

United States District Court
Western District of Texas
San Antonio Division

Tajdinali Momin,
Petitioner,

v.

USDHS Secretary Kristi Noem, *et al*,
Respondents.

No. 5:25-CV-1017-OLG (HJB)

**Federal¹ Respondents' Response in Opposition to
Petitioner's Writ of Habeas Corpus**

Respondents timely submit this response per this Court's Order dated October 27, 2025, directing service and ordering a response within seven days of service. *See* ECF Nos. 11; 13 (confirming CMRRR delivery on October 31, 2025). In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Ibrahim ("Petitioner"), *pro se*, seeks release from civil immigration detention, alleging his removal to Pakistan is not reasonably foreseeable and that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied, including his request for attorney's fees under the Equal Access to Justice Act ("EAJA")².

Despite his allegation that there is "no basis" for his continued detention, Petitioner is lawfully detained with a final order of removal, his constitutional challenge to continued detention is not ripe until he has been detained in post-order custody for at least six months, and there is insufficient reason to believe that removal is unlikely in the foreseeable future. 8 U.S.C. §

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 are lawfully detaining Petitioner on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

² *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

1231(a)(6); *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The burden of proof has not shifted to Respondents, but even if it had, Respondents can show that removal to Pakistan is, in fact, 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 Pakistan. Exh. A at ¶ 7. In June 1994, Petitioner unlawfully attempted to enter the United States possessing a Pakistani passport bearing a different name and belonging to a different person. *Id.* at ¶ 8. Petitioner failed to appear for his hearing and was ordered excluded from the United States. *Id.* at ¶ 11. In June 1995, the Petitioner failed to surrender himself for removal. Exh. A at ¶ 12.

In June 2005, Petitioner attempted to adjust status to lawful permanent resident, but those applications were denied. *Id.* at ¶ 13. In 2008 and 2009, Petitioner filed additional petitions to adjust status, and those were denied. *Id.* at ¶ 14–15. In 2009, Petitioner’s motion to reopen his order of deportation, was denied and affirmed on appeal by the Board of Immigration Appeals (in 2010). *Id.* at ¶ 16. In September 2009, ICE took Petitioner into custody to execute the order of exclusion and attempted to obtain a travel document. Exh. A. at ¶ 17. On May 24, 2010, ICE released Petitioner on an order of supervision. *Id.* at 20.

In 2012, Petitioner again attempted to file an application with Citizenship and Immigration Services (USCIS), which was denied. *Id.* at ¶ 22. On July 18, 2013, ERO provided Petitioner with a letter from the Consulate in Houston notifying Petitioner the Consulate was waiting for the government of Pakistan to verify his identity and issue him a travel document. Exh. A at ¶ 23. In April 2014, Pakistan did not issue a travel document because they could not verify Petitioner’s antecedents. *See, id.* at ¶ 24. ICE instructed Petitioner to obtain a travel document for Pakistan and to bring evidence demonstrating his efforts at his scheduled report in(s). *Id.* at ¶ 25.

On June 6, 2025, ICE detained Petitioner. Exh. A at ¶ 26. On June 24, 2025, ICE served Petitioner the Form I-229, Warnings for Failure to Depart, Notice of Alien File Custody Review, and two Pakistani applications to facilitate obtaining a Pakistani travel document. *Id.* at ¶ 28. On July 5, 2025, ICE spoke with Petitioner regarding incorrect information in his travel document applications. *Id.* at ¶ 29. Petitioner assisted with the corrections but refused to sign the applications. *Id.* ICE informed Petitioner he was required to assist in obtaining his travel documents or he will be considered failing to comply. *Id.*

On July 7, 2025, ICE Headquarters (HQ) informed ICE San Antonio, a new travel document request was needed. Exh. A at ¶ 30. On the same date, ICE submitted the travel document request to the Pakistani Consulate noting Petitioner refused to sign the signature block section. *Id.* at ¶ 31. In August 2025, ICE secured a removal date for Petitioner to occur in September 2025. *Id.* at ¶ 33. However, Petitioner could not be removed at that time, as Pakistan could not confirm his identity. Exh. A at ¶ 34. ICE HQ informed ICE San Antonio that the government of Pakistan is verifying his identity. *Id.* at ¶ 34.

On September 2, 2025, ICE San Antonio issued a 90-day post-order custody review (POCR) letter informing Petitioner of ICE's continued detention determination. The 90-day POCR was served on September 25, 2025. *Id.* at ¶ 35. HQ-RIO and ICE San Antonio continue to engage with the Pakistani Consulate pending the issuance of the travel document. *See* ¶¶ 31, 36.

ICE's FY2024 annual report documents 132 Pakistani nationals were removed from the United States, the highest number of removals in the past four years. *See* <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last accessed November 7, 2025). In FY2025, as of January 2025, 15 Pakistani nationals were removed. *See* [ICE Enforcement and Removal Operations Statistics | ICE](#) (filtered by nationality and last accessed November 7,

2025).

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*, 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.

III. 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).

IV. 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 Pakistan 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 that he has been in post-order custody for six months, and 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). Petitioner additionally argues that because he filed for adjustment of status he is in a period of, “authorized stay,” reducing his likelihood of removal. ECF No. 1 at 14. However, a period of ‘authorized stay’ addresses inadmissibility purposes and whether Petitioner continues to accrue unlawful presence when he attempts to adjust status to permanent resident, and not removal under § 1231. *See* INA §§ 212(a)(9)(B); 212(a)(9)(C); 8 U.S.C. §§ 1182(a)(9)(B); 1182(a)(9)(C). 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. First, ICE’s FY2024 annual report documents 132 Pakistani nationals were removed from the United States, the highest number of removals in the past four years. *See* <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last accessed November 7, 2025). In FY2025, as of January 2025, 15 Pakistani nationals were removed. *See* [ICE Enforcement and Removal Operations Statistics | ICE](#) (filtered by nationality and last accessed November 7, 2025).

In July 2025, ICE delivered to the Pakistani Consulate Petitioner’s travel document application. Ex. A at ¶ 31. ICE previously scheduled Petitioner for removal in September 2025. *Id.* at ¶ 33–34. Petitioner’s substantive due process claim fails here as a matter of law.

V. 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).

Petitioner argues he has not violated his conditions of supervised release, “in any way whatsoever,” but Petitioner was instructed to apply for and provide proof he applied for a travel document and assist ICE in obtaining a travel document. *Compare* ECF No. 1 at ¶ 43 *with* Exh. A (most recently, Petitioner refuses to sign the application), Exh. B at 1. Additionally, ICE has continued to review Petitioner's detention status through the POCR process. *See* Exh. A (For example, the 90-day POCR was served in September 2025). Petitioner's allegations are insufficient to establish ICE has 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.

VI. ICE Has Not Initiated Third Country Removal Efforts, and Petitioner's Challenges are Premature.

ICE has not attempted to remove Petitioner to a third country and his challenges are premature. ECF No. 1 at 11–12. Petitioner argues ICE’s March 30, 2025, does not comport with minimal due process and relies on *D.V.D. v. DHS. D.V.D. v. U.S. Dept. of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass. 2025). Respondents note the Supreme Court stayed the preliminary injunction issued in that case, pending an appeal to the First Circuit Court of Appeal and disposition of a petition for a writ of certiorari, if such writ is timely sought. *Dept. of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025).

VII. Conclusion

Petitioner’s detention is lawful under 8 U.S.C. § 1231(a)(6) and any due process claim is premature under *Zadvydas*. Moreover, Petitioner fails to show good reason to believe that there is no significant likelihood of removal to Pakistan in the reasonably foreseeable future. As such, the burden has not shifted to ICE to show the opposite. Even if the burden had shifted, ICE could establish that removal is foreseeable. Additionally, ICE has afforded Petitioner procedural due process over the course of his five-month post-order detention, including post-order custody reviews. Petitioner’s continued detention, therefore, is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Respectfully submitted,

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