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 Respondents' Objections to Report and Recommendations of the United States Magistrate Judge

Pursuant to 28 U.S.C. § 626(b)(1), Federal Respondents object to the Report and Recommendation that recommends granting in part and denying in part Petitioner's Petition for *Habeas Corpus* for the reasons stated below.

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. 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 June 2025). 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. Exhibit. A (Custody Decision June 2025). Petitioner further alleges he was scheduled for a "custody determination hearing" on July 2, 2025. *Id.* ¶ 46.

On August 5, 2025, the Lebanese Embassy in Washington D.C issued a travel document for the Petitioner. *See* Exhibit B (Travel Document). Said travel document is set to expire on November 5, 2025.[1] Since receipt of the Lebanese travel document, ICE has successfully scheduled a removal date. Said removal is imminent and is scheduled to occur, via a commercial flight, the week of September 21, 2025.[2]

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[1] Federal Respondents have notified opposing counsel of these changed circumstances, including the referenced travel document and imminent removal. Respondents provided opposing counsel with a copy of the travel document and conferred with opposing counsel regarding a short stay of these proceedings while the removal process takes place. The parties were unable to reach an agreement regarding any stay in this matter.

[2] Due to security concerns for the officers coordinating the removal, the specific details of this repatriation flight are not disclosed to the public. Federal Respondents, however, will update the Court as soon as practicable with proof of the executed removal order. Federal Respondents anticipate no impediments to the successful execution of the removal order as scheduled.

II. Legal Standards

The District Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The party filing objections must specifically identify those findings or recommendations to which objections are being made, but the District Court need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). Parties have fourteen (14) days after service of the Report in which to file objections. 28 U.S.C. § 636(b)(1).

III. Argument

The United States respectfully objects to Magistrate Judge Hightower's recommendation that the District Court grant the Petition for a Writ of Habeas Corpus under 8 U.S.C § 2241 and order the United States to immediately release Yassine on an Order of Supervision in accordance with 8 U.S.C § 1231(a)(3). As a threshold issue, Federal Respondents object to the Judge Hightower's finding that this due process claim is ripe, because Petitioner has not been in post-order detention for the presumptively reasonable six months. To the extent this Court finds the claim to be ripe, however, Federal Respondents aver that Petitioner has not met his burden of proving good cause that his removal is unlikely. Finally, even if this Court finds that Petitioner has made such a showing of good cause, Respondents sufficiently rebut that finding with evidence that removal to Lebanon is significantly likely in the reasonably foreseeable future. Indeed, shortly following the conclusion of briefing, ICE received Petitioner's Lebanese travel document. A removal flight is scheduled to occur before the end of this month.

As such, the petition fails because Petitioner cannot meet the fourth prong under *Zadvydas*, which is that there is no significant likelihood of removal in the reasonably foreseeable future.

Zadvydas v. Davis, 533 U.S. 678, 700 (2001). At the time of the briefing in this matter the United States was not in possession of a travel document for the respondent. Since briefing, Federal Respondents have obtained a travel document and confirmed that removal to Lebanon is imminent. *See* Exhibit B (Lebanese Travel Document).

A. Even if the Court is correct that the Petitioner met his burden under *Zadvydas*, new facts and evidence show removal is imminent, and Federal Respondents meet their burden of showing a significant likelihood of removal in the foreseeable future.

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, at 533 U.S. at 680. 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. Federal Respondents aver that Petitioner did not sufficiently make this showing, but even if this Court finds that he did, changed circumstances and facts make it clear that removal is imminent, and Petitioner cannot make this showing.

Briefing was completed in this case on July 31, 2025. Less than one week later, on August 5, 2025, the Embassy of Lebanon in Washinton D.C. issued a travel document for Petitioner. *See* Exhibit B (Lebanese Travel Document). Exhibit A is set to expire on November 5, 2025. Immigration and Customs Enforcement has confirmed that the removal flight is scheduled via commercial airline and is expected to take place the week of September 21, 2025. Federal Respondents aver that they will update the Court with a status report and/or proof of removal by October 3, 2025.

Publicly available statistics show that twenty-seven (27) Lebanese nationals were successfully removed in FY2024.

See https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (last accessed September 11, 2025). Since FY2022, there has been an upward trend in successful removals to Lebanon. *Id.* As such, there are currently no impediments to removal expected.[3]

As briefed previously, ICE denies that there is no likelihood of removal in the reasonably foreseeable future. *See* Exhibits A, B, C, and 8 U.S.C § 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). This concept of fluidity is even more evident in Petitioner's case. Both prior custody determinations made by ICE explained that they "expect[ed] to receive the necessary travel documents to effectuate…removal, and removal is practicable". *See* Exhibits A and B. Less than a month after the most recent custody determination, ICE obtained the requisite travel document. *See* Exhibit B. Given the nature of diplomatic communications involved with requesting and obtaining travel documents, aliens are not always privy to the fluid nature of this process. For this reason, any 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

[3] Federal Respondents aver that any impediment anticipated at this juncture would be attributed only to Petitioner. The flight is scheduled, and Petitioner has a valid travel document to Lebanon. Unlike charter flights, where ICE can place the alien on the plane despite any efforts to resist, an alien's refusal to board the commercial flight or take any other action necessary to secure his placement on the flight will result in a failed mission. Petitioner has been duly warned of the duty to comply with these removal efforts and of the consequences of any failures to comply.

> 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).

As such, Petitioner is unable to meet the fourth prong under *Zadvydas,* and Petitioner's substantive due process claim fails here as a matter of law. Therefore, the Court should overrule this recommendation and deny the Petition for Writ of Habeas Corpus.

B. Release on OSUP Does Not Forever Prohibit Future Post-Order Detention.

Federal Respondents respectfully disagree with the Magistrate's finding that Petitioner's due process claim under *Zadvydas* is ripe for review when he was detained in post-order custody for less than six months at the time he filed this habeas petition. *Zadvydas* involved former lawful permanent residents who had been ordered removed and were being held in detention beyond the removal period because the government was unable to remove them. 533 U.S. at 682. The Supreme Court imposed the six-month presumption to eradicate the "serious constitutional questions" associated with potentially indefinite detention. *Id.* It would be illogical, if not unreasonable, to extend *Zadvydas* to suggest there where the government releases an alien on OSUP, the six-month clock continues to run while the alien is released, such that any period following the statutory revocation of his OSUP prohibits the alien's post-order detention. *See Tanha v. Warden*, No. 1:25–CV–02121–JRR, 2025 WL 2062181 (D. Md. July 22, 2025).

This reasoning is consistent with the Supreme Court's definition of "custody" in *Jennings*, where the Court reaffirmed that the terms "detain" and "custody" as used in *Zadvydas*, referred exclusively to physical confinement and restraint. *Jennings*, at 308–11 (distinguishing between "detained" aliens and aliens "who are free to walk the streets"). Congress permits the revocation of release and the re-arrest/re-detention of a final order alien to execute a removal order. *Id.* at 308–09. If release on OSUP constituted "custody" for purposes of this constitutional analysis, there would be no need to take the alien into custody again. *Id.* Indeed, the initial decision to release the alien on OSUP in lieu of continued detention effectively avoided the very concern the Supreme

Court sought to remedy when it imposed a six-month guardrail on continued post-removal period detention. *See Phadael v. Ripa*, No. 24–CV–22227-ALTMAN, 2024 WL 3088350 at *2–3 (S.D. Fla. June 21, 2024). Even where an alien spent significant time released on OSUP, the final order alien has not earned a constitutionally protected presumption against re-detention *Id. Zadyvdas* did not hold that, nor is that a reasonable interpretation of the Supreme Court's reasoning. *Id.* Such an extension of *Zadvydas* does not withstand scrutiny; otherwise, upon securing the liberty afforded by OSUP, an alien is effectively granted a shield against re-detention upon revocation. *Id.*

Unless an alien shows that his post-removal detention is more than six months, his habeas petition must be dismissed as premature. *See Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 n.33 (W.D. Tex. 2018); *Seong v. Witte*, No. 18–CV–00283–DCG, 2018 WL 7350949 at *2 (W.D. Tex. Nov. 26, 2018); *Guerrero-Sanchez v. Warden*, 905 F.3d 208, 225–26 (3d Cir. 2018); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *Metellus v. Holder*, 2011 WL 1740187 (M.D. Fla. May 5, 2011); *K.A.M. v. Warden*, No. 21–11212 (SDW), 2021 WL 4772130 at *2 (D.N.J. Oct. 12, 2021) (analyzing *Jennings*). This is not to say that Petitioner's claim may not ripen into a meritorious claim, but it is not there yet.

IV. Conclusion

For the foregoing reasons, the United States objects to Magistrate Judge Hightower's recommendations recommendation that the District Court grant the Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C § 2241 and order the United States to immediately release Yassine on OSUP in accordance with 8 U.S.C § 1231(a)(3). The Court should overrule the recommendation and deny the Petition for a Writ of Habeas Corpus pursuant to Title 28 U.S.C § 2241. Federal Respondents ask that the Court adopt the remainder of the Report and Recommendation not specifically objected to herein, such as the finding that Petitioner is not entitled to attorney's fees and costs.

Respectfully submitted,

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