District Judge Jamal N. Whitehead
Magistrate Judge Michelle L. Peterson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAVON RICARDO GORDON,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States, *et al.*,

Respondents.

Case No. 2:25-cv-00682-JNW-MLP

FEDERAL RESPONDENTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS THE HABEAS CLAIM

Noted for Consideration:
June 26, 2025

Petitioner submits an email purportedly from Jamaican authorities stating that Petitioner cannot be deported to Jamaica. Dkt. 11-2. That is not ICE's understanding at the current time. In support of its Reply, Respondents submit the declaration of Enrique Rodriguez. ("Rodriguez Decl."). Because Jamaica is designated under the Electronic Nationality Verification (ENV) system, ICE can remove Petitioner based even on his expired passport. *See* Dkt. 8. Indeed, ICE had been in the process of effectuating that removal in May 2025. Rodriguez Decl., ¶ 4. That effort was halted only because Petitioner made a claim of fear of returning to Jamaica, despite never making such a claim before. *Id.* at ¶¶ 4, 5. Petitioner's claim had been referred to USCIS for screening. That screening process is ongoing, and ICE will not remove Petitioner while it is pending. Based on the USCIS interview, however, it appears that Petitioner is withdrawing that

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claim. Currently, the active fear claim is the only impediment to Petitioner's removal that ICE is aware of. *Id.* at 4. "In particular, ICE has not received any formal refusal from the Jamaican government to accept the petitioner for repatriation under the Electronic Nationality Verification (ENV) process. Internal ICE records contain no documentation indicating that Jamaica has rejected the removal or returned the removal packet. ICE continues to treat Jamaica as a viable destination country based on the petitioner's verified Jamaican identity and the ENV framework currently in place." *Id.* at ¶ 6. The current delay is entirely based on Petitioner's recent claim of fear. Should USCIS issue a negative fear finding and Petitioner is not granted protection, ICE is ready to execute the removal order and effectuate removal to Jamaica based on the facts and circumstances currently known. *Id.* at ¶¶ 8, 9.

Based on recent developments, it appears Petitioner is withdrawing his claim. Petitioner was originally scheduled for an interview regarding his fear claim on June 17, 2025. That interview was rescheduled and conducted on June 23, 2025, which occurred after Petitioner filed his response to the Federal Respondents' motion. *See* Dkt. 11 (filed June 20, 2025). At that time, Petitioner advised USCIS "that I don't want to continue with a CAT claim." Rodriguez Decl., ¶ 7. USCIS reminded him that it could base its decision on Petitioner's refusal to answer, but he was adamant in refusal to participate. *Id.* Currently, ICE is waiting for USCIS to issue its decision before proceeding. *Id.* It would seem unlikely that USCIS would grant it after Petitioner withdraws the request.

Thus, Petitioner's argument that removal is impossible is not born out by the facts known to ICE. The Rodriguez declaration provides evidence sufficient to show that ICE remains able to remove Petitioner. *See* Rodriguez Decl., ¶¶ 6-9. Further, based on very recent developments, it appears that USCIS may issue a negative fear finding. Should that happen, ICE believes it can promptly remove Petitioner. Thus, Petitioner cannot adequately demonstrate at this time that his

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continued detention has become indefinite or otherwise show a good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). While this process may be slow, it "does not undermine the conclusion that removal remains foreseeable." *See Atikurraheman v. Garland*, No. 24-cv-00262-JHC-SKV, 2024 WL 2819242 (W.D. Wash. May 10, 2024), *report and recommendation adopted*, No. 24-cv-00262-JHC-SKV, 2024 WL 2818574 (W.D. Wash. June 3, 2024); *see also Iddrisu v. Kelly*, No. 17-cv-00038 AFM, 2017 WL 11635015, at *2 (C.D. Cal. Mar. 27, 2017). Furthermore, the procedural delay here was not caused by ICE, but by Petitioner exercising his rights to make a fear claim, and now seemingly revoking that decision. This should not be weighed against ICE.

At the very least, Federal Respondents request that the Court allow for USCIS to issue its decision. Because the circumstances and the underlying facts have recently changed, Respondents propose submitting an updated status report within 30 days if that would assist the Court. Additionally, USCIS's decision may change the legal basis for ICE's continued detention and moot Petitioner's current challenge under *Zadvydas*.

As before, the process is continuing towards removal, which could occur in the reasonably foreseeable future. For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition and dismiss this matter in its entirety. Alternatively, Federal Respondents request that the Court stay any decision pending USCIS's determination, and they can provide the Court with an updated status report 30 days or at whatever time the Court deems appropriate.

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DATED this 26th day of June, 2025.

Respectfully submitted,

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I certify that this memorandum contains 754 words, in compliance with the Local Civil Rules.