United States District Court
Western District of Texas
Austin Division

Hussein Ali Yassine, also known as Mike, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 1:25-CV-00786-ADA-SH

Federal[1] Respondents' Response to Petitioner's Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order dated July 7, 2025, directing service and ordering a response on or before July 22, 2025. *See* ECF No. 11. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Yassine ("Petitioner") seeks release from civil immigration detention, claiming that his detention (less than two months at the time he filed the petition) is unlawful. ECF No. 1. The petition consists of two counts: (1) Violation of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231, claiming that his detention is in violation of statute because removal is not likely; and (2) Substantive Violation of the Fifth Amendment Due Process Clause, claiming his detention is indefinite. *Id.* ¶¶ 88–100.[2]

Petitioner, who is a convicted aggravated felon, *see* 8 U.S.C. § 1101(a)(43)(D), is lawfully detained with a final order of removal while ICE continues to arrange his removal to Lebanon. 8 U.S.C. § 1231(a). Petitioner's post-order detention is mandatory for the first 90 days of the removal

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

[2] Petitioner also seeks attorney fees in his Prayer for Relief, but EAJA fees are not available to habeas petitioners in the Fifth Circuit. *See Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

period. *Id.* Even beyond the 90-day removal period, any constitutional challenge to continued detention is not ripe until the alien has been detained in post-order custody for at least six months. Petitioner's claims should be denied, because he is lawfully detained, and his constitutional claim is not ripe.

I. Relevant Facts and Procedural History

Petitioner claims birth in Ivory Coast to Lebanese parents, but he alleges that he is stateless. ECF No. 1 at ¶¶ 1, 23. In the late 1980s, Petitioner entered the United States on a Lebanese passport as a visitor, but the passport has since expired. *Id.* ¶ 24–25. He has a final order of removal to Ivory Coast, or in the alternative, Lebanon, dated November 20, 2020, which was entered against him following a conviction and eight years of incarceration for tax evasion and money laundering. *Id.* ¶¶ 1, 16, 26, 29.

In removal proceedings, Petitioner applied for, but was denied, relief from removal. *Id.* ¶ 29. He reserved appeal of that decision but did not timely appeal. *Id.* In January 2021, Petitioner alleges that ICE released him from custody under an Order of Supervision ("OSUP") due to his mental health diagnosis and the COVID-19 pandemic. *Id.* ¶ 35; 8 U.S.C. §§ 1231(a)(3), (a)(6).

ICE took Petitioner back into custody on April 3, 2025, for the purpose of executing his final order of removal. *Id.* ¶ 40. Petitioner had counsel present during that arrest who subsequently submitted a request for a discretionary administrative stay of removal, which ICE promptly reviewed and denied on April 15, 2025. *Id.* ¶ 41. Within a day of his arrival at the ICE detention facility in April 2025, Petitioner alleges that ICE took photos of him for the purpose of requesting his travel document from Lebanon. *Id.* ¶ 42. Petitioner further alleges that ICE emailed the Embassy of Lebanon on April 14, 2025, regarding a travel document. *Id.* ¶ 44. Petitioner further alleges he was scheduled for a "custody determination hearing" on July 2, 2025. *Id.* ¶ 46.

ICE denies that there is no significant likelihood of removal to Iran in the reasonably foreseeable future. On or about June 25, 2025, ICE issued a Decision to Continue Detention following a review of Petitioner's file. *See* Exhibit A (Custody Decision); 8 C.F.R. § 241.4(e), (f), and (g). In that Decision, ICE determined that Petitioner's detention should continue because Petitioner poses "a risk to public safety" and because "ICE is in receipt of or expects to receive the necessary travel documents to effectuate" Petitioner's removal. Ex. A (Custody Decision). The Decision further explains that "removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest." *Id.*

In the Decision, ICE also notifies Petitioner of his duty to comply with removal efforts and the consequences of failing to cooperate. *Id.* The letter explains that he will be given another custody review within 90 days, which would include the option of a personal interview where he could be represented by counsel. *Id.* ICE advised in the Decision that ICE would notify Petitioner and his attorney of record of the interview approximately 30 days beforehand. *Id.* Petitioner and/or his attorney may submit documentation prior to the interview in support of release. *Id.* The Decision provides instructions for submitting such evidence. *Id.*

The Decision indicates that Petitioner wants a personal interview prior to his next custody review. *Id.* The Decision advises that Petitioner could request additional time to prepare for the interview if he does so within five days of receipt of the interview notice. *Id.* The Deportation Officer served a copy of the Decision on Petitioner on July 7, 2025. *Id.* (signed by Petitioner as proof of service).

I. Section 1231(a) Mandates Petitioner's Post-Order Detention for 90 Days.

Petitioner is detained in ICE custody under 8 U.S.C. § 1231(a), because he has a final order of removal. *See* ECF No. 1. ICE's detention authority under § 1231 is well-settled. *Zadvydas v.*

Davis, 533 U.S. 678, 701 (2001). 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). DHS has no obligation to release during the 90-day period until the Department of Homeland Security DHS Headquarters Post-Order Detention Unit has had the opportunity during a six-month period to determine whether there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.13(b)(2)(ii); 241.13(f).

II. Petitioner's Due Process Claim Is Premature, As He Has Not Been Detained in Post-Order Custody for Six Months.

Federal Respondents are actively seeking removal to Lebanon.[3] Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas*, 533 U.S. at 701. 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). 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). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*,

[3] The Court lacks jurisdiction to review which country ICE is considering for removal, because those negotiations are inextricably intertwined with ICE's unreviewable authority to execute a final order of removal. *See, e.g., C.R.L. v. Dickerson, et al*, 4:25-CV-175-DL-AGH, 2025 WL 1800209 at *2-3 (M.D. Ga. June 30, 2025); *Diaz Turcios v. Oddo*, No. 3:25-CVC-0083, 2025 WL 1904384 at *5 (W.D. Pa. July 10, 2025).

at 533 U.S. at 680.

Although Petitioner's removal order became final in 2020, 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. Any due process claim under *Zadvydas* is, therefore, premature. *See Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 2011 WL 891071 at *1 (5th Cir. Mar. 15, 2011); *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 n.33 (W.D. Tex. 2018); *Kasangaki v. Barr*, 2019 WL 13221026 at *3 (W.D. Tex. July 31, 2019).

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.* There is no dispute that Petitioner has not been in custody for six months. *See* ECF No. 1 at ¶ 69.

Even if his claim were ripe, Petitioner has a final order of removal that authorizes his detention under 8 U.S.C. § 1231(a). Moreover, Petitioner has an aggravated felony conviction, which could lead ICE to continue his detention in the exercise of discretion beyond the 90-day removal period by finding that he is a risk to public safety. *Id.*; *see also* Ex. A (Custody Decision). ICE denies that there is no likelihood of removal in the reasonably foreseeable future. *Id.* § 1231(a)(6). 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).

Even if Petitioner were to successfully meet his burden once the claim is ripe, ICE avers that there is significant likelihood of removal in the reasonably foreseeable future. Petitioner's substantive due process claim fails here as a matter of law.

Conclusion

Petitioner is lawfully detained by statute and his detention comports with the limited due process he is owed as a convicted criminal alien with a final order of removal. This Court should deny the petition.

Respectfully submitted,

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