IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

&

JAWAD ALALI &

Petitioner, & **Case No.: 25-CV-82-CDL-AGH**
28 U.S.C. section 2241

v. &

WARDEN, STEWART DETENTION CENTER &

Respondent. &

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

On April 30, 204, the Department of Homeland Security ("DHS") filed the NTA with the immigration judge. On September 9, 2024, the IJ denied Petitioner's applications for relief form removal and ordered him remand to Syria. Petitioner reserved the right to appeal the IJ's order to the Board of Immigration Appeals ("BIA") Petitioner did filed an appeal to the BIA within the 30 days required. 8 C.F.R. Section 1003.38(b). Therefore, Petitioner's removal order became final on October 9, 2024. 8 C.F.R. Section 1241.1(c).

On February 28, 2025 Petitioner filed hand delivered his Writ of Habeas Corpus Petition to Stewart Detention facility mail-room Official. However, Petitioner acknowledge that from the date he hand delivered to facility mail-room his Petition did not exceeded the six months presumptively reasonable detention period.

The Court should not dismiss the Petition because: (1) The Petitioner herein is able to state a claim for the relief under Zadvydas and why his Zadvydas claim should be determined premature, (2)

Petitioner herein will show he entitled to relief under Zadvydas.

Background

Petitioner incorporates by reference the statements contained in the "Background" of the Respondent's "Motion to Dismiss". See (Res. Mot. To Dis. Doc.#7).

Due Process

Petitioner's detention is governed by 8 U.S.C section 1231(a).1 That code section provides that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. section 1231(a)(1)(A). Detention of the alien within the ninety-day removal period is mandatory. Id. at section 1231(a)(2). This removal period begins on the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. Id. at section 1231(a)(1)(B). The statute provides, however, that "[t]he removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." Id. at section 1231(a)(1)(C).

In Zadvydas v. Davis, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2D 653 (2001), the Supreme Court determined that if an alien is not removed within the removal period, detention may continue if it is "reasonably necessary" to effectuate removal. Zadvydas, 533 U.S. at 689. The Court held that, under the Due Process Clause of the Fifth Amendment, detention for six months is presumptively reasonable. Id. at 700-01. After this period, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond

with evidence sufficient to rebut that showing." Id. at 701. The Eleventh Circuit has explained that in order "[t]o state a claim under Zadvydas . . . an alien must show that: (1) he has been detained for more than six months following the final order of removal and (2) there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." Vaz v. Skinner, 634 F. App'x 778, 782 (11th Cir. 2015) (per curiam) (citing Akinwale v. Ashcroft, 287 F.3d 1050, 1052 (11th Cir. 2002)).

Argument

Firstly, Petitioner's Zadvydas claim should not be dismissed as premature though he had not been detained post-final order of removal for six months at the time he filed the writ of habeas corpus Petition. Petitioner filed his Petition on February 28, 2025 the date he signed his Petition. Petitioner order became final on October 9, 2024 when his 30 days to appeal expired. 8 C.F.R. Section 1003.38(b); 8 C.F.R. Section 1241.1(c). Therefore, the six months reasonable detention period under Zadvydas ended on April 9 2025. Zadvydas, 533 U.S. At 700. This means that the Petitioner filed his habeas Petition One month and nine days earlier. Nevertheless, the Respondent did not response to the Petitioner's writ of habeas corpus until April 11, 2025 the date the Respondent field its Motion To Dismiss. See (Doc.#7). The Respondent in turn filed its motion to response three days after the six month presumptively reasonably detention period under Zadvydas on April 11, 2025.

Because, here in Petitioner's case his six month period ended on April 9, 2025, and the Respondent responded three days after the six month period under Zadvydas the Respondent did not suffered any prejudice. The Respondent argued that Petitioner fails to state a claim because the Petition is premature under Zadvydas, however, contrary to the Respondent's argument the Respondent still was allowed a fairly six month to obtain the Petitioner's travel document after the Petitioner's six month became final on April 9, 2025 and the Respondent's filed its Motion To Dismissed. The Respondent

admits that "the Syrian mission has verified Petitioner's passport and recently provided ICE/ERO with the requirements - a photograph and a travel itinerary for obtaining a travel document, which is evidence that the Respondent would not have received the Petitioner's travel document even if the Petitioner had filed his habeas Petition an (the) additional one month and nine days later. Hence, for these reasons the Court should disagree with the Respondent that the Petitioner's writ of habeas corpus Petition should be dismissed because the Petitioner fail to state a claim because the Petition is premature under Zadvydas.

Secondly, Petitioner is entitled to relief under Zadvydas As noted above the Petitioner provide the Court with good cause why the Court should ignore that his Zadvydas' claim is premature an proceed with making a determination on the grounds of whether Petitioner fails to show that he is entitlement to release under Zadvydas.

Nonetheless, the Respondent argues that ICE/ERO is able to obtain travel documents for Syrian nationals with verified Syrian passports. And that they has a copy of Petitioner's expired Syrian passport. Also ICE/ERO has states that "the Syrian Mission has verified Petitioner's passport and recently provided ICE/ERO with the requirements—a photograph and a travel itinerary—for obtaining a travel document. Further, ICE/ERO has developed a travel itinerary to remove non-citizens to Syria through a two-part witness departure process." To date, after six month ICE/ERO has still failed to meet their burden of the six month period under Zadvydas 533 U.S. At 700. In the Petitioner's case the Respondent argues that Petitioner's claim his premature yet has not obtained any travel document for Petitioner after six months. After this period, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." Id. at 701.

ICE/ERO is allegedly saying what can be done and progress is being made to obtain Petitioner's travel document instead of obtaining the Petitioner's travel document. After six long month whether

what ICE is alleging is fact or not, such should not be considered a justifiable reason to prolong the Petitioner detention. It appears as if Respondent intentionally abuses and manipulates the law/language under Zadvydas stating that "... ICE/ERO has made significant progress in securing a travel document for, Petitioner". The Petitioner would hope so as well be grateful after six long months. ICE/ERO tactic after exceeding the six month violation period under Zadvydas to gain additional time from the Court comes at Petitioner's expense. Meaning possibly another three to five months detention that is almost double the allotted six month period under Zadvydas , the six months reasonable period of time to allow the government to accomplish such removal. See Zadvydas v. Davis, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed. 2D 653 (2001).

Zadvydas v Davis, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2D 653 (2001), however, the United States Supreme Court applied the doctrine of constitutional avoidance to "read an implicit limitation into the statute." 533 U.S. at 689. The Supreme Court held that 1231(a)(6) authorizes post-removal-order detention only for a period "reasonably necessary" to accomplish the alien's removal from the United States. Id. at 699-700. The Court recognized six months as a presumptively reasonable period of time to allow the government to accomplish such removal. Id. at 701. The Court of Appeals for the Eleventh Circuit has explained that to be entitled to release under Zadvydas, an alien must show: "(1) that the six-month period, which commences at the beginning of the statutory removal period, has expired when the section 2241 petition is filed; and (2) evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." Gozo v. Napolitano, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (quotation marks omitted); see also Akinwale v. Ashcroft, 287 F.3d 1050, 1052 (11th Cir. 2002) (per curiam) ("[I]n order to state a claim under Zadvydas the alien . . . must show post-removal order detention in excess of six months [and] also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.").

In Zadvydas, the Court construed section 1231(a)(6) to mean that an alien who has been ordered removed may not be detained beyond "a period reasonably necessary to secure removal," [533 U.S. at 699,] and it further held that six months is a presumptively reasonable period, id. [at 701.] After that, the Court concluded, if the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the Government must either rebut that showing or release the alien. Ibid. v. Rodriguez, --- U.S. ---, 138 S. Ct. 830, 843, 200 L. Ed. 2D 122 (2018).

Petitioner has the burden to provide "evidence of a good reason to believe that there is no significant likelihood of removal in the reasonable foreseeable future." Petitioner's claim of prolonged detention must therefore be evaluated under the rubric applicable to post-final order of removal detention. Because Petitioner is detained under section 1231(a), the propriety of his current period of detention is controlled by the Supreme Court's decision in Zadvydas and the Third Circuit's decision in Guerrero-Sanchez v. Warden York Cnty. Prison, 905 F3.d 208, 225-26 (3d Cir. 2018). As the Supreme Court has explained,

Under [section 1231(a)], when an alien is ordered removed, the Attorney General is directed to complete removal within a period of 90 days, 8 U.S.C. section 1231(a)(1)(A), and the alien must be detained during that period, section 1231(a)(2). After that time elapses, however, section 1231(a)(6) provides only that aliens "may be detained" while efforts to complete removal continue. (Emphasis added).

Hence, the Petitioner has offered evidence sufficient to shift the burden to Respondent to show a likelihood of removal, which the Respondent has failed to show. And in turn the has provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

Conclusion

For the aforementioned reasons, this Court should find that Respondent is bound by the Due

Process Clause to Grant Petitioner's Petition for release from custody.

Respectfully submitted on this __ day of April 2025.

Jawad Aliali
A No.: [redacted]
Stewart Detention Center
146 CCA Road
P.O. 248
Lumpkin, Georgia 31815

CERTIFICATE OF SERVICE

The Petitioner certify that he on this ___ date of April 2025 filed the **PETITIONER'S REPLY TO RESPONDENT'S RESPONE MOTION TO DISMISS** with the Clerk of the United Stated District Court by hand delivering to the Stewart Detention Mail-room official.

Petitioner further certify that he on this __ day of April 2025 mailed by United States Postal Service the document and a copy o f the aforesaid Petition to the following parties:

Roger C. Grantham Jr.
Assistant United States Attorney's Office
Middle District of Georgia
Post Office Box 1702
Columbus, Georgia 31202-1702; and

Department Homeland Security
Stewart Detention Center
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Lumpkin, GA 31815

Jawad Aliali
A No.: [redacted]