United States District Court
Western District of Texas
San Antonio Division

Alula Fantaye Hagos, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 5:25-CV-00447-JKP

Federal[1] Respondents' Response in Opposition to Petition for Writ of Habeas Corpus

Petitioner, *pro se*, filed a habeas petition with this Court on or about April 21, 2025. ECF No. 1. A few days later, Petitioner filed an Amended Petition. ECF No. 2. The Court ordered service on Respondents and a response within sixty (60) days of that service. ECF No. 3 at 2. As such, Respondents timely file this Response. *See* ECF No. 7 (showing service sent by CMRRR to U.S. Attorney's Office, with delivery confirmation signed on May 5, 2025). Petitioner is a convicted aggravated felon who is lawfully detained with a 2011 final order of removal. Ex. A (ERO Declaration) ¶¶ 5-6.

This habeas petition should be denied for several reasons: (1) Petitioner's post-order detention is authorized by statute, even beyond the 90-day removal period, in the exercise of ICE's discretion; (2) his *Zadvydas* claim is premature, as he has been in post-order custody less than six months; and (3) he has not shown good reason to believe that imminent removal from the United States is unlikely. *See, e.g., Quiroz-Zapata v. Anda-Ybarra, et al*, No. 3:25–CV–148–LS, ECF No.

[1] The named warden in this litigation is not a federal employee, and as such, the Department of Justice does not represent him in this action. The Federal Respondents, however, have the authority over custody decisions of aliens detained under 8 U.S.C. § 1231(a).

18 (W.D. Tex. June 25, 2025) (denying habeas petition filed by detained alien because she was lawfully detained with a final order of removal and had not shown that her removal was not reasonably foreseeable).

I. Legal Standards

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 v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is 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.

II. Argument

A. Petitioner's Derivative U.S. Citizenship Claim Is Not Cognizable Under Habeas.

Petitioner's claims to derivative U.S. citizenship have already been reviewed via Form N-600 filed with U.S. Citizenship & Immigration Services ("USCIS"), denied, reviewed on administrative appeal, and dismissed in a final agency action in 2010. *Id.* ¶ 7. The timeframe for seeking federal judicial review of this claim has long passed. *See id.*; 8 U.S.C. § 1503(a) (any

action must be filed within five years of the final administrative denial of a right or privilege of U.S. citizenship).

In any event, an action seeking declaratory relief under § 1503(a) is a separate and exclusive civil action requiring a filing fee much higher than the $5 filing fee required for habeas petitions. Petitioner's citizenship claim is not cognizable under habeas, and even if it were, he is not entitled to release from custody based on a conclusory, unsupported, and time-barred allegation of derivative U.S. citizenship.

B. ICE's Decision to Revoke Petitioner's Order of Supervision Is an Unreviewable Discretionary Enforcement Decision Authorized by 8 U.S.C. § 1231(a)(6).

Petitioner challenges the government's discretionary decision to revoke his Order of Supervision and detain him pending the execution of his final removal order. ECF No. 2, *generally*. ICE's detention authority under § 1231 is well-settled, even beyond the 90-day removal period that mandates detention. *Zadvydas*, 533 U.S. at 701. Where the alien challenges the discretionary basis for detention authority, that decision is protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

ICE exercised its discretion for over a decade by permitting Petitioner to reside in the U.S. under an Order of Supervision, despite his final order of removal and his criminal conviction. Ex. A (ERO Declaration) ¶ 12. During that time, Petitioner continued to commit various crimes resulting in multiple arrests. *Id.* ¶¶ 13-15 (arrests spanning from 2018 to 2024 for violent crimes, drug offenses, and crimes involving moral turpitude). In March 2025, ICE took Petitioner into custody after he was encountered in the Bexar County Jail and revoked his Order of Supervision. *Id.* ¶ 16.

ICE's decision to continue Petitioner's post-order detention beyond the 90-day removal

period comports with 8 U.S.C. § 1231(a)(6), as he is threat to public safety and removal is foreseeable. The evidence shows that Petitioner has (1) a final order of removal issued by an Immigration Judge in 2011 with an aggravated felony conviction; (2) been previously released from custody in the exercise of discretion, subject to an Order of Supervision with Immigration and Customs Enforcement (ICE), for almost 15 years, during which time he was criminally arrested multiple times in the past seven years; (3) been detained in ICE custody less than six months under his final order of removal; and (4) is pending the issuance of a travel document to Ethiopia as early as this week to secure his lawful removal from the United States. *See* Ex. A (ERO Declaration). Continued detention in the exercise of discretion is unreviewable and authorized by statute.

C. Petitioner's *Zadvydas* Claim Is Premature.

Although Petitioner's removal order became final in 2011, the 90-day removal period may be extended where ICE determines the alien is unlikely to comply with the removal order. *See Johnson v. Guzman-Chavez*, 594 U.S. 523, 528–29, 544 (2021); *see also* 8 C.F.R. § 1231(a)(6); 8 C.F.R. § 241.4. Continued detention under this provision is the "post-removal-period." *Guzman-Chavez*, 594 U.S. at 529. The statute does not specify a time limit on this post-removal period, but the Supreme Court has read an implicit limitation into the statute and held that the alien may be detained only for a period reasonably necessary to remove the alien from the United States. *Id.*; 8 C.F.R. § 241.13. Six months is the presumptively reasonable timeframe in the post-removal context. *Zadvydas*, 533 U.S. at 701. Although the Court recognized this presumptive period, *Zadvydas* "creates no specific limits on detention . . . as 'an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably

foreseeable future.'" *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (quoting *Zadvydas*, 533 U.S. at 701).

To state a claim for relief under *Zadvydas*, Petitioner must show that: (1) he is in DHS custody; (2) he has a final order of removal; (3) he has been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700. Petitioner does not and cannot make this showing, as he has been detained less than six months in post-order custody. Moreover, Petitioner has not shown good cause to believe that his imminent removal to any country other than Eritrea is unlikely. Under *Zadvydas*, Petitioner is lawfully detained, and this habeas should be denied.

Petitioner has been detained in ICE custody for less than six months, meaning that any claim filed under *Zadvydas* to challenge the constitutionality of his post-order detention is premature. 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 he 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*, 459 F.3d at 543–44; *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.* Petitioner has been in post-order custody for less than six months. *See* Ex. A (ERO Declaration) ¶ 16.

Even if his claim were ripe, Petitioner has a final order of removal that authorizes his detention under 8 U.S.C. § 1231(a). Although ICE has been unable to remove Petitioner to his native Eritrea,[2] nothing prevents ICE from removing Petitioner to a third country. *See e.g.*, *Guzman Chavez*, 594 U.S. at 531–32, 535–36; 8 U.S.C. § 1231(b)(1)(c)(iv); 8 C.F.R. §§ 208.16(f); 1208.16(f); 208.17(b)(2); 1208.17(b)(2). There are numerous removal options for ICE to consider, including any country willing to accept the alien. *Guzman Chavez*, 594 at 536–37; 8 U.S.C. § 1231(b)(2).

Shortly after bringing him back into ICE custody in late March 2025, ICE began efforts to execute Petitioner's removal order to countries other than his native country. Ex. A (ERO Declaration) ¶ 17. The efforts were unsuccessful. *Id.* In May, ICE submitted another travel document request to Eritrea, but by June, Eritrea denied the request for insufficient evidence. *Id.* ¶ 18-19.

On June 17, 2025, ICE submitted a travel document request to Ethiopia, and Ethiopia interviewed Petitioner on June 30, 2025. *Id.* ¶¶ 20, 22. The Ethiopian consulate anticipates issuing an Ethiopian travel document to Petitioner by July 10. *Id.* 22. Once received, ICE anticipates no impediments to removing Petitioner to Ethiopia. *Id.*

As such, Petitioner has not shown "good reason" that removal to any third country is unlikely. The burden of proof has not shifted to ICE to show that there is significant likelihood of removal in the reasonably foreseeable future. The "reasonably foreseeable future" is not a static concept; it is fluid and country-specific, depending in large part on country conditions and

[2] *See* Ex. A (ERO Declaration) ¶¶ 11-12.

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).

Petitioner relies on only conclusory allegations to argue that removal is not likely, which are wholly insufficient to meet his 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 his burden, and the burden does not shift to ICE 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).

Petitioner's claims fail here as a matter of law. This habeas petition should be denied.

Respectfully submitted,

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Certificate of Service

I certify that on July 7, 2025, I mailed a copy of Federal Respondents' Response in Opposition to Petition for Writ of Habeas Corpus to Plaintiff (*pro se*) at the following address:

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