

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
TEXAS, BROWNSVILLE DIVISION**

Tokareva v. Venegas

Civil Action No. 1:26-cv-0309 (S.D. Tex. Mar. 17, 2026) (magistrate judge's report and recommendation) · No.

Civil Action No. 1:26-cv-0309 · Decided March 17, 2026

SUMMARY

A magistrate judge recommends dismissing without prejudice Anna Tokareva's 28 U.S.C. § 2241 habeas petition challenging her immigration detention. The recommendation concludes that only four months had passed since her final order of removal, making her detention presumptively reasonable under *Zadvydas v. Davis* and her claim premature and not ripe. The report also recommends closing the case and advises the parties regarding objections.

OPINION

March 17, 2026 UNITED STATES DISTRICT COURT Nathan Ochsner, Clerk SOUTHERN DISTRICT OF TEXAS BROWNSVILLE DIVISION ANNA TOKAREVA, § Petitioner, § § v. § Civil Action No. 1:26-cv-0309 § FRANCISCO VENEGAS, § Respondent. § MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Before the Court is Anna Tokareva's "Petition for a Writ of Habeas Corpus (Tokareva's "§ 2241 Petition").

Dkt. No. 1. For the reasons discussed below, it is recommended that the Court: (1) DISMISS WITHOUT PREJUDICE Tokareva's § 2241 Petition; and (2) DIRECT the Clerk of Court to CLOSE this case. I. FACTUAL AND PROCEDURAL BACKGROUND¹ Tokareva, proceeding pro se, a citizen of Russia, is in immigration custody at the El Valle Detention Center ("El Valle") located in Raymondville, Texas.

Dkt. No. 1 at 1. Tokareva has been in detention since August 2025; a final order of removal was entered on October 27, 2025. *Id.* From reviewing her § 2241 Petition, it does not appear, and Tokareva does not otherwise state that she appealed the final order of removal to the Board of Immigration Appeals ("BIA").² See generally *id.* ¹ Information obtained from Tokareva's § 2241 Petition.

See Dkt. No. 1. ² According to her § 2241 Petition, Tokareva further states she has a pending U-Visa petition before the United States Citizenship and Immigration Services. Dkt. No. 1 at 2. II. LEGAL STANDARDS A. Federal Subject Matter Jurisdiction: Standing and Ripeness "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins.*

Co. of Am., 511 U.S. 375, 377 (1994). Federal courts presume that any given case lies outside this limited jurisdiction, and the party seeking to invoke jurisdiction has the burden of showing otherwise. *Kokkonen*, 511 U.S. at 377; *Aetna Cas. & Sur. Co. v. Hillman*, 796 F.2d 770, 775 (5th Cir. 1986).

Accordingly, federal courts have an independent obligation to examine their own subject matter jurisdiction, even *sua sponte*. *Rivero v. Fid. Invs., Inc.*, 1 F.4th 340, 344 (5th Cir. 2021), cert. denied, 142 S.Ct. 1670 (2022) (quoting *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006)).

The United States Constitution limits federal jurisdiction to the resolution of “cases” and “controversies.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559 (1992); U.S. Const. art. III, § 2, cl. 1. Standing is an “essential and unchanging part” of the Constitution’s case-or-controversy requirement. *Lujan*, 504 U.S. at 559. Standing requires, in part, an “actual or imminent” injury, i.e., one that is “ripe for decision.” *Id.* at 560; *Shields v. Norton*, 289 F.3d 832, 835 (5th Cir.

2002), cert. denied sub nom. *Schuehle v. Norton*, 537 U.S. 1071 (2002). For a claim to be ripe, it must have “matured sufficiently to warrant judicial intervention.” *Contender Farms, L.L.P. v. U.S. Dep’t of Agric.*, 779 F.3d 258, 267 (5th Cir. 2015) (internal quotations omitted). A premature claim for relief is not judicially ripe and falls outside the federal courts’ limited jurisdiction.

Shields, 289 F.3d at 835; see also *Sample v. Morrison*, 406 F.3d 310, 312 (5th Cir. 2005) (per curiam) (noting that standing and ripeness are “essential components of federal subject-matter jurisdiction.”). Without subject matter jurisdiction, federal courts have no authority to adjudicate a case and must dismiss it. *Goodrich v. United States*, 3 F.4th 776, 779 (5th Cir.

2021); Fed. R. Civ. P. 12(h)(3). Dismissal for lack of subject matter jurisdiction is without prejudice. *Carver v. Atwood*, 18 F.4th 494, 498 (5th Cir. 2021). B. 28 U.S.C. § 2241: Habeas Review of Final Orders of Removal The district courts may grant writs of habeas corpus to persons in federal custody in violation of federal law. 28 U.S.C. § 2241(a), (c)(1), (c)(3).

This power extends to immigrant detainees in custody beyond the statutorily mandated removal period. 8 U.S.C. § 1231(a)(1)(A); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Habeas review of removal orders, however, is conditioned on the detainee first exhausting all available administrative remedies. 8 U.S.C. § 1252(d)(1). Failure to exhaust administrative remedies should result in dismissal without prejudice.

Dawson Farms, LLC v. Farm Serv. Agency, 504 F.3d 592, 607 (5th Cir. 2007). III. DISCUSSION Immigration judges are authorized to issue orders of removal, which become final once the Board of Immigration Appeals has acted or the time to seek review of a removal order expires. See generally 8 C.F.R. § 1241.1; *Texas v. United States*, 524 F. Supp. 3d 598, 614 (S.D.

Tex. 2021) (Tipton, J.). Generally, the Government has 90 days to execute a final removal order and remove the unauthorized immigrant from the United States. 8 U.S.C. § 1231(a)(1)(A). Though § 2241 proceedings “remain available as a forum for statutory and constitutional challenges to post-removal-period detention,” the detainee’s ability to seek habeas relief is subject to certain time constraints.

Zadvydas, 533 U.S. at 688. When the Government fails to execute a removal order within the 90-day period, post-removal detention must be limited to a period “reasonably necessary” to effectuate removal; indefinite detention is impermissible. *Id.* at 689. This does not mean that any amount of post-removal-period of confinement is unlawful; rather, the Government’s obligation to rebut a presumption of indefinite detention does not activate until after detention has been ongoing longer than six months, and only after the immigrant detainee first makes a showing that “there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

Up to six months of immigration detention after entry of a final removal order is, therefore, “presumptively reasonable.” *Id.*; *Chance v. Napolitano*, 453 F. App’x 535, 536 (5th Cir. 2011) (per curiam). In arriving at the six-month presumption, the United States Supreme Court acknowledged the sensitive interplay of separation of powers concerns and national interests in the immigration context.

See *Zadvydas*, 533 U.S. at 700. The six-month presumption, then, reflected a reasoned judgment that earlier review of post-removal-period detention posed too great a risk to institutional interests to properly warrant judicial scrutiny. Tokareva asks that the Court “grant [her] Petition for Writ of Habeas Corpus, order [her] release under reasonable conditions, or provide an individualized custody hearing.” Dkt.

No. 1 at 4. She states that she has been “detained beyond the time reasonably necessary to effectuate [her] removal.” *Id.* As Tokareva is proceeding pro se, her pleadings are liberally construed under a less stringent standard of review than a formal pleading drafted by a lawyer. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nevertheless, a pro se filing must still “abide by the rules that govern federal courts.” *E.E.O.C. v. Simbaki Ltd.*, 767 F.3d 475, 484 (5th Cir.

2014) (quoting *Frazier v. Wells Fargo Bank, N.A.*, 541 Fed. Appx. 419, 421 (5th Cir. 2013)). The Court, then, liberally construes her claim for relief under *Zadvydas*. Dkt. No. 1 at 4; *E.E.O.C.*, 767 F.3d at 484. Here, only four months have passed since Tokareva received her final order of removal on October 27, 2025. Dkt. No. 1 at 1. This is fatal to Tokareva’s § 2241 Petition because it falls short of six months; it falls within the window of presumptive reasonableness.

8 U.S.C. § 1231(a)(i)(B)(i) (“The removal period begins ... [t]he date the order of removal becomes administratively final.”); *Zadvydas*, 533 U.S. at 688, 701 (stating that the post-removal-

period detention statute applies only after a noncitizen has been ordered removed); see *Chance*, 453 F. App'x at 536.

As a result, judicial intervention at this stage is premature and, for the reasons explained in *Zadvydas*, would be imprudent considering the Executive branch's primary prerogative over the administration of immigrant removal. See *Zadvydas*, 533 U.S. at 700.

Accordingly, Tokareva's claim is not ripe and is subject to dismissal for lack of subject matter jurisdiction. A dismissal does not preclude Tokareva's ability to file a new § 2241 petition under *Zadvydas v. Davis*, 533 U.S. 678 (2001); she would then have to demonstrate that no significant likelihood exists for her removal in the reasonably foreseeable future.

IV. RECOMMENDATION For the foregoing reasons, it is recommended that the Court: (1) DISMISS WITHOUT PREJUDICE Tokareva's § 2241 Petition; and (2) DIRECT the Clerk of Court to CLOSE this case. V. NOTICE TO PARTIES A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object.

Douglass v. United Servs. Auto. Assn, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1); FED. R. Civ. P. 72(b). SIGNED on this 17th day of March, 2026 at Brownsville, Texas. we United States Magistrate Judge 6/6