United States District Court
Western District of Texas
San Antonio Division

Juan Carlos Garcia-Aleman, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 1:25-CV-0886-OLG-HJB

Federal[1] Respondents' Response to Petitioner's Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order dated July 30, 2025, directing service and ordering a response within seven (7) days of the date of service. *See* ECF No. 5.[2] In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Garcia-Aleman ("Petitioner") seeks release from civil immigration detention, claiming that his less than two months[3] of post-order detention is unlawful. ECF No. 2.

The petition consists of two substantive counts: (1) Fifth Amendment due process violation (substantive and procedural); and (2) Violation of the Immigration and Nationality Act (INA). *Id.* ¶¶ 13–16.[4] In his Prayer for Relief, Petitioner seeks an order directing Respondents to release him "on his own recognizance or under parole, a low bond or reasonable conditions of supervision…."

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[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, however, have detention authority over aliens detained under 8 U.S.C. § 1231(a).

[2] The U.S. Attorney's office was served on August 4, 2025, by certified mail.

[3] Petitioner alleges that he was taken into custody at his ICE check-in on May 6, 2025, but government records show that the check-in that resulted in his detention was June 5, 2025. *See, e.g.*, Ex. A (OSUP). The petition was filed on July 22, 2025. *See* ECF No. 2.

[4] Petitioner also seeks attorney fees, but EAJA fees are not available to habeas petitioners in the Fifth Circuit. *See Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

Id. at 5. He further requests that the Court enjoin "Respondents from continuing his detention absent a legally viable removal plan." *Id.* at 6.

Petitioner is lawfully detained with a final order of removal while ICE prepares to execute that order. *See* ECF No. 2 ¶ 8; 8 U.S.C. § 1231(a). Petitioner's post-order detention is mandatory for the first 90 days of the removal period. *Id.* Even beyond the 90-day removal period, any constitutional challenge to continued detention is not ripe until the alien has been detained in post-order custody for at least six months. *See Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011). Petitioner's claims should be denied, because he is lawfully detained, and his constitutional claim is not ripe. Even if his claim were ripe, Petitioner cannot show that ICE is unlikely to remove him to a third country in the reasonably foreseeable future.

I. Relevant Facts and Procedural History

Petitioner is a citizen of Mexico with a final order of removal that was first entered in 1999. ECF No. 2 at ¶ 8. In January 2013, Petitioner alleges that an immigration judge granted him withholding of removal to Mexico under the Convention Against Torture (CAT) while he was in withholding-only proceedings.[5] *Id.* ¶ 9; ECF No. 2-2 at 2. Following that decision, ICE released him from custody under an Order of Supervision ("OSUP"). *Id.* ¶¶ 1, 9, 22; *see also* Ex. A (OSUP dated March 7, 2013). At his most recent check-in on June 5, 2025, ICE revoked his OSUP and took him back into ICE custody. *Id.*; *see also* 8 U.S.C. §§ 1231(a)(3), (a)(6). Petitioner is detained in Pearsall, Texas. ECF No. 2 ¶ 1.

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[5] When an alien is lawfully removed pursuant to a final order of removal and is subsequently encountered in the United States without having been admitted or paroled, he is subject to reinstatement of that executed removal order. 8 U.S.C. § 1231(a)(5). If he claims fear of returning to his country and that fear is found to be reasonable, he is given an opportunity to pursue limited relief from removal before an immigration judge in "withholding-only proceedings." *Id.* § 1231(b)(3).

ICE denies that Petitioner is in custody unlawfully. The OSUP issued to him in 2013 very plainly states that Petitioner's release was conditioned upon certain requirements, one of which was to assist the agency in obtaining any necessary travel documents to execute his removal order that was issued in 1999. Ex. A (OSUP). Similarly, Petitioner's release was conditioned upon providing the agency with written copies of requests to Embassies or Consulates requesting the issuance of a travel document. *Id.* It also required that Petitioner provide the agency with written responses from the Embassy or Consulate regarding those requests. *Id.* Finally, the OSUP warns that any violation of these conditions may result in being taken back into custody. *Id.* Other than a blanket statement alleging that he "has been compliant with ICE's conditions of supervision for over a decade," the habeas petition is silent as to whether Petitioner complied with these specific conditions. *See, e.g.,* ECF No. 2 at ¶¶ 1, 22.

The petition does allege, however, that ICE is "now attempting to remove him to a third country, though no country has agreed to accept him." *Id.* ¶ 9. The petition does not identify any third country or explain why ICE is unlikely to execute his removal to a given country. Petitioner broadly claims that there is no significant likelihood of removal in the reasonably foreseeable future, but he does not explain the basis for that belief. *Id.* ¶ 12. Federal Respondents deny Petitioner's allegations within paragraph 20 of the Petition and aver that third country removal efforts are ongoing. Federal Respondents further deny that they have a duty to provide Petitioner with "a legally viable removal plan" beyond his reinstated removal order itself and the warnings associated with that removal order, especially when his order has been final since 1999 and has already been executed at least once, he has provided no evidence that he complied with the specific terms of his OSUP since 2013 by corresponding with Embassies and Consulates to request the issuance of a travel document, and he has identified no basis for his conclusions that removal is

unlikely.

II. Section 1231(a) Mandates Petitioner's Post-Order Detention for 90 Days.

Petitioner is detained in ICE custody under 8 U.S.C. § 1231(a), because he has a final order of removal. *See* ECF No. 2. Although he was granted withholding of removal to Mexico in 2013, such relief extends only to the country where Petitioner was found to have a reasonable fear of being tortured. *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, ICE cannot remove Petitioner to Mexico at this time, but nothing prevents ICE from removing Petitioner to a third country. *See e.g.*, *Johnson v. Guzman Chavez*, 594 U.S. 523, 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. § 1231(b)(2).

ICE's detention authority under § 1231 is well-settled. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). 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). DHS has no obligation to release during the 90-day period until the Department of Homeland Security DHS Headquarters Post-Order Detention Unit has had the opportunity during a six-month period to determine whether there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.13(b)(2)(ii); 241.13(f).

III. Petitioner's Due Process Claim Is Premature, As He Has Not Been Detained in Post-Order Detention for Six Months.

Federal Respondents are actively seeking to execute Petitioner's removal order, and Petitioner's post-order detention is presumptively reasonable for at least six months.[6] *See Zadvydas*, 533 U.S. at 701. Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *Id.* 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 fails to comply with removal efforts or presents a flight risk or other risk to the community. *Id.*; *see also Guzman-Chavez*, 594 U.S. at 528–29, 544; 8 U.S.C. § 1231(a)(1)(C), (a)(6); 8 C.F.R. § 241.4. Continued detention under this provision is the "post-removal-period." *Guzman-Chavez*, 594 U.S. at 529. Where the alien challenges the discretionary basis for detention authority, that decision is protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

The statute does not specify a time limit on this post-removal period, but the Supreme Court has read an implicit limitation into the statute and held that the alien may be detained only for a period reasonably necessary to remove the alien from the United States. *Id.*; 8 C.F.R. § 241.13. Although the Court recognized this six-month presumptive period, *Zadvydas* "creates no specific limits on detention . . . as 'an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (quoting *Zadvydas*, 533 U.S. at 701).

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[6] The Court lacks jurisdiction to review which country ICE is considering for removal, because those negotiations are inextricably intertwined with ICE's unreviewable authority to execute a final order of removal. *See, e.g., C.R.L. v. Dickerson, et al*, 4:25-CV-175-DL-AGH, 2025 WL 1800209 at *2-3 (M.D. Ga. June 30, 2025); *Diaz Turcios v. Oddo*, No. 3:25-CVC-0083, 2025 WL 1904384 at *5 (W.D. Pa. July 10, 2025).

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.[7] Any due process claim under *Zadvydas* is, therefore, premature. *See Chance*, 2011 WL 6260210 at *1; *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).

Even when an 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 also provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade*, 459 F.3d at 543–44; *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien makes this showing, the burden will not shift to the government to prove otherwise. *Id.* There is no dispute that Petitioner has not been in custody for six months. *See* ECF No. 2 at ¶ 1.

Petitioner has a final order of removal that authorizes his detention under 8 U.S.C. § 1231(a). ICE denies that there is no likelihood of removal in the reasonably foreseeable future. *Id.* § 1231(a)(6). 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*,

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[7] The time Petitioner spent on supervised release does not count towards this six-month period. The Supreme Court has explicitly rejected the notion that an alien who is "free to walk the streets" on "supervised release" is "in custody" under the INA. *Jennings v. Rodriguez*, 583 U.S. 281, 308–9 (2018).

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).

Even if Petitioner were to successfully meet his burden once his claim is ripe, ICE avers that there is significant likelihood of removal in the reasonably foreseeable future. Petitioner is lawfully detained with a final order of removal. His due process claim fails here as a matter of law.

IV. The OSUP Revocation Does Not Violate Petitioner's Procedural Due Process Rights.

Petitioner cannot show a procedural due process violation here. While an agency is required to follow its own procedural regulations, 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). 8 C.F.R. § 241.4(l) (requiring notice and an interview be given to the alien "promptly" upon return to custody). The remedy for such a violation, in any event, 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). 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). For these reasons, Petitioner's procedural due process claim fails, but even if it did not, it would not result in his release from custody.

Conclusion

Petitioner is lawfully detained by statute and his detention comports with the limited due process he is owed as an alien with a reinstated final order of removal. This Court should deny the petition.

Respectfully submitted,

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