United States District Court
Western District of Texas
El Paso Division

ABDIKARIM ADAN OMAR, Petitioner, v. Mary De Anda-Ybarra, Field Office Director of Enforcement and Removal Operations, El Paso Field Office, Immigration and Customs Enforcement; Warden of ERO El Paso Camp East Montana; Todd M. Lyons, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; Kristi Noem, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and Pamela Jo Bondi, *in her official capacity* as Attorney General of the United States; Respondents.	No. 3:26-CV-00267-DCG

Federal[1] Respondents' Response to Petitioner's Writ of Habeas Corpus

Federal Respondents submit this response to Petitioner's writ of habeas corpus. In his petition filed under 28 U.S.C. § 2241, Mr. Omar ("Petitioner") seeks release from civil immigration detention, claiming that his more than 1-month post-removal-order detention has been

[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).

become unreasonable, contrary to statute and the Due Process Clause. *See* ECF No. 1. He was granted withholding of removal to Somalia, and U.S. Immigration and Customs Enforcement (ICE) is working to execute his removal order to a third country. Petitioner's claims lack merit, and this petition should be denied.

Despite being granted relief from removal, referred to as withholding of removal (WHO) under Immigration and Nationality Act § 241(b)(3), 8 U.S.C. § 1231(b)(3), such relief extends only to the country where Petitioner was found to have a reasonable fear of being persecuted: Somalia. *See* 8 C.F.R. §§ 208.16–208.17, 1208.16; 1208.17; 208.31(a); 1208.31(a); 8 U.S.C. § 1231(b)(3)(A).

In other words, nothing prevents DHS from removing Petitioner to a third country. *See e.g.*, *Guzman Chavez*, 594 U.S. at 531–32, 535–36; 8 U.S.C. § 1231(b)(1)(c)(iv); 8 C.F.R. §§ 208.16(f); 1208.16(f); 208.17(b)(2); 1208.17(b)(2). There are numerous removal options for ICE to consider under this statute, including any country willing to accept the alien. *Guzman Chavez*, 594 at 536–37; 8 U.S.C. § 1231(b)(2).

Petitioner argues his continued detention is unlawful and violates his substantive and procedural rights under the Constitution's Fifth Amendment. *See e.g.*, ECF No. 1, at 15 ¶ 71. He also argues that no removal is in any way foreseeable. ECF No. 1, at 18 ¶ 79. These arguments are insufficient reasons to believe that removal is unlikely in the foreseeable future, which means the burden of proof does not shift to ICE to show the likelihood of removal. *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). Even if the burden has so shifted, Respondents can show that removal to a third country is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Relevant Facts

Petitioner is a citizen and native of Somalia. ECF No. 1, at 14 ¶ 58. On October 4, 1997, he was admitted to the United States using a fraudulent Kenyan passport issued in another individual's name. *See* Exh. A (ERO Declaration) ¶ 6. Petitioner was convicted of felony check forgery on December 15, 2003, and of forgery-uttering, resisting or obstructing an officer, and receiving stolen property on May 23, 2004. *Id.* ¶ 7-8. On June 22, 2004, Petitioner was placed in removal proceedings with the issuance of a Notice to Appear ("NTA"), charging him as removable under INA § 237(a)(2)(A)(iii). *Id.* ¶ 9. On September 7, 2006, an immigration judge ordered Petitioner removed to Somalia and granted Withholding of Removal to Somalia. *Id.* ¶ 10.

On January 25, 2007, Petitioner was released from ICE custody on an Order of Supervision (OSUP) due to a lack of significant likelihood of removal in the reasonably foreseeable future (SLRRFF). *See* Exh. A (ERO Declaration) ¶ 11. Petitioner violated the terms of his OSUP on multiple occasions. *Id.* ¶ 12-15, 17, 19-20, 22-23. On January 10, 2026, ERO encountered and detained Petitioner. ECF No. 1, at 2 ¶ 2; Exh. A (ERO Declaration) ¶ 24. On January 21, 2026, ERO served Petitioner with an OSUP revocation letter and a notice of removal to a third country. *Id.* ¶ 26. On February 18, 2026, ERO offered Petitioner the option of removal to Mexico, which he declined. *Id.* ¶ 27 ERO avers that it will coordinate with the Detention and Deportation Officer assigned to the country of Somila to explore further removal options. *Id.* ¶ 28.

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 is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show "good reason" to believe that removal to a third country 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 September 7, 2006, and that he was initially detained on January 10, 2026. ECF No. 1 at 2 ¶ 2; 4 ¶ 16; 9 ¶ 35; 15 ¶ 63. Additionally, there is no dispute that Petitioner has been notified of plans to remove him to a third country. ECF No. 1 at 15 ¶¶ 65, 68. As such, Petitioner's substantive due process claim is not ripe because he has not been detained 'post-order' for more than six months. *Id.* Therefore, he cannot 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). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

A. ICE Has Afforded Petitioner Procedural Due Process.

Petitioner cannot show a procedural due process violation here. To establish a procedural due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Petitioner has received procedural due process in this case, from issuance of his NTA in removal proceedings to service of his notice of third country removal.

The Fifth Circuit, however, finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).As such, Petitioner's procedural due process claim, like his substantive one, should be denied.

B. Conclusion

Petitioner is lawfully detained by statute until his removal, and his detention comports with the limited due process he is owed. This Court should deny the petition.

Respectfully submitted,

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