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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

AIPING LIU,

Petitioner,

v.

YOLANDA PITTMAN, *et al.*,

Respondents.

Hon. Katharine S. Hayden, U.S.D.J.

Civil Action No. 25-16289(KSH)

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

TABLE OF CONTENTS

Preliminary Statement..... 1

Background 1

 I. Petitioner’s Immigration History..... 1

 II. Procedural History..... 2

Standard of Review..... 3

Argument- The Court Should Dismiss The Habeas Petition..... 3

 I. Petitioner’s Detention Under §1231(a)(6) Is Proper and Not of
 Unreasonable Duration 3

 A. Petitioner’s Challenge to ICE’s Ability to Detain Her Fails..... 4

 B. Petitioner’s Detention Remains “Presumptively Reasonable” 6

Conclusion..... 8

TABLE OF AUTHORITIES

Cases

Alam v. Nielsen,
312 F. Supp. 3d 574 (S.D. Tex. 2018) 6

Barneboy v. Att’y Gen.,
150 F. App’x 258 (3d Cir. 2005) 8

Beckford v. Lynch,
168 F. Supp. 3d..... 5

Callender v. Shanahan,
281 F. Supp. 3d 428 (S.D.N.Y. 2017) 5

Cesar v. Achim,
542 F. Supp. 2d 897 (E.D. Wis. 2008)..... 7

Chun Yat Ma v. Asher,
2012 WL 1432229 (W.D. Wash. Apr. 25, 2012)..... 5

Heckler v. Chaney,
470 U.S. (1985) 4

Johnson v. Arteaga-Martinez,
596 U.S. 573 (2022) 7

Kevin A.M. v. Essex Cnty. Corr. Facility,
No. 21-11212 (SDW), 2021 WL 4772130 (D.N.J. Oct. 12, 2021) 7

Luma v. Aviles,
No. 13-6292 (ES), 2014 WL 5503260 (D.N.J. Oct. 29, 2014) 7

McFarland v. Scott,
512 U.S. 849 (1994) 3

Moncrieffe v. Yost,
367 F. App’x 286 (3d Cir. 2010) 3

Primero v. Mattivelo,
No. 25-11442, 2025 WL 1899115 (D. Mass. July 9, 2025) 6

Rodriguez–Guardado v. Smith,
271 F. Supp. 3d 331 (D. Mass. Sept. 22, 2017)..... 5

Zadvydas v. Davis,
533 U.S. 678 (2001) 1-8

Statutes

8 U.S.C. § 1231(a)(1) 1, 2, 4
8 U.S.C. § 1231(a)(1), (a)(6) 3
8 U.S.C. § 1231(a)(1)(A) 4, 5
8 U.S.C. § 1231(a)(2) 4
8 U.S.C. § 1231(a)(6) 1, 3-5, 7
28 U.S.C. § 2241 1, 3
28 U.S.C. § 2241(c)(3) 3
28 U.S.C. § 2254 3

Regulations

8 C.F.R. § 241.4 6
8 C.F.R. § 241.4(d), (f), (h) & (k) 6
8 C.F.R. § 241.4(k)(1)(i) 6
8 C.F.R. § 1241.1 2, 3

PRELIMINARY STATEMENT

On October 2, 2025, Petitioner was detained by immigration officials under 8 U.S.C. § 1231(a)(6) because she is subject to a final order of removal. Petitioner brings this habeas action under 28 U.S.C. § 2241 alleging that her detention violates § 1231(a)(1) and the Due Process Clause. *See* ECF No. 1 (“Pet.”) ¶¶ 10, 41-52. Petitioner seeks an order from this Court staying any removal from the United States and releasing Petitioner from custody. *See* Pet. (Prayer for Relief).

Petitioner is lawfully detained under § 1231(a)(6), not § 1231(a)(1). And § 1231(a)(6) grants United States Immigration and Customs Enforcement (“ICE”) authority to detain individuals, like Petitioner, subject to a final order of removal beyond the initial 90-day removal period. Petitioner has been detained for just over one month. Her detention is reasonable under the Supreme Court’s decision in *Zadvydas v. Davis*, which recognized that detention less than six months is presumptively reasonable. Respondents respectfully request that the Court dismiss this habeas petition.

BACKGROUND

I. Petitioner’s Immigration History

Petitioner is a citizen of China. *See* Pet. ¶ 2. Petitioner entered the United States with a fraudulent Japanese passport on April 4, 1994. *Id.* On May 31, 1995, Petitioner’s I-589 Application for Asylum and Withholding of Removal was denied, and she was ordered excluded from the United States. *Id.* ¶ 3. On July 1, 1999, Petitioner filed a motion to reopen based on claims under the Convention Against Torture. *Id.* ¶ 4. On November 15, 2000, Petitioner’s motion to reopen was denied. *Id.*

¶ 5. On March 11, 2002, the Board of Immigration Appeals (“BIA”) dismissed the appeal. *Id.* On February 22, 2008, Petitioner filed a second motion to reopen. *Id.* ¶ 6. On April 22, 2008, the BIA denied the motion to reopen. *Id.* ¶ 7. Petitioner’s May 1995 order of exclusion is administratively final. *Id.* ¶ 40; *see* 8 C.F.R. § 1241.1.

On June 28, 2019, U.S. Citizenship and Immigration Service (“USCIS”) approved an I-130 immigrant petition filed by Petitioner’s U.S. Citizen son. *Id.* ¶ 8.

On October 2, 2025, ICE detained Petitioner when she appeared for her adjustment of status interview. *Id.* ¶ 9.¹ Petitioner does not allege that ICE had detained her at any point prior to October 2, 2025.

II. Procedural History

Petitioner filed the Petition on October 6, 2025, alleging her detention violated § 1231(a)(1) and was unreasonably prolonged under the Supreme Court’s *Zadvydas* analysis. *See* Pet. Petitioner also filed an application for a temporary restraining order (“TRO”) and an order to show cause asking the Court to direct USCIS to adjudicate her pending application for adjustment of status within seven days and temporarily enjoin ICE from removing, detaining, or transferring her. *See* ECF 2. On October 8, 2025, the Court denied Petitioner’s motion for a TRO and ordered Respondents to answer by October 22, 2025. *See* ECF 5.

After granting Respondent’s extension request, Petitioner voluntarily withdrew allegations of the Petition relating to adjudication of Petitioner’s

¹ Paragraph 32 alleges that ICE detained Petitioner “[o]n August 18, 2025,” but that appears to be a scrivener’s error. Pet. ¶ 32.

applications submitted to USCIS because the applications were denied on October 30, 2025. *See* ECF 9.

STANDARD OF REVIEW

28 U.S.C. § 2241(c)(3) authorizes a court to grant a writ of habeas corpus where a prisoner “is in custody in violation of the Constitution or laws or treaties of the United States.” Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, which is applicable to § 2241 petitions through Rule 1(b), provides this Court with the authority to dismiss a habeas petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” *See also Moncrieffe v. Yost*, 367 F. App’x 286, 288 n.2 (3d Cir. 2010) (noting summary dismissal of a § 2241 habeas petition is appropriate pursuant to Rule 4 of the Rules Governing Section 2254 Cases). “Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face.” *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing 28 U.S.C. § 2254, Rule 4).

ARGUMENT

THE COURT SHOULD DISMISS THE HABEAS PETITION

I. Petitioner’s Detention Under § 1231(a)(6) Is Proper and Not of Unreasonable Duration

Petitioner argues her detention violates 8 U.S.C. § 1231(a)(1), (a)(6), and *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner’s May 31, 1995 order of exclusion became administratively final after she exhausted her appellate options. *See* Pet. ¶ 40; 8 C.F.R. § 1241.1. Petitioner was not detained during the removal or

post-order period prior to October 2, 2025. The Court should reject her claim for the reasons that follow.

A. Petitioner’s Challenge to ICE’s Ability to Detain Her Fails

Petitioner raises several arguments why ICE should not have been allowed to detain her in the first place. Each argument fails.

Petitioner argues, first, her detention is unlawful because it “rests solely on the existence of the decades-old exclusion order[.]” Pet. ¶ 40. Petitioner is incorrect. Where, as here, an alien is subject to a final order of removal, there is a 90-day “removal period,” during which the government “shall” remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). However, § 1231(a)(1)(A) does not mandate immediate arrest or detention upon finality. The 90-day period begins to run when the order becomes administratively or judicially final, but the timing of arrest and detention within that period remains a matter of agency discretion. *See, e.g., Heckler v. Chaney*, 470 U.S. 82, 831 (1985) (“This Court has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”). Thus, DHS’s timing in executing a removal order, and detaining an alien as part of that process, falls squarely within its discretionary enforcement authority. And contrary to Petitioner’s argument here suggesting that DHS is barred from or limited in detaining her now, Congress authorized the detention of aliens under § 1231(a)(6) after the removal period. *Zadvydas*, 533 U.S. at 682 (“A special statute authorizes further detention if the Government fails to remove the alien during those 90 days.”).

Petitioner’s argument that, after the initial 90-day period, DHS is barred or limited in whether it can detain is incorrect:

[Petitioner] is confusing the 90–day “removal period” under 8 U.S.C. § 1231(a)(1)(A), which began when his order of removal became final in 2006, *see id.* § 1231(a)(1)(B), with the six-month “presumptively reasonable period of detention” under *Zadvydas*, 533 U.S. at 701, 121 S. Ct. 2491, which could not have begun until he was detained by ICE in 2015. This result is compelled not only by the language of *Zadvydas* but also by its logic. It is the prospect of indefinite “detention” that led the Supreme Court to create the six-month presumption. *Id.* at 682, 121 S. Ct. 2491; *see also id.* at 689, 121 S. Ct. 2491 (read “in light of the Constitution’s demands,” § 1231(a)(6) “does not permit indefinite detention”); *Beckford*, 168 F. Supp. 3d at 536 (“In *Zadvydas*, the Supreme Court was presented with the challenge of reconciling [the] apparent authorization of indefinite detention [under § 1231(a)(6)] with the Fifth Amendment’s prohibition against depriving a person of their liberty without due process.”). Delays in effecting the deportation of a non-detained alien do not implicate the alien’s liberty interests and thus do not raise the same “serious constitutional concerns.” *Zadvydas*, 533 U.S. at 682, 121 S. Ct. 2491.

Callender v. Shanahan, 281 F. Supp. 3d 428, 435–36 (S.D.N.Y. 2017); *see id.* at n.7 (“[T]he district courts have come to inconsistent conclusions [about *Zadvydas* accrual] . . . however, most district courts have concluded—as does this Court—that *Zadvydas* meant what it said: six months is the presumptively reasonable period of ‘detention’ after the entry of a final order of removal.”); *see, e.g., Rodriguez–Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. Sept. 22, 2017) (“Petitioner’s contention that the *Zadvydas* clock runs while he is not in custody defies common sense.”); *Chun Yat Ma v. Asher*, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012) (“Petitioner first argues that the time period for analyzing his detention under *Zadvydas* begins from when his removal order became final, rather than the date of his detention. The Court

disagrees . . . Detention is the core issue in *Zadvydas*, and Petitioner was not detained until May 9, 2011,” five years after his order of removal became final in 2006).

Next, Petitioner argues, citing to 8 C.F.R. § 241.4, that ICE had to provide her a pre-detention individualized determination of dangerousness and flight risk. *See* Pet. ¶ 39 (citing 8 C.F.R. § 241.4(d), (f), (h) & (k)). Section 241.4 “prescribes in considerable detail a set of custody reviews, release procedures, and other processes” for aliens in the post-removal period. *Alam v. Nielsen*, 312 F. Supp. 3d 574, 582 (S.D. Tex. 2018). These procedures, however, apply to “continued” detention beyond the 90-day removal period, or to re-detention after discretionary release from custody. *See Primero v. Mattivelo*, No. 25-11442, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025). Neither occurred here: Petitioner was not subject to “continued” detention, nor was she redetained after release from detention. And Petitioner will be entitled to periodic custody reviews while she remains in detention. *See* 8 C.F.R. § 241.4(k)(1)(i).

Lastly, Petitioner argues that detention is improper because her exclusion order was “effectively resolved.” Pet. ¶ 40. By that, she seems to mean she was in the process of applying to adjust her status to a lawful permanent resident. But her mere application does not confer any status on her, and her exclusion order remains valid despite her multiple efforts to reopen her exclusion proceedings. Accordingly, ICE’s decision to detain Petitioner to effectuate her removal is lawful.

B. Petitioner’s Detention Remains “Presumptively Reasonable”

Petitioner next argues that her detention violates *Zadvydas*. That argument also fails.

The INA does not place an explicit time limit on how long detention during the “post-removal-period” can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only detain aliens in the post-removal-period for the time “reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). And the Supreme Court further clarified that a six-month period of detention is “presumptively reasonable.” *Id.* at 701. “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.” *Id.*

Here, DHS detained Petitioner under § 1231(a)(6) and has held her in custody for approximately one-and-a-half months. There is no basis to argue that she is subject to any “prolonged detention” at this point. Indeed, based on *Zadvydas*, any challenge to a post-removal-order detention by an alien who has been detained “for less than six months must be dismissed as premature.” *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021) (emphasis added); *see also Luma v. Aviles*, No. 13-6292 (ES), 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2014) (“To state a claim under *Zadvydas*, the presumptively reasonable six-month removal period must have expired at the time the Petition was filed; any earlier challenge to post-removal-order detention is premature and subject to dismissal.”); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008) (collecting cases).

Moreover, Petitioner advances no argument that her removal is not reasonably foreseeable. *See Barneboy v. Att’y Gen.*, 150 F. App’x 258, 261 n.2 (3d Cir. 2005) (recognizing “burden is on the alien to provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” (quotation omitted)). But even if Petitioner did propound that argument, the claim would fail. Here, ICE arrested Petitioner on October 2, immediately detained her, and is prepared to remove her. *Zadvydas* permits ICE a reasonable period to work through the diplomatic and logistical requirements to do so.

CONCLUSION

For the foregoing reasons, the Court should dismiss or deny the Amended Petition.

Respectfully submitted,

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