

United States District Court
Western District of Texas
El Paso Division

Jelili Qudus,
Petitioner,

v.

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

No. 3:25-CV-00679-DB

**Federal¹ Respondents' Response in Opposition to
Petitioner's Writ of Habeas Corpus**

Respondents submit this response per this Court's Order [ECF No. 2] and Respondents' motion for extension of time [ECF No. 3]. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Qudus ("Petitioner"), seeks release from civil immigration detention, claiming that his approximately two-month post-removal-order 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 from June 20, 1997, 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 claims he should be released because he alleges his order of supervision (OSUP) was wrongfully revoked does not

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).

merit release.

Petitioner is lawfully detained with a final order of removal, his constitutional challenge to continued detention is not ripe until he has been detained in post-order custody for at least six months, and there is insufficient reason to believe that removal is unlikely in the foreseeable future. The burden of proof has not shifted to Respondents, but even if it had, Respondents can show that removal to Nigeria is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Nigeria. ECF No. 1 at 6. He entered the United States as a tourist visa and overstayed his visa, rather than seek or receive an extension. Exh. A at ¶ 6. Petitioner was convicted of engaging in a conspiracy to sell social security cards. *Id* at ¶ 7. He was sentenced to imprisonment in the Bureau of Prisons. *Id*. He was ordered removed from the United States because he overstayed his visa and committed a crime involving moral turpitude within five years of his entry. *Id* at ¶ 9. Petitioner filed applications for relief from removal but those were denied and furthermore, he was found to be not credible before the immigration court. *Id*. Those decisions were affirmed on appeal. *Id* at ¶¶ 9–13. Petitioner later sought to reopen his removal proceedings. *Id* at ¶ 14. The immigration judge initially granted that motion before vacating its decision as jurisdiction was not properly before the immigration judge. *See* Exh. A at ¶¶ 14, 19–20. ICE attempted to execute the removal order by directing Petitioner to report for removal. *Id* at ¶¶ 15–18. On September 14, 2008, ICE detained Petitioner and released him on OSUP on December 19, 2008. *Id* at ¶¶ 21–22. In 2010, Petitioner requested ICE join in his motion to reopen proceedings which ICE declined. Exh. A at ¶ 23–24. On October 23, 2025, ICE detained Petitioner to execute the removal order. *Id* at ¶ 25. ICE completed the pre-removal checks and submitted his

travel document packet to the Consulate General in Atlanta. *Id* at ¶¶ 27–28. In addition, ICE’s headquarters (HQ RIO) submitted a request using the Electronic Nationality Verification (ENV program) for Petitioner. Exh. A at ¶ 29. On December 5, 2025, the Government of Nigeria could not verify his identity through the ENV program. *Id* at ¶ 30. ICE will schedule Petitioner for an identity verification interview with the Consulate. *Id* at ¶ 31.

Petitioner admits that his daughter filed an I-130 petition to recognize Petitioner as a parent of a U.S. citizen, however he must concede, and he does, that he is not eligible to obtain permanent residency in the United States because he is “inadmissible”.² ECF No. 1 at 7; INA § 212(a)(2)(A)(i)(I); 8 U.S.C. 1182(a)(2)(A)(i)(I).

Publicly available statistics show that 437 Nigerian nationals were successfully removed to Nigeria in the first quarter of FY2025. *See ICE Enforcement and Removal Operations Statistics | ICE* (filtered by nationality and last accessed Dec. 30, 2025). Prior to FY2025, 138 Nigerian nationals were successfully removed in FY2024, showing an increase from the 2021. *See <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>* (last accessed Dec. 30, 2025).

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).

² Petitioner also alleges he was unable to appear for a biometrics appointment with Citizenship and Immigration Services but fails to explain what the biometric notice is for or its relevance towards the instant habeas. ECF No. 1 at 9.

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. Petitioner’s Substantive Due Process Claim under *Zadvydas* is Premature.

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 detained less than six months in post-order custody. *Chance v. Napolitano*, 453 F. App’x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011); *Agyei-Kodie v. Holder*, 418 F. App’x 317, 2011 WL 891071 at *1 (5th Cir. Mar. 15, 2011); *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 n.33 (W.D. Tex. 2018); *Kasangaki v. Barr*, 2019 WL 13221026 at *3 (W.D. Tex. July 31, 2019); *Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 7–16 (W.D. Tex. Aug. 12, 2025).

IV. 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 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)). 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 argues that he hasn’t been given a ‘sign’ that his removal is foreseeable and therefore his condition is indefinitely uncertain. ECF No. 1 at 10. 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.

Even if the burden did shift to ICE, ICE could show that removal is likely in the foreseeable future. Publicly available statistics show that 437 Nigerian nationals were successfully removed to Nigeria in the first quarter of FY2025. *See ICE Enforcement and Removal Operations Statistics | ICE supra*. Prior to FY2025, 138 Nigerian nationals were successfully removed in FY2024, showing an increase from the 2021. *See*

<https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> *supra*.

ICE attempted to obtain his travel document through the ENV but after that request was denied, ICE will schedule him for an identity verification interview. *See* Exh. A at ¶¶ 28–31. Petitioner’s substantive due process claim fails here as a matter of law.³

V. 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*, at 10–14 (discussing *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). This Court should also follow *Zadvydas* to review the procedural claim at issue here. *Id.* Under the *Zadvydas* framework, six months post-order detention is reasonable, and unless that time frame has passed, any procedural due process claim is also premature.

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

³ Petitioner makes additional allegations regarding his conditions of confinement. ECF No. 1 at 11-12. These allegations do not provide a basis for release in habeas. *See Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021) (rejecting a habeas petitioner’s argument that alleged deficiencies in the conditions of confinement would entitle him to release, with the explanation that “[s]imply stated, habeas is not available to review questions unrelated to the cause of detention,” and its “sole function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose” (internal quotation marks and citation omitted)); *Ahmed v. Warden*, No. 1:24-CV-1110, 2024 WL 5104545, at *1 (W.D. La. Sept. 25, 2024) (applying this rule to an immigration detainee’s claims of religions discrimination in custody as well as other alleged deficiencies in the conditions of confinement).

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).

Petitioner argues he has not violated his conditions of supervised release and is not a flight risk or threat to the community or society. ECF. No. 1 and therefore he must be released. These allegations are insufficient to establish ICE has failed to provide procedural protections, and even if it did, it would not result in his release from custody or a stay of his removal order. Petitioner's allegations of procedural due process violations should be denied.

VI. Conclusion

Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6) and any due process claim is premature under *Zadvydas*. Moreover, Petitioner fails to show good reason to believe that there is no significant likelihood of removal to Nigeria 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. Additionally, ICE has afforded Petitioner procedural due process over the course of his approximate two-month post-order detention, including post-order custody reviews. 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,

Justin R. Simmons
United States Attorney

By: /s/ Anne Marie Cordova
Anne Marie Cordova
Assistant United States Attorney
Texas Bar No. 24073789
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100 (phone)
(210) 384-7118 (fax)
Anne.Marie.Cordova@usdoj.gov

Attorneys for Respondents