

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ALLAN MICHEL DIAZ-CRUZ,)
)
Petitioner,)
)
v.)
)
KRISTI NOEM, Secretary, Department of)
Homeland Security; PETE FLORES,)
Commissioner, Customs and Border)
Protection; RICARDO WONG, Field)
Office Director, ICE ERO Chicago; and)
C. CARTER, Warden, FCI-Leavenworth,)
)
Respondents.)
_____)

Case No. 25-3162-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Allen Michel Cruz-Diaz (“Petitioner”) for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, an alien subject to an order of removal, asks the Court to release him from detention at the Federal Correctional Institution in Leavenworth, Kansas (“Leavenworth FCI”). Petitioner asserts he has been in custody since May 2, 2024, and there is no significant likelihood of removal to his home country of Honduras in the reasonably foreseeable future. ECF 1 at 1-2. Citing *Zadvydas v. Davis*, 533 U.S. 678 (2001), he contends his detention violates the Due Process Clause of the Fifth Amendment to the Constitution and 8 U.S.C. § 1231(a)(6). *Id.* at 5-7. The Court directed Respondents to show cause why the habeas petition should not be granted. ECF 3.

The habeas petition should be denied or dismissed. Petitioner has not discharged his burden under *Zadvydas* to show that there is “no significant likelihood of removal in the reasonably foreseeable future.” Petitioner focuses on whether his removal to Honduras is reasonably foreseeable but fails to demonstrate that removal to a third country is impracticable or impossible.

And even if Petitioner had made the required initial showing under *Zadvydas*, Respondents have now rebutted it. Respondents have and continue to act diligently by attempting to remove Petitioner to countries other than Honduras. Those efforts have not yet been successful, but Respondents continue to their efforts to identify alternative third countries to which Petitioner can be removed. Also, given his participation in the custody review process, Petitioner is not entitled to a bond hearing or further procedures.

STATEMENT OF FACTS

The following facts are part of the Declaration of Lilia Rangel, a Deportation Officer for Enforcement and Removal Operations (“ERO”) at United States Immigration and Customs Enforcement (“ICE”). Exhibit 1, Declaration of Lilia Rangel ¶¶ 1-3. Some facts alleged in the petition (ECF 1) are included as well.

Petitioner is a native and citizen of Honduras. *Id.* ¶ 5; *see also* ECF 1, ¶¶ 1, 10, 1(15).¹ In March 2007, Petitioner was encountered by United States Border Patrol agents near Hildago, Texas after he entered the United States without being admitted or paroled. *Ex. 1*, ¶ 6. That same day, Customs and Border Patrol (CBP) processed Petitioner for expedited removal pursuant to section 235(b)(1) of the Immigration and Nationality Act (“INA”). *Id.*, ¶ 7 (citing 8 U.S.C. § 1225(b)(1)). Petitioner was removed from the United States in March 2007. *Id.*, ¶ 7

In January 2011, Petitioner was encountered by Immigration and Customs Enforcement (ICE) in Johnson County, Indiana after entering the country without being admitted or paroled. Petitioner was processed for reinstatement of the prior order of removal and was removed from the United States for a second time in February 2011. *Id.*, ¶ 8.

¹ Petitioner’s numbered paragraphs restart at number one beginning on page 4 with the Statement of Facts.

In October 2012, Petitioner was again encountered by United States Border Patrol agents near Hildago, Texas after entering the United States without being admitted or paroled. *Id.*, ¶ 9. Petitioner was again processed for reinstatement of the prior order of removal and removed from the United States for a third time in October 2012. *Id.*, ¶ 9.

Petitioner re-entered the United States at an unknown time and place after his third removal. *Id.*, ¶ 10. In May 2021, Petitioner was encountered by ICE at the Marion County Jail in Indianapolis, Indiana after officers at the jail determined that Petitioner could be present in the United States illegally and contacted ICE for assistance. *Id.*, ¶ 11. On July 28, 2021, Petitioner was turned over to ICE for processing and detention. *Id.*, ¶ 12. Petitioner was released from ICE custody under an order of supervision in August 2021. *Id.*, ¶ 13.

In May 2024, Petitioner was taken into ICE custody to reinstate and enforce the prior order of removal. *Id.*, ¶ 14. An officer from U.S. Citizenship and Immigration Services (“USCIS”) interviewed the Petitioner to assess whether Petitioner could meet the threshold to pursue an application for relief from removal. *Id.*, ¶ 15. USCIS concluded that Petitioner did not meet the requisite standard for the relief that he sought and referred the matter to an Immigration Judge for review. *Id.*, ¶ 16.

On July 3, 2024, an Immigration Judge reviewed the findings made by USCIS, reversed their determination, and placed Petitioner in proceedings before the Immigration Court to pursue an application for relief. *Id.*, ¶ 16. On December 17, 2024, Petitioner’s application for relief was granted by the Immigration Judge. No appeal was taken of the Immigration Judge’s decision by either party. *Id.*, ¶ 16.

Pursuant to 8 U.S.C. § 1231(a)(1)(A), an alien who has been ordered removed shall be removed from the United States within 90 days. *Id.* ¶ 21. If an alien has not been removed at or

near 90 days after a removal order, ERO conducts a File Custody Review, also known as a Post-Order Custody Review (“POCR”), to determine the necessity of continued custody. *Id.* When conducting a 90-day POCR, factors to be considered include a detained individual’s flight risk, any danger the individual may pose to the community, any threat to national security, and whether there is a significant likelihood of removal in the reasonably foreseeable future. *Id.*

If an alien has been detained pursuant to a final removal order for 180 days, a Transfer Checklist generally is completed with information related to follow-up actions taken to obtain a travel document after the initial 90-day POCR and every 90 days thereafter. *Id.* ¶ 22. The Transfer Checklist is transferred to the ICE/ERO Headquarters POCR Unit, which makes the ultimate decision on the individual’s continued detention beyond 180 days, or every 90 days thereafter. *Id.* This decision is based on whether there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* A File Custody Review for Petitioner was conducted in November 2024. ECF 1, ¶ 2(16).

On August 15, 2025, Petitioner was served with a Decision to Continue Detention following the review of his custody status. Ex. 1, ¶ 23 Since the December 2024 order of the Immigration Court became final, the United States Department of Homeland Security (“DHS”) has attempted to remove Petitioner to alternative third countries with no success. *Id.* ¶ 24. ICE continues its efforts to identify alternative countries to which Petitioner can be removed. *Id.* ¶ 25.

ARGUMENT

28 U.S.C. § 2241(a) vests each district court with the power to grant a writ of habeas corpus. Such a writ “shall not extend to a prisoner” unless “[h]e is in custody in violation of the Constitution or laws or treaties of the United States[.]” 28 U.S.C. § 2241(c)(3). The Court of Appeals reviews legal issues in connection with a § 2241 habeas petition *de novo*, while factual

findings are reviewed for clear error. *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012).

ARGUMENT

I. Counts I and II fail because Petitioner has not shown removal is unlikely, or alternatively, Respondents can rebut any such showing

Upon the entry of a final removal order, “the Government ordinarily secures the alien’s removal during a subsequent 90-day statutory ‘removal period,’ during which time the alien normally is held in custody.” *Zadvydas*, 533 U.S. at 682. If the alien is not removed during this 90-day period, 8 U.S.C. § 1231(a)(6) “authorizes further detention.” *Id.* In *Zadvydas*, the Supreme Court held a 6-month period of detention is presumptively reasonable. *Id.* at 701. “After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.* The presumption does not mean that “every alien not removed must be released after six months,” but instead that the alien may be held in confinement until “it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

Here, Petitioner has not demonstrated “good reason to believe” there is no significant likelihood of removal in the reasonably foreseeable future. He mainly focuses on the Immigration Court order deferring removal to Honduras based on an alleged threat of persecution there. “But because withholding of removal is a form of country specific relief, nothing prevents DHS from removing the alien to a third country other than the country to which removal has been withheld or deferred.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021) (citation modified). ICE has been attempting to remove Petitioner to countries other than Honduras. *See supra* Statement of Facts (“SOF”). Attempts to remove Petitioner to third countries have not yet been successful,

but ICE is continuing to identify such countries. *Id.* Petitioner makes no attempt to show that there are no countries outside of Honduras to which Petitioner could be removed.

Moreover, the mere fact that such removal has not yet occurred since the IJ's December 2024 order does not establish that there is no significant likelihood of removal in the reasonably foreseeable future. *See Masih v. Lowe*, No. 4:24-CV-01209, *3 & n.32 (M.D. Pa. Oct. 2, 2024) (“[T]he fundamental basis of [petitioner’s] argument appears to be that his removal is unlikely simply because it has not occurred to this point[.]”) (citation modified). Stated differently, “[s]peculation and conjecture are not sufficient to carry this burden, nor is a lack of visible progress” in Petitioner’s removal “sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future.” *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, *3 (S.D. Tex. Oct. 21, 2024) (citation modified). “Because ICE is still actively pursuing” Petitioner’s removal “and his detention furthers Congress’s goal of ensuring his presence for removal,” Petitioner “is, therefore, not entitled to release under *Zadvydas*.” *Bains v. Garland*, No. 2:23-cv-00369-RJB-BAT, 2023 WL 3824104, *4 (W.D. Wash. May 16, 2023).

In the same vein, a “mere delay” in obtaining travel documents “does not trigger the inference that an [individual] will not be removed in the reasonably foreseeable future because the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals.” *Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, *4 (W.D. Okla. Aug. 27, 2024) (citation modified), *adopted*, 2025 WL 486679, *1-4 (W.D. Okla. Feb. 13, 2025). Indeed, part of the delay in this case is associated with Petitioner’s efforts to secure “withholding or asylum,” which efforts “do not normally trigger the concerns raised by *Zadvydas*.” *Roman v. Garcia*, No. 6:24-CV-01006, *3 (W.D. La. Jan. 29, 2025). And even when the Government “has not identified a specific date by which it expects a travel

document to issue,” it remains true that “uncertainty as to when removal will occur does not establish that detention is indefinite.” *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, *4 (W.D. Wash. May 10, 2024). In sum, Petitioner has not provided competent evidence to show that removal to a country other than Honduras is unlikely.

Even if Petitioner had made an initial showing removal is unlikely, Respondents have now rebutted it. ICE has acted diligently by attempting to remove Petitioner to countries other than Honduras. *See supra* SOF. Those efforts have not succeeded but ICE is continuing to look for alternative countries. *Id.* If it believes all regulatory requirements can be met, ICE also has the option of asking the Immigration Court to lift the deferral order with respect to Honduras. *Id.*² All of this defeats any assertion there is no significant likelihood of removal. *See, e.g., Soudom*, 2025 WL 1594822, at *2 (finding the respondents “sufficiently rebutted” any initial showing, in part because “[i]mmigration officials have diligently sought the necessary travel documents for petitioner from South Africa since his detention”).

II. Count I also fails because Petitioner has not established an entitlement to a bond hearing or other cumulative process

The Court should reject Petitioner’s argument that his detention without “a bond hearing or other meaningful process” to assess whether his continued confinement is justified violates the Due Process Clause of the Fifth Amendment to the United States Constitution. ECF 1 ¶ 14(29). Although Count I is styled as a Fifth Amendment due process claim and Count II is styled as a claim under 8 U.S.C. § 1231(a)(6), the reality is that both claims are covered by *Zadvydas*. *See Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, *6 (W.D. Okla. Dec. 18, 2007)

² Deferral of removal can be terminated if the Government files a motion with and makes an appropriate showing before the Immigration Court. 8 C.F.R. §§ 1208.17(d)(1), (4). Deferral of removal also can be terminated “based on diplomatic assurances forwarded by the Secretary of State.” *Id.* §§ 1208.17(f), 1208.18(c).

(“Petitioner fails to elaborate on the details of any procedural due process claim; rather, he appears to base such claim on an entitlement to release pursuant to *Zadvydas*, which has already been rejected in addressing his statutory claim.”); *see also Nasr v. Larocca*, No. CV 16-1673-VBF(E), 2016 WL 2710200, *5 (C.D. Cal. June 1, 2016) (“[W]here Petitioner has failed to meet his burden to show there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*, Petitioner also has failed to prove that his continued detention violates due process.”) (citation modified).³ In addition to the points set forth *supra* in Argument § I, Count I fails for two more independent reasons.

First, Petitioner is not entitled to further process because he has been and will continue to be eligible for POCRs. As summarized in the Statement of Facts, an initial 90-day custody determination is conducted by the relevant district director or the Director of Detention and Removal Field Office (collectively “Director”). 8 C.F.R. §§ 241.4(c)(1), 241.4(f)(1)-(8), 241.4(h)(1), 241.4(k)(1)(i). During the next 90-day period, the Director may “conduct such additional review of the case as he or she deems appropriate,” “release the alien,” or refer the alien to the Headquarters Post-Order Detention Unit for “further custody review.” *Id.* §§ 241.4(c)(2), 241.4(k)(1)(ii), 241.4(k)(2)(i)-(ii). Petitioner’s latest File Custody Review occurred in November 2024 and resulted in a Decision to Continue Detention issued on August 15, 2025. *See supra* SOF. POCRs under § 241.4 “alleviate any due process concerns in this case.” *Masih*, 2024 WL 4374972,

³ To the extent Petitioner is asserting a substantive due process claim, the same analysis applies. *See, e.g., Dusabe*, 2024 WL 5465749, at *5-6 (“Courts, including this one, have held that a petitioner’s failure to establish that his detention violates *Zadvydas* negates a substantive due process claim.”); *Singh v. Barr*, No. 19-CV-732, 2019 WL 4415152, *3 (W.D.N.Y. Sept. 16, 2019) (“Conversely, if detention is valid under *Zadvydas*, it cannot violate substantive due process.”); *Jovel-Jovel v. Contreras*, No. H-18-1833, 2018 WL 11473467, *4 (S.D. Tex. Oct. 30, 2018) (“[I]f detention is no longer than reasonably necessary to effectuate removal, it will comport with § 1231(a)(6), *Zadvydas*[,] as well as substantive due process protections.”) (citation modified).

at *4; *see also* *Dusabe*, 2024 WL 5465749, at *5 (finding no “deprivation of procedural due process” where ICE performed periodic custody reviews and “issued a Decision to Continue Detention”).

CONCLUSION

For the foregoing reasons, the habeas petition should be denied or dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 8, 2025, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties, including:

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