UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

MINGHAO CHEN, *Petitioner,* v. KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA BONDI, United States Attorney General, *Respondents.*	§ § § § § § § § § § §	CIVIL ACTION NO. 5:25-CV-150

MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Respondents, KRISTI NOEM, Secretary of the United States Department of Homeland Security and PAMELA BONDI, United States Attorney General (hereafter "Respondents"), file this Motion to Dismiss the Petition for a Writ of Habeas Corpus of Petitioner Minghao Chen (Dkt. No. 1), pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).[1]

EXHIBITS

RESPONDENTS' EXHIBIT 1	Declaration of Naiokie L. Guerra dated October 17, 2025, Deportation Officer, "DO" for the Harlingen Field Office of Enforcement and Removal Operations ("ERO"), U.S. Immigration and Customs Enforcement ("ICE"), U.S. Department of Homeland Security ("DHS").
RESPONDENTS' EXHIBIT 2	Sealed A-File of Petitioner Minghao Chen.

[1] Respondents file this Rule 12 motion in lieu of an answer and preserves all affirmative defenses for inclusion in an answer in the event the instant motion is denied.

I. NATURE AND STAGE OF PROCEEDING

1. Petitioner, Minghao Chen (hereafter "Petitioner"), is a native and citizen of China, who is awaiting removal from the United States, following an Order of the Immigration Judge, entered on May 13, 2025, which Petitioner did not appeal. Respondents' Ex. 1, ¶ 7.

2. Petitioner is an immigration detainee in the custody of the Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE) and is currently detained at the Webb County Detention Center located at 9998 US-83, Laredo, Texas 78046, where he has been detained Since February 7, 2025.

3. On September 15, 2025, Petitioner filed the instant habeas petition, alleging that he is being held in violation of the Constitution, laws, or treaties of the United States, on the following grounds: unlawful detention; no significant likelihood of removal in the foreseeable future; and unreasonable prolonged incarceration. Dkt. No. 1 at 1-3. The Petitioner's request for relief includes being released immediately and declared that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a). *Id.* at 33.

II. STANDARD OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(1)

4. Federal courts are courts of limited jurisdiction. *See Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001), cert. denied, 534 U.S. 993 (2001); *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court must dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also* Fed. R. Civ. P. 12(h)(3)("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.") "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th

facts' language ... is best forgotten as an incomplete, negative gloss on an accepted pleading standard ...."). To withstand a Rule 12(b)(6) motion, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.

In *Ashcroft v. Iqbal*, --- U.S. ----, 129 S.Ct. 1937 (2009), the Supreme Court elaborated on the pleading standards discussed in *Twombly*. The Court set out the following procedure for evaluating whether a complaint should be dismissed: (1) identify allegations that are conclusory, and disregard them for purposes of determining whether the complaint states a claim for relief; and (2) determine whether the remaining allegations, accepted as true, plausibly suggest an entitlement to relief. *Iqbal*, 129 S.Ct. at 1949-50.

With respect to the "plausibility" prong of the dismissal analysis, *Iqbal* explained that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). The *Iqbal* Court further noted that "[t]he plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556). Finally, the Supreme Court has made clear that "'when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, 'this basic deficiency should ... be exposed at the point of minimum expenditure of time and money by the parties and the court.'" *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)(quoting *Twombly*, 550 U.S. 544).

ALLEGATIONS CONTAINED IN HABEAS PETITION

Through her petition, De Oliveira, who has a reinstated prior removal order, and who was in withholding of removal proceedings in immigration court when she filed the petition, seeks to be given an opportunity to be heard by an Immigration Judge ("IJ"), and present her defense for

8. On March 20, 2025, Petitioner filed for asylum and withholding of removal.

9. On May 13, 2025, the Immigration Judge found the Petitioner inadmissible under the Immigration and Nationality Act 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) and denied Petitioner's applications for asylum. Respondents' Ex. 2 at 125. Withholding of Removal under INA § 241(b)(3) was granted. Petitioner waived his right to appeal the decision to the Board of Immigration Appeals ("BIA"), which rendered his May 13, 2025, order final. *Id.* at 4.

10. On June 18, 2025, ERO started the custody review by serving Petitioner a Notice of his custody file review Ex. 1, ¶ 8.

11. On August 22, 2025, a 90-day Post Order Custody Review ("POCR") was conducted by ERO. Ex. 1, ¶ 9. ERO determined that Petitioner would continue to be detained because ICE determined that Petitioner would pose a significant flight risk. *Id.* ERO also elevated the case to headquarters for coordination of third country removal and are working with agency counterparts to identify a third country for removal. *Id* at ¶10. Petitioner is currently in the process of being scheduled for an interview to assist in identifying a third country for removal. *Id.* at ¶12.

IV. ISSUE PRESENTED

12. Whether Petitioner's detention is lawful.

IV. ARGUMENT

A. Petitioner's Detention is lawful.

13. Petitioner challenges ICE's continued custody, asserting that his prolonged detention is unreasonable. Dkt. No. 1 at ¶ 3.

14. Under 8 U.S.C. § 1231, the Attorney General has an initial period of 90 days (known as the removal period) to remove an alien who is subject to a removal order, during which time the alien "shall" be detained. 8 U.S.C. § 1231(a)(1)(A) and (a)(2). If not removed within the initial 90-

day removal period, it is presumptively constitutional for an alien to be detained for six months after a final order of removal is entered. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

15. To prevail under *Zadvydas*, the alien must make a two-part showing. First, he must establish that he has been detained beyond the six-month period set forth in *Zadvydas*. *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002). Second, he must provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas,* 533 U.S. at 701; *Akinwale*, 287 F. 3d at 1052. Petitioner fails to satisfy *Zadvydas*. First, Petitioner has not exceeded the six-month presumptively reasonable period following the issuance of his removal order on May 13, 2025, which became final without appeal. Second, Petitioner provides no good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. Because Petitioner cannot prevail under the *Zadvydas* standard, Petitioner is lawfully detained, and the Court should dismiss his petition for writ of habeas corpus.

16. In *Zadvydas v. Davis*, the Supreme Court considered a challenge to 8 U.S.C. § 1231(a) and was asked to decide whether the statute authorized indefinite detention of a removable alien. 533 U.S. 678. The Court held that the continued detention of removable aliens beyond the mandated 90-day removal period was permissible under the Constitution, but only for as long as was "reasonably necessary to bring about the alien's removal from the United States." *Id.* at 689. To that end, the Court announced that post-removal detention for six months is presumptively reasonable. *Zadvydas*, 533 U.S. at 701. After the expiration of the six-month period, an alien is eligible for release, only if he or she shows "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The Government thereafter can respond with evidence sufficient to rebut the showing. *Zadvydas*, 533 U.S. at 701.

17. In light of the Supreme Court's decision in *Zadvydas*, the Attorney General promulgated

regulations to establish and implement a formal administrative process to review the custody of aliens, like Petitioner, who are being detained subject to a final order of removal, deportation, or exclusion. 8 U.S.C. § 1231, C.F.R. § 241 *et seq*. Under the regulatory provisions, post-order aliens who remain detained beyond the removal period may present to ICE their claims that they should be released from detention because there is no significant likelihood that they will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(d). Upon a written claim, ICE will analyze the likelihood of removal under the circumstances and information available. 8 C.F.R. § 241.13(f). Unless and until ICE determines that there is no significant likelihood of removal in the foreseeable future, the alien will continue to be detained, and his detention will continue to be governed by the post-order detention standards. 8 C.F.R. § 241.13(g)(2).

18. For an alien to establish a prima facie claim for relief under the *Zadvydas* rationale, he must not only show post-removal detention in excess of six months, but he must also provide evidence of good reason to believe that there is no significant likelihood of removal in the foreseeable future. 8 C.F.R. § 241.13(d). Where the alien fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006), cert. denied, 549 U.S. 1132 (2007) (acknowledging the alien's initial burden of proof where claim under *Zadvydas* was without merit because it offered "nothing beyond [alien's] conclusory statements" suggesting that removal was not foreseeable).

19. Here, Petitioner has made conclusory allegations that his removal is not reasonably foreseeable because "DHS has tried to remove Petitioner for several months since May 13, 2025" and "[a]bsent a Court order, Petitioner will likely remain detained for many more months, if not years." Dkt. No. 1 at ¶2. These conclusory allegations, however, are insufficient grounds to state or support a claim that Petitioner's detention is unlawful. Petitioner has failed to make an initial

showing that he has been detained for more than six months since the issuance of his final order. Moreover, ERO is actively working to identify a third country to which Petitioner may be removed. Respondents' Ex. 1, ¶ 11.

B. Petitioner has failed to establish that he has been detained beyond the six-month presumptively reasonable period

20. It is presumptively constitutional for an alien to be detained for six months after a final order of removal is entered. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In the present case, Petitioner's final order of removal was issued on May 13, 2025. Even accounting for the withholding of removal issued on that date, the time elapsed since then does not total the six-month presumptively reasonable period set forth in *Zadvydas*.

C. There is a significant likelihood of Petitioner's removal to a third country in the reasonably foreseeable future.

21. Under *Zadvydas*, it is the petitioner's initial burden to provide "a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Once that initial burden is met, the burden then shifts to the government to respond with sufficient evidence to rebut the presumption of reasonableness. Petitioner asserts there is no significant likelihood of his removal because DHS has been unable to remove Petitioner for several months since May 13, 2025. Dkt. No. 1, ¶ 2. However, contrary to Petitioner's allegations, there is a significant likelihood of his removal, as ERO is actively working with other agencies to identify and secure acceptance from a third country for his removal. Respondents' Ex.1, ¶ 11.

22. In *Alam*, the Court emphasized that "removal is not "reasonably foreseeable" in cases "where no country would accept the detainee, the country of origin refused to issue the proper travel documents, the United States and the country of origin did not have a removal agreement in place, or the country to which the deportee was going to be removed was unresponsive for a

significant period of time." *Alam v. Nielsen, et al.*, 312 F. Supp.3d 574, (S.D. Texas, Houston Division – May 9, 2018). Petitioner has not offered any evidence demonstrating that he meets any of the examples outlined in *Alam* or any evidence altogether to indicate that he will not be deported in the reasonably foreseeable future. Thus, his habeas claim should be dismissed.

D. Petitioner's detention does not violate his right to Due Process under the Fifth Amendment

23. Petitioner's other argument for why he should be released is that his detention violates his right to due process under the Fifth Amendment. To the extent that Petitioner is arguing that the Government is violating due process by detaining him during his removal proceedings, such an argument is contrary to the INA and has been rejected by the Supreme Court. *See* U.S.C. § 1226(a) (Stating that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."); *see also Denmore v. Kim*, 538 U.S. 510, 123 S.Ct. 1708, 155 L.Ed. d724(2003) (holding that "detention during [deportation] proceedings is a constitutionally valid aspect of the process"); *Wong Wing v. United States,* 163 U.S. 228, 16 S.Ct. 977, 41 L.Ed. 140 (1896) (explaining that "[p]roceedings to exclude or expel would be vain if those accused could not be held in custody…while arrangements were being made for their deportation."). Accordingly, this petition warrants dismissal.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully requests that this Court grant its motion and dismiss Petitioner's petition for writ of habeas corpus.

Dated: October 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2025, a true and correct copy of the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

By: ***s/Gabriel Abebe***
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