

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

IVAN ALEJANDRO IBARRA MORENO,)

Petitioner,)

v.)

Case No. 25-3168-JWL

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.)

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Ivan Alejandro Ibarra Moreno (“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 October 15, 2024, and there is no significant likelihood of removal to his home country of Mexico in the reasonably foreseeable future. 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, procedurally and substantively and 8 U.S.C. § 1231(a)(6). *Id.* at 7-8. 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.” 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 Mexico. 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 the nature of his offenses and 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 Emilia Skierkowska, a Deportation Officer for Enforcement and Removal Operations (“ERO”) at United States Immigration and Customs Enforcement (“ICE”). Exhibit 1, Declaration of Emilia Skierkowska ¶¶ 1-3. Some facts alleged in the petition (ECF 1) and attachments are included as well.

Petitioner is a native and citizen of Mexico. ECF 1, ¶ 6. Petitioner entered the United States in or around June 2006. Ex. 1, ¶ 6. In June 2010, Petitioner was granted Lawful Permanent Resident status. *Id.*, ¶ 7. In November 2022, Petitioner applied for entry into the United States as a returning resident at the Mariposa Port of Entry in Nogales, Arizona. He was subsequently paroled into the United States. *Id.*, ¶ 8. On January 16, 2024, Petitioner was convicted in the United States District Court for the District of Arizona for Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C).

Petitioner was taken into ICE custody after his release from custody on his criminal charges on October 15, 2024. Ex. 1, ¶ 10. On that date, the United States Department of Homeland Security (DHS) issued a Notice to Appear charging Petitioner as inadmissible to the United States under the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(7)(B)(i)(II), 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(C). *Id.*, ¶ 11.

On November 11, 2024, Petitioner filed an application for relief from removal with the Immigration Court. *Id.*, ¶ 12. On January 27, 2025, Petitioner was ordered removed from the

United States, but the Immigration Judge also granted his application for relief. No appeal was taken. *Id.*, ¶ 13.

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 May 2, 2025, Petitioner was served with a Decision to Continue Detention following the review of his custody status. Ex. 1, ¶ 18. On or about July 24, 2025, Petitioner was served a Notice to Alien of Interview for Review of Custody Status. Petitioner was interviewed regarding his custody status on July 24, 2025, and again on August 5, 2025. *Id.*, ¶ 19. As of this filing, a decision has not yet been made on continuing with detention. *Id.*, ¶ 20. Since the January 2025 order of the Immigration Court became final, DHS has attempted to remove Petitioner to

alternative third countries with no success, including Canada, Spain, and Chile. *Id.*, ¶ 21.; ECF 1-2, pg. 6. ICE continues its efforts to identify alternative countries to which Petitioner can be removed. Ex. 1, ¶ 22.

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).

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 argues that he does not know if he will or will not be accepted by a third country, no country has accepted him yet. True, attempts to remove Petitioner to third countries have not yet been successful, but ICE is continuing to identify such countries for removal and has attempted removal to three other countries. *See supra*, Statement of Facts (“SOF”). The mere fact that such removal has not yet occurred since the IJ’s January 2025 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*, CIVIL ACTION NO. H-24-2823, 2024 WL 4534747, at *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 *Zadydas*.” *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, at *4 (W.D. Wash. May 10, 2024).

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 Mexico. *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 Mexico. *Id.*¹ All of this defeats any assertion there is no significant likelihood of removal. *See, e.g., Soudom v. Warden, FCI-Leavenworth*, No. 25-3063-JWL, 2025 WL 1594822, at *2 (D. Kan. May 23, 2025) (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. Counts II and III also fail 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 timely and meaningful opportunity to demonstrate that [he] should not be detained” violates the Due Process

¹ 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).

Clause of the Fifth Amendment to the United States Constitution. ECF 1 ¶ 27. Although Count II is styled as a Fifth Amendment substantive due process claim and Count I is styled as a claim under 8 U.S.C. § 1231(a)(6), the reality is both claims are covered by *Zadvydas*. *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, at *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).²

In addition to the points set forth *supra* in Argument § I, Count III 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

² To the extent Petitioner is asserting a substantive due process claim, the same analysis applies to Petitioner’s procedural due process claim. *See Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, *6 (W.D. Okla. Dec. 18, 2007) (“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).

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 on August 5, 2025 and a decision is pending from that review. Prior to that, Petitioner was issued a Decision to Continue on April 25, 2025. *See supra* SOF. POCRs under § 241.4 “alleviate any due process concerns in this case.” *Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, at *4 (M.D. Pa. Oct. 2, 2024); *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”).

Second, “Congress has required detention (without a bond hearing) for some categories of aliens[.]” *Olmos v. Holder*, 780 F.3d 1313, 1315 (10th Cir. 2015). 8 U.S.C. § 1226(c)(1)(B) states that the Attorney General “shall” take into custody any alien who “is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title.” This means “[t]he Attorney General must detain aliens in Paragraphs ‘A’ through ‘D’ without a bond hearing.” *Olmos*, 780 F.3d at 1325; *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 527 n.2 (2021) (explaining that aliens “may generally apply for release on bond,” but there is an “exception” for “certain criminal aliens” under § 1226(c)). Petitioner fits this description, as he was found guilty of “a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance” under § 1227(a)(2)(B)(i). *See supra*, SOF; *see also Ogole v. Garland*, No. 24-3198-JWL, 2025 WL 548452, at *3 (D. Kan. Feb. 19, 2025) (rejecting “any claim that petitioner is entitled to a bond hearing,” in part because his “drug conviction” made his detention “mandatory”).

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 18, 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. I further certify that I caused a copy of the foregoing and the notice of electronic filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

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