United States District Court
Western District of Texas
San Antonio Division

Bikash Gurung, Petitioner, v. Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. SA:25-CV-01614-XR

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

Federal Respondents timely submit this response per this Court's Order dated July 30, 2025, directing service and ordering a response within three (3) days of the date of service. *See* ECF No. 3.[2] In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Garcia-Aleman ("Petitioner") seeks release from civil immigration detention, claiming that aggregate of 16 months of post-order detention is unlawful. ECF No. 1.

The petition consists of two substantive counts: (1) Fifth Amendment due process violation (substantive and procedural); and (2) Violation of the Immigration and Nationality Act (INA). *Id.* ¶¶ 13.[3] Petitioner does not list any specific relief sought in his Prayer of Relief, however given the nature of the case and the specific facts, Respondent's believe the intent of the petition is to seek immediate release. *Id.* at .¶15.

[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, however, have detention authority over aliens detained under 8 U.S.C. § 1231(a).

[2] The U.S. Attorney's office was served on December 10, 2025, by certified mail.

[3] Petitioner filed the habeas petition *pro se*, and as such, Respondent's are doing their best to fully address all possible claims given the limited information.

Petitioner is lawfully detained with a final order of removal while ICE prepares to execute that order. *See* Ex. A (C. Pena Declaration).; 8 U.S.C. § 1231(a). Petitioner's post-order detention is mandatory for the first 90 days of the removal period. *Id.* Even beyond the 90-day removal period, any constitutional challenge to continued detention is not ripe until the alien has been detained in post-order custody for at least six months. *See Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011). Petitioner's claims should be denied, because he is lawfully detained. Petitioner cannot show that ICE is unlikely to remove him to a third country in the reasonably foreseeable future.

I. Relevant Facts and Procedural History

Petitioner is a native of Nepal with a final order of removal that was first entered on March 25, 2022. Exh. A (C. Pena Declaration) at ¶ 9. On March 9, 2022, ICE issued Petitioner superseding notice to appear based on his criminal history. *Id.* at ¶ 7. On March 25, 2022, Petitioner appeared before the immigration court and was not eligible for any relief, and as such was ordered removed to Nepal., *Id.* Following that order, and after attempts to obtain travel documents ICE released him from custody under an Order of Supervision ("OSUP") on August 5, 2022. *Id.* ¶¶ 10-15. Pursuant to his conditions of release, Petitioner was required to provide proof of requests for a travel document. *Id* at ¶¶ 15-16. On November 3, 2022, Petitioner informed ICE that he had applied to other countries for a travel document, and ICE scheduled an in person meeting so that he could provide proof. *Id* at ¶17-19. Petitioner then updated ICE as to new inquires he conducted to assist in his removal. *Id* at ¶ 20. On or about January 21, 2025, ICE had Petitioner report in person to prepare for removal, and on January 28, 2025, Petitioner was taken into custody. *Id* at ¶¶ 21-22. ICE then began a review of Petitioner's A-file, along with family member A-files. *Id* at ¶23-24. This was done to obtain more information regarding nationality,

citizenship, and heritage. *Id.* On March 11, 2025, ICE received a request from an attorney for release of petitioner, said request was subsequently denied. *Id* at ¶¶25-26. On or about June 25, 2025, ICE resubmitted a travel document request to the Embassy of Nepal, and ICE received a request for a money order for the travel document request. *Id* at ¶ 27. On July 1, 2025, ICE submitted the request to headquarters for review. *Id* at ¶ 28. On July 9, 2025, ICE received a second request from immigration counsel regarding release of Petitioner, and more it was denied. *Id* at ¶¶ 29, 31. On or about July 10, 2025, ICE submitted the money order to the Embassy of Nepal. *Id* at ¶ 30. On or about July 24, 2025, ICE conducted a 150-day Post Order Custody review, and said review resulted in continued detention. *Id* at ¶32. On or about July 30, 2025, the travel document request was denied because Petitioner was unable to provide a passport number on the passport application. *Id* at ¶ 33. On or about August 6, 2025, ICE-HQ requested a denial letter from the Embassy of Nepal, and access to relevant Nepalese databases to search for a passport/citizenship number for Petitioner. *Id* at ¶¶ 34-35. On or about October 9, 2025, Petitioner informed ICE that he would like to be removed to a third country because he does not possess documents to Nepal. *Id* at ¶ 36. On October 23, 2025, Petitioner informed that he would like to be removed to Mexico. *Id* at ¶ 37. ICE did not pursue a removal to Mexico at that time because the removal process with Nepal was still ongoing. *Id.* On or about December 8, 2025, ICE-HQ notified local Ice that the Nepalese embassy was not likely to issue a travel document. *Id* at ¶ 38. On December 11, 2025, ICE local emailed ICE-HQ a Request for Acceptance of Alien, Form I-241, to submit to Mexico for third country removal. *Id* at 39. That same day the request was denied by Mexico. *Id.* ICE continues the third country removal process and plans to seek removal to additional third countries. *Id.* at 40.

II. Section 1231(a) Mandates Petitioner's Post-Order Detention for 90 Days.

Petitioner is detained in ICE custody under 8 U.S.C. § 1231(a), because he has a final order of removal. *See* Exh. A (C. Pena Declaration). There is currently a removal option 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).

ICE's detention authority under § 1231 is well-settled. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). 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). DHS has no obligation to release during the 90-day period until the Department of Homeland Security DHS Headquarters Post-Order Detention Unit has had the opportunity during a six-month period to determine whether there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.13(b)(2)(ii); 241.13(f).

III. Petitioner's Due Process Claim Fails, As Petitioner fails to provide "Good Reason" to believe there is no significant likelihood of removal in the foreseeable future.

Federal Respondents are actively seeking to execute Petitioner's removal order, and Petitioner's post-order detention is presumptively reasonable for at least six months.[4] *See Zadvydas*, 533 U.S. at 701. Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *Id.* Under § 1231, the removal period can be

[4] The Court lacks jurisdiction to review which country ICE is considering for removal, because those negotiations 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); *Diaz Turcios v. Oddo*, No. 3:25-CVC-0083, 2025 WL 1904384 at *5 (W.D. Pa. July 10, 2025).

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 fails to comply with removal efforts or presents a flight risk or other risk to the community. *Id.*; *see also Guzman-Chavez*, 594 U.S. at 528–29, 544; 8 U.S.C. § 1231(a)(1)(C), (a)(6); 8 C.F.R. § 241.4. Continued detention under this provision is the "post-removal-period." *Guzman-Chavez*, 594 U.S. at 529. Where the alien challenges the discretionary basis for detention authority, that decision is protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

The statute does not specify a time limit on this post-removal period, but the Supreme Court has read an implicit limitation into the statute and held that the alien may be detained only for a period reasonably necessary to remove the alien from the United States. *Id.*; 8 C.F.R. § 241.13. Although the Court recognized this six-month presumptive period, *Zadvydas* "creates no specific limits on detention . . . as 'an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (quoting *Zadvydas*, 533 U.S. at 701).

To state a claim for relief under *Zadvydas*, Petitioner must show that: (1) he is in DHS custody; (2) he has a final order of removal; (3) he has been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700.

When an 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 also provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade*, 459 F.3d at 543–44; *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien makes this showing, the burden will not shift to the government to prove

otherwise. *Id.* Petitioner has not provided any reason, much less good reason, that removal is not reasonably foreseeable. ICE has diligently sought approval from multiple countries, and has expediently continued to pursue removal options. *See* Exh. A (C. Pena Declaration).

Petitioner has a final order of removal that authorizes his detention under 8 U.S.C. § 1231(a). ICE denies that there is no likelihood of removal in the reasonably foreseeable future. *Id.* § 1231(a)(6). 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).

Even if Petitioner were to successfully meet his burden, ICE avers that there is significant likelihood of removal in the reasonably foreseeable future. Petitioner is lawfully detained with a final order of removal. His due process claim fails here as a matter of law.

IV. The OSUP Revocation Does Not Violate Petitioner's Procedural Due Process Rights.

Petitioner cannot show a procedural due process violation here. While an agency is required to follow its own procedural regulations, 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). 8 C.F.R. § 241.4(l) (requiring notice and an interview be given to the alien "promptly" upon return to custody). The remedy for such a violation, in any event, 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). 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). For these reasons, Petitioner's procedural due process claim fails, but even if it did not, it would not result in his release from custody.

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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