

United States District Court
Western District of Texas
San Antonio Division

ATIQ YUNSAI,
Petitioner,

v.

PAM BONDI, KRISTI NOEM, TODD M.
LYONS, LETICIA DIAZ,

Respondents.

No. 5:26-CV-00129-XR

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

Federal Respondents submit this response per this Court's Order dated January 21, 2026. *See* ECF No. 3. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Yunsai ("Petitioner") seeks release from civil immigration detention, claiming that his just over 6-month post-removal-order detention has been become indefinite, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a final order of removal from July 29, 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) ¶ 14. 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 foreseeable future. Even if Petitioner were able to make such a showing, the burden would shift to

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).

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. Ex. A (ERO Declaration) ¶ 1. Petitioner entered the United States unlawfully in on September 9, 2024, and was arrested and placed into immigration proceedings that same day. *Id.* ¶ 7. Petitioner was convicted of improper entry by alien and was sentenced to time served. *Id.* ¶ 9. Petitioner was later returned to ICE custody for removal proceedings. *Id.* ¶ 10. Petitioner was ordered removed by an immigration judge on June 26, 2025, and Petitioner reserved appeal but did not file an appeal, making his removal order final on July 29, 2025. *Id.* ¶ 14. For the following 90 days, Petitioner's detention was mandated by statute during the statutory removal period. 8 U.S.C. § 1231(a).

On August 20, 2025, Afghanistan started requiring Afghani nations travelling on valid or expired passports to have an additional transportation letter. Ex. A (ERO Declaration) ¶ 15. ICE submitted a transportation document request to the United States embassy in Doha, Qatar, for delivery to the Afghanistan embassy on September 12, 2025. *Id.* ¶ 17. ICE has repeatedly followed up on the status of the transportation letter, since then to finalize efforts to secure a travel document. *Id.* ¶¶ 19-25.

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 was ordered removed on June 26, 2025, and that petitioner did not file an appeal making his removal order final on July 29, 2025. *See* ECF No. 1 at 2; Ex. A (ERO Declaration) ¶ 14. Since that time, ICE has been making consistent efforts to obtain the necessary documents to remove Petitioner. Ex. A (ERO Declaration) ¶¶ 16–25. Petitioner offers no reasoning as to why he thinks his removal is unlikely to occur. Petitioner instead seems to be arguing against his deportation and reiterating that he wishes to receive asylum in the United States. ECF No. 1 at 2. Petitioner states that his case was not that complicated and does not justify the length of time he has been in detention. ECF No. 1 at 9. This does not demonstrate the Petitioner’s removal is unlikely to occur in the reasonably foreseeable future.

Petitioner's 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; *Borok 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 regular efforts to obtain the necessary document from Afghanistan. *Id.* ¶¶ 17-25. Once the transportation letter is issued, there is no evidence in the record of any other issue that would prevent removal. Notably, the Afghanistan embassy has not declined to issue a travel document in this case, but the request has remained pending. *Id.* ¶¶ 17-25.

Moreover, ICE is complying with post-order-custody-review regulations. *Id.* ¶ 16. 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,

Justin R. Simmons
United States Attorney

By: /s/ Nathan Ripley
Nathan Ripley
Special Assistant United States Attorney
Illinois Bar No. 304097
700 E. San Antonio Ave., Suite 200
El Paso, Texas 79901
(915) 534-6884 (phone)
Nathan.Ripley@usdoj.gov

Attorneys for Federal Respondents