United States District Court
Western District of Texas
El Paso Division

Christopher Sambissa, and Darla Palacio Sambissa, Petitioners, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 3:25-CV-00237-DCG

Response in Opposition to
Petitioner's Writ of Habeas Corpus Petition

Respondents timely submit this response per this Court's Order dated July 1, 2025, directing service and ordering a response by July 10, 2025. *See* ECF No. 2. In her petition, Ms. Darla Palacios Sambissa ("Petitioner"), claims to be "next friend" of Christopher Sambissa and requests Mr. Sambissa's release from civil immigration detention, claiming that he is being held in violation of the law. *See* ECF No. 1. Petitioner seeks "immediate release" of Mr. Sambissa, "unless Respondents 1) immediate [*sic*] permit Mr. Sambissa to contact an attorney of his choice; and (2) within twenty-24 hours, charge [him] via Notice to Appear, transfer him to a processing center in Los Angeles, make a custody determination in his case, and arrange prompt review of that determination by an Immigration Judge (if the initial determination does not result in his release)." ECF No. 1 at 11.

Petitioner's claims lack merit, not only because she has not sufficiently proven her standing as "next friend," but also because Mr. Sambissa is not eligible for the relief sought. Mr. Sambissa is subject to the laws governing the Visa Waiver Program ("VWP"). *See* INA § 217, 8 U.S.C. § 1187. As a condition to entering the United States through the VWP, Mr. Sambissa was required

to waive his rights to contest removal, unless applying for asylum. *Id.* In other words, before he ever entered the United States in 2019, Mr. Sambissa agreed to waive his right to contest removal and was on notice of the consequences for remaining in the U.S. longer than permitted under the VWP. *Id.*

Under the VWP, Mr. Sambissa is not entitled to a Notice to Appear (NTA) for a hearing before an immigration judge to contest his removal charge, nor is he entitled to a bond hearing. *Id.; see also, e.g., Kim v. Napolitano*, No. EP–11–CV–261–KC, 2011 WL 13491886 (W.D. Tex. Nov. 14, 2011); *Kim v. Obama*, No. EP–12–CV–173–PRM, 2012 WL 10862140 (W.D. Tex. July 10, 2012).[1] In fact, he is not due any process beyond what Congress provided him by statute, which is an opportunity to contest his removal only on the basis of asylum. 8 U.S.C. § 1187 (b)(2); *see, e.g., Dep't of Homeland Sec. v. Thurassigiam*, 591 U.S. 103, 105 (2020).[2] In compliance with the statute, Mr. Sambissa was given the opportunity to contest his removal within 48 hours of being served with notice of it, but he declined the opportunity, and he now faces execution of his final administrative order. Mr. Sambissa's detention is mandated by statute and comports with the limited due process protections Congress afforded to him under VWP. This petition should be denied.

I. Facts and Procedural History

Petitioner is a native and citizen of the United Kingdom. ECF No. 1 at ¶ 1. Petitioner entered the United States lawfully through the VWP at the Las Vegas airport in January 2019. Ex.

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[1] Respondents provide the Court with these citations for the limited purpose of the *Kim* courts' (I and II) overview of the VWP. The facts of *Kim* are distinguishable from this case in that Kim claimed fear after being served with his notice of intent, which placed him into asylum-only proceedings before an Immigration Judge. By contrast, Mr. Sambissa did not claim fear or otherwise challenge his INA § 217 removal order. As such, his removal order is final.

[2] Thuraissigiam dealt with expedited removal under 8 U.S.C. § 1225, as opposed to the VWP's waiver of the right to contest removal. Still,

A (ICE Documents) at 1-3. On June 12, 2025, ICE ERO encountered Mr. Sambissa in Inglewood, California, explained to him that he was being arrested for remaining in the United States longer than permitted, and took him into ICE custody in El Paso, Texas, for processing. *Id.* at 2 (noting transfer from Los Angeles to El Paso due to lack space); *see also* ECF No. 1 ¶ 12 (acknowledging that he was informed that the basis for his arrest was his "visa overstay"). ICE records further show that Mr. Sambissa has a criminal record, having been arrested on two separate occasions, once drug possession and again for burglary. Ex. A (ICE Documents) at 2.

While in custody in El Paso, Texas, ICE processed Mr. Sambissa and issued Form 71-058, VWP Notice of Intent to Issue a Final Administrative Removal Order. Ex. A (ICE Documents), at 5-6. This written notice fully explains the law governing Mr. Sambissa's removal, the allegations and charge lodged against him, the extent of his limited rights to contest his removal, and the consequences for failing to timely exercise those rights. *Id.* Mr. Sambissa, refused to acknowledge receipt of this document, but ICE records indicate it was served on him on June 23, 2025, in El Paso, Texas. *Id.* The form further shows that he did not contest the removal. *Id.*

Although Petitioner claims that she is married to Mr. Sambissa, that she is a U.S. citizen, and that Mr. Sambissa has filed immigration paperwork based on their marriage, she attaches no such evidence to the Petition. *See* ECF No. 1 ¶ 12. ICE records did not reveal any pending immigration benefit petitions or applications filed on Mr. Sambissa's behalf. *See* Ex. A (ICE Documents) at 1-3. Also, there is no spouse reported on Form I-213. *Id.* at 1.

On or about July 3, 2025, ICE transferred Mr. Sambissa from El Paso, Texas, to the Torrance County Detention Facility ("Torrance"), located in Estancia, New Mexico, where he

remains detained pending the issuance of a travel document.[3] *See* https://www.ice.gov/detain/detention-facilities/torrance-county-detention-facility (last accessed July 10, 2025). Information on Torrance, including how to contact detainees and arrange for attorney communication, is available publicly on ICE's website. *Id.*

II. Petitioner Does Not Sufficiently Qualify As "Next Friend."

Respondents urge this Court to reconsider the preliminary finding in the Order to Show Cause, ECF No. 2, that Petitioner qualifies as "next friend" sufficiently for purposes of establishing this Court's jurisdiction over the habeas petition. *See Whitmore v. Arkansas*, 495 U.S. 149, 164 (1990) (finding that restrictions on "next friend" standing are necessary to preserve the jurisdictional limits of Article III). For example, in *Whitmore*, the Court ruled that the proposed next friend "failed to establish that [the prisoner was] unable to proceed on his behalf" where "there was no meaningful evidence that he was suffering from a mental disease, disorder, or defect that substantially affected his capacity to make an intelligent decision." *Id.* at 166.

Under *Whitmore's* two-pronged framework, Petitioner has not established she should be permitted to proceed here as Mr. Sambissa's "next friend." Brief temporary unavailability is not enough to show inaccessibility. For example, in denying a mother "next friend" standing where her adult daughter might be "temporarily" unavailable due to military service, a court relied on the absence of a showing of "a complete inability to access the courts." *J.B. ex rel. K.E. v. Charley*, No. 21-632 MV/SCY, 2021 WL 5768907, at *2 (D.N.M. Dec. 6, 2021).

As to the first prong, Petitioner has not shown that Mr. Sambissa cannot appear on his own behalf as the petitioner in a habeas proceeding. Petitioner alleges that Mr. Sambissa was being held

[3] Given the quick turnaround for this Response, Respondents respectfully request an opportunity to supplement this record with additional evidence of Mr. Sambissa's failure to comply with removal efforts, should the Court require such evidence to dismiss this habeas petition outright.

"virtually incommunicado" with "no access to the courts." ECF No. 1 ¶ 1. But Petitioner concedes that upon apprehension, Mr. Sambissa "was informed that his visa overstay was the reason for his arrest." *Id.* ¶ 12. Moreover, Form I-213, Record of Deportable Alien, dated June 23, 2035, indicates that Mr. Sambissa was offered a phone call, which he declined. Ex. A (ICE Documents) at 1-3. It further indicates that he was advised of his right to speak with a consular officer from his native country of United Kingdom. *Id.*

Additionally, on June 23, 2025, ICE served Mr. Sambissa with Form 71-058, Notice of Intent to Issue a Final Administrative Removal Order under the VWP, but Mr. Sambissa refused to sign to acknowledge service. *Id.* at 5-6. The Notice explains on its face that the alien has 48 hours from service to contest the allegations or the removal charge. *Id.* It further explains that the alien may request an extension to rebut the charges, gather evidence, or consult an attorney. *Id.* Additionally, it outlines the process for applying for relief from removal under asylum and related laws. *Id.* Finally, it explains that if the alien fails to respond within this time frame, he will be ordered removed without appeal rights and subject to detention pending physical removal in the exercise of DHS's discretion. *Id.* The Notice confirms that Mr. Sambissa "failed or refused to respond to the allegations." *Id.* As such, the record disputes that Mr. Sambissa was unable to communicate with counsel or otherwise exercise his limited rights – he declined the opportunity. Moreover, there is no evidence that Mr. Sambissa failed to understand English or was suffering any incapacitation that prohibited him from making "an intelligent decision."

Petitioner faces obstacles proving the second prong of *Whitmore*, as well, which requires a showing that a "next friend" petitioner has "some significant relationship with the real party in interest." *Whitmore*, 495 U.S. at 163-64. Petitioner claims to be Mr. Sambissa's wife but Form I-213 does not list any spouse for Mr. Sambissa, nor does it indicate that he has any immigration

benefit petitions or applications pending on his behalf based on marriage to her. Ex. A (ICE Documents) at 1-3. These omissions directly contradict Petitioner's allegations that she is his wife, and that Mr. Sambissa has filed immigrant benefit applications (Forms I-130 and I-485) based on their marriage. *See* ECF No. 1 ¶ 12.

III. Mr. Sambissa Has A Final Order of Administrative Removal Lawfully Issued Under 8 U.S.C. § 1187.

Mr. Sambissa is not entitled to release, because he is subject to a final removal order that he waived his rights to contest. *See* INA § 217, 8 U.S.C. § 1187. Under § 1187(a)(1), an individual seeking admission to the United States under the Visa Waiver Program ("VWP") applies for admission as a nonimmigrant and is provided with a waiver of the visa requirement, subject to certain conditions. 8 U.S.C. § 1182(a)(7)(B)(i)(II); *see McCarthy v. Mukasey*, 555 F.3d 450, 459–60 (5th Cir. 2009). The VWP allows qualifying aliens of designated countries to enter the United States temporarily for up to 90 days. 8 U.S.C. § 1187. To benefit from the VWP, however, the alien must waive the right to contest any action for removal, unless he is requesting asylum. 8 U.S.C. § 1187(b)(2). Removal of such an alien "shall be effected without referral … to an immigration judge…." 8 C.F.R. § 217.4(b).

This necessarily means that an alien who remains in the United States longer than the time allotted to him under the VWP may not contest a removal action due to a pending adjustment of status application (Form I-485) based on marriage to a United States citizen. *See, e.g., Nose v. Att'y Gen.*, 993 F.2d 75 (5th Cir. 1993); *Formusoh v. Gonzales*, No. 3–07–CV–128–K, 2007 WL 465305 at *1–2 (N.D. Tex. Feb. 12, 2007). Whether to pause removal for that purpose is within the sole discretion of the Department of Homeland Security, which is not subject to judicial review. *See* Adjustment of Status for VWP Entrants PM, at 2 (last accessed July 10, 2025); *Singh v. Cole*, No. 1:20–CV–763–P, 2020 WL 7655276 at *3–*8 (W.D. La. Nov. 17, 2020) (collecting cases).

While the district court has habeas jurisdiction under § 2241 to review a custody challenge, the court lacks jurisdiction to review any issues directly related to a VWP removal order. *See Vargas v. U.S. Dep't of Homeland Sec.*, No. 1:17–CV–356, 2017 WL 962420 at *2–3 (W.D. La. Nov. 10, 2017).

The authority to detain aliens subject to an administrative removal order under 8 U.S.C. § 1187 is found within the statute itself. *See* 8 U.S.C. § 1187(c)(2)(E). Petitioner argues in error that ICE is holding Mr. Sambissa without notifying him of his charges and without any removal authority, in violation of his due process rights. The record shows, however, that ICE notified Mr. Sambissa of the intent to issue a final administrative order of removal under the VWP. Ex. A (ICE Documents) at 4-6. The records further show that Mr. Sambissa declined to sign to acknowledge service and refused to respond to the allegations and charge against him, thereby waiving his right to timely contest the order. *Id.* As such, he is subject to a final order of removal. *See* 8 U.S.C. § 1187(c)(2)(E).

IV. Mr. Sambissa's Detention Comports with Due Process.

It is uncontested that Petitioner has been in ICE custody since June 12, 2025. ECF No. 1 at ¶ 12. On or about June 23, 2025, ICE issued and served Mr. Sambissa with a final administrative order of removal under the VWP. Ex. A (ICE Documents) at 4-6. The VWP statute plainly states that a participating VWP country must, within three weeks of issuance of a final order, accept the repatriation of any citizen, former citizen, or national of that country against whom that final order is issued. 8 U.S.C. § 1187(c)(2)(E). The statute cautions, however, that there is no duty owed by the United States or any right owed to the alien with respect to removal or release under this provision. *Id.* The statute further notes that the statute creates no cause of action or claim against a United States official "to compel the release, removal, or consideration for release or removal of

any alien." *Id.* In other words, the statute mandates Mr. Sambissa's detention until his removal is executed.

Courts typically review due process claims regarding immigration detention under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).[4] The *Zadvydas* court reviewed the constitutionality of final order detention as authorized by 8 U.S.C. § 1231. Under § 1231, the first 90 days following the entry of the removal order subjects the alien to mandatory detention. 8 U.S.C. § 1231(a). The removal period can be extended in a least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community, or if he fails to comply with removal efforts. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

The 90-day removal period may also be extended where ICE determines the alien is unlikely to comply with the removal order. *See Johnson v. Guzman-Chavez*, 594 U.S. 523, 528–29, 544 (2021); *see also* 8 C.F.R. § 1231(a)(6); 8 C.F.R. § 241.4. Continued detention under this provision is the "post-removal-period." *Guzman-Chavez*, 594 U.S. at 529. The statute does not specify a time limit on this post-removal period, but the Supreme Court has read an implicit limitation into the statute and held that the alien may be detained only for a period reasonably necessary to remove the alien from the United States. *Id.*; 8 C.F.R. § 241.13. Six months is the presumptively reasonable timeframe in the post-removal context. *Zadvydas*, 533 U.S. at 701.

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[4] Respondents do not concede that *Zadvydas*, as opposed to *Thuraissigiam*, for example, is the proper analysis to determine the constitutionality of final order detention under the VWP. For the sake of argument, however, even under *Zadvydas,* Petitioner fails to establish any constitutional violation here.

Although the Court recognized this presumptive period, *Zadvydas* "creates no specific limits on detention . . . as 'an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (quoting *Zadvydas*, 533 U.S. at 701).

To state a claim for relief under *Zadvydas*, Petitioner would have to show that: (1) Mr. Sambissa is in DHS custody; (2) he has a final order of removal; (3) he has been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700. Petitioner does not even allege that Mr. Sambissa has a final order of removal, but even if she had, there is no dispute that he has been detained less than 30 days in DHS custody. As such, any claim under *Zadvydas* is premature.[5] Moreover, Petitioner has not shown good cause to believe that Mr. Sambissa's removal to the U.K. is unlikely. Therefore, even under *Zadvydas*, Mr. Sambissa's post-order detention comports with due process. This habeas should be denied.

[5] Mr. Sambissa has been detained in ICE custody for less than six months, meaning that any claim filed under *Zadvydas* to challenge the constitutionality of his post-order detention is premature. In *Zadvydas*, the U.S. Supreme Court held that § 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. Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade*, 459 F.3d at 543–44; *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite "good reason," the burden will not shift to the government to prove otherwise. *Id.*

V. Conditions of Confinement Claims Are Not Cognizable Under Habeas.

Petitioner's claims related to the conditions of Mr. Sambissa's confinement are not cognizable under habeas. *See, e.g.,* ECF No. 1 ¶¶ 13–16, 31–34, 37. Any allegations regarding conditions of confinement do not provide a basis for release in habeas. *See Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021) (rejecting a habeas petitioner's argument that alleged deficiencies in the conditions of confinement would entitle him to release, with the explanation that "[s]imply stated, habeas is not available to review questions unrelated to the cause of detention," and its "sole function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose" (internal quotation marks and citation omitted)); *Ahmed v. Warden*, No. 1:24-CV-1110, 2024 WL 5104545, at *1 (W.D. La. Sept. 25, 2024) (applying this rule to an immigration detainee's claims of religions discrimination in custody as well as other alleged deficiencies in the conditions of confinement).

IV. Conclusion

Mr. Sambissa has been detained less than 30 days with a final order of administrative removal entered under 8 U.S.C. § 1187. He waived his limited rights afforded to him by Congress and his detention is mandated by statute pending the execution of his removal order. *Id.* Even under the constitutional analysis in *Zadvydas*, Petitioner's due process claim is premature. Mr. Sambissa's detention is lawful, comports with due process, and this habeas petition should be denied.

Respectfully submitted,

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Certificate of Service

I certify that on July 10, 2025, I caused to be mailed a copy of Response in Opposition to Petition for Writ of Habeas Corpus to the following (*pro se*):

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