

United States District Court
Western District of Texas
San Antonio Division

Soheiliestahbanati, Behnaz,
Petitioner,

v.

No. 5:26-CV-00154-FB

Pamela Jo Bondi, *et al*,
Respondents.

Response to Petition for Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order. ECF Nos. 3, 7. In the petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner seeks release from civil immigration detention, claiming that her detention is contrary to statute and the Due Process Clause. *See* ECF No. 1 ¶¶ 13–26. Petitioner is subject to a final order of removal to Iran, but an immigration judge withheld the execution of that order to Iran under the Convention Against Torture (CAT). ECF No. 1 at 17–18. The court ordered an alternative order of removal to Ecuador. *Id.*; *see also* § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). For these reasons, the Court should deny this habeas petition without the need for an evidentiary hearing.

I. Facts and Procedural History

Petitioner entered the United States unlawfully, was placed into expedited removal proceedings, claimed fear, and then issued a Notice to Appear in immigration court. Respondents aver that Petitioner was initially detained on a mandatory basis but eventually released during her removal proceedings on humanitarian parole under 8 U.S.C. § 1182(d)(5). In 2022, Petitioner was ordered removed to Iran, and in the alternative, Ecuador. ECF No. 1 at 17–18. Petitioner, however, was granted CAT withholding of removal to Iran. *Id.* Due to the policies in place at the time, ICE

placed Petitioner on an Order of Supervision in the exercise of discretion in lieu of third country removal. *Id.* at 21–25.

After a change in policy in 2025, ICE took Petitioner back into custody and began processing her for third country removal. *Id.* ¶¶ 4– 5. ICE served Petitioner with a Notice of Revocation on June 27, 2025. Ex. A (Notice of Revocation of Release); *see also* Ex. B (Benavidez Declaration). Since then, ICE has been making efforts to effectuate her removal to Ecuador, a country where she previously had lawful status. *See id.*; *see also* ECF No. 1 at 27–30. The last request was made to Ecuador in October 2025 and remains pending. Ex. A ¶ 20. ICE performed a 90-day post order custody review (POCR) and issued Petitioner a Decision to Continue Detention on October 6, 2025. *Id.* at 32–34. On January 29, 2026, ICE conducted an interview of Petitioner in conjunction with her 180-day POCR. Ex. B ¶ 21. On the same day, the local ICE office elevated their recommendation to ICE headquarters to continue her detention, because she has failed to fully comply with the instructions on Form I-229 for ICE to seek third country removal. *Id.* ¶ 22. The decision is pending review and approval. *Id.*

II. Argument and Authorities

A. Petitioner’s Detention Comports with the Fifth Amendment’s Due Process Clause.

Petitioner faces a fundamental flaw in her request for the Court to order additional process than what she has received in this case: the Supreme Court has already decided what constitutional due process is required under these circumstances to avoid violating the rights of an alien in this position. The *Zadvydas* standard is due process: a § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation.” *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (emphasis in the original); *see also 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, 95 F.4th at 760).

In *Zadvydas*, the Supreme Court determined what “limits” the “Constitution’s demands” imposed on “post-removal-period detention” pursuant to § 1231. *Zadvydas*, 533 U.S. at 689. After determining that the Constitution “does not permit indefinite detention,” the Court held that a habeas court “should hold continued detention unreasonable” only “if removal is not reasonably foreseeable.” *Id.* at 689, 699. But the Supreme Court did not stop there—it went on to detail the process by which that determination would be made. After the end of the presumptively reasonable six-month detention period, an alien must “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If that showing is made, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* This process was sufficient, the Court reasoned, to avoid the “serious constitutional concerns” that “indefinite detention” would raise. *Id.* at 682.

The upshot of this decision is straightforward. “[T]he Supreme Court . . . had occasion to consider the constitutional implications of indefinite detention under § 1231(a),” and it “offered [courts] a standard through which to judge indefinite-detention cases—the *Zadvydas* standard.” *Martinez v. Larose*, 968 F.3d 555, 566 (6th Cir. 2020); see *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (*Zadvydas* “articulates the outer bounds of the Government’s ability to detain aliens . . . without jeopardizing their due process rights”). Yet Petitioner now urges the Court to conclude that *Zadvydas*, in essence, was wrong. No doubt she will dispute this characterization, but there is no other way to understand this argument that something more than the process set out in *Zadvydas* is required to vindicate her constitutional rights.

The Court should certainly decline this invitation. When, as here, the Supreme Court has spoken on the issue at hand, “[t]his Court is bound like all lower courts to apply [that] precedent.”

United States v. Williams, No. 1-09-cr-414, 2010 WL 3909480, at *4 (E.D. Va. Sept. 23, 2010); see *Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) (“It is beyond our power to disregard a Supreme Court decision . . .”). There is accordingly no basis for the Court to hold that due process demands more than what the Supreme Court already held it requires in this circumstance. See *Hernandez-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *8 (W.D. Tex. June 22, 2018) (stating that to the extent petitioner sought periodic bond hearings in federal court, “*Zadvydas* addressed the extent to which due process demands relief in the § 1231(a) setting”); *M.P. v. Joyce*, No. 1:22-cv-06123, 2023 WL 5521155, at *5-6 (W.D. La. Aug. 10, 2023) (finding petitioner was not in custody in violation of his procedural due-process rights where petitioner received requisite custody review panels, where petitioner’s detention was not “indefinite” or “potentially permanent,” and, “to the extent the *Mathews* factors” applied, the government’s interests outweighed petitioner’s); cf. *Roman v. Garcia*, No. 6:24-cv-01006, 2025 WL 1441101, at *3 (W.D. La. Jan. 29, 2025) (finding that petitioner’s detention did not violate due process because the government could detain her beyond the 90-day removal period pursuant to § 1231(a)(6), and § 1231(a)(6) does not require a bond hearing). Petitioner has received all the process to which she is entitled, including the 90-day and 180-day POOR process. See Ex. B.

Even if *Zadvydas* did not squarely govern Petitioner’s claim, as it does, she would not be entitled to the immediate release that he seeks. Courts across the country have applied different approaches to determine the constitutionality of continued detention under various immigration statutes. See, e.g., *Rimobaye v. Castro*, No. SA-23-CV-1529-FB (HJB), 2024 WL 5375786, at *2–3 (W.D. Tex. Oct. 29, 2024), *report and recommendation adopted*, No. SA-23-CV-1529-FB, 2025 WL 377722 (W.D. Tex. Jan. 31, 2025) (collecting cases and comparing approaches). Some courts, but not all, utilize the three-factor balancing test Petitioner urges here, which is set forth in

Mathews v. Eldridge, 424 U.S. 319 (1976), a case involving the termination of a citizen's social security benefits. *Id.* The Supreme Court, however, "when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*," *Rodriguez Diaz*, 53 F.4th at 1206–07, and Respondents do not concede that *Mathews* applies here. While other circuits have applied the *Mathews* test to due-process challenges brought under § 1231(a)(6), the Fifth Circuit has not. Petitioner makes no argument as to why this Court should apply the *Mathews* test and offers no reason her procedural due-process claim should not be subject to the same standard as other due process challenges to § 1231 in this Circuit. *See Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). Petitioner was adjudicated removable and has been given the benefit of the attendant processes outlined in *Zadvydas*. This Court should accordingly dismiss the Petition.

B. The Statutes and Regulations Allow ICE to Take Petitioner into Custody to Execute Her Removal Order.

The authority to detain Petitioner derives from § 1231, which directs the Attorney General to detain and effect the removal of any alien from this country within 90 days of any order of removal, while also authorizing an additional period of detention for certain aliens who have been ordered removed due to a criminal offense or who otherwise present a risk to the community. 8 U.S.C. § 1231(a)(1),(6)). Construing the post-90-day-removal-period detention provision of this statute, the Supreme Court held in *Zadvydas* that the statute does not authorize permanent, indefinite detention, and that instead, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699. Applicable statutes and regulations provide extensive protections to all aliens detained under § 1231. There is no basis in law for imposing more procedures that neither Congress nor the relevant agencies have adopted.

As a threshold matter, § 1231(a)(6) provides that DHS "may" detain an alien beyond the

90-day removal period—in other words, the decision is discretionary. And federal regulations set forth a framework for the exercise of that discretion. *See* 8 C.F.R. § 241.4. Under that framework, ICE may release the alien if she demonstrates to the satisfaction of the responsible official that she will not pose a danger to the community or a significant flight risk pending his removal from the United States. *Id.* § 241.4(d)(1). Upon release, an alien subject to a final order of removal must comply with certain conditions of release. 8 U.S.C. § 1231(a)(3),(6). Section 1231 specifically authorizes “the Attorney General to use her discretion to set conditions for supervision, and one such provision empowers the respondents to re-detain an alien ‘to enforce a removal order.’” *Ladak v. Noem*, --- F.Supp.3d ---, 2025 WL 3764016 at *4 (N.D. Tex. Dec. 30, 2025).

Federal regulations also set out a separate set of “special review procedures” derived from *Zadvydas*. 8 C.F.R. § 241.13(a). Under those procedures, the regulation provides that a noncitizen’s release may be revoked “if, on account of changed circumstances,” it is determined that “there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). “[T]he alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly *after* his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* § 241.13(i)(3) (emphasis added). The regulations expressly provide that those special review procedures supplement, rather than supplant, the discretionary framework discussed in the preceding paragraph. *Id.* § 241.13(b). Though Petitioner tries to impugn the quality of these procedures, the Supreme Court concluded in *Zadvydas* that the process established in that case overcomes any constitutional concerns the applicable procedures might raise. *See* 533 U.S. at 692, 699-701; *see also Wang*, 320 F.3d at 146 (rejecting claim for bond hearing to justify continuing detention).

Here, the revocation of Petitioner's release and his current detention are both legally permissible because of the change in circumstances relating to the United States' ability to remove final order aliens from the United States via third country removal options. In light of these changed circumstances, Respondents had reason to revoke Petitioner's release and detain her in anticipation of removal. Respondents timely provided notice to Petitioner of the basis of the revocation. Petitioner is, therefore, entitled to no relief on her challenges to the revocation of her release and the resulting detention. The relevant circumstances have changed since Petitioner was released in the exercise of discretion, and both revocation and detention for the purpose of attempting to execute Petitioner's removal order are constitutionally permissible. ICE denies any allegations related to adherence to the OSUP revocation regulations, but even if there were such an error, it would be harmless. *See Ladak*, 2025 WL 3764016 at *5.

C. Conclusion

The Court should deny the habeas petition without the need for a further evidentiary hearing. Petitioner is a final order alien who has already been afforded the process owed to her by the U.S. Constitution.

Respectfully submitted,

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