United States District Court
Western District of Texas
El Paso Division

Nicole Tatiana Cala-Villamil Petitioner, v. Kristi Noem, *et al*, Respondents.	No. 3:25-CV-00688-LS

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

Respondents timely submit this response per this Court's Order dated December 18, 2025, directing service and ordering a response. *See* ECF No. 3. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Ms. Cala-Villamil ("Petitioner"), seeks release from civil immigration detention, claiming that her approximately 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 her allegation that there is "no basis" for her continued detention, Petitioner has a final order of removal from April 30, 2025, which not only mandated her 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).

Despite her allegation that there is "no basis" for her continued detention, Petitioner has a final order of removal and ERO is working to execute the removal order. *See* Ex. 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 native and citizen of Columbia. ECF No. 1 at 5. Petitioner first entered the

United States unlawfully on May 13, 2024 and was removed to Columbia On July 15, 2024 after a negative credible fear determination. Ex. A (ERO Declaration) ¶¶ 4–5. On or about September 10, 2025 Petitioner reentered the United States, again unlawfully and was apprehended. Ex. A at ¶ 6. Petitioner was booked into the El Paso Service Processing Center (SPC) on September 16, 2024. Ex. A at ¶ 7.

On Oct 1, 2024, Petitioner received a second credible fear interview at the US Citizenship and Immigration Services (USCIS) where findings were concluded as a reasonable possibility of future tortured, and Petitioner was referred to an Immigration Judge. Ex. A at ¶ 8.

On March 13,2025 Petitioner was served with her decision to continue detention after her 180-day Post Order Custody Review (POCR).[1] ECF No. 1-2 at 35.

On April 30, 2025, an immigration judge ordered Withholding of Removal to Columbia and both parties waived appeal. *See* Ex. A at ¶ 10.

On May 13, 2025 ERO contacted the consulates of Guatemala, Ecuador, and El Salvador inquiring about acceptance or denial of Petitioner, and Ecuador and Guatemala denied her admission. Ex. A at ¶¶ 11–13.

On June 16, 2025, ERO emailed headquarters regarding a 270-day POCR. Ex. A at ¶ 14.

On June 30, 2025, ERO contacted the Costa Rica Consulate for acceptance of Petitioner and on July 14, 2025, they denied her admission. Ex. A at ¶¶ 15–16.

On July 14 2025, ERO contacted the Consulate in Spain regarding acceptance of Petitioner and on July 22, 2025, they denied her admission into Spain. Ex. A at ¶¶ 17–18.

On September 12, 2025, ERO Requested a 360 day POCR, which is still pending.

[1] Because Petitioner's case is a reinstatement, she is a final order upon her second apprehension and the POCR clock started at the time of detention.

On December 11, 2025 ERO received notice Petitioner is amenable to removal to Mexico and Petitioner and an ICE officer signed a notice of removal to Mexico, and currently making travel arrangements. Ex. A at ¶¶ 23–25.

On December 17, 2025, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, arguing her detention is unreasonably prolonged in violation of the Immigration and Nationality Act (INA) and the Constitution. ECF No. 1 at 11.

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 Mexico 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 she 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 her continued detention pending removal is contrary to statute and in violation of her procedural and substantive due process rights. Petitioner's claims are insufficient under *Zadvydas* because she 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 her continued detention is unreasonable, nor has she shown she is owed any additional due process than what she 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 anticipates no impediments to removal once a travel document is issued. Petitioner's substantive due process claim fails here as a matter of law.

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 she 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 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).

On September 12, 2025, ERO requested a Custody Review from Head Quarters which is pending a decision. Allegations made by petitioner 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.

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 Mexico 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 her 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,

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