UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

OSAMAH MOHAMMAD YACOUB,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:25-CV-05713
	§	
KRISTIE NOEM, *et al.*,	§	
	§	
Respondents.	§	

FEDERAL RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

Kristi Noem, in her capacity as Secretary of the U.S. Department of Homeland Security; Todd Lyons, Acting Director of United States Immigration and Customs Enforcement (ICE); Marcos Charles, Acting Associate Director, ICE ERO; Pamela Bondi, Attorney General; and Bret Bradford, in his capacity as Field Office Director of ICE Houston Field Office, ("Federal Respondents") file this Motion for Summary Judgment in opposition to the Petition for a Writ of Habeas Corpus (Dot. No. 1).[1] For the following reasons, the Court should deny the Petition on summary judgment.

I. STATEMENT OF JURISDICTION

The Court has jurisdiction to review this habeas petition as it challenges the lawfulness of the Petitioner's detention. *See* 28 U.S.C. § 2241.

[1] While the undersigned does not represent the warden as he is not a federal employee, all the arguments here pertain to the warden as well.

II. STATEMENT OF AUTHORITY

Petitioner is detained pursuant to a final order of removal issued by an immigration judge on July 13, 2005. *See* Exhibit (Declaration of Deportation Officer Sheehan) para. 6. This is not disputed. See Petition, para. 14. All available administrative remedies have been exhausted. Sheehan Declaration, para. 6 and 14.

III. SUMMARY

The Federal Respondents disagree with Petitioner that his detention is unlawful because it is "indefinite" and that "there is 'no significant likelihood' that ICE will be able to remove Mr. Yacoub from the United States 'in the reasonably foreseeable future.'" Petitioner has been detained since June 16, 2025. ICE has been making attempts to effectuate his removal by requesting travel documents. Thus, summary judgment in favor of the Respondents is appropriate.

IV. BACKGROUND

Petitioner is a Palestine national and considers himself "stateless". He has a remarkable criminal history culminating in a federal conviction and serving 40 months in the custody of the Bureau of Prisons. Sheehan Declaration, para. 8-11. In 2005 he was ordered removed to Israel or the West Bank. *Id.* at 14. Petitioner holds a Jordanian passport and is a citizen of Jordan. *Id.* at 14. ICE is attempting to remove him to Jordan. *Id.* para. 19-20. Other people have been removed to Jordan this year. *Id.* para 17. There is no impediment to removing petitioner to Israel, Jordan or the West Bank. *Id.* at 18. Efforts continue and as of December 2, 2025, ICE awaits a decision from the Jordanian embassy. *Id.* at 21.

V. STANDARD OF REVIEW

Summary judgment is appropriate where the pleadings and evidence demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Materiality is determined from the governing substantive law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Disputes over facts that may affect the outcome of the case according to the substantive law are "material" and a dispute is "genuine" if the evidence allows a reasonable jury to return a verdict for the nonmoving party. If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 256.

VI. ARGUMENT

In a petition for a writ of habeas corpus, the petitioner challenges the legality of the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286, 61 S.Ct. 574, 85 L.Ed. 830 (1941). As set forth in the INA, an alien must be held in custody after entry of a final removal order and during the 90-day removal period. 8 U.S.C. § 1231(a)(2). After this period, the INA nevertheless contemplates continued detention. *Id.* § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001), the Supreme Court addressed "whether aliens that the Government finds itself unable to remove are to be condemned to an indefinite term of imprisonment within the United States." *Id.* at 695. It held that post-removal detention is presumptively lawful up to six months, after which the detention may still be reasonable and

lawful until "the alien provides good reason" to "determine that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Thus, the primary issue before the Court is whether Yacoub has satisfied his burden of proof by providing good reason to show that there is no significant likelihood of removal in the reasonably foreseeable future.

A. Petitioner fails to carry his burden of showing that there is no significant likelihood of removal.

Failing to satisfy his burden, Petitioner relies mostly on conclusory allegations to support his habeas petition. Abushanab carries the burden to show that "there is no significant likelihood of removal . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13; *see Tawfik v. Garland*, No. 4:24-CV-02823, 2024 WL 4534747, at *3 (S.D. Tex. Oct. 21, 2024) (citing *Zadvydas v. Davis*, 533 U.S. 678, 701, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001)) (explaining that it is the detainee's burden to show that his removal is not significantly likely in the reasonably foreseeable future). To carry that burden requires "something beyond speculation and conjecture," and a lack of visible progress, such as "a lack of post-order-of-removal proceedings," is insufficient; rather, a petitioner must demonstrate that there are particular individual barriers preventing his removal. *Idowu v. Ridge*, No. 3:03-CV-01293, 2003 WL 21805198, at *3 (N.D. Tex. Aug. 4, 2003); *see also Apau v. Ashcroft*, No. 3:02-CV-02652, 2003 WL 21801154 (N.D. Tex. June 17, 2003) (holding the fact that the respondent country had yet to issue travel documents was insufficient to meet this burden).

Petitioner does not allege plausible facts demonstrating that ICE is incapable of effecting his removal in the near future. His equitable argument is simply that he was on a prior order of supervision (OSUP), has complied with the law during that time, is not a danger

to the community and should thus been released. He does not dispute that he can be taken into custody; the dispute is whether he may remain in custody for an indeterminate time. The summary judgment evidence shows receipt of a travel document to Jordan and deportation is imminent. Sheehan Declaration para. 22. There are therefore no constitutional infirmities with his detention at this juncture.

B. Petitioner's Due Process claim is unsupported.

Failing to show an unlawful detention under the statutory and *Zadvydas* frameworks, the Petition further fails to otherwise show any Due Process violation. Procedural due process protects an individual's right to be heard prior to deprivation of life, liberty or property. *See Matthews v. Eldridge*, 424 U.S. 319, 332-333 (1976). In the instant case, detention beyond the removal period may be maintained upon compliance with applicable process. *See* 8 C.F.R. § 241. There is no showing that procedural due process rights have been violated. *See* Dkt. No. 1, para. 23 (alleging that ICE was arbitrary in arresting him). The government can re-detain Petitioner when, in ICE's discretion, "it is appropriate to enforce a removal order". *Alam v Nielsen*, 312 F.Supp. 3d 584, 582 (S.D. Tex. 2018). Further, the threshold question in assessing substantive due process is "whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8 (1998). The Petition does not suggest that any immigration officer involved in this case acted in a manner that could be characterized as egregious or that would shock the conscience. The summary judgment evidence shows receipt of a travel document to Jordan and deportation is imminent. Sheehan Declaration para. 22. Thus, the Due Process claim fails to show a material fact issue

C. The Court is without jurisdiction to enjoin removal or transfer to a third country.

Finally, although not raised, contesting the decision to seek removal to Jordan (as opposed to Israel) is outside the scope of a habeas petition.

This Court lacks jurisdiction to consider such request as it would relate to a decision or action by the Attorney General to execute a removal order against an alien. *See Alvidres-Reyes v. Reno*, 180 F.3d 199, 206 (5th Cir. 1999) (Section 1252(g) removed jurisdiction to consider a "challenge to the Attorney General's decision to decline to commence proceedings or to adjudicate deportations, *or to hear the plaintiffs' claim for suspension of their deportations which concomitantly arises therefrom.*"); *Fabulae v. Immigr. & Naturalization Agency*, 244 F.3d 133 (5th Cir. 2000). Relatedly, to the extent Petitioner raises due process claims to challenge execution of his removal order, such claims are also barred by Section 1252(g). *Foster v. Townsley*, 243 F.3d 210 (5th Cir. 2001); *see also*, *Chen v. Escareno*, No. 4:09-CV-00270, 2009 WL 3073928, at *2, 6 (S.D. Tex. Sept. 18, 2009) (rejecting petitioner's claim that she faced removal "without due process," as "all of the plaintiffs' claims are connected directly and immediately with a decision or action by the Attorney General to execute the [removal order]," and thus were unreviewable under Section 1252(g)).

VII. CONCLUSION

For the reasons stated above, the Court should grant judgment as a matter of law in the Government's favor and dismiss the petition for writ of habeas corpus.

Dated: December 5, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney

By: */s/ Daniel David Hu*
Daniel David Hu, Attorney-in-Charge
Assistant United States Attorney
Texas Bar No. 10131415
Southern District No. 7959
1000 Louisiana, Suite 2300
Houston, Texas 77002
Tel: (713) 567-9000
Fax: (713) 718-3303
E-mail: Daniel.hu@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on December 5, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Daniel Hu
Daniel David Hu
Assistant United States Attorney