

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

ALIREZA ZAREFARD) CIVIL ACTION NO: 1:25-cv-00895
) SECTION: P
)
VERSUS) JUDGE EDWARDS
)
NEW ORLEANS FIELD OFFICE) MAGISTRATE JUDGE PEREZ-MONTES
FOR THE U.S. IMMIGRATION)
AND CUSTOMS ENFORCEMENT,)
ET AL.)

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

1. INTRODUCTION

Petitioner, Alireza Zarefard, is subject to a final order of removal. On June 24, 2025, he filed a Petition for Writ of Habeas Corpus requesting that this Court order his immediate release from detention at River Correctional Facility in Ferriday, Louisiana. Alternatively, Petitioner seeks an order directing Respondents to remove him to his native country of Iran. Petitioner claims that his continued detention in United States Immigration and Customs Enforcement (“ICE”) custody pending removal violates his statutory and constitutional due process rights. (ECF Doc. No. 1). Respondents maintain that there is a significant likelihood of Petitioner’s removal in the reasonably foreseeable future. Thus, his detention is lawful. For the following reasons, the petition should be denied, and this action should be dismissed.

2. BACKGROUND

On April 24, 2024, Alireza Zarefard (“Petitioner”), a native and citizen of Iran, encountered U.S. Customs and Border Protection at the San Ysidro Port of Entry where he applied for admission into the United States. Upon being deemed inadmissible to enter, Petitioner was placed

in expedited removal proceedings pursuant to Section 235(b)(1) of the Immigration and Nationality Act. See Declaration of Assistant Field Director Robert M. Ainley, attached hereto as Government Exhibit A. On July 30, 2024, an immigration judge denied Petitioner's request for asylum and ordered his removal to Iran. The Order of Removal became final after both Petitioner and the Government waived appeal. See Ex. A, ¶10. Petitioner remains in ICE custody pursuant to 8 U.S.C. §1226(a) pending completion of his immigration proceedings. He has not requested a subsequent custody redetermination based upon a showing that his circumstances have changed materially since his last bond redetermination decision. See Ex. A, ¶12.

There is no foreseeable impediment to Petitioner's removal. Thus, there is a significant likelihood that he will be removed in the reasonably foreseeable future. Upon removal, the alternative relief sought in his habeas petition – return to his native country of Iran – will have been granted.

3. ARGUMENT

Zadvydas Does Not Mandate Petitioner's Release Since Removal Will Occur In The Reasonably Foreseeable Future.

In *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001), and the extension and application of that decision by *Clark v. Martinez* 543 U.S. 371, 125 S. Ct. 716, 160 L. Ed. 2d 734 (2005) to aliens who are inadmissible, the United States Supreme Court adopted a six-month period for which the institutional detention of an alien, found within the United States and ordered removed pursuant to various provisions of Section 237(a) of the Act [8 U.S.C. § 1227(a)], is presumptively reasonable, and concluded that, “* * * once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699. In the words of the Court:

In answering that basic question, the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. (Citations omitted). And if removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period.

Zadvydas, 533 U.S. at 699-700.

The Supreme Court clearly indicated that the lapse of the presumptive period does not mandate release and concluded that, "[t]o the contrary, 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." *Zadvydas*, 533 U.S. at 701. The United States Court of Appeals for the Fifth Circuit has recognized that "[t]he [Supreme] Court's decision creates no specific limits on detention, however, '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), *see also*, *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011).

Thus, in order to state a claim for relief under the *Zadvydas* decision, an alien must: 1) establish post removal order detention in excess of six months at the time of the filing of his or her petition; and, 2) establish good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.*; *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir.

2002). Thereafter, “the Government must respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701.

To meet his burden under the second prong, an alien’s claim must be supported by more than mere “speculation and conjecture.” *Idowu v. Ridge*, 03-1293, 2003 WL 21805198, *4 (N.D. Tex. Aug. 4, 2003) (citing *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)). In order to shift the burden to the Government, an alien 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. *Id.* If the alien fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Akinwale*, 287 F.3d at 1051.

The instant case is distinguishable from *Zadvydas* and *Clark*. In *Zadvydas*, all of the countries to which the alien had ties had refused his admission on the grounds that he was not a citizen. *Zadvydas*, 533 U.S. at 691. In *Clark*, the Court found that the Government brought forward no evidence to indicate that a substantial likelihood of removal exists. *Clark*, 543 U.S. at 386. Moreover, the Government conceded in *Clark* that it was no longer involved in repatriation negotiations with Cuba. *Id.*

Petitioner in the captioned case has failed to present this Court with sufficient evidence that there exists “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” Petitioner has not requested another custody redetermination hearing. *See* Ex. A, ¶12. Rather, he seeks the alternative relief of deportation to Iran. (ECF, Doc. 1). Therefore, Petitioner cannot establish that ICE is incapable of executing his removal, or that his detention will be indefinite.

Petitioner's current immigration detention is consistent with due process, as well as with applicable statutes and regulations, as interpreted by the United States Supreme Court in *Zadvydas v. Davis*. "This 6-month presumption, of course does not mean that every alien not removed must be released after six months." *Zadvydas*, 533 U.S. at 701. In the instant case, Petitioner's removal is imminent, and his detention is lawful.

4. CONCLUSION

Petitioner has failed to show that there is no significant likelihood of accomplishing his removal in the reasonably foreseeable future. *Zadvydas* does not mandate his release, and his petition should be dismissed.

Respectfully submitted,

ZACHARY A. KELLER
UNITED STATES ATTORNEY

BY: /s/Desiree C. Williams
DESIREE C. WILLIAMS (#30978)
Assistant United States Attorney
800 Lafayette Street, Suite 2200
Lafayette, Louisiana 70501
Telephone: (337) 262-6618
Facsimile: (337) 262-6693
Email: desiree.williams@usdoj.gov