

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ANTHONY BUDHAI, :  
 :  
 Petitioner, :  
 :  
 v. : CASE NO. 3:02CV1429 (RNC)  
 :  
 JOHN ASHCROFT, :  
 :  
 Respondent. :

ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Anthony Budhai, has filed a petition for writ of habeas corpus asking this Court to order his release from the custody of the Immigration and Naturalization Service on the ground that his continued detention is unreasonable and therefore unconstitutional. For reasons set forth below, the petition [Doc. #1] is denied.

BACKGROUND

Petitioner is a citizen of Guyana and a legal permanent resident of the United States. (Pet. Mem. 1) Convicted of an aggravated felony, he is subject to removal. On May 15, 2002, an immigration judge entered a final order of removal against petitioner and he did not appeal. (Pet. Mem. 1). Petitioner has been in INS custody since that time. (Pet. Mem. 1)

Petitioner argues that because he has been in custody since May 15, 2002 - a period longer than 90 days - his continued detention is

unlawful under the Supreme Court's decision in Zadvydas v. Davis, 533 U.S. 678 (2001). Specifically, he asserts that because he has been detained beyond the 90 days presumptively reasonable under Zadvydas, the INS must demonstrate that it will remove him in the reasonably foreseeable future, which it has not done.

#### DISCUSSION

Following a final order of removal, there is a mandatory 90-day detention period. 8 U.S.C. § 1231(a)(2). After 90 days, INA § 241(a)(6) authorizes the Attorney General to continue to detain certain removable aliens, including aggravated felons such as petitioner. 8 U.S.C. § 1231(a)(6). In Zadvydas, the Supreme Court held that § 241(a)(6) authorizes detention for "a period reasonably necessary to bring about [the] alien's removal from the United States." 533 U.S. at 689. Six months is presumptively reasonable. Id. at 701. After that, if the alien provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the government to respond with rebuttal evidence. Id. Thus, even after six months, an alien may be held in INS custody until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future. Id.

In this case, petitioner has been in INS custody since May 15, 2002 - a presumptively reasonable period under Zadvydas. Thus,

Petitioner is not entitled to the burden-shifting aspect of Zadvydas and must satisfy a higher burden than merely providing reason to believe there is no significant likelihood of removal. See Prenga v. Ashcroft, 3:01CV1992(JCH) (requiring clear and convincing evidence). Petitioner has provided no evidence that his removal to Guyana will not occur in the reasonably foreseeable future.

CONCLUSION

Accordingly, the petition is denied.

So ordered.

Dated at Hartford, Connecticut this 30<sup>th</sup> day of September 2002.

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Robert N. Chatigny  
United States District Judge