

United States District Court
Western District of Texas
El Paso Division

Adriana Maria Quiroz Zapata
Petitioner,

v.

No. 3:25-CV-00376-LS

Mary De Anda-Ybarra, Field Office Director
for Enforcement and Removal Operations,
et al,
Respondents.

Respondents' Response to Show Cause Order

Respondents submit this response per this Court's Order to Show Cause dated September 15, 2025. ECF No. 3. Petitioner Adriana Quiroz Zapata is detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1231, because she has a reinstated final order of removal. *See* 8 U.S.C. § 1231(a)(5); ECF No. 1 ¶ 7; *Johnson v. Guzman Chavez*, 594 U.S. 523, 526, 534–535 (2021). ICE is actively pursuing efforts to repatriate her to a third country. *See* Ex. 1 (ICE Declaration).

Despite being granted relief from removal under the Convention Against Torture (CAT), such relief extends only to the country where Petitioner was found to have a reasonable fear of being tortured: Colombia. *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, nothing prevents DHS from removing Petitioner to a third country. *See e.g., Guzman Chavez*, 594 U.S. at 531–32, 535–36; 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). This is Petitioner's second

habeas petition; this Court denied her first petition on June 25, 2025, finding that she had not met her burden of proving that removal was unlikely or that she would not pose a significant flight risk if released. *See Quiroz Zapata v. Anda-Ybarra, et al*, No. 3:25-CV-148-LS, Nos. 18–19 (W.D. Tex. June 25, 2025). Petitioner’s current habeas petition does not overcome these deficiencies and should likewise be denied.

a. Relevant Background

Petitioner is a native and citizen of Colombia. ECF No. 1 ¶ 6. On November 12, 2021, Petitioner was removed from the United States. ECF No. 1 ¶ 7. On August 23, 2024, Petitioner was arrested by immigration officials after she unlawfully re-entered the United States. ECF No. 1 ¶ 7. Thereafter, her prior removal order was reinstated, and she was transferred to the El Paso Service Processing Center. ECF No. 1 ¶ 7; 8 U.S.C. § 1231(a)(5). On December 10, 2024, ERO served Petitioner with a 90-day Post Order Custody Review (POCR) informing Petitioner she would remain detained as she is a flight risk. ECF No. 1 ¶ 10.

On February 21, 2025, an immigration judge granted Petitioner’s application for withholding of removal under CAT, restricting ICE from executing her final order of removal to Colombia. ECF No. 1 ¶ 11; *see, e.g.*, 8 U.S.C. § 1231(b)(3). On March 4, 2025, Mexico tentatively agreed to accept Petitioner for third country removal. ECF No. 1 ¶ 13. On May 14, 2025, however, Mexico reversed that decision. ECF No. 1 ¶ 21. On May 22, 2025, ERO served Petitioner and counsel a POCR declining release. ECF No. 1 ¶ 23.

Between June 11 and 12, 2025, ERO submitted requests to the following consulates seeking third country acceptance of Petitioner: Brazil, Costa Rica, Ecuador, El Salvador, France, Guatemala, Peru, Panama, and Spain. ECF No. 1 ¶ 24. In the interim, ERO has received declinations from Peru, Spain, France, Panama, Uruguay, Brazil. ECF No. 1 ¶¶ 25–28. ERO is

pending responses from Costa Rica, El Salvador, and Guatemala. *Compare* ECF No. 1 ¶¶ 24 with ¶¶ 25–28. In addition, on September 2, 2025, ERO submitted another request to Mexico. ECF No. 1 ¶¶ 33. ERO is pending a response from Mexico. *Id.*

b. 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 at 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.

c. Petitioner’s Reinstated Removal Order is Valid.

This Court has no jurisdiction to review Petitioner’s claim that her 2021 removal order was not properly reinstated. Indeed, it is uncontested that Petitioner applied for and received CAT protection following the reinstatement of her 2021 removal order and her placement in reasonable fear proceedings. *See id.* ¶ 16; *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576–77 (2022) (explaining review process for fear claims resulting from the reinstatement of a removal order).

Moreover, the claim is unsupported, legally incorrect, and outside the scope of this Court's jurisdiction. *See* 8 U.S.C. § 1252(d), (g) (restricting district court review of removal orders or decision to execute removal orders against any alien). The proper recourse for such a claim is a motion with the Immigration Court and administrative review at the Board of Immigration Appeals (BIA). *See, e.g., id.* § 1252(a)(2)(D); *Wilkinson v. Garland*, 601 U.S. 209, 218–19 (2024). Even still, the Fifth Circuit has rejected this type of claim where the alien admits the requisite predicate findings resulting in no actual prejudice. *See Ojeda-Terrazas v. Ashcroft*, 290 F.3d 292, 302 (5th Cir. 2002).¹

d. 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 a third country 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.

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

¹ Even this Court noted in the Order Denying Post-Order Motions that Petitioner had conceded this fact in her initial habeas petition and never took the opportunity to amend her concession. *See Quiroz Zapata v. Anda-Ybarra, et al*, No. 3:25–CV–148–LS, No. 24 (W.D. Tex. June 25, 2025).

is no significant likelihood of removal in the reasonably foreseeable future. *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 is subject to a final order of removal, but she, nonetheless, urges this Court to order that her continued detention pending removal is contrary to her substantive and procedural rights under the Fifth Amendment. Specifically, Petitioner alleges that “removal to a safe third country is not reasonably foreseeable, as she has not substantial ties to any other country besides Colombia and the United States. ECF No. 1 at 23. Beyond these conclusory allegations, Petitioner

fails to allege any reason, much less a “good reason,” to believe that there is no significant likelihood of removal in the foreseeable future. These claims are wholly insufficient under *Zadvydas. 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).

Petitioner cannot meet her burden to establish no significant likelihood of removal in the reasonably foreseeable future. *See 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). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

Even if the burden did shift to ICE in this analysis, ICE could show that removal is likely in the foreseeable future. ICE has contacted multiple countries seeking acceptance of Petitioner. While some requests have been refused, the requests to Costa Rica, El Salvador, Guatemala, and Mexico (second request) remain pending. As such, removal is likely in the reasonably foreseeable future, and her continued detention is lawful. She will continue to receive POCRs as outlined by regulation until she is removed or released. Petitioner’s substantive due process claim fails and should be denied.

e. ICE Has Afforded Petitioner Procedural Due Process.

Petitioner cannot show a procedural due process violation here. To establish a procedural due process violation, Petitioner must show that she 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 v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)).

Additionally, 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).

In addition, ICE has conducted custody reviews of Petitioner's detention as required by regulation. Once the 90-day removal period concluded in this case, ICE fulfilled its regulatory duty under 8 C.F.R. § 241.4 to perform a post-order custody review ("POCR") to determine whether Petitioner should remain detained or whether she should be released in the exercise of discretion under an Order of Supervision. *See* ECF No. 1 ¶¶ 10. Following this 90-day POCR, ICE served a copy of the Decision to Continue Detention on Petitioner, and she acknowledged receipt of the same via her signature on December 10, 2024. *Id.* At or around the 180-day mark, Petitioner received another POCR, wherein ICE determined that she should remain detained. *See* ECF No. 1 ¶ 23; 8 C.F.R. § 241.13. POCRs are set to occur at the 270-day and the one-year marks, as well. *Id.*

Courts have found that these regulatory deadlines are not firm, so long as the review itself has occurred. *See Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354 at *6 n. 6 (W.D. Tex. May 24, 2016). Even if Petitioner had alleged such a violation, the remedy is not immediate release from custody, but an opportunity for the government to provide substitute process. *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172 at *12 (W.D. Tex. Mar. 23, 2020).

The POCR process addresses constitutional concerns that were identified in *Zadvydas*, providing safeguards and allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. ICE is in compliance with these regulatory provisions. As such, Petitioner's procedural due process claim, like her substantive one, should be denied.

f. Conclusion

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

Respectfully submitted,

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Certificate of Service

I certify that on October 6, 2025, a true and correct copy of the foregoing Government's Response to Show Cause Order was electronically filed with the Clerk of the Court using the CM/ECF System.

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