

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOEL TEMBENG MUKONG,

Petitioner,

v.

MARTIN FRINK, *et al.*,

Respondents.

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CIVIL NO. 4:25-CV-05352

**RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND
MOTION TO DISMISS, AND IN THE ALTERNATIVE, FOR SUMMARY
JUDGMENT**

The Federal Respondents¹ file this response to the Petition for Writ of Habeas Corpus (Dkt. 1) and moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. As explained below, Petitioner’s claim for habeas relief should be denied because he is lawfully detained.

I. ARGUMENT SUMMARY

Petitioner, Joel Tembeng Mukong, is a native and citizen of Cameroon. (Dkt. 1 at 1); Gov’t Ex. 1 ¶ 9. Petitioner has been convicted of an aggravated felony and is currently in the custody of U.S. Immigration and Customs Enforcement (“ICE”). He has been ordered removed from the United States, and he has an order for withholding of removal under the

¹ The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

Convention Against Torture. During his detention, ICE has been working to obtain the necessary travel documents to effectuate the Petitioner's removal.

Despite his criminal history and the reasonable foreseeability of his removal, the Petitioner claims his statutory and constitutional due process rights have been violated. In support of his claim, Petitioner asserts that his removal is not likely in the reasonably foreseeable future because his removal has not occurred within six months of his removal order becoming final. However, the mere fact that a removal has not occurred within six months does not necessarily constitute a violation of law. Rather, the Court must consider the available facts to determine whether a removal is reasonably foreseeable. Here, the facts that show that the Petitioner's removal is reasonably foreseeable. Moreover, any delay in effectuating the Petitioner's removal is partly due to his own actions. Therefore, Petitioner fails to show that his detention amounts to a statutory or constitutional violation. Consequently, his habeas petition should be denied.

II. NATURE AND STAGE OF THE PROCEEDING

On November 7, 2025, Petitioner filed a petition for writ of habeas corpus, contesting his continued detention. (Dkt. 1). He claims that his continued detention six months past entry of a final removal order violates statutory and constitutional law. On November 20, 2025, the Court ordered Respondents to answer the petition. (Dkt. 5).

III. RELEVANT BACKGROUND

Petitioner is being detained pursuant to a final removal order. (Dkt. 1 at 1).

On January 16, 2016, Petitioner was admitted to the United States at Washington, DC as a nonimmigrant student (F1). Govt. Ex. 1 ¶ 10. On February 6, 2017, Petitioner's F1 status

was terminated. Gov't Ex. 1 ¶ 11. On April 23, 2018, Petitioner filed form I-485, Application to Register Permanent Residence or adjust Status, which was denied on December 16, 2019. Gov't Ex. 1 ¶ 12. On March 26, 2021, Petitioner was convicted of Conspiracy to Commit Money Laundering, 18 U.S.C § 1956(h), and sentenced to 32 months of imprisonment. Gov't Ex. 1 ¶ 13; (Dkt. 1 at 2).

On December 19, 2024, Field Office of Enforcement and Removal Operations (“ERO”) Houston, Compliance Enforcement Unit, Team Delta encountered Petitioner outside a residence associated with his vehicle located in Houston, Texas. Gov't Ex. 1 ¶ 14. The officers positively identified Petitioner and took him into custody without incident. Gov't Ex. 1 ¶ 14. On December 19, 2024, Team Delta transported Petitioner to the Montgomery Processing Center in Conroe, Texas, for processing. Gov't Ex. 1 ¶ 15. On December 20, 2024, Petitioner was served with a Notice of Intent to Issue a Final Administrative Removal Order being charged with 237(a)(2)(A)(iii) of the act, 8 U.S.C. 1227(a)(2)(A)(iii), as amended, being convicted of an aggravated felony as defined in Section 101(a)(43)(D) of the Act, 8 U.S.C. 1101(a)(43)(D). Gov't Ex. 1 ¶ 16.

On December 23, 2024, ICE transferred Petitioner to the Houston Contract Detention Facility in Houston, Texas. Gov't Ex. 1 ¶ 17. On March 10, 2025, OPLA stated Administrative Deportation for Petitioner was legally sufficient. Gov't Ex. 1 ¶ 18. On March 11, 2025, the United States Citizenship and Immigration Services (“USCIS”) stated that on November 7, 2016, Petitioner filed Form, I-589 Application for Asylum and Withholding of Removal. Gov't Ex. 1 ¶ 19. On March 17, 2025, ERO submitted Petitioner's reasonable fear documents to USCIS. Gov't Ex. 1 ¶ 20. On March 27, 2025, an Immigration Judge vacated DHS's decision

and found that Petitioner had established a reasonable possibility that he would be persecuted on the basis of a protected ground, or a reasonable possibility that he would be tortured in the country of removal. Gov't Ex. 1 ¶ 21. Petitioner was placed in withholding only proceedings. Gov't Ex. 1 ¶ 21.

On March 14, 2025, Petitioner appeared before an Immigration Judge. Gov't Ex. 1 ¶ 22. The Immigration Judge rescheduled Petitioner's hearing to June 12, 2025. Gov't Ex. 1 ¶ 22. On June 12, 2025, Petitioner appeared before an Immigration Judge and his hearing was rescheduled to June 20, 2025. Gov't Ex. 1 ¶ 23. On June 20, 2025, Petitioner's hearing was rescheduled to July 7, 2025, due to delayed biometrics. Gov't Ex. 1 ¶ 24.

On July 7, 2025, an Immigration Judge denied Petitioner's Withholding of Removal under Immigration and Nationality Act 241(b)(3) but granted Withholding of Removal under the Convention Against Torture. Gov't Ex. 1 ¶ 25. DHS reserved appeal. Gov't Ex. 1 ¶ 25. On August 11, 2025, OPLA stated they would not appeal the Immigration Judge's decision. Gov't Ex. 1 ¶ 26. On September 7, 2025, ERO contacted Headquarters Removals and International Operations ("HQ-RIO") to inquire which countries are accepting Cameroonians. Gov't Ex. 1 ¶ 27. On September 15, 2025, Petitioner stated he would like to be removed to Canada, Australia and South Africa. Gov't Ex. 1 ¶ 28.

On September 17, 2025, ERO contacted the Consulate of Canada, Australia and South Africa for third country of removal. Gov't Ex. 1 ¶ 29. ERO intends to keep Petitioner in custody. Gov't Ex. 1 ¶ 30.

IV. STANDARD OF REVIEW

A. Fed. R. Civ. P. 12(b)(1)

Because federal courts are of limited jurisdiction, Rule 12(b)(1) requires dismissal of a claim if the court lacks subject matter jurisdiction. See *Kokkunen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994); *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, (1978). A claim must be dismissed if the court lacks subject matter jurisdiction to entertain it. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998). The party invoking federal jurisdiction bears the burden of proving its existence by a preponderance of the evidence and outside evidence may be considered. *Id.*; *Patterson v. Weinberger*, 644 F.2d 521 (5th Cir. 1981); *Stanley v. Central Intelligence Agency*, 639 F.2d 1146 (5th Cir. 1981).

B. Fed. R. Civ. P. 12(b)(6)

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only if the pleadings, along with evidence, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); see also Fed. R. Civ. P. 56(c). Once a motion has been made, the nonmoving party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to show the existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 322-23. If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Id.* at 322. Furthermore, “only reasonable inferences can be drawn from the evidence in favor of the nonmoving party.” *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 469 n.14 (1992) (emphasis in original) (quoting *H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1012 (2d Cir. 1989)).

V. STATEMENT OF ISSUES

1. Whether the Petitioner is lawfully detained.

VI. ARGUMENT

A. Petitioner's Detention is Lawful

Petitioner's detention is lawful because (1) ICE has discretion to continue his detention; and (2) he fails to show that the length of his detention is unreasonable under the *Zadvydas* framework given his foreseeable removal.

1. Due to his criminal history and foreseeable removal, Petitioner's continued detention is lawful.

The statutory provision governing Petitioner's detention is 8 U.S.C. § 1231, which applies once an alien is ordered removed. Under this section, the Department of Homeland Security must physically remove him from the United States within a 90-day removal period. 8 U.S.C. § 1231. But, even after the 90-day removal period expires, ICE has the discretion to continue detention for certain aliens. 8 U.S.C. § 1231. Based on Petitioner's admitted criminal history of an aggravated felony conviction for conspiracy to commit money laundering and 32-month prison sentence, he is a danger to the community. (Dkt. 1 at 2). Consequently, Petitioner is within the class of aliens properly detained. 8 C.F.R. § 241.4.

Further, the Attorney General has 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 C.F.R. § 241, *et seq.* Under the regulations, 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). 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).

Here, ICE has properly extended Petitioner's detention under § 1231 and the applicable regulations due to the determination that he is likely to be removed in the reasonably foreseeable future. Gov't Ex. 1.

2. Petitioner's detention is lawful under *Zadvydas*.

The length of Petitioner's detention is not unconstitutional in light of his reasonably foreseeable removal. A petitioner may challenge continued detention under the framework established by the U.S. Supreme Court in *Zadvydas v. Davis*, which held that detention may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In a challenge to detention under *Zadvydas*, the petitioner must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The Government must then respond with evidence sufficient to rebut that showing. *Id.* The Supreme Court further emphasized that the six-month presumption does not mean that every alien not removed must be released after six months. *Id.* "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.*

As an initial matter, the six-month presumption is tolled if the petitioner has caused the delay in removal. *See Lawal v. Lynch*, 156 F. Supp. 3d 846, 854 (S.D. Tex. 2016). "Cases in other circuits that have considered the question recognize equitable tolling to extend the six month period to detain an alien who has been ordered removed and who files litigation

challenging the validity of the removal order.” *Id.* (collecting cases). By exercising his legal right to seek relief through a withholding of removal application, Petitioner prolonged his detention. This was his right. (Dkt. 1 at 3-5). But he cannot dispute that the delay in his removal, at least in part, was caused by his own actions. *See, e.g., Fuentes-De Canjura*, 2019 WL 4739411, at * (“Here, the delay in [the petitioner’s] removal prolonging her detention has been caused by ongoing withholding-only proceedings, including a remand by the BIA and the subsequent appeal of the IJ’s decision on remand.”); *Okechukwu Mummee Amadi v. Young*, No. 2:06CV1138, 2007 WL 855358, at *4 (W.D. La. Feb. 12, 2007) (“[T]he court finds that because petitioner’s continuing litigation is the cause of his continued detention, he cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future.”).

Petitioner’s habeas petition also fails due to its lack of specific allegations. When a petitioner 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) (acknowledging the petitioner’s initial burden of proof where claim under *Zadvydas* was without merit because it offered nothing beyond the petitioner’s conclusory statements suggesting that removal was not foreseeable).

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). Nothing in Petitioner’s case suggests that any such barrier now stands in the way of his removal. Rather, the Petitioner fails to cite to any evidence, other than

conclusory statements, that there is no significant likelihood of removal in the reasonably foreseeable future. Rather, the Petition merely asserts that “there is no significant likelihood of removal in the reasonably foreseeable future because (1) he cannot legally be removed to Cameroon; (2) no other country has agreed to accept him; and (3) even if such a country were identified, Petitioner would be entitled to apply for protection from that country.” Dkt. 1 at 9. This conclusion alone does not lead to a reasonable inference that Petitioner has no significant likelihood of removal in the foreseeable future. He does not otherwise provide any other “good reason” to challenge his detention.

The removal order became final 30 days after the Convention Against Torture application was granted on July 7, 2025, and six months have not past since that date. Therefore, the claim is not ripe for consideration. *See Zadvydas*, 533 U.S. at 700; *Contender Farms*, 779 F.3d at 267; *see also Chance*, 453 F. App’x at 536 (“Chance had not been in post-removal-order detention longer than the presumptively reasonable six-month period[.] Consequently, the district court did not err in finding that his challenge to his continued post removal detention was premature.”). However, even assuming for the sake of argument that the Court deems Petitioner to have been detained, for the purposes of the *Zadvydas* presumption, more than six months, his petition should nevertheless be denied. He cannot satisfy his burden of proof of showing that there is “no significant likelihood of removal in the reasonably foreseeable future.” 8 C.F.R. § 241.13(d); *Zadvydas*, 533 U.S. at 801. As explained in the accompanying declaration, ICE has reached out to countries identified by Petitioner for potential third country removal. Gov’t Ex. 1 ¶¶ 28-29. There is no evidence that those

countries have refused to admit the Petitioner. Therefore, Petitioner cannot meet his burden of showing there is no significant likelihood of removal in the reasonably foreseeable future.

Ultimately, Petitioner's detention pending removal comports with statutory and constitutional law and comports with *Zadvydas*.

VII. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied.

Dated: December 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 10, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Catina Haynes Perry _____

Catina Haynes Perry
Assistant United States Attorney