UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

HABEN KIDANE # [redacted]	)	**CIVIL ACTION NO: 1:25-cv-01152**
	)	**SECTION: P**
	)	
VERSUS	)	**JUDGE EDWARDS**
	)	
U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, *ET AL.*	)	**MAGISTRATE JUDGE PEREZ-MONTES**

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents, U.S. Immigration and Customs Enforcement; Melissa Harper, in her official capacity as Field Office Director, New Orleans Field Office, United States Immigration and Customs Enforcement; Todd Lyons, in his official capacity as Acting Director, United States Immigration and Customs Enforcement; and Kristi Noem, in her official capacity as Secretary, United States Department of Homeland Security, file this Response in Opposition to Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1).

INTRODUCTION AND STATEMENT OF FACTS

Petitioner is a native and citizen of Eritrea who entered the United States on or about June 15, 2024 without being inspected by an immigration officer. ECF No. 1-2; Government Exhibit A, Declaration of Charles G. Ward, ¶ 4. On June 15, 2024, Petitioner was encountered by U.S Border Patrol (USBP) and was taken into ICE custody. Government Exhibit A, ¶ 5. USBP issued Petitioner a Notice and Order of Expedited Removal pursuant to Section 235(b)(1) of the Immigration Nationality Act (INA). *Id.* On June 19, 2024, Petitioner transferred to ERO (Enforcement and Removal Operations) San Diego and was detained at the Otay Mesa Detention Center there. *Id.*

Petitioner later transferred to ERO New Orleans and was detained at the River Correctional Center, in Ferriday, LA. *Id.*

On June 20, 2024, Petitioner referred to the U.S. Citizenship and Immigration Services (USCIS) after claiming fear of returning to Eritrea. Government Exhibit A, ¶ 6. On July 24, 2024, USCIS issued Petitioner a negative credible fear finding. *Id.* Petitioner requested an immigration judge (IJ) review the decision. On July 27, 2024, the IJ in Jena, LA affirmed the USCIS negative credible fear determination and returned the case to the Department of Homeland Security for removal of the Petitioner. *Id.*

On September 8, 2025, the embassy of Sweden issued the Petitioner a travel document under the alias of Ghirmay Filimon, which expires on March 22, 2026. Government Exhibit A, ¶ 7. ERO is in the process of scheduling the Petitioner for removal. *Id.*

On August 11, 2025, prior to the issuance of Petitioner's travel document, Petitioner filed the instant Petition for Writ of Habeas Corpus on two counts: (1) that his immigration detention violates the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a), and (2) that his continued detention violates substantive due process rights under *Zadvydas v. Davis,* 533 U.S. 678 (2001), and the Fifth Amendment. As set forth below, the requested relief (release from ICE custody) is not warranted in this case.

LAW AND ARGUMENT

A. Petitioner's Detention in Accordance with 8 U.S.C. § 1231(a).

Petitioner has in place a final order of removal dated July 27, 2024. ECF No. 1, p. 5 of 9; Government Exhibit A, ¶ 6. The INA includes a statutory framework for the detention of aliens when a final order of removal has been entered. Section 8 U.S.C.A. § 1231 of the INA provides as follows.

(a) Detention, release, and removal of aliens ordered removed

(1) Removal period

(A) In general

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) Beginning of period

The removal period begins on the latest of the following:

i. The date the order of removal becomes administratively final.

ii. If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

iii. If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Section 1231 is the only relevant provision of the INA applicable to detention, release and removal of aliens with final orders of removal in place such as Petitioner.

Petitioner argues he has been detained by ICE beyond the removal period authorized by statute. Pursuant to 8 U.S.C.A. § 1231 (a)(2)(A), "[d]uring the removal period, the Attorney General *shall* detain the alien." (Emphasis added.) Despite Petitioner's argument that he has been detained for a prolonged period, as set forth below, the U.S. Supreme Court has found that once the removal period begins, continued detention for a period that is reasonably necessary to remove the alien is warranted unless the Petitioner can provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Therefore, Petitioner's continued detention pending his removal does not violate 8 U.S.C. § 1231 and established jurisprudential authority interpreting and applying this statute.

B. Petitioner Has Failed to Show There is No Likelihood of Removal in the Reasonably Foreseeable Future.

Petitioner has failed to show there is no likelihood of removal in the reasonably foreseeable future as required by *Zadvydas*. The Supreme Court 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 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) (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 at 318; *Andrade*, 459 F.3d at 543–44 ("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.

Idown, 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); *Idown v. Ridge*, No. 3:03-cv-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). In this case, however, progress has been made toward Petitioner's imminent removal.

Petitioner has failed to provide this Court with sufficient evidence that he has good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. He has offered nothing beyond the allegation that the Eritrean embassy/consulate has not issued travel

documents for Petitioner. However, if an alien cannot be removed to his or her home country, he or she may be removed to a third country who government will accept the alien into that country. 8 U.S.C. §1231(b)(2)(E)(vii). In this case, DHS identified a third country for the removal of Petitioner (Sweden), and the embassy of Sweden has issued Petitioner a travel document under his acknowledged alias, Ghirmay Filimon. Government Exhibit A, ¶ 7; ECF No. 1 (including Plaintiff's alias as a name he has used). Here, the Government has acted diligently to identify a country for Petitioner's removal and obtain a travel document for Petitioner, and is simply waiting for the removal process to play out, which is its right under the INA.

This Petition should be dismissed, like the petitions in *Fahim v. Ashcroft* and *Nagib v. Gonzales*. 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 the 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,* 227 F. Supp. 2d at 1365-1366; *Nagib,* 2006 WL 1499682 at *3. Mere delay (which Respondents deny is even present in this case) does not trigger an inference that the removable alien will not be accepted by a country. *See Fahim,* at 1366. In this case, Petitioner has been issued a travel document by the embassy of Sweden, and ERO is in the process of scheduling Petitioner for removal. Government Exhibit A, ¶ 7.

Ultimately, Petitioner has not met his burden of demonstrating that his detention under 8 U.S.C. § 1231 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. Therefore, his Petition should be dismissed.

CONCLUSION

The Petitioner seeks release from his post-removal order 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 because he has not satisfied his burden of proving good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, because a travel document has been issued for Petitioner. 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 November 17, 2025, a copy of the *Response in Opposition to Petition for Writ of Habeas Corpus* was filed electronically with the Clerk of Court using the CM/ECF system. I also certify that I have mailed by United States Postal Service this filing to the following non-CM/ECF participant:

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