

United States District Court
Western District of Texas
El Paso Division

Frank Marrero Rivera,
Petitioner,

v.

Pamela Bondi, *et al*,

Respondents.

Case No. 3:26-CV-0180-DCG

Response to Petition for Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order. ECF No. 4. In their petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner seeks release from civil immigration detention, claiming that his detention violates the Due Process Clause, the Administrative Procedure Act ("APA").¹ See ECF No. 1 ¶¶ 23–43. Petitioner is subject to a final order of removal. Exhibit A (ERO Declaration); *see also* § 1231(a)(6); *Zadvydas v. Davis*, 533

¹ In this habeas proceeding, Petitioner expressly challenges his civil detention. Such a challenge must be brought in the form of a petition for a writ of habeas corpus, which is what Petitioner has filed here. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus"). Petitioner, however, raises additional arguments under the APA, none of which are cognizable in habeas, and none of which are covered under the \$5 habeas filing fee. As such, those claims should be dismissed. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). "When a filing contains both habeas and on-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id.* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3; *see also Montoya v. Noem*, SA–CV–1410–FB (W.D. Tex. Jan. 26, 2026) (dismissing all non-habeas claims without prejudice under Rules 12(b)(1) and (6)).

U.S. 678, 701 (2001). Petitioner's claims lack merit. For these reasons, the Court should deny this habeas petition without further evidentiary hearings.

I. Facts and Procedural History

Petitioner entered the United States in 1991 and later became a lawful permanent resident of the United States, but in 2005, he received a removal order from an immigration judge following a 2000 conviction of aggravated assault, burglary, cocaine possession, and property damage. ECF No. 1 ¶¶ 2–3; *see also* Ex. A (ERO Declaration) ¶¶ 6, 7. Given that ICE was unable to execute his removal order to Cuba at that time, ICE released Petitioner from custody under an Order of Supervision on February 21, 2006. *Id.* ¶ 4. While released, Petitioner was convicted again of serious crimes, including drug trafficking in 2010 and drug possession/resisting an officer in 2018. *Id.* ¶ 7. In December 2025, immigration authorities served Petitioner with a Notice of Revocation of Release, which he refused to sign. *Id.* ¶ 12. He has been in ICE custody since that day while ICE works to execute his removal order. *Id.* ¶ 12–15. Cuba denied acceptance of Petitioner in mid-December, so ICE served him on January 10, 2026, with a Notice of Third Country Removal to Mexico. *Id.* ¶ 14. Petitioner filed this habeas petition on January 27, 2026. ECF No. 1. On or about February 9, 2026, ICE transferred Petitioner to the El Valle Detention Center, located within the Southern District of Texas, in anticipation of his removal. *See* <https://locator.ice.gov/odls/#/details> (last accessed Feb. 12, 2026).

II. Argument and Authorities

A. Petitioner's Detention Comports with the Fifth Amendment's Due Process Clause.

Petitioner faces a fundamental flaw in his request for the Court to order additional process than what he has received in this case: the Supreme Court has already decided what constitutional due process is required under these circumstances to avoid violating the rights of an alien in this

position. The *Zadvydas* standard *is* due process: a § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation. *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024); *see also 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*, 95 F.4th at 760).

In *Zadvydas*, the Supreme Court determined what “limits” the “Constitution’s demands” imposed on “post-removal-period detention” pursuant to § 1231. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). After determining that the Constitution “does not permit indefinite detention,” the Court held that a habeas court “should hold continued detention unreasonable” only “if removal is not reasonably foreseeable.” *Id.* at 689, 699. But the Supreme Court did not stop there—it went on to detail the process by which that determination would be made. After the end of the presumptively reasonable six-month detention period, an alien must “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If that showing is made, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* This process was sufficient, the Court reasoned, to avoid the “serious constitutional concerns” that “indefinite detention” would raise. *Id.* at 682. The upshot of this decision is straightforward. “[T]he Supreme Court . . . had occasion to consider the constitutional implications of indefinite detention under § 1231(a),” and it “offered [courts] a standard through which to judge indefinite-detention cases—the *Zadvydas* standard.” *Martinez v. Larose*, 968 F.3d 555, 566 (6th Cir. 2020); *see Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (*Zadvydas* “articulates the outer bounds of the Government’s ability to detain aliens . . . without jeopardizing their due process rights”).

Indeed, Petitioner cites *Zadvydas* in both of his claims for relief and offers no alternative framework for this Court to review his due process claims. When, as here, the Supreme Court has

spoken on the issue at hand, “[t]his Court is bound like all lower courts to apply [that] precedent.” *United States v. Williams*, No. 1-09-cr-414, 2010 WL 3909480, at *4 (E.D. Va. Sept. 23, 2010); *see Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) (“It is beyond our power to disregard a Supreme Court decision . . .”). There is accordingly no basis for the Court to hold that due process demands more than what the Supreme Court already held it requires in this circumstance. *See Hernandez-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *8 (W.D. Tex. June 22, 2018) (stating that to the extent petitioner sought periodic bond hearings in federal court, “*Zadvydas* addressed the extent to which due process demands relief in the § 1231(a) setting”); *M.P. v. Joyce*, No. 1:22-cv-06123, 2023 WL 5521155, at *5-6 (W.D. La. Aug. 10, 2023) (finding petitioner was not in custody in violation of his procedural due-process rights where petitioner received requisite custody review panels, where petitioner's detention was not “indefinite” or “potentially permanent,” and, “to the extent the *Mathews* factors” applied, the government's interests outweighed petitioner's); *cf. Roman v. Garcia*, No. 6:24-cv-01006, 2025 WL 1441101, at *3 (W.D. La. Jan. 29, 2025) (finding that petitioner's detention did not violate due process because the government could detain her beyond the 90-day removal period pursuant to § 1231(a)(6), and § 1231(a)(6) does not require a bond hearing). Petitioner has received all the process to which he is entitled. *See, e.g., Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). Petitioner has been adjudicated removable and had the benefit of the attendant processes.

B. The Statutes and Regulations Allow Petitioner's OSUP Revocation and Resulting Detention.

The authority to detain Petitioner derives from § 1231, which directs the Attorney General to detain and effect the removal of any alien from this country within 90 days of any order of removal, while also authorizing an additional period of detention for certain aliens who have been ordered removed due to a criminal offense or who otherwise present a risk to the community. 8

U.S.C. § 1231(a)(1),(6)). Construing the post-90-day-removal-period detention provision of this statute, the Supreme Court held in *Zadvydas* that the statute does not authorize permanent, indefinite detention, and that instead, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

Upon release, an alien subject to a final order of removal must comply with certain conditions of release. 8 U.S.C. § 1231(a)(3),(6). And the release can be revoked for various reasons, including, under 8 C.F.R. § 241.13(i), for purposes of executing the alien’s removal order. Specifically, a noncitizen’s release may be revoked “if, on account of changed circumstances,” it is determined that “there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Section 1231 specifically authorizes “the Attorney General to use her discretion to set conditions for supervision, and one such provision empowers the respondents to re-detain an alien ‘to enforce a removal order.’” *Ladak v. Noem*, --- F.Supp.3d ---, 2025 WL 3764016 at *4 (N.D. Tex. Dec. 30, 2025).

As a threshold matter, § 1231(a)(6) provides that DHS “may” detain an alien beyond the 90-day removal period—in other words, the decision is discretionary. And federal regulations set forth a framework for the exercise of that discretion. *See* 8 C.F.R. § 241.4. Under that framework, ICE may release the alien if he demonstrates to the satisfaction of the responsible official that he will not pose a danger to the community or a significant flight risk pending his removal from the United States. *Id.* § 241.4(d)(1). Federal regulations also set out a separate set of “special review procedures” derived from *Zadvydas*. 8 C.F.R. § 241.13(a). Under those procedures, the regulation provides that a noncitizen’s release may be revoked “if, on account of changed circumstances,” it is determined that “there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). “[T]he alien will be notified of the reasons

for revocation of his or her release. The Service will conduct an initial informal interview promptly *after* his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* § 241.13(i)(3) (emphasis added). The regulations expressly provide that those special review procedures supplement, rather than supplant, the discretionary framework discussed in the preceding paragraph. *Id.* § 241.13(b). Though Petitioner tries to impugn the quality of these procedures, the Supreme Court concluded in *Zadvydas* that the process established in that case overcomes any constitutional concerns the applicable procedures might raise. *See* 533 U.S. at 692, 699-701; *see also Wang*, 320 F.3d at 146 (rejecting claim for bond hearing to justify continuing detention).

Here, the revocation of Petitioner’s release and the resulting detention are both legally permissible because of the change in circumstances relating to the ability to remove him from the United States to a third country. ICE is actively working to remove Petitioner to Mexico and has already notified Petitioner of this third country removal. *See* Ex. A (ERO Declaration).

In light of these changed circumstances, Respondents had reason to revoke release in anticipation of third country removal. For these reasons, Petitioner is entitled to no relief on his challenges to the revocation of release and resulting detention. The relevant circumstances have changed, and both revocation and detention for the purpose of attempting to execute Petitioner’s removal orders are constitutionally permissible. ICE denies any allegations related to their adherence to the OSUP revocation regulations, but even if there were such an error, it would be harmless. *See Ladak*, 2025 WL 3764016 at *5.

III. Conclusion

The Court should deny the habeas petition without the need for further evidentiary hearings.

Dated: February 12, 2026

Respectfully submitted,

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