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

ALEJANDRO J. L.,

Petitioner,

v.

PRAIRIELAND DETENTION CENTER,

Respondent.

Civil Action No. 3:25-CV-02503-K-BN

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Alejandro Jimenez Lobaina 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). The Court should deny the petition as Petitioner's continued detention is constitutional.

I. Facts

Petitioner is a native and citizen of Cuba. App. p. 18. On August 8, 2015, Petitioner was admitted to the United States as a lawful permanent resident. *Id.* On November 4, 2022, Petitioner was convicted of possession with intent to distribute cocaine in the Northern District of Oklahoma and sentenced to 33 months imprisonment. App. pp. 9-10.

Petitioner was placed into removal proceedings with the issuance of a Notice to Appear on January 7, 2025. App. p. 18. On January 14, 2025, an Immigration Judge found

Petitioner removable. App. pp. 24-25. Thereafter on February 19, 2025, an Immigration Judge denied Petitioner's applications for protection from removal and ordered Petitioner removed to Cuba. App. p. 26. Petitioner waived his right to appeal the decision. App. p. 27.

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. Indeed, as 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).

In light of the above, 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

Although Petitioner has been detained beyond the six-month post-order period, petition for a writ of habeas corpus fails to establish a *prima face* claim under *Zadvydas*. Petitioner claims that he cannot be removed because ICE has yet to obtain travel documents to execute his removal, and that as such there is no reason to believe that it will suddenly

receive them. ECF. 3 at 6. The passage of time alone, however, does not meet Petitioner's burden to prove that his removal is not foreseeable. *See Fahim*, 227 F. Supp. 2d at 1366. ICE has been diligently working to secure all the travel documents necessary to execute his removal. App. p. 3. On May 5, 2025, Enforcement and Removal Operations ("ERO") contacted the government of Cuba to request a travel document. App. p. 3, at ¶5. After receiving no response, ERO sent the case to ICE International Operations Division ("IOD"). *Id.*, at ¶5. On October 3, 2025, ERO sent a second request to ICE IOD about a travel document for Petitioner. *Id.*, at ¶8. Cuba has not denied ERO's request for travel documents. In light of these facts, Petitioner has not and cannot show that his removal is not likely in the reasonably foreseeable future.

Petitioner has the burden of showing that he is unlikely to be removed in the near future. *Id.* To satisfy this burden, Petitioner must provide "*evidence* of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Akinwale*, 287 F.3d at 1052 (emphasis added). In instances where an alien is unable to produce evidence demonstrating good cause to believe that there is no significant likelihood of removal in the reasonably foreseeable future, courts have sustained continuing periods of detention pending removal well beyond the six-month time frame described as presumptively reasonable by the Supreme Court in *Zadvydas* in order to accommodate the issuance of travel documents. *See, e.g.*, *Issa v. Holder*, No. 4:11-cv-19, 2011 WL 1671915, at *3 (M.D. Ga. Apr. 11, 2011); *Edmund v. Gonzales*, No. 05-00347, 2007 WL 2187258, at *2 (N.D. Fla. July 27, 2007) (holding that detention may still be reasonable after the "presumptively reasonable" period of detention has passed); *Chery v.*

Attorney Gen., No. 08-2300, 2009 WL 151104, at *2 (M.D. Fla. Jan. 21, 2009); *Linton v. U.S. Attorney Gen.*, No. 10-20145, 2010 WL 4810842, at *3–4 (S.D. Fla. Oct. 4, 2010).

Petitioner fails to establish that ICE will be unable to effectuate his removal in the reasonably foreseeable future. As set forth in the declaration of Officer Javier Robles, ICE submitted a request for a travel document to Cuba. App. p. 3, at ¶5. That request has not been denied by Cuba, and Petitioner has produced no evidence to establish that Cuba will not issue a travel document for him or that ICE will be unable to remove him. Indeed, Petitioner fails to assert *any* evidence regarding his impending removal, let alone enough evidence to establish that there is *no* significant likelihood of his removal to Cuba in the reasonably foreseeable future. *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1365 (N.D. Ga. 2002) ("Petitioner's bare allegations are insufficient to demonstrate a significant unlikelihood of his removal in the reasonably foreseeable future."). This is insufficient to satisfy his burden under *Zadvydas*. *See Fahim*, 227 F. Supp. 2d at 1366 ("[P]etitioner, in effect, seeks to place the burden on the Government to show when it will remove petitioner, whereas the Supreme Court held that it is petitioner's burden first to show good reason to believe that there is no significant likelihood of removal. All petitioner has shown is the passage of some time.").

IV. Conclusion

Respondent requests that the Court dismiss Petitioner's petition.

Respectfully submitted,

NANCY E. LARSON
ACTING UNITED STATES ATTORNEY

/s/ Ann E. Cruce-Haag
ANN E. CRUCE-HAAG
Assistant United States Attorney
Texas Bar No. 24032102
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401
Telephone: (806) 472-7351
Facsimile: (806) 472-7394
Email: ann.haag@usdoj.gov

Attorneys for Respondent

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
ANN E. CRUCE-HAAG
Assistant United States Attorney