

United States District Court
Western District of Texas
El Paso Division

Ashraf Bazzar,
Petitioner,

v.

Pam Bondi, Attorney General, *et al*,
Respondents.

No. 3:26-CV-00019-DB

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

Respondents timely submit this response per this Court's Order. ECF No. 6. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Bazzar ("Petitioner"), *pro se*, seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 3. Petitioner's claims lack merit, and this petition should be denied.

Despite his allegation that there is "no basis" for his continued detention, Petitioner is subject to a final order of removal, which mandates his detention. *See* ECF No. 3 at 4; Exh. A (ERO Declaration) at 2–3; *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner alleges removal is not reasonably foreseeable because neither Israel, Palestine, or Jordan have issued Petitioner a travel document or accepted him. ECF No. 3 at 5. These arguments are insufficient reason to believe that removal is unlikely to occur in the foreseeable future.

Respondents have obtained the necessary permissions to remove Petitioner in January 2026. *See* Exh. A. However, this Court has Ordered a stay of removal which prevents ICE from

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent the warden in this action.

executing the removal order. ECF No. 6 at 2. Respondents argue this stay of removal should be immediately dissolved as this Court lacks jurisdiction to grant a stay of removal. *Imran v. Harper*, No. 25-30370 (5th Cir. 2026) (finding the district court lacked jurisdiction to grant a stay of removal as a stay of removal *is* a challenge to a removal order and federal courts lack jurisdiction over claims directly and immediately with a decision or action by the Attorney General to... execute removal orders (emphasis added); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (citing 8 U.S.C. § 1252(g)).

For these reasons, the Court should deny this habeas petition without further evidentiary hearings.

I. Facts and Procedural History

Petitioner was born in Jerusalem. Exh. A at 2. On February 26, 2005, Petitioner entered the United States as a conditional lawful permanent resident. *Id.* Petitioner's permanent resident status was terminated after he failed to file a petition to remove the conditions on his residency. *Id.* Petitioner was issued a Notice to Appear and placed in removal proceedings, however, the immigration judge ordered him removed *in absentia*. Exh. A at 2. Petitioner attempted to reopen the removal order, but his motion was denied. *Id.* Petitioner admits he is subject to a final order of removal from 2110 [sic]. ECF No. 3 at 4. On April 6, 2025, Petitioner arrived at the St. Thomas, U.S. Virgin Islands airport and presented himself for primary pre-departure inspection seeking travel to Florida. Exh. A at 3. He was detained due to the final order of removal. *Id.*

On May 16, 2025, ICE submitted Petitioner's transit request to the Israeli Embassy. *Id.* ICE does not need an Israeli travel document for Petitioner, rather ICE requests permission from Israel to transit Petitioner from the Ben Gurion Airport in Tel Aviv, Israel to the West Bank or Gaza. Exh. A at 3. ICE can use Petitioner's expired passport issued by the Palestinian Authority

to effect removal. *See* Exh. A at 2, 3.

If this Court dissolves, lifts, or vacates its order staying removal, ICE is working to place Petitioner on a charter removal flight to Israel this month, January 2026. *Id* at 3. Based on the coordination between the United States government and multiple Israeli government agencies to remove Palestinians, only charter flights may be used, and not commercial air flights. *Id* at 4.

If ICE is unable to remove Petitioner in January 2026, ICE is preparing for another charter flight of Palestinian removals in February 2026. Exh. A at 4. However, ICE would again need to coordinate² with multiple Israeli government agencies to obtain permission to transit Petitioner from the Tel Aviv Airport to the West Bank or Gaza. *See* Exh. A at 4.

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

Petitioner's detention is lawful. 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*, 533 U.S. at 701. 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).

² Removal in February could only occur if the stay of removal is vacated or the habeas is denied and dismissed.

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.

a. There Is No Good Reason to Believe That Removal is Unlikely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to the West Bank or Gaza is unlikely in the reasonably foreseeable future. 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).

Petitioner urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and the Fourteenth Amendment, because to his knowledge no travel documents have been issued and there is no indication that Israel, Palestine, or Jordan have accepted Petitioner. ECF No. 3 at 5. Petitioner fails to allege a "good reason" to believe that there is no significant likelihood of removal in the foreseeable future. These claims are insufficient 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 establish 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 was taking

affirmative steps to obtain Vietnamese travel documents). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

Even if the burden did shift to ICE in this analysis, ICE could show that removal is likely in the foreseeable future. First, if the Court lifts the stay of removal, ICE is finalizing plans to remove Petitioner this month, in January 2026. Exh. A at 3–4. Second, ICE does not need a new travel document, as Petitioner believes, because ICE can use Petitioner’s expired passport issued by the Palestinian Authority. *Compare* ECF No. 3 at 5 *with* Exh. A at 3. Furthermore, ICE does not need Israel to issue Petitioner a travel document as ICE only needs to obtain permission from the Israeli government to transit Petitioner from the Tel Aviv Airport to the West Bank or Gaza.

If the Court dissolves the stay of removal, ICE can execute the order of removal that has required extensive coordination between the United States government and Israeli government agencies. As such, removal is likely in the reasonably foreseeable future, and his continued detention is lawful. Petitioner’s substantive due process claim fails and should be denied.

b. ICE Has Afforded Petitioner Procedural Due Process.

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). The Fifth Circuit has not provided guidance to lower courts, post-*Arteaga-Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231, but the Fourth Circuit, post-*Arteaga-Martinez*, used the *Zadvydas* framework to analyze a post-order-custody alien’s due process claims. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is

required beyond the constitutional analysis outlined in *Jennings* and *Thuraiissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

Additionally, the Fifth Circuit 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).

Petitioner admits he has received post order custody reviews. ECF No. 3 at 4–5. Respondents argue the post order custody process addresses constitutional concerns identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. This process comports with Petitioner's limited due process rights as an alien subject to a final order of removal. Petitioner's procedural due process claim, like his substantive one, should be denied.

III. Conclusion

The temporary stay of removal should be dissolved, and the Court should deny the habeas petition without the need for further evidentiary hearings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On or about January 13, 2026, I directed a copy of this filing be mailed to Petitioner at the below address:

Ashraf Bazzar



El Paso Service Processing Center
8915 Montana Avenue
El Paso, TX 79925

/s/ Anne Marie Cordova
AUSA Anne Marie Cordova

