UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| RISEEPAN, SACHCHITHANANTHAN-PAKEERATHAN<br><br>Petitioner,<br><br>v.<br><br>GRANT DICKEY, in his official capacity as Warden, et al.,<br><br>Respondent. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | Civil Action No. 4:25-cv-5660 |

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION 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 he is scheduled to be removed in the near future.

## I. SUMMARY OF THE ARGUMENT

Petitioner is a native and citizen of Sri Lanka. He is currently a detainee in the custody of Immigration and Customs Enforcement (ICE) at the Joe Corely Processing Center in Conroe, Texas. It is uncontested that Petitioner is subject to a final order or removal. Petitioner challenges the length of his detention under the Immigration and Nationality Act

[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.

(INA) and the Supreme Court's decision in *Zadvydas*. The dispositive question before the Court is whether there is significant likelihood of removal of Petitioner in the reasonably foreseeable future. The declaration supporting this response shows that Petitioner is likely to be removed in the near future. Thus, Petitioner cannot show that his continued detention amounts to a constitutional violation and his petition should be denied.

## II. AUTHORITY BY WHICH PETITIONER IS HELD

Petitioner is being held in immigration detention pursuant to a final removal order. *See* Dkt. 1 at ¶ 14, Dkt. 1-2 at p. 42 (Order of Removal). Petitioner is therefore detained under 8 U.S.C. § 1231.

## III. RELEVANT BACKGROUND

Petitioner is a native and citizen of Sri Lanka. Dkt. 1 at ¶ 12. In 2019, Border Patrol apprehended Petitioner and issued him an order of expedited removal. *Id.*; Dkt. 1-2 at p. 6 (deeming Petitioner an arriving alien under § 1225(b)(1)). Petitioner was provided a credible fear interview. Dkt. 1 at ¶ 13. After multiple interviews he was issued a negative credible fear determination. *Id.* In 2020, an immigration judge conducted a de novo review of his credible fear claim an affirmed the negative credible fear determination. Dkt. 1 at ¶ 14. Thus, Petitioner was ordered removed. Dkt. 1-2 at 42. Petitioner was uncooperative in facilitating his removal and ICE was therefore unable to remove him following the immigration judge's decision. *See* Exhibit 1, Declaration of Assistant Field Director John D. Linscott at ¶ 13. Petitioner was released from detention in 2021 on an order of supervision due to COVID-19 protocols. *Id.* at ¶ 20.

In June of 2024, Petitioner was arrested for driving while intoxicated. Exhibit 1 at ¶ 21. He was convicted of driving while his ability was impaired by the consumption of alcohol in December of 2024. *Id.* at ¶ 22. In April of 2025, ICE personnel apprehended Petitioner and placed him in detention. Exhibit 1 at ¶ 7. ICE is working to obtain the necessary authorizations to remove Petitioner to Sri Lanka and it expects to remove him in the near future. *Id.* at ¶ 24.

## IV. 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)).

## VI. ARGUMENT

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 given his foreseeable removal.

**A. Due to his upcoming 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.

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 based on the determination that he is likely to be removed in the reasonably foreseeable future.

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

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, Petitioner's habeas petition 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. Indeed, Petitioner attempts to shift burden of the initial offer of proof to the Government: "Respondents have failed to demonstrate that his removal is significantly likely to occur in the reasonably foreseeable future." Dkt. 1 at ¶ 31. This assertion 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 Petitioner met his burden of coming forward with an initial offer of proof, his petition should nevertheless be denied. *Zadvydas*

creates a six-month presumption. However, a period of detention in excess of six months is not necessarily unlawful. *Zadvydas*, 533 U.S. at 701 (2001)( the six-month presumption "does not mean that every alien not removed must be released after six months."). Indeed, a detention of more than six months is permitted if the government shows that the alien's removal is likely to take place in the reasonably foreseeable future. *Id.* Here, ICE personnel anticipate removing Petitioner to Sri Lanka within the next fifteen days. Exhibit 1 at ¶ 24. Petitioner's continued detention is thus permitted.

## VII. CONCLUSION

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

Dated: December 9, 2025

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on December 9, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

*s/ Jimmy A. Rodriguez*
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