

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

BILAL FAWZI BASHEER  
ALHALABI,

Petitioner,

v.

RANDY TATE, Warden,

Respondent.

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CIVIL ACTION NO. H:25-526

**MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS, OR  
ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

Warden Randy Tate, Respondent, files this motion to dismiss the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (ECF 1), pursuant to Federal Rule of Civil Procedure 12(b)(1). Alternatively, Respondents move for summary judgment under Federal Rule of Civil Procedure 56.

**I. NATURE AND STAGE OF THE PROCEEDING**

Petitioner, Bilal Fawzi Basheer Alhalabi, is an immigration detainee in the custody of the Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE). Petitioner is a native and citizen of Jordan awaiting removal from the United States after the immigration judge (IJ) ordered Alhalabi removed to Jordan on July 19, 2024. Petitioner filed the pending habeas corpus petition on February 3, 2025, alleging that he is being held past 6 months indefinitely.

## **II. STANDARD OF REVIEW**

### **A. Federal Rule of Civil Procedure 12(b)(1)**

Because federal courts are courts of limited jurisdiction, Rule 12(b)(1) requires dismissal of a claim if the court lacks subject matter jurisdiction. *See Kokkenen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994); *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365 (1978). A claim must be dismissed if the court lacks subject matter jurisdiction to entertain it. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998). In ruling on a motion to dismiss for lack of subject matter jurisdiction, courts may evaluate: (1) the petition alone; (2) the petition supplemented by undisputed facts evidenced in the record; or (3) the petition supplemented by undisputed facts plus the court's resolution of disputed facts. *Williams v. Wynne*, 533 F.3d 360, 365 n.2 (5th Cir. 2008); *Den Norske Stats Oljeselskap As v. HeereMac Vof*, 241 F.3d 420 (5th Cir.2001). The party invoking federal jurisdiction bears the burden of proving its existence by a preponderance of the evidence and outside evidence may be considered. *Id.*; *Patterson v. Weinberger*, 644 F.2d 521 (5th Cir. 1981); *Stanley v. Central Intelligence Agency*, 639 F.2d 1146 (5th Cir. 1981).

### **B. Federal Rule of Civil Procedure 56**

Summary judgment is appropriate where the pleadings and evidence demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Materiality is determined from the governing substantive law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Disputes over facts that may affect the outcome of the

case according to the substantive law are “material” and a dispute is “genuine” if the evidence allows a reasonable jury to return a verdict for the nonmoving party. If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 256.

### III. FACTUAL SUMMARY

On March 20, 2013, The United States Customs and Border Protection admitted Petitioner at Houston, Texas, as a Legal Permanent Resident - Conditional Spouse of a U.S. citizen (TC1). Government Exhibit 1, Alexis Declaration ¶ 9. On January 27, 2015, the United States Citizenship and Naturalization Service (USCIS) received a Petition to Remove the Conditions on Residence (I-751) that was filed by Petitioner. Gov’t Ex. 1 ¶10. On March 1, 2016, USCIS received an Application for Naturalization (N-400) that was filed by Petitioner. Gov’t Ex. 1 ¶11. On May 3, 2017, USCIS denied the I-751 and N-400 filed by Petitioner and terminated his status. Gov’t Ex. 1 ¶12.

On June 3, 2020, the 176th District Court of Harris County, Texas, convicted Petitioner for two counts of Indecency with Child Sexual Contact for which Petitioner was sentenced to five years confinement. Gov’t Ex. 1 ¶13. On April 9, 2024, the Texas Department of Criminal Justice (TDCJ) released Petitioner into the custody of ERO Houston. Gov’t Ex. 1 ¶14. Petitioner was served a Notice to Appear (I-862) and placed into removal proceedings. *Id.* On July 19, 2024, an Immigration Judge (IJ) ordered Petitioner removed to Jordan. Gov’t Ex. 1 ¶15.

On August 12, 2024, ERO Houston submitted a request for a travel document to the embassy of Jordan for Petitioner. Gov't Ex. 1 ¶16. On November 18, 2024, ERO Houston received a travel document for Petitioner that was due to expire on December 4, 2024. Gov't Ex. 1 ¶17. ERO Houston was unable to get a removal flight scheduled before that travel document for Petitioner expired. *Id.*

On January 15, 2025, ERO Houston submitted a new request for a travel document to the embassy of Jordan for Petitioner. Gov't Ex. 1 ¶18. On January 24, 2025, ERO Houston reserved a seat for Petitioner on a Special High Risk Charter Flight (SHRC) to Jordan as an alternate scheduled to depart on February 18, 2025. Gov't Ex. 1 ¶19. On February 3, 2025, ERO Houston received a travel document for Petitioner that was due to expire on February 28, 2025. Gov't Ex. 1 ¶20. On February 18, 2025, Petitioner was cut from the scheduled SHRC flight to Jordan as that the flight was full. Gov't Ex. 1 ¶21.

On February 21, 2025, ERO Houston submitted a new request for a travel document to the embassy of Jordan for Petitioner as the prior travel document would expire before ERO Houston could effectuate removal. Gov't Ex. 1 ¶22. On March 12, 2025, ERO Houston received a travel document for Petitioner that is due to expire on April 9, 2025. Gov't Ex. 1 ¶23. ERO Houston has tentatively scheduled Petitioner for removal from the United States on April 4, 2025. Gov't Ex. 1 ¶24.

#### IV. ISSUE PRESENTED

1. Whether Petitioner's detention is lawful.

#### V. ARGUMENT

##### A. Petitioner's Detention is Lawful

Under 8 U.S.C. § 1231, the Attorney General has an initial period of 90 days (known as the removal period) to remove an alien who is subject to a removal order, during which time the alien "shall" be detained. 8 U.S.C. § 1231(a)(1)(A) and (a)(2). If not removed within the initial 90-day removal period, it is presumptively constitutional for an alien to be detained for six months after a final order of removal is entered. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). To prevail under *Zadvydas*, the alien must make a two-part showing. First, he must establish that he has been detained beyond the six-month period set forth in *Zadvydas*. *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002). Second, he must provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F. 3d at 1052.

Petitioner fails to meet the second prong of *Zadvydas*. Petitioner's removal order became final on July 19, 2024. Despite more than six months passing from the entry of Petitioner's final order of removal, Petitioner is lawfully detained because his removal is likely in the reasonably foreseeable future, and his detention has been extended for a time necessary to bring about his removal. Because Petitioner cannot prevail under the

*Zadvydas* standard, the Court should dismiss his petition for writ of habeas corpus. Alternatively, the Court should grant judgment for Respondent as a matter of law.

*1. Petitioner's Criminal History Makes Him a Danger to Society and a Flight Risk*

Under Section 1231(a)(6), federal immigration authorities can detain certain aliens who were ordered removed due to criminal convictions and flight risk beyond the initial removal period. 8 U.S.C. § 1231(a)(6); *Lightson v. Mukasey*, No. H-07-2236, 2008 WL 8053472, at \*1 (S.D. Tex. Mar. 6, 2008). Petitioner's criminal history includes a conviction for Indecency with Child Sexual Contact. Gov't Ex. 1 ¶13. Based on his criminal history, Petitioner is a danger to the community, the safety of other persons, and is a flight risk. Consequently, Petitioner's behavior has placed him within the class of aliens properly detained, and his detention has been extended for a time necessary to bring about his removal.

*2. Removal is Reasonably Foreseeable*

Under *Zadvydas*, it is the petitioner's initial burden to provide "a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Once that initial burden is met, the burden then shifts to the government to respond with sufficient evidence to rebut the presumption of reasonableness.

Petitioner asserts that due to deportation officer error in allowing his travel document to expire, he is being held indefinitely in violation of his constitutional rights. (ECF 1 at 6). Petitioner's assertion is incorrect. He is not being held indefinitely, and

although his previous travel documents expired, he has been issued a new travel document and he is tentatively scheduled for removal on April 4, 2025, which is in the reasonably foreseeable future. Gov't Ex. 1 ¶24.

In *Alam*, the Court determined that “removal is not ‘reasonably foreseeable’ in cases ‘where no country would accept the detainee, the country of origin refused to issue the proper travel documents, the United States and the country of origin did not have a removal agreement in place, or the country to which the deportee was going to be removed was unresponsive for a significant period of time.’” *Alam v. Nielsen, et al.*, 312 F. Supp. 3d 574, 581 (S.D. Texas 2018). Nothing in Petitioner’s case suggests that any such barrier stands in the way of his removal.

Petitioner does not allege or show that Jordan has refused to issue the proper travel documents. Petitioner mistakenly asserts that he will be held indefinitely because his previous travel document expired. (ECF 1 at 6). In fact, travel documents have been issued and Petitioner’s removal is tentatively scheduled in the near future. Therefore, Petitioner cannot meet his burden to show a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Because the Petitioner fails to assert or show there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, his habeas claim fails and should be dismissed under 12(b)(1), or alternatively, as a matter of law under Rule 56 because there is no genuine issue of material fact.

VI. CONCLUSION

For the reasons stated above, Respondent urges the Court to dismiss Petitioner's petition for writ of habeas corpus, or alternatively, to grant Respondent judgment as a matter of law.

Dated: March 21, 2025

Respectfully submitted,

NICHOLAS J. GANJEI  
United States Attorney

By: /s/ Catina Haynes Perry

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**CERTIFICATE OF CONFERENCE**

Undersigned counsel is unable to confer with the *pro se* Petitioner because he is in custody. Therefore, it is presumed that Petitioner opposes this motion.

/s/ Catina Haynes Perry  
Catina Haynes Perry  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I certify that on March 21, 2025, the foregoing was filed through the Court's CM/ECF system and will be mailed to the *pro se* Petitioner as follows.

Bilal Fawzi Basheer Alhalabi  
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Montgomery Processing Center  
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Conroe, TX 77301

/s/ Catina Haynes Perry  
Catina Haynes Perry  
Assistant United States Attorney