UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KARIM HAMED AHMED,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:25-cv-5639
	§	
KRISTI NOEM, *et al,*	§	
	§	
	§	
Respondents.	§	
	§	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

The Government[1] files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief (Dkt. 1). As explained below, Petitioner's claim for habeas relief should be denied because he is lawfully detained, and the government intends to remove him in the foreseeable future.

SUMMARY OF THE ARGUMENT

Petitioner is an immigration detainee in the custody of Immigration and Customs Enforcement (ICE) at the Montgomery Processing Center in Conroe, Texas. Declaration, attached as Exhibit 1. Petitioner is a native and citizen of Eritrea awaiting removal from the United States pursuant to an order of removal that became final in April 2013. Exhibit 1, ¶ 1, 17; Dkt. 1 at ¶ 9. Petitioner filed the pending Petition for Writ of Habeas Corpus on November 22, 2025. He has been held in custody since November 4, 2025, for 31 days. Dkt. 1. He alleges

[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 (2004). That said, it is the named federal respondents, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

that his current detention is in violation of his due process rights because detention is not a requirement of deportation, and that he is entitled to a writ of habeas corpus because his detention is indefinite. Dkt. 1. Petitioner further claims that he has been subject to "constructive" detention since his 2013 final removal order and that the decision to detain him in physical custody violates the Due Process Clause of the U.S. Constitution and 8 CFR § 241.13. There is no basis for these arguments. Petitioner does not provide an actionable challenge to his detention. Thus, the Court should dismiss the Petition.

THE NATURE AND STAGE OF THE PROCEEDING

On November 22, 2025, Alexander Salgar filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (the "Petition"), contesting his continued detention pending the execution of his final removal order. He claims that his continued detention violates the Due Process Clause of the U.S. Constitution and the *Zadvydas* standard. Dkt. 1. The Court ordered a response explaining why the habeas corpus should not issue. Dkt. 4.

STATEMENT OF THE ISSUES

1. Whether Petitioner's claim for habeas relief should be denied because he is lawfully detained for less than six months pursuant to a final order of removal, and the government intends to remove him in the foreseeable future.

FACTUAL SUMMARY

On April 10, 2010, Petitioner was an arriving alien at the Pharr, TX Port of Entry. Ex. 1 at ¶ 9. Petitioner was referred for an expedited removal/credible fear interview and issued a Notice to Appear. Ex. 1 at ¶ 12. The Immigration Judge, on July 1, 2010, ordered that Petitioner be removed from the U.S. *Id.* at ¶ 15. Additionally, his request for Asylum was

denied, his request for Withholding of removal was denied and his application of withholding of removal deferral of removal under Article III of the Convention Against Torture was denied. *Id.* Petitioner's appeals were dismissed and his Order of Removal was final on April 5, 2013. *Id.* at ¶ 17. Petitioner surrendered to ICE custody and was ultimately granted an Order of Supervision (OSUP) on January 12, 2015. *Id.* at ¶ 29. On November 4, 2025, Petitioner's OSUP was terminated due to the President of the United States declaring a national emergency relating to the country's immigration enforcement and removal portfolio. *Id.* at ¶ 46. Petitioner was arrested and transported to Montgomery Processing Center on November 4, 2025. *Id.* at ¶ 46.

Since his arrest, ICE has sent a Travel Document Request packet to Headquarters-Removal and International Operations (HQ-RIO), who then submitted the packet on November 20, 2025 to the Department of State Post Asmara and the Eritrean Embassy in the District of Colombia. *Id.* at ¶ 49.

AUTHORITY BY WHICH PETITIONER IS HELD

In the instant case, Petitioner is being detained pursuant to a final removal order. Exhibit 1. Detention pursuant to a final order of removal is proper under 8 U. S. C. § 1231.

ARGUMENT

A. Petitioner is Lawfully Detained.

The statutory provision governing Petitioner's detention is 8 U.S.C. § 1231, which applies because Petitioner is detained subject to a removal order that became final on April 5, 2013. BIA Decision, attached as Exhibit 2. Under *Zadvydas v. Davis*, it is presumptively constitutionally reasonable for the petitioner to be detained for six months after the final order

of removal was entered. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). To date, Petitioner has been detained for 31 days. Exhibit 1 at ¶ 47.

Petitioner has been detained for less than six months.

The Petition's other arguments appear to be improper challenges to his removal order cloaked as challenges to his detention. For example, Petitioner seeks to enjoin execution of his removal order. The Court lacks jurisdiction to consider such a request, as it would relate to a decision or action by the Attorney General to execute a removal order against an alien. *See Alam*, 312 F.Supp.3d at 580 (citing 8 U.S.C. § 1252(g)); *Alvidres-Reyes v. Reno*, 180 F.3d 199, 206 (5th Cir. 1999) (Section 1252(g) removed jurisdiction to consider a "challenge to the Attorney General's decision to decline to commence proceedings or to adjudicate deportations, or to hear the plaintiffs' claim for suspension of their deportations which concomitantly arises therefrom."); *Fabuluje v. Immigr. & Naturalization Agency*, 244 F.3d 133 (5th Cir. 2000). And to the extent he raises due process claims to challenge execution of his removal order, such claims are also barred by Section 1252(g). *Foster v. Townsley*, 243 F.3d 210 (5th Cir. 2001); *see also*, *Chen v. Escareno*, No. 4:09-CV-00270, 2009 WL 3073928, at *2, 6 (S.D. Tex. Sept. 18, 2009) (rejecting petitioner's claim that she faced removal "without due process," as "all of the plaintiffs' claims are connected directly and immediately with a decision or action by the Attorney General to execute the [removal order]," and thus were unreviewable under Section 1252(g)). Thus, Petitioner cannot maintain this action as a constitutional challenge.

B. Petitioner's Claim that He Has Been "Constructively" Detained Since 2013 is Without Legal Basis

There is no basis to suggest that Petitioner has been "constructively" detained in violation of *Zadvydas* since 2013. The Petition argues that "Petitioner was previously reporting to ICE on an "Order of Supervision" in constructive custody since 2015 with restrictions on travel and subject to a final order of removal since April 5, 2013." Dkt. 1 at ¶ 9. However, this is not a recognized basis for a *Zadvydas* challenge. Unsurprisingly, Petitioner does not provide legal authority for this argument. In fact, caselaw refutes this argument.

Petitioner does not specify his allegation that he has been under "ICE control." Dkt. 1 at ¶ 31. To the extent that he argues that the time since his order of removal became final counts toward the six-month period set by *Zadvydas*, this argument fails. The law distinguishes between actual detention and other forms of supervision, such as an order of supervision. *Compare* 8 U.S.C. 1231(a)(3) (providing for supervision) *with* 8 U.S.C. 1231(a)(6) (authorizing detention under certain circumstances). Only the time that an alien is detained counts toward the *Zadvydas* six-month presumption. *See Mahmoud v. Cangemi*, 2006 WL 1174214 at *3 (D. Minn. May 1, 2006) (holding a petitioner had failed to show that the conditions of an order of supervision constituted a "constructive detention"); *cf. Riley v. I.N.S.*, 310 F.3d 1253 (10th Cir. 2002) (holding that an alien's supervised release from extended detention to which he was subject following entry of a final order of deportation mooted his *Zadvyda*s challenge); *Dogra v. I.C.E.*, No. 09–CV–065A, 2009 WL 2878459, at *2 n. 2 (W.D.N.Y. Sept. 2, 2009) (calculating length of detention as of petitioner's second time in ICE custody); *Phean v. Holder*, No. 11–CV–0535, 2011 WL 1257389, at *2 (M.D. Pa. Mar. 30, 2011) ("[T]he presumptively reasonable six month period began running on September 21, 2010, the date he was taken back into

custody."). Indeed, the Court in *Zadvydas* explicitly held that release on conditions is the appropriate alternative to detention: "the choice ... is not between imprisonment and the alien 'living at large;'... [i]t is between imprisonment and supervision under release conditions that may not be violated." 533 U.S. at 696. Thus, the time that Petitioner was under ICE supervision does not count toward the *Zadvydas* six-month presumption. Because he has been in detention for 31 days, there is no basis for relief under *Zadvydas*.

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

Even if this Court were to countenance Petitioner's "constructive custody" argument, 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.*

It has been less than six months since Petitioner was taken into custody. Therefore, the *Zadvydas* presumption does not apply. Additionally, ICE has taken steps since Plaintiff was placed into detention to remove him – namely, creating a Travel Document Request (TDR) packet, submitting it to HQ-RIO, and then submitting it to the Department of State (DoS) Post Asmara and the Eritrean Embassy in District of Columbia (DC).

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". Dkt. 1 at ¶ 29. 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.

Ultimately, Petitioner's detention pending removal comports with the letter of the law and is outside the scope of *Zadvydas*.

CONCLUSION

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

Dated: December 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 5, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Christina Cullom
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