UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Sonam T.,

Petitioner,

v.

Pamela Bondi, et al.,

Respondents.

Case No. 25-cv-2834 (JRT/DTS)

REPORT AND RECOMMENDATION

INTRODUCTION

Petitioner Sonam Tsering has been detained by United States Immigration and Customs Enforcement (ICE) for over ten-months pending removal from the United States. Tsering asserts that his prolonged detention violates his rights under the Due Process Clause of the Fifth Amendment and the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). He therefore seeks a Writ of Habeas Corpus securing his immediate release. This Court recommends the Petition be granted as outlined below.

FINDINGS OF FACT

Tsering is a citizen and native of China who was admitted to the United States under a non-immigrant R1 visa on August 20, 2008. Murphy Decl. ¶ 4, Ex. 2, at 3, Dkt. No. 9. On October 20, 2010, Tsering was granted asylum status and on May 25, 2012, he became a lawful permanent resident. *Id.* ¶¶ 8-9, Ex. 2, at 3. On August 14, 2018, Tsering was convicted of promoting prostitution, receiving profits from prostitution, and two counts of sex trafficking. *Id.* ¶¶ 11-12, Ex. 1. He was sentenced to two consecutive sentences of 57 months incarceration. *Id.*

Shortly after Tsering began his sentence, ICE agents served Tsering with a Notice to Appear, charging that he was removable based upon his criminal convictions. *Id.* ¶ 13, Ex. 2. On June 28, 2021, an Immigration Judge ordered Tsering removed but also granted him deferral of removal to China under the Convention Against Torture (CAT). *Id.* ¶ 14, Ex. 3. On November 12, 2024, the Minnesota Department of Corrections released Tsering, but ICE agents immediately arrested him. *Id.* ¶ 15. Tsering has since remained in ICE custody. Pet. ¶ 11, Dkt. No. 1. On February 6, 2025, Tsering was informed he would remain in ICE detention beyond the 90-day removal period because he appeared to be a threat to the community and there was a significant likelihood of removal in the foreseeable future. *Id.* Ex. C. On April 24, 2025, ICE conducted a 180-day detention review interview, upon which they recommended he stay in custody "pending third country removal efforts." Murphy Decl. ¶ 17, Ex. 5.

Tsering filed this Petition for a Writ of Habeas Corpus on July 14, 2025, arguing he should be released pending removal because ICE is forbidden from holding him indefinitely, and that his deportation is not reasonably foreseeable. Pet. ¶¶ 47-53.

CONCLUSIONS OF LAW

I. Legal Standard

A. Scope of Review

Although federal district court review of removal proceedings is limited, this Court retains jurisdiction to consider statutory and constitutional challenges to the Government's detention of an alien. *Zadvydas*, 533 U.S. at 688 (holding "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention"); *see also Moallin v. Cangemi*, 427 F. Supp. 2d 908, 919-

21 (D. Minn. 2006) (explaining that certain 2005 amendments do not alter district court jurisdiction over § 2241 petitions not attacking the underlying removal order). Tsering's Petition challenges his continued civil detention, not his removability, and so falls squarely within this Court's limited jurisdiction.

B. Post-Final-Order Detention and *Zadvydas*

Tsering's detention during the post-removal-period is authorized by § 1231(a)(6) because he was found removable under § 1227(a)(2) due to his criminal conviction. *See* § 1231(a)(6) ("An alien ordered removed who is ... removable under section ... 1227(a)(2) ... may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3)"). Section 1231(a)(1)(A) provides that once "an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of three dates: (1) the date the order of removal becomes administratively final, (2) the date of the final order of any court that entered a stay of removal, or (3) the date on which the alien is released from non-immigration detention or confinement. 8 U.S.C. § 1231(a)(1)(B); *Johnson v. Guzman Chavez*, 141 S.Ct. 2271, 2281 (2021). During that 90-day removal period, the government "shall detain the alien." 8 U.S.C. § 1231(a)(2). If an alien is removable for committing a crime, the Government may detain the alien beyond 90 days. *Id.* at (a)(6).

Although the removal order in this case became administratively final in July 2021, the time at which the opportunity to appeal the removal order expired, the 90-day statutory removal period did not begin until ICE took Tsering into custody on November 14, 2024. *See* 8 U.S.C. § 1231(a)(1)(B)(iii); *see also Nasrallah v. Barr*, 590 U.S. 573, 582 (2020)

(holding a removal order is final despite removal being deferred since CAT "does not disturb the final order of removal," "affect the validity of the final order of removal," or otherwise "merge into the final order of removal.") (quoted in *Guzman Chavez*, 141 S.Ct. at 2288).

Despite the statutory language granting the government the discretion to detain certain individuals after the 90-day removal period expires, the Supreme Court has stated that post-final-order detention is only presumptively reasonable for six months under § 1231. *Zadvydas*, 533 U.S. at 699-701. A potentially indefinite civil detention, as § 1231 seemingly authorizes, would run afoul of the Fifth Amendment's Due Process Clause. *Id.* at 690-92. Because detention of individuals subject to removal proceedings is civil rather than criminal, the detention must have a non-punitive purpose. *Id.* at 690. Where the detention is potentially indefinite, it "no longer bears a reasonable relation to the purpose for which the individual was committed." *Id.* (cleaned up). Noting the ambiguity of the word "may" used to grant the Attorney General the authority to extend detention, the Supreme Court avoided these constitutional invalidation concerns and read into the statute itself a limiting principle: "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. After a six-month window of presumptively reasonable detention, inclusive of the 90-day removal period, continued detention is not authorized if removal is not reasonably foreseeable. *Id.* at 700-01.

Under the *Zadvydas* framework, once an individual has been detained under a final order of removal for over six months, he may provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," which the government must then rebut. *Id.* at 701. If removal is not reasonably foreseeable, then

the civil detention no longer serves its legitimate, non-punitive purpose and the individual must be released. *Id.* at 690-91, 699-700. The longer an individual has been in post-removal custody, what counts as the "reasonably foreseeable future" necessarily grows shorter. *Id.* at 701.

II. Analysis

Tsering has been in civil custody under a final order of removal for over ten-months. He contends that his prolonged detention violates his due process rights and precedent set by *Zadvydas*. Specifically, he argues that the deferral of his removal to China and Respondents' failure to make progress in removing him to a third country provides good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future. Pet. ¶¶ 47-53. Respondents do not dispute that Tsering has been detained beyond the 90-day statutory period or the *Zadvydas* six-month benchmark. Gov't Resp. 5, Dkt. No. 8. Rather, they argue that Tsering's continued detention is permitted since ICE is actively pursuing removal and Tsering has failed to establish that removal is unlikely to occur in the foreseeable future. *Id.* 7-11.

This Court finds Tsering has met his burden by providing good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future. Successful removals to third countries have been exceedingly rare. *See Guzman Chavez*, 141 S. Ct. at 2286 ("[A]lternative-country removal is rare"); *see also Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *8 (D.N.J. June 24, 2025) ("ICE has had historically low success in removing" individuals to third countries). Further, even if ICE identifies a third country for removal, the process of effectuating that removal requires additional lengthy procedures. *See Zavvar v. Bondi*, No. CV 25-2104-TDC, 2025

WL 2592543, at *8 (D. Md. Sept. 8, 2025) ("The fact that [petitioner] likely will have the opportunity to seek further relief from the Immigration Court, and then potentially file appeals from any adverse rulings, further demonstrates that removal is not likely in the reasonably foreseeable future."). Thus, courts have consistently found prolonged detention to be unreasonable where removal has been deferred under CAT or where removal to the petitioner's home country is otherwise unavailable. *See e.g., Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (holding that when removal has been deferred under CAT it is "a powerful indication of the improbability of ... foreseeable removal, by any objective measure"); *Munoz-Saucedo*, 2025 WL 1750346, at *8 (finding petitioner had "successfully overcome the presumption that his 164-day detention remains reasonable" since petitioner was unable to be removed to home country); *Marco A. C.-P. v. Garland*, No. CV 20-1698 (JRT/TNL), 2021 WL 1976132, at *4 (D. Minn. May 18, 2021) (finding petitioner who had been detained for 590 days "provided good reason to believe that there is no significant likelihood of removal in the foreseeable future" since petitioner could not be removed to home country); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2201470, at *1 (S.D. Tex. Aug. 1, 2025) (finding petitioner's removal was unlikely to occur in the reasonably foreseeable future since petitioner had been detained for six-months and could not be removed to home country).

Tsering has demonstrated that there is no significant likelihood of removal in the reasonably foreseeable future. Respondents have had over four years since the removal order became final to effectuate removal but have failed to show any meaningful progress. Respondents have not identified any third country that is willing to accept

Tsering.[1] Their argument that Tsering's removal is being actively pursued by ICE and is likely to occur in the foreseeable future is insufficient. *See Tadros*, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) ("Respondents' sole statement that 'ICE has been making efforts to facilitate Petitioner's removal to a country other than Egypt' is insufficient to rebut the presumption established by [petitioner]"). The only action Respondents have taken is requesting assistance from ICE HQ on July 17, 2025, three days after the filing of this Petition, despite obtaining a final removal order in 2021. Given the well-documented difficulties of removing an individual to a third country, this Court finds that Tsering has met his burden of showing there is no significant likelihood of removal in the foreseeable future, and Respondents have not rebutted that showing.

Accordingly, Tsering must be released from custody. The Department of Homeland Security may impose appropriate release conditions, through an order of supervision, as authorized by law. *See Bah v. Cangemi*, 489 F.Supp.2d 905, 923-24 (D. Minn. 2007) (aliens released from custody under *Zadvydas* may be subjected to appropriate release conditions set forth in federal regulations).

RECOMMENDATION

For the reasons set forth above, the Court RECOMMENDS THAT:

1. Tsering's Petition for Writ of Habeas Corpus (Dkt. No. 1) be GRANTED; and

[1] Respondents mistakenly assert in their brief that Thomas P. Murphy's declaration, Dkt. No. 9, describes ongoing efforts to remove Tsering to Pakistan. Gov't Resp. 8. Murphy's declaration makes no mention of Pakistan and Tsering's counsel contacted Respondents who confirmed that there are no active efforts to remove Tsering to Pakistan. Pet'r Reply 3 n. 1, Dkt No. 10.

2. Tsering be released from custody subject to any appropriate release conditions authorized by law.

Dated: September 16, 2025

s/ David T. Schultz
DAVID T. SCHULTZ
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court. It is not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).