United States District Court
Western District of Texas
El Paso Division

Melika Mohammadi Gazvar Olya, Petitioner, v. Angel Garite, *et al*, Respondents.	No. 3:25-CV-00083–DCG

Response in Opposition to Petition for Writ of Habeas Corpus and Motion to Dismiss, or in the Alternative, Motion for Summary Judgment

In her petition for writ of habeas corpus under 28 U.S.C. § 2241, Ms. Mohammadi ("Petitioner") seeks release from civil immigration detention, claiming that her 20-month post-removal-order detention has been unlawfully prolonged. *See* ECF No. 1 ¶¶ 2–3, 23, 31, 37, 39, 56–58, 62–64. She claims that ICE does not have the legal authority to continue her detention, despite her final order of removal, though she has refused to comply with removal efforts, causing the cancellation of ICE missions and allowing her passport to expire. *Id.* Petitioner's claims lack merit, and this petition should be dismissed.

Petitioner has a final order of removal from August 2023, which mandates her detention under 8 U.S.C. § 1231(a) during the 90-day removal period and potentially beyond that time under certain circumstances, pending her physical removal to Iran. Moreover, Petitioner refuses to cooperate with efforts to enforce her removal order, which has delayed her removal. Even if she were able to make a showing that removal to Iran is not likely in the foreseeable future, which she cannot, the burden would shift to Respondents who can show that removal to Iran is, in fact, significant likely in the reasonably foreseeable future. For these reasons, Petitioner fails to state a claim for habeas relief, and the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Iran. ECF No. 1 at ¶ 15. Petitioner claims she last entered the United States without inspection in January 2023 and subsequently surrendered herself to immigration officers. *Id.* Immigration officials served Petitioner with an expedited removal order on January 30, 2023, but she claimed fear of returning to Iran. *See* Exhibit A (Declaration of ICE ERO El Paso Assistant Field Office Director, Martin A. Sarellano, Jr.) at ¶ 5. Petitioner was subsequently convicted in this Court of illegal entry under 8 U.S.C. § 1325 and sentenced to a total of 25 days of imprisonment. *Id.* ¶¶ 6–8.

On February 23, 2023, ICE El Paso accepted custody of Petitioner and detained her at the El Paso Processing Center (EPC). *Id.* ¶ 8. Within a week, ICE referred Petitioner for a credible fear interview, and on March 11, 2023, USCIS determined that Petitioner did, in fact, have a credible of returning to Iran. *Id.* ¶ 9. USCIS issued her a Notice to Appear in immigration court, which canceled her expedited removal order to allow her to apply for relief from removal based on her credible fear of return. *Id.* Ultimately, an immigration judge denied Petitioner's applications for relief from removal and ordered her removed to Iran. *Id.* This order became final on August 21, 2023, when Petitioner's appellate period lapsed. *Id.*

Despite having been warned verbally and in writing of the consequences of failing to depart the United States under a final removal order, Petitioner refused to board the commercial aircraft for removal to Iran and failed to depart the United States as scheduled on October 1, 2023, which was within the 90-day removal period. *Id.* ¶¶ 10–11. ICE subsequently referred her case to the U.S. Attorney's Office for prosecution under 8 U.S.C. § 1253 (failure to depart), but prosecution was declined. *Id.* ¶ 11. In subsequent interviews, Petitioner continued to state that she would refuse to board future removal flights. *Id.*

On October 18, 2023, Petitioner filed with the Immigration Judge (IJ) a motion to reopen

her removal order, but the IJ denied the motion the following day. *Id.* ¶ 12. On November 20, 2023, Petitioner filed with the Board of Immigration Appeals (BIA) an appeal of the IJ's decision to deny her motion to reopen. *Id.* ¶ 15. The BIA granted her emergency motion for stay of removal on December 8, 2023. *Id.* ¶ 16. On April 18, 2024, the BIA remanded the motion to reopen to the IJ for consideration of new evidence, and the IJ denied it for a second time on May 30, 2024. *Id.* ¶ 18. Petitioner filed another appeal and a motion to stay with the BIA on June 25, 2024. *Id.* ¶ 21. On September 16, 2024, Petitioner again refused to board her removal flight, which caused ICE to cancel the mission, but ICE continued moving forward with efforts to reschedule removal. *Id.* ¶ 24–26, 28. On December 13, 2024, the BIA denied Petitioner's motion for stay of removal. *Id.* ¶ 28.

On February 5, 2025, Petitioner's passport expired, so ICE began preparing a request for a travel document (TD) to submit to the Iran Embassy. *Id.* ¶ 29. ICE did not require any information from Petitioner for the TD application, because ICE was in possession of her expired passport containing the pertinent information. *Id.* ¶ 30. The TD request remains pending, but ICE does not anticipate any impediments to its issuance. *Id.* ¶ 33. Even if Petitioner refuses to comply with future efforts to secure her removal, ICE can coordinate a charter flight to Iran, now that changes to the priorities of the United States government have resulted in improved international relations between the United States and other countries, resulting in more charter flight approvals in recent months. *Id.*

Throughout her post-removal-order custody and on multiple occasions, ICE ERO has served Petitioner with a variety of written notices and warnings, in addition to providing verbal warnings, regarding her obligation to assist in removal efforts, the consequences of noncompliance, and the basis for her continued detention beyond the 90-day removal period,

including an opportunity for her to be heard. *Id.* ¶¶ 10–11, 13–15, 17, 22–25.[1] Petitioner routinely refused to acknowledge service of these notices and warnings, but ICE served her nonetheless. *Id.*

On March 19, 2025, this Court ordered the Respondents to respond to Petitioner's habeas petition by April 2, 2025, and ordered the clerk's office to serve[2] the U.S. Attorney's Office. ECF No. 4. In opposition to this habeas petition, Respondents timely[3] file this Response and Motion to Dismiss, or in the alternative, Motion for Summary Judgment, in accordance with the Court's order.

II. Detention Authority under 8 U.S.C. § 1231 – Final Orders of Removal

The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B). Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Under § 1231, the removal period can be extended in a least three circumstances. *See Glushchenko*, 566 F.Supp.3d at 703. Extension is

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[1] A notice of failure to comply served on the alien outside of the 90-day removal period does not excuse the alien's non-compliance or otherwise prevent an extension of the removal period. *See Glushchenko v. DHS*, 566 F.Supp.3d 693, 708 (W.D. Tex. Oct. 8, 2021) (citing 8 U.S.C. § 1231(a)(1)(C); 8 C.F.R. § 241.4(g)).

[2] As of the date of filing, it does not appear the government has been properly served with the petition as required by the Federal Rules of Civil Procedure.

[3] Because of the quick turnaround, Respondents are continuing to gather documents and other relevant information and would appreciate an opportunity to supplement this filing if it would further assist the Court in reviewing the legality of Petitioner's claims.

warranted, for example, if the alien fails to comply with removal efforts or presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

III. Argument

A. Petitioner Fails to Show Good Reason That Removal Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner fails to state a claim for relief under the habeas statute, because she cannot show that there is "good reason" to believe that removal to Iran is not imminent. In *Zadvydas*, the U.S. Supreme Court held that § 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" but "does not permit indefinite detention." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute." *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701.

Once the alien establishes that she has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite "good reason," the burden will not shift to the government to prove otherwise. *Id.*

The "reasonably foreseeable future" is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21–

CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioner's burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

There is no dispute that Petitioner's removal order has been final since August 2023. *See* ECF No. 1 ¶¶ 1, 9, 22. Petitioner, nonetheless, urges this Court to order that her continued detention pending removal to Iran is contrary to statute and in violation of her procedural and substantive due process rights. *Id.* ¶¶ 40–64. Petitioner, however, fails to allege "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Instead, Petitioner relies on only conclusory allegations and speculation to argue that her detention "will continue indefinitely." *Id.* ¶ 62. Specifically, Petitioner cites an outdated 2019 report that lists Iran as an "uncooperative country" in relation to removal efforts by the United States. *Id.* ¶ 35. Petitioner further relies on a January 2025 news article from The Washington Post (publicly inaccessible due to a paywall) that purportedly reports "2618 Iranians with final orders of removal in the U.S.," but that statistic, even if accurate, is irrelevant to the question of whether removal to

Iran is currently imminent. *Id.* ¶ 36. For example, the statistic does not indicate whether these 2618 Iranians are even in ICE custody or whether they are impeding ICE's ability to enforce their removal orders, such as failing to surrender to ICE custody for removal. Indeed, ICE publicly releases statistics[4] regarding its removals and reports that 27 Iranian nationals were successfully removed in FY2024, showing an increase in successful removals to Iran since FY2019. The report, of course, does not yet include statistics for FY2025, but ICE maintains that relations with Iran have improved such that ICE anticipates no impediments to obtaining the TD in this case, especially when Petitioner's passport only recently expired.

Moreover, Petitioner has obstructed the removal process on various occasions by refusing to board removal flights and stating her intent to refuse to cooperate with future removal efforts. *See* Ex. A (Sarellano Declaration) at ¶¶ 10–11, 24–26, 28; *see also* 8 U.S.C. § 1231(a)(1)(C) (authorizing continued detention if an alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure"); *see also* 8 C.F.R. § 241.4(g)(1)(ii). As this Court has acknowledged, an alien will have difficulty showing the required "good cause" that removal is unlikely if the alien's actions have obstructed the removal process. *See Gluschenko,* 566 F.Supp.3d at 707, 709–10; *Liu v. Chertoff*, EP-06-CA-0203-DB, 2006 WL 4511941, at *3 (W.D. Tex. Oct. 23, 2006); *Dumpeh v. Moore*, SA-07-CA-294-OG, 2007 WL 3235099, at *2 (W.D. Tex. Oct. 26, 2007) ("[A]n alien cannot assert a viable constitutional claim when his indefinite detention is due to his failure to cooperate with the INS's efforts to remove him."); and *Khan v. Gonzales*, 481 F.Supp. 2d 638, 641 (W.D. Tex. 2006) (holding "[w]e cannot know whether an alien's removal is a 'remote possibility,' … until the alien makes a full and honest

[4] *See* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (last accessed Apr. 2, 2025).

effort to secure travel documents."); *Shabanov v. Tate*, No. H–23–3136, 2024 WL 1772873 at *3 (S.D. Tex. Apr. 24, 2024).

Just like the petitioner in *Glushchenko* and similar cases cited above, Petitioner here has contributed to her own continued detention by refusing to board her removal flight on at least two occasions, once in October 2023, and a second time in September 2024, causing ICE to cancel the missions. These delays of her own doing allowed her passport to expire before ICE could place her on another removal flight. Despite her failures to comply, ICE was not complacent in its removal efforts, even while Petitioner continued filing various motions to reopen and/or stay the execution of her removal order. While challenging the legality of her removal order was well within her rights, such challenges necessarily prolonged her detention.

Petitioner's conclusory and speculative claims are wholly insufficient to meet her burden of proof under *Zadvydas*. *See Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014). As such, Petitioner cannot meet her burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. *See Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government was taking affirmative steps to obtain Vietnamese travel documents). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

Given Petitioner's lack of cooperation in violation of federal law, including her intentional actions (both legal and illegal) to delay her removal, her petition seeking release from federal immigration custody should be denied. Because Petitioner failed to cooperate with removal efforts,

failed to otherwise show that her detention is contrary to law, and failed to show she is otherwise entitled to any relief, her petition should be denied.

B. Petitioner Fails to Show That ICE Violated Her Procedural Due Process Rights.

To establish a procedural due process violation, Petitioner must show that she was deprived of her liberty without adequate safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). While an agency is required to follow its own procedural regulations, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). In any event, a remedy for a procedural due process violation is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

Similar to her substantive due process claim, Petitioner provides only conclusory allegations that fall short of the pleading standards to argue that ICE has failed to provide her with "adequate procedural protections." ECF No. 1 ¶ 63. The record, however, disputes this unsupported allegation. *See* Ex. A (Sarellano Declaration), *generally*. In compliance with the pertinent regulations, ICE ERO repeatedly served Petitioner with written notices and warnings for failing to comply with removal efforts. ICE also repeatedly notified Petitioner of the basis for her continued detention. Petitioner was, therefore, fully on notice of her obligation to assist in her own

removal, the consequences (both civil and criminal) of failing to comply with that obligation, and the basis for which ICE continued her detention beyond the removal period.

IV. CONCLUSION

Petitioner fails to show good reason to believe that there is no significant likelihood of removal to Iran in the reasonably foreseeable future. Additionally, she has failed to comply with removal efforts in violation of § 1231. Her continued detention, therefore, is lawful. Accordingly, the Court should dismiss or otherwise deny this petition.

Respectfully submitted,

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