Summary Judgment; (2) **DISMISS WITHOUT PREJUDICE** Abu-Hamdah's § 2241 Petition; (3) **DECLINE** to issue Abu-Hamdah a certificate of appealability; and (4) **DIRECT** the Clerk of Court to **CLOSE** this case.

VI. NOTICE TO PARTIES

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions

accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

SIGNED on this **25th** day of **August, 2025,** at Brownsville, Texas.

Ignacio Torteya, III
United States Magistrate Judge