

United States District Court
Western District of Texas
El Paso Division

Jose Perez Rosa
Petitioner,

v.

Pam Bondi, United States Attorney General,
Respondents.

No. No. 3:26-CV-062-LS

Response to Show Cause Order

Respondents submit this response per this Court's text Order dated February 6, 2026. Petitioner is detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1231(a)(6), because he has a reinstated final order of removal and poses a flight risk. *See* 8 U.S.C. § 1231(a)(5); ECF No. 1 ¶ 16. Petitioner's situation falls squarely within the confines of *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), and Petitioner fails to present any argument as to why *Guzman Chavez* is not controlling.

I. Facts and Procedural History

Petitioner was first encountered by Border Patrol back in November of 2018 and served with a notice of expedited removal. Exh. A (I-213) at 2. On December 19, 2018, Petitioner was removed from the United States. *Id.* In March of 2019, Petitioner reentered the United States with his family. *Id.* Petitioner's family members were served with NTA's, however because Petitioner was previously removed, Petitioner was eventually served with a notice of intent to reinstate prior order. Exh. A (I-213) at 3. Petitioner was eventually released on an order of supervision, and proceedings were eventually terminated as to the family. Exh. A (I-213) at 3. Petitioner also had supervision restrictions reduced and terminated. Exh. A (I-213) at 3.

On April 13, 2025, Petitioner was arrested for driving under the influence and a detainer was lodged. Exh. A (I-213) at 3. On May 19, 2025, Petitioner filed an affirmative application for

relief with United States Citizenship and Immigration Services. Exh. A (I-213) at 3. On Jun 18, 2025 Petitioner reported to ERO, and ERO determined that Petitioner was amenable to removal, however the I-860 was unavailable. Exh. A (I-213) at 3. On June 26, 2025, Petitioner reported once more and was served with a notice to reinstate prior order once more and detained. Exh. A (I-213) at 3. Petitioner then went through reasonable fear proceedings. Exh. A (I-213) at 3. On December 2, 2025, Petitioner requested voluntary departure but was denied because he is statutorily ineligible. Exh. B (VD Order). Petitioner is scheduled for an individual hearing on his relief from removal on February 23, 2026. Exh. C (Notice of Hearing).

II. Argument

A. Supreme Court Precedent Has Upheld Mandatory Detention In The Withholding Only Context

Petitioner has not been granted any form of relief from removal at this time. Should Petitioner be granted relief said relief would only apply to the specific country Petitioner seeks relief from. In other words, nothing prevents DHS from removing Petitioner to a third country. *See e.g., Guzman Chavez*, 594 U.S. at 531–32, 535–36; 8 U.S.C. § 1231(b)(1)(c)(iv); 8 C.F.R. §§ 208.16(f); 1208.16(f); 208.17(b)(2); 1208.17(b)(2). There are numerous removal options for ICE to consider under this statute, including any country willing to accept the alien. *Guzman Chavez*, 594 at 536–37; 8 U.S.C. § 1231(b)(2). Additionally, should relief be denied, DHS would be able to reinstate the removal order and effectuate it to Petitioner’s home country of Honduras.

Petitioner is mandatorily detained in ICE custody under 8 U.S.C. § 1231(a)(1)(A) with a final order of removal while he pursues withholding of removal before the Immigration Court. *See Guzman-Chavez*, 594 U.S. at 528. Such detention is mandatory. *Id.* The 90-day removal period may be extended where ICE determines the alien is unlikely to comply with the removal order. *Id.* at 528–29, 544; *see also* 8 C.F.R. § 1231(a)(6); 8 C.F.R. § 241.4. Continued detention

under this provision is the “post-removal-period.” *Guzman-Chavez*, 594 U.S. at 529. The statute does not specify a time limit on this post-removal period, but the Supreme Court has read an implicit limitation into the statute and held that the alien may be detained only for a period reasonably necessary to remove the alien from the United States. *Id.*; 8 C.F.R. § 241.13.

B. Due Process Is Being Provided To Petitioner

Petitioner cannot show a procedural due process violation here. 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 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)).

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).

1. Post Order Custody Reviews

In addition, ICE has conducted custody reviews of Petitioner's detention as required by regulation. ICE provided notice of the 90 day POCR. Exh. D (Notice of Interview). At or around the 180-day mark, Petitioner received another POCR, wherein ICE determined that he should remain detained. *See* Exh. E (180 POCR); 8 C.F.R. § 241.13. POCRs are set to occur at the 270-day and the one-year marks, as well. *Id.*

Courts have found that these regulatory deadlines are not firm, so long as the review itself has occurred. *See Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354 at *6 n. 6 (W.D. Tex. May 24, 2016). Even if Petitioner had alleged such a violation, the remedy is not immediate release from custody, but an opportunity for the government to provide substitute process. *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172 at *12 (W.D. Tex. Mar. 23, 2020).

The POCR process addresses constitutional concerns that were identified in *Zadvydas*, providing safeguards and allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. ICE is in compliance with these regulatory provisions. As such, Petitioner's procedural due process claim, like any substantive one, should be denied.

2. Withholding Only Proceedings

Although pursuant to *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the removal period has begun, ICE has not attempted to remove Petitioner to a third country because ICE is allowing the Petitioner the fullest extent of due process possible via Withholding Only

Proceedings. 8 C.F.R. § 208.16. Petitioner's has expressed a fear of return and that fear has triggered the Withholding Only Proceedings process. 8 C.F.R. § 208.16.

Additionally, pursuant to Supreme Court precedent in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), ICE could begin the third country removal process, but said commencement would be premature. *Id.* at 531. It is possible that Petitioner is denied relief from removal at the conclusion of Withholding Only Proceedings. If that were to occur third country removal would be unnecessary, and ICE would be able to effectuate removal to Petitioner's home country.

On the one hand, Petitioner alleges a due process violation for remaining in detention pursuant to Withholding Only Proceedings, (thereby averring himself to due process) and argues lack of removal as a basis for the violation. ECF No 1 at 8-9. On the other hand, if ICE was to begin the removal process and effectuate removal to a third country, Petitioner could argue that they are not being allowed their due process via Withholding Only Proceedings. This argument is inconsistent.

Additionally, Petitioner's detention is not indefinite. Petitioner is scheduled for an individual hearing on his relief from removal on February 23, 2026. Exh. C (Notice of Hearing). Should Petitioner prevail, said relief would only apply to a specific country and not hinder removal to any other country. *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021).

Should relief be denied, Petitioner is free continue to aver himself to the due process afforded to him by congress and appeal to the Board of Immigration Appeals. However, at that time, Additionally, any claims arising from the length of detention based on Petitioners 'choice to continue to litigate matters in removal proceedings should be dismissed. See *Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 15 (W.D. Tex. Aug. 12, 2025) (collecting cases

and finding that aliens cannot assert viable due process claims when their detention is caused by their own plight, because delay due to litigation activity does not render detention indefinite).

III. Conclusion

Petitioner is lawfully detained, and this Court should follow its precedent in a case with similar circumstances deny the habeas petition. *See e.g. Quiroz Zapata v Ybarra*, 3:25-CV-148-LS, ECF No. 18 (W.D. Tex. Jun. 25, 2025).

Respectfully submitted,

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