

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

YING YANG,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

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CIVIL ACTION NO. 4:25-CV-5603

**RESPONSE TO HABEAS PETITION, MOTION TO DISMISS, AND
ALTERNATIVELY, FOR SUMMARY JUDGMENT**

The Government¹ files this response to Petitioner Ying Yang's habeas petition pursuant to the Court's order to answer (Dkt. 4) and respectfully requests that this Court deny his petition under 28 U.S.C. § 2241 and grant summary judgment for the Government under Federal Rule of Civil Procedure 56.

I. BACKGROUND

Petitioner is a native and citizen of the People's Republic of China. (Dkt. 1 at 4). Petitioner alleges that he entered the U.S. in or about December 2007. (Dkt. 1 at 4). Petitioner further alleges that he filed an application for political asylum and was placed in removal proceedings. (Dkt. 1 at 4). On September 29, 2009, an immigration judge ordered the Petitioner's removal from the United States. (Dkt. 1 at 4.) Petitioner appealed to the Board of Immigration Appeals ("BIA"), and his appeal was dismissed on November 21, 2011. (Dkt. 1 at 4).

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.

Per the Petitioner, his removal order became final on September 29, 2009. (Dkt. 1 at 2.) Petitioner alleges that the 90-day removal period under 8 U.S.C. § 1231(a)(1) expired on December 28, 2009, and the six-month presumptively reasonable detention period under *Zadvydas v. Davis*, 533 U.S. 678 (2001), expired on March 29, 2010. Dkt. 2 at 2. Petitioner alleges that he filed an I-130 family petitioner, and I-212 application, and submitted a I-601A provisional presence waiver. (Dkt. 1 at 5). Petitioner further alleges he was detained in the custody of U.S. Immigration and Customs Enforcement (“ICE”) on June 1, 2025, and he is currently detained at the Joe Corley Processing Center. (Dkt. 1 at 2, 4).

II. LEGAL AUTHORITY FOR PETITIONER’S DETENTION

In the instant case, Petitioner is being detained pursuant to a final removal order. (Dkt. 1 at 2). Detention pursuant to a final order of removal is proper under 8 U. S. C. § 1231. Govt. Ex. 1 at 3.

III. STANDARD OF REVIEW

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)).

IV. ARGUMENT

A. Petitioner's Custody is Lawful

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

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.

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 given that ICE is actively working with the Chinese consulate to obtain travel documents. Govt. Ex. 1. Petitioner was detained on June 1, 2025. (Dkt. 1 at 5.); Govt. Ex. 1. Petitioner has been detained for a reasonable time to effectuate his removal. Therefore, Petitioner's habeas petition should be denied.

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

The length of Petitioner's detention is not unconstitutional. 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). Thus, any time that has lapsed due to the Petitioner seeking relief from the removal order should be equitably tolled.

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 this case, the Petition fails to cite to any evidence, other than conclusory statements, that there is no significant likelihood of removal in the reasonably foreseeable future. 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. 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 indicated in the accompanying declaration, Petitioner is expected to be removed in the near future, as soon as ICE obtains the travel documents from the Chinese consulate. 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 the letter of the law and is outside the scope of *Zadvydas*.

V. CONCLUSION

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

Dated: December 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 22, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Catina Haynes Perry _____
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Assistant United States Attorney