

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-02834 (JRT/DTS)

Sonam Tsering,

Petitioner,

v.

Pamela Bondi, Kristi Noem, Todd Lyons, and Ryan
Shea,

Respondents.

**RESPONSE TO PETITION
FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

Respondents (1) Pam Bondi, Attorney General of the United States; (2) Kristi Noem, Secretary, Department of Homeland Security; and (3) Todd Lyons, Acting Director, Immigration and Customs Enforcement (collectively, the “Federal Respondents”) respectfully file this Response to Petitioner Sonam Tsering’s Petition for a Writ of Habeas Corpus. In his Petition, Tsering argues that his detention after a final order of removal is unconstitutional because there is not a significant likelihood of his removal in the reasonably foreseeable future. Tsering’s Petition should be denied. There is a significant likelihood of his removal in the reasonably foreseeable future because ICE is actively pursuing third country removal.

FACTUAL BACKGROUND

Petitioner Sonam Tsering is a native and citizen of China who claims to have entered the United States on or about August 20, 2008, as a nonimmigrant R1 – Religious Worker. U.S. Customs and Border Protection (CBP) admitted Tsering under the false identity of

FNU Thinley Rabgyal, a citizen of India. (Declaration of Thomas P. Murphy (“Murphy Decl.”) ¶ 4.)

On June 23, 2009, U.S. Citizenship and Immigration Services (USCIS) received Form I-589, Application for Asylum from Tsering. (*Id.* ¶ 5.) On August 4, 2009, USCIS found Tsering not eligible for asylum. (*Id.* ¶ 6.) His testimony was found to be non-credible, inconsistent and lacking detail. (*Id.*) Five days later, on August 8, 2009, USCIS New York issued Tsering an I-862, Notice to Appear, charging under Section 237(a)(1)(A) of the Immigration and Nationality Act (“INA”). (*Id.* ¶ 7.)

On October 20, 2010, an Immigration Judge in New York, NY granted Tsering asylum status. (Murphy Decl. ¶ 8.) USCIS adjusted Tsering’s status to an AS-6 Lawful Permanent Resident on May 25, 2012. (*Id.* ¶ 9.) However, on June 14, 2017, USCIS denied Tsering’s Form N-400, Application for Naturalization. (*Id.* ¶ 10.)

On August 14, 2018, in Hennepin County, Minnesota, Tsering was convicted of two counts of engaging in the sex trafficking of an individual and sentenced to 57 months confinement for each count. (Murphy Decl. ¶ 11, Ex. 1.) On the same date, Tsering was convicted of promoting prostitution of an individual and receiving profits from prostitution. (*Id.* ¶ 12.) No sentence was pronounced for these additional convictions. (*See id.*)

Several months later, on December 20, 2018, ERO St. Paul issued Tsering an I-862, Notice to Appear, charging under Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (“INA”) while incarcerated at a Minnesota Correctional Facility. (Murphy Decl. ¶ 13, Ex. 2.)

On June 28, 2021, an Immigration Judge (“IJ”) in Ft. Snelling, MN ordered Tsering removed from the United States and granted deferral of removal under the Convention Against Torture. (Murphy Decl. ¶ 14, Ex. 3.)

On November 12, 2024, ERO St. Paul arrested Tsering after being released by the Minnesota Correctional Facility. (Murphy Decl. ¶ 15, Ex. 4.) Less than three months later, on February 6, 2025, ERO St. Paul served Tsering with a Decision to Continue Detention. (*Id.* ¶ 16.)

On April 24, 2025, ERO St. Paul conducted a 180-day detention review interview. (Murphy Decl. ¶ 17, Ex. 5.) The panel recommended that Tsering stays in ICE custody pending third country removal efforts. (*Id.* ¶ 17.)

ERO is pursuing a third country removal and there appears to be a significant likelihood of removal in the reasonably foreseeable future. (Murphy Decl. ¶ 18.) On July 17, 2025, ERO St. Paul requested assistance from ICE HQ - Removal Management Division for assistance in determining a third country for removal. (*Id.*) Due to issues of operational security, third country considerations, and officer safety, ICE does not disclose specific dates and times of forthcoming removal itineraries. (*Id.*)

ARGUMENT

A. Scope of Review

Judicial review of immigration matters, including immigration detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *see also 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 v. Bell*, 430 U.S. 787, 792 (1977). 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.”).

Here, Tsering’s sole challenge is to his continued civil immigration detention pending his removal. (ECF No. 1 at 8, ¶ 34, 11-12, ¶ 53.) Tsering does not challenge his final order of removal, nor could he. Jurisdiction over a challenge to a final order of removal lies exclusively with the appropriate circuit court of appeals. *See* 8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (exclusive jurisdiction to review final orders of removal is with the circuit, not district, court).

B. Tsering's post-final removal order detention is constitutional.

Tsering argues that his detention pending his removal is unconstitutional. Tsering is detained, however, because ERO St. Paul is pursuing a third country removal. (Murphy Decl. ¶ 18.) ERO St. Paul requested assistance from ICE HQ - Removal Management Division for assistance in determining a third country for removal. (*Id.*)

1. Legal Standard

Tsering has been in post-removal-order detention since November 12, 2024, when ICE took custody after he was sentenced to 57 months of incarceration for his sex trafficking convictions in Hennepin County. (Murphy Decl. ¶¶ 11-12, Ex. 1, ¶ 15, Ex. 4); *see* 8 U.S.C. § 1231(a)(2) (detention in cases of post final order of removal). Under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained *indefinitely* pending removal. 533 U.S. at 699-700. *Zadvydas* established a temporal marker: post-final order of removal detentions of six months or less are presumptively constitutional. 533 U.S. at 701. Detentions longer than six months comport with due process if a "significant likelihood of removal in the reasonably foreseeable future" exists.

Id. As the Supreme Court explained:

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. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. *This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, 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.*

Id. (emphasis added).

Thus, under *Zadvydas*, a habeas petitioner has the initial burden of demonstrating that there is no significant likelihood of his or her removal in the reasonably foreseeable future. *Id.* If the petitioner does so, the government must rebut that showing. *Id.*

After the Court's decision in *Zadvydas*, the U.S. Department of Homeland Security promulgated comprehensive regulations to implement the *Zadvydas* mandate. See 8 C.F.R. §§ 241.4, 241.13, 241.14, 66 Fed. Reg. 56967-01, 56969 (Nov. 14, 2001). Accord *Alexander v. U.S. Attorney General*, 495 F. App'x 274, 277 (3d Cir. 2012) ("*Zadvydas* is not the only word on post-removal detention; regulations promulgated around the time of, and after, the *Zadvydas* decision established a series of processes for determining whether an alien should be released from custody after the expiration of the ninety-day removal period."). These regulations govern immigration detention of aliens subject to a final order of removal and establish a systemized process for detention reviews.

Section 241.4 of the regulations requires that a detainee be given a post-order custody review before the 90-day statutory removal period expires, if removal cannot be accomplished during the 90-day period. 8 C.F.R. § 241.4(k)(1)(i). Numerous considerations factor into this initial custody review, including the detainee's criminal history. 8 C.F.R. § 241.4(f). To release a detainee at this point, DHS must conclude, among other things, that he or she is "not likely to pose a threat to the community following release." 8 C.F.R. § 241.4(e).

Section 241.13 addresses the substantial likelihood of removal in the reasonably foreseeable future standard established in *Zadvydas*. It provides numerous factors relevant to the standard, including the “ongoing nature of the Service’s efforts to remove this alien,” and states that “[w]here the Service is continuing its efforts to remove the alien, there is no presumptive period of time within which the alien’s removal must be accomplished, but the prospects for the timeliness of removal must be reasonable under the circumstances.” 8 C.F.R. § 241.13(f).

2. Tsering has not met his burden under *Zadvydas*.

Tsering has not met his *Zadvydas* burden. Rather than showing that there is no significant likelihood of his removal in the near future, Tsering simply argues that his cumulative detention has lasted more than six months under a final removal order. (ECF No. 1 at 8, ¶ 34, 11-12, ¶ 53.)¹ Tsering cannot meet his burden as the Petition lacks non-conclusory arguments showing that his removal is unlikely in the reasonably foreseeable future. (*See generally* ECF No. 1.) *Zadvydas*, however, establishes no such bright line rule regarding length of detention. Rather, the Court in *Zadvydas* explicitly recognized that detention longer than six months is constitutional if removal will be accomplished reasonably soon. 533 U.S. at 701; *see also* 8 C.F.R. § 241.13(f); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (detainee must “present any facts

¹ Because Tsering has not alleged any due process claims in relation to third country removal, based on the allegations in the Petition, the June 23, 2025, U.S. Supreme Court decision in *Dept. of Homeland Security v. D.V.D., et al.*, 606 U.S. ___ (2025) does not appear to directly bear on the issues before the court here. *See Gomez v. Chestnut*, No. 2:25-cv-975 (GMN/BNW), 2025 WL 1695359, at (D. Nev. Jun. 17, 2025) (determining *D.V.D.* did not apply).

indicating that the INS is incapable of executing his removal . . . and that his detention will, therefore, be of an indefinite nature”); *Gahamanyi v. Baniecke*, No. 07-cv-4007 (RHK/RLE), 2008 WL 5071098, at *11 (D. Minn. Nov. 24, 2008) (same). Tsering cannot discharge his burden by doing nothing more than citing the total length of his detention post-removal order and asserting that “Respondents can only offer a vague plan for removal.” (ECF No. 1 at 11 ¶ 53); see *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1365-68 (N.D. Ga. 2002) (mere passage of time insufficient to meet alien’s burden of proof); *Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wa. 2002) (same). As a result, Tsering has not met his burden under *Zadvydas*; this Court should dismiss his Petition for this reason alone.

1. There appears to be a significant likelihood that Tsering will be removed in the reasonably foreseeable future.

But even if Tsering had met his burden under *Zadvydas*, immigration officials have rebutted this showing. The Declaration of Deportation Officer Thomas P. Murphy lays out the basis for detaining Tsering and the ongoing process of removing him to Pakistan. Tsering has been detained under a final removal order since November 2024, and Murphy details what immigration officials have done since then, including requesting assistance from ICE HQ - Removal Management Division for assistance in determining third country for removal. (See Murphy Decl. ¶ 18.) Due to the ongoing efforts by immigration officials, Tsering’s removal is likely in the reasonably foreseeable future. (See *id.*) Though courts have reached different conclusions based on the unique facts and circumstances of each case, the Federal Respondents have satisfied *Zadvydas*. But see *Tanha v. Warden*, No. 1:25-cv-2121 (JRR), 2025 WL

2062182, at *3-4 (D. Md. Jul. 22, 2025); (determining respondents statements about third country removal insufficient); *Vaskanyan v. Janecka*, No. 5:25-cv-1475 (MRA-AS), 2025 WL 2014208, at *5-6 (C.D. Cal. Jun. 25, 2025) (finding government did not rebut petitioner's showing that there was no significant likelihood of removal in the reasonably foreseeable future); *Munoz-Saucedo v. Pittman*, No. 25-cv-2258 (CPO), 2025 WL 1750346, at *6-8 (D.N.J. Jun. 24, 2025) (reasoning petitioner's removal to third county was not reasonably foreseeable). Moreover, Tsering is not stateless, and, far from impossible, his removal to a third country is likely, given the steps ICE has taken to effectuate his removal. (Murphy Decl. ¶¶ 17-18); *Cf. Zadvydas*, 533 U.S. 684-85 (detainee was stateless); *Jama v. ICE*, 01-cv-1172 (JRT/AJB), 2005 WL 1205160, at *4 (D. Minn. May 20, 2005) (habeas relief granted where failed deportation attempt occurred and court concluded that it "may well be impossible" under the conditions in Somalia at that time).

As Magistrate Judge Thorson recently, there are generally five circumstances where courts have found no significant likelihood of removal: "(1) where the detainee is stateless, and no country will accept [him]; (2) where the detainee's country of origin refuses to issue a travel document; (3) where there is no repatriation agreement between the detainee's native country and the United States; (4) where political conditions in the country of origin render removal virtually impossible; and (5) where a foreign country's delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue." *Ahmed v. Brott*, No. 14-cv-5000 (DSD/BRT), 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015), *report and*

recommendation adopted, 2015 WL 1542155 (Apr. 7, 2015). Tsering makes no argument that any of these circumstances is applicable here; he does not fall into any of these categories. (*See generally* ECF No. 1.)

Conclusory statements do not suffice to meet Tsering's burden. One illustrative case, *Andrade*, involved a petitioner who had been detained for more than three years when his habeas appeal reached the Fifth Circuit. *See Andrade v. Gonzales*, 459 F.3d 538, 543-44 (5th Cir. 2006), *cert. denied*, 549 U.S. 1132, 127 S. Ct. 973, 166 L. Ed. 2d 739 (2007). The Andrade Court noted that *Zadvydas* "creates no specific time limits on detention," rather 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." *Id.* (citing 533 U.S. at 701). It found that, as "[t]he alien bears the initial burden of proof in showing that no such likelihood of removal exists" and he "ha[d] offered nothing beyond his conclusory statements suggesting that he will not be immediately removed . . . following the resolution of his appeals," "[h]is constitutional claim [wa]s meritless." *Id.* (citing *Zadvydas*, 533 U.S. at 701). So too here, where Tsering offered nothing beyond conclusions and unsupported statements. *Id.*; *see also Skaftouros*, 667 F.3d at 158 (the burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treaties of the United States).

Even assuming *arguendo* that Tsering could meet his initial burden under *Zadvydas*, the record is sufficient to rebut the notion that there is no significant likelihood of Tsering's removal in the reasonably foreseeable future. 533 U.S. at 701. Immigration officials have asserted that Tsering is likely to be removed in the near future. (Murphy

Decl. ¶¶ 17-18); *see, e.g., Joseph K. v. Berg*, No. 18-cv-3125 (DWF/HB), 2019 WL 13254377, at *3-4 (D. Minn. Mar. 15, 2019), *report and recommendation adopted*, 2019 WL 13254378 (May 3, 2019); (recommending denial of habeas petition while removal to Liberia had taken ten months); *Nadin K. v. Barr*, No. 18-cv-3223 (PJS/BRT), 2019 WL 13254351, at *3 (D. Minn. Mar. 11, 2019), *report and recommendation rejected as moot*, 2019 WL 23387804 (May 17, 2019) (same).

Tsering's detention continues to serve a clear purpose "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Detention to facilitate removal has long been held to be a legitimate governmental objective. *See, e.g., Wong Wing*, 163 U.S. at 235 ("Proceedings to exclude or expel would be vain if those accused could not be held . . . while arrangements were being made for their deportation."). Petitioner's detention also has an obvious endpoint at removal. His present detention remains in the presumptively reasonable period under *Zadvydas*, but even had it lasted for longer period, "the mere passage of time . . . is not alone sufficient to show that no such likelihood exists" without more. *See Chen v. Banieke*, No. CIV. 15-2188 DSD/BRT, 2015 WL 4919889, at *4 (D. Minn. Aug. 11, 2015); *Jaiteh v. Gonzales*, No. 07-cv-1727, 2008 WL 2097592 at *2-3 (D. Minn. Apr. 28, 2008). Thus, even if Tsering could meet his burden under *Zadvydas*, Respondents have adduced evidence show that there appears to be a significant

likelihood of removal in the reasonably foreseeable future. His Petition should be denied.²

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition without an evidentiary hearing.

Dated: July 31, 2025

JOSEPH H. THOMPSON
Acting United States Attorney

s/Erin M. Secord

BY: ERIN M. SECORD
Assistant U.S. Attorney
Attorney ID No. 0391789
Email: erin.secord@usdoj.gov
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
612-664-5600

Attorneys for Federal Respondents

² In the event the Court recommends granting the petition, remand to immigration officials for a determination of the appropriate conditions of release is the appropriate remedy. *See Nguyen v. Scott*, No. 2:25-cv-1398, 2025 WL 2165995, at *9 (W.D. Wash. Jul. 30, 2025) (allowing respondents time to provide rebuttal evidence and meet and confer with petitioner's counsel after granting habeas relief in part) *Hassoun v. Sessions*, No. 18-cv-586 (FPG), 2019 WL 78984, at *7-8) (W.D.N.Y. Jan. 2, 2019) (remanding for determination of "reasonable conditions of supervision").