UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

JOSE VALDEZ-CARBALLEA,	
Petitioner,	
v.	No. 3:26-CV-02007-LS
TODD M. LYONS, et al.,	
Respondents.	

FEDERAL RESPONDENTS' RESPONSE AND MOTION TO DISMISS SUCCESSIVE PETITION

Federal[1] Respondents file this Motion to Dismiss Petitioner's second habeas petition (ECF No. 2) as it raises no newly discovered evidence or new rule of constitutional law that was previously unavailable as required by 28 USC § 2255(h).

I. FACTUAL BACKGROUND

Jose Valdez Carballea is a national and citizen of Cuba who was paroled into the United States on or about July 2, 1980. *See* Composite Ex. A, at 1-4 (2026 Form I-213). On April 24, 1987, Petitioner was convicted in the Circuit Court in and for Monroe County, Florida of possession of cannabis and sentenced to three years of probation. *See id.* at 5-7 (1987 J. & 1986 Info.). On September 20, 1989, Petitioner was convicted in the Circuit Court in and for Monroe County, Florida of a violation of the Florida Racketeering Influence and Corrupt Organization Act and trafficking in cannabis, for which he was sentenced to three years in prison. *See id.* at 8-12 (1989 J. & Sentence). Accordingly, on January 18, 1990, the legacy Immigration and Naturalization Service (INS) placed Petitioner in exclusion—i.e., removal—proceedings. *Id.* at

[1] The U.S. Department of Justice only represents federal employees in this action.

13-16 (1990 NTA). On January 24, 1990, INS revoked Petitioner's parole. *Id.* at 17 (1990 Parole Revoc.).

On July 18, 1990, Petitioner was charged in the U.S. District Court for the Southern District of Florida with four counts of conspiracy to distribute, conspiracy to import, importing, and distributing cocaine. *See id.* at 18-22 (1990 Indictment). On January 11, 1991, Petitioner pled guilty to one count of possession with intent to distribute and was sentenced to serve 10 years in the U.S. Bureau of Prisons, to run concurrently with a sentence imposed in a state case, followed by five years of supervised release. *Id.* at 23-28 (1991 J. & Sentence). On March 28, 1991, Petitioner was taken into immigration custody. *Id.* at 52 (Detention History). On April 18, 1991, Petitioner was ordered removed from the United States. *Id.* at 29-31 (1991 Removal Order). On May 21, 1991, Petitioner was released from immigration custody into the custody of another federal agency. *Id.* at 52.

On April 16, 1997, Petitioner was taken into immigration custody. Composite Ex. at 52. On September 3, 1998, Petitioner was released from immigration custody. *Id.* On February 1, 2000, Petitioner was issued an Order of Supervision ("OSUP"). *Id.* at 32-34 (2000 OSUP).[2] On October 29, 2013, Petitioner was placed on another OSUP. *See id.* at 35-38 (2013 OSUP). On October 18, 2023, Petitioner was placed on a third OSUP.[3] *See id.* at 39-41 (2023 OSUP).

On March 3, 2026, U.S. Immigration and Customs Enforcement (ICE) encountered Petitioner during a vehicle stop and took him into immigration custody. Composite Ex. at 3; *see*

[2] The undersigned recognizes that Petitioner's 2000 OSUP has a note stating "Canceled 2-7-2000 placed on parole." Composite Ex. at 33. ICE represents it does not have sufficient information to clarify whether Petitioner's 2000 OSUP was canceled and whether he was placed on parole.

[3] The undersigned has requested information regarding why Petitioner was placed on a third OSUP in 2023. As of the time of this filing, the undersigned has not received any clarification on this issue. If the undersigned receives more information before the Court rules, she will supplement this response with the same.

also id. at 42-45 (2026 Arrest Docs.). On April 8, 2026, ICE issued Petitioner a Notice of Revocation of Release, notifying him that his 2013 OSUP has been revoked pursuant to 8 C.F.R. § 241.13(i) because circumstances have changed such that there is a significant likelihood of removal in the reasonably foreseeable future. *See id.* at 46-47 (2013 OSUP Revoc.). That same day, ICE provided Petitioner with an informal interview pursuant to 8 C.F.R. § 241.4(l) and 8 C.F.R. § 241.13(i), but Petitioner was unwilling to sign. *Id.* at 48 (2026 Informal Interview).

II. MOTION TO DISMISS AS SECOND OR SUCCESSIVE HABEAS PETITION

On June 12, 2026, Petitioner filed a petition for habeas corpus before a district court in the Middle District of Florida, Fort Myers Division, seeking release from immigration detention. *See Valdez Carballea v. Warden South Fl. Det. Facility, et al*, No. 2:26-cv-01998-KCD-KRH, (M.D. Fl. June 12, 2026). That First Petition is currently still pending in the Middle District of Florida. According to information provided by ICE, Petitioner was subsequently moved from Florida to El Paso, Texas on or about June 14, 2026. Petitioner then filed the successive habeas petition currently pending before this Court seeking the same relief on July 29, 2026 (ECF No. 2) (hereinafter "Second Petition"). The two petitions essentially raise the same legal basis for release. *Compare* ECF No. 2 and First Petition filed in 2:26-cv-01998-KCD-KRH.

Title 28 U.S.C. § 2255(h), requires the following for second or successive habeas petitions:

> A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—
>
> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

A petition is successive when it raises a claim for release "that was or could have been raised in an earlier petition." *In re Robinson*, 917 F.3d 856, 862 (5th Cir. 2019) (quoting *In re Edwards*, 865 F.3d 197, 203 (5th Cir. 2017). Petitioner has filed a second or successive habeas

petition in this case without meeting the 2255(h) requirement. There is no newly discovered evidence or a new rule of constitutional law applicable in this case. Instead, it appears that Petitioner is improperly using this Court's limited time and resources when another essentially identical habeas petition is currently pending in another federal district court. Consequently, the Court should dismiss the Petition in the instant case as a second or successive Petition under 2255(h).

III. RESPONSE TO PETITION

Even if the Court does not dismiss the Petition because it is a second or successive petition that does not meet the requirement set out in 2255(h), the Court should deny it substantively for the following reasons.

a. 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 a 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.

b. 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).

c. 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 Sierra Leone 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 claims his removal is not reasonably foreseeable, but these claims are insufficient under *Zadvydas* because he has not shown any 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). Petitioner has not shown that his continued detention is unreasonable, nor has he shown he is owed any additional due process than what he is currently receiving. *See Hernandezs-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *8 (W.D. Tex. June 22, 2018). 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. *See* Ex. B (Dec.). Petitioner's substantive due process claim fails here as a matter of law.

IV. 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).

CONCLUSION

For the foregoing reasons, the Court should dismiss Petitioner's habeas petition [ECF No. 2]. Respondents presume that Petitioner (*pro* se) would be opposed to Respondents' motion because he is detained.

Respectfully submitted,

JUSTIN R. SIMMONS
United States Attorney

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Certificate of Conference

Petitioner, *pro se*, is currently detained at ERO El Paso Camp East Montana. Consequently, Respondents were unable to confer with Petitioner. Respondents presume that Petitioner would be opposed to Respondents' Motion to Dismiss because he is detained.

Certificate of Service

I certify that on August 5, 2026, I mailed a copy of Federal Respondents' Motion to Dismiss Successive Petition to Petitioner (*pro se*) at the following address:

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ERO El Paso Camp East Montana
6920 Digital Road
El Paso, TX 79936
PRO SE

By: */s/ Sarah Valenzuela*
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