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

[redacted]N [redacted]Y [redacted]VALLE,	)	
	)	
Petitioner	)	
	)	
v.	)	**Case No. CIV-25-1161-J**
	)	
DON JONES et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Petitioner [redacted]n [redacted]y [redacted]Valle seeks habeas corpus relief under 28 U.S.C. § 2241. (ECF No. 1). United States District Judge Bernard M. Jones II has referred the matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Respondents filed a Response and Petitioner replied. (ECF Nos. 11 & 14). For the reasons set forth below, the undersigned recommends that the Court **GRANT** habeas relief to Petitioner and release him from custody immediately.

I. BACKGROUND

Mr. Valle is a middle-aged man with cognitive and intellectual disabilities who first came to the United States with a family member in March 2006, fleeing politically-motivated violence against him in [redacted]r. (ECF Nos. 1:6 & 1-1).[1] On June 7, 2006, Petitioner was ordered removed *in absentia*, when he failed to appear at a hearing on account of his cognitive difficulties. (ECF Nos. 1:6-7 & 1-1). The Immigration Judge (IJ) at that hearing designated [redacted]r as country of removal and declined to designate

[1] ECF No. 1-1 is a declaration, under penalty of perjury, from Marie Vincent, an attorney who has represented Mr. Valle in prior immigration proceedings and in this case.

an alternate country of removal. (ECF Nos. 1:7 & 1-1). In April 2011, ICE apprehended Petitioner and deported him to [redacted]. (ECF Nos. 1:7 & 1-1). In July 2011, Petitioner fled [redacted] again with a family member, re-entered the United States, was apprehended by the DHS on or about August 9, 2011, and the prior removal order was reinstituted the following day. (ECF No. 1:7 & 1-1). Following an interview, Mr. Valle was referred to withholding-only proceedings before an IJ based on his fear of persecution or torture if removed to [redacted]. (ECF Nos. 1:7 & 1-1).

On or around May 4, 2012, ICE set a $5,000 bond for [redacted]s release after determining that Mr. Valle was not a danger or flight risk such that continued detention was not required. (ECF Nos. 1:7 & 1-1). On May 9, 2012, bond was posted and on May 10, 2012, Petitioner was released on an Order of Supervision ("OOS"). (ECF Nos. 1:7, 1-1, 1-2). On January 22, 2014, in Immigration Court, Petitioner filed an I-589 application for asylum, withholding of removal under § 241(b)(3) of the Immigration and Nationality Act (INA) and/or protection under the Convention Against Torture ("CAT"). (ECF Nos. 1:7 & 1-1). At a hearing on November 2, 2017, an IJ determined that Petitioner was mentally incompetent and granted safeguards. (ECF Nos. 1:7 & 1-1). On March 22, 2018, the IJ granted withholding of removal under INA § 241(b)(3), prohibiting Petitioner's removal to [redacted], finding that he would likely be subject to persecution there. (ECF Nos. 1:7, 1-1, 1-4). This order became final when both parties waived appeal of the IJ's decision on March 22, 2018. (ECF Nos. 1:7-8, 1-1, 1-4). On August 21, 2018, ICE cancelled Mr. Valle's Immigration Bond. (ECF Nos. 1:8, 1-1, 1-3).

On February 24, 2025, ICE arrested Mr. Valle when he appeared for a regularly scheduled check-in, and issued a Notice of Revocation of Release which stated that "there are changed circumstances in your case." (ECF Nos. 1:8, 1-1, 1-5). The notice did not state what the changed circumstances were. The notice further stated:

> ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. On June 7, 2006, you were ordered removed to [redacted]r. You were removed to [redacted]n April 6, 2011. On August 10, 2011, your removal order was reinstated. You were served with your Order of Supervision on May 10, 2012.

(ECF No. 1-5). The notice does not acknowledge that Petitioner was granted withholding of removal from [redacted]r, nor does it identify any alternative country to which ICE believes it can remove Mr. Valle. *See id.*

On March 26, 2025, an IJ granted Petitioner's emergency motion to reopen withholding proceedings and emergency motion to stay his removal for the opportunity to apply for withholding of removal from any country to which DHS tries to remove him. (ECF Nos. 1:8 & 1-1). But to date, DHS has not identified any country of removal, requested designation of a new country of removal, nor provided any evidence that any country other than [redacted]r would accept Petitioner. (ECF Nos. 1:8 & 1-1); *see infra.* A hearing for Petitioner is scheduled in Immigration Court on December 9, 2025. (ECF Nos. 1:8 & 1-1).

II. PETITIONER'S CLAIMS

In the Petition, Mr. Valle asserts three claims: (1) a violation of the Immigration and Nationality Act ("INA"); (2) a violation of the Administrative Procedures Act ("APA");

and (3) a violation of the Fifth Amendment Due Process Clause. *See* ECF No. 1:25-30. As relief, Petitioner requests:

- immediate release;
- a declaration that Petitioner's continued detention violates the INA, the APA, and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- an order that Respondents refrain from re-detaining Petitioner unless and until he is afforded a hearing at which the government must show by clear and convincing evidence that removal is reasonably foreseeable and that Petitioner presents a danger or flight risk requiring further detention; and
- reasonable attorney fees and costs pursuant to the Equal Access to Justice Act ("EAJA").[2]

III. STANDARD OF REVIEW

To obtain habeas corpus relief, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 224l(c)(3). "[T]he primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear ... challenges to the lawfulness of immigration-related detention." *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas."); *Head v. Keisler*, No. 07-CIV-402-F, 2007 WL 4208709, at *2 (W.D. Okla. Nov. 26, 2007) (determining that "[t]his Court has subject

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[2] To the extent Petitioner may be entitled to EAJA fees and costs, he must seek those separately. 28 U.S.C. § 2412(d)(1)(B); *see also Daley v. Ceja*, --- F.4th---, 2025 WL 3058588, at *10 (10th Cir. Nov. 3, 2025) (interpreting "EAJA's broad language to unambiguously authorize fees in habeas actions challenging immigration detention"). Accordingly, the undersigned does not address this request at this juncture.

matter jurisdiction over" unconstitutional detention in an immigration-related § 2241 habeas petition).

Petitioner asserts that his continued detention violates 8 U.S.C. § 1231(a). (ECF No. 1:16-21). Under this statute, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). The 90-day period is known as the "removal period." *Id.* After the removal period, ICE has discretion to detain inadmissible or criminal aliens. *Id.* § 1231(a)(6). However, detention of an alien subject to a final order of removal may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *See Zadvydas*, 533 U.S. at 701; *see also Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005) (reiterating that "the reasonable period of post-removal detention is presumptively six months"). After that, a detainee may bring a habeas action to challenge his detention. *Zadvydas*, 533 U.S. at 688. "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.

Therefore, to obtain habeas relief, a petitioner has the initial burden to show the post-removal-order detention has surpassed six months and to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id*; *see also Soberanes*, 388 F.3d at 1311 ("If removal is not reasonably foreseeable, the court should hold continued detention unreasonable." (citation

modified)). "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." *Zadvydas*, 533 U.S. at 701. Further, "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." *Id.*

IV. PETITIONER'S INTERESTS ARE ADEQUATELY PROTECTED

Petitioner's attorney, Marie Vincent, has filed a declaration stating that she has assisted Mr. Valle in his immigration proceedings since 2013. (ECF No. 1-1). According to Ms. Vincent, Petitioner was diagnosed with Global Developmental Delay in childhood, and moderate to severe Intellectual Disability and Neurocognitive Disorder due to Traumatic Brain Injury in adulthood. (ECF No. 1-1). Ms. Vincent attests that Petitioner is unable to live on his own due to his cognitive difficulties and was living with his parents in [redacted], [redacted]s when he was re-detained in February 2025. (ECF No. 1-1). Indeed, an IJ found Petitioner to be mentally incompetent on November 2, 2017. (ECF No. 1:6).

Due to Mr. Valle's cognitive issues, Respondent draws the Court's attention to Fed. R. Civ. P. 17(c)(1) which addresses who, as a representative, may file a lawsuit on behalf of an incompetent person. (ECF No. 11:2). According to Respondent, "Federal Rule of Civil Procedure 17(c) requires a court to take whatever measures it deems proper to protect an incompetent person during litigation." (ECF No. 11:2) (citation omitted). Respondent additionally states: "A district court has broad discretion and need not appoint a guardian ad litem if it determines the real party in interest is or can be otherwise

adequately protected, but it is under a legal obligation to consider whether the person is adequately protected." (ECF No. 11:2) (citation omitted).

The undersigned believes, and the Court should find, that Mr. Valle's interests are adequately protected based on Ms. Vincent's involvement and representation of Petitioner in previous litigation and now in this case. Ms. Vincent attests to the Court that:

- she is an attorney in good standing and licensed to practice in the State of California;
- she first met Mr. Valle in July 2013 and represented him in immigration matters, working closely with his brother and mother to assist with his case, as he suffered from cognitive and intellectual disabilities;
- she successfully sought and received a withholding of removal for Mr. Valle by filing for asylum for him based on his fears of persecution in [redacted]r;
- she is actively working to protect Petitioner's interests, having sought a 90-day custody review for him in May of 2025 and representing Mr. Valle in seeking release by means of the instant Petition.

Based on the forgoing, the Court should find that Mr. Valle's interests are protected through Ms. Vincent's representation of him.

V. PETITIONER'S CONTINUED DETENTION VIOLATES HIS FIFTH AMENDMENT DUE PROCESS RIGHTS

Mr. Valle is entitled to immediate release based on a violation of his Due Process rights as discussed below.

A. Mr. Valle has met his Initial Burden

Petitioner has met his initial burden under *Zadvydas* to: (1) establish his post-removal-order detention has surpassed six months and (2) show "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Notably, Petitioner is not required under *Zadvydas* to "show the absence of any prospect

of removal—no matter how unlikely or unforeseeable," *id.* at 702, only that he has "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

As to his current detention, Respondents state that Mr. Valle "has been detained since February 24, 2025"—a nine month period of time. (ECF No. 11:6). Because Petitioner has been detained for more than six months, ICE's rebuttable presumption of reasonableness has been removed. Further, Petitioner has "provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. "To meet the burden of establishing this, Petitioner must demonstrate the existence of either institutional barriers to repatriation or obstacles particular to his removal." *Dusabe v. Jones*, No. 24-464-SLP, 2024 WL 5465749, at *3 (W.D. Okla. Aug. 27, 2024), *adopted*, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025). Here, Petitioner has identified several barriers and obstacles.

First, the parties agree that on March 22, 2018, an IJ granted Mr. Valle a withholding of removal/protection under the CAT, finding that Petitioner would likely be subjected to persecution if removed to [redacted]r. (ECF Nos. 1-1:2, 1-4, 11-1). Petitioner therefore has a clear institutional barrier to his repatriation. *See Trejo v. Warden of ERO El Paso East Mont.*, No. EP-25 CV-401, --- F. Supp. 3d. ---, 2025 WL 2992187, at *5 (W.D. Tex. Oct. 24, 2025) (finding that petitioner "identified a particular individual barrier to his repatriation to his country of origin—his grant of DCAT, which prevents his removal to [redacted]l [redacted]" (citation modified)); *Misirbekov v. Venegas*, No. 25-cv-00168, 2025 WL 2450991, *1 (S.D. Tex. Aug. 15, 2025) (finding that petitioner is likely to succeed in his

habeas petition because he "provided good reason to believe that there is no significant likelihood of removal in the foreseeable future," as he could not be removed to his country of birth and "does not have citizenship nor any ties to any other country"); *see also Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (recognizing that a grant of withholding of removal under the Convention Against Torture to a noncitizen "is a powerful indication of the improbability of his foreseeable removal, by any objective measure").

Second, Petitioner was previously granted a withholding of removal and ICE officials ordered him released under an OOS based on his fear of returning to [redacted]r. *See* ECF Nos. 1-2:1, 11-1:2. The Court should conclude that these facts provide pertinent evidence in determining that Petitioner has provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See* ECF No. 20:12, *Sukhyani v. Bondi*, et al., Case No. CIV-25-1243 (W.D. Okla. Nov. 18, 2025) (noting the prior inability to remove the petitioner, coupled with his prior release "are directly relevant to the likelihood now that Petitioner will be removed to a third country in the reasonably foreseeable future.")

Third, Petitioner has demonstrated obstacles to his removal to a third country. Petitioner alleges, and Respondents do not dispute, that ICE has not secured travel documents or even identified any alternate countries during the initial removal period, during Mr. Valle's supervised release or during his re-detention. (ECF No. 1:17). Respondents submit a declaration from ICE Deportation Officer Bradley McNary who: (1) believes "that Mexico was accepting citizens of [redacted]r with final orders of removal"

such as Mr. Valle and (2) states that Mr. Valle is scheduled for an immigration court hearing on December 9, 2025, at which time, the court will determine if Petitioner can establish eligibility for withholding of removal to "any country to which ERO intends to remove him." (ECF No. 11-1:2-3). But beyond these assertions, Respondents have presented no evidence that Mexico or any other third country would be actually willing to take *Mr. Valle*, and the mere possibility of repatriation to third countries, without concrete progress, is insufficient to justify continued detention. *See Momennia v. Bondi*, 2025 WL 3011896, at *10 (W.D. Okla. Oct. 15, 2025) ("[M]ere intent to find a third country," absent "specific communications between the United States and an identified country" is "too speculative to permit indefinite detention"), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025)*; Roble v. Bondi*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (finding insufficient the government's assertion that ICE "requested third country removal assistance from [Enforcement and Removal Operations] HQ"); *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) ("The fact that Respondents intend to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future.").

Based on the forgoing, the Court should find that Petitioner has met his initial burden to demonstrate that there is no significant likelihood of his removal in the reasonably foreseeable future.

B. Respondents Have Not Met Their Burden

Once Petitioner has established six months of post-removal-order detention and "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." *Zadvydas*, 533 U.S. at 701. The Court should find that Respondents have not met their burden in this regard.

The bulk of the Response focuses on whether Mr. Valle's interests are protected in light of his cognitive and intellectual disabilities. *See* ECF No. 11. In fact, Respondents make *no* substantive argument to rebut Petitioner's showing that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, instead stating only: "[U]pon the Court's satisfaction that Petitioner's interests are adequately protected pursuant to Rule 17(c), the Court may conduct its *Zadvydas* analysis." (ECF No. 11:7).

As stated, Respondents submit a declaration from Deportation Officer McNary who states that Mr. Valle is scheduled for an immigration court hearing on December 9, 2025, at which time, the court will determine if Petitioner can establish eligibility for withholding of removal to "any country to which ERO intends to remove him." *See supra*. But, as stated, "mere intent to find a third country is too speculative to permit indefinite detention or to overcome [Petitioner's] showing." *Momennia v. Bondi*, No. CIV25-1067-J, 2025 WL 3011896, at *10 (W.D. Okla. Oct. 15, 2025), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025). And although Mr. McNary states a belief that Mexico is willing to accept citizens from [redacted] r subject to a final order of removal, *see supra*, "Respondents have not established [*the petitioner's*] removal to a third country is significantly likely in the reasonably foreseeable future." *See* ECF No. 20:15, *Sukhyani v. Bondi*, et al., Case No. CIV-25-1243 (W.D. Okla. Nov. 18, 2025). Based on the forgoing, the Court should

conclude that Respondents have failed to rebut Petitioner's showing that there is no significant likelihood of his removal in the reasonably foreseeable future and that he is being detained indefinitely in violation of the Fifth Amendment. Accordingly, the undersigned concludes that under *Zadvydas*, Petitioner is entitled to habeas relief and immediate release from custody. *See* 28 U.S.C. § 2241(c)(3).

VI. PETITIONER'S REMAINING CLAIMS

As stated, Petitioner also alleges that his re-detention was in violation of ICE's own regulations and the APA. *See supra*. But Because the undersigned recommends that the Court grant the Petition after finding Petitioner's indefinite detention violates his Fifth Amendment Due Process rights, the Court should decline to address Petitioner's other claims. *See Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3006045, at *1 n.1 (W.D. Okla. Oct. 27, 2025) (declining to decide whether ICE violated its own regulations by continuing to detain the petitioner because the Court adopted the conclusion that his indefinite detention violates his Fifth Amendment Due Process rights). Further, considering the recommended relief, the undersigned declines to address Petitioner's other requests for injunctive and declaratory relief.

VII. RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

For the reasons set forth above, the undersigned recommends the Court grant Petitioner's request for habeas relief, and order his immediate release from custody. The undersigned further recommends that the Court order Respondents to submit a declaration pursuant to 28 U.S.C. § 1746 affirming that Petitioner has been released from custody.

The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court by **December 2, 2025**, in accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2).[3] The parties are further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

VIII. STATUS OF REFERRAL

This Report and Recommendation terminates the referral by the District Judge in this matter.

ENTERED on November 25, 2025.

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE

[3] Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to this Report and Recommendation to seven days. *See* Fed. R. Civ. P. 72(b)(2) advisory committee's note to 1983 addition (noting that rule establishing 14-day response time "does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28."); *see also Whitmore v. Parker*, 484 F. App'x 227, 231, 231 n.2 (10th Cir. 2012) (noting that "[t]he Rules Governing § 2254 Cases may be applied discretionarily to habeas petitions under § 2241" and that "while the Federal Rules of Civil Procedure may be applied in habeas proceedings, they need not be in every instance – particularly where strict application would undermine the habeas review process").