

United States District Court
Western District of Texas
San Antonio Division

Aleksandr Snetkov,
Petitioner,

v.

Kristi Noem, in her official capacity as
Secretary, U.S. Department of Homeland
Security *et al*,
Respondents.

No. 5:25-CV-01761-FB

**Federal¹ Respondents' Response in Opposition to
Petitioner's Motion for Temporary Restraining Order**

Respondents timely submit this response per this Court's Order dated December 17, 2025, directing service and ordering a response to Petitioner's Motion for Temporary Restraining Order (TRO). *See* ECF Nos. 4. In his TRO, Petitioner, requests this Court, *inter alia*, order him released from custody and a stay of removal preventing removal from the United States. *See* ECF No. 2. Petitioner's motion should be denied.

First, the TRO should be denied because Petitioner seeks an injunction to grant the same ultimate relief he seeks on the merits of the habeas proceedings. ECFs No. 1, 2; *see e.g.*, *Garcia-Aleman v Warden Bobby Thompson*, SA-25-CV-00886-OLG *1 (W.D.T.X. October 30, 2025) (collecting cases). Furthermore, seeking a stay of removal while arguing that removal is not reasonably foreseeable creates a self-fulfilling prophecy that demonstrates why the stay should not be granted.

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 pursuant to 8 U.S.C. § 1231(a)(6).

Second, Petitioner is not presently entitled to release from post-final removal order custody. Petitioner has a final order of removal from January 18, 2007, 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). Moreover, Petitioner's approximately one month detention does not violate the constitution as applied to him, because he is being given sufficient procedural and substantive due process. As such, Petitioner is not likely to succeed on the merits of these claims and this TRO should be denied.

Specifically, Petitioner is not likely to succeed for several reasons: (1) his post-removal detention is authorized by statute 8 U.S.C. § 1231(a); (2) while this Court may review an as-applied constitutional challenge, Petitioner cannot show that his continued detention violates procedural due process as ERO served notice of the order of supervised release revocation and afforded Petitioner an opportunity to respond and; (3) his detention is not unconstitutionally prolonged (or indefinite) in violation of his substantive due process rights, because he has been detained for approximately one month in post-removal-order detention.

I. Facts and Procedural History

Petitioner is a native and citizen of Moldova who was admitted as a refugee in 1997. ECF No. 8 Exh. A at ¶ 4. He never adjusted status to lawful permanent resident. *Id.* After a series of criminal arrests, an immigration judge ordered Petitioner removed. *See id.* at 6–11. Petitioner waived appeal of the immigration judge's order, and the order of removal became final². ECF No. 8 Exh. A at ¶ 11. On January 25, 2007, ERO served a notice to alien of file custody review and

² Petitioner waiving an appeal caused the removal order to become final. 8 C.F.R. § 1241.1(b).

warning for failure to depart (form I-229(a)) instruction sheet regarding requirements to assist in removal. *Id.* at ¶ 13. In January 2007, ICE submitted a travel document request (TDR) to the Embassy of Moldova which was denied in May 2007. *Id.* at ¶¶ 14, 16. During this time in ICE custody, ICE completed the 90-day post order custody review (POCR). *Id.* at ¶ 14–16. In June 2007, Petitioner was released on an order of supervision (OSUP). ECF No. 8 Exh. A at ¶ 18. After Petitioner’s detention in state custody, he was detained by ICE again. *Id.* at ¶ 18. In April 2008, another TDR request was sent to the Moldovan Embassy. *Id.* at ¶ 19. In May 2008, Petitioner was released on OSUP. ECF No. 8 Exh. A at ¶ 20. On November 17, 2025, ICE redetained Petitioner and served him with a Notice of Revocation of Release. *Id.* at ¶ 21. On December 22, 2025, ICE served Petitioner with the form I-229(a), Notice to Alien of File Custody Review and Warning for Failure to Depart and an instruction sheet for Petitioner to assist in his removal. *Id.* at ¶ 22. He was provided a TDR packet to complete and return for mailing to the Consulate of Moldova, in Washington D.C. ECF No. 8 Exh. A at ¶ 22.

II. Legal Standards

A preliminary injunction is an “extraordinary and drastic remedy.” *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is “not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion.” *Black Fire Fighters Ass’n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). Importantly, temporary restraining orders are ordinarily aimed at temporarily preserving the status quo. *Foreman v. Dallas Cty.*, 193 F.3d 314, 323 (5th Cir. 1999), *abrogated on other grounds by Davis v. Abbott*, 781 F.3d 207 (5th Cir. 2015). “The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted,

(3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.” *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has “clearly” carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

III. Argument

a. Plaintiff is Unlikely to Succeed on the Merits.

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 at 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.

Petitioner’s reliance on *Zadvydas* is premature because he has been detained less than six months. 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. Petitioner does not and cannot make this

showing, as he has been currently detained less than six months in post-order custody. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 7–16 (W.D. Tex. Aug. 12, 2025).

Petitioner cannot show “good reason” to believe that removal 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; *see also Linares*, ECF No. 14 at 8, 10–11.

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)).

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 ICE was unable to remove him from the United States fourteen years ago. ECF No. 2 at 6.

Petitioner's claims are insufficient under *Zadvydas* because he has not shown that he has been in post-order custody for six months, and he has not shown any good reason to believe that removal is unlikely. *See Linares*, ECF No. 14 at 8, 10–11, 14–16; *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.

Petitioner cannot establish a procedural due process violation because he was not 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 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).

Petitioner argues that a violation of the OSUP revocation regulations means Petitioner must be released. ECF No. 2 at 8–9. However, the remedy for any procedural due process violation is substitute process, not release. *See Mohammad v. Lynch, supra*. This further shows why Petitioner is not likely to succeed on the merits.

B. Remaining Factors Do Not Favor Relief.

With respect to the balancing of the equities and public interest, it cannot be disputed that (1) Petitioner is subject to a final order of removal, and ICE is actively working to remove Petitioner; and (2) both the government and the public at large have a strong interest in the enforcement of the immigration laws.

IV. Conclusion

This TRO motion should be denied, because Petitioner has not clearly shown that his circumstances merit such an extraordinary remedy. Petitioner's substantive due process violation claim is premature, and the remedy to his alleged procedural due process violation is substitute process, not release from custody. The Court should deny the Motion.

Respectfully submitted,

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