

United States District Court
Western District of Texas
San Antonio Division

Kely Villatoro, W.V.,
Petitioner,

v.

Pamela Bondi et. al.

Respondents.

No. 5:26-CV-00124-XR

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

Federal² Respondents provide this Response to Petitioners' Writ of Habeas Corpus. Any allegations that are not specifically admitted herein are denied. Petitioners are not entitled to the relief they seek, including attorney's fees under the Equal Access to Justice Act ("EAJA")³, and this Court should deny this habeas petition without the need for an evidentiary hearing.

Petitioner is an, 'arriving alien' who was ineligible for bond pre-*Hurtado* from an immigration judge. 8 C.F.R. 1003.19(h)(2)(i). The fact that Petitioner was paroled and released does not change the fact that he is an arriving alien. Arriving aliens remain arriving aliens throughout their proceedings. 8 C.F.R. 1001(q). The fact that petitioner is an arriving alien and also has a removal order makes this case factually distinguishable from all of the typical briefing relating to *Hurtado* that this court has seen before. *See* Ex. A, V.W. NTA; Ex. B, Kely Villator NTA; and Ex. C, Declaration. Even recently, courts out of the Western District of Texas

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 on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

² The Department of Justice represents only federal employees in this action.

³ *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

have sided with the government when it comes to arriving aliens. *See Goguev v. Noem*, et al, SA–25–CA–01593–XR (W.D. Tex. Jan. 13, 2026) (Rodriguez, J.) (denying habeas petition to an arriving alien).

I. Relevant Facts and Procedural History

Petitioners are citizens and natives of Guatemala who applied for admission at the Port of Douglas, Arizona port of entry on December 22, 2016.⁴ Exs. A & B. On or about November 28, 2018, Petitioners had their final hearing before an immigration judge. Ex. C. At that hearing, the immigration judge denied all relief and ordered both removed to Guatemala. Ex. C. Petitioners reserved appeal. *Id.* On February 11, 2021, the Board of Immigration Appeals (“BIA”) dismissed Petitioners’ appeal. *Id.* On March 11, 2021, Petitioners filed a petition for review with the Ninth Circuit. *Id.*

On May 7, 2021, the petition for review was temporarily closed for administrative purposes until August 5, 2021. *Id.* On July 30, 2021, the administrative closure period was extended until November 3, 2021. *Id.* Thereafter, on November 30, 2021, the administrative closure period was extended until further order of the court. *Id.* On July 2, 2025, a motion to reopen the petition for review was filed and was later granted on or about July 31, 2025. *Id.*

On December 4, 2025, Petitioners. were taken into custody and detained pending removal to Guatemala. *Id.* On December 4, 2025, Petitioners filed an emergency motion to stay removal with the Ninth Circuit which was granted on that same date. *Id.* At this time, ERO is unable to execute the removal order given the stay and ongoing litigation in the Ninth Circuit. *Id.*

⁴ This is a factual difference between this petition and the others frequently filed before the court, where Petitioner entered the United States *in between* the ports of entry. Petitioner here presented himself to a port of entry.

When the order of removal is finalized, there is a significant likelihood of removal in the reasonably foreseeable future, as there are flights to Guatemala each week and Petitioners both have valid Guatemalan passports. *Id.*

II. Argument

The only relief available to Petitioners through habeas is release from custody. 28 U.S.C. § 2241; *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020).

A. Petitioner is an Arriving Alien

Again, this petition differs from those frequently filed before the Court because these Petitioners are arriving aliens who presented themselves to a port of entry and did not enter the United States unlawfully within the ports of entry.

The term “arriving alien” means an applicant for admission coming or attempting to come into the United States at a port-of-entry” 8 C.F.R. § 1001.1(q). Arriving aliens are inspected immediately upon arrival in the United States and, unless “ ‘ clearly and beyond a doubt entitled to be admitted,’ ” are placed in “removal proceedings to determine admissibility.” *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (quoting 8 U.S.C. § 1225(b)(2)(A)). Additionally, “an arriving alien remains an arriving alien even after paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.” 8 C.F.R. § 1001.1(q).

Since Petitioners applied for admission at the port of entry they are arriving aliens. *See* Exs. A & B; 8 C.F.R. § 1001.1(q). Pursuant to 8 U.S.C. § 1225(b)(2)(A), arriving aliens are to be detained unless released by ICE on a discretionary parole. 8 C.F.R. § 1235.3(c); *Clark*, 543 U.S. at 373 (explaining that detention of an “alien arriving in the United States” is “subject to the Secretary’s discretionary authority to parole him into the United States “for urgent humanitarian

reasons or significant public benefit,” “to meet a medical emergency[,] or ... for a legitimate law enforcement objective.”; 8 U.S.C. § 1182(d)(5)(A). Whether the government decides to parole an arriving alien or keep him detained, the regulations state that an immigration judge does not have authority to review the custody determination. 8 C.F.R. § 1003.19(h)(2)(i)(B). Here, Petitioners were paroled. However, service of an NTA and placement in removal proceedings automatically terminated said parole. 8 C.F.R. § 212.5 (e)(2)(i); Exs. A & B. The termination of the parole then reverted Petitioners back to their previous status as an arriving alien, thus subject to mandatory detention. 8 C.F.R. § 1001.1(q); *see also* 8 U.S.C. § 1225(b)(2)(A).

Here, as Petitioners are arriving aliens, irrespective of the Board’s decision in *Hurtado*, 29 I&N Dec. 216, Petitioners are ineligible to seek bond from an immigration judge. *See also Maldonado v. Macias*, 150 F.Supp.3d 788, 797–98 (W.D.T.X. Dec. 15, 2015) (the parties agree [Maldonado] is an arriving alien, and the Court finds this to be accurate, as [Maldonado] applied for admission to the United States at a port-of-entry... As such, Petitioners are currently detained pursuant to 8 U.S.C. § 1225(b)(2)(A)).

B. On Its Face, and As Applied to Petitioners, § 1225(b)(2)(A) Comports with Due Process.

Section 1225 does not provide for a bond hearing. The Supreme Court upheld the facial constitutionality of § 1225(b) in *Thuraissigiam*, 591 U.S. 103, 139 (2020). Aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are “treated” for due process purposes “as if stopped at the border.” *Thuraissigiam*, 591 U.S. at 139.

Mandatory detention of an applicant for admission during “full” removal proceedings does not violate due process, because the constitutional protections are built into those proceedings. The aliens were served with a charging document (an NTA) outlining the factual allegations and the

charge(s) of removability against him. Exs. A & B; § 1229a(a)(2). They had an opportunity to be heard by an immigration judge and represented by counsel of her choosing at no expense to the government. *Id.* § 1229a(b)(1), (b)(4)(A). They could and have sought reasonable continuances to prepare any applications for relief from removal, or they could waive that right and seek immediate removal or voluntary departure. *Id.* § 1229a(b)(4)(B), (c)(4). Petitioners have also sought their ability to appeal. *Id.* § 1229a(b)(4)(C), (c)(5).

While an as-applied constitutional challenge, such as a prolonged detention claim, may be brought before the district court in certain circumstances, Petitioners here have been detained for only a brief period pending their removal proceedings and thus such argument is inapplicable. For aliens, like Petitioner, who are detained during removal proceedings as applicants for admission, what Congress provided to them by statute satisfies due process. *Thuraissigiam*, 591 U.S. at 140. As applied here to Petitioners, their detention does not violate due process.

C. Alternatively, Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

Federal Respondents acknowledge that this interpretation of detention authority has shifted from prior interpretations of aliens similarly situated to these Petitioners. Even under the prior interpretation, Petitioners' detention is lawful. 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.

a. There Is No Good Reason to Believe That Removal is Unlikely in the Reasonably Foreseeable Future.

Petitioners cannot show “good reason” to believe that removal to Guatemala 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.

Once the alien establishes that they have 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. *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).

Petitioners have only been in detention since December 2025. Ex. C. Furthermore, on that same date Petitioners filed an emergency motion to stay removal with the Ninth Circuit which was granted. Ex. C. Petitioners, nonetheless, urge this Court to order that their continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and the Fourteenth Amendment. Beyond these conclusory allegations, Petitioner was the one who caused a stay in their own litigation and thus such an argument is not applicable. *See Linares v. Collins*

et. al, 1:25-CV-584-RP, ECF Doc. No. 16 (W.D. Tex. Sep. 24, 2025) (explaining that a Petitioners appeal does not make detention indefinite). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

Even if the burden did shift to ICE in this analysis, ICE could show that removal is likely as soon as the stay is lifted; “When the order of removal is finalized, there is a significant likelihood of removal in the reasonably foreseeable future, as there are flights to Guatemala each week and [Petitioners] both have valid Guatemalan passports.” Ex. C. Petitioners’ substantive due process claim fails and should be denied.

b. ICE Has Afforded Petitioner Procedural Due Process.

To establish a procedural due process violation, Petitioner must show that they 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-*Artega-Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231, but the Fourth Circuit, post-*Artega-Martinez*, used the *Zadvydas* framework to analyze a post-order-custody alien’s due process claims. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is required beyond the constitutional analysis outlined in *Jennings* and *Thuraiissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

Additionally, 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).

As an applicant for admission, Petitioner has received the maximum process afforded by Congress under the statutes, to include placement in “full” removal proceedings before an immigration judge. Such process included notice and an opportunity to be heard, including judicial review through the appellate court.. This process addresses constitutional concerns that were identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. This process comports with Petitioners’ limited due process rights as an applicant for admission subject to a final order of removal. Petitioner’s procedural due process claim, like his substantive one, should be denied.

III. Conclusion

Petitioners’ continued detention is mandatory under 8 U.S.C. § 1225(b)(2) until their removal order is executed, and he has not shown that it has become unconstitutional. In the alternative, even under § 1231(a)(6), detention here would be considered lawful. Petitioners fail to show good reason to believe that there is no significant likelihood of removal to Guatemala 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 Petitioners procedural due process through his mandatory detention, including post-

order custody reviews. Petitioners' continued detention, therefore, is comports with the law and with due process. It 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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