UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MBIANGA GABRIEL MASSANGA,	§	
Petitioner,	§	
v.	§	CIVIL NO. 4:25-CV-5611
WARDEN RANDY TATE, Montgomery Processing Center,	§	
Respondent.	§	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS, AND ALTERNATIVELY, FOR SUMMARY JUDGMENT

The Government[1] files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (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 and the only current impediment to his removal is this Court's Order Enjoining Transfer of the Petitioner Outside of the Southern District of Texas.

I. NATURE AND STAGE OF THE PROCEEDING

Petitioner, Mbianga Gabriel Massanga, is a native and citizen of Angola who was previously issued an Angolan passport. Dkt. 1-1 at 1. He is currently a detainee in the custody of U.S. Immigration and Customs Enforcement ("ICE"). On January 7, 2025, Petitioner was convicted in Harris County, Texas for assaulting a family member and for violating the terms

[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, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). However, 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.

of his bond by violating a protective order. Dkt. 1-1 at 22. The Petitioner has an administratively final order of removal from the United States. Dkt. 1-1 at 25. ICE has previously obtained the necessary travel documents to effectuate the Petitioner's removal, but has not effected the Petitioner's removal due to the Court's order enjoining transfer outside the Southern District of Texas. Dkts. 8 and 10.

Despite his administratively final order of removal and the Petitioner previously having been determined to be a flight risk, the Petitioner attempts to collaterally attack his removal order by challenging his detention through the pending petition for writ of habeas corpus, filed on November 21, 2025. Dkt. 1 at 2. Petitioner fails to show he is entitled to habeas relief; therefore, his petition should be denied.

II. AUTHORITY BY WHICH PETITIONER IS HELD

Petitioner is being detained pursuant to a final removal order. Petitioner was ordered removed on March 24, 2025, after he was convicted for assaulting a family member and for violating the terms of his bond by violating a protective order. Dkt. 1-1 at 22. Petitioner's removal is substantially likely in the reasonably foreseeable future.

III. STANDARD OF REVIEW

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

To survive a 12(b)(6) motion, a Petitioner must frame a complaint with enough factual matter, taken as true, to suggest entitlement to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)); Ashcroft *v.* Iqbal, 56 U.S. 662 (2009). A court may consider documents attached or referred to in the complaint without converting a 12(b)(6) motion into one for summary judgment. *Tellabs, Inc. v. Makor Issued & Rights*, 551 U.S. 308 (2007).

B. Federal Rule of Civil Procedure 56

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 Detention is Lawful

Petitioner's detention is lawful because he is a flight risk, he is being detained subject to a final removal order, and he fails to show that the length of his detention is unreasonable under the *Zadvydas* framework given his foreseeable removal in the near future.

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. Dkt. 8. The length of Petitioner's detention is not unconstitutional, particularly in light of his upcoming 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 applications for asylum, withholding of removal, and withholding of removal under the Convention Against Torture, Petitioner prolonged his detention. Dkt. 101 at 13. This was his right. 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."). On March 24, 2025, the Board of Immigration Appeals ("BIA") denied the Petitioner's applications for relief from his removal order, thereby making him subject to a final administrative order of removal. Dkt. 1-1 at 25 citing 8 C.F.R. § 1241.1(a).

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 that there is no significant likelihood of removal in the reasonably foreseeable future. Rather, the Petitioner challenges his detention claiming that the immigration court improperly found him to be a flight risk. Dkt. 1 at 2. The Court does not have jurisdiction to hear such a claim in light of the Petitioner's final order of removal. Because Petitioner cannot challenge the immigration court's finding that he is a flight risk and cannot meet his burden of showing there is no significant likelihood of removal in the reasonably foreseeable future (Dkt. 8), Petitioner's detention pending removal is lawful.

B. The Petitioner Has Not Shown Entitlement to a Stay of Removal

Petitioner is attempting to indirectly attack the issuance of the removal order against him. *See Nolos v. Mukasey*, No. EP-08-CV-287-DB, 2008 WL 5351894, at *2 (W.D. Tex. Sept. 25, 2008) ("Congress enacted the REAL ID Act on May 11, 2005, which stripped district courts of jurisdiction over 28 U.S.C. § 2241 petitions attacking removal orders."); *see also* 8 U.S.C. § 1252(B)(ii) (supplying the language needed to strip habeas jurisdiction from district courts reviewing discretionary decisions of the Attorney General); *see Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917 (W.D. Tex. 2018).Because Petitioner's claims challenge a removal order, this Court does not have subject matter jurisdiction to hear his claims. Filing a motion to stay with the Fifth Circuit Court of Appeals does not automatically entitle to the Petitioner to a stay from removal. Rather, under 8 U.S.C. § 1252(b)(3)(B), service of a petition for review ("PFR") does not stay removal while the PFR is pending "unless the court orders otherwise." Therefore, unless and until the Fifth Circuit

issues a stay of removal, legally the Petitioner's removal can proceed. As of the date of this filing, the Fifth Circuit has not entered a stay of removal in the Petitioner's case.

V. CONCLUSION

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

Dated: December 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 15, 2025, the foregoing was filed through the Court's CM/ECF system and will be served on the *pro se* petitioner as follows.

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