United States District Court
Western District of Texas
San Antonio Division

Antonio Delgado-Jaimes, Petitioner, v. Pam Bondi, U.S. Attorney General, *et, a.l*, Respondents.	No. 5:25-CV-01434-XR

Federal[1] Respondents' Response to Petition of Writ for Habeas Corpus and Motion for Temporary Restraining Order

Respondents submit this response per this Court's Oral Order stated on November 17, 2025, ordering a response by 5pm November 18, 2025.[2] In his writ of habeas corpus, Petitioner, *pro se*, seeks release from civil immigration detention, because he has been detained for approximately four months after being ordered removed. ECF No. 1 at 10. Petitioner believes there DHS violated its own policies in detaining Petitioner, there is no significant likelihood of removal in the foreseeable future and further argues his continued detention is unlawful and violates his substantive and procedural rights under the Constitution's Fifth and Fourteenth Amendments. *See e.g.*, ECF No. 1 at 2-10.

Petitioner's claims fail. He is detained on a mandatory basis under 8 U.S.C. § 1231(a). Petitioner's claims fail, as there is 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

[1] The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action.
[2] Arguments by both parties and the relief sought by Petitioner are identical in both the Petition and the Motion for TRO. For brevity's sake Respondents will refer to the Petition throughout, but this response is addressing of both Petitioner's filings.

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 steps are being taken to effectuate removal to a third country and therefore removal is likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Relevant Facts

Petitioner is a citizen and native of Mexico Exh 1. at ¶ 2. On April 6, 2013, he entered the United States without inspection. *Id.* at ¶ 4. Petitioner was then convicted of Illegal Entry and removed from the United States. *Id* at ¶ 5. Petitioner then reentered the Country at some point , and was arrested for DWI and released to ICE for reinstatement of his removal order. *Id* at ¶ 7. Petitioner was then processed for reasonable fear proceedings and sought relief from removal from the immigration court. *Id* at ¶¶ 7-9. On September 12, 2017 Petitioner was ordered removed from the United States but Petitioner received relief from being removed to Mexico in the form of protection pursuant to the Convention Against Torture. *Id* at ¶10. Petitioner was then released on an Order of supervision. *Id* at ¶11. In 2018, Petitioner was convicted of DWI. On July 17, 2025, Petitioner was arrested and detained at the South Texas Processing Center. *Id* at ¶ 14. An informal interview post arrest took place. *Id.*

On August 18, 2025, ICE submitted "Requests for Acceptance" to Guatemala, Canada and Panama, said requests are still pending. *Id* at ¶15. Requests were also made to Belize and El Salvador, and both requests were denied. *Id* at ¶¶ 16-17.

II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

Petitioner's detention is lawful. 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 removal order has been final since September 12, 2017. Exh 1 at ¶ 11; 8 C.F.R. §§ 241.1; 1241.1(b). Petitioner urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and Fourteenth Amendment, because he claims a lack of agreement with third countries and the fact that he has been on an order of supervision. ECF No. 1 ¶¶ 1- 27. 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 also insufficient under *Zadvydas*.

As such, Petitioner cannot meet his burden to establish no significant likelihood of removal in the reasonably foreseeable future. *See 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.

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 has received procedural due process in this case, from his initial reasonable fear interview to his hearing before an immigration judge in withholding only proceedings, to ICE's continued review of Petitioner's post-order detention.

The Fifth Circuit, however, 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).

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 currently in the process of completing these regulatory provisions. Courts have found that these regulatory deadlines are not firm, so long as the review itself has occurred. *See Mohammad*, , 2016 WL 8674354 at *6 n. 6. Petitioner alleges such a violation; however, 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.

III. This Court Lacks Jurisdiction

This Court lacks jurisdiction to review Petitioner's due process claims because they are inextricably intertwined with ICE's unreviewable authority to execute a final order of removal. *See, e.g., C.R.L. v. Dickerson, et al*, 4:25-CV-175-DL-AGH, 2025 WL 1800209 at *2-3 (M.D. Ga. June 30, 2025) (denying habeas petition for lack of jurisdiction where alien sought review of ICE's decision to execute his final removal order to a third country, noting that ICE agreed to provide him with notice and opportunity to contest the removal); *Diaz Turcios v. Oddo*, No. 3:25-CVC-0083, 2025 WL 1904384 at *5 (W.D. Pa. July 10, 2025) (removal to a third country is closely "bound up with" the removal order such that the court lacks jurisdiction over the TRO motion seeking to enjoin the removal).

IV. DHS Third Country Removal Guidance and Processes

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the nationwide preliminary injunction in *D.V.D. v. Dep't. of Homeland Sec.*, No. 25-10676, 2025 WL

1142968 (D. Mass. Apr. 18, 2025), which required ICE to comply with certain procedures before initiating removal to a third country.

On July 9, 2025, the ICE Director issued written guidance to all ICE employees that explicitly rescinded all prior guidance implementing the previously issued preliminary injunction. Ex. B ("July 9 Guidance"). The July 9 Guidance ordered ICE, effective immediately, to adhere to the Secretary of Homeland Security, Kristi Noem's, March 30, 2025, memorandum, *Guidance Regarding Third Country Removals*. Ex. C ("March Guidance").

The March Guidance provides that aliens may be removed to a "country [that] has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." *Id.* If the State Department finds the representations credible, the "alien may be removed without the need for any further procedures." *Id.*

The process provided in the March Guidance satisfies all Constitutional requirements. The Supreme Court has held that when an Executive determines a country will not torture a person on his removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702–03 (2008); *see also Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts "may not question the Government's determination that a potential recipient country is not likely to torture a detainee"), *cert. denied*, 559 U.S. 1005 (2010). As now-Justice Kavanaugh explained in concurrence in *Kiyemba*, the "*Munaf* decision applies here a fortiori: That case involved the transfer of *American Citizens*, whereas this case involves the transfer of alien detainees with no constitutional or statutory right to enter the United States." *Kiyemba*, 561 F.3d at 517–18 (Kavanaugh, J., concurring). These cases stand for the proposition that when the Executive decides an alien will not be tortured abroad, courts may not "second guess [that] assessment," unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citations omitted); *Munaf*, 553 U.S. at 703 n.6.

This framework also requires rejection of any argument of entitlement to an individualized determination under the CAT regulations. The law provides for assurances that an alien would not be tortured if removed to a "specific country," but once the Attorney General and the Secretary of State deem those assurances "sufficiently reliable," that is the end of the inquiry. *See* 8 C.F.R. § 1208.18(c)(1)-(3); *see also Munaf*, 553 U.S. at 703 n.6.

If removal is to a third country not covered by adequate assurances, the March Guidance makes clear that DHS will first inform the alien of the intent to remove him to that country and then give him an opportunity to establish that he fears removal there. Ex. B (March Guidance). If the alien affirmatively states a fear, immigration officials from U.S. Citizenship and Immigration Services ("USCIS") will screen the alien, generally within 24 hours, to determine whether he "would more likely than not" be persecuted on a statutorily protected ground or tortured in the country of removal. *Id.* at 2. If USCIS determines that the alien has not met this standard, the alien will be removed. *Id.* If the alien does meet the standard, the alien will be referred to the immigration judge in the first instance, or if previously in proceedings before an immigration judge, USCIS will notify ICE to file a motion to reopen those proceedings, as appropriate, for the sole purpose of determining eligibility for protection under INA § 241(b)(3) and CAT, specifically to the newly designated country of removal. *Id.* Alternatively, ICE may choose another country for removal, subject to the same processes. *Id.*

The March Guidance affords sufficient process to aliens subject to final orders of removal. It confirms that Petitioner will be notified of a third country removal and afforded an opportunity to assert a fear claim. Petitioner has not shown a likelihood that he will be erroneously deprived of his rights under the March Guidance, such that he is entitled to any additional or substitute procedural safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 355 (1976) (no due process

concerns where there is low risk of an erroneous deprivation through the procedures used). As such, it is unlikely that Petitioner will succeed on the merits of his due process claims.

Given the fact the March Guidance affords Petitioner an opportunity to present a fear claim prior to removal to any third country, he is not likely to prevail on the merits of his due process claims, and the TRO should be immediately dismissed and petition denied.

V. Conclusion

Petitioner is lawfully detained by statute until his removal, and his detention comports with the limited due process he is owed. This Court should deny the petition.

Respectfully submitted,

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