

United States District Court
Western District of Texas
San Antonio Division

Sigifredo MEDELLIN MARTINEZ,
Petitioner,

v.

Pam Bondi, *et al*,
Respondents.

No. 5:25-CV-01319-OLG

Federal¹ Respondents' Response to Petition of Writ for Habeas Corpus

Respondents submit this response per this Court's Order dated October 23, 2025, ordering a response to the petition. ECF No. 7. Federal Respondents incorporate herein by reference their arguments made in opposition to Petitioner's Motion for Temporary Restraining Order (TRO) and for efficiency, do not restate facts or arguments raised therein. *See* ECF No. 10; ECF No. 7 (permitting consolidating briefing). ICE is working to execute Petitioner's removal order to a third country. Ex. A (Pena Declaration). Petitioner's claims lack merit, and this petition should be denied.

Despite being granted relief from removal, referred to as withholding of removal (WHO) under Immigration and Nationality Act § 241(b)(3), 8 U.S.C. § 1231(b)(3), such relief extends only to the country where Petitioner was found to have a reasonable fear of being persecuted: Mexico. *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 if such a country is willing to accept him. *See e.g., Guzman Chavez v. Johnson*, 594 U.S.

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action.

at 531–32, 535–36 (2021); 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).

Petitioner argues his continued detention is contrary to the Immigration and Nationality Act, the pertinent regulations, and the Administrative Procedure Act (APA). He further claims ICE is violating his substantive and procedural rights under the Constitution’s Fifth and Fourteenth Amendments. *See e.g.*, ECF No. 1 ¶¶ 76–111. Finally, he argues he argues no removable is foreseeable and that he fears removal, generally, “to a Third Country” due to his need for mental healthcare and psychiatric medications. ECF No. 1 at ¶¶ 40, 98–104; 7. Notably, however, he does not proffer an acceptable third country that would be suitable, nor does he outline any efforts to seek permission to live in any acceptable third countries. *Id.*

These arguments are insufficient reason to believe that removal is unlikely in the foreseeable future, which means the burden of proof does not shift to ICE to show the likelihood of removal. *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). Even if the burden has so shifted, Respondents can show that removal to a third country is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Removal Efforts

On September 12, 2025, ICE revoked Petitioner’s Order of Supervision on the basis of changed circumstances and served him with written notice of that revocation on the same day. *See* ECF No. 1-1. ICE provided Petitioner with a personal interview on the same date, but he declined to provide a statement. ECF No. 10-1.

On October 30, 2025, ICE conducted an interview with Petitioner to determine third country options. *See* Ex. A (Pena Declaration). On the same date, ICE served Petitioner with warnings for failure to depart. *Id.* To date, ICE has contacted four countries to request acceptance of Petitioner. Panama, Guatemala, and Honduras declined acceptance. *Id.* El Salvador has not yet responded to the request that ICE sent on November 4, 2025. *Id.* If El Salvador declines acceptance, ICE will continue sending requests to acceptable third countries. On November 3, 2025, ICE served Petitioner with notice of his upcoming post-order custody review, which is scheduled for November 30, 2025. *Id.*

II. Petitioner, As an Applicant for Admission, Is Detained Until Removal on a Mandatory Basis Under 8 U.S.C. § 1225(b).

This petition should be denied. Petitioner is lawfully detained until removal as an applicant for admission. 8 U.S.C. § 1225(b)(2)(A). *See* Ex. A (Pena Declaration). “To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be deemed for purposes of this chapter an applicant for admission,” defining that term to encompass *both* an alien “present in the United States who has not been admitted *or* [one] who arrives in the United States . . .” *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. An alien who DHS has determined is seeking admission to the United States and is not clearly and beyond a doubt entitled to be admitted will

be placed into removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. § 1225(b)(2)(A). Petitioner here was placed into such proceedings, ordered removed to Mexico by an Immigration Judge, but granted relief in the form of withholding of removal to Mexico. Ex. A (Pena Declaration); ECF No. 1 at 3; ¶ 22.

“A basic canon of statutory construction” is that “a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter.” *Hughes v. Canadian Nat’l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to aliens “arrested and detained pending a decision” on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to aliens who are “applicants for admission,”—a specially defined subset of aliens that explicitly includes those “present in the United States who ha[ve] not be admitted.” *Id.* § 1225(a). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (“§ 1225(a) treats a specific class of aliens as ‘applicants for admission,’ and § 1225(b) mandates detention of these aliens throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien.”). Because Petitioner falls squarely within the definition of individuals deemed to be “applicants for admission,” the specific detention authority under § 1225(b) governs until removal. Thus, “[w]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Aliens who presented at ports of entry have always been subject to mandatory detention under § 1225, while those who successfully evaded detection and crossed without inspection have been until recently interpreted to be eligible for bond under § 1226(a). Given the updates in the law, Petitioner’s current detention is governed, still, by § 1225(b) until he is successfully removed

from the United States. He is not entitled to a bond hearing, and the Supreme Court has already upheld the constitutionality of this mandatory detention provision in both *Jennings* and *Thuraissigiam*. Those cases, rather than the *Zadvydas* decision, control the constitutional analysis here. *See Thuraissigiam*, 591 U.S. at 140. As the Supreme Court noted, aliens detained under § 1225(b) are afforded only the process that Congress provided them by statute. *Id.* Congress intended to mandate the detention of aliens like Petitioner until removal. To the extent Petitioner was owed any process during this time, he has already exhausted the administrative remedies available to him under the statute. His detention until removal comports with due process.

III. Alternatively, Detention Is Lawful Under 8 U.S.C. § 1231(a)(6).

Federal Respondents acknowledge that this interpretation of detention authority has shifted from prior interpretations. Even under the prior interpretation, however, Petitioner's detention is lawful. In addition to the detention authority in § 1225(b), 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 a 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.

A. 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's substantive due process claim is not ripe because he has not been detained 'post-order' for more than six months. ECF No. 1 ¶ 25 (noting release from custody on July 22, 2019, when relief granted). Therefore, he cannot 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). He was subsequently re-detained on September 12, 2025. ECF No. 1 ¶ 27. As such, he has been detained less than 90 days in post-order custody.

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. Petitioner is aware ICE is attempting to remove him to a third country. 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); *see also 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 is pending a response from El Salvador, and if declined, ICE will continue to request acceptance from third countries. Ex. A (Pena Declaration). As such, removal is likely in the reasonably foreseeable future, and his continued detention is lawful. Petitioner's substantive due process claim fails and should be denied.

B. 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). Petitioner received procedural due process following the revocation of his OSUP in the form of written notice and an opportunity to be heard at a personal interview. *See* ECF No. 10-1. Petitioner declined to participate. *Id.*

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).

Even though ICE is detaining Petitioner under § 1225(b), ICE nonetheless conducts post-order custody reviews of an alien's detention as required by regulation for aliens detained under § 1231.² Once the 90-day removal period concludes in this case, ICE will perform a post-order custody review ("POCR") under 8 C.F.R. § 241.4 to determine whether Petitioner should remain detained or whether he should be released in the exercise of discretion under an Order of Supervision. At or around the 180-day mark, Petitioner will receive another POCR if he remains detained, wherein ICE will determine whether he should remain detained. *See* 8 C.F.R. § 241.13. POCRs are set to occur at the 270-day and the one-year marks, as well. *Id.*

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. 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.

² 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. 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)).

23, 2020). As such, Petitioner's procedural due process claim, like his substantive one, should be denied.

IV. Conclusion

Petitioner is lawfully detained by statute until his removal, and his detention comports with the limited due process he is owed as an applicant for admission subject to a final order of removal. This Court should deny the petition.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Anne Marie Cordova

Anne Marie Cordova
Special Assistant United States Attorney
Texas Bar No. 24073789
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100 (phone)
(210) 384-7118 (fax)
Anne.Marie.Cordova@usdoj.gov

Attorneys for Federal Respondents