

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

JOEL TEMBENG MUKONG,

Petitioner,

v.

MARTIN FRINK, Warden, *et al.*,

Respondents.

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Case No. 4:25-cv-05352

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS  
AND MOTION FOR SUMMARY JUDGMENT**

Petitioner, Joel Tembeng Mukong, submits this response and opposition to Respondents’ motion to dismiss and for summary judgment. ECF No. 11. Respondents’ motion argues that Petitioner should be denied relief because Immigration and Customs Enforcement (“ICE”) has the discretion and statutory or regulatory authority to detain him, he has not been detained for a sufficient length of time, and that his removal is likely in the near future. None of these arguments are convincing nor does the record in this matter support Respondents’ arguments. Petitioner’s detention violates the law, and this Court should deny Respondents’ motion and the writ of habeas corpus should issue.

**I. Nature and Stage of the Proceedings**

This matter involves a petition for habeas corpus filed by a noncitizen detainee, being held in mandatory custody well after the expiration of the statutory removal period and with no reasonable likelihood of removal in the foreseeable future. Petitioner was issued a Final Administrative Removal Order (“FARO”) on December 20, 2024. ECF No. 1-1 at 20. He has remained in ICE custody since that time. Petitioner was granted Withholding of Removal under the Convention Against Torture on June 20, 2025 and an order to that effect was issued on July 7,

2025. ECF No. 1-1 at 31-32. The Department of Homeland Security did not appeal that order. ECF No. 12 ¶ 26.

On November 7, 2025, still detained by Respondents, Petitioner sought habeas corpus relief before this Court. ECF No. 1. Respondents have since submitted their response and motion to dismiss or alternatively grant summary judgement and Petitioner now makes this reply.

## **II. Issue Before the Court**

The issue before the Court is whether Petitioner's detention is unlawful and unconstitutional as it has extended beyond the statutory removal period and his removal is unlikely in the reasonably foreseeable future.

## **III. Argument**

The Court should deny Respondents' motion to dismiss or for summary judgment as there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future and Respondents' conclusory statements that he is lawfully detained or that his removal is likely are not supported by the facts of the matter. Moreover, Petitioner is not required to be detained for six months before he may challenge his detention because detention beyond the statutory removal period is no longer authorized when removal is merely a remote possibility. The motions for dismissal and for summary judgment should be denied and Petitioner should be granted the relief requested in his petition.

### **a. Petitioner's Detention and Custody Under § 1231**

Respondents argue that Petitioner's detention is lawful under 8 U.S.C. § 1231 and 8 C.F.R. § 241.4 and that ICE has discretion to detain noncitizens after the removal period. ECF No. 11 at 6-7. However, while the statute allows for continued detention past the 90-day removal period in certain circumstances, it does not require it and Respondents do not have unlimited discretion to

detain indefinitely under the statute. 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001) (“[W]hile ‘may’ suggests discretion, it does not necessarily suggest unlimited discretion.”). Indeed, it was detention pursuant to this very provision that the Supreme Court reviewed in *Zadvydas* and found to be implicitly limited to detention only for a period reasonably necessary to carry out removal. *Zadvydas*, 533 U.S. at 689. As the Court held, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

Petitioner is allegedly being held in custody because he is a danger to the community under 8 C.F.R. § 241.4. ECF No. 11 at 6. The statement in Respondents’ motion is the only place in the record where one might find that determination. Notably, their accompanying exhibit does not state that such a finding forms the basis of his continued detention but rather states only that ICE “intends to keep [Petitioner] in custody.” ECF No. 12 ¶ 30. The regulations require that any determination to continue custody after the removal period be predicated on consideration of specific factors—of which only one is the existence of a criminal record. 8 C.F.R. § 241.4(e)-(f). Petitioner is unaware which factors if any were considered in his case or whether a formal custody review has ever actually been conducted in accordance with the requirements of 8 C.F.R. 241.4(d) but he has never received the required written notice of any purported review. ECF No. 1-1 ¶ 7, 12. Additionally, and as noted above, Respondents’ exhibit sheds no light on the decision to continue to detain Petitioner or the process by which it was made—including whether a formal custody review has been conducted—but bluntly states only that they “intend” to keep him in custody. ECF No. 12 ¶ 30.

The Respondents also point to an administrative process outlined in the regulations, wherein the onus is on a noncitizen to prove to the satisfaction of ICE that their removal is not foreseeable. ECF No. 11 at 6-7; 8 C.F.R. 241.13(d). First, the process is quite evidently deficient

in that, regardless of when a noncitizen requests the opportunity to prove their removal is unlikely in the reasonably foreseeable future, ICE may postpone a decision until the expiration of the removal period and are under “no obligation to release” a noncitizen who has shown their removal is unlikely until after ICE has had a full six months to make their own determination as to the likelihood of removal. Secondly, the Supreme Court’s concerns about the process available under 8 C.F.R. § 241.4(d) are equally applicable to § 241.13 as the “sole procedural protections available” are in administrative proceedings where the noncitizen has the burden of proof and the process allows an “administrative body the unreviewable authority to make determinations implicating fundamental rights.”. *Zadvydas*, 533 U.S. at 692 (citing to *Superintendent, Mass. Correctional Institution at Walpole v. Hill*, 472 U.S. 445, 450 (1985)). Finally, the mere existence of such a process cannot absolve them of their independent obligations to cease detention once removal is not reasonably foreseeable nor can it render Petitioner’s custody constitutional. Here, although the statute may provide authority to detain Petitioner as an initial matter, it does not provide authority to detain him indefinitely or when his removal is not reasonably likely in the foreseeable future.

**b. The Removal Period & Six-Month Presumption Under *Zadvydas***

Respondents posit that Petitioner is lawfully detained as it has been less than 6 months since his removal order became final. ECF No. 11 at 9. They cite to *Zadvydas*, for the presumption that the claim is not ripe for consideration as the six months have not passed. *Id.* Respectfully, their argument is both factually and legally incorrect.

Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) expired on March 20, 2025. That is because, the removal period is triggered by only three events under the statute: (1) the date an order of removal becomes administratively final; (2) the date of a court’s final order if

a court has issued a stay pending judicial review of the removal order; or (3) the date a noncitizen is released from detention or confinement that is not part of an immigration process. 8 U.S.C. § 1231(a)(1)(B). Petitioner was issued a FARO on December 20, 2024 and it became final immediately upon issuance. *Riley v. Bondi*, 606 U.S. 259, 267 (2025). The subsequent withholding of removal proceedings had no effect on the finality of the removal order. *Id.* at 269 (finding that withholding of removal is distinct from the removal order itself and “does not affect the validity of a previously issued order of removal or render that order non-final.”). The removal period thus began and ended under the plain language of the statute 90 days after Petitioner’s FARO was issued. Moreover, even if the Court were to measure the removal period from the date the withholding of removal order became final (August 6, 2025) Petitioner’s detention would still be outside the removal period.

Respondents argue that the presumptively reasonable 6-month detention period should be tolled since Petitioner applied for withholding of removal. ECF No. 11 at 7-8. While it is true that some courts have declined to find prolonged detention unlawful when the petitioner was responsible for the delays in their removal, the authorities cited by Respondents involved petitioners whose litigation and other underlying proceedings was *ongoing* at the time they submitted their habeas petitions. *See Fuentes-De Canjura v. McAleenan*, 2019 WL 4739411, at \* 6 (noting petitioner had not been removed because “her withholding of removal and CAT proceedings [were] still ongoing.”); *Okechukwu Mummee Amadi v. Young*, No. 2:06CV1138, 2007 WL 855358, at \*4 (W.D. La. Feb. 12, 2007) (finding the petitioner’s “continuing litigation” to be the cause of his continued detention). *Lawal* is equally unavailing as the petitioner there had repeatedly refused to cooperate with efforts to obtain a travel document. *Lawal v. Lynch*, 156 F.

Supp. 3d 846, 849–50 (S.D. Tex. 2016). Most importantly, there is no ongoing litigation in this matter as all proceedings were concluded with the issuance of the order for withholding of removal.

As stated herein, Petitioner’s removal order was final on December 20, 2024. Even if the Court finds it appropriate to toll the six-month *Zadvydas* period because Petitioner sought withholding of removal, his application was granted on July 7, 2025 and the decision would have been final *but for* ICE reserving appeal. Calculated from that date, the six months have passed. Calculated from the date ICE’s appeal deadline expired on August 6, 2025, Petitioner’s detention is quickly approaching the six-month mark. Should the Court determine to use the later date, Petitioner may still challenge his detention because while there is a presumptive six-month period in which post-order detention might be constitutionally permissible, that presumption is subject to rebuttal. *Zadvydas*, 533 U.S. at 699; see also *Villanueva v. Tate*, 2025 WL 2774610, at \*10 (“[T]he presumption of constitutionality during that six-month period is rebuttable.”). Detention may only continue for “a period reasonably necessary to bring about that alien’s removal from the United States” and once removal becomes unlikely, it is no longer authorized. *Id.* at 689. Because Petitioner’s removal is not likely in the foreseeable future, his detention may be found unlawful.

**c. Petitioner’s Removal is Unlikely in the Reasonably Foreseeable Future**

The basic responsibility of the habeas court is to “ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Zadvydas*, 533 U.S. at 699. In so doing, the habeas court “should measure reasonableness primarily in terms of the statute’s basic purpose, namely, assuring the noncitizen’s presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699-700. “A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future.”

*Kane v. Mukasey*, No. CV B-08-037, 2008 WL 11393137, at \*5 (S.D. Tex. Aug. 21, 2008), *superseded by*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008) (a new report and recommendation was entered denying the petition as moot because petitioner was deported prior to the order adopting), R & R adopted, 2008 WL 11393148 (S.D. Tex. Oct. 7, 2008).

Petitioner acknowledges that he has the initial burden of proof in these proceedings and notes that “because the habeas proceeding is civil in nature,” he “must satisfy his burden of proof by a preponderance of the evidence.” *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at \*4 (S.D. Tex. Sept. 26, 2025)(quoting *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011); also citing *Bruce v. Estelle*, 536 F.2d 1051, 1058 (5th Cir. 1976)). Respondents argue that Petitioner has not made an initial offer of proof that his removal is unlikely. ECF No. 11 at 8-10. They characterize Petitioner’s statements to that effect as conclusory. *Id.* at 9. Respectfully, Respondents have mischaracterized the facts and evidence in this matter.

It is a fact that Petitioner may not be removed to his native country of Cameroon. There is no question that he has been granted withholding of removal from that country and he may not be removed to Cameroon unless the withholding order is reopened and rescinded. ECF No. 1-1 at 31-32. It is not speculative or conclusory to state that Petitioner has no travel or repatriation documents for any other country. Petitioner explained in his sworn declaration that he has not been asked to complete any applications for travel documents nor has any further information been communicated to him by any ICE officer other than asking him to which countries he would like to be removed. ECF No. 1-1 at ¶ 8-13. The affidavit submitted by Respondents from Deportation Officer (“DO”) Daniel Matthews corroborates the truth of this statement as it is noted therein that ICE has “contacted the Consulate of Canada, Australia and South Africa for third country removal” but there is no information regarding a reply, issuance of a travel document, or anticipation of a

response in the foreseeable future. ECF No. 12 at ¶ 29. Frankly, the affidavit does not even say if formal requests for travel documents have been submitted but only that some sort of contact was attempted. *Id.* Quite obviously, no other country has agreed to accept Petitioner upon removal.

Respondents cite *Alam*, noting that courts have found removal not be reasonably foreseeable where “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*, 312 F. Supp. 3d 574, 581 (S.D. Tex. 2018)(citing to *Clarke v. Kuplinski*, 184 F.Supp.3d 255, 260 (E.D. Va. 2016)). This authority actually supports Petitioner’s claims as he may not be sent to his home country, no other country as agreed to accept him, and there has been no reported response from any of the three countries that ICE purportedly contacted almost four months ago. It should also be noted that the United States has no known agreement with Canada, South Africa, or Australia to receive “third country” removals.<sup>1</sup> Petitioner has thus demonstrated that there are particularized barriers to his removal and nothing submitted by Respondents refutes that showing.

Petitioner has now been detained for at least 156 days or 5 months and 3 days since the time to appeal his withholding of removal order lapsed. While Petitioner does not concede that

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<sup>1</sup> See “Third Country Deportations Tracker”, US Committee for Refugees and Immigrants (2025), available at <https://refugees.org/tcdtracker/> (last visited Jan 9, 2026); “EO 14165 § 8 directs DOS, DOJ, and DHS to Enter International Cooperation Agreements, Including But Not Limited to Safe Third Country Agreements” Immigration Policy Tracking Project (2025), <https://immpolicytracking.org/policies/potus-issues-executive-order-directing-dos-doj-and-dhs-to-enter-international-cooperation-agreements-including-safe-third-country-agreements/#/tab-policy-overview> (last visited Jan 9, 2026); “What are Third-Country Removals? Understanding Their Use in U.S. Immigration Policy”, American Immigration Council (2025), <https://www.americanimmigrationcouncil.org/factsheet/what-are-third-country-removals-factsheet/> (last visited Jan 9, 2026); Jacqueline Metzler, “What are Third-Country Deportations, and Why is Trump Using Them?”, Council on Foreign Relations (2025), <https://www.cfr.org/article/what-are-third-country-deportations-and-why-trump-using-them> (last visited Jan 9, 2026).

date is the proper starting point for the removal period or the presumptively reasonable 6 months under *Zadvydas*, the 6 months has very nearly elapsed even counting from the latest possible starting point. As noted by other courts, when “a period of detention continues without success, courts are rightly skeptical of the government’s basis for continued detention.” *Ladak v. Noem*, No. 1:25-CV-194-H, 2025 WL 3764016, at \*9 (N.D. Tex. Dec. 30, 2025). Respondents have offered nothing more than an affidavit stating three consulates were contacted almost four months ago and statements of counsel in their motion that there is no evidence those countries have refused to admit Petitioner. The uncontested facts provided by Petitioner demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future and Respondents have made no rebuttal. Accordingly, this Court should find that Petitioner’s detention is unlawful and no longer authorized.

#### **IV. Conclusion**

Based on the foregoing, Petitioner asks this Court to deny the Respondents’ motion and issue an order for him to be scheduled for a bond hearing immediately or, if a bond hearing is not scheduled promptly, that he be released from custody without further delay.

Respectfully submitted,

Date: January 9, 2026

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Reply was duly served upon opposing counsel electronically via the CM/ECF system on January 9, 2026.

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