

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SOLOMON AYOR,

Petitioner,

v.

WARDEN, HOUSTON CONTRACT
DETENTION FACILITY, *et. al.*,

Respondents.

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CIVIL NO. 4:25-cv-6030

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

The Government¹ hereby requests that the Court deny Soloman Ayor’s habeas petition and grant summary judgment in the Government’s favor under Federal Rule of Civil Procedure 56.

Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement (“DHS/ICE”). Petitioner brought this habeas corpus petition against various federal officials seeking release from detention. As discussed below, Petitioner is lawfully detained under 8 U.S.C. § 1231 because he is subject to a final order of removal. Moreover, Petitioner has been in detention for approximately two months, less than the six-month detention period presumed to be lawful under *Zadvydas*. As a result, the instant petition should be denied.

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.

BACKGROUND

Petitioner is a citizen and native of Nigeria. *See* Exhibit 1, Removal Order. Petitioner arrived in the United States in 2011. *See* Dkt. 1 at p. 2. After full consideration of his case, an immigration judge ordered Petitioner removed on January 20, 2012. *See* Exhibit 1. In so ordering, the immigration judge denied Petitioner’s request for asylum, along with other relief including his application for withholding of removal and for protection under the Convention Against Torture. *Id.* Petitioner appealed and the Board of Immigration Appeals dismissed the appeal on June 13, 2012. *See* Exhibit 2. ICE detained Petitioner on or about November 14, 2025, in order to effectuate his removal order. *See* Exhibit 3, Declaration of Deportation Officer at ¶¶ 39-40. Since his detention, ICE has been working to obtain a travel document from Nigeria. *Id.* at ¶¶ 41-45.

I. THE BASIS OF PETITIONER’S DETENTION

The statutory provision governing Petitioner’s detention is 8 U.S.C. § 1231, which applies once an alien is ordered removed. Section 1231(a)(1)(A) provides that the Government has a 90-day “removal period” to deport an alien ordered removed from the United States. *See* 8 U.S.C. § 1231(a)(1)(A). During the “removal period,” the alien must be detained. *See* 8 U.S.C. § 1231(a)(2); *Kujoe Bonsafo Agyei-Kodie v. Holder*, 418 Fed. Appx. 317, 318 (5th Cir. 2011) (noting that § 1231 “provides that the Attorney General shall remove the alien within a period of 90 days, during which time the alien shall be detained”). After the 90-day removal period, ICE may continue to detain a removable alien for six months beyond this time. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). After six months, an alien may continue to be held in

confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.*

When it comes to detention of an alien without status to remain in the United States, it is well-taken that the authority to detain is elemental to the authority to deport, as “[d]etention is necessarily a part of th[e] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952). As the Supreme Court has stated, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003). Here, Petitioner is detained so that ICE can effectuate his removal order.

The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). Here, Petitioner incorrectly argues that because U.S. Citizenship and Immigration Services has approved a Form I-130, he cannot be detained. Dkt. 1. The Form I-130 is just a preliminary step in the process to obtain an adjustment of status. USCIS’s approval of an alien’s I-130 in no way prevents an alien from being removed or detained. Indeed, the Form I-130 approval notice itself makes clear that “[t]he approval of this visa petition does not in itself grant any immigration status.” Dkt. at 1-1 at p. 10.

In addition, Petitioner states that he has very recently filed a motion to reopen his immigration removal proceedings. *See* Dkt. 1. That is his right. But, unless and until, an immigration court grants his motion to reopen, he remains subject to a final order of removal. His pending motion to reopen is not a valid basis to grant habeas relief. *See Hernandez-Morales v. Bondi*, No. 25-CV-2551-BJC-MMP, 2025 WL 2932650, at *3 (S.D. Cal. Oct. 15, 2025) (dismissing habeas where Petitioner sought to “prevent DHS from executing the removal order while the BIA adjudicates his motion to reopen”).

II. Petitioner is within the presumptively lawful detention period.

The length of Petitioner's detention is constitutional. 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). Here, Petitioner offers no argument about the likelihood of his removal in the foreseeable future. *See* Dkt. 1. Moreover, a detention period of less than six months is presumptively lawful under *Zadvydas*. In this case, Petitioner has only been detained since November of 2025. Thus, his two month-long detention is well within *Zadvydas*' six-month presumptively lawful length of detention.

III. Petitioner is still within the 90-day mandatory detention period.

Although the language of § 1231 does not directly address this question, courts have held that, at least with respect to the mandatory 90-day removal period required by § 1231(a)(1)(A), the clock restarts each time an alien subject to a final order of removal is again detained by ICE. *See, e.g., Guerra-Castro*, 2025 WL 1984300, at *4; *Thai v. Hyde*, No. 25-11499-NMG, 2025 WL 1655489, at *3 (D. Mass. 2025); *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018) (“This Court does not read *Zadvydas* to be a permanent ‘Get Out of Jail Free Card’ that may be redeemed at any time just because an alien was detained too long in the past.”); *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). The Court should adopt this approach in this case and find that Petitioner’s current length of detention, which began in November of 2025, is lawful.

CONCLUSION

For the foregoing reasons, the Government requests that the Court deny the habeas petition and grant the Government’s motion for summary judgment.

Dated: January 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 6, 2026, the foregoing was filed and served on counsel of record through the Court's CM/ECF system. The pro se Petitioner will be served in person by ICE personnel. I copy with also be mailed to Petitioner's next friend as noted on the docket.

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