UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MOHAMMED ABUSHANAB, A # 249-382-027 *Petitioner,* v. WARDEN MARTIN L. FRINK, et al., *Respondents.*	CIVIL ACTION NO. 4:25-5340

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, CROSS MOTION FOR SUMMARY JUDGMENT

I. Introduction

Mohammed Abushanab ("Mr. Abushanab") is a 27-year old Palestinian man from the West Bank who came to the United States seeking asylum after facing harassment, threats, and military detention by the Israeli military and Palestinian authorities. Petition, Dkt. 1, ¶¶ 1, 17-18. As a native and citizen of Palestine, he is legally "stateless" and does not have a passport. *Id*. ¶ 28. Mr. Abushanab received humanitarian relief in the United States through withholding of removal to Palestine and relief under the Convention Against Torture. *Id*. ¶ 25. Yet, he remains in Immigration and Customs Enforcement ("ICE") detention, where he has been for more than 17 total months, including for more than nine months after his order of removal became administratively final. *Id*. ¶ 27.

Under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), ICE's detention of Mr. Abushanab violates both the Immigration and Nationality Act ("INA") and his rights under the Due Process Clause of the Fifth Amendment. Respondents have supplied no evidence of their alleged attempts to effectuate his removal, or named any third country or countries to which Mr. Abushanab could be removed in the reasonably foreseeable future. The unsupported assertions in Respondent's Motion for Summary Judgment are woefully insufficient to justify Mr. Abushanab's continued detention.

Mr. Abushanab has met his burden to show that he has "good reason" to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *See id.* As a native of Palestine, Mr. Abushanab does not have a passport or other necessary documentation. Respondents cannot remove Mr. Abushanab to Palestine and have not supplied the Court with *any details* about their attempts to remove Mr.

Abushanab to a third country. Respondents' provided declaration from Mr. Abushanab's Deportation Officer Daniel Matthews ("DO Matthews"), who is responsible for making efforts to effectuate his removal, provides no affirmative statement that Mr. Abushanab's removal is foreseeable or that any special circumstances exist for him to remain detained for more than six months after his removal order became administratively final. Dkt. 11-1. Nor does it contain any information that ICE has determined that special circumstances exist to justify Mr. Abushanab's indefinite detention under the post-removal-period detention statute. *Id*.

Accordingly, Mr. Abushanab is entitled to release under 8 U.S.C. § 1231, as interpreted by the U.S. Supreme Court in *Zadvydas.* His indefinite detention without adequate review also violates the substantive and procedural guarantees of the Due Process Clause, and he is entitled to release on constitutional grounds. Therefore, the Court should deny Respondent's Motion for Summary Judgment, grant Mr. Abushanab's Petition for a Writ of Habeas Corpus, and issue the writ.

II. Factual Background

Mr. Abushanab is a native and citizen of Palestine who was born in the West Bank. Petition ¶ 17. He is legally stateless. *Id.* ¶ 16. Mr. Abushanab fled and came to the United States, entering on or about July 11, 2024, and was apprehended and taken into custody by border control officials. *Id*. ¶¶ 10, 21. On November 13, 2024, he applied for asylum, withholding of removal, and protection under CAT. *Id.* ¶ 23. On February 3, 2025, he was found ineligible for asylum, but his applications for withholding of removal and protection under CAT were granted. *Id.* ¶¶ 25-26. As a result, the U.S. government is

mandatorily barred from removing him to Palestine. *Id*. ¶ 27. His removal order became administratively final on March 5, 2025. *Id.*

Nine months later, Mr. Abushanab remains in ICE detention. Mr. Abushanab has been fully cooperative with ICE's requests related to obtaining travel documents to third countries. When asked by ICE officers, he has completed paperwork that he was told would be used for applications for travel documents. *Id*. ¶¶ 38-39. However, he has no knowledge what applications were actually submitted, and if they were, he does not know if they were granted or denied. The government is silent on the answers. *See* Matthews Decl., Dkt. 11-1.

Meanwhile, Mr. Abushanab's mental and emotional well-being have been negatively affected by his prolonged detention. Petition ¶¶ 30-31. Mr. Abushanab has engaged in multiple hunger strikes, most recently from November 13-December 3, 3025, because of his continued detention and treatment at the facility. *See id.* ¶¶ 32-33. His mental and emotional well-being is deteriorating and will likely continue to do so as long as he remains detained.

III. Argument

A. Respondents are Not Entitled to Summary Judgment Because Mr. Abushanab is Entitled to Release under *Zadydas* As His Removal is Not Significantly Likely in the Reasonably Foreseeable Future and the Government Has Failed to Rebut This Showing.

1. Mr. Abushanab Has Provided Good Reason to Believe He Will Not Be Removed in the Reasonably Foreseeable Future.

The *Zadvydas* Court adopted a "presumptively reasonable period of detention" of six months, or 180 days. 533 U.S. at 701. Because more than 180 days have passed without any attempts to deport him, Mr. Abushanab has "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and thus the burden shifts to the government to disprove that good reason. *Id.*; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005); *Hernandez-Esquivel v. Castro*, No. 5-17-CV-0564-RBF, 2018 WL 3097029, at *5 (W.D. Tex. June 22, 2018).

Respondents argue that Mr. Abushanab has not established that there is good reason because "based on his own allegations, ICE has been making attempts to effectuate his removal by requesting travel documents." Dkt. 11 at 2. However, requesting that Mr. Abushanab fill out travel documents cannot be part of an effort to effectuate his removal unless it is part of a plan likely to succeed. The government does not mention any plans or efforts likely to result in Mr. Abushanab's removal, including confirming whether or not it submitted any applications for travel documents. *See* Petition ¶¶ 38-39; Matthews Decl.

Respondents do not dispute the facts submitted with Mr. Abushanab's original petition: that he has been detained under a final removal order for more than nine months; that he is stateless; or that he does not have any travel documents that would allow him to be removed to any third country. Instead, they ask this Court to find that Mr. Abushanab's evidence is insufficient to show good reason because Mr. Abushanab has "offered no evidence, other than conclusory allegations, indicating any real, non-speculative barriers to his removal exist." Dkt. 11 at 5. This reading of the facts simply

does not hold water. Mr. Abushanab has demonstrated that ICE officers asked him to fill out paperwork between March and May 2025, more than six months ago. Since that time, ICE has not obtained travel documents from any country, nor has ICE asked Mr. Abushanab to complete additional paperwork. The lack of travel documents and the lack of effort by ICE to obtain paperwork for new applications since May 2025 indicate real, non-speculative barriers to his removal.

2. The Government Has Failed to Meet Its Burden of Disproving Mr. Abushanab's Good Reason to Believe He Will Not Be Removed in the Reasonably Foreseeable Future.

To rebut Mr. Abushanab's "good reason," the government must show that there is a "significant likelihood" that ICE will be able to remove him, in this case to a third country, "in the reasonably foreseeable future." See *Zadvydas*, 533 U.S. at 701. Notably, not only have Respondents not shown a "significant likelihood" or removal, Respondents' Motion and supporting declaration are completely silent about *anything* Respondents have done or are doing to effectuate Mr. Abushanab's removal since the IJ's ruling on February 3, 2025. Respondents' silence supports Mr. Abushanab's argument that his removal is not significantly likely in the reasonably foreseeable future. Although Mr. Abushanab has pled that he was asked to complete paperwork for travel documents, Petition ¶¶ 38-39, Respondents have not provided any information about whether the applications referenced in Mr. Abushanab's petition, or any other applications, were actually submitted, how many, and, if so, the outcome of each application.

Despite detailing that his job duties include "confirm[ing] if an individual is subject to removal and all legal avenues have been completed," "communicating with consulates and embassies of reign countries to repatriate citizens of those countries who have been ordered removed from the United States," and "determining if a non-citizen is cooperating in effectuating their removal," Matthews Decl. ¶¶ 3-4, DO Matthews does not include a single paragraph to inform the Court about his or any ICE officer's performance of any of these duties as it relates to Mr. Abushanab's case. *See* Matthews Decl. Indeed, the government does not argue that it has, in fact, done anything more than have Mr. Abushanab complete paperwork. The Court can infer that there is nothing else for Respondents to report because they have not taken any other actions to effectuate Mr. Abushanab's deportation. Thus, this Court can conclude that the government has failed to meet its burden to show that Mr. Abushanab's removal is significantly likely in the reasonably foreseeable future.

Therefore, under *Zadvydas*, Respondents can only justify ongoing detention of Mr. Abushanab under the post-removal-period detention statute if he has been noncompliant with ICE's attempts to effectuate his removal. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F. Supp. 3d 693, 709 (W.D. Tex. 2021) (explaining that noncompliance must be demonstrated by "clear and convincing evidence" of "intentional or deliberate conduct"). However, Respondents have not argued this or provided the Court with even a modicum of information to suggest that Mr. Abushanab has not cooperated with efforts to effectuate his removal. *See* Matthews Decl. Nor do they rebut

that Mr. Abushanab has cooperated with ICE officers when asked to complete paperwork. Petition ¶¶ 38-39.

The government's mere belief or unsubstantiated assertion that someone will be removed in the reasonably foreseeable future is insufficient to meet its burden under *Zadvydas*. *See McKenzie v. Gillis*, No. 5:19-cv-139, 2020 WL 5536510, at *3 (S.D. Miss. July 30, 2020) ("Neither ICE's belief that Petitioner will be removed nor the information provided by Respondent satisfy the government's burden . . . ."); *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019) ("[I]f [ICE] has no idea of when it might reasonably expect [petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future."); *Andreasyan v. Gonzalez*, 446 F. Supp. 2d 1186, 1189–90 (W.D. Wash. 2006) (finding that respondent had not rebutted petitioner's showing when respondent repeatedly asked for "a few more weeks" to obtain travel documents). The Supreme Court in *Zadvydas* disavowed the premise that detention is lawful "as long as good faith efforts to effectuate deportation continue." *Zadvydas*, 533 U.S. at 702. Such a standard would require a noncitizen like Mr. Abushanab "to show the absence of any prospect of removal—no matter how unlikely or unforeseeable—which demands more than [the Supreme Court's] reading of the statute can bear." *Id*. The government's arguments in this case argue for precisely the standard that the Supreme Court rejected in *Zadvydas*.

This Court can and should find that the government has not tried to remove Mr. Abushanab, that his removal is not likely in the reasonably foreseeable future, and that Mr. Abushanab has not been non-cooperative. As a result, this Court should find that ICE

does not have any authority under the post-removal-period detention statute to continue detaining Mr. Abushanab.

B. Mr. Abushanab's Continued Detention Violates Due Process.

Mr. Abushanab's continued detention violates substantive due process. Civil immigration detention violates the due process clause when it no longer bears a reasonable relation to the detention statute's purpose. The purposes of post-order detention under 8 U.S.C. § 1231 are to ensure an individual's presence for her imminent removal and, secondarily, to prevent danger to the community. See *Zadvydas*, 533 U.S. at 690, 697. The government has not argued that either of these purposes are a concern in Ms. Abushanab's case, even though DO Matthews explained in his declaration that making these determinations is part of his "present duties." Matthews Decl. ¶ 4. Neither the Motion nor the Matthews declaration provide any information about any custody determination any ICE Officer has done in Mr. Abushanab's case. Nor do the Motion or the declaration mention how or whether ICE considered the oral and written communications from Mr. Abushanab's immigration attorney during the 90-day and 180-day reviews, including Mr. Abushanab's lack of criminal history and stable residence available with his U.S. Citizen and Army veteran sponsor upon his release. Petition ¶¶ 34, 36. Moreover, as *Zadvydas* recognized, any purported flight risk argument "is weak or nonexistent where removal seems a remote possibility at best." *Zadvydas*, 533 U.S. at 690.

Because of the length of time Mr. Abushanab has already been detained pursuant to final order, the deleterious effects of his detention, Petition ¶ 31, and the fact that ICE

is unlikely to imminently effectuate his removal to a third country, his detention is no longer reasonably related to the purpose of ensuring his presence for imminent removal. Thus, Mr. Abushanab's detention violates the substantive guarantees of the Fifth Amendment's Due Process Clause.

C. In light of the Court's Notice Ordered in This Case on November 12, 2025, Mr. Abushanab is Not Pursuing Relief under the All Writs Act.

The government also challenges Mr. Abushanab's original request relating to notice or an opportunity to be heard before removal. In light of the Court's order requiring notice before any transfer, Dkt. 3 at 4, Mr. Abushanab is not requesting this relief at this time.[1]

D. This Case is Ripe for Decision Without Further Proceedings.

Given the lack of evidence presented by Respondents and that they do not dispute the material facts presented by Mr. Abushanab, there is no need for an evidentiary hearing to resolve this petition. On this record, Respondents' Motion for Summary

[1] Mr. Abushanab will brief this issue more fully in the event such relief becomes necessary, but briefly notes here that such orders are proper during the pendency of litigation under this Court's authority under the All Writs Act, which grants courts broad authority to "issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). Courts across the country have issued similar orders enjoining third-country removals during the pendency of habeas litigation. *See, e.g.*, *Alves v. U.S. Dep't of Just.*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (enjoining removal pending consideration of habeas petition, and citing cases across the country); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2201470, at *2 (S.D. Tex. Aug. 1, 2025) (granting TRO and enjoining transfer or removal outside of the district without court order); *Nguyen v. Scot*t, No. 2:25-CV-01398, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025) (issuing preliminary injunction barring removal to a third country in light of inadequate procedures in ICE's policy on third-country removals).

Judgment is due to be denied. Mr. Abushanab is entitled to the relief he requests under *Zadvydas*: immediate release from government custody.

IV. Conclusion

The government is detaining Mr. Abushanab in violation of 8 U.S.C. § 1231 and the Due Process Clause. Despite receiving humanitarian relief from the Immigration Court, Mr. Abushanab remains detained by ICE more than nine months after the immigration court's order granting withholding of removal and protection under CAT became administratively final. Mr. Abushanab has met his initial burden of pleading and showing that his removal is not significantly likely in the reasonably foreseeable future. Respondents have not met their burden to rebut that showing. This Court should deny Respondents' Motion for Summary Judgment and grant Mr. Abushanab a writ of habeas corpus and order him immediately released.

Dated: December 11, 2025

Respectfully submitted,

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**** Plaintiff is represented by a clinic operated by Texas A&M University School of Law, but this document does not purport to present the school's institutional views, if any.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all known parties to this litigation through their counsel of record by filing the same with the Court's electronic case filing system on December 11, 2025.

/s/ Sara Zampierin