

United States District Court
Western District of Texas
El Paso Division

Haytham Fawzi Salah Madhoun,
Petitioner,

v.

No. 3:25-CV-00312-KC (consolidated)

El Paso Processing Center, Immigration
Detention Center, et al,
Respondents.

**Federal Respondents' Response to
Petitioner's Writ of Habeas Corpus**

Statement of Issues

1. Whether Petitioner, a convicted aggravated felon, is lawfully detained in immigration custody pending the execution of his final removal order.

I. Introduction

Federal¹ Respondents timely submit this response per this Court's Order dated August 29, 2025, consolidating Petitioner's four habeas petitions and ordering a response on or before September 12, 2025. *See* ECF No. 11.² In his four now-consolidated petitions for writ of habeas corpus filed under 28 U.S.C. § 2241, Mr. Madhoun ("Petitioner") seeks release from civil immigration detention, claiming that his detention is unlawful. The combined petitions consist of three counts: (1) Violation of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231, claiming removal is not likely; (2) Substantive Violation of the Fifth Amendment Due Process Clause, claiming his detention is indefinite; and (3) Procedural Violation of the Fifth Amendment Due Process Clause, claiming ICE has failed to acknowledge or act upon the Petitioner's administrative requests for release and that there is procedural protection in place to mandate a decision or review an alleged unlawful decision. *See, e.g.*, EP-CV-351, ECF No. 1-1 at ¶¶ 22–28.

II. Relevant Facts and Procedural History

Petitioner claims to be a Palestinian who was born in in Israel. *Id.* at ¶ 11. In 2006, Petitioner entered the United States on a student visa. *Id.* He has a final order of removal to Jordan, dated July 14, 2020, which was entered against him following a conviction and five years of

¹ The Department of Justice (DOJ) represents only the United States and its agencies. To the extent that this Court considers this consolidated petition properly filed against the United States or its agencies, this Response is filed only on their behalf. To the extent there are other respondents named in these petitions (by the Court or otherwise) who are not federal employees, DOJ does not represent them or act on their behalf in these matters. The U.S. Department of Homeland Security (DHS) has authority over custody decisions for aliens detained in civil immigration custody under Title 8 of the U.S. Code. *See, e.g., Aguilar v. Johnson*, No. 3:25-CV-1904-K-BN, 2025 WL 2099201 at *1–2 (N.D. Tex. July 25, 2025) (collecting cases and citing *M.A.P.S. v. Garite*, --- F.R.D. ---, EP-25-00171-DB, 2025 WL 1479504 *6 (W.D. Tex. May 22, 2025)).

² Respondents refer to the docket entry numbers associated with the consolidated cause number: 25-CV-312. *See* ECF No. 11 at 5.

incarceration, ten years suspended sentence, and five years' probation for Burglary of Dwelling and Cyberstalking. *Id.* ¶¶ 11–12.

Petitioner alleges that, in September of 2020, ICE released him from custody under an Order of Supervision (“OSUP”). *Id.* at ¶ 12; *see also* 8 U.S.C. §§ 1231(a)(3), (a)(6). ICE encountered Petitioner in El Paso, Texas, following an arrest for theft and took Petitioner back into custody on February 4, 2025. *See* Exhibit A (Declaration); *see also* EP–CV–351, ECF No. 1-1 at ¶ 13. Petitioner alleges that he complied with ICE’s requests to fingerprint and photograph him, and he filled out and signed applications for travel documents for Israel, Palestinian Authority, and Jordan. *See id.* at ¶ 14.

On or about April 30, 2025, ICE issued a Decision to Continue Detention following a review of Petitioner’s file. *Id.* at ¶15. In anticipation of his 180-day custody review, ICE El Paso recommended to ICE-HQ following a review of Petitioner’s file that Petitioner’s custody continue. *See* Ex. B (Custody Review Memorandum); 8 C.F.R. § 241.4(e), (f), and (g); *see also* EP–CV–351, ECF No. 1-1 at ¶ 16. In that recommendation, ICE determined that Petitioner’s detention should continue because Petitioner poses a “flight risk” and “a risk to public safety”. *See* Ex. B (Custody Review Memorandum). ICE noted that Petitioner’s record contained disciplinary infractions while in ICE custody, violations of prior conditions for release, and a criminal history. *Id.* The recommendation also noted that “ERO El Paso expects to effectuate his removal in the reasonable [*sic*] foreseeable future.” *Id.*

III. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order

becomes “administratively final,” (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas*, 533 U.S. at 701. Under § 1231, the removal period can be extended in at least three circumstances. *See Glushchenko v. U.S. Dep’t of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). 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.

IV. There Is No Good Reason to Believe That Removal Is Unlikely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal is unlikely in the reasonably foreseeable future. In *Zadvydas*, the U.S. Supreme Court held that § 1231(a)(6) “read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States” but “does not permit indefinite detention.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute.” *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption “does not mean that every alien not removed must be released after six months.” *Id.* at 701.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a “good reason” to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills*, No. 20–60547, 2022 WL

1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite “good reason,” the burden will not shift to the government to prove otherwise. *Id.*

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). Additionally, a 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 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).

There is no dispute that Petitioner’s removal order has been final since July 14, 2020. Petitioner, nonetheless, urges this Court to order that his continued detention pending removal is contrary to statute and in violation of his procedural and substantive due process rights, because of “war and genocide against Palestinians.” *See* EP-CV-351, ECF No. 1-1 at ¶ 17. Beyond these conclusory allegations, Petitioner fails to allege any reason, much less a “good reason,” to believe that there is no significant likelihood of removal in the reasonably foreseeable future. These claims are wholly insufficient under *Zadvydas*. *See Nogales v. Dept. of Homeland Sec.*, No. 21-10236,

2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014). As such, Petitioner cannot meet his burden to establish no significant likelihood of removal in the reasonably foreseeable future. *See Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government was taking affirmative steps to obtain Vietnamese travel documents). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

Even if the burden did shift to ICE, ICE avers that removal is likely in the foreseeable future. *See* Ex. A (ERO Declaration) ¶¶ 7, 9. ICE requested Petitioner’s travel document from the government of Israel on or about June 8, 2025, and the request remains pending. *Id.* ICE anticipates no impediments to securing the travel document and repatriating Petitioner to Israel in the reasonably foreseeable future. *Id.* If Israel refuses to issue a travel document, ICE will continue efforts to seek third country acceptance of Petitioner’s removal.

V. ICE Continues to Afford Petitioner Procedural Due Process During His Post-Order Custody Pending Removal.

Petitioner has not been deprived of any due process protections. To establish a procedural due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). While an agency is required to follow its own procedural regulations, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). In any event, a remedy for a procedural due process violation is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's

procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

Like his substantive due process claim, Petitioner provides only conclusory allegations to support his procedural due process claim. EP–CV–351, ECF No. 1-1 at ¶¶ 27-28. The record, however, disputes this claim. *See* Exhibits A and B. In compliance with the pertinent post-order custody regulations, ICE will continue to serve Petitioner with written notice regarding removal efforts and the basis for his continued detention. *Id.* Such notice continues to provide him with an opportunity to be heard and present evidence. Petitioner’s continued detention comports with his limited due process rights as an aggravated felon subject to a final order of removal.

VI. Conclusion

Petitioner’s detention is lawful under 8 U.S.C. § 1231(a)(6). Petitioner fails to show good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. As such, the burden has not shifted to ICE to show the opposite. Even if the burden had shifted, ICE avers that removal is foreseeable. Additionally, ICE has afforded Petitioner procedural due process over the course of his seven-month post-order detention. Petitioner’s continued detention, therefore, is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Respectfully submitted,

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Certificate of Service

I certify that on September 12, 2025, I mailed a copy of Federal Respondents' Response to Petition for Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

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