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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Hijran Malik,

Petitioner,

v.

Fred Figueroa, *et al.*,

Respondents.

Case No. 2:25-cv-03570-GMS--JFM

PETITIONER'S REPLY IN SUPPORT OF WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

Respondents concede that since they contacted two consulates on June 16 – more than five months ago – they have made no progress toward Mr. Malik's removal, and yet, despite receiving a denial from those countries, they still argue that "his removal is significantly likely" and "not unconstitutionally prolonged." Resp. at 5. Even more concerning, they concede that it has been over nine months since they were advised that Mr. Malik lacked the necessary travel documents to be removed to Afghanistan (13-1 at ¶ 16) and more than five months since they sent a request for a travel letter to the U.S. embassy in Qatar to deliver to the Afghan Embassy, (13-1 at ¶ 17) yet the report absolutely no progress since that time, and cannot even confirm if that letter was actually delivered

to Afghanistan. Nonetheless, they deploy an array of jurisdictional and procedural red herrings to argue that this Court cannot grant Mr. Malik relief. Numerous other district courts have rejected these same arguments; for the reasons that follow, this Court should do the same.

ARGUMENT

I. This Court's jurisdiction is not affected by either 8 U.S.C. § 1252(g) or the Foreign Affairs Reform and Restructuring Act.

A. Section 1252(g) does not bar review of Petitioner's due process claims.

Respondents begin by arguing that "Petitioner's claim seeking a stay of removal ... is barred by 8 U.S.C. § 1252(g)." Resp. at 5. However, Mr. Malik is not asking for a stay of removal. Instead he has asked this Court to declare that his detention violates both the Supreme Court's ruling in *Zadvydas v. Davis*, 533 U.S. 678 (2001) and the Due Process clause of the Fifth Amendment, and therefore enter an order releasing him from detention and also enter an order to enjoin "Respondents from removing him to a third country without" due process. *See* ECF No. 7, First Amended Petition at pp. 18. Section § 1252(g) does not bar either of these forms of relief.

The argument that § 1252(g) bars Mr. Malik's *Zadvydas* claim is a nonstarter. The Supreme Court made clear in that case that the jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not preclude challenges to unconstitutionally prolonged detention. *Zadvydas*, 533 U.S. at 687-88 (holding that § 1252(a)(1), § 1252(a)(2)(C) and § 1252(g) do not bar "statutory and constitutional challenges to post-removal-period detention").

Similarly, with respect to Mr. Malik's claims regarding third-country removal without due process, courts have held that § 1252(g) presents no barrier to granting such relief. A sister court discussed this issue in depth in a recent case, *Arostegui-Maldonado v. Baltazar*, -- F. Supp. 3d --, 2025 WL 2280357 (D. Colo. Aug. 8, 2025), ultimately concluding that the INA's jurisdiction-stripping provisions did not "preclude [the court] from fashioning the narrow relief that Maldonado seeks here: an injunction requiring Respondents to adhere to their non-discretionary obligation to provide Maldonado with notice and an opportunity to seek withholding of removal before he is deported to any third country." *Id.* at *13. In fact, the court found its authority went even further: "To the Court's mind, there is little question that it has authority under the All Writs Act to enjoin Maldonado's unlawful removal from the United States while these habeas proceedings remain pending … Indeed, invoking its authority under the All Writs Act, the Supreme Court recently did just that." *Id.* at *12 (citing *A.A.R.P. v. Trump*, 145 S.Ct. 1364, 1369 (2025) ("We had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter.")).

The cases relied upon by Respondents involve petitioners who sued in district court seeking an injunction to stay their removal from the United States. *See, e.g., Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (denying a noncitizen's request for a TRO to prevent his removal while the BIA adjudicated his motion to reopen). Respondents' argument regarding § 1252(g) is also foreclosed by the Ninth Circuit's decision in *Ibarra-Perez v. United States*, No. 24-631, 2025 WL 2461663, at *7 (9th Cir. Aug. 27, 2025), which held

that § 1252(g) does not bar review of procedural protections that must be provided prior to a third country removal. *See id.* at *7 ("The government's broad reading of § 1252(g) would lead to a result that is not contemplated in the statute and that has been disavowed by the Supreme Court. The government's reading of § 1252(g) would entirely insulate from judicial review any post-hearing decision by ICE to remove noncitizens to third countries where they would be in danger of persecution, torture, and even death.").

But in any event, Mr. Malik has not asked this Court to enjoin his removal from the United States; he has only asked that such removal be conducted in a manner that comports with due process. Amended Pet. (ECF No. 7) at pp. 17-18. And courts have not hesitated to grant such relief, or indeed, in some cases even broader relief. *See, e.g., Arosteguí-Maldonado*, 2025 WL 2280357, at *16 (enjoining removal or transfer pending resolution of habeas petition); *Misirbekov v. Venegas*, 2025 WL 2201470 (S.D. Tex. Aug. 1, 2025) (enjoining removal without court's permission); *Nguyen v. Scott*, 2025 WL 2165995 (W.D. Wash. July 30, 2025) (enjoining removal to any country besides Vietnam); *Vaskanyan v. Janecka*, 2025 WL 2014208 (C.D. Cal. June 25, 2025), at *9 (granting TRO to prevent third-country removal without 10 days' written notice and a meaningful opportunity to raise a fear-based claim); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 376-77 (D. Mass. 2025) (court "will not construe section 1252(g) to immunize an unlawful practice from judicial review").

In short, since Mr. Malik is seeking only the limited relief of notice and adequate process before his removal and does not ask this Court to stay or otherwise interfere in the

removal process, this Court should follow other courts that have found no jurisdictional bar to granting such relief.

B. FARRA presents no jurisdictional bar in this case.

Next Respondents argue that Mr. Iakubov's claims "run[] afoul of" the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"). Resp. at 6. In *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025), the court rejected the very same argument: "Ortega does not seek review of 'the regulations adopted to implement' CAT or 'claims considered under' CAT. Instead, he asks not to be detained or removed without first receiving due process as to any CAT claim he might have for a third country to which the Government seeks his removal. FARRA, by its plain language, does not bar this Court's review of such claims." *Id.* at *4. *See also D.V.D. v. U.S. Dep't of Homeland Sec.*, -- F. Supp. 3d --, 2025 WL 1487238, at *5 (also rejecting FARRA argument); *J.G.G. v. Trump*, 772 F. Supp. 3d 18, 40-41 (D.D.C. 2025) ("that jurisdiction-stripping mandate pertains only to the review of the *substance* of CAT claims" not claims that the government is "denying [] any opportunity to *raise* CAT claims before [] deportation") (emphasis in original). In short, FARRA has no application to this case.

II. The non-opt-out class provisions of *D.V.D.* do not prevent the Court from granting injunctive relief in this case.

Respondents argue that "Petitioner's claims seeking to delay or otherwise prohibit his removal to a third country ... substantially overlap with the nationwide class action, *D.V.D.*", and should therefore be dismissed. Resp. at 8-9. A sister court in this circuit recently addressed these same arguments in *Nguyen v. Scott*, -- F. Supp. 3d --, 2025 WL

2419288 (W.D. Wash. Aug. 21, 2025). The court relied upon the Ninth Circuit's decision in *Pride v. Correa*, 719 F.3d 1130 (9th Cir. 2013) to find that the petitioner's claims were not barred. *Id.* at *20. The *Nguyen* court held that the petitioner "may bring his independent claim for injunctive relief because it is not duplicative of the [*D.V.D.*] litigation" and because "without that opportunity, Petitioner would be left 'powerless to petition the courts for redress' until the *D.V.D.* class action has been 'fully resolved.'" *Id.* at *21 (citing *Pride*, 719 F.3d 1137-38). The court also pointed out that:

> The Court also notes that Respondents' position contradicts the position they have taken in *D.V.D.* itself ... [O]ne of the government's primary arguments against the injunction in *D.V.D.* is that there is a jurisdictional bar to classwide injunctive relief in that case. [...] In other words, the government is arguing in *D.V.D.* that injunctive relief cannot be granted to the class, and may only be pursued (if at all) through individual cases, while arguing here that Petitioner's individual claim should be barred because his injunctive claims should be adjudicated as part of the *D.V.D.* class. The contradiction in these arguments further undermines Respondents' position here. The class certification order in *D.V.D.* does not prevent this Court from adjudicating Petitioner's claims regarding third-country removal.

Id. at *21. This Court should follow the detailed and thorough reasoning of the court in *Nguyen* and conclude that Mr. Malik's inclusion in the non-opt-out class in *D.V.D.* does not preclude this Court from adjudicating his individual claims in this case.

C. This Court Must Grant Mr. Malik's Petition Because Respondents Have Failed to Make Any Progress Toward Removal for Months.

Respondents argue that this Court should deny Mr. Malik's *Zadvydas* claim because "There is no legal impediment to removing Petitioner to Afghanistan. The only step that remains is for Afghanistan to issue a transportation letter. Upon the issuance of the letter, ERO Eloy will remove Petitioner to Afghanistan." Resp. at 3. They also state that "the

Government is not at an impasse in removing Petitioner, his removal is significantly likely, and Petitioner's detention is not unconstitutionally prolonged." Resp. at 5. However, Respondents' own evidence contradicts this. The Declaration of David Sandoval (ECF No. 13-1) indicates that nearly ten months ago, on February 7, 2025, Respondents discovered that they lacked travel documents necessary to send Mr. Malik to Afghanistan. ECF 13-1 at ¶ 11. Mr. Malik cooperated in the application for travel documents, and on May 21, 2025, "ERO Eloy sent an Afghan Transportation Letter to the U.S. Embassy in Doha, Qatar for delivery to the Afghan Embassy." ECF 13-1 at ¶11, 17. On June 16, 2025, Respondents asked El Salvador and Kuwait to accept Mr. Malik; both countries declined on July 1, 2025. ECF 13-1 at ¶¶ 18-20. Since that time, no progress has been made toward Mr. Malik's removal; Respondents concede that they have merely added his name to a list of other Afghans waiting for travel letters. ECF 13-1 at ¶ 23.

Resolution of this case is governed by two words from *Zadvydas*: "significant" and "reasonably." Once a noncitizen shows that "there is no *significant* likelihood of removal in the *reasonably* foreseeable future," the Government must produce evidence to rebut that showing. *Zadvydas*, 533 U.S. at 701 (emphasis added). "A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Kane v. Mukasey*, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008) (superseded on mootness grounds by *Kane v. Mukasey*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008)). Respondents must show "evidence of progress ...

in negotiating [his] repatriation." *Gebrelibanos v. Wolf*, 2020 WL 5909487 (S.D. Cal. Oct. 6, 2020), at *3.

In any case, "the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts ... Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit. Diligent efforts alone will not support continued detention." *Hassoun v. Sessions*, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (internal citation omitted). "[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, 2020 WL 4880158 (S.D. Miss. July 7, 2020), at *3.

Here, Respondents have pointed to no evidence of progress whatsoever in Mr. Malik's removal; they were turned down by two countries in July and have made absolutely no progress in removing Mr. Malik to Afghanistan since May 21, 2025, more than six months ago, when they purportedly sent a request for travel documents to be delivered to the Afghan embassy. Respondents provide no information as to whether that letter was actually delivered, whether the Afghan government has determined whether to issue a travel letter, and the timeline for any possible removal. As such, Mr. Malik has shown that his removal is not reasonably foreseeable and respectfully asks this Court to order his immediate release from detention.

CONCLUSION

Respondents have failed to overcome Mr. Malik's showing that his removal is not reasonably foreseeable. For the foregoing reasons, the Court should grant the petition for habeas corpus and order Mr. Malik's immediate release.

Dated: December 1, 2025

Respectfully submitted,

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