

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHAMS HASHMAT,
Petitioner,

v.

Kristi Noem, Secretary, Department of
Homeland Security; *et al.*,

Respondents.

No. SA-26-CV-000130-FB

**Federal¹ Respondents' Response to
Petitioner's Writ of Habeas Corpus**

Federal Respondents submit this response per this Court's Order dated January 27, 2026. *See* ECF No. 3. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Hashmat ("Petitioner") seeks release from civil immigration detention, claiming that his 8-month post-removal-order detention has been become indefinite, contrary to statute and the Due Process Clause. *See* ECF No. 1 at 6. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a final order of removal from July 2, 2025, which mandated his detention under 8 U.S.C. § 1231(a) during the 90 days following the entry of his final order. Ex. A (ERO Declaration) ¶ 12. Detention can be extended past the removal period in the exercise of discretion where removal is reasonably foreseeable. 8 U.S.C. § 1231(a)(6). ICE decided in its discretion to continue Petitioner's detention past the 90-day removal period, which is a decision protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

Petitioner has not shown here that there is no likelihood of removal in the reasonably

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. The Federal Respondents, however, have detention authority over aliens detained under 8 U.S.C. § 1231(a).

foreseeable future. Even if Petitioner were able to make such a showing, the burden would shift to Respondents who can show that removal to Afghanistan is, in fact, significant likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Afghanistan. ECF No. 1 at 2. Petitioner entered the United States unlawfully without inspection on or about September 9, 2024. Exhibit A (ERO Declaration) ¶ 4. On January 10, 2026, Petitioner was convicted of Illegal Entry under 8 U.S.C. § 1325. *Id.* at ¶¶ 6-7.

Petitioner was processed for Expedited Removal upon completion of his sentence. *Id.* at ¶ 7. On March 18, 2025, Petitioner was issued a Notice to Appear (NTA) and placed in immigration proceedings. *Id.* at ¶ 11. On July 2, 2025, Petitioner was ordered removed and waived appeal. *Id.* at ¶ 12.

Enforcement and Removal Operations (ERO) San Antonio submitted Petitioner's case to the Afghani tracking list on November 9, 2025. *Id.* at 15. On February 2, 2026, a transportation letter application for Petitioner was submitted. *Id.* at ¶ 16. Petitioner provided a copy of his Afghan National ID which ERO promptly provided to the detention and deportation officer for review and approval. *Id.* at ¶ 17. On February 24, 2026, ERO sent a travel letter request to the U.S. Mission Afghanistan in Doha. *Id.* at 20.

II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

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 mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order

becomes “administratively final,” (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Under § 1231, the removal period can be extended in at least three circumstances. *See Glushchenko v. U.S. Dep’t of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is “no significant likelihood of removal in a reasonably foreseeable future.” *Zadvydas*, at 533 U.S. at 680.

III. There Is No Good Reason to Believe That Removal to Afghanistan Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to Afghanistan is unlikely. In *Zadvydas*, the U.S. Supreme Court held that § 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” but “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 the 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.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a “good reason” to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills*, No. 20–60547, 2022 WL

1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite “good reason,” the burden will not shift to the government to prove otherwise. *Id.*

The “reasonably foreseeable future” is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21–CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioner’s burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03–CV–1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien’s burden of proof. *Nagib v. Gonzales*, No. 3:06–CV–0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (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 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).

There is no dispute that Petitioner’s removal order has been final since July 2, 2025. ECF No. 1 at 2. Petitioner, nonetheless, requests his release and argues that his continued detention has become unlimited. *Id.* at ¶ 6. Petitioner, however, relies on only requests conclusory statements to argue that his detention is “indefinite.” *Id.* at 6.

Additionally, Petitioner requests that the Court reviews his claim for immigration relief and explains why he wishes to remain in the United States. *Id.* at 2, 7. This is outside the scope of

habeas relief and any appeals of on the merits of his immigration case should be handled by the immigration court.

Petitioner's conclusory and speculative claims are wholly insufficient to meet his burden of proof under *Zadvydas*. See *Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); see also *Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014). As such, Petitioner cannot meet his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. See *Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government travel documents). The burden of proof, therefore, does not shift to Federal Respondents to prove that removal is likely.

Even if the burden did shift to ICE, ICE is making efforts to obtain a required travel letter from Afghanistan. Ex. A (ERO Declaration) ¶¶ 14-17, 20. ICE is aware of the additional requirements to return Afghans that have traveled to the United States and have been making efforts to obtain a transportation letter for Petitioner. *Id.* Petitioner has provided an Afghan National ID card and a travel letter request has been sent to the U.S. Mission Afghanistan, and while there is no anticipated timeline at this time, Petitioner has not provided evidence to show why the document is unlikely to be issued. *Id.* ¶¶ 17-18.

Moreover, ICE is complying with post-order-custody-review regulations. *Id.* ¶ 19. There is no basis for a due process argument here when ICE is complying with *Zadvydas* standards and providing Petitioner sufficient procedural safeguards throughout his post-removal detention.

IV. Conclusion

There is no good reason to believe that removal to Afghanistan in the reasonably foreseeable future is unlikely. Continued detention under 1231(a)(6), therefore, is lawful. Accordingly, the Court should deny this petition.

Respectfully submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2026, I caused the Federal Respondents' Response to Petitioner's Writ of Habeas Corpus (Dkt. 9), and Exhibit A, ERO declaration (Dkt. 9-1), to be served on Petitioner, Shams Hashmat, by sending copies via certified U.S. mail as follows:

Shams Hashmat
A# 
South Texas ICE Processing Center
566 Veterans Drive
Pearsall, TX 78061

Dated: March 2, 2026

Respectfully submitted,

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