

United States District Court
Western District of Texas
El Paso Division

Asenanaz Akbaba,
Petitioner,

v.

Kristi Noem, in her official capacity as
Secretary of the U.S. Department of Homeland
Security, et al.,
Respondents.

No. 3:26-cv-00140-LS

Federal Respondents' Response to Petition for Writ of Habeas Corpus

Respondents submit this response to the Petition [ECF No. 1]. Petitioner argues her post-final order detention has become prolonged and she should be released. *See* ECF No. 1. ICE is working to execute Petitioner's removal order to a third country. Exh. A (Deportation Officer Declaration). Petitioner's claims lack merit, and this petition should be denied.

Despite being granted relief from removal, referred to as withholding of removal under Immigration and Nationality Act (INA) § 241(b)(3), 8 U.S.C. § 1231(b)(3), such relief extends only to the country where Petitioner was found to have a reasonable fear of being persecuted: Turkey. *See* 8 C.F.R. §§ 208.16–208.17, 1208.16; 1208.17; 208.31(a); 1208.31(a); 8 U.S.C. § 1231(b)(3)(A). In other words, nothing prevents DHS from removing Petitioner to a third country if such a country is willing to accept her. *See e.g., Guzman Chavez v. Johnson*, 594 U.S. at 531–32, 535–36 (2021); 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 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).

Petitioner argues her continued detention is contrary to the INA and the pertinent

regulations. *See e.g.*, ECF No. 1. She raises alleged violations of her substantive and procedural due process rights. *See* ECF No. 1, ¶¶ 48–52. She further claims ICE is violating her substantive and procedural rights under the Constitution’s Fifth Amendments. *See e.g.*, ECF No. 1, ¶ 61. She also argues she should be released based on alleged deficient conditions of confinement in ICE custody. ECF No. 1, ¶¶ 22–24. But conditions of confinement 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)).¹ Finally, she argues that her removal is not “significantly likely.” ECF No. 1, ¶ 5.

These arguments are insufficient reason to believe that removal is unlikely in the foreseeable future, which means the burden of proof does not shift to ICE to show the likelihood of removal. *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). Even if the burden has so shifted, Respondents can show that removal to a third country is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Removal Efforts

¹ Petitioner’s medical claims are likewise outside habeas under the umbrella conditions of confinement language. ECF No. 1, ¶ 22. In any event, ICE follows its National Detention Standards, <https://www.ice.gov/doclib/detention-standards/2025/nds2025.pdf>.

Petitioner is a citizen and native of Turkey who arrived in the United States (between ports of entry) via the Rio Grande on December 21, 2024. *See* ECF No. 1 at 5. On January 3, 2025, the Department of Homeland Security (DHS) served Petitioner with a Notice to Appear (“NTA”), later filed with the El Paso Immigration Court, charging her as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i)(I) (alien present in the United States without being admitted or paroled), and § 1182(a)(7)(A)(i)(I) (alien not in possession of valid entry documents). Exh. B (NTA). Petitioner thereafter appeared before an immigration judge and sought and ultimately (on June 23, 2025) received withholding of removal, under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3). Exh. C (Order of Removal, Dated June 23, 2025); *see Automated Case Information System* (last accessed Feb. 12, 2026). Petitioner reserved appeal but did not file an appeal. Exh. A, ¶ 9. Based on the thirty-day appeal window, the removal order did not become final until July 23, 2025.² 8 C.F.R. § 1003.38(b).

On August 25, 2025, ERO El Paso requested assistance from ERO Headquarters (HQ), Removal and International Operations (RIO) for third country removal. Exh. A, ¶ 10. On September 16, 2025, ERO El Paso requested assistance from HQ-RIO for third country removal. Exh. A, ¶ 11. On October 17, 2025, ERO El Paso again requested assistance from HQ-RIO for third country removal. Exh. A, ¶ 12. On October 21, 2025, HQ-RIO advised ERO El Paso that they were actively coordinating with the Department of State and DHS to pursue options for third country removal. Exh. A, ¶ 13. On January 8, 2026, HQ-RIO again advised ERO El Paso that they were actively coordinating with the Department of State and DHS to pursue options for third country removal. Exh. A, ¶ 14. On that same date, ERO El Paso served the Petitioner with a Notice of File Custody Review and a Warning for Failure to Depart, Form I-229(a) for the 90-day post-

² From July 23, 2025 to today (February 12, 2026) is 6 months 20 days (including end date).

order custody review (POCR); Petitioner refused to sign both documents. Exh. A, ¶ 14. On January 22, 2026, HQ-RIO issued the Petitioner a 180-day POCR Decision to Continue Detention and on January 28, 2026, ERO El Paso served the decision letter to the Petitioner, who refused to sign the document. Exh. A, ¶ 15.

On January 31, 2026, ERO El Paso conducted an interview with the Petitioner. Exh. A, ¶ 16. During the interview, the Petitioner stated that she does not have any connection to another country, aside from having family in the United States and Turkey. Exh. A, ¶ 16. On that same date, ERO El Paso issued a 90-day POCR Decision to Continue Detention. Exh. A, ¶ 16. The decision was served to the Petitioner on February 6, 2026, and she refused to sign the document. Exh. A, ¶ 16. On February 6, 2026, ERO El Paso served the Petitioner with a Warning for Failure to Depart, Form I-229(a), Warrant of Removal/Deportation, Form I-205, and the Warning to Alien Ordered Removed or Deported, Form I-294. Exh. A, ¶ 17. On February 7, 2026, ERO El Paso interviewed the Petitioner regarding potential third country removal. Exh. A, ¶ 17. During the interview, the Petitioner stated that she did not wish to be removed to countries neighboring Turkey and requested to be interviewed again on February 8, 2026. Exh. A, ¶ 17.

On February 8, 2026, ERO El Paso interviewed the Petitioner regarding potential third country removal options. Exh. A at ¶ 19. During the interview, the Petitioner requested that any further discussion regarding third country options be postponed until after her upcoming federal court hearing. Exh. A at ¶ 19. Currently, HQ-RIO has not advised ERO El Paso that there is not a significant likelihood of removal in the reasonably foreseeable future. Exh. A at ¶ 20. ERO El Paso with the assistance of the headquarters Detention and Deportation Officers continue to work to identify a third country that will accept Petitioner.

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

Petitioner's detention is lawful under 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 at 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.

Petitioner cannot show "good reason" to believe that removal to a third country 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 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. *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 substantive due process claim is not ripe because she has not been detained ‘post-order’ for much more than six months. Exh. A, ¶ 9, Exh. D (showing the removal order became final on July 23, 2025). Therefore, she cannot 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).

Petitioner mainly argues the delay in removal as the basis for release. *See* ECF No. 1. Petitioner fails to allege any reason, much less a “good reason,” to believe that there is no significant likelihood of removal in the foreseeable future. These claims are insufficient under *Zadvydas. 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); *see also 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). 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 in the foreseeable future. ICE continues to attempt to locate a third country to accept Petitioner and has sent requests for acceptance to countries Petitioner designates. *See, e.g.*, Exh. A. As such, removal is likely in the reasonably foreseeable future, and her continued detention is lawful. Petitioner’s substantive due process claim fails and should be denied.

B. ICE Has Afforded Petitioner Procedural Due Process.

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). In January 2026 and February 2026, ICE has attempted to serve Petitioner the form I-229, notice to alien that her custody is being reviewed by Petitioner has refused to sign the document. Exh. A at ¶¶ 14, 17.

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).

The post order custody reviews under 8 C.F.R. § 241.4 satisfy the due process concerns 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. As mentioned *supra*, ICE attempted to serve the notices advising Petitioner her custody would be reviewed and Petitioner has declined to sign. *See* Exh. A at ¶¶ 14, 17. Additionally, Petitioner does not raise a procedural due process issue.

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). As such, Petitioner's procedural due process claim, like her substantive one, should be denied.

III. Conclusion

Petitioner is lawfully detained by statute until her removal, and her detention comports with the limited due process she is owed as an applicant for admission subject to a final order of removal. This Court should deny the petition.

Respectfully submitted,

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