United States District Court
Western District of Texas
El Paso Division

Shi Ying Huang, Petitioner, v. Kristi Noem, Secretary of the U.S. Department of Homeland Security, et al., Respondents.	Case No. 3:25-CV-00730-DB

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

Respondents timely submit this response per this Court's Order dated December 23, 2025, directing service and ordering a response no later no later than January 7, 2026. *See* ECF No. 2. In her petition for writ of habeas corpus under 28 U.S.C. § 2241, Ms. Huang ("Petitioner") seeks release from civil immigration detention, claiming that her approximately one-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 her allegation that there is "no basis" for her continued detention, Petitioner has a final order of removal from October 9, 2001, 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). Petitioner argues she should not be removed from the United States due to long term presence. ECF No. 1 ¶ 43.

[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).

Petitioner claims she is the family's sole breadwinner. *Id.*

Petitioner is lawfully detained with a final order of removal, her constitutional challenge to continued detention is not ripe until she 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 China 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 China. ECF No. 1 ¶ 1, 20. Petitioner entered the United States in 1999. Exh. A (A. Garite Declaration dated Jan. 2, 2026. On October 9, 2001, Petitioner was ordered removed from the United States. *Id.* ¶ 10. On January 2, 2002, Petitioner filed a motion to reopen with the Immigration Court and on January 15, 2022, the Immigration Judge denied Petitioner's motion. *Id.* ¶ 11. On June 27, 2022 the Board of Immigration Appeals ("BIA") affirmed the Immigration Judge's decision. *Id.* Petitioner submitted a second motion to reopen on February 23, 2007 and on April 5, 2007, the Immigration Judge denied the motion. Exh. A ¶ 12. After the BIA remanded the record for further review, the Immigration Judge again denied Petitioner's motion to reopen and on January 11, 2010 the BIA dismissed Petitioner's appeal. *Id.* ¶ 13. On February 3, 2010, Petitioner filed a petitioner for review with the Second Circuit Court of Appeals and on April 15, 2011 the Second Circuit Court of Appeal denied Petitioner's petition for review. *Id.* ¶ 14.

On February 2, 2019, Petitioner filed a motion to reopen with the BIA and on November 4, 2019, the BIA denied said motion. Exh. A ¶ 15. On September 25, 2025, ERO initiated a Travel Document Request with the General Consulate of China in Washington D.C. *Id.* ¶ 16. On

December 9, 2025, Petitioner was detained, and her Order of Supervision was revoked. *Id.* ¶ 17. On December 12, 2025, Petitioner was transferred to Camp East Montana in El Paso, Texas. *Id.*

On December 23, 2025, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, arguing her detention is unlawful without an individualized determination of danger or flight risk. ECF No. 1 at 11. Petitioner seeks release from ICE Detention on an Order of Supervision (OSUP). *Id.* On December 23, 2025, the Court ordered Respondents not to remove or deport Petitioner from the United States or transfer Petitioner from any facility outside the boundaries of the El Paso Division of the Western District of Texas, until the Court orders otherwise or this case is closed. ECF No. 2 at 3.

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

Petitioner's reliance on *Zadvydas* is premature because she has been detained less than six months. To state a claim for relief under *Zadvydas*, Petitioner must show that: (1) she is in DHS custody; (2) she has a final order of removal; (3) she 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 she 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 to China 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's claims are insufficient under *Zadvydas* because she has not shown that she has been in post-order custody for six months, and 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. First, publicly available statistics show that 297 Chinese nationals were successfully removed to India FY2025 in Q1. *See* ICE Enforcement and Removal Operations Statistics | ICE (filtered by nationality and last accessed Jan. 7, 2026). Prior to FY2025, 517 Chinese nationals were successfully removed in FY2024, showing an overall increase in successful removals to china since FY 2021 and large charter flights stopping in China. *See* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (last accessed Jan. 7, 2026). On September 25, 2025, ERO initiated a Travel Document Request with the General Consulate of China in Washington D.C. Ex. A at ¶ 16. ICE anticipates no impediments to removal once the

document is issued. *Id.* ¶ 21. Petitioner's substantive due process claim fails here as a matter of law.[2]

V. ICE Has Afforded Petitioner Procedural Due Process During Her Post-Order Custody Pending Removal.

To establish a procedural due process violation, Petitioner must show that 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

---

[2] Petitioner makes additional allegations regarding her conditions of confinement. ECF No.1. 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).

(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 she has not violated her conditions of supervised release and is not a flight risk or threat to the community or society. ECF. No. ¶ 43. On September 25, 2025, ERO initiated a Travel Document Request with the General Consulate of China in Washington D.C. Exh. A ¶16. These allegations are insufficient to establish ICE has failed to provide procedural protections, and even if it did, it would not result in her release from custody or a stay of her removal order.

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 China 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. 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/ Barbara Falcon*

Barbara Falcon
Assistant United States Attorney
Texas Bar No. 24121619
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100 (phone)
(210) 384-7118 (fax)
barbara.falcon@usdoj.gov

Attorneys for Respondents