

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

KHALED SALAH ABU-HAMDAH,

Petitioner,

v.

FRANCISCO VENEGAS, in his capacity
as Warden,

Respondent.

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Civil Action No. 1:25-cv-142

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
AND MOTION FOR SUMMARY JUDGMENT**

The Government¹ files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. 1) and moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. As explained below, Petitioner's claim for habeas relief should be denied because he is lawfully detained, and he is scheduled to be removed in the near future.

I. SUMMARY OF THE ARGUMENT

Petitioner Khaled Salah Abdallah Abu-Hamdah was born in Jerusalem, and he holds a Jordanian passport. He is currently a detainee in the custody of Immigration and Customs Enforcement (ICE). The Petitioner has been convicted of several crimes, including second-degree murder. He has been ordered to be removed from the United States. During his

¹ As the Court previously noted, the proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). Since the filing of this Petition, the Petitioner has been transferred to a facility in Pearsall, Texas (in the Western District of Texas). Exhibit 1, at ¶ 3; *see also* Dkt. 9. The warden of that facility is Bobby Thompson. That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

detention, ICE has been working to obtain the necessary travel documents and schedule his flight to Jordan. Petitioner is scheduled to be removed by the end of this month.

Despite his criminal history and the reasonable foreseeability of his removal, the Petitioner claims a Due Process violation. In support of this claim, he asserts that his removal has not occurred within six months. However, the sole fact that a removal has not occurred within six months does not itself constitute a violation of law. Rather, the Court must consider the available facts to determine whether a removal is reasonably foreseeable. Here, the facts show that the Petitioner's removal is not merely foreseeable, but imminent. Hamdah thus fails to show how his continued detention amounts to a constitutional violation and his petition should be denied.

II. THE NATURE AND STAGE OF THE PROCEEDING

On June 26, 2025, Khaled Salah Abu-Hamdah filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (the "Petition"), contesting his continued detention pending the execution of his removal order. He claims that his continued detention past six months violates the Due Process Clause of the U.S. Constitution and Immigration and Nationality Act. Dkt. 1. The Court ordered a response explaining why the habeas corpus should not issue. Dkt. 8.

III. AUTHORITY BY WHICH PETITIONER IS HELD

Petitioner is being detained pursuant to a final removal order. Petitioner was originally ordered removed in 2009: after his murder conviction. *See* Exhibit 1, Declaration at ¶ 6. On October 17, 2024, Petitioner's removal order was reinstated after his recent conviction for illegal reentry. *Id.* at ¶ 8. On January 10, 2025, ICE issued a decision on his continued detention

pursuant to 8 CFR § 241.4, stating that ICE would maintain custody of him. *Id.* at ¶ 10. After Petitioner's request for deferral of removal was denied by an Immigration Judge, ICE issued Petitioner another decision on his continued detention, explaining that he had a final order of removal, and removal would occur in the foreseeable future. *Id.* at ¶ 14. Petitioner is scheduled for removal by the end of the month. *Id.* at ¶ 17.

IV. RELEVANT BACKGROUND

As stated in the Petition, Hamdah was born in Jerusalem, and he holds a Jordanian passport. Dkt.1 at ¶ 2. He previously held status as a Lawful Permanent Resident. Ex. 1 at ¶ 5. However, after his conviction for second-degree murder in Florida in 1999, he was ordered removed. *Id.* at ¶ 6. In July of 2024, Hamdah illegally reentered the United States, for which he was convicted under 8 U.S.C. § 1326. *Id.* at ¶ 7. Having served his time for the illegal reentry conviction, Hamdah's removal order was reinstated in October of 2024. *Id.* at ¶ 8.

After the reinstatement of his removal order, Hamdah originally challenged his removal: seeking asylum and protection under the Convention Against Torture. Ex. 1 at ¶¶ 8-12. On April 2, 2025, Hamdah waived any further review of his challenge to removal. *Id.* at ¶ 13. On May 14, 2025, ICE advised Hamdah of its decision to continue detention pending removal and explained in writing the basis for this decision, which was that he had a final order of removal, and removal would occur in the foreseeable future. *Id.* at ¶ 14. ICE has secured a removal date and Hamdah is scheduled for removal by the end of July 2025. *Id.* at ¶ 17.

V. STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only if the pleadings, along with evidence, if any, show that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56(c). Once a motion has been made, the nonmoving party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to show the existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 322-23. If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Id.* at 322. Furthermore, “only *reasonable* inferences can be drawn from the evidence in favor of the nonmoving party.” *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 469 n.14 (1992) (emphasis in original) (quoting *H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1012 (2d Cir. 1989)).

VI. ARGUMENT

A. Petitioner’s Custody is Lawful

Hamdah’s detention is lawful because (1) ICE has the discretion to continue his detention; and (2) he fails to show that the length of his detention is unreasonable under the *Zadvydas* framework given his foreseeable removal.

1. Due to his criminal history and upcoming removal, Petitioner’s continued detention is lawful.

The statutory provision governing Petitioner’s detention is 8 U.S.C. § 1231, which applies once an alien is ordered removed. Under this section, the Department of Homeland Security must physically remove him from the United States within a 90-day removal period. 8 U.S.C. § 1231. But, even after the 90-day removal period expires, ICE has the discretion to continue detention for certain aliens. 8 U.S.C. § 1231.

Further, the Attorney General has promulgated regulations to establish and implement a formal administrative process to review the custody of aliens, like Petitioner, who are being detained subject to a final order of removal, deportation, or exclusion. 8 C.F.R. § 241, *et seq.* Under the regulations, post-order aliens who remain detained beyond the removal period may present to ICE their claims that they should be released from detention because there is no significant likelihood that they will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(d). Unless and until ICE determines that there is no significant likelihood of removal in the foreseeable future, the alien will continue to be detained, and his detention will continue to be governed by the post-order detention standards. 8 C.F.R. § 241.13(g)(2).

Here, ICE has properly extended Petitioner's detention under § 1231 and the applicable regulations due to the determination that he is likely to be removed in the reasonably foreseeable future. *See* Ex. 1 at ¶ 14.

2. Petitioner's detention is also lawful under *Zadvydas*.

The length of Petitioner's detention is not unconstitutional, particularly in light of his upcoming removal. A petitioner may challenge continued detention under the framework established by the U.S. Supreme Court in *Zadvydas v. Davis*, which held that detention may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In a challenge to detention under *Zadvydas*, the petitioner must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The Government must then respond with evidence sufficient to rebut that showing. *Id.* The Supreme Court further emphasized that the six-month presumption does not mean that every alien not removed must be released after six

months. *Id.* “To 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.” *Id.*

As an initial matter, the six-month presumption is tolled if the petitioner has caused the delay in removal. *See Lawal v. Lynch*, 156 F. Supp. 3d 846, 854 (S.D. Tex. 2016). “Cases in other circuits that have considered the question recognize equitable tolling to extend the six-month period to detain an alien who has been ordered removed and who files litigation challenging the validity of the removal order.” *Id.* (collecting cases). By exercising his legal right to seek relief through a withholding of removal application, Hamdah prolonged his detention. This was his right. But he cannot dispute that the delay in his removal, at least in part, was caused by his own actions. *See, e.g., Fuentes-De Canjura*, 2019 WL 4739411, at * (“Here, the delay in [the petitioner’s] removal prolonging her detention has been caused by ongoing withholding-only proceedings, including a remand by the BIA and the subsequent appeal of the IJ’s decision on remand.”); *Okechukwu Mummee Amadi v. Young*, No. 2:06CV1138, 2007 WL 855358, at *4 (W.D. La. Feb. 12, 2007) (“[T]he court finds that because petitioner’s continuing litigation is the cause of his continued detention, he cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future.”). Hamdah withdrew his challenge to his removal in April of 2025, *see* Ex. 1 at ¶ 13. It has been less than six months since that time. Therefore, the *Zadvydas* presumption does not apply.

Petitioner’s habeas petition also fails due to its lack of specific allegations. When a petitioner fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006) (acknowledging the petitioner’s initial burden of proof where claim under *Zadvydas* was without merit because it offered nothing beyond the

petitioner's conclusory statements suggesting that removal was not foreseeable). In this case, the Petition fails to cite to any evidence, other than conclusory statements, that there is no significant likelihood of removal in the reasonably foreseeable future. Rather, the Petition states that "[a]bsent an order from this Court, Petitioner will likely remain detained for many more months, if not years." Dkt. 1 at ¶ 2. This conclusion alone does not lead to a reasonable inference that Petitioner has no significant likelihood of removal in the foreseeable future. He does not otherwise provide any other "good reason" to challenge his detention.²

Even assuming for the sake of argument that the Court deems Petitioner to have been detained, for the purposes of the *Zadvydas* presumption, more than six months, his petition should nevertheless be denied. He cannot satisfy his burden of proof of showing that there is "no significant likelihood of removal in the reasonably foreseeable future." 8 C.F.R. § 241.13(d); *Zadvydas*, 533 U.S. at 801. As explained in the accompanying declaration, Petitioner is set to be removed in the near future. Therefore, Petitioner cannot meet his burden of showing there is no significant likelihood of removal in the reasonably foreseeable future. Ultimately, Petitioner's detention pending removal comports with the letter of the law and is outside the scope of *Zadvydas*.

VII. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied.

² With regard to the allegations in the Petition, the most substantive discussion concerns his murder conviction and whether he would be found guilty under current Florida law. The government acknowledges the point, but it has no bearing on the instant analysis. The Petitioner was convicted of murder, and he was also convicted of illegal reentry. His removal order is legally valid and should be enforced.

Dated: July 25, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 25, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

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