United States District Court
Western District of Texas
San Antonio Division

Juan PUERTAS MENDOZA, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 5:25-CV-00890-XR

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 three (3) days of the date of service. *See* ECF No. 2.[2] In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Puertas Mendoza ("Petitioner") seeks release from civil immigration detention, claiming that his one week of post-order detention is unlawful. ECF No. 1.

The petition consists of two counts: (1) Violation of the Fifth Amendment Due Process Clause, claiming his detention is indefinite; and (2) Violation of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231, claiming that removal is not likely. *Id.* ¶¶ 30–37. In his Prayer for Relief, Petitioner seeks immediate release and requests that the Court order ICE to file a complete copy of the "administrative file from the Department of Justice and the Department of Homeland Security." *Id.* at 13. He further requests that the Court enjoin ICE from transferring him outside of

[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.

this district while the habeas petition is pending. *Id.*[3]

Petitioner is lawfully detained with a final order of removal while ICE prepares to execute his removal order. 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, Puertas Mendoza, is a citizen of Mexico with a final order of removal last reinstated in 2016. ECF No. 1 at ¶¶ 6, 13. Petitioner alleges that he initially entered the United States in 1995. *Id.* ¶ 16. After multiple unlawful entries, he alleges he was eventually apprehended in June 2001 and removed to Mexico via expedited removal. *Id.* He subsequently attempted to re-enter the United States unlawfully, but DHS reinstated and executed his removal order in October 2009. *Id.* He was also convicted of illegal reentry in 2009. *See* ECF No. 1-2 at 6 (referencing *U.S. v. Puertas-Mendoza*, No. 1:09–353–JRN (W.D. Tex. July 8, 2009).[4]

In March 2016, Petitioner claims to have again attempted to return unlawfully to the United States, but he was apprehended. *Id.* On that occasion, he expressed fear of returning to Mexico

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

[4] Although Petitioner claims to have a pending benefit application for a nonimmigrant visa, he concedes he is inadmissible to the United States under no fewer than six (6) statutory grounds, including willful misrepresentation (using a fake lawful permanent resident card to enter the United States on at least two to three occasions). *Id.* at 6, 22; *see also* 8 U.S.C. § 1182(a).

based on past persecution on account of his membership in a particular social group. *Id.* He was placed into reasonable fear proceedings and given a hearing before an immigration judge to pursue limited relief from removal. *Id.* Petitioner alleges that the immigration judge granted him withholding of removal to Mexico and relief under the Convention Against Torture (CAT) on March 24, 2016. *Id.* Following that decision, ICE released him from custody under an Order of Supervision ("OSUP"). *Id.* At his most recent check-in on July 17, 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. 1 ¶ 16.

ICE denies that Petitioner is in custody unlawfully or without proper notice. On August 7, 2025, ICE issued a Notice of Revocation of Release to inform Petitioner that ICE revoked his OSUP based on ICE's determination that there is a significant likelihood of removal in the reasonably foreseeable future. *See* Exhibit A (Notice of Revocation of Release); 8 C.F.R. §§ 241.4(l); 241.13(i). In the Decision, ICE also notified Petitioner of his duty to comply with removal efforts and the consequences of failing to cooperate. Ex. A (Notice of Revocation). The letter explains that he will be given notice of a new custody review within approximately three months. *Id.*

ICE also interviewed Petitioner informally on August 7, 2025, regarding the revocation of his OSUP. *Id.* The purpose of the interview was to afford Petitioner an opportunity to respond to the reasons for the revocation as outlined in the notification letter. *Id.* Petitioner responded orally that any questions should be posed to his attorney. *Id.* Petitioner did not provide a written statement or any documents at the interview in response to the revocation notice. *Id.*

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. 1. Although he was granted withholding of removal to Mexico in 2016, 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.[5] *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* 8 U.S.C. § 1231(a)(1)(C); (a)(6). 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). 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. The 90-day removal period may be extended where ICE determines the alien is unlikely to comply with the removal order. *See Guzman-Chavez*, 594 U.S. at 528–29, 544; *see also* 8 C.F.R. § 1231(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.

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. Six months is the presumptively reasonable timeframe in the post-removal context. *Zadvydas*, 533 U.S. at 701. Although the Court recognized this presumptive period, *Zadvydas* "creates no specific limits on detention . . . as 'an alien may be held in confinement until it has been determined that

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[5] 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).

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).

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.[6] 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).

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.

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[6] Petitioner continuously refers to his release from custody on OSUP as having been "in custody" for purposes of *Zadvydas*, but he offers no support for this argument. 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). Petitioner has not been in post-order detention longer than the presumptively reasonable period of six months, such that he may lodge a claim under *Zadvydas*. Regarding any procedural due process claim,

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*, 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 establishes the requisite "good reason," 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. 1 at ¶ 69.

Even if his claim were ripe, Petitioner has a final order of removal that authorizes his detention under 8 U.S.C. § 1231(a). Although Petitioner's removal order was first entered in 2001, his most recent unlawful entry in 2016 resulted in his removal order being reinstated, but withheld. Considering the immigration judge's grant of withholding of removal to Mexico, ICE released Petitioner from custody under an Order of Supervision. Nonetheless, Petitioner remained subject to a final order of removal.

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*, 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 the 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). The record shows that ICE timely served Petitioner with written notice of the reasons for his OSUP revocation and provided him an interview where he could respond orally or in writing to the allegations. *See* Ex. A (Notice of Revocation); 8 C.F.R. § 241.4(l) (requiring notice and an interview be given to the alien "promptly" upon return to custody).

Even if Petitioner were successful in showing some form of procedural due process violation in this case, the remedy for such a violation 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 final order of removal. This Court should deny the petition.

Respectfully submitted,

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