IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GERARDO REYNA-SALGADO, Petitioner, v. KRISTI NOEM, Secretary, Department of Homeland Security; PETE FLORES, Commissioner, Customs and Border Protection; RICARDO WONG, Field Office Director, ICE ERO Chicago; and C. CARTER, Warden, FCI-Leavenworth, Respondents.	)	Case No. 25-3236-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the third petition of Gerardo Reyna-Salgado ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, an alien subject to an order of removal, asks the Court to release him from detention at the Federal Correctional Institution in Leavenworth, Kansas ("Leavenworth FCI"). Citing *Zadvydas v. Davis*, 533 U.S. 678 (2001), he contends his detention violates the Due Process Clause of the Fifth Amendment to the Constitution and 8 U.S.C. § 1231(a)(6). ECF 1 at 4, 18. The Court has ordered a response from the individuals named in the habeas petition (collectively "Respondents"). ECF 3.

The Court denied Petitioner's first and second requests for habeas relief in part because he did not shoulder his burden to show there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner's third petition should be denied on similar grounds. Petitioner currently cannot be removed to his home country of Mexico, but Respondents have been investigating and continue to investigate third country removal options. The fact that these efforts have not yet met with success does not mean Petitioner's detention has become indefinite. Stated

differently, Petitioner again has not discharged his burden to show removal is unlikely, or alternatively, Respondents can rebut any such showing. Moreover, Petitioner presents no challenge to his custody review process.

STATEMENT OF FACTS

The following facts are part of the Declaration of Emilia Skierkowska, a Deportation Officer for Enforcement and Removal Operations ("ERO") at United States Immigration and Customs Enforcement ("ICE"). Exhibit ("Ex.") 1, Declaration of Emilia Skierkowska ¶¶ 1-4. Some facts alleged in the habeas petition (ECF 1) are included as well.

Petitioner is a native and citizen of Mexico. Ex. 1 ¶ 5; *see also* ECF 1 ¶ 10. He unlawfully entered the United States on an unknown date and at an unknown location. Ex. 1 ¶ 6. In November 2024, He was convicted in Illinois state court of domestic battery in violation of 720 ILCS 5/12 3.2(a)(1). *Id.* ¶ 7. On December 2, 2024, he was placed in removal proceedings through the issuance of a Notice to Appear. *Id.* ¶ 8; *see also* ECF 1 ¶¶ 1, 15 (alleging Petitioner has been in ICE custody since this date). He was charged as inadmissible to the United States pursuant to sections 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("INA"). Ex. 1 ¶ 8 (citing 8 U.S.C. §§ 1182(a)(6)(i) & (a)(2)(A)(i)(I)).

On or around January 6, 2025, Petitioner filed an application for relief with the Immigration Court. *Id.* ¶ 9. Petitioner alleges he sought withholding of removal to Mexico under 8 U.S.C. § 1231(b)(3). ECF 1 ¶¶ 1, 15 (citing INA section 241(b)(3)). After holding a hearing on February 21, 2025, the Immigration Court granted relief. Ex. 1 ¶ 10. The order of the Immigration Court was not appealed by either party and became final. *Id.* ¶¶ 10-12.

Since the order of the Immigration Court became final, the United States Department of Homeland Security ("DHS") has attempted to remove Petitioner to three alternative countries with

no success. *Id.* ¶ 15; *see also* ECF 1 ¶ 16. On July 31, 2025 and on November 18, 2025, ERO reached out to ICE's Removal and International Operations ("RIO") headquarters to inquire about other potential countries to which Petitioner could be removed. Ex. 1 ¶ 18. ICE will continue its efforts to identify alternative countries. *Id.* ¶ 19.

On or around April 1, 2025, ERO issued a Notice to Alien of File Custody Review. *Id.* ¶ 16. A File Custody Review is also known as a Post-Order Custody Review. *Id.* ¶ 13. A File Custody Review considers several factors to assess continued custody, including whether there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* ¶¶ 13-14. During a File Custody Review, an alien can submit evidence that would support an argument for release from ICE custody. *Id.* ¶ 16. As of the date of this filing, a decision on continuing with Petitioner's detention had not been made. *Id.* ¶ 17.

In July 2025, Petitioner filed his first habeas petition, largely making the same arguments presented in his second and third petitions. *Reyna-Salgado v. Noem et al.*, Case No. 25-cv-3138 ("*Reyna-Salgado I*"), ECF 1. The Court denied Petitioner's first request for habeas relief, ruling that the petition was premature because less than six months had passed since the removal order became final. *Reyna-Salgado I*, ECF 6 at 1-3. After six months passed, Petitioner filed a second petition seeking his release under *Zadvydas*. *Reyna-Salgado v. Noem et al.*, Case No. 25-cv-3172 ("*Reyna-Salgado II*"), ECF 1. Applying the *Zadvydas* framework, the Court denied the petition because Petitioner had failed to meet his burden:

> Applying this framework, the Court concludes that petitioner has not met his burden to show that there is no significant likelihood of his removal in the reasonably foreseeable future. The mere fact that the requisite six months have now elapsed is not sufficient to meet that burden. *See Zadvydas*, 533 U.S. at 701 ("This 6-month presumption, of course, does not mean that every alien not removed must be released after six months."). Moreover, petitioner does not contend that officials have made no efforts to remove him to a third country; to the contrary, petitioner concedes in the petition that officials have made attempts to remove him to three

> alternative countries. In light of those efforts and the fact that petitioner's detention has lasted only slightly longer than six months since the beginning of the removal period, the Court cannot find that petitioner's detention has become unreasonably indefinite.

Reyna-Salgado II, ECF 6, at 4.

ARGUMENT

28 U.S.C. § 2241(a) vests each district court with the power to grant a writ of habeas corpus. Such a writ "shall not extend to a prisoner" unless "[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). The Court of Appeals reviews legal issues in connection with a § 2241 habeas petition *de novo*, while factual findings are reviewed for clear error. *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012).

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

Although Count I is styled as a Fifth Amendment due process claim and Count II is styled as a claim under 8 U.S.C. § 1231(a)(6), the reality is that both claims are covered by *Zadvydas*. *See Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, *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 2710200, *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.") (citation modified).[1]

Under *Zadvydas*, upon the entry of a final removal order "the Government ordinarily secures the alien's removal during a subsequent 90-day statutory 'removal period,' during which time the alien normally is held in custody." 533 U.S. at 682. If the alien is not removed during this 90-day period, 8 U.S.C. § 1231(a)(6) "authorizes further detention." *Id. Zadvydas* held that a 6-month period of detention is presumptively reasonable. *Id.* at 701. "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." *Id.* The presumption does not mean that "every alien not removed must be released after six months," but instead that the 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.*

Here, Petitioner has not carried his burden to demonstrate "good reason to believe" there is no significant likelihood of removal in the reasonably foreseeable future. While Petitioner has an order that currently precludes removal to his home country of Mexico, "withholding of removal is a form of country specific relief," so "nothing prevents DHS from removing the alien to a third country other than the country to which removal has been withheld or deferred." *Johnson v.*

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[1] To the extent Petitioner is asserting a substantive due process claim, the same analysis applies. *See, e.g., Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, *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, *1-4 (W.D. Okla. Feb. 13, 2025); *Singh v. Barr*, No. 19-CV-732, 2019 WL 4415152, *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, *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.") (citation modified).

Guzman Chavez, 594 U.S. 523, 531-32 (2021) (citation modified). And like *Reyna-Salgado II*, Petitioner does not contend that officials have made no effort to remove him to a third country. ICE has acted diligently by attempting to remove Petitioner to three countries other than Mexico. *See supra* Statement of Facts ("SOF"). These attempts to remove Petitioner elsewhere have not yet borne fruit, but ICE is continuing to investigate third country options and has been in contact with Removal and Internation Operations recently. *Id.*

Instead, although Petitioner doesn't outright say it, Petitioner argues that removal to a third country is unlikely simply because it hasn't happened yet. That is not enough to shift the burden under *Zadvydas*. *See Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, *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, *3 (S.D. Tex. Oct. 21, 2024) (citation modified and emphasis added). "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, *4 (W.D. Wash. May 16, 2023).

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

Even if Petitioner had made an initial showing removal is unlikely, Respondents have now rebutted it. ICE has acted diligently by attempting to remove Petitioner to countries other than Mexico. *See supra* SOF. Those efforts have not succeeded but ICE is continuing to look for alternative countries. *Id.* To that end, ICE reached out to its RIO Headquarters in November 2025 to inquire about potential removal locations for Petitioner. *Id. See, e.g., Soudom*, 2025 WL 1594822, at *2 (finding the respondents "sufficiently rebutted" any initial showing, in part because "immigration officials have diligently sought the necessary travel documentation for petitioner from South Africa since his detention").

CONCLUSION

For the foregoing reasons, the habeas petition should be denied.

Respectfully submitted,

RYAN A. KRIEGSHAUSER
United States Attorney
District of Kansas

s/ Brian E. Vanorsby
Brian E. Vanorsby, KS #27606
Assistant United States Attorney
301 N. Main, Suite 1200
Wichita, Kansas 67202
Telephone: (316) 269-6103
Facsimile: (316) 269-6484
E-mail: brian.vanorsby@usdoj.gov
Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify that on November 26, 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, including:

Maya King
King Law Group
1401 Iron Street, Suite 200
North Kansas City, Missouri 64116
maya@myklegal.com
Counsel for Petitioner

s/ Brian E. Vanorsby
Brian E. Vanorsby
Assistant United States Attorney