

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FARUK ATIK ADIR,

A# 

PETITIONER

v.

Civil Action No. 5:25-cv-00123-DCB-BWR

WARDEN RAFAEL VERGARA, Adams
County Correctional Center

RESPONDENT

RESPONSE IN OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Rafael Vergara, Warden of Adams County Correctional Center (“Respondent”), by and through the United States Attorney for the Southern District of Mississippi and the undersigned Assistant United States Attorney, submits this Response in Opposition to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 filed by Faruk Atik Adir (“Petitioner”). *See* ECF No. 1.

INTRODUCTION

Petitioner filed the instant petition, contending his continued detention is in violation of the Immigration and Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment. *See* ECF No. 1, *Petition*. To be released from custody, he must demonstrate that “there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Petitioner has failed to provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future and thus, his application should be denied and this action dismissed.

BACKGROUND

Petitioner is a native and citizen of Turkey. Exhibit 1, *Declaration of Charles G. Ward* ¶ 4. He illegally entered the United States on or about January 10, 2025, near San Ysidro, California. *Id.*

The same day, the U.S. Customs and Border Protection encountered the Petitioner, took him into custody and placed him in Expedited Removal Proceedings, pending a credible fear interview with the U.S. Citizenship and Immigration Services (“USCIS”). *Id.* After the interview, the USCIS found the Petitioner possessed a credible fear of persecution in his home country. Exhibit 1, *Declaration of Charles G. Ward* ¶ 6.

On February 23, 2025, the U.S. Department of Homeland Security (“DHS”) initiated removal proceedings and served the Petitioner with a Notice to Appear pursuant to Sections 212(a)(8)(A)(i)(I) and 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”). *Id.* On May 6, 2025, the Immigration Judge denied Petitioner’s application for asylum but granted the Petitioner’s application for Withholding of Removal to Turkey pursuant to Section 241(b)(3) of the INA.¹ Exhibit 1, *Declaration of Charles G. Ward* ¶ 8; see also Exhibit 2, *Order of the Immigration Judge*. Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) subsequently contacted the Spanish consulate to determine if Spain would accept the Petitioner upon his removal from the United States.² Exhibit 1, *Declaration of Charles G. Ward* ¶¶ 9, 10 and 11. After receiving no response from Spain, ERO Oakdale sent requests to ERO Headquarters for third country removal.³ Exhibit 1, *Declaration of Charles G. Ward* ¶¶ 12, 14 and 15. Although ERO has not received a response from a third country, incessant efforts are being made to facilitate removal of the Petitioner in the reasonably foreseeable future. Exhibit 1, *Declaration of Charles G. Ward* ¶ 16.

LAW AND ANALYSIS

The detention of aliens under final orders of deportation is governed by 8 U.S.C. § 1231(a). Under that statute “when an alien is ordered removed, the Attorney General shall remove the alien

¹ The DHS declined to appeal. Exhibit 1, *Declaration of Charles G. Ward* ¶ 8.

² ERO submitted several requests to the Spanish consulate on May 19, 2025, May 27, 2025, and August 12, 2025.

³ ERO Oakdale submitted request to ERO Headquarters on August 12, 2025, October 19, 2025, and November 12, 2025.

from the United States within a period of 90 days.” *See* 8 U.S.C. § 1231(a)(1). This 90-day period is referred to as the “removal period.” *Id.* The removal period begins to run upon the last of: (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. *See* 8 U.S.C. § 1231(a)(1)(B)(i)-(iii). The statute further provides that “[d]uring the removal period, the Attorney General shall detain the alien.” 8 U.S.C. § 1231(a)(2).

The time after the removal period is called the “the post-removal-period”. It is after the post-removal-period that the analysis set forth in the Supreme Court’s decision in *Zadvydas* applies. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, ICE may detain an alien for a longer period if it is reasonably necessary to bring about the alien’s removal from the United States. 533 U.S. at 701. It also held that detention for up to six months after the removal order becomes final is “presumptively reasonable.” *Id.* “This [six]-month presumption, of course, does not mean that every alien not removed must be released after six months.” *Id.* To 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.” *Id.* However, after six months, “once 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.” *Id.*

Here, the Petitioner argues that since being served a “Notice of Removal” on May 16, 2025, he has not received any additional information from ICE regarding deportation to Spain. *See* ECF No. 1, *Petition*, pg. 7. However, ICE issued a “Decision to Continue Detention” letter on September 15, 2025, advising that it had reviewed the Petitioner’s custody status and determined continued custody to due to risk of flight and the reasonably foreseeability of removal. *See* Exhibit 1, *Declaration of Charles G. Ward* ¶ 13.

The Petitioner's continued detention is reasonable given the Petitioner cannot return to his home country due to his fear of persecution, which would inevitably slow down the process. Moreover, the evidence demonstrates that ICE has made repeated efforts to comply with the removal order and facilitate the Petitioner's removal in a timely manner. ICE's continuous actions establish a significant likelihood that he will be removed in the reasonably foreseeable future. There is no other evidence that would suggest otherwise.

A final point of contention are attorney's fees and costs requested by the Petitioner under the Equal Access to Justice Act. *See* Dkt. No. 1, at 16, *Petition*. The Petitioner is not entitled to recovery of fees and costs under this statute, as he is not a prevailing party. *See Okafor v. Smith*, No. 12-0467, 2012 WL 4959464, at *2 (W.D. La. May 14, 2012) (citing 28 U.S.C. § 2412(d)(1)(A)). Thus, his request for attorney's fees and costs should be denied.

CONCLUSION

For the reasons stated herein, the Court should deny and dismiss the subject Petition for Writ of Habeas Corpus.

Date: December 1, 2025

Respectfully submitted,

PATRICK A. LEMON
ACTING UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I, Keesha D. Middleton, Assistant United States Attorney, hereby certify that, on this date, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification to counsel of record.

DATE: December 1, 2025

By: /s/Keesha D. Middleton
KEESHA D. MIDDLETON
Assistant United States Attorney