United States District Court
Western District of Texas
El Paso Division

Gennadity Yuryevich Glushchuk, Petitioner, v. Pameal Bondi, U.S. Attorney General, *et al*, Respondents.	No. 3:25-CV-00501-LS

Respondents' Response in Opposition to Petitioner's Writ of Habeas Corpus

Respondents timely submit this timely response per this Court's Order. ECF No. 3. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Glushchuk ("Petitioner"), *pro se*, seeks release from civil immigration detention, claiming his continued detention is unlawful contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a final order of removal from January 9, 2009, which not only mandated his detention under 8 U.S.C. § 1231(a) during the 90-day removal period but allows for continued detention beyond the removal period in the exercise of ICE's discretion, so long as removal is reasonably foreseeable. 8 U.S.C. § 1231(a)(6); *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner claims there are limited options for safe third countries that would accept him due to his Christian beliefs and criminal history. ECF No. 1 at 7. Finally, he alleges his prior efforts to obtain Mexican travel documents were unsuccessful and ICE will not be able to deport him in the foreseeable future. *Id.* Petitioner is lawfully detained with a final order of removal, and Respondents can show that removal a third country is likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Ukraine, former USSR. Ex. A (ERO Declaration) at ¶ 4. Petitioner entered the United States in March 1995. *Id.* On January 9, 2009, an immigration judge ordered Petitioner removed from the United States. *Id.* at ¶ 6. Immigration and Customs Enforcement (ICE) attempted to execute the removal order until it released Petitioner on an Order of Supervision (OSUP) in July 2009. *Id* at ¶ 7.

On June 13, 2025, ICE apprehended Petitioner and transferred him to the El Paso, Texas, Service Processing Center (EPC). Ex A at ¶ 11. On September 11, 2025, ICE requested a 90-day Post-Order Custody Review from ERO Headquarters, and at the time of this filing it remains pending. *Id* at ¶ 12.

On November 15, 2025, Petitioner was transferred to Florence, AZ[1] for staging prior to a scheduled removal to Ukraine on November 17, 2025. Exh. A at ¶ 13. However, ERO Travel Unit declined removal on November 17, 2025, due to lack of a Travel Document. *Id.* On November 17, 2025, ICE initiated removal to a third country. *Id* at ¶ 14. ICE is aware that Mexico evaluates individuals for removal to its country if they can present evidence of ties to Mexico. *Id.* Petitioner's wife is a permanent resident of Mexico and Petitioner had been performing sporadic work through contacts in churches in Mexico. *Id.* On November 17, 2025, ICE submitted documentation to Mexican authorities to evaluate Petitioner for potential acceptance. *Id* at ¶ 15.

II. 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

[1] Undersigned understands that Petitioner will be transferred back to El Paso from Florence, Arizona.

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.

III. 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 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. *Id.* at 14–16; *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 urges this Court to order that his continued detention pending removal is contrary to statute and in violation of his procedural and substantive due process rights, because deportation is not reasonably foreseeable. ECF No. 1 at 9. Petitioner provided a letter from the Consulate of

Ukraine declining to issue him a passport due to a lack of information. ECF No. 1-4 at 2. Additionally, Petitioner claims he received notice in October of 2025 from Mexico that they will not issue him travel documents. ECF No. 1 at 7. However, Petitioner did not provide a copy of that notification in his petition.

Petitioner's claims are insufficient under *Zadvydas* because he has not shown any good reason to believe that removal is unlikely. *Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also 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); *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). Petitioner has not shown that his continued detention is unreasonable, nor has he shown he is owed any additional due process than what he is currently receiving. *See Hernandezs-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *8 (W.D. Tex. June 22, 2018). Therefore, the burden of proof does not shift to Respondents to prove significant likelihood of removal in the reasonably foreseeable future.

Even if the burden did shift to ICE, ICE could show that removal is likely in the foreseeable future. ICE is pending a response from Mexico, and if declined, ICE will continue to request acceptance from third countries. Ex A at ¶ 15. As such, removal is likely in the foreseeable future, and his continued detention is lawful.

IV. ICE Has Afforded Petitioner Procedural Due Process During His Post-Order Custody Pending Removal.

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,* 1:23-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)).

In any event, 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).

ICE applies the post order custody review (POCR) as required by regulation for aliens detained under § 1231. Once the 90-day removal period concludes, ICE will review Petitioner's detention and whether removal is reasonably foreseeable. *See* Exh. A at 3. ICE will continue the reviews as required in the regulations. *See* 8 C.F.R. § 241.4.

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

V. Conclusion

Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6). Moreover, Petitioner fails to show good reason to believe that there is no significant likelihood of removal to a third country in the reasonably foreseeable future. As such, the burden has not shifted to ICE to show the opposite. Even if the burden had shifted, ICE could establish that removal is foreseeable. Additionally, ICE has afforded Petitioner procedural due process over the course of his detention, including post-order custody reviews. Petitioner's continued detention, therefore, is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Respectfully submitted,

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Certificate of Service

I certify that on November 20, 2025, I mailed a copy of Response in Opposition to Petition for Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

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