

United States District Court
Western District of Texas
El Paso Division

HASSAN AYYOUBI
Petitioner,

v.

MARY DE ANDA-YBARRA, *et al.*

Respondents.

No. 3:26-CV-00111-KC

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

Federal Respondents timely submit this response per this Court's Order dated January 21, 2026, directing service and ordering a response by January 2, 2026. *See* ECF No. 3. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Ayyoubi ("Petitioner") seeks release from civil immigration detention, claiming that his 7-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 an order of removal from May 12, 2025, which became final on June 11, 2025, which mandated his detention under 8 U.S.C. § 1231(a) during the 90 days following the entry of his final order. ECF No. 1 at 1 ¶ 2; Ex. A (ERO Declaration) ¶ 4. 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).

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).

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 Respondents who can show that removal to Iran 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 Iran. ECF No. 1 at ¶ 13; Ex. A (ERO Declaration) ¶ 3. Petitioner entered the United States on or about January 5, 2025, was detained upon entry, placed in removal proceedings, and ordered removed by an immigration judge on May 12, 2025. ECF No. 1 at 1 ¶ 2; Ex. A (ERO Declaration) ¶ 4. Petitioner's order of removal became final in June 2025, after he failed to file an appeal. ECF No. 1 at 1 ¶ 2. Petitioner filed a motion to reopen on October 9, 2025, which was denied on October 17, 2025, and he filed a second motion to reopen on October 28, 2025, which was denied on November 3, 2025. Ex. A (ERO Declaration) ¶ 5.

Petitioner was scheduled to be removed via charter removal flight on January 25, 2026, and Petitioner was moved to Florence Staging Facility in Arizona in preparation for the removal. Ex. A (ERO Declaration) ¶ 6. While at the Florence Staging Facility, a contagious disease outbreak required that all detainees be quarantined causing Petitioner to not be medically cleared for travel on January 25, 2026. *Id.* ¶ 7. ICE does not report any chronic medical conditions that would prevent Petitioner's removal. *Id.* ¶ 8. Petitioner is being transferred from Florence Staging Facility to a different ICE facility while ICE ERO (Enforcement and Removal Operations) is exploring Petitioner's removal via commercial air. *Id.* ¶¶ 9-10. Additionally, ICE ERO is in possession of Petitioner's unexpired Iranian passport. *Id.* ¶ 11.

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 South Africa Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to Iran 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 has a final order of removal, and that ICE has been making efforts to effectuate Petitioner’s removal to Iran. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. ECF No. 1 at 4–9 Petitioner, however, relies on only conclusory allegations that his health

is too poor to effectuate his removal to argue that his detention is “indefinite.” *Id.* at 1 ¶ 1; *Id.* at 2 ¶¶ 3, 8; *Id.* at 9 ¶ 13.

In addition to health issues, Petitioner cites “numerous country conditions” for Iran as the basis for his conclusion that his chance of removal is “extremely unlikely.” *Id.* at ¶ 8. Petitioner offers no source as to country conditions in Iran preventing his removal.

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, Petitioner concedes that ICE is making continuous efforts to remove Petitioner to Iran. Indeed, ICE even scheduled Petitioner for removal on January 25, 2026, and this removal was only prevented due to a disease outbreak at the facility requiring the facility to be quarantined. Ex. A (ERO Declaration) ¶¶ 6-7. ERO does not know of any chronic health conditions that would prevent his removal. *Id.* ¶ 8. ICE was able to move Petitioner to Florence Staging Facility as recently as January 21, 2026, and plan on moving him again. *Id.* ¶¶ 6, 9.

Petitioner's assertions that his removal is unlikely in the reasonably foreseeable future is rebutted by the fact that he was scheduled to be removed on January 25, 2026, and he was even moved to a facility in Arizona in preparation of the removal. *Id.* ¶ 6. Petitioner's removal was prevented due to a disease outbreak at the facility requiring quarantine, not a chronic health condition or any country conditions in Iran. *Id.* ¶ 6. ICE possesses Petitioner's unexpired Iranian passport and is again exploring removal via commercial air. *Id.* ¶¶ 10-11.

IV. Conclusion

There is no good reason to believe that removal to Iran 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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