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UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Tirhas Zedingle,

Petitioner,

v.

Kristi Noem, Secretary, Department of Homeland Security; Todd Lyons, in his Official Capacity as Acting Director of U.S. Immigration and Customs Enforcement (Ice); Pam Bondi, Attorney General of the United States; Gregory J. Archambeault, Director, San Diego Field Office, Immigration and Customs Enforcement; Christopher J. Larose, Warden, Otay Mesa Detention Center.

Respondents.

No. 26-cv-00100-DMS-SBC

Petitioner's Reply to Respondents' Return to Petition for Writ of Habeas Corpus

District Judge Dana M. Sabraw

Petitioner hereby submits her reply to Respondents' Return of January 15, 2026. Dkt # 5.

A. RESPONDENT IS DETAINED IN VIOLATION OF 8 U.S.C. § 1231(a)(6) AND SUBSTANTIVE DUE PROCESS

The Immigration and Nationality Act authorizes a post-removal-period detention of six months to allow the United States to effectuate removal. 8 U.S.C. § 1231(a)(6). Zadvydas v. Davis, 533 U.S. 678 (2001). Once removal is no longer foreseeable, it is a violation of 8 U.S.C. § 1231(a)(6) and Due Process to hold a noncitizen in immigration detention. Zadvydas places the burden on the alien to show, after a detention period of six months, that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Pelich v. I.N.S., 329 F.3d 1057, 1059 (9th Cir. 2003).

In order to demonstrate eligibility for release, Petitioner must establish that, after a detention of 180 days, there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." Pelich v. I.N.S., 329 F.3d 1057, 1059 (9th Cir. 2003) citing Zadvydas v. Davis, 533 U.S. 678, 701, 121 S. Ct. 2491, 2505, 150 L. Ed. 2d 653 (2001). Once that is established, the government must provide evidence to refute that assertion and establish that removal is likely in the foreseeable future, or release is required. Pelich v. I.N.S., 329 F.3d 1057, 1059 (9th Cir. 2003). See Iakubov v. Figueroa, No. CV-25-03187-PHX-KML (JZB), 2025 WL 2640218, at *2 (D. Ariz. Sept. 15, 2025) (after 180 day post-final order detention "the burden shifts to the Government to establish it is likely petitioner will be removed in the reasonably foreseeable future.")

Petitioner was held for more than 180 days in custody over 20 years ago, and was released because she could not be removed from the United States. Respondents concede this. Dkt # 5-2 ¶ 16 ("On November 7, 2002, Petitioner was released from ICE custody on Order of Recognizance after further attempts from

ICE to obtain a travel documents for Petitioner were unsuccessful.'"). Respondents also concede that ICE is not trying to remove Petitioner to a third country. Dkt # 5-2 ¶ 18 ("ICE is not seeking to remove Petitioner to a third country.")

The government already tried to remove Petitioner to Ethiopia in 2002 and it failed to secure travel documents. Dkt # 5-2 ¶ 16. Further, she was not born in Ethiopia and does not believe that she can be removed there. Dkt # 2, Tolchin Dec. Exh. B. Given her prior detention 20 years ago and her birth in Eritrea, not Ethiopia, Petitioner has reason to believe that she cannot be removed to Ethiopia, the country of removal on the immigration judge's order. Dkt # 2 at Exh. D.

As such, Petitioner demonstrates there is reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, shifting the burden to Respondents under Zadvydas. Respondents cannot overcome that burden. Panfilov v. Bondi, No. 2:25-CV-02027-TMC, 2025 WL 3190522, at *3 (W.D. Wash. Nov. 14, 2025) ("The government's representations here are not persuasive enough to rebut Mr. Panfilov's showing that his detention has become indefinite.") Respondents contacted Ethiopia for travel documents, and no response has been received for months. Dkt # 5-2. It has been three months since the November 5, 2025 request. The lack of any substantive response to the request does not establish a significant likelihood of removal. S.F. v. Bostock, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025) (finding the government's evidence that the petitioner "could be a candidate" for a scheduled charter flight to Iran "speculative" and "insufficient to rebut Petitioner's showing that removal is not significantly likely within the reasonably foreseeable future."); Vaskanyan v. Janecka, 2025 WL 2014208, at *5 (C.D. Cal. June 25, 2025) (finding that petitioner's pending citizenship application to Armenia was insufficient to rebut petitioner's showing even when "the government may receive a response from Armenia in the near term"); Hassoun v. Sessions, No. 18-CV-586-FPG, 2019 WL 78984, at *6 (W.D.N.Y. Jan. 2, 2019) ("the record fails to disclose any evidence illuminating the likelihood that this

country will accept Petitioner specifically or the timeframe in which removal could be effected."). Compare Piao v. Lyons, No. 1:25-CV-1725, 2025 WL 3046783, at *3 (E.D. Va. Oct. 31, 2025) ("Respondents have represented that Petitioner's travel documents to China were approved earlier this month, the issuance of which will permit Petitioner to board a commercial flight to China.").

"Courts in this circuit have regularly refused to find Respondents' burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur." G.A.A. v. Chestnut, No. 1:25-CV-01102-EPG-HC, 2025 WL 3251316, at *4 (E.D. Cal. Nov. 21, 2025) citing Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2419288, at *16 (W.D. Wash. Aug. 21, 2025) (citing Singh v. Gonzales, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); Chun Yat Ma v. Asher, No. C11–1797 MJP, 2012 WL 1432229, at *4–5 (W.D. Wash. Apr. 25, 2012); Hoac v. Becerra, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025)).

B. RESPONDENT WAS DETAINED WITH NO CHANGE IN CIRCUMSTANCES IN VIOLATION OF THE REGULATIONS AND DUE PROCESS

In addition, the regulations also address the requirement that immigration authorities may only re-detain an individual who was released from custody if there are changed circumstances which now provide that removal is reasonably foreseeable. DHS regulations authorize the revocation of an order of release only when "if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). *Gutierrez v. Noem*, No. 5:25-CV-02668-DOC-RAO, 2025 WL 3247769, at *4 (C.D. Cal. Oct. 31, 2025). An agency's failure to follow its regulations that are meant to protect fundamental rights is a violation of due process. *Accardi v. Shaughnessy,* 347 U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681

(1954); *Sameena Inc. v. U.S. Air Force,* 147 F.3d 1148, 1153 (9th Cir. 1998). The regulation at 8 C.F.R. § 241.13(i)(2) is designed to protect the fundamental interest of liberty, and the failure to follow the regulation is a violation of due process.

This regulation places the burden on the government to demonstrate that there are new circumstances which now establish that removal is reasonably foreseeable, consistent with the requirements of *Zadvydas. See also Gutierrez v. Noem,* No. 5:25-CV-02668-DOC-RAO, 2025 WL 3247769, at *4 (C.D. Cal. Oct. 31, 2025) ("Respondents have the burden to establish changed circumstances that make removal significantly likely in the reasonably foreseeable future and have not done so.")' *Sun v. Noem*, No. 3:25-CV-02433-CAB-MMP, 2025 WL 2800037, at *2 (S.D. Cal. Sept. 30, 2025) ("ICE's own regulations ... place the burden on ICE to show changed circumstances that make removal significantly likely in the reasonably foreseeable future."); *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (the burden falls on the government to change the present state of affairs and it therefore mist demonstrate changed circumstances).

There is no evidence of changed circumstances here. Petitioner was detained in September 2025 in order for the government to try and remove her to Ethiopia. Dkt # 5-2 ¶ 19. Petitioner was arrested before the government even contacted Ethiopia for documents, and in fact was in custody for *two months* before ICE even contacted Ethiopia to request travel documents. Dkt # 5-2 ¶ 19. In addition, Respondents do not explain why they believe that Ethiopia will issue documents now when it failed to do so in 2002. Hence, the re-detention of Petitioner is a violation of 8 C.F.R. § 241.13(i)(2) and Petitioner's due process rights without evidence of changed circumstances that Petitioner's removal is reasonably foreseeable.

C. RESPONDENT WAS DETAINED WITHOUT THE ELEMENTS OF § 241.4(l) BEING MET, IN VIOLATION OF THE REGULATIONS AND DUE PROCESS

Last, the regulation at 8 C.F.R. § 241.4(l) authorizes the revocation of release only where there has been a violation of the conditions of release or there has been a determination by the Executive Associate Commissioner that "i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." The regulation at 8 C.F.R. § 241.4(l) is designed to protect the fundamental interest of liberty, and the failure to follow the regulation is a violation of due process. *Accardi v. Shaughnessy,* 347 U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force,* 147 F.3d 1148, 1153 (9th Cir. 1998). None of the circumstances under 8 C.F.R, § 241.4(l) have been met, in violation of Due Process.

None of the circumstances under 8 C.F.R. § 241.4(l) have been met, nor do Respondents allege as such. Respondents submitted a September 4, 2025 Notification of Revocation of Release. Dkt # 5-1. That document cites both § 241.13 and § 241.4, and states that there is a determination that "there are changed circumstances in your case." Dkt # 5-1. The notice does not cite any of the relevant provisions in § 241.4 which would justify detention and, as discussed above, the changed circumstances requirements of § 241.13 have not been met. As such, the re-detention of Petitioner is unlawful.

As such, the petition for writ of habeas croups should be granted and Petitioner should be ordered released on the terms of her original order of supervision.

Dated: January 15, 2026

Respectfully submitted,

By: /s/ *Stacy Tolchin*

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