

**United States District Court
Western District of Texas
San Antonio Division**

Georgi Shengelia,
Petitioner,

v.

No. 5:25-cv-01545-JKP

Sylvester M. Ortega, Director of the San
Antonio Field Office of the U.S. Immigration
and Customs Enforcement, ICE, U.S.
Department of Homeland Security, *et. al.*,
Respondents.

Federal¹ Respondents' Response to Petition of Writ for Habeas Corpus

Respondents submit this timely response to Petitioner's petition for a writ of habeas corpus [ECF No. 1]. ECF No. 3 at 1. Petitioner alleges ICE's detention violates the Fifth Amendment's Due Process Clause, and the Immigration and Nationality Act. ECF No. 1 at 21-23.

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: Georgia. *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 if such a country is willing to accept him. *See e.g., Guzman Chavez v. Johnson*, 594 U.S. at 531–32, 535–36 (2021); 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.

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

§ 1231(b)(2). ICE can remove Petitioner to a third country and is actively seeking third country acceptance. Exh. A (F. Rodriguez declaration).

Petitioner argues his continued detention is contrary to the Immigration and Nationality Act, the pertinent regulations. He further claims ICE is violating his substantive and procedural rights under the Constitution's Fifth Amendments. *See e.g.*, ECF No. 1 at 21. Finally, he argues his removable is not reasonably foreseeable. *Id.* at 22. Notably, however, he does not proffer an acceptable third country that would be suitable, nor does he outline any efforts to seek permission to live in any acceptable third countries. *Id.*

These arguments are insufficient reason 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. Removal Efforts

On March 6, 2024, an immigration judge denied Petitioner's application for asylum, withholding, and protection under the Convention Against Torture ("CAT"). Exh. A ¶ 10. The immigration judge ordered Petitioner removed to Georgia. *Id.* On March 7, 2024, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA"). Exh. A ¶ 11. On July 30, 2024, the BIA issued a decision affirming the immigration judge's denial of Petitioner's asylum application but remanded the case in part for the immigration judge to determine Petitioner's eligibility for WHO under the INA. Exh. A ¶. On September 19, 2024, an immigration judge again denied Petitioner's application for asylum but granted his WHO to Georgia under INA § 241(b)(3). Exh.

A ¶ 13. On April 21, 2025, the BIA affirmed the immigration judge's decision granting Petitioner's WHO under the INA. Exh. A ¶ 15.

On May 7, 2025, ICE submitted a request for third country acceptance of Petitioner and no response was received. Exh. A ¶ 18. On May 14, 2025, ICE submitted a request for third country acceptance of Petitioner to France and on June 3, 2025, France declined. Exh. A ¶ 19. On June 3, 2025, ICE requested Armenia accept Petitioner and no response has been received. Exh. A ¶ 20. On July 10, 2025, ICE requested Azerbaijan, Turkey, and Armenia accept Petitioner and no response has been received. Exh. A ¶ 21.

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). 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 a third country 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’s removal order has been final since April 21, 2025. Exh. A ¶ 15. Petitioner urges this Court to order that his continued detention is contrary to his substantive and procedural rights under the Fifth and Fourteenth Amendment, because Petitioner has been detained for more than six months. ECF No. 1 at 21. Beyond these conclusory allegations, Petitioner fails to allege any reason, much less a “good reason” to believe that there is no significant likelihood of removal in the foreseeable future. These claims are not only false, but they are also wholly 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, even applying the prior interpretation of the detention authority at issue here, 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. ICE is actively working with its agency counterparts to secure third country removal. *See* Exh. A (F. Rodriguez Declaration). 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.

III. 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.*

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).

ICE nonetheless conducts post-order custody reviews of an alien's detention as required by regulation for aliens detained under § 1231.² Once the 90-day removal period concludes in this case, ICE will perform a post-order custody review ("POCR") under 8 C.F.R. § 241.4 to determine whether Petitioner should remain detained or whether he should be released in the exercise of discretion under an Order of Supervision. At or around the 180-day mark, Petitioner will receive another POCR if he remains detained, wherein ICE will determine whether he should remain detained. *See* 8 C.F.R. § 241.13. POCRs are set to occur at the 270-day and the one-year marks, as well. *Id.*

The POCR process addresses constitutional concerns that were identified in *Zadvydas*, providing safeguards and allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. Courts have found that these regulatory deadlines are not firm, so long as the review itself has occurred. *See Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354 at *6 n. 6 (W.D. Tex. May 24, 2016). Even if Petitioner had alleged such a violation, the remedy is not immediate release from custody, but an opportunity for the government to provide substitute process. *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172 at *12 (W.D. Tex. Mar. 23, 2020).

² 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. 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)).

Additionally, there is already a robust process in place to handle fear claims in third country removal situations. On July 9, 2025, the ICE Director issued written guidance to all ICE employees regarding third country removals. Ex. B (“July 9 Guidance”). The July 9 Guidance ordered ICE, effective immediately, to adhere to the Secretary of Homeland Security, Kristi Noem’s, March 30, 2025, memorandum, *Guidance Regarding Third Country Removals*. Ex. C (“March Guidance”).

The March Guidance provides that aliens may be removed to a “country [that] has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured.” *Id.* If the State Department finds the representations credible, the “alien may be removed without the need for any further procedures.” *Id.*

The process provided in the March Guidance satisfies all Constitutional requirements. The Supreme Court has held that when an Executive determines a country will not torture a person on his removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702–03 (2008); *see also Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts “may not question the Government’s determination that a potential recipient country is not likely to torture a detainee”), *cert. denied*, 559 U.S. 1005 (2010). As now-Justice Kavanaugh explained in concurrence in *Kiyemba*, the “*Munaf* decision applies here a fortiori: That case involved the transfer of *American Citizens*, whereas this case involves the transfer of alien detainees with no constitutional or statutory right to enter the United States.” *Kiyemba*, 561 F.3d at 517–18 (Kavanaugh, J., concurring). These cases stand for the proposition that when the Executive decides an alien will not be tortured abroad, courts may not “second guess [that] assessment,” unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citations omitted); *Munaf*, 553 U.S. at 703 n.6.

This framework also requires rejection of any argument of entitlement to an individualized determination under the CAT regulations. The law provides for assurances that an alien would not

be tortured if removed to a “specific country,” but once the Attorney General and the Secretary of State deem those assurances “sufficiently reliable,” that is the end of the inquiry. *See* 8 C.F.R. § 1208.18(c)(1)-(3); *see also* *Munaf*, 553 U.S. at 703 n.6.

If removal is to a third country not covered by adequate assurances, the March Guidance makes clear that DHS will first inform the alien of the intent to remove him to that country and then give him an opportunity to establish that he fears removal there. Ex. C (March Guidance). If the alien affirmatively states a fear, immigration officials from U.S. Citizenship and Immigration Services (“USCIS”) will screen the alien, generally within 24 hours, to determine whether he “would more likely than not” be persecuted on a statutorily protected ground or tortured in the country of removal. *Id.* at 2. If USCIS determines that the alien has not met this standard, the alien will be removed. *Id.* If the alien does meet the standard, the alien will be referred to the immigration judge in the first instance, or if previously in proceedings before an immigration judge, USCIS will notify ICE to file a motion to reopen those proceedings, as appropriate, for the sole purpose of determining eligibility for protection under INA § 241(b)(3) and CAT, specifically to the newly designated country of removal. *Id.* Alternatively, ICE may choose another country for removal, subject to the same processes. *Id.*

The March Guidance affords sufficient process to aliens subject to final orders of removal. It confirms that Petitioner will be notified of a third country removal and afforded an opportunity to assert a fear claim. Petitioner has not shown a likelihood that he will be erroneously deprived of his rights under the March Guidance, such that he is entitled to any additional or substitute procedural safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 355 (1976) (no due process concerns where there is low risk of an erroneous deprivation through the procedures used). As such, Petitioner’s procedural due process claim, like his substantive one, should be denied.

IV. Conclusion

Petitioner is lawfully detained by statute until his removal, and his detention comports with the limited due process he is owed as an applicant for admission subject to a final order of removal. This Court should deny the petition.

Respectfully submitted,

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