

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

ISMAEL OBIANG OBAMA NFUMU,)	
)	
Petitioner,)	
)	CIV-25-1574-J
v.)	
)	
WARDEN DR. SCARLET)	
GRANT et al.,)	
)	
Respondents.)	

**RESPONSE IN OPPOSITION TO PETITIONER’S PETITION FOR A WRIT OF
HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner names only two Respondents in this proceeding, “Warden Dr. Scarlet Grant” and “ICE Dallas Field Office.”¹ Respondent Scarlet Grant, Warden of the Cimarron Correctional Facility, is not a federal official and this response is therefore not filed on her behalf. The Court has ordered a Response to be filed and directed the Clerk of Court to send the petition to the United States Attorney for the Western District of Oklahoma. *See* Order at 1 (Doc. 5). Accordingly, this Response in Opposition to Petitioner’s Petition for Writ of Habeas Corpus is respectfully submitted. For the reasons addressed below, dismissal of the Petition is appropriate.

Introduction

In this immigration detention habeas proceeding, Petitioner seeks immediate release from custody claiming his removal from the United States is not reasonably foreseeable,

¹ *See* Pet. for Writ of Habeas Corpus (“Pet.”) at 1 (Doc. 1).

and thus (according to the Supreme Court's *Zadvydas v. Davis*, 533 U.S. 678 (2001), framework) release is appropriate. Because Petitioner fails to meet his initial burden in this regard, his Petition should be denied.

Petitioner's Claims

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 directing his release from Cimarron Correctional Facility in Cushing, Oklahoma, a bond hearing, and an injunction against his movement or removal.² Petitioner contends that his continued detention is unlawful under *Zadvydas* and the Fifth Amendment due process clause.³ He further asserts a “[v]iolation of Immigration and Nationality Act as well as Immigration and Customs Enforcement’s own regulations, policy and procedures,” claiming that ICE is intending to remove him to Equatorial Guinea, despite the Immigration Judge’s withholding of removal under INA § 241(b)(3) and the Convention Against Torture (“CAT”).⁴

Factual Background

Petitioner Ismael Obama Nfumu is a citizen of Equatorial Guinea.⁵ He entered the

² Pet. at 7, ¶ 15. The Court does not have jurisdiction to review the Attorney General’s decision to execute Petitioner’s removal order. 8 U.S.C. § 1252(g). As recognized by the United States District Court for the District of Massachusetts, “Congress made it quite clear that all court orders regarding alien removal—be they stays or permanent injunctions—were to be issued by the appropriate courts of appeals.” *Tejada v. Cabral*, 424 F. Supp. 2d 296, 298 (D. Mass. 2006) (citing 8 U.S.C. § 1252(a)(2)(C). 8 U.S.C. §§ 1252(a)(2)(D), 1252(a)(5)); *see also Mapoy v. Carroll*, 185 F.3d 224, 227 (4th Cir. 1999).

³ *Id.* at 6, ¶ 13.

⁴ *Id.*; Ex. 3 at 3 (“Order”).

⁵ Ex. 1 (“Nation Decl.”) ¶ 3; Ex. 2 (“Not. to Appear”).

United States unlawfully on November 4, 2024.⁶ Petitioner was detained and charged as an inadmissible alien removable under two provisions of the INA: § 212(a)(7)(A)(i)(I), alien present without a valid entry document, and § 212(a)(6)(A)(i), alien present without admission or parole.⁷ On May 15, 2025, an Immigration Judge (“IJ”) denied Petitioner’s asylum claim, but granted Withholding of Removal under INA § 241(b)(3) and CAT.⁸ Petitioner reserved appeal, but did not file, so the Removal Order became final on June 17, 2025.⁹ On June 10, 2025, Petitioner was transferred to Cimarron Correctional Facility where he remains detained.¹⁰

Once the Removal Order became final, ERO immediately began taking consistent and affirmative actions to facilitate Petitioner’s removal to a third country, in compliance with relevant regulations. ERO has conducted both 90-day and 180-day post order custody reviews and submitted removal requests on behalf of Petitioner to five different countries.¹¹

On July 1, 2025, ERO accommodated Petitioner’s requests to attempt removal to Italy, Norway and Canada by contacting those countries on his behalf.¹² Italy immediately

⁶ Nation Decl. ¶ 4.

⁷ *Id.* ¶ 4, Not. to Appear at 1.

⁸ Ex. 3 at 3. *See* 8 C.F.R. § 1208.17(a) and (b)(2). A removable noncitizen who is ineligible for asylum may seek protection from removal to a specific country by applying for statutory withholding of removal, CAT withholding of removal, or CAT deferral of removal. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c), 1208.17(a).

⁹ Nation Decl. ¶ 5; Pet. at 6.

¹⁰ *Id.*

¹¹ *See* Pet. at 6; Nation Decl. ¶¶ 6-7.

¹² Nation Decl. ¶ 6.

denied the request.¹³ Norway denied the request on July 18, 2025.¹⁴ The request to Canada is pending.¹⁵ On July 29, 2025, HQ RIO requested removal of Petitioner to Gabon, and the request was denied on July 31, 2025.¹⁶ On September 26, 2025, HQ RIO requested removal of Petitioner to Ghana. The request to Ghana is pending.¹⁷

Petitioner is likely to be removed to a third country, most likely Ghana, in the reasonably foreseeable future. Petitioner's Deportation Officer ("D.O.") states:

RIO is actively working with the Department of State to facilitate Obama Nfumu's removal to a third country. In FY 2024 and FY 2025, the government successfully conducted around fifteen [removals] for non-Ghanaian citizens. The White House and State Department are currently coordinating efforts for a future third-country removal flight to Ghana.¹⁸

While Petitioner asserts that he has "remained in detention since the 15th of November 2024 without any individualized bond hearings," he does not state what regulatory provision he challenges that would require a bond hearing.¹⁹ He has received the required custody reviews during his post-order detention. On August 6, 2025, Petitioner was given paperwork to fill out regarding a Post Order Custody Review.²⁰ On October 20, 2025, the Post Order Custody Review was routed to a Supervisory Detention and

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* ¶ 8.

¹⁹ Pet. at 6.

²⁰ Nation Decl. ¶ 6.

Deportation Officer.²¹ On November 20, 2025, deportation officers conducted an interview with Petitioner and determined that continued detention was appropriate.²² On December 9, 2025, ICE informed Petitioner via letter of its decision to continue detention.²³ The letter contained a scrivener's error stating a travel document had been requested for Equatorial Guinea instead of Ghana.²⁴ The letter was corrected on January 14, 2026.²⁵ Around December 16, 2025, HQ RIO conducted a second Post Order Custody Review.²⁶

Legal Standards

I. Statutory framework for the detention of noncitizens.

The authority to detain noncitizens after the entry of a final order of removal is set forth in Section 241(a) of the Immigration and Nationality Act ("Act"), codified at 8 U.S.C. § 1231(a).²⁷ Pursuant to that provision, Immigration and Customs Enforcement ("ICE") is afforded a ninety-day period within which to remove the noncitizen from the United States following the entry of a final order of removal.²⁸ During the removal period, ICE must

²¹ *Id.* ¶ 7

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* ¶ 8.

²⁷ Unless directly quoted, this Response uses the term "noncitizen" as equivalent to the statutory term "alien." *Nasrallah v. Barr*, 590 U.S. 573, 578 n. 2 (2020) (citing 8 U.S.C. § 1101(a)(3)).

²⁸ 8 U.S.C. § 1231(a)(1).

detain the noncitizen.²⁹ If the removal period expires, ICE can either release an individual pursuant to an order of supervision as directed by Section 1231(a)(3), or continue detention under Section 1231(a)(6). Section 1231(a)(6) allows continued detention for those noncitizens who are inadmissible to the United States, removable under various INA provisions, or who are determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal.³⁰

This detention prior to removal, however, is not indefinite. In *Zadvydas v. Davis*, the United States Supreme Court held that Section 1231(a)(6) “read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.” “It does not,” the Court held, “permit indefinite detention.”³¹ The Court explained: “[I]nterpreting the statute [section 1231(a)(6)] to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute.”³² The *Zadvydas* Court found that six months was a presumptively reasonable period of post-order detention.³³ As such, in order to establish a claim for habeas relief under the *Zadvydas* rationale, a noncitizen must first prove that he has been in post-order custody for more than

²⁹ *Id.* § 1231(a)(2) (“shall detain”).

³⁰ *Id.* § 1231(a)(6).

³¹ *Zadvydas*, 533 U.S. at 689.

³² *Id.* at 699.

³³ *Id.* at 701; *see also Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005) (“the reasonable period of post-removal detention is presumptively six months . . .”).

six months at the time the habeas petition is filed.³⁴

If a noncitizen can demonstrate he has been held longer than the presumptively reasonable six months, they must then provide a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. As explained by the United States Court of Appeals for the Tenth Circuit, “the onus is on the alien to ‘provide[] good reason to believe that there is no [such] likelihood’ before ‘the Government must respond with evidence sufficient to rebut that showing.’”³⁵ And critically, someone detained cannot establish a claim for relief simply because he is more than six months into his post-order confinement.³⁶ “To the contrary,” the Supreme Court stated in *Zadvydas*, noncitizens “may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.”³⁷

In other words, while six months of detention is presumptively reasonable, time in detention after that may also be reasonable so long as removal of the noncitizen is in the reasonably foreseeable future. And the noncitizen “bears the initial burden of proof in

³⁴ *Apau v. Ashcroft*, 2003 WL 21801154, at *2 (N.D. Tex. Jun. 17, 2003) (citing *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 and n.3 (11th Cir. 2002)); see also *Abiodun v. Mukasey*, 264 F. App'x 726, 729 (10th Cir. 2008).

³⁵ *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (citing *Zadvydas*, 533 U.S. at 701); *Diop v. Gonzales*, No. 07-245-T, 2007 WL 2080173, at *1 (W.D. Okla. July 18, 2007); *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) (“*The burden is upon the alien to show that there is no reasonable likelihood of repatriation.*”) (emphasis in original).

³⁶ *Zadvydas*, 533 U.S. at 701.

³⁷ *Id.*

showing that no such likelihood of removal exists.”³⁸ Where the noncitizen fails to come forward with this initial offer of proof, the petition is ripe for dismissal.³⁹

II. Standards for habeas corpus relief.

Habeas corpus review may be sought by an immigration detainee who claims that he “is in custody in violation of the Constitution or laws or treaties of the United States.”⁴⁰ The writ of habeas corpus, “while essential to our political system, is a drastic remedy.”⁴¹ To obtain relief, a § 2241 petitioner must allege and establish that his custody violates the Constitution or laws or treaties of the United States.⁴² “Habeas is an exceptional writ reserved for errors which result from fundamental defects that result in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands for fair procedure.”⁴³

³⁸ *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).

³⁹ *Knwanga v. Maurer*, No. 06-0262-MSK/MEH, 2006 WL 2475261, at *1 (D. Colo. Aug. 24, 2006).

⁴⁰ 28 U.S.C. § 2241(c)(3); *see also Zadvydas*, 533 U.S. at 687 (immigration detainees may bring § 2241(c)(3) petitions).

⁴¹ *Basri v. Barr*, 469 F. Supp. 3d 1063, 1066 (D. Colo. 2020). *See also Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) (“The writ of habeas corpus is an extraordinary remedy that guards only against extreme malfunctions in the state criminal justice systems.”) (internal quotation marks and citation omitted); *Gomez-Arias v. U.S. Immigr. & Customs Enf’t*, No. 20-CV-00857-MV-KK, 2020 WL 6384209, at *2 (D.N.M. Oct. 30, 2020) (“As release from custody is an extreme remedy, Congress has circumscribed its use by the courts.”).

⁴² *Bradin v. United States Prob. & Pretrial Servs.*, No. 22-3032-JWL, 2022 WL 1154622, at *3 (D. Kan. Apr. 19, 2022).

⁴³ *Nguyen v. Noem*, No. 6:25-CV-057-H, 2025 WL 2737803, at *6 (N.D. Tex. Aug. 10, 2025) (citing *Hill v. United States*, 368 U.S. 424, 428 (1962), and *United States v. Reyna*, 358 F.3d 344, 349 (5th Cir. 2004)).

Argument

I. The Petition should be denied because it fails to establish a *prima facie* claim for relief under *Zadvydas*.

A. Petitioner has not met his initial burden under *Zadvydas*.

Petitioner's post-order detention began when his removal order became final, on June 17, 2025. At the time of filing his Petition, Petitioner had been detained approximately six months and two weeks. Although his detention is beyond the presumptively reasonable six month period articulated in *Zadvydas*, the Petitioner has not "provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."⁴⁴

As Ground One for challenging his detention, Petitioner states "[p]rolonged detention under *Zadvydas*."⁴⁵ He claims, "I have been and remain[] in detention in excess of six month (sic). . . . ICE has not been able to remove me to a third country."⁴⁶ He further claims:

ICE had tried to remove to Ghana, Gabon, Canada and Italy, all these countries would not accept me. ICE conducted a 90 day and 180 day custody review and decided to continue detention because they had requested a travel document from Equatorial Guinea and that request is pending and my removal is expected to occur even though an IJ had granted me withholding of removal to Equitorial (sic) Guinea thus I can't be removed there."⁴⁷

Thus, Petitioner's primary argument in support of his *Zadvydas* claim is that he has been

⁴⁴ *Zadvydas*, 533 U.S. at 701.

⁴⁵ Pet. at 7.

⁴⁶ *Id.*

⁴⁷ *Id.*

detained longer than six months, that some countries have not accepted him, and that removal to Equatorial Guinea is being attempted.

To start, ERO is not attempting to effectuate removal to Equatorial Guinea. Deportation Officer Nation clarified in his Declaration that the travel document request referring to removal to Equatorial Guinea was a scrivener's error, that the travel document request was intended to refer to Ghana, and that the error has been corrected.⁴⁸ Further, while Petitioner notes that some countries have denied his acceptance, that alone is not sufficient to show a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

Petitioner has put forth no additional evidence that would impede his removal to a third country in order “[t]o meet the burden of establishing [no likelihood of removal],” such as “demonstrate[ing] the existence of either institutional barriers to repatriation or obstacles particular to his removal.”⁴⁹ Petitioner claims that “all these countries” i.e. Ghana, Gabon, Canada and Italy, “would not accept me.”⁵⁰ However, two of these countries have not yet answered and Petitioner has presented no evidence that these countries would refuse him. A delay in issuance of a travel document is not enough for Petitioner to meet his burden of proof under *Zadvydas*. As a judge in this court has previously stated, “a mere delay in receiving travel documents does not trigger the

⁴⁸ Nation Decl. ¶ 7.

⁴⁹ *Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *3 (W.D. Okla. Aug. 27, 2024) (R&R), *adopted*, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025).

⁵⁰ Pet. at 6.

inference that an alien will not be removed in the reasonably foreseeable future because the reasonableness of detentions pending deportation cannot be divorced from the reality of bureaucratic delays that almost always attend such removals.”⁵¹

Accordingly, the Petition should be denied because Petitioner has failed to meet his burden to prove that his removal is not significantly likely in the near future.

B. Even if Petitioner had met his burden, Respondent has sufficiently rebutted the presumption that removal is not likely.

For there to be no significant likelihood of removal in the reasonably foreseeable future, there must be some indication that the United States is unwilling to remove the alien or that the United States is incapable of doing so due to seemingly insurmountable barriers, such as an alien’s stateless status or the foreign country’s outright refusal to issue travel documents.⁵²

⁵¹ *Head v. Keisler*, No. 07-402-F, 2007 WL 4208709, at *4 (W.D. Okla. Nov. 26, 2007)) (citation modified). *See also Komlanvi v. Sessions*, No. CV H-18-1058, 2018 WL 3348886, at *2 (S.D. Tex. July 9, 2018) (finding petitioner had not “met his initial burden of showing that there is no significant likelihood of removal in the foreseeable future,” despite being detained for more than a year, because “immigration officials are working with the government of Togo to procure the necessary travel documents”); *Salim v. Sessions*, No. CV H-18-2287, 2019 WL 13218806, at *6-7 (S.D. Tex. Sep. 4, 2019) (“The mere fact that the Pakistan Consulate has not yet responded to the request for travel documents does not mean it will not do so in the future” because “the Government has taken affirmative steps to obtain travel documents—none of which have been presently denied.” (citation modified)).

⁵² *See Al-Shewaily v. Mukasey*, No. 07-0946-HE, 2007 WL 4480773, at *5 (W.D. Okla. Dec. 18, 2007) (citing *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136-37 (S.D. Cal. 2001)). (noting that an alien can satisfy his initial burden by showing “the existence of either institutional barriers to repatriation to the country in question or barriers peculiar to the individual in question such that there is no significant likelihood of removal in the reasonably foreseeable future.”)

Here, Respondent has requested third country removals from five countries – Italy, Norway, Canada, Gabon and Ghana. The requests to Canada and Ghana are still pending. Thus, even if Petitioner had met his burden, Respondent have sufficiently rebutted it with evidence that two travel document requests are still pending. Deportation Officer Nation stated in FY 2024 and FY 2025, “the government successfully conducted around fifteen [removals] for non-Ghanaian citizens.”⁵³ He concludes noting that “[t]he White House and State Department are currently coordinating efforts for a future third-country removal flight to Ghana.”⁵⁴ These diligent efforts began and have continued following the date Petitioner’s order of removal became final. This supports a rebutting of any presumption should the Court find Petitioner met it.⁵⁵

II. Petitioner’s continued detention does not violate his due process rights under the Fifth Amendment.

Petitioner alleges in Ground Two of his Petition that his “[p]rolonged detention” is in violation of Fifth Amendment due process clause.”⁵⁶ As discussed above, the Petitioner failed to establish a claim under *Zadvydas*. Therefore, he cannot now prevail

⁵³ Nation Decl. ¶ 8.

⁵⁴ *Id.*

⁵⁵ See *Tawfik v. Garland*, No. CVH-24-2823, 2024 WL 4534747, at *4 (S.D. Tex. Oct. 21, 2024) (finding respondents sufficiently rebutted petitioner’s showing because “ICE has been actively working on securing [petitioner’s] removal since the removal order became final”); *McAulay v. Taylor*, No. CIV-17-3290, 2017 WL 4842375, at *3 (D.N.J. Oct. 25, 2017) (finding respondents rebutted petitioner’s claim that his removal was not likely in the reasonably foreseeable future because during petitioner’s year-long detention the government had been in direct contact with and provided requested documents to the United Kingdom Consulate and passport office, and his “removal awaits only the issuance of a travel document”).

⁵⁶ Pet. at 6.

on a substantive due process claim. “A petitioner’s failure to establish that his detention violates *Zadvydas* negates a substantive due process claim.”⁵⁷ Accordingly, the Court should deny the Petition.

III. Respondent has complied with the Immigration and Nationality Act and its regulations.

Petitioner alleges in Ground Three of his Petition a ‘[v]iolation of Immigration and Nationality Act as well as Immigration and Customs Enforcement’s own regulations, policy and procedure.’⁵⁸ In support of this assertion, Petitioner admits “ICE conducted a 90 day and 180 day custody review and decided to continue detention because they had requested a travel document from Equitorial (sic) Guinea.”⁵⁹ As stated above, that letter referencing removal to Equatorial Guinea contained a scrivener’s error designating Equatorial Guinea, rather than Ghana, as the country and that error has been corrected.⁶⁰ Because the Petition does not state an alternative basis for the violation of the INA and/or other regulations, the Petition should be denied.

Conclusion

Petitioner has failed to meet his burden under *Zadvydas* that there is no significant likelihood of his removal in the reasonably foreseeable future. His detention

⁵⁷ *Dusabe*, 2024 WL 5465749, at *6 (citation modified); see also *Mafukidze v. Gonzales*, No. CIV-07-871-W, 2008 WL 395411, at *4 (W.D. Okla. Feb. 11, 2008) (“Without providing good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future, [p]etitioner cannot prevail on a substantive due process claim based upon his continued detention.”).

⁵⁸ Pet. at 6.

⁵⁹ *Id.*

⁶⁰ Nation Decl. ¶ 7.

is therefore lawful, and his Petition for habeas corpus should be dismissed and/or denied.


Respectfully Submitted,

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CERTIFICATE OF SERVICE

X I hereby certify that on January 20, 2026, I served the attached document by U.S. Mail on the following, who is not a registered participant of the ECF System:

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