

United States District Court
Western District of Texas
El Paso Division

Jose Antonio Trejo Trejo
Petitioner,

v.

No. 3:25-CV-00401-KC

Warden of the ERO El Paso East Montana,
et al,
Respondents.

Federal¹ Respondents' Response to Show Cause Order

Respondents submit this response per this Court's Order to Show Cause dated September 22, 2025. ECF No. 2. Petitioner Jose Trejo Trejo is detained in the custody of U.S. Depart of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) under 8 U.S.C. § 1231, because he has a reinstated final order of removal. *See* 8 U.S.C. § 1231(a)(5); ECF No. 1 ¶ 5; *Johnson v. Guzman Chavez*, 594 U.S. 523, 526, 534–535 (2021). ICE is actively pursuing efforts to repatriate him to a third country. *See* ECF No. 1 ¶ 20.

Despite being granted deferral of removal under the Convention Against Torture (DCAT), such relief extends only to the country where Petitioner was found to have a reasonable fear of being tortured: El Salvador. *See* 8 C.F.R. §§ 208.17, 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

¹ Unless the warden in this action is a federal employee, the Department of Justice does not represent him in this action. Federal Respondents are lawfully detaining Petitioner and have direct authority under Title 8 over custody decisions in his case.

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).

a. Relevant Background

Petitioner is a native and citizen of El Salvador. Exh. 1 at ¶ 1. On February 27, 2008, Petitioner was removed from the United States to El Salvador. Exh. 1 at ¶ 4. On July 12, 2017, Petitioner was encountered by immigration officers after he unlawfully re-entered the United States. Exh. 1 at ¶ 5. DHS issued him a reinstatement of his removal order and referred him for criminal prosecution under 8 U.S.C. § 1326. Exh. 1 at ¶ 5. On May 1, 2018, Petitioner was released after serving his criminal sentence and was placed in withholding-only proceedings. Exh. 1 at ¶ 6; 8 CFR § 1208.31(e).

On April 29, 2019, Petitioner was granted DCAT, restricting ICE from executing his final removal order to El Salvador. ECF No. 1-4 at 8; Exh. 1 at ¶ 7; *see, e.g.*, 8 U.S.C. § 1231(b)(3). On May 7, 2019, ICE released Petitioner and issued him an Order of Supervision (OSUP). Exh. 1 at ¶ XX. On March 27, 2025, ICE took Petitioner back into custody to attempt removal efforts to third countries. Exh. 1 at ¶ 11. On April 10, 2025, ERO sent a request to Mexico to accept Petitioner. Exh. 1 at ¶ 12. On May 6, 2025, ERO sent a request to Guatemala and Ecuador to accept Petitioner. Exh. 1 at ¶ 13. Those requests are pending. Exh. 1 at ¶ 15.

On June 27, 2025, and in compliance with ICE regulations, ICE ERO initiated a 90-day Post Order Custody Review (POCR) and determined Petitioner should remain detained. Exh. 1 at ¶ 14. On July 16, 2025, this decision was served. Exh. 1 at ¶ 14. On August 22, 2025, ERO sent a request to Mexico to accept Petitioner and this request is pending. Exh. 1 at ¶ 16.

On September 6, 2025, Petitioner was transferred to the El Paso Camp East Montana Detention Facility. Exh. 1 at ¶ 17. On September 23, 2025, ERO was scheduled to conduct

Petitioner's 180-day POOR, the decision on detention has not yet been made. Exh. 1 at ¶ 18. ERO expects to effect Petitioner's removal in the reasonably foreseeable future, as requests to Mexico, Guatemala, and Ecuador remain pending.

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. 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 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 he, nonetheless, urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth Amendment because he believes ICE (as of Petitioner's September 19, 2025, filing) is not actually attempting to remove him anywhere reasonably foreseeable. ECF No. 1 at 8–9. 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 insufficient under *Zadvydass. 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 his 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 Mexico, Guatemala, and Ecuador remain pending. As such, removal is likely in the reasonably foreseeable future, and his continued detention is lawful. He will continue to receive POCRs as outlined by regulation until he is removed or released. Petitioner's substantive due process claim fails and should be denied.

d. 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 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 v. Collins*, 1:25-CV-00584-RP-DH, 2025 WL 2726549 at *3–6 (W.D. Tex. Aug. 12, 2025), *adopted by Linares v. Collins*, 2025 WL 2726067 (W.D. Tex. Sept. 24, 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, and will continue to conduct them at the 270-day mark and the one-year mark until his removal order is executed. *See* 8 C.F.R. § 241.13. 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).

This 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. Petitioner's procedural due process claim, like his substantive one, should be denied.

e. Conclusion

Petitioner is lawfully detained by statute, and his detention comports with the limited due process he 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.

/s/ Anne Marie Cordova

Anne Marie Cordova

Special Assistant United States Attorney