

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Roosevelt B.,

Case No. 25-cv-3198 (PJS/DTS)

Petitioner,

REPORT AND RECOMMENDATION

v.

Pamela Bondi, et al.,

Respondents.

INTRODUCTION

Petitioner Roosevelt Bartu Jr. has been detained by United States Immigration and Customs Enforcement (ICE) for some 20 months pending removal to Liberia. He argues his prolonged detention violates his rights under the Due Process Clause of the Fifth Amendment as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). He therefore seeks a Writ of Habeas Corpus and a Temporary Restraining Order compelling his immediate release.

Bartu argues he has been in post-removal order detention under 8 U.S.C. § 1231 since October 11, 2024, the date the Board of Immigration Appeals (BIA) affirmed his removal order. Respondents disagree, contending that because his removal proceedings remain pending on appeal, no final order of removal has been issued. Thus, they argue he is detained under § 1226(c) and may only challenge his pre-final order detention. Respondents further argue that, even if the removal order became final on October 11, 2024, he is still not entitled to habeas relief because he will be removed to Liberia in the reasonably foreseeable future.

For the reasons set forth below, this Court recommends the Petition and the TRO be denied.

FINDINGS OF FACT

I. Bartu's Criminal Convictions

Bartu is a citizen and native of Liberia who was admitted to the United States as a lawful permanent resident on December 22, 2015. Repp Decl. Ex. H, Dkt. No. 11. Bartu has multiple criminal convictions, including disorderly conduct in 2017, aggravated robbery in the first degree in 2021, and domestic assault in 2023. *Id.* Exs. B-C, H. Following his aggravated robbery conviction, Bartu was sentenced to 41 months incarceration. *Id.* Ex. B.

II. Bartu's Removal Proceedings

In June 2023, while incarcerated, Bartu was served with a Notice to Appear, charging that he was removable based upon his criminal convictions. *Id.* Ex. D. To effectuate his removal, ICE arrested Bartu on December 4, 2023. Ligon Decl. ¶ 9, Dkt. No. 9. On April 17, 2024, an Immigration Judge (IJ) ordered Bartu be removed to Liberia. Repp Decl. Ex. F. Bartu appealed the decision to the Board of Immigration (BIA) on May 17, 2024. Ligon Decl. ¶ 13.

On October 11, 2024, the BIA affirmed that Bartu was removable under 8 U.S.C. § 1227(a)(2) due to his criminal convictions but remanded the case for further review of his withholding of removal claims. Repp Decl. Ex. G at 3-6. On February 3, 2025, the IJ concluded that Bartu's aggravated robbery conviction qualified as a "particularly serious crime" under 8 U.S.C. § 1231(b)(3)(B)(ii), making him ineligible for withholding of removal and again ordered removal to Liberia. *Id.* Ex. I at 1-2. Bartu appealed the order to the BIA

on February 11, 2025. Ligon Decl. ¶ 16. On May 23, 2025, the BIA dismissed Bartu's appeal citing his failure to submit a supporting brief. Repp Decl. Ex. J at 3. The BIA noted in their order that they had declined to consider Bartu's motions to submit a late-filed brief. *Id.*

On May 28, 2025, Bartu filed a Petition for Review in the Eighth Circuit followed by a Motion to Stay Removal. Ligon Decl. ¶¶ 19, 20. While that petition was pending, on June 20, 2025, ICE obtained a travel document for Bartu from the Liberian Government. *Id.* ¶ 22. The Court of Appeals granted Bartu a stay of removal on July 3, 2025. *Id.* ¶ 24. On August 14, 2025, the Eight Circuit granted Bartu's petition for review, holding that the BIA abused its discretion in declining to consider Bartu's motions to submit a late-filed brief, and remanded the case. Repp Decl. Ex. A at 4.

III. Habeas and TRO Proceedings

On August 11, 2025, Bartu filed an Emergency Petition for a Writ of Habeas Corpus, Dkt. No. 1, and Emergency Motion for Temporary Restraining Order, Dkt. No. 2. Bartu seeks immediate release, alleging his prolonged detention violates his due process rights under *Zadvydas*. Pet., Dkt. No. 1.

CONCLUSIONS OF LAW

The Due Process Clause of the Fifth Amendment forbids the Government to deprive any person of liberty without due process of law. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

The parties do not dispute that Bartu has been in continuous immigration detention for nearly two years. They disagree on whether he is detained pursuant to a final order of

removal under 8 U.S.C. § 1231, or instead under the pre-final removal statute, 8 U.S.C. § 1226.

I. Post-Removal-Order Detention Under 8 U.S.C. § 1231(a)

An order of removal¹ is an order “concluding that the alien is deportable or ordering deportation.” 8 U.S.C. § 1101(a)(47)(A). Such order “shall become final upon the earlier of” two dates: when the BIA affirms it, or when the time for seeking review by the BIA expires. *Id.* § 1101 (a)(47)(B).

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).

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

¹ The terms “removal” and “deportation” mean the same thing. *Lopez v. Heinauer*. 332 F.3d 507, 510 n.3 (8th Cir. 2003); see also *Nasrallah v. Barr*, 590 U.S. 573, 5821(2020) (final order of removal is a final order concluding an alien is deportable or ordering deportation, citing § 1101(a)(47)(A)).

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 of Post-Removal-Order Detention

Bartu asserts he has been detained for over a year since his removal order became administratively final on October 11, 2024, when the BIA affirmed he was removable under 8 U.S.C. § 1227(a)(2). He seeks release under *Zadvydas* on the ground that there

is no significant likelihood he will be removed in the reasonably foreseeable future. Respondents contend that there has been no final order of removal, arguing his removal proceedings are still pending and he is in pre-removal status under 8 U.S.C. § 1226. Gov't Resp. 10-15, Dkt. No 8. As outlined below, this Court finds that Bartu is subject to a final removal order but his current detention is authorized by § 1231(a)(6).

A. Final Order of Removal

Bartu has been subject to a final order of removal since October 11, 2024, when the BIA affirmed his removability under 8 U.S.C. § 1227(a)(2). See 8 U.S.C. § 1101(a)(47)(A)(B)(i). The Supreme Court has emphasized that withholding-only proceedings do not affect the finality of removal orders. *Guzman Chavez*, 141 S.Ct. at 2287 (“[T]he finality of the order of removal does not depend in any way on the outcome of the withholding-only proceedings.”); see also *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020) (holding a 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.”). Respondents do not dispute this Supreme Court precedent but argue that Bartu’s subsequent appeals concern the removal order itself rather than merely withholding of removal. However, the record demonstrates otherwise.

On October 11, 2024, the BIA affirmed Bartu’s removability and limited its remand to Bartu’s withholding claims:

At the outset, we affirm the Immigration Judge’s conclusion that the respondent is removable under section 237(a)(2)(A)(iii) of the INA, 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony crime of violence based on his conviction for aggravated robbery in the first degree under section 609.245.1 of the Minnesota Statutes.

Contrary to the respondent's argument, he also is removable under section 237(a)(2)(E)(i) of the INA, 8 U.S.C. § 1227(a)(2)(E)(i), because pursuant to Eighth Circuit case law his misdemeanor domestic assault conviction under section 609.2242.1(1) of the Minnesota Statutes is a categorical crime of domestic violence.

Repp Decl. Ex. G at 3-6. On February 3, 2025, the IJ confirmed the narrow scope of that remand and expressly did not reopen removability:

This was a decision on remand to address whether Respondent has been convicted of a particularly serious crime and the merits of his claim to withholding of removal. Due to the limited scope of the BIA remand, this Court does not analyze removability, asylum eligibility or deferral of removal eligibility anew. Those aspects of the Court's April 17, 2024 decision remain undisturbed.

Id. Ex. I at 1-2. Bartu's own February 11, 2025, notice of appeal likewise challenged only the particularly serious crime determination and the issues regarding his withholding/deferral of removal:

(1) the IJ erred in determining Respondent's aggravated robbery conviction constitutes a particularly serious crime; (2) the IJ erred in alternatively holding Respondent is not eligible for withholding of removal; (3) the IJ erred in holding Respondent is not eligible for deferral of removal under the Convention Against Torture.

Id. Ex. K at 2. Finally, when the Eighth Circuit granted the petition for review on August 14, 2025, the court described the posture the exact same way; removability was affirmed and the remand concerned only the withholding proceedings:

An immigration judge (IJ) sustained the removability charges, and in April 2024, entered a partial adverse credibility determination, and denied Bartu asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Bartu appealed the decision to the BIA; the BIA affirmed the removability determination, and remanded the case to the IJ for further consideration of both Bartu's credibility, and the IJ's withholding-of-removal analysis in light

of new evidence involving the circumstances surrounding Bartu's robbery conviction.

Id. Ex. A at 3. Accordingly, this Court finds that Bartu has been subject to a final order of removal since October 11, 2024.

B. Application of the Unencumbered Time Approach

The Eighth Circuit granted a stay of removal on July 3, 2025, while the petition for review was pending. On August 14, 2025, the court granted Bartu's petition for review and remanded the case. Although Bartu was subject to a final removal order on October 11, 2024, the stay interrupted the removal period established under, 8 U.S.C. § 1231(a)(1)(B).

In *Bah v. Cangemi*, 489 F.Supp.2d 905 (D. Minn. 2007), this Court considered how *Zadvydas* is applied to someone, like Bartu, who has been subject to a final removal order but has later been granted a stay of that order. In *Bah*, the petitioner awaited deportation for over two years, but had not been released under *Zadvydas* because he had repeatedly shifted between pre- and final-removal status. *Id.* at 917. The court identified two separate analytical approaches to answering the question how *Zadvydas* applies to the time an alien had been detained while shifting in and out of final removal status. Under the first approach – retrospective recharacterization – the issuance of a stay order such as Bartu's causes all "time served" to be retrospectively recharacterized as pre-removal detention, thereby resulting in a resetting of the *Zadvydas* clock. In the "unencumbered time" approach, the court aggregates all time during which the alien was in removal and post-removal status, and could have lawfully been removed. In *Bah*, the Court determined that the unencumbered time approach is the proper one and, applying it to *Bah*, found his detention exceeded the six-month period presumptively reasonable under *Zadvydas*.

Since *Bah* had demonstrated there was no significant likelihood of removal in the reasonably foreseeable future, *Zadvydas* compelled *Bah*'s immediate release.

Applying *Bah*'s unencumbered time approach, *Bartu* has spent approximately eight months—the period between October 11, 2024, when his removal order was issued until July 3, 2025, when the stay was granted—in final removal status. This eight-month period exceeds the presumptively reasonable six-month period set by *Zadvydas*.

C. *Bartu*'s *Zadvydas* Claim

Though *Bartu* has been detained under a final removal order for more than six months, he nonetheless has the initial burden to establish “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” which the government must then rebut. *Zadvydas*, 533 U.S. at 701. *Bartu* attempts to meet his burden based solely on his prolonged detention and the fact that his withholding-only proceedings are still pending.

Courts have consistently held that prolonged detention, without more, is insufficient to establish that removal is not reasonably foreseeable. See e.g., *Joseph K. v. Berg*, No. 18-cv-3125, 2019 WL 13254377, at *2 (D. Minn. Mar. 15, 2019), *report and recommendation adopted*, 2019 WL 13254378 (D. Minn. May 3, 2019) (“When a petitioner is unable to point to evidence other than prolonged detention to show good cause to believe that there is no significant likelihood of removal in the reasonably foreseeable future, courts have routinely sustained periods of detention longer than the presumptive six months”); see also *Sokpa-Anku v. Paget*, No. 017-CV-1107, 2018 WL 3130681, at *3 (D. Minn. June 8, 2018), *report and recommendation adopted*, 2018 WL 3129002 (D. Minn. June 26, 2018) (“[T]he passage of time alone is perhaps insufficient

to establish a petitioner's initial burden under *Zadvydas*"). Similarly, the mere existence of pending withholding-only proceedings does not establish removal is unlikely to occur in the foreseeable future. See *Perez v. Berg*, No. 24-CV-3251, 2025 WL 566884, at *4 (D. Minn. Jan. 6, 2025), *report and recommendation adopted*, 2025 WL 566321 (D. Minn. Feb. 20, 2025) (holding pending withholding-only proceedings are insufficient "to demonstrate that a noncitizen's removal is not likely to occur in the reasonably foreseeable future."); see also *Castaneda v. Perry*, 95 F.4th 750, 758 (4th Cir. 2024) ("[O]ngoing withholding-only proceedings do not, standing alone, cast doubt on the foreseeability of an alien's removal in the future."). Bartu has failed to meet his initial burden.

More importantly, even if Bartu has met his burden, ICE has rebutted it. ICE obtained a travel document for Bartu from the Liberian government on June 20, 2025. Ligon Decl. ¶ 22. The issuance of a travel document is strong evidence that removal will occur in the reasonably foreseeable future. See *Gael A. O. v. DHS/ICE Off. of Chief Couns.*, No. 18-CV-3269, 2019 WL 3325839, at *4 (D. Minn. May 13, 2019), *report and recommendation adopted*, 2019 WL 3322920 (D. Minn. July 24, 2019) (holding the regular removal of detainees to Gabon and the obtaining of a travel document was "sufficient to show a significant likelihood of removal"); see also *Nhean v. Brott*, No. CV 17-28, 2017 WL 2437268, at *3 (D. Minn. May 2, 2017), *report and recommendation adopted*, 2017 WL 2437246 (D. Minn. June 5, 2017) (holding the issuance of a travel document was adequate to rebut the petitioner's showing of no significant likelihood of removal). Accordingly, this Court finds that Bartu has failed to meet his initial burden of

showing there is no significant likelihood of removal in the foreseeable future and that, even if he has, ICE has successfully rebutted it.

III. Conditions of Confinement

Bartu challenges the conditions of his confinement at the Sherburne County Jail, arguing his detention is unconstitutionally punitive. Pet. ¶¶ 92-97. Such a claim falls outside the proper scope of habeas review under 28 U.S.C. § 2241. See e.g., *Jorgensen v. Birkholz*, No. 20-CV-2349, 2021 WL 3476709, at *6 (D. Minn. Feb. 18, 2021), (“Conditions of confinement claims are not cognizable under habeas corpus.”); *Mohammed S. v. Tritten*, No. 20-CV-783, 2020 WL 2750109, at *2 (D. Minn. May 27, 2020) (“[T]he Eighth Circuit held that as a general matter, habeas proceedings are not available to challenge conditions of confinement.”). “Instead, claims challenging conditions of confinement are proper as civil rights claims under 42 U.S.C. § 1983.” *Jorgensen*, 2021 WL 3476709, at *6 (citing *Nelson v. Campbell*, 541 U.S. 637, 643 (2004)).

IV. Temporary Restraining Order

Because the Court recommends denying habeas relief on the merits, the Emergency Motion for Temporary Restraining Order should be denied as moot.

RECOMMENDATION

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

1. Bartu’s Emergency Petition for Writ of Habeas Corpus (Dkt. No. 1) be DENIED; and

2. Bartu's Emergency Motion for Temporary Restraining Order (Dkt. No. 2) be DENIED as moot.

Dated: September 19, 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).