

United States District Court  
Western District of Texas  
San Antonio Division

Jose Santos Gomez-Simeon,  
Petitioner,

v.

Pamela Bondi, Attorney General of the United  
States, *et. al.*  
Respondents.

No. 5:25-cv-01460-JKP

**Federal<sup>1</sup> Respondents' Response to Show Cause Order**

Respondents submit this response per this Court's Order to Show Cause dated November 12, 2025. ECF No. 2. Petitioner Jose Santos Gomez-Simeon is detained in the custody of U.S. Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1231, because he has a reinstated final order of removal. *See* 8 U.S.C. § 1231(a)(5); ECF No. 1 ¶ 5; *Johnson v. Guzman Chavez*, 594 U.S. 523, 526, 534–535 (2021). ICE is actively pursuing efforts to repatriate him to a third country. *See* Exh. A (Declaration of Deportation Officer dated November 20, 2025).

Despite being granted withholding of removal under the Convention Against Torture ("WHO-CAT"), such relief extends only to the country where Petitioner was found to have a reasonable fear of being tortured: Honduras. Exh. A at ¶ 12; *see* 8 C.F.R. §§ 208.17, 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. *See e.g.*, *Guzman Chavez*, 594 U.S. at 531–32, 535–36; 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).

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<sup>1</sup> The Department of Justice represents only federal employees in this action.

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).

**a. Relevant Background**

Petitioner is a native and citizen of Honduras. ECF No. 1 ¶ 1; Exh. A at ¶ 5 (Declaration of Deportation Officer dated November 20, 2025). On January 27, 2005, Petitioner was first admitted to the United States as a crewman. Exh. A at ¶ 5. Petitioner overstayed his visa and continued to remain in the United States unlawfully. *Id* at ¶ 5. On June 19, 2012, Petitioner was ordered removed and physically removed from the United States on May 7, 2012. *Id* at ¶ 9. After Petitioner unlawfully entered the United States, his prior removal order was reinstated, and he was removed on January again September 20, 2012. *Id* at ¶ 10

On November 24, 2012, Petitioner was encountered by immigration officers after he unlawfully re-entered the United States. *Id* at ¶ 11. Again, he was processed for reinstatement of his prior order of removal and was convicted under 8 U.S.C. § 1326 for illegal re-entry on November 26, 2012. *Id* at ¶ 11. After claiming a fear of return, on November 13, 2012, Petitioner was granted WHO-CAT, preventing ICE from executing his final removal order to Honduras, but not removal to third countries. *See id* at ¶ 12. On November 20, 2013, Petitioner was released on an Order of Supervision (“OSUP”). *Id.* at ¶ 13.

On October 22, 2025, ICE took Petitioner back into custody to attempt removal efforts to third countries. *Id.* at ¶ 16. On the same date, ICE revoked his order of supervision. *Id.* ICE is making efforts to attempt removal efforts to third countries including Mexico. Exh. A at ¶ 18.

**b. 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 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.

**c. 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.* Petitioner has been detained for less than one month and his substantive due process claim is premature.

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 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 because he believes ICE (as of Petitioner’s November 10, 2025, filing) is not actually attempting to remove him anywhere reasonably foreseeable. ECF No. 1 at

15-16. Beyond these conclusory allegations, 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 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).

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). Again, he has been detained for less than one month and his substantive due process violation allegation is premature. 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 seeking acceptance by a third country. 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.

**d. 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). 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*, 1:25-CV-00584-RP-DH, 2025 WL 2726549 at \*3–6 (W.D. Tex. Aug. 12, 2025), adopted by

*Linares v. Collins*, 2025 WL 2726067 (W.D. Tex. Sept. 24, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)).

Additionally, 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).

ICE applies the post order custody review (“POCR”) as required by regulation for aliens detained under § 1231. Again, Petitioner has been detained for less than one month, so the POCR process is not yet applicable. Once the 90-day removal period concludes, ICE will review Petitioner’s detention and whether removal is reasonably foreseeable. 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. Even if Petitioner could allege a procedural due process violation, 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.

e. **Petitioner’s Request for a Low Bond Conflicts with Supreme Court Precedent and Should be Denied.**

Among Petitioner’s requests is a request for release on recognizance, *a low bond*, or reasonable conditions of supervision. ECF No. 1 at 12 (emphasis added). The Supreme Court determined in *Guzman Chavez*, that aliens subject to reinstated orders of removal are not entitled to a bond during their withholding-only proceedings. *Johnson v. Guzman Chavez*, 549 U.S. 523, 526 (2021). Reading *Guzman Chavez* and § 1231 together, Petitioner’s request for a low bond or release on an order of recognizance is inapposite. *See generally* § 1231(a)(2) (detention during the “removal period” is mandatory); *Guzman Chavez*, 594 U.S. at 529 (if removal is not reasonably foreseeable, the alien will be released subject to supervision (§ 1231(a)(3))). To the extent those requests violate Supreme Court and statutory precedent on the release of aliens with reinstated prior orders of removal, those requests should be denied.

f. **Conclusion**

Petitioner is lawfully detained by statute, and his detention comports with the limited due process he is owed as an alien with a reinstated final order of removal. This Court should deny the petition.

Respectfully submitted,

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