United States District Court
Western District of Texas
San Antonio Division

Eduardo Xavier Jimbo Mendez Petitioner, v. Warden South Texas ICE Processing Center, *et al*, Respondents.	No. 5:25-CV-01566-XR

Federal[1] Respondents' Response in Opposition to Petitioner's Writ of Habeas Corpus

Respondents timely submit this response to the petition for writ of habeas corpus [ECF No. 1]. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Jimbo Mendez ("Petitioner"), *pro se*, seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Despite his allegation that there is "no basis" for his continued detention, Petitioner has a final order of removal and ERO is working to execute the removal order in December 2025. *See* Exh. A; *see also* 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)

I. Facts and Procedural History

Petitioner is a citizen of Ecuador who unlawfully entered the Untied States in 2022. Exh. A at 1. He was released and instructed to report to ICE. *Id* at 2. Petitioner reported and was issued a Notice to Appear. *Id.* After being notified of his hearing for February 15, 2024, Petitioner did

[1] The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. The Federal Respondents are lawfully detaining Petitioner on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

not appear, and he was ordered removed *in absentia*. Exh. A at 2. In March 2025, Petitioner filed a motion to reopen the *in absentia* removal order, which was denied on April 24, 2025. *Id* at 2–3. On May 19, 2025, Petitioner filed an appeal of the denial of the motion to reopen the *in absentia* removal order. *Id* at 3. The appeal is still pending but the appeal does not stay[2] removal. Exh. A at 3. Petitioner has not requested a stay of removal from the Board of Immigration Appeals (Board). *Id.* On August 11, 2025, ICE detained Petitioner and revoked his order of recognizance. *Id.* ICE mistakenly believed there was a stay of removal in place, however ICE recognizes no stay of removal in place. *Id.* On December 17, 2025, ICE conducted Petitioner's 90-day post order custody review (POCR). Exh. A at 3. ICE has Petitioner's valid Ecuadorian passport. *Id.* ICE is working to schedule his removal from the United States to Ecuador to occur in December 2025. *Id.*

ICE's FY2024 annual report documents 12,921 Ecuadorian nationals were removed from the United States, the highest number of removals in the past five years. *See* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (last accessed December 22, 2025). In FY2025, first quarter, over 2,000 Ecuadorian nationals were removed. *See* ICE Enforcement and Removal Operations Statistics | ICE (filtered by nationality and last accessed December 22, 2025).

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

[2] When Congress passed IIRIRA (Immigration Reform and Immigrant Responsibility Act of 1996), Pub. L. No. 104-208, 110 Stat. 3009, on September 30, 1996. This law, among other things, repealed the portion of the INA providing for an automatic stay when the denial of the motion to reopen an *in absentia* order is appealed to the Board.

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 Ecuador 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 April 24, 2025. Exh. A at 3. He was detained in August 2025 and therefore six months have not elapsed. *See* Exh. A at 3. Petitioner's detention is presumptively reasonable.

Petitioner, nonetheless, urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth Amendment. ECF No. 1. 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 not only false, but they are also wholly insufficient under *Zadvydas*. *See 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).

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.

Even if the burden did shift to ICE in this analysis, ICE could show that removal is likely in the foreseeable future. ICE is working to schedule his removal for December 2025. Furthermore, ICE's FY2024 annual report documents 12,921 Ecuadorian nationals were removed from the United States, the highest number of removals in the past five years. *See* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (last accessed December 22, 2025). In FY2025, first quarter, over 2,000 Ecuadorian nationals were removed. *See* ICE Enforcement and Removal Operations Statistics | ICE (filtered by nationality and last accessed December 22, 2025). 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.

b. ICE Has Afforded Petitioner Procedural Due Process.

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, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is required beyond the constitutional analysis outlined in *Jennings* and *Thuraiissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

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).

As an applicant for admission, Petitioner has received the maximum process afforded by Congress under the statutes, to include placement in "full" removal proceedings before an immigration judge. Such process included notice and an opportunity to be heard, including judicial

review through the appellate court. Even after that process ran its course, ICE has conducted a custody review of his detention, most recently in December 2025. Exh. A at 3. This process addresses constitutional concerns that were identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. This process comports with Petitioner's limited due process rights as an applicant for admission subject to a final order of removal. Petitioner's procedural due process claim, like his substantive one, should be denied.

III. Conclusion

Petitioner is lawfully detained, and his substantive and procedural due process violation allegations are without merit. Accordingly, the Court should deny this petition.

Respectfully submitted,

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Certificate of Service

I certify that on December 22, 2025, I directed a copy of Response in Opposition to Petition for Writ of Habeas Corpus to be mailed to Petitioner (*pro se*) at the following address:

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