

United States District Court
Western District of Texas
San Antonio Division

O.R.M.M.,
Petitioner,

v.

Mary de Anda-Ybarra, *et al*,

Respondents.

Case No. 3:26-CV-00094-DB

Response to Petition for Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order. ECF No. 3. In the petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner seeks release from civil immigration detention, claiming that his detention is contrary to statute, the regulations, the Due Process Clause, and the Administrative Procedure Act (APA). *See* ECF No. 1. Petitioner is subject to a final order of removal, but both the Immigration Court and this Court have entered temporary stays of the execution of that order. ECF No. 1 at ¶ 32; ECF No. 3 at 2; *see also* § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner's claims lack merit, and this Court should dissolve the stay of removal, as there is no jurisdiction for such an order out of this Court. *See Imran v. Harper*, No. 25–30370, 2026 WL 93131 at *1 (5th Cir. Jan. 13, 2026) (federal courts lack jurisdiction over a habeas petitioner's request for a stay of removal, because such a request is an impermissible challenge to a removal order). For these reasons, the Court should deny this habeas petition without further evidentiary hearings.

I. Facts and Procedural History

Petitioner entered the United States unlawfully and was eventually ordered removed administratively in 2016 as an aggravated felon 

[REDACTED] after being convicted in Illinois of a felony offense of [REDACTED]. See Ex. A (Conviction Records); Ex. B (Final Order of Removal). Petitioner claimed fear of removal and was subsequently granted deferral of his removal to Honduras under the Convention Against Torture (CAT). ECF No. 1 ¶ 1. Due to the policies in place at the time, ICE placed Petitioner under an Order of Supervision (OSUP) in 2017 in lieu of third country removal. *Id.* After a change in policy in 2025, ICE took Petitioner back into custody and began processing him for third country removal. *Id.* ¶¶ 1, 3. Since then, ICE has been making efforts to effectuate his removal. *Id.* Petitioner filed a motion to reopen his removal order with the Immigration Court, which DHS opposed. See Ex. C (DHS Opposition). The immigration judge temporarily granted an administrative stay of removal on December 17, 2025, pending the outcome of the motion to reopen. ECF No. 1 ¶ 32. On December 18, 2025, USCIS determined after a screening that Petitioner did not establish that it is more likely than not that he would be persecuted or tortured in Mexico. Ex. D (Third Country Screening Notice). (But for that stay and the temporary restraining order this Court issued halting removal, removal is imminent. See, e.g., ECF No. 1 ¶ 32; ECF No. 3 at 2.

II. Argument and Authorities

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

Petitioner faces a fundamental flaw in his request for the Court to order additional process than what he 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 v. Davis*, 533 U.S. 678, 689 (2001). 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 he 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 his 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 he is entitled.

Even if *Zadvydas* did not squarely govern Petitioner’s claim, as it does, he 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., Rimtobaye 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 his 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 has been adjudicated removable and had the benefit of the attendant processes. But even if the Court were to find that *Mathews* applies, the conclusion would nevertheless be the same—Petitioner's detention is not unconstitutional even under *Mathews*.

Mathews outlines a three-part “flexible” test to determine whether due process complies with the Constitution. *Mathews*, 424 U.S. at 321. Under *Mathews*, courts consider: (1) the individual's interest; (2) the risk of erroneous deprivation of the right absent further procedures; and (3) the government's interest. *Id.* at 334. Any analysis of these factors in the immigration context must “weigh heavily” the fact that “control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). A correct application of the *Mathews* test weighs against ordering the immediate release Petitioner request.

Clearly Petitioner has a liberty interest in freedom from lengthy imprisonment. However, Petitioner's liberty interest is diminished because he is subject to an order of removal. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). The Supreme Court has emphasized that "detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process." *Demore v. Kim*, 538 U.S. at 523 (emphasis added). Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact, has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure.").

Regarding the second *Mathews* factor, applicable statutes and regulations already 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 he demonstrates to the satisfaction of the responsible official that he 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). 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).

Finally, the government’s interests in maintaining the existing procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government “need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication” when it comes to immigration regulation. *Mathews*, 426 U.S. at 81. Accepting Petitioner’s position would flout this directive by injecting that very rigidity into the discretionary detention regime Congress adopted. In determining what process is due in immigration proceedings, “it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). “[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.” *Mathews*, 426 U.S. at 81 n.17 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952)). “Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal [noncitizen]s—to be a vital public interest.” *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022). It is thus clear that, in

the removal process, “the government interest includes detention.” *Id.* And the Supreme Court has stated removal proceedings “would be vain if those accused could not be held in custody pending the inquiry into their true character.” *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Further, “[t]here is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law.” *Nken v. Holder*, 556 U.S. 418, 436 (2009); see *Landon*, 459 U.S. at 34 (“The government’s interest in efficient administration of the immigration laws . . . is weighty.”).

Therefore, all three *Mathews* factors favor Respondents, and this Court should accordingly dismiss the Petition.

B. The Statutes and Regulations Allow for Petitioner’s OSUP Revocation and Resulting Detention.

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.

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). And the release can be revoked for various reasons, including, under 8 C.F.R. § 241.13(i), for purposes of executing the alien’s removal order. Specifically, 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). 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).

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. Third country removal to Mexico is significantly likely in the foreseeable future in this case. *See, e.g.*, ECF No 1 at ¶ 32 (“Believing removal to be imminent in the event the RFI was denied...”).

In light of these changed circumstances, Respondents had reason to revoke Petitioner’s release and detain him in anticipation of removal. For these reasons, Petitioner is entitled to no relief on his challenges to the revocation of release and resulting detention. The relevant circumstances have changed since Petitioner was placed on OSUP, 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 their 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. Petitioner Cannot Seek APA Review in a Habeas Petition.

In this proceeding, Petitioner expressly challenges his civil detention. *See, e.g.*, ECF 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus, which is what Petitioner has done here through the paying of a \$5 filing fee. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee “is challenging the very fact or duration of his

physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus”); *see also* ECF 1. The only relief available to Petitioner through habeas is release from custody. 28 U.S.C. § 2241; *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020). Petitioner, however, has no claim to any lawful status¹ in the United States that would permit him to reside lawfully in the United States upon release.

Petitioner nonetheless purports to assert a non-habeas claim under the Administrative Procedure Act (“APA”). *Id.* ¶¶ 46–50, 56–59. This he may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g., Mesina v. Wiley*, 352 F. App’x 240, 241–42 (10th Cir. 2009) (holding that petition asserting APA claim “does not state a habeas claim”). Moreover, Petitioner did not pay the filing fee for anything beyond the habeas claim, and any non-habeas claims should be either dismissed outright or severed upon the paying of the proper filing fee. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020).

III. Conclusion

The Court should deny the habeas petition without the need for further evidentiary hearings. Moreover, the Court should lift the temporary restraining order prohibiting Petitioner’s removal from the United States, as there is no jurisdiction for such an order, and an administrative stay is already in effect, issued by an Immigration Judge in December 2025. *See* ECF No 1 at ¶ 32. Petitioner is a convicted sex offender who has already been afforded the process owed to him by the U.S. Constitution.

¹ Work authorization tied to a now-revoked OSUP does not confer lawful status.

Respectfully submitted,

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