United States District Court
Western District of Texas
El Paso Division

Yen Abner Banegas-Ramos, Petitioner, v. Markwayne Mullin, *et al.*, Respondents.	Cause No. 3:26-CV-02216-KC

Federal Respondents' Response to Petitioner's Petition for Writ of Habeas Corpus

STATEMENT OF ISSUES

1. Whether mandatory detention under 8 U.S.C. § 1231 is unconstitutional as applied to petitioner.

2. Whether the writ of habeas corpus under 28 U.S.C. § 2241 provides any relief other than release.

Federal Respondents provide the following response to Petitioner's habeas petition.[1] Any allegations that are not specifically admitted herein are denied. In the petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner seeks release from civil immigration detention, claiming that his post-removal-order detention has been become indefinite, contrary to statute, and the Due Process Clause. *See* ECF No. 3. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a final order of removal, which mandates his detention under 8 U.S.C. § 1231(a) for a 90-day removal period. *See* Exh. A, Declaration, at ¶¶ 4, 5; *see also* EOIR, Automated Case Information, https://acis.eoir.justice.gov/en/caseInformation (last accessed on September 4, 2026). Detention can be extended past the removal period in the exercise of discretion where removal is reasonably foreseeable. 8 U.S.C. § 1231(a)(6). ICE decided in its discretion to continue Petitioner's detention past the 90-day removal period, which is a decision protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

Petitioner has not shown here that there is no likelihood of removal in the reasonably foreseeable future. Even if Petitioner were able to make such a showing, the burden would shift to Respondents who can show that removal is, in fact, significantly likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Honduras who entered the United States on or about 2000, as a juvenile. ECF No. 3, at pg. 10;[2] Exh. B, I-213 2025, at pg. 3. Thereafter, on November 29, 2016, an administrative removal order was entered against Petitioner, due to his 2008 aggravated felony conviction for dealing in cocaine, for which he was sentenced to 25 years

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

[2] All page citations to the petition refer to the page numbers assigned by the Court's CM/ECF system, rather than the internal pagination of the cited document.

imprisonment. Exh. C, Removal Order. On March 16, 2017, an immigration judge (IJ) granted Petitioner deferral of removal under CAT in withholding-only proceedings. Exh. D, IJ Order; *see also* EOIR, Automated Case Information, https://acis.eoir.justice.gov/en/caseInformation (last accessed on September 4, 2026). Petitioner was released on the same day under an order of supervision. Exh. B, I-213 2025, at pg. 3.

Upon information and belief, Petitioner's criminal history also includes an aggravated felony conviction on December 1, 2022, for sexual conduct against a minor, for which he was sentenced to 6 years imprisonment. Exh. B, I-213 2025, at pgs. 3-4. Further, upon information and belief, Petitioner was convicted of identity theft in 2004 and received an 18-month sentence. *Id.* at pg. 2.

On July 24, 2025, Petitioner was turned over to ICE custody at the New Castle Correctional Facility, and he was arrested by ICE due to his subsequent aggravated felony conviction. *Id.* at pg. 3. On January 5, 2026, Petitioner was removed to Honduras, despite the IJ's deferral order, but was returned to the U.S. on July 24, 2026. ECF No. 3, at pg. 4.

Since detaining Petitioner, ERO has taken steps to effectuate Petitioner's removal and to address any obstacles with removal. *See* Exh. A, Declaration. On August 20, 2026, Petitioner was served with a Notice of Third Country Removal to Mexico, but he refused to sign and stated he did not want to be removed to Mexico, and claimed fear of removal to Mexico and "everywhere else." *Id.* at ¶¶ 6, 7. He had previously refused removal to Mexico on October 6, 2025, November 18, 2025, and prior occasions in August 2026. *Id.* at ¶¶ 9, 10. A third country fear packet was thus submitted, and on or about August 28, 2026, USCIS found that Petitioner did not establish more likely than not that he would be persecuted or tortured in Mexico. *Id.* at ¶¶ 14, 15. On September 3, 2026, ERO interviewed Petitioner regarding any nexus to another third country other than

Honduras or Mexico, but Petitioner indicated he had no other nexus to any third country. *Id.* at ¶ 16. ERO will continue coordination with OPLA and HQ RIO regarding third country removal and will await further HQ RIO guidance on viable third-country removal options. *Id.* at ¶ 17. At this time, Mexico remains the only third country documented as approved for removal. *Id.* There is no specific date for the expected removal date. *Id.*

Thus, as set forth in the attached declaration, efforts have been made and are continuing to be made in order to effectuate removal of Petitioner and overcome any obstacles to removal, such that removal is significantly likely in the reasonably foreseeable future. *See generally,* Exh. A, Declaration.

II. 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 v. Davis*, 533 U.S. 678, 701 (2001). 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.

III. There Is No Good Reason to Believe That Removal Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show "good reason" to believe that removal is unlikely. 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).

There is no dispute that Petitioner's removal order is a final order. *See* Exh. A, Declaration at ¶¶ 4, 5. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. *See generally* ECF No. 3. Petitioner, however, relies on only conclusory allegations and speculation to argue that he is not subject to continued detention *Id.*

Petitioner's conclusory and speculative claims are wholly insufficient to meet the burden of proof 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, Petitioner cannot meet the burden to provide good reason to believe that there is 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 has taken affirmative steps to obtain travel documents). The burden of proof, therefore, does not shift to Federal Respondents to prove that removal is likely.

Moreover, Respondents have provided evidence of the removal efforts underway to remove Petitioner, indicating a significant likelihood of removal in the reasonably foreseeable future. *See* Exh. A, Declaration.

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

Regarding Petitioner's claims of violations of procedural due process, such claims should be denied. 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 fails to allege the manner in which his procedural due process has been violated and instead argues that his detention has been prolonged without removal being effectuated. *See generally* ECF No. 3. Thus, Petitioner's allegations are insufficient to establish that ICE failed to provide procedural protections, and even if it did, it would not result in his release from custody or a stay of his removal order.

V. Conclusion

There is no good reason to believe that removal in the reasonably foreseeable future is unlikely. Continued detention under 1231(a)(6), therefore, is lawful. Accordingly, the Court should deny this petition.

Dated: September 4, 2026

Respectfully submitted,

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Certificate of Service

On or about September 4, 2026, I directed a copy of this filing to be mailed via US Certified Mail to the Pro Se Petitioner at the below address(es).

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