

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JHONATAN HERNANDEZ-PEREZ,)
)
Petitioner,)
v.) Case No. CIV-25-1081-J
)
U.S. IMMIGRATION AND CUSTOMS)
ENFORCEMENT et al.,)
)
Respondents.)

REPORT AND RECOMMENDATION

Petitioner, proceeding pro se,¹ filed a petition for habeas corpus under 28 U.S.C. § 2241, challenging his detention by United States Immigration and Customs Enforcement (ICE) officials after he was granted deferral of removal. Docs. 1, 2.² United States District Judge Patrick J. Wyrick referred the case to the undersigned Magistrate Judge for initial proceedings under 28 U.S.C.

¹ This Court construes “[a] pro se litigant’s pleadings . . . liberally,” holding them “to a less stringent standard than formal pleadings drafted by lawyers.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991); see *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The Court, however, may not serve as Petitioner’s advocate, creating arguments on his behalf. See *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

² Citations to a court document are to its electronic case filing designation and pagination. Except for capitalization, quotations are verbatim unless otherwise indicated.

§ 636(b)(1)(B), (C). Doc. 5.³ The United States filed a response. Doc. 14. So the matter is at issue.⁴

For the reasons set forth below, the undersigned recommends the Court conditionally grant habeas corpus relief to Petitioner after a forty-five-day deferral period so that Respondents can provide the Court with additional information on the removal efforts.

I. Procedural history.

Petitioner is a native and citizen of Mexico. Doc. 14, Ex. 5, at 1. It is unknown when he entered the United States, *id.*, and Respondents are currently detaining him within this judicial district. Petitioner has a recent history of drug-related convictions, including:

- October 4, 2024 Wisconsin felony convictions for manufacture/delivery of fentanyl 10 grams or less; manufacture/delivery of THC 200 grams or less, possession with intent of THC 200 grams or less, and maintaining a drug trafficking place, for which he received a sentence of three years' imprisonment on each count to be served concurrently, Doc. 14, Ex. 2, at 1-2; and

³ The case was later reassigned to United States District Judge Bernard M. Jones. Doc. 15.

⁴ In the order for response, the undersigned gave Petitioner fourteen days to file a reply to Respondents' response. *See* Docs. 9. 10. That time has not expired but, given the recommendation, the undersigned concludes it is in the interest of justice to promptly file the Report and Recommendation. Petitioner may still object to this Report and Recommendation in the normal course.

- June 10, 2019 Wisconsin misdemeanor convictions for possession of THC; possession/illegally obtaining a prescription, for which he received a sentence of five months in jail on each count to run consecutively; and possession/illegally obtaining a prescription for which he received a sentence of two years' probation, *id.* Ex. 3, at 1-3.

Petitioner received a notice to appear in Chicago, Illinois, dated October 15, 2024. Doc. 14, Ex. 1. He appeared and was apparently detained and remains in ICE custody. *Id.* Ex. 1, at 2.

On January 2, 2025, an immigration judge (IJ) denied Petitioner's application for asylum and denied the withholding of removal under the Immigration and Nationality Act (INA) and the Convention Against Torture (CAT). Doc. 14, Ex. 4, at 1. The IJ granted Petitioner's application for deferral of removal under the CAT. *Id.* Because the IJ granted the deferral, ICE cannot remove him to Mexico, but it can remove him to another country where he is "not likely to be tortured." 8 C.F.R. § 1208.17; *see also* Doc. 14, at 3 & n.10.

On January 3, 2025, Petitioner submitted a Detainee Request form asking about his release from custody. Doc. 2, Ex. 2. The response stated that Petitioner would "[m]ost likely . . . be released after 90 days on an Order of Supervision." *Id.* (Response dated Jan. 4, 2025).⁵ And that he was "scheduled for release on or about April 2, 2025." *Id.*

⁵ The officer's full response read:

On April 3, 2025, a Department of Homeland Security (DHS) Enforcement and Removal Operations (ERO) deportation officer reviewed Petitioner's detention and determined he should remain in custody because "[t]he U.S. Government foresees no issues in effectuating your removal." Doc. 2, Ex. 2, at 6. On June 11, 2025, however, DHS issued an "Order of Supervision" for Petitioner because the agency ha[d] not effected [his] deportation or removal during the period prescribed by law." Doc. 2, Ex. 3 at 1. The order placed Petitioner "under supervision" and "permitted [him] to be at large" under certain conditions, none of which are at issue in this action. *Id.* An ICE official served Petitioner this order on June 20, 2025. Doc. 14, Ex. 5, at 2.

In response to the habeas corpus petition, the ERO deportation officer assigned to Petitioner's case, stated in a declaration that, despite the ERO

The [IJ] ordered you removed and granted you DCAT. This means you will be in custody for 90 days to allow ICE to try to remove you to a "third Count[r]y"[.] ICE will send requests to other countries to see if they will accept you as a deportee. Most likely, None of these countries will accept you and you will be released after 90 days on an Order of Supervision. You are scheduled for release on or about April 2, 2025. Please send me the address where you will live once released and the name and phone number of a person who can pick you up from Dodge on April 2, 2025."

Doc. 2, Ex. 2, at 1.

having served Petitioner with an order of supervision, “the release to supervision had not been approved by ERO Headquarters, and [Petitioner] was not released from detention.” Doc. 14, Ex. 5, at 1-2. The officer also stated that ERO Headquarters had been diligently pursuing removal of Petitioner to a third country. *Id.* at 2. He stated the ERO had made requests to the consulates of Great Britain, Spain, Chile, El Salvador, Guatemala, and the Dominican Republic. *Id.* “Each request was either denied or received no response.” *Id.* The ERO officer gave no greater specificity as to which countries had denied the request or failed to respond. *Id.* He stated only that “ERO Headquarters is continuing to pursue a third country removal.” *Id.* Respondents maintain that because Petitioner has “multiple criminal convictions, he is a priority for removal.” Doc. 14, at 4.

II. Discussion.

A. Petitioner’s failure to name the proper custodian.

Respondents first argue this Court should dismiss the petition because Petitioner has failed to name his immediate physical custodian as a Respondent. Doc. 14, at 7-8. The Court granted Petitioner’s request to add as Respondents the Attorney General, the Secretary of Homeland Security, the Acting Director and Associate Acting Director of ICE, the Field Office Director, and the warden of Cimmaron Correctional Facility as Respondents in this

matter. Doc. 17. So the undersigned recommends the Court deny Respondents' request to dismiss on this basis as moot.

B. Removal proceedings.

Petitioner claims that his continued detention by immigration authorities is improper. Doc. 1, at 6. He seeks immediate release. *Id.* at 7. He also asks this Court to “order Respondents not to transfer Petitioner outside the jurisdiction of [the] Court pending consideration of this Petition.” Doc. 2, at 3. The Court liberally construes this as a request for preliminary injunctive relief.

To obtain habeas corpus relief, Petitioner must establish that he is “in custody in violation of the Constitution or laws or treaties of the United States.” *See* 28 U.S. C. § 2241(c)(3). This Court has habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention unrelated to a final order of removal. *See Demore v. Kim*, 538 U.S. 510, 517-18 (2003); *see also Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (explaining that 28 U.S.C. § 2241 is the “basic method for obtaining review of continued *custody after* a deportation order has become final”); *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (“Challenges to immigration detention are properly brought directly through habeas.” (citing *Zadvydas*, 533 U.S. at 687-88)).

Generally, when an alien is ordered removed, the removal is to occur within a period of ninety (90) days, known as the “removal period.” *See* 8 U.S.C. § 1231(a)(1)(A). Petitioner’s removal period began on January 2, 2025, when Petitioner waived his appeal of the IJ’s order deferring removal. *See id.* § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(b); *see also* Doc. 14, Ex. 4, at 4. Petitioner claims that, after more than six months since the start of the removal period, his detention has become unreasonably indefinite, and that *Zadvydas* requires his release. *See* Doc. 2, at 2.

In *Zadvydas*, the Supreme Court noted that an alien must be detained during the 90-day removal period. 533 U.S. at 683 (“After entry of a final removal order and during the 90-day removal period, however, aliens must be held in custody.” (citing 8 U.S.C. § 1231(a)(2))). After that period, the Government may continue to detain an alien or release the alien under supervision. *Id.* (citing *id.* § 1231(a)(6)). But, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699. The Court elaborated on that standard as follows:

In answering that basic question, the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In

that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. . . .

We recognize, as the Government points out, that review must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive INS efforts to enforce this complex statute, and the Nation's need to "speak with one voice" in immigration matters. But we believe that courts can take appropriate account of such matters without abdicating their legal responsibility to review the lawfulness of an alien's continued detention.

Id. at 699-700 (citations omitted). The Supreme Court then established a presumptively reasonable detention period of six months for the Government to accomplish removal, after which the Court should determine the reasonableness of an alien's detention as follows:

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. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an 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. at 701; *see also Ibarra Morena v. Bondi*, 2025 WL 2926547, at *2-3 (D. Kan. Oct. 15, 2025) (applying this framework and granting habeas relief).

Respondents argue Petitioner can make no prima facie claim for relief under *Zadvydas*. The undersigned disagrees.

Respondents claim any delay is a simple delay, which does not trigger relief. Doc, 14, at 9. Yet Petitioner remains detained almost ten months after his removal order was final. Respondents blame the delay on the inefficiencies of the six countries the agency has contacted. *Id.* at 9-10. They state the ERO is “diligently” working and has taken “numerous actions to effectuate [Petitioner’s] removal” because he is a “priority for removal.” *Id.* at 3, 11, Ex. 5, at 2. But Respondents give no specifics from the ERO. Respondents fleetingly state in closing that “three countries have refused to accept [Petitioner].” Doc. 14, at 13 (Respondents do not name the countries or give any information about when the ERO made the requests, or when the countries denied them). Respondents do not state when the ERO made requests to the remaining three countries, or whether the ERO identified them as alternative countries only because the other countries refused to accept Petitioner. The ERO’s declaration makes no mention that three countries refused to accept Petitioner. Merely claiming Petitioner is a “priority” without more detail smacks of artifice.

Respondents do argue that Petitioner “received his 180-day custody review panel interview” on October 9, 2025. Doc. 14, at 9 n.42, 12 (citing 8

C.F.R. § 241.1(k)(1)(ii)). But despite the DHS release order, his final custody decision is still pending. *See* 8 C.F.R. § 241.4(i)(6).

The undersigned concludes Petitioner has made a prima facie showing there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. That said, Respondents have recently conducted an interview and are awaiting word from three potential countries for placement. And the undersigned acknowledges Petitioner's recent felony convictions.⁶

Given these factors, the undersigned recommends the Court:

1. Order Respondents to provide Petitioner a custody review determination no later than five days after the adoption of this Report and Recommendation, and to provide notice to the Court and to Petitioner when the ERO makes the determination;
2. Order Respondents to update the Court within 45 days of the adoption of this Report and Recommendation of the following:
 - The dates inquiries were sent to each of the six countries identified; the dates and contents of any responses received;

⁶ Petitioner has served his sentences for both his felony and misdemeanor convictions.

the dates and responses of any follow-up contacts made, and expected response time;

- Similar information about any contacts/inquiries made to any other countries (including dates; responses; follow-up information; and expected response time);

3. Grant habeas corpus relief if, at that time, it appears there continues to remain no significant likelihood of removal in the reasonably foreseeable future.⁷ The Court should order Petitioner's release under the terms and conditions set forth in Respondents' previous order of supervision (*see* Doc. 2, Ex. 3);

⁷ *See Kacanic v. Elwood*, 2002 WL 31520362, at *3-5 (E.D. Pa. Nov. 8, 2002) (granting writ where there was little contact with consular officials during first nine months of the petitioner's detention and the government's "own actions [showed] that it believe[d] that it [was] unlikely the Petitioner w[ould] be removed in the near future"); *Lewis v. INS*, 2002 WL 1150158, at *4-5 (E.D.N.Y. May 7, 2002) ("good showing" requirement satisfied where "there [was] no evidence that the Consulate responded to any of [the agency's] letters" and a panel of INS interviewers had concluded "that travel documents were unlikely to be issued in the foreseeable future and recommended the release of Petitioner pending deportation"); *Okwilagwe v. INS*, 2002 WL 356758, at *3 (N.D. Tex. Mar. 1, 2002) (granting writ where, after the petitioner had been detained for eleven months, lack of communications from consular officials provided "no way to determine" whether the removal would occur in the reasonably foreseeable future).

4. Order Respondents to not transfer Petitioner outside this district until the Court resolves this action. This would in effect grant Petitioner's request for a preliminary injunction. Ordinarily this would not be necessary as the Court would not lose jurisdiction even if Respondents moved Petitioner outside this jurisdiction. *See, e.g., Santillanes v. U.S. Parole Comm'n*, 754 F.2d 887, 888 (10th Cir. 1985) ("It is well established that jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change."); *see also Jones v. English*, 817 F. App'x 580, 582 n.2 (10th Cir. 2020) (agreeing with the district court that the petitioner's transfer "did not divest" the court of jurisdiction); *Garcia-Ayala v. Andrews*, 2025 WL 2578167, at *3 (E.D. Cal. Sept. 5, 2025) (denying the petitioner's request to enjoin the respondents from removing him outside the court's jurisdiction because the petitioner had "properly filed his habeas petition in the Eastern District [and] the Court does not lose jurisdiction over his pending habeas petition if [he] is transferred to another jurisdiction"). But, given the unique posture of this case, an order preventing transfer

would better maintain the status quo while Respondents comply with the Court's directives.

III. Recommendation and notice of right to object.

For the reasons set forth above, the undersigned recommends the Court defer the grant of habeas corpus relief for 45 days, after the adoption of this Report and Recommendation, based upon the above recommendations.

The undersigned advises the parties of their right to file an objection to this Report and Recommendation with the Clerk of this Court by November 4, 2025, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. The undersigned further advises the parties that failure to make timely objections to this Report and Recommendation waives the right to appellate review of both factual and legal questions contained herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). This Report and Recommendation disposes of the issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 28th day of October, 2025.



SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE