IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ABNER DE LA CRUZ-CONTRERAS, Petitioner, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PETER. FLORES, Commissioner, U.S. Customs and Border Protection; RICARDO WONG, Field Office Director, U.S. Immigration and Customs Enforcement; CRYSTAL CARTER, Warden, Leavenworth Federal Correctional Institution Respondents.	)	Case No. 25-3232-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Abner De La Cruz-Contreras ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained at Leavenworth Federal Correctional Institution, pending removal from the United States. He seeks release from detention on the basis that his detention violates his rights to due process and that his detention violates the Immigration and Nationality Act (INA). In compliance with the Court's Order to Show Cause, Doc. 2, Kristi Noem, Secretary, U.S. Department of Homeland Security; Peter Flores, Commissioner, U.S. Customs and Border Protection; Ricardo Wong, Field Office Director, U.S. Immigration and Customs Enforcement; and Crystal Carter, Warden, FCI Leavenworth (collectively "Respondents") respectfully submit this response. The § 2241 habeas petition should be denied. Petitioner cannot provide a showing there is no significant likelihood of removal in the reasonably foreseeable future and any regulatory deficiency does not justify release.

STATEMENT OF FACTS

The following facts are based on the declaration of Eric Swanson, a Deportation Officer for ICE Enforcement and Removal Operations ("ERO") of the United States Department of Homeland Security ("DHS"). Exhibit 1, Swanson Decl. ¶¶ 1-3. Petitioner is a native and citizen of Guatemala. *Id.* ¶ 5. Petitioner entered the United States on an unknow date and at an unknown location. *Id.* ¶ 6. On or about October 2, 2024, Petitioner was encountered by ICE pursuant to an ICE detainer lodged with the Johnson County, Indiana Sheriff's Office after his release on bond following a felony charge for child solicitation in violation of Indiana Code § 35-42-4-6. *Id.* ¶ 7. On October 2, 2024, Petitioner was placed in removal proceedings through issuance of a Notice to Appear ("NTA"), charging him as inadmissible to the United States pursuant to sections 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(6)(i). *Id.* ¶ 8. On or about January 27, 2025, Petitioner filed an application for relief with the Immigration Court. *Id.* ¶ 9. On February 26, 2025, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief. No appeal was taken of the Immigration Judge's decision by either party. *Id.* ¶ 10. Pursuant to 8 C.F.R. § 1241.1(a), an order of removal made by the Immigration Judge at the conclusion of proceedings shall become final upon dismissal of an appeal by the BIA. *Id.* ¶ 11. Since no appeal was filed with the BIA, the Immigration Judge's order is a final administrative order pursuant to 8 C.F.R. § 1241.1. *Id.* ¶ 12.

Pursuant to 8 U.S.C. § 1231(a)(1)(A), an alien who has been ordered removed, shall be removed from the United States within 90 days. At or near 90 days post removal order, if an alien has not been removed, ERO conducts a File Custody Review, also known as a Post-Order Custody Review ("POCR"), to determine the necessity of continued custody. When conducting a 90-day POCR, some factors that are considered are the following: a detained individual's flight risk, any

danger the individual may pose to his or her community, threat to national security, and whether there is significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"). Based on this information, a recommendation will be made to management as to whether the individual should remain in custody. Those managers, including the Supervisory Deportation and Detention Officer, Assistant Field Office Director, Deputy Field Office Director and the Field Office Director, will either concur in the assessment to continue detention or request release of the alien. *Id.* ¶ 13.

In cases where an alien has been detained pursuant to a final order for 180 days, a Transfer Checklist will be completed with information related to follow-up actions taken to obtain a travel document after the initial 90-day POCR and every 90 days thereafter. The Transfer Checklist contains information, such as the alien's biographical information, whether there is a judicial stay in effect, whether there is a habeas petition pending at the time of review, whether the particular case is a national security case, whether the alien has medical or psychological issues, and whether and how often an Embassy person has been contacted for the status of a travel document. This checklist is then transferred to the ICE/ERO Headquarters POCR Unit, which makes the ultimate decision on the individual's continued detention beyond the 180 days, or every 90 days thereafter, based on the SLRRFF. *Id.* ¶ 14.

On or about May 27, 2025, a Decision to Continue Detention was issued, stating that ICE would continue with Petitioner's detention. *Id.* ¶ 15. On October 31, 2025, Petitioner was served with a Notice of Removal, informing him of ICE's intention to remove him to Mexico. *Id.* ¶ 16. On November 10, 2025, Petitioner was interviewed by an officer from U.S. Citizenship and Immigration Services ("USCIS") to assess whether Petitioner could meet the threshold to pursue an application for relief from removal to Mexico. USCIS concluded that Petitioner did not meet

the requisite standard for the relief he sought. *Id.* ¶ 17. ICE intends on proceeding with removal to Mexico in the coming days. *Id.* ¶ 18. ICE will continue its efforts to effectuate Petitioner's removal and will update the Court on any further developments in this matter. *Id.* ¶ 19.

Petitioner filed his § 2241 petition on October 28, 2025. Doc. 1.

ARGUMENT

"The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal." *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, *6 (D. Kan. July 13, 2020). To obtain habeas corpus relief, a petitioner must demonstrate that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States[.]" 28 U.S.C. § 2241(c)(3).

I. All Counts fail because Petitioner has not shown removal is unlikely, or alternatively, Respondents can rebut any such showing.

Petitioner is detained pursuant to the INA. Under the INA, an alien shall be removed if the alien is present in the United States in violation of the INA. 8 U.S.C. § 1227(a)(1)(B). Here, Petitioner was charged as inadmissible to the United States pursuant to sections 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 8. On February 26, 2025, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief. *Id.* ¶ 9. Since no appeal was filed with the BIA, the Immigration Judge's order is a final administrative order pursuant to 8 C.F.R. § 1241.1. *Id.* ¶ 12.

Upon the entry of a final removal order, "the Attorney General 'shall detain the alien' during the 90-day removal period established under 8 U.S.C. § 1231(a)(2)." *Zhiriakov*, 2020 WL 3960442, at *8 (citations omitted). "Generally, the government is required to remove the alien held in its custody within the 90-day removal period." *Garcia Uranga v. Barr*, No. 20-3162-JWL, 2020 WL 4334999, *4 (D. Kan. July 27, 2020) (citing 8 U.S.C. § 1231(a)(1)(A)-(B)). Nevertheless, "[i]f

removal cannot be carried out within the removal period, inadmissible aliens may be detained beyond the removal period under certain circumstances." *Id.* (citing 8 U.S.C. § 1231(a)(6)).

Specifically, "the detention of an alien subject to a final order of removal for up to six months is presumptively reasonable in view of the time required to accomplish removal." *Zhiriakov*, 2020 WL 3960442, at *8 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). "Beyond that period, if the alien shows that there is 'no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.'" *Garcia Uranga*, 2020 WL 4334999, at *4 (quoting *Zadvydas*, 533 U.S. at 701). "The six-month presumption" thus "does not mean that every alien must be released after that time, but rather an alien may be detained 'until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Zhiriakov*, 2020 WL 3960442, at *8 (quoting *Zadvydas*, 533 U.S. at 701).

While Petitioner invokes due process claims in his Petition, his claims must be analyzed under the *Zadvydas* framework. *See Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, at *6 (W.D. Okla. Dec. 18, 2007) ("Petitioner fails to elaborate on the details of any procedural due process claim; rather, he appears to base such claim on an entitlement to release pursuant to *Zadvydas*, which has already been rejected in addressing his statutory claim."); *see also Nasr v. Larocca*, No. CV 16-1673-VBF(E), 2016 WL 3710200, at *5 (C.D. Cal. June 1, 2016) ("[W]here Petitioner has failed to meet his burden to show there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*, Petitioner also has failed to prove that his continued detention violates due process."); *Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *5-6 (W.D. Okla. Aug. 27, 2024) ("Courts, including this one, have held that a petitioner's failure to establish that his detention violates *Zadvydas* negates a substantive due

process claim."), *adopted*, 2025 WL 486679, at *1-4 (W.D. Okla. Feb. 13, 2025); *Singh v. Barr*, No. 19-CV-732, 2019 WL 4415152, at *3 (W.D.N.Y. Sept. 16, 2019) ("Conversely, if detention is valid under *Zadvydas*, it cannot violate substantive due process."); *Jovel-Jovel v. Contreras*, No. H-18-1833, 2018 WL 11473467, at *4 (S.D. Tex. Oct. 30, 2018) ("[I]f detention is no longer than reasonably necessary to effectuate removal, it will comport with § 1231(a)(6), *Zadvydas*[,] as well as substantive due process protections.").

Here, Petitioner's claims should be denied. He has not demonstrated "good reason to believe" that there is no significant likelihood of removal in the reasonably foreseeable future. The Petition cites no facts to support his position that removal will not occur in the reasonably near future. In effect, Petitioner is arguing that removal to a third country is unlikely because it hasn't happened yet. That is not enough. *See Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, at *3 & n.32 (M.D. Pa. Oct. 2, 2024) ("[T]he fundamental basis of [petitioner's] argument appears to be that his removal is unlikely simply because it has not occurred to this point[.]") (citation modified). Stated differently, "[s]peculation and conjecture are not sufficient to carry this burden, nor is a lack of visible progress" in Petitioner's removal "sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future." *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, at *3 (S.D. Tex. Oct. 21, 2024) (citation modified). "Because ICE is still actively pursuing" Petitioner's removal "and his detention furthers Congress's goal of ensuring his presence for removal," Petitioner "is, therefore, not entitled to release under *Zadvydas*." *Bains v. Garland*, No. 2:23-cv-00369-RJB-BAT, 2023 WL 3824104, at *4 (W.D. Wash. May 16, 2023).

Petitioner has not provided competent evidence to show that removal to a country other than Guatemala is unlikely. *See, e.g., Soudom v. Warden*, No. 25-3063-JWL, 2025 WL 1594822,

at *2 (D. Kan. May 23, 2025) (denying relief where the petitioner did not carry his initial burden, in part because "[t]he letter on which petitioner relies does not foreclose the possibility of his removal"); *Ogole v. Garland*, No. 24-3198-JWL, 2025 WL 548452, at *2 (D. Kan. Feb. 19, 2025) (denying relief where the petitioner did not carry his initial burden by asserting "his country has a 'freeze on deportation,'" as this argument was "made without supporting evidence" and belied by other facts in the record). All Counts should be denied on this basis alone.

Respondents acknowledge that the Court previously has been presented with the foregoing legal authorities in cases where habeas petitions were granted. *E.g., Diaz-Cruz v. Noem*, No. 25-cv-3162 (D. Kan. Oct. 2, 2025), ECF 7 at 1-6; *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679, at *2-3 (D. Kan. Sept. 29, 2025); *Anduaga-Colin v. Bondi, et al.*, No. 25-3151-JWL, 2025 WL 2926546, at *2-3 (D. Kan. Oct. 15, 2025); *Ibarra Moreno v. Bondi*, No. 25-3168-JWL, 2025 WL 2926547, at *2-3 (D. Kan. Oct. 15, 2025); *Mango v. CARTER et al.*, No. 25-3183-JWL, 2025 WL 2841209, at *2-3 (D. Kan. Oct. 7, 2025) *Zhuzhiashvili v. Carter*, No. 25-3189-JWL, 2025 WL 2837716, at *2-3 (D. Kan. Oct. 7, 2025). Even so, Respondent believes each Petition must be evaluated individually based on its own unique facts and circumstances.

In any event, even if Petitioner had made an initial showing that removal is unlikely, Respondents have now rebutted it. ICE intends on proceeding with removal of Petitioner to Mexico in the coming days as it has been determined that Petitioner does not meet the threshold criteria to pursue an application for relief from removal to Mexico. *See supra* SOF. ICE is continuing its efforts to effectuate removal. *Id.* All of this defeats any assertion there is no significant likelihood of removal.

II. Any alleged regulatory deviation is insufficient to justify release.

Petitioner also challenges ICE's compliance with the file custody review regulations set forth in 8 C.F.R. § 241.4; this effort should also be denied. The Petitioner does not elaborate regarding the factual basis of this claim. On May 27, 2025, a Decision to Continue Detention was issued. *See supra* SOF. Admittedly, a Transfer Checklist has not been completed after 180 days of detention. This fact is superseded by more recent facts, including that Petitioner has been served a Notice of Removal to Mexico and that ICE intends on proceeding with removal in the coming days. *Id.*

A. ICE substantially complied with 8 C.F.R. § 241.4, and any deviation was harmless or otherwise insufficient to warrant release.

"[N]ot every procedural misstep or difficulty raises anything like a constitutional issue. Procedural due process protects a right to a fundamentally fair proceeding; but few proceedings are perfect and one can have real errors, including ones that adversely affect a party's interests, without automatically violating the Constitution." *Matias v. Sessions*, 871 F.3d 65, 71 (1st Cir. 2017). It follows that even if Petitioner shows some material deviation from the 90-day or 180-day POCR requirement in 8 C.F.R. § 241.4, "the remedy for a procedural due process violation is substitute process." *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, at *12 (W.D. Tex. Mar. 23, 2020). As explained in *Virani*:

> Substitute process—as oppose[d] to release—as a remedy for a procedural due process violation also comports with the reasoning of the Supreme Court in the analogous context of the Bail Reform Act, which supplies the procedures for determining whether to detain a suspect in pretrial custody on federal criminal charges. The Supreme Court has made clear that the mere failure to comply with the time limitations set forth in the Act does not mandate release of a person who should otherwise be detained.

Id. (citation modified); *see also Gaona v. U.S. Dep't of Homeland Sec.*, No. 5-20-CV-00473-FB-RBF, 2020 WL 6255411, at *3 (W.D. Tex. Sept. 11, 2020) ("[T]he appropriate remedy for a

procedural due process violation in these circumstances would not necessarily involve immediate release . . . . Instead, a successful procedural due process claim could very well result in Petitioners receiving additional process.") (citation modified).

Courts have reached similar conclusions with respect to other procedures. For instance, tribunals have determined that violations of the "informal interview" requirement or other revocation requirements in 8 C.F.R. § 241.13(i) were harmless or did not warrant release. *See Nguyen v. Noem*, No. 6:25-CV-057-H, 2025 WL 2737803, at *12 (S.D. Tex. Aug. 10, 2025) (holding that "even if the respondents did fail to abide by the procedural requirements" of § 241.13(i)(3), "any error was harmless. And even if it were harmful error, a writ of habeas corpus ordering his release would not be the appropriate remedy.")

CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 25, 2025, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties.

/s/ Wendy A. Lynn
WENDY A. LYNN