

United States District Court
Western District of Texas
Austin Division

Adhanom Debru Tesfamariam,
Petitioner,

v.

Kristi Noem, Secretary of Homeland Security,
et al.,
Respondents.

No. 1:26-CV-00363-DAE

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

Respondents submit this response to the petition. ECF No. 3. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner, seeks to prevent ICE removing Petitioner pursuant to a valid removal order, while he attempts to reopen his immigration case. *See* ECF No. 1. This Court should deny the Petition.

Despite his allegation that there is “no basis” for his continued detention, Petitioner is lawfully detained with a final order of removal, his constitutional challenge to continued detention is not ripe until he has been detained in post-order custody for at least six months, and there is insufficient reason to believe that removal is unlikely in the foreseeable future. 8 U.S.C. § 1231(a)(6); *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

I. This Court Should Dissolve the Stay of Removal

This Court has Ordered a stay of removal which prevents ICE from executing the removal

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 are lawfully detaining Petitioner on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

order. ECF No. 3. The Court issued a stay because, “he [challenges] the lawfulness of his detention during ongoing removal proceedings.” *Id* at 4. However, this Petitioner does have a final order of removal and received due process in his prior immigration case that resulted in his removal order. 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)).

II. Facts and Procedural History

Petitioner is a citizen of Ethiopia and a citizen of Eritrea. ECF No. 1-3 at 1. He has been detained in ICE custody in Taylor, Texas since December 15, 2025. Exh. A at ¶ 3. In January 2018, Petitioner applied for admission at San Ysidro port of entry and Petitioner was placed in expedited removal under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). Exh. A at ¶ 4. Petitioner claimed fear and was issued a Notice to Appear after Citizenship and Immigration Services issued a positive credible fear determination. Exh. A at ¶ 4-7; 8 U.S.C. § 1225(b)(1)(B)(ii). At the conclusion of removal proceedings, an immigration judge denied his application and ordered Petitioner removed to Eritrea or Ethiopia in the alternate. Exh. A at ¶ 8. Petitioner waived appeal and the removal order became final on May 23, 2018. Exh. A at ¶ 8.

On May 24, 2018, Petitioner was served with applications to complete as part of his travel document request packet. Exh. A at ¶ 9. On June 1, 2018, ICE sent the completed travel document packet to the ICE headquarters unit, HQ RIO-Africa. Exh. A at ¶ 10. On August 23, 2018, ICE

completed the 90-day post order custody review (POCR) and recommended detention to continue efforts to obtain a travel document. Exh. A at ¶ 11. On February 1, 2019, ICE conducted a case review and released Petitioner on bond. Exh. A at ¶ 13. On June 10, 2021, Petitioner reported to the ICE non-detained unit and was directed to report in 2022. Exh. A at ¶ 14.

On July 8, 2025, ICE enrolled Petitioner in alternates to detention (ATD) with GPS monitoring. Exh. A at ¶ 15. On August 5, 2025, ICE requested Petitioner's A file to complete the travel document request for his removal. Exh. A at ¶ 16. On September 22, 2025, ICE noted Petitioner damaged the GPS equipment and ICE needed to inspect it. Exh. A at ¶ 17. On two additional occasions, October 10 and 17th, 2025, ICE noted Petitioner damaged the GPS equipment and ICE needed to inspect it. Exh. A at ¶¶ 18, 19. On October 31, 2025, ICE sent a follow-up request for the status of a previously submitted travel document request (from 2018). Exh. A at ¶ 20. ICE was advised an updated travel document request would be needed. Exh. A at ¶ 20. On November 14, 2025, ICE submitted the travel document request to the Department of State's Post at Asmara and the Embassy of Eritrea.

On December 15, 2025, Petitioner reported to ICE and was detained pursuant to his final order of removal. Exh. A at ¶ 22. The same date, ICE sent notice of bond cancellation to the obligor. Exh. A at ¶ 23. On December 17, 2025, the travel document request was sent for review. Exh. A at ¶ 24. On January 22, 2026, ICE submitted a request for an update from ICE's headquarters unit, HQ RIO regarding the travel document and removal flight for Petitioner. Exh. A at ¶ 25. As of February 23, 2026, ICE San Antonio is pending the update from headquarters to obtain Petitioner's travel document. Exh. A at ¶ 26.

Petitioner has been ordered removed to Eritrea and Ethiopia. ECF No. 1-3 at 16. ICE's fiscal year 2024 annual report shows ICE is removing aliens to both countries, increasing over

prior years. *See* FY2024 Annual Report (last accessed Feb. 24, 2026).

On February 16, 2026, Petitioner filed his petition. ECF No. 1. After his detention, he has identified ‘new’ facts that demonstrate he will be harmed if returned to Eritrea. *Id.* at 2. Petitioner intends to file a motion to reopen his removal order to Eritrea. *Id.* Petitioner does not address his removal order to Ethiopia and doesn’t allege he is seeking to reopen or contest his removal order to Ethiopia. *See generally* ECF No. 1.

III. 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*, 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.

IV. Petitioner’s Substantive Due Process Claim under *Zadvydas* is Premature.

Petitioner’s reliance on *Zadvydas* is premature because he has been detained less than six months. To state a claim for relief under *Zadvydas*, Petitioner must show that: (1) he is in DHS

custody; (2) he has a final order of removal; (3) he has been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700. Petitioner does not and cannot make this showing, as he has been detained less than six months in post-order custody. *Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 2011 WL 891071 at *1 (5th Cir. Mar. 15, 2011); *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 n.33 (W.D. Tex. 2018); *Kasangaki v. Barr*, 2019 WL 13221026 at *3 (W.D. Tex. July 31, 2019); *Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 7–16 (W.D. Tex. Aug. 12, 2025).

V. 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 Eritrea or Ethiopia 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; *see also Linares*, ECF No. 14 at 8, 10–11.

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. *Id.* at 14–16; *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 does not allege that his removal is not foreseeable. *See generally* ECF No. 1. Therefore, this Court should determine Petitioner has not shown good reason to believe that removal is unlikely. *See Linares*, ECF No. 14 at 8, 10–11, 14–16; *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); *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). Therefore, the burden of proof does not shift to Respondents to prove significant likelihood of removal in the reasonably foreseeable future.

Even if the burden did shift to ICE, ICE could show that removal is likely in the foreseeable future. First, ICE has removed aliens to both Ethiopia and Eritrea, and ICE is in the process of obtaining Petitioner's travel document. *See* FY2024 Annual Report (last accessed Feb. 24, 2026); *see also* Exh. A. Because Petitioner does not allege removal is not foreseeable, Petitioner's substantive due process claim fails here as a matter of law.

VI. ICE Has Afforded Petitioner Procedural Due Process During His Post-Order Custody Pending Removal.

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*, at 10–14 (discussing *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). This Court should also follow *Zadvydas* to review the procedural claim at issue here. *Id.* Under the *Zadvydas* framework, six months post-order detention is reasonable, and unless that time frame has passed, any procedural due process claim is also premature.

In any event, 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's alleged violations do not merit release, and Petitioner's petition should be denied.

VII. Conclusion

Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6). Petitioner's continued detention is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. He seeks this Court stay removal so he can attempt to reopen removal proceedings only as to his removal order to Eritrea. He doesn't contest or address his removal order to Ethiopia. Accordingly, the Court should deny this petition.

Respectfully submitted,

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