

United States District Court
Western District of Texas
El Paso Division

Sami Francis Khoury,
Petitioner,

v.

Angel Garite; *et al*,
Respondents.

No. 3:25-CV-00577-DCG

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

Respondents timely submit this response per this Court's Order dated December 2, 2025. See ECF No. 2. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Khoury ("Petitioner"), 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 February 3, 1999, 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 alleges prior efforts to obtain travel documents were unsuccessful and ICE will not be able to deport him in the foreseeable future. ECF No. 1 at ¶ 18.

Petitioner is lawfully detained with a final order of removal, Respondents can show that removal to 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 entered the United States in December 1992. *See* Ex. A (Declaration of Assistant Field Office Director Martin A. Sarellano Jr.) at ¶ 3. On February 3, 1999, an immigration court ordered Petitioner removed from the United States and the order became administratively final in May 2001. *Id.* at ¶ 5. Immigration and Customs Enforcement (ICE) released Petitioner on an Order of Supervision (OSUP) in June 2008. *Id.* at ¶ 7.

On October 27, 2025 ICE apprehended Petitioner under a final order of removal. *Id.* at ¶ 9.

On or about December 1, 2025, ICE sent a complete travel document packet, to include photos to the Consulate General of Liberia. *Id.* at ¶ 10. On or about December 8, 2025, ICE received information from the consulate General of Liberia they do not recognize Petitioner as a citizen or national. *Id.* at ¶ 11.

On or about December 8, 2025, ICE sent a sent travel document packet, to include photos to the to the Consulate General of Lebanon. *Id.* at ¶ 12.

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 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 to Lebanon 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 ¶¶ 2, 63. ICE cannot confirm Petitioner’s country of citizenship. *Id.* at ¶ 49; *see also* Ex. A at ¶ 11. As such, ICE has asked for removal to a third country of Lebanon on December 8 and are awaiting a response. *See* Ex. A at ¶ 12.

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 Lebanon, and if declined, ICE will continue to request acceptance from third countries. Ex A at ¶ 12. 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). 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 conducts post-order custody reviews (“POCR”s) of an alien’s detention as required by regulation for aliens detained under § 1231. Once the 90-day removal period concludes in this case, ICE will perform a POCR under 8 C.F.R. § 241.4 to determine whether Petitioner should remain detained or whether he should be released in the exercise of discretion under an Order of Supervision. At or around the 180-day mark, Petitioner will receive another POCR if he remains detained, wherein ICE will determine whether he should remain detained. *See* 8 C.F.R. § 241.13. POCRs are set to occur at the 270-day and the one-year marks, as well. *Id.*

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. 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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