UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

KAMOLKHON ABDUSAMAT UGLI SALIMOV	**CIVIL ACTION NO. 25-CV-01040**
VERSUS	**DISTRICT JUDGE DRELL**
U.S. IMMIGRATION & CUSTOMS ENFORCEMENT	**MAGISTRATE JUDGE PEREZ-MONTES**

RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Respondent, U.S. Immigration & Customs Enforcement, and files this Response to the Petition for Writ of Habeas Corpus filed by Petitioner, Kamolkhon Abdusamat Ugli Salimov.

INTRODUCTION

The Petitioner is native and citizen of Uzbekistan who entered the United States without being admitted or paroled and was ordered removed on October 1, 2024. Petitioner is currently in ICE custody at the Louisiana ICE Processing Center. Although Petitioner was initially ordered removed to Uzbekistan, the Immigration Court simultaneously ordered his removal withheld pursuant to a grant of protection under the Convention Against Torture (CAT). He seeks release from ICE custody on the basis that he has been detained beyond the removal period allowed by statute with no significant likelihood of removal in the foreseeable future because he cannot be removed to Uzbekistan. For the reasons set forth herein, the Petition should be denied.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Uzbekistan, who entered the United States on or about December 1, 2023, without being admitted or paroled. (Ex. A, Declaration of Lisa Fruge-Prudhome, ¶ 4). On December 2, 2023, DHS served Petitioner with Form I-862, Notice to Appear, charging him

with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. (Ex. A, ¶ 5). Petitioner was released from DHS custody by an Order of Recognizance pending his immigration hearing. *Id.*

Petitioner was taken into ICE custody on April 12, 2024, and has been in ICE custody since that date. (Ex. A, ¶ 6). He is currently detained at the Louisiana ICE Processing Center. *Id.* On October 1, 2024, the Immigration Court ordered the Petitioner removed to Uzbekistan, but simultaneously ordered his removal withheld pursuant to a grant of protection under the Convention Against Torture. (Ex. A, ¶ 7). On October 30, 2024, DHS filed an appeal of the Immigration Court's decision with the Board of Immigration Appeals. (Ex. A, ¶ 8). On January 15, 2025, the BIA granted DHS's December 27, 2024, motion to withdraw its appeal and returned the record to the Immigration Court without further action. (Ex. A, ¶ 9).

On January 18, 2025, ERO advised Petitioner, via service of Form I-229(a), Warning for Failure to Depart and Instruction Sheet to Detainee Regarding Requirement to Assist in Removal, of the specific requirements to comply with his obligation to assist in making timely application in good faith for travel or other documents necessary to his departure and/or his obligation not to conspire or act to prevent his removal subject to an order of removal. (Ex. A, ¶ 10). On January 18, 2025, ERO served Petitioner a Notice to Alien of File Custody Review, advising him that his custody status would be reviewed and that he could submit evidence in support of his release. (Ex. A, ¶ 11). On April 18, 2025, ERO conducted a 90-Day Post Order Custody Review (POCR), and the NOL ERO Deputy Field Office Director (DFOD) authorized Petitioner's continued detention. *Id.* On April 23, 2025, Petitioner was served a Decision to Continue Detention, advising that he would not be released from ICE custody because ICE is in receipt or expects to receive the necessary travel documents to effectuate his removal, and removal is practicable, likely to concur in the reasonably foreseeable future,

and in the public interest. *Id.*

ERO continues to request removal to a third country and expects a significant likelihood of removal due to recent removals of Uzbekistan nationals. (Ex. A, ¶ 12).

ARGUMENT

A. This Court Lacks Jurisdiction to Review Challenges to the Execution of a Removal Order

At the outset, to the extent Petitioner seeks any ruling from this Court regarding the validity of his removal order, or asks this Court to enjoin his removal, this Court lacks jurisdiction under 8 U.S.C. § 1252(g) to "hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to … execute removal orders against any alien." *See Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999).

B. *Zadvydas* does not mandate Petitioner's release, and Petitioner has failed to meet his burden of proving he has good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

An alien's post-removal-period detention under 8 U.S.C. § 1231 is limited to a period reasonably necessary to bring about that alien's removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has found that once the removal period begins, six months is a reasonably necessary period to remove the alien. *See id.* at 701. After six months, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. *Id.*

The Supreme Court in *Zadvydas* made it clear that the lapse of the presumptive period alone does not require 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 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) (quoting *Zadvydas*, 533 U.S. at 701); *see also*, *Agyei–Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011).

"The burden is on the alien to show that there is no reasonable likelihood of repatriation." *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011); *Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006) ("The alien bears the initial burden of proof in showing that no such likelihood of removal exists."). 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)). Additionally, mere conclusory allegations are 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). The Northern District of Texas has clarified:

> 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 and 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; *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ; *Ali v. Gomez*, No. SA-11-CA-726-FB, 2012 WL 13136445, *6 (W.D. Tex. March 14, 2012) (denying habeas relief when petitioner offered only 'conclusory statements' to show he will not immediately be removed to Pakistan). 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 "reasonably foreseeable future" is not a static concept. Instead, it is fluid and country specific, significantly depending on the diplomatic relations between the United States and the country that will receive the removed alien. The processes for obtaining a temporary travel document from

another country are complex, multi-faceted, and include considerations of diplomacy that are beyond the control of ICE. The Northern District of Georgia has explained:

> Clearly, it is no secret that the bureaucracies of second and third world countries, and not a few first world countries, can be inexplicably slow and counter-intuitive in the methods they employ as they lumber along in their decision-making. To conclude that a deportable alien who hails from such a country must be released from detention, with the likely consequence of flight from American authorities back to the hinterlands, simply because his native country is moving slow, would mean that the United States has effectively ceded its immigration policy to those other countries. The Court does not read the holding of *Zadvydas* as requiring such an extreme result.

Fahim v. Ashcroft, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002).

Moreover, even a "lack of visible progress … does not in and of itself meet [the petitioner's] burden of showing that there is no significant likelihood of removal." *Id.* at 1366. "It simply shows that the bureaucratic gears of the [federal immigration agency] are slowly grinding away." *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001); *Idowu v. Ridge*, No. 3:03-cv-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003).

Petitioner has failed to provide this Court sufficient evidence that he has good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Here, the Government has acted diligently and is simply waiting for responses from third countries. ICE has in fact recently removed Uzbekistan nationals to third countries. (Ex. A, ¶ 12).

This Petition should be dismissed, like the petitions in *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1365 (N.D. Ga. 2002) and *Nagib v. Gonzales*, 2006 WL 1499682 at p. 2. In both cases, courts found that the aliens had not met their burdens because the only evidence of a good reason to believe there was no significant likelihood of a reasonably foreseeable removal was the time in detention and the assertion that receiving country had not yet issued travel documents. In these types of cases, absent evidence of an institutional barrier to removal or an individual barrier to removal, habeas relief is not warranted. *Fahim*, at 1365-1366; *Nagib*, at pp. 2-3. Mere delay does not trigger an inference that the removable alien will not be accepted by a country. *See, Fahim*, at 1366.

Further, the instant case is distinguishable from *Zadvydas*. In *Zadvydas*, all 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. This case is also distinguishable from other cases cited by Petitioner (*Barco v. Witte*, 6:20-CV-00497, 2020 WL 7393924 (W.D. La. Nov. 19, 2020), *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643 (W.D. La. Sept. 17, 2020) and *Alexis v. Smith*, No. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011)), all of which involved cases where it was acknowledged that travel documents could not be secured for the aliens at issue, either due to suspensions in travel or otherwise.

Following the Supreme Court's decision in *Zadvydas*, the Government enacted regulations to meet the criteria established by the Court to prevent indefinite detention. *See* 8 C.F.R. § 241.4. Pursuant to those regulations, a detained alien is entitled to review of his custody status prior to the expiration of the removal period, 8 C.F.R. § 241.4(k)(1), and at annual intervals thereafter, 8 C.F.R. § 241.4(k)(2), with the right to request interim reviews not more than once every three months in the interim period between annual reviews. 8 C.F.R. § 241.4(k)(2)(iii). The post-order custody review process satisfies the requirements of 8 U.S.C. § 1231(a)(6) and the due process clause. *See Zadvydas*, 533 U.S. at 724. The regulations require that the reviewing ICE officials consider several factors when determining whether to release an alien or continue his detention pending removal from the United States. 8 C.F.R. § 241.4(f).

In this case, custody was reviewed on April 18, 2025 and the NOL ERO Deputy Field Office Director authorized Petitioner's continued detention. (Ex. A, ¶ 11). Petitioner has provided no evidence to support any contention that he has been denied due process, or that he has requested any review of his custody status and been denied. As a result, his 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*. "If it is established at any stage of a custody review that, in the judgment of the Service, travel documents can be obtained, or such document is forthcoming, the

alien will not be released unless immediate removal is not practicable or in the public interest." 8 C.F.R. § 241.4(g)(3).

Petitioner has not met his burden of demonstrating that his detention under 8 U.S.C. § 1231(a)(6) violates his due process rights under the *Zadvydas* standard because he has not established that there is good reason to believe that there is no significant likelihood of his removal from the United States in the reasonably foreseeable future. His only factual basis for relief consists of speculative, conclusory, and incorrect allegations. He has failed to satisfy his burden and his Petition should therefore be dismissed.

C. Alternatively, this Court should dismiss or, alternatively, stay proceedings pending the resolution of an already-certified nationwide class action.

Alternatively, this Court should dismiss, or, at the very least, stay this action pending resolution of class action currently pending in the United States District Court for the District of Massachusetts, *see D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.), in which Petitioner is a class member. "Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action." *Wynn v. Vilsack*, No. 3:21-CV-514-MMH-LLL, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) (internal quotations omitted). As the Eighth Circuit stated,

> After rendition of a final judgment, a class member is ordinarily bound by the result of a class action.... If a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified.

Goff v. Menke, 672 F.2d 702, 704 (8th Cir. 1982). Thus, dismissal of this action in light of Petitioner's membership in the *D.V.D.* class is warranted.

Alternatively, this Court should stay proceedings pending the outcome of *D.V.D.* District courts also have the inherent discretionary authority "to stay litigation pending the outcome of related proceedings in another forum." *Chappell v. United States*, 2016 WL 11410411, at *2 (M.D. Ga. 2016)

(quoting *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d 1284, 1288 (11th Cir. 1982) (citing *Landis v. North American Co.*, 299 U.S. 248, 255 (1936), *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 665 (1978), and *P.P.G. Industries Inc. v. Continental Oil Co.*, 478 F.2d 674 (5th Cir. 1973)). "A stay is also necessary to avoid the inefficiency of duplication, the embarrassment of conflicting rulings, and the confusion of piecemeal resolutions where comprehensive results are required." *Chappell*, 2016 WL 11410411, at *3 (internal quotations and citations omitted).

Here, the potential for conflicting decisions is real. Petitioner's removal to his home country of Uzbekistan has been ordered withheld pursuant to a grant of protection under the CAT. (Ex. A, ¶ 7). Therefore, ERO is requesting removal to a third country. (Ex. A, ¶ 12). Petitioner is therefore a member of the nationwide class certified by the United States District Court for the District of Massachusetts on April 18, 2025. *D.V.D.*, 778 F. Supp. 3d at 379. That class is defined as

> [a]ll individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. In *D.V.D.,* Plaintiffs, on behalf of themselves and this certified class, seek to require DHS to provide additional procedures to class members before removing them to a third country (*i.e.* a country not previously designated in removal proceedings). The Court certified the class.[1] *Id.* at 386 ("The Court finds that the named and unnamed Plaintiffs alike share an identical interest in challenging Defendants' alleged practice of removing individuals to third countries without notice and an opportunity to be heard, and, as such, satisfy the typicality requirement under Rule 23(a)(2)."); *see also Kincade v. Gen. Tire and Rubber Co.*, 635 F.2d 501, 506-07 (5th Cir. 1981) (discussing the lack of an opt out under Rule 23(b)(2)). Membership in the class is not waivable. Fed. R. Civ. P. 23(b)(2).

[1] The Government has appealed the district court's preliminary injunction. *D.V.D., et al. v. U.S. Dep't of Homeland Sec.*, No. 25-1311 (1st Cir.).

Because the District Court for the District of Massachusetts has certified a class that will address Petitioner's claims, staying these proceedings would be prudent as a matter of comity. *Cf Munaf v. Geren*, 553 U.S. 674 at 693 (2008) ("prudential concerns, such as comity . . . may require a federal court to forgo the exercise of its habeas corpus power"). As another district court has recognized, Rule 23(b)(1) permits a class action to proceed where "prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." *Nio v. United States Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. 2017) (quoting Fed. R. Civ. P. 23(b)(1)). Indeed, this is the very purpose of a Rule 23(b)(2) class. Because "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Nio*, 323 F.R.D. at 34. There is little sense to go forward in this case because the analysis is already well under way and currently being evaluated to some degree by the First Circuit Court of Appeals. *D.V.D., et al. v. U.S. Dep't of Homeland Sec.,* No. 25-1311 (1st Cir.). "Consistency of treatment [is at the heart of what] Rule 23(b)(2) was intended to assure." *Cicero v. Olgiati*, 410 F. Supp 1080, 1099 (S.D. NY 1976). Dismissing, or at a minimum, staying these proceedings to allow resolution of a nationwide class action (to which Petitioner belongs) allows for consistent treatment and promotes efficiency.

CONCLUSION

The Petitioner seeks release from his post-removal detention. The Supreme Court in *Zadvydas* provides Petitioner his only appropriate standard for relief. Petitioner, however, does not satisfy the requirements of the *Zadvydas* standards, i.e. he does not satisfy his burden of proving good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. Further, Petitioner is a member of an already-certified nationwide class action. Consequently, his petition for writ of habeas corpus should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 20, 2025, a copy of the foregoing was forwarded to Plaintiff by depositing a copy of same in the United States Mail, postage prepaid and properly addressed to his last known address:

Kamolkhon Abdusamat Ugli Salimov
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s/ Kristen H. Bayard
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