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

EMMANUEL STEPHANE RUKIRANDE MUKIZA, Petitioner, v. THOMAS BERGAMI, et al., Respondent.	Civil Action No. 3:25-CV-02081-E-BT

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner seeks his immediate release from immigration detention. *See* ECF No. 1. As explained herein, Petitioner shows no entitlement to habeas relief, and he is not entitled to immediate release. The Court should deny the relief requested in the habeas petition.

I. Factual Background

Petitioner is a native of Gabon and citizen of the Democratic Republic of Congo. ECF 1, pg. 4. On December 22, 2008, Petitioner was admitted to the United States as a nonimmigrant student to attend Grayson County College in Sherman, Texas. App. p. 16. Petitioner failed to comply with the conditions of his student visa by failing to enroll in school beginning in June 2010. *Id.* On October 5, 2011, Petitioner pled guilty to aggravated assault with a deadly weapon in Texas state court and was sentenced to five years deferred probation. App. p. 14. Thereafter on March 26, 2012, Petitioner was placed in removal proceedings and served with a Notice to Appear. App. p. 19. An immigration judge ordered Petitioner removed to Gabon on May 3, 2012. App. pp. 21-22. Petitioner filed an appeal but later withdrew the appeal. App. p. 26.

On September 4, 2012, DHS submitted a travel document to the Gabon Embassy. App. p. 3, at ¶6. The Gabon Embassy declined to issue travel documents on October 3, 2012, due to insufficient information that Petitioner was a Gabonese national. *Id.* DHS placed Petitioner on an order of supervised release on October 16, 2012. App. p. 4, at ¶7.

Thereafter, on October 17, 2012, DHS submitted a travel document request to the Congolese Embassy. *Id.* at ¶8. DHS received a letter from the Congolese Embassy on November 21, 2014, declining to issue travel documents stating Petitioner is from Gabon, and that Petitioner himself stated that he is from Gabon. *Id.*

At Petitioner's April 6, 2015, check in with DHS, immigration officials told him to bring proof that he applied for travel documents to the Gabon Embassy. *Id.* at ¶9. At his next check in on November 13, 2015, Petitioner did not provide evidence that he applied for travel documents with the Gabon Embassy, but he stated he was in contact with the Embassy. *Id.* During 2016 and 2017, Petitioner told DHS that he was working on obtaining the travel documents. *Id.* On November 7, 2018, Petitioner informed DHS that he was unable to obtain travel documents to Gabon. *Id.*

On July 3, 2025, Petitioner's order of supervision was revoked and he was taken back into ICE custody. App. p. 4, ¶10. On August 14, 2025, DHS sent a completed travel document request to the Gabon Embassy, the request is currently pending. Petitioner filed a motion to reopen his removal proceedings with the Dallas Immigration Court on July 21, 2025. App. p. 4, ¶11. The motion was denied on July 25, 2025, by the Chief Judge of the Dallas Immigration Court. App. pp. 29-30.

Petitioner then filed a Petition for Writ of Habeas Corpus on August 6, 2025, seeking release from detention. ECF 1. Petitioner filed an emergency motion for temporary restraining

order and requested a mandatory injunction on September 13, 2025. ECF No. 6. On September 15, 2025, the district court entered an order prohibiting Petitioner's removal until November 17, 2025. ECF 10. At the time the court entered this order, Enforcement and Removal Operations (ERO) had already sent a travel document request to Gabon. OPLA has informed ERO of the court's order not to remove Petitioner until November 17, 2025.

II. Argument & Authorities

A. Petitioner's Claims Fail on the Merits Because ICE is Authorized to Detain and Deport Him.

ICE can lawfully detain Petitioner because he is subject to a final order of removal and can be detained under 8 U.S.C. § 1231(a)(6) and ICE followed all policies in re-detaining Petitioner.

1. ICE Lawfully Detained Petitioner Pursuant to 8 U.S.C. § 1231(A).

ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the "removal period." During the removal period, ICE must detain the alien. 8 U.S.C. § 1231(a)(2) ("shall detain"). If the removal period expires, ICE can either release an individual pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6).

Petitioner is outside the 90-day mandatory removal period. However, he is still eligible for ICE detention as he is an alien with a final order of removal who is present in the country illegally. *See* 8 U.S.C. § 1227(a)(1)(B). As such, ICE has statutory authority to detain Petitioner to effectuate his removal order from the United States. Petitioner's detention is therefore lawful.

2. Petitioner's Detention is Proper Because it Has Not Exceeded the Time Limit Allowed by Statute and the Supreme Court.

Petitioner's claim that his detention violates the Fifth Amendment lacks merit, because he has been detained less than six months. The Supreme Court set forth a framework to mount a Due Process challenge to post-final order detention in *Zadvydas v. Davis*, 533 U.S. 678 (2001). That framework provides that, while the government cannot indefinitely detain an alien before removal, detention for up to six months is "presumptively reasonable." *Id.* at 701. Because Petitioner has been detained less than six months, his Due Process challenge must fail.

The Supreme Court has recognized that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating "reasonableness" of detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699.

In *Zadvydas*, the Supreme Court considered the government's ability to detain an alien subject to a final order of removal before the removal is effectuated. 533 U.S. at 699. The Supreme Court held that the government cannot detain an alien "indefinitely" beyond the 90-day removal period, limiting "post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 682, 689. The Court further held that a detention period of six months is "presumptively reasonable." *Id.* at 701. Then after this first six months, the burden is on the petitioner to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the burden shifts back to the government to rebut that showing. *Id.*

Here, Petitioner's Due Process challenge fails as he has not been detained six months, making his detention presumptively reasonable. Second, Petitioner has the burden of showing that

he is unlikely to be removed in the near future. *Zadvydas*, 533 U.S. at 701. *Zadvydas*, does not require the release of every alien held in detention for more than six months; rather, the Court held: "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). To satisfy this burden, Petitioner must provide "*evidence* of 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 (11th Cir. 2002) (emphasis added). In instances where an alien is unable to produce evidence demonstrating good cause to believe that there is no significant likelihood of removal in the reasonably foreseeable future, courts have sustained continuing periods of detention pending removal well beyond the six-month time frame described as presumptively reasonable by the Supreme Court in *Zadvydas* in order to accommodate the issuance of travel documents. *See, e.g., Issa v. Holder*, No. 4:11-cv-19, 2011 WL 1671915, at *3 (M.D. Ga. Apr. 11, 2011); *Edmund v. Gonzales*, No. 05-00347, 2007 WL 2187258, at *2 (N.D. Fla. July 27, 2007) (holding that detention may still be reasonable after the "presumptively reasonable" period of detention has passed)

Petitioner fails to establish that ICE will be unable to effectuate his removal in the reasonably foreseeable future. ICE routinely removes individuals to Gabon. App. p. 5, ¶12. ICE believes that there will be no impediment to removal once ICE obtains a travel document for Petitioner. *Id.* at ¶13. Petitioner has not offered any specific evidence otherwise and cannot meet his burden under *Zadvydas*. The initial burden is on a petitioner to provide "good reason to believe" that there is no significant likelihood of his removal in the reasonably foreseeable future. *Id.* Petitioner has made no such showing. He has not produced any evidence to establish that Gabon

will not issue a travel document for him or that ICE will be unable to remove him. *See Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002) ("[P]etitioner, in effect, seeks to place the burden on the Government to show when it will remove petitioner, whereas the Supreme Court held that it is petitioner's burden first to show good reason to believe that there is no significant likelihood of removal. All petitioner has shown is the passage of some time."). Accordingly, Petitioner fails to assert *any* evidence regarding his impending removal, let alone enough evidence to establish that there is *no* significant likelihood of his removal to Gabon in the reasonably foreseeable future. This is insufficient to satisfy his burden. *Fahim*, 227 F. Supp. 2d at 1365 ("Petitioner's bare allegations are insufficient to demonstrate a significant unlikelihood of his removal in the reasonably foreseeable future."). Petitioner's claim thus fails under *Zadvydas*.

3. ICE's Revocation of Release Comports with Regulation and the Constitution.

On July 3, 2025, ICE exercised its significant discretion to revoke Petitioner's Order of Supervised Release. In his Petition, Petitioner raises claims related to ICE's decision to revoke his Order of Supervised Release.

a. The Post-Order Custody Regulations Provide for Revocation of Release at ICE's Discretion to Effectuate a Removal Order.

While 8 U.S.C. § 1231(a)(3) is silent as to revocation procedures for an individual released pursuant to an Order of Supervision, ICE has issued Post-Order Custody Regulations ("POCR") contained at 8 C.F.R. § 241.4 to set forth mechanisms concerning custody reviews, release from ICE custody, and revocation of release for individuals with final orders of removal. The regulatory provisions concerning revocation of release are contained at 8 C.F.R. § 241.4(l) and provide significant discretion to ICE to revoke release. This can occur for two reasons: the noncitizen violates the conditions of release, § 241.4(l)(1), or ICE determines in its discretion to revoke release, § 241.4(l)(2). If release is revoked due to a violation of conditions under § 241.4(l)(1), the

noncitizen must be notified of the reasons for revocation and afforded an initial informal interview promptly after his return to custody, to afford the noncitizen an opportunity to respond to the reasons for revocation stated in the revocation of release notification. 8 C.F.R. § 241.4(l)(1).

The regulation providing for revocation of release in the discretion of ICE has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody. 8 C.F.R. § 241.4(l)(2). Factors allowing for the revocation of release in the discretion of ICE include: (1) the purpose of the release has been served; (2) the noncitizen violated a condition of release; (3) revocation is appropriate to enforce a removal order or to commence removal proceedings; and (4) the conduct of the noncitizen, or any other circumstance, indicates release would no longer be appropriate. 8 C.F.R. §§ 241.4(l)(2) (i–iv).

Petitioner's revocation of release was pursuant to § 241.4(l)(2), at the discretion of ICE, to enforce his removal order. The regulations do not require notice to Petitioner. Nonetheless, ICE has provided Petitioner notice. Petitioner was informed that he would be detained because he is the subject of a final order of removal and there is now a likelihood of removal to Gabon. App. p. 8, ¶ 4. To the extent Petitioner contends that he should have received prior notice of the revocation of his release, no regulation or statute requires such prior notice. Thus, ICE has complied with the relevant regulations governing the revocation of release. Moreover, if ICE determines in its "judgment [that] travel documents can be obtained, or such document is forthcoming, the alien will not be released unless immediate removal is not practicable or in the public interest." 8 C.F.R. § 241.4(g)(3). These regulations apply to aliens who have "filed a motion to reopen immigration proceedings for consideration of relief from removal ... unless the motion to reopen is granted." 8 C.F.R. § 241.4(b)(1). Petitioner's claims that ICE's revocation of his release violated regulations fails as ICE properly exercised its ample discretion in revoking Petitioner's release.

III. Conclusion

For these reasons, the Court should dismiss the Petition, stay consideration of the Petition, or deny relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On, September 30, 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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