

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MOUHAMADOU LAMINE FAYE,

Petitioner,

v.

ATTORNEY GENERAL, et al.,

Respondent.

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Civil Action No. 4:25-CV-5835

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
AND MOTION FOR SUMMARY JUDGMENT**

The Government¹ 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 expected to be removed in the reasonably foreseeable future. For the reasons discussed below, any claim for emergency injunctive relief should also be denied.

I. SUMMARY OF THE ARGUMENT

Petitioner is currently a detainee in the custody of Immigration and Customs Enforcement (ICE) at the Montgomery Processing Center in Conroe, Texas. It is uncontested that Petitioner is subject to a final order of removal. Petitioner was recently taken into custody

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.

so that he could be removed. ICE believes that there is a significant likelihood of removal in the reasonably foreseeable future.

II. AUTHORITY BY WHICH PETITIONER IS HELD

Petitioner is being held in immigration detention pursuant to a final removal order. *See* Exhibit 1, Declaration of Deportation Officer Maple at ¶¶ 11-15 (explaining that Petitioner was issued an expedited order of removal and that his credible fear claim was denied). Petitioner is therefore detained under 8 U.S.C. § 1231.

III. RELEVANT BACKGROUND

In 2010, U.S. Customs and Border Protection took Petitioner into custody at a Port of Entry for presenting a false identity. Exhibit 1 at ¶ 9. He was originally charged with violating 18 U.S.C. § 1544 (using a passport issued for the use of another). *Id.* Those criminal charges were dropped, and he was placed in expedited removal proceedings. Exhibit 1 at ¶ 11. Petitioner claimed to have a fear of persecution or torture if returned to his home country. *Id.* at ¶ 13. After an interview, his credible fear claim was denied. *Id.* at ¶¶ 14-15. Petitioner was thus removable on or about May of 2010. *Id.*

ICE attempted to obtain travel documents and authorization to remove Petitioner. Exhibit 1 at ¶¶ 16-27. In August of 2011, Petitioner was release on an Order of Supervision. *Id.* at ¶ 28. Petitioner was detained on November 21, 2025, so that he could be removed. *Id.* at ¶ 47. Senegal is currently accepting the return of aliens and ICE expects to remove Petitioner in the reasonably foreseeable future. *Id.* at ¶ 48.

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; (2) he fails to show that the length of his detention is unreasonable under the *Zadvydas* framework given its length and his foreseeable removal; and (3) the Court lacks jurisdiction to halt the execution of Petitioner’s removal order or to compel action on an administrative application to stay 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 is lawfully subjecting Petitioner to 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, Petitioner has only been detained since November of 2025. Thus his month-long detention is well within *Zadvydas*’ six-month presumptively lawful length of detention.

Even assuming for the sake of argument that Petitioner show that his detention has extended beyond six months, his claim would still fail. 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 anticipates removing Petitioner to Sri Lanka in the reasonably foreseeable future. Exhibit 1 at ¶ 48. Petitioner’s continued detention is thus permitted.

C. The Court lacks jurisdiction over a challenge to Petitioner's removal order.

The instant petition appears to be an attempt to halt Petitioner's removal proceedings, which the Court lacks jurisdiction over. The REAL ID Act, Pub.L. 109-13, 119 Stat. 231, "divested federal [district] courts of jurisdiction over § 2241 [habeas] petitions attacking removal orders." *Rosales v. Bureau of Immigration & Customs Enft.*, 426 F.3d 733, 736 (5th Cir. 2005); *Perry v. Barr*, 4:19-CV-1302, 2019 WL 6255330, at *3 (S.D. Tex. Nov. 22, 2019). The instant petition makes few specific assertions, but it does seek to halt "removal for 14 days." Dkt. 1 at (Prayer for Relief). Section 28 U.S.C. § 1252(g) strips district courts of jurisdiction to review decisions or actions to execute removal orders. *See Reno v. American-Arab Anti-Discrim. Cmte.*, 525 U.S. 471, 943 (1999). Accordingly, the Court lacks jurisdiction to prevent ICE from executing Petitioner's removal order.

D. The Court also lacks jurisdiction to review a claim for a stay of removal using Form I-246.

Petitioner's habeas petitioner complains that ICE has "blocked access to a statutory stay (I-246)." Dkt. 1 at (Cause of Action). The decision to grant a stay of removal is within the sole discretion of the Department of Homeland Security. Thus, courts are "explicitly barred" from reviewing Form I-246 decisions. *See Pinto-Barrera v. Sifuentex*, No. EP-18-CV-00325-DCG, 2018 WL 6027114, at *2 (W.D. Tex. Nov. 16, 2018); *Trejo-Quiroz v. Kolutwenzew*, No. 19-CV-2174, 2019 WL 13292487, at *2 (C.D. Ill. July 3, 2019) (holding "that the request for a stay of removal and request for review of ICE's denial of a Form I-246 Application for Stay of Removal fall squarely within § 1252(g) as well."). Moreover, the applicable regulations make clear that "neither the request nor failure to receive notice of disposition of the request

shall delay removal.” 8 C.F.R. § 241.6. Thus, Petitioner’s arguments about ICE processing and accepting his Form I-246 application does not form a valid basis to halt or delay his removal.

VII. CONCLUSION

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

Dated: December 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 14, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system. The filing will also be served on the following by U.S. Mail:

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s/ Jimmy A. Rodriguez _____
Jimmy A. Rodriguez
Assistant United States Attorney