

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAUN CARLOS MARTINEZ MARTINEZ,)	
)	
Petitioner,)	
)	
v.)	Case No. 25-3254-JWL
)	
UNITED STATES IMMIGRATION and CUSTOMS ENFORCEMENT; and, C. CARTER, Warden, FCI-Leavenworth,)	
)	
Respondents.)	
)	

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the *pro se* petition of Juan Carlos Martinez Martinez (“Petitioner”) for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen 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.

STATEMENT OF FACTS

The following facts are part of the Declaration of Miryan Sarabia, a Deportation Officer for Enforcement and Removal Operations (“ERO”) at United States Immigration and Customs Enforcement (“ICE”). Exhibit (“Ex.”) 1, Declaration of Miryan Sarabia ¶¶ 1-4.

Petitioner is a native and citizen of Mexico. Ex. 1 ¶ 5; *see also* ECF 1 ¶ 10. He unlawfully entered the United States on May 8, 2018 near Douglas, Arizona. Ex. 1 ¶ 6. He was subsequently encountered by Customs and Border Protection (“CBP”), taken into custody, and detained pending

expedited removal pursuant to section 235(b)(1) of the Immigration and Nationality Act (“INA”). *Id.* Petitioner was removed to Mexico on or about May 10th, 2018. *Id.* ¶ 7. Petitioner unlawfully reentered the United States at an unknown date and time. *Id.* ¶ 8. On or about November 15, 2024, ERO was notified that the Petitioner had been detained in Boone County, Missouri for traffic and domestic violence related charges. *Id.* ¶ 9. Petitioner was taken into ICE custody on or about the same date. *Id.* ¶ 10.

On or about December 19, 2024, Petitioner filed an application for relief with United States Citizenship and Immigration Services (USCIS). *Id.* ¶ 11. USCIS denied the Petitioner’s application for relief and the case was referred to the Immigration Judge for review. *Id.* ¶ 12. On or about January 26, 2025, the Immigration Judge issued an order granting the Petitioner relief and placing him in removal proceedings. *Id.* ¶ 13. Petitioner’s hearing was continued to February 18, 2025, to allow him time to retain an attorney to represent him in the removal proceeding. *Id.* ¶ 14. Petitioner’s removal proceeding was continued again to May 8, 2025, for an individual hearing on Petitioner’s application for relief. *Id.* ¶ 15. At the conclusion of the hearing on May 8, 2025, the IJ ordered Petitioner removed and granted Petitioner’s application for relief. *Id.* ¶ 16. No appeal was taken of the IJ’s decision by either party, making the order final upon the lapse of the 30-day appeal period on June 7, 2025. *Id.* ¶ 16.

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.* ¶ 19.

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 PO CR 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 PO CR 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.* ¶ 20.

On or about May 30, 2025, ERO attempted to obtain approval to remove Petitioner to Canada. On June 2, 2025, ERO’s request was denied by Canada. *Id.* ¶ 21. On June 2, 2025, ERO attempted to obtain approval to remove Petitioner to Guatemala. On June 3, 2025, ERO’s request was denied by Guatemala. *Id.* ¶ 22. On June 10, 2025, ERO attempted to obtain approval to remove Petitioner to Costa Rica. On July 7, 2025, ERO’s request was denied by Costa Rica. *Id.* ¶ 23. ERO has continued to follow up with Removal and International Operations (“RIO”) headquarters to inquire about other potential countries to which Petitioner could be removed on a near monthly

basis. *Id.* ¶¶ 24-28. ICE will continue these efforts to identify alternative countries to which Petitioner can be removed. *Id.* ¶ 29.

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. Grounds One and Two fail because Petitioner has not shown that his removal is unlikely and, even if he had, Respondents rebut that showing.

Although Ground One is styled as a claim under 8 U.S.C. § 1231(a)(6) and Ground Two is styled as a Fifth Amendment due process claim, 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).

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.*

A Petitioner does not show that there is no significant likelihood of removal in the reasonably foreseeable future merely because his or her detention has been slightly longer than the presumptive six-month period. *See Reyna-Salgado v. Noem*, No. 25-3172-JWL, 2025 WL 3209007, at *2 (D. Kan. Oct. 3, 2025) (“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.”).

Here, Petitioner’s Order of removal became final on June 7, 2025, after the expiration of the time allowed for an appeal. 8 C.F.R. 1214.1(c). Petitioner filed his Petition on November 21, 2025, less than six months after his detention under § 1231(a)(6) began. As of the date of this filing, Petitioner’s detention has only lasted sixteen days longer than the presumptively lawful six-month period. During this time, ICE has acted diligently in identifying and attempting to remove Petitioner to three countries other than Mexico. *See supra* Statement of Facts (“SOF”). And ICE has followed up consistently seeking to identify other countries to which Petitioner may be removed. (SOF). In light of the efforts taken to remove Petitioner and the only slightly longer than six months period of detention, Petitioner has not carried his burden to demonstrate “good reason to believe” there is no significant likelihood of removal in the reasonably foreseeable future.

“[N]othing prevents DHS from removing [Petitioner] to a third country other than the country to which removal has been withheld or deferred.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021) (citation modified).

Moreover, the fact that so far three countries have not accepted Petitioner does not 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 that 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. 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”).

II. Ground Three should be denied as Petitioner never develops any basis to conclude that his right to procedural due process has been violated.

Petitioner appears to argue that he is entitled to habeas relief on the ground that he has not been provided a neutral decision-maker to review his continued custody by ICE in violation of his right to procedural due process under the Fifth Amendment to the United States Constitution. ECF 1, pg. 6. This ground should be denied as conclusory and not sufficient to state a constitutional claim. *See Glushchenko v. United States Dep't of Homeland Sec.*, 566 F. Supp. 3d 693, 711 (W.D. Tex. 2021) (denying the same claim as conclusory and insufficient to state a constitutional claim.)

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 December 22, 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. I further certify that I caused a copy of the foregoing and the notice of electronic filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

Juan Carlos Martinez Martinez,
FCI Leavenworth Inmate Mail
P.O. Box 1000
Leavenworth, KS 66048



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