

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AKOP D.,

Petitioner,

v.

PRAIRIELAND DETENTION CENTER,

Respondent.

Civil Action No. 3:25-CV-02502-L-BN

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Akop Dongelyan filed this habeas petition under 28 U.S.C. § 2241 to challenge the length of time the Immigration and Customs Enforcement (ICE) has held him in custody following his final order of removal. Petitioner's claim is properly raised under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Because Petitioner will be removed in the reasonably foreseeable future, the Court should deny the petition.

I. Facts

Petitioner is a native and citizen of Armenia. App. p. 35. On January 13, 1990, Petitioner was admitted to the United States as a parolee. *Id.* Petitioner adjusted his status to a lawful permanent resident on December 15, 1992. *Id.* On February 20, 2024, Petitioner was convicted of conspiracy and sentenced to 364 days imprisonment. App. pp. 6-7.

Petitioner was placed into removal proceedings with the issuance of a Notice to Appear on July 1, 2024. App. p. 35. The NTA charged Petitioner as removable pursuant to

section 237(a)(2)(A)(iii) for his conviction of an aggravated felony fraud offense and conspiracy to commit a fraud offense. App. p. 38. An immigration judge found him removal as charged on January 13, 2025. App. pp. 40-41. On January 24, 2025, Petitioner was transferred to the custody of Immigration and Customs Enforcement (“ICE”). On February 18, 2025, an Immigration Judge ordered Petitioner removed to Armenia, as he had failed to file an application for relief. App. p. 41. Petitioner waived his right to appeal that decision.

II. Relevant Law

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 period within which to remove the alien from the United States following the final order. 8 U.S.C. § 1231(a)(1)(A). The alien must be detained during this period. 8 U.S.C. § 1231(a)(2). However, not all removals can be accomplished in 90 days. *Zadvydas*, 533 U.S. at 701. An alien who is removable under 8 U.S.C. § 1227(a)(2), may be detained beyond the 90-day removal period for the time necessary to execute the removal. 8 U.S.C. § 1231(a)(6).

In *Zadvydas*, the Supreme Court held that section 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” and “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 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; *Agyei-Kodie v. Holder*, 418 F. App’x 317, 318 (5th Cir. 2011) (a habeas challenge brought before the expiration of the six-month period should be dismissed as premature).

To establish a *prima facie* claim for habeas relief under *Zadvydas*, the alien must provide a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006); *Saeku v. Johnson*, No. 1:16-CV-155-O, 2017 WL 4075058, at *3 (N.D. Tex. Sept. 14, 2017). The “reasonably foreseeable future” is not a static concept. Rather, it is fluid and country-specific, depending in large part on the diplomatic relations between the United States and the subject country that will receive the removed alien. The mechanisms for obtaining a temporary travel document from another country are manifold and include functional considerations of rapport and diplomacy, which are beyond the control of ICE. One court has aptly observed:

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 into the hinterlands, simply because his native country is moving slow, would mean that the United States would have effectively ceded its immigration policy to those other countries. The Court does not read the holding in *Zadvydas* as requiring such an extreme result.

Fahim v. Ashcroft, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002). Additionally, a “lack of visible progress” in the removal process “does not in and of itself meet [the petitioner’s] burden of showing that there is no significant likelihood of removal.” *Id.* at 1366; *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006).

“[I]t 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).

“*The burden is on the alien to show that there is no reasonable likelihood of repatriation.*” *Khan*, 194 F. Supp. 2d at 1136 (emphasis in original). Conclusory allegations are insufficient to meet the alien’s burden of proof. *Nagib*, 2006 WL 1499682, at *3 (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 has 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). If 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.” *Zadvydas*, 533 U.S. at 701. However, if the alien fails to produce facts indicating that ICE is incapable of executing his removal soon and that his detention will be of indefinite duration, the petition should be dismissed. *Apau v. Ashcroft*, No. 3:02-CV-2652-D, 2003 WL 21801154, at *3 (N.D. Tex. June 17, 2003).

III. Argument

While Petitioner has been detained beyond the six-month post-order period, he has failed to establish a prima face claim under *Zadvydas*. He claims that he cannot be removed because ICE has been unable to obtain travel documents to execute his removal, and there

is no reason to believe that it will suddenly receive them. ECF. 3 at 6. The passage of time alone does not meet Petitioner's burden to prove that his removal is not foreseeable. *See Fahim*, 227 F. Supp. 2d at 1366. Nonetheless, since Petitioner filed this petition, ICE has been diligently working to secure all the travel documents necessary to execute his removal. App. p. 3. On September 10, 2025, ICE received a travel document from the government of Armenia for Petitioner. *Id.* Petitioner was scheduled to be removed on October 7, 2025, by charter flight to Armenia. App. p. 4, at ¶11. However, Petitioner did not make the flight as his transportation arrived late to the flight. App. p. 4, at ¶12. Petitioner is scheduled for a commercial flight to Armenia on October 20, 2025. *Id.* Given that travel documents have been issued for Petitioner by Armenia, the removal of Petitioner is significantly likely in the reasonably foreseeable future. App. p. 5, at ¶14. In light of these facts, Petitioner has not and cannot show that his removal is not likely in the reasonably foreseeable future. *Darwishahmed*, 2008 WL 4450276 at *6 (dismissing *Zadvydas* claim where an Israeli travel authorization for a Palestinian individual was pending and was the only document still needed to execute removal).

IV. Conclusion

Respondent requests that the Court dismiss Petitioner's petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On October 14, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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