United States District Court
Western District of Texas
San Antonio Division

Juan Carlos Sanchez Rodriguez, Petitioner, v. Kristi Noem, Secretary, U.S. Department of Homeland Security *et al*, Respondents.	No. 5:26-cv-515-FB

Federal[1] Respondents' Response in Opposition to Petitioner's Writ of Habeas Corpus

Respondents timely submit this response per this Court's Order dated January 29, 2026. *See* ECF No. 2 at 1. Petitioners filed a Motion to Extend Time with the Court on February 9, 2026, requesting until February 17, 2026, to file Respondent's response. *See* ECF No. 4.

In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Sanchez Rodriguez ("Petitioner"), seeks release from civil immigration detention, claiming that his approximately two-month post-removal-order detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 1 at ¶¶ 23,31. Petitioner's claims lack merit, and this petition should be dismissed.

Despite his allegation that there is "no basis" for his continued detention, Petitioner has a final order of removal from January 6, 2009, which not only mandated his detention under 8 U.S.C. § 1231(a) during the 90-day removal period but allows for continued detention beyond the removal period in the exercise of ICE's discretion, so long as removal is reasonably foreseeable. 8 U.S.C.

[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 pursuant to 8 U.S.C. § 1231(a)(6).

§ 1231(a)(6); *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner is a native and citizen of Cuba. ECF No. 1 at 4 ¶ 14. Petitioner argues his Order of Supervision ("OSUP") was revoked without justification and he was detained without reason. ECF No. 1 at 8 ¶ 28.

Petitioner is lawfully detained with a final order of removal, his constitutional challenge to continued detention is not ripe until he has been detained in post-order custody for at least six months, and there is insufficient reason to believe that removal is unlikely in the foreseeable future. The burden of proof has not shifted to Respondents, but even if it had, Respondents can show that removal to an alternate third country is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

On or about March 20, 1998, Petitioner entered the United States at the Miami International Airport without a passport, immigrant visa or any other valid entry document. Exh. A at ¶ 2. Petitioner was subsequently served with a Notice to Appear ("NTA"). *Id.* On April 9, 1999, Petitioner was ordered removed from the United States to Cuba by an Immigration Judge. *Id.* at ¶ 3. On May 17, 2002, the Board of Immigration Appeals ("BIA") dismissed Petitioner's appeal and affirmed his removal order. *Id.* at ¶ 4. On January 9, 2003, Petitioner was released on an Order of Recognizance. *Id.* at ¶ 5. On August 9, 2008. Petitioner's application for permanent residence status was denied by USCIS. *Id.* at ¶ 6. On December 22, 2008, Petitioner was issued an NTA. Petitioner was charged with section 212(a)(6)(A)(i) of the Immigration and Nationality Act. *Id.* at ¶ 7. On January 6, 2009, Petitioner was ordered removed from the United States to Cuba. *Id.* at ¶ 8. On February 3, 2009, and March 5, 2009, Petitioner was served with Form I-229(a), Warning for Failure to Depart and Instruction Sheet. Exh. A at ¶¶ 9-10. He was also served with an Alien of File Custody Review. *Id.* On April 7, 2009, Petitioner was released on an

Order of Supervision. Exh. A at ¶ 11. On December 11, 2025, Petitioner report for an ICE check-in as part of his Order of Supervision and was detained and served with a Notice of Revocation of Release. *Id.* at ¶ 12.

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

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.

II. Petitioner's Substantive Due Process Claim under *Zadvydas* is Premature.

Petitioner's reliance on *Zadvydas* is premature because he has been detained less than six months. To state a claim for relief under *Zadvydas*, Petitioner must show that: (1) he is in DHS custody; (2) he has a final order of removal; (3) he has been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700. Petitioner does not and cannot make this

showing, as he has been detained less than six months in post-order custody. *Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 2011 WL 891071 at *1 (5th Cir. Mar. 15, 2011); *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 n.33 (W.D. Tex. 2018); *Kasangaki v. Barr*, 2019 WL 13221026 at *3 (W.D. Tex. July 31, 2019); *Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 7–16 (W.D. Tex. Aug. 12, 2025).

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

Petitioner cannot show "good reason" to believe that third country removal 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; *see also Linares*, ECF No. 14 at 8, 10–11.

Once the alien establishes that he 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. *Id.* at 14–16; *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 urges this Court to order that his continued detention pending removal is contrary to statute and in violation of his procedural and substantive due process rights. Petitioner asserts that the government has violated his due process rights by failing to comply with its own regulations governing his revocation of supervised release and removal to a third country. ECF No, at 2 ¶4. Petitioner provide no evidence to support such claims.

Petitioner's claims are insufficient under *Zadvydas* because he has not shown that he has been in post-order custody for six months, and he has not shown any good reason to believe that removal is unlikely. *See Linares*, ECF No. 14 at 8, 10–11, 14–16; *Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985

F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also 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); *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). Petitioner has not shown that his continued detention is unreasonable, nor has he shown he is owed any additional due process than what he is currently receiving. *See Hernandezs-Esquivel v. Castro*, No. 5-17-cv-0564-RBF, 2018 WL 3097029, at *8 (W.D. Tex. June 22, 2018). Therefore, the burden of proof does not shift to Respondents to prove significant likelihood of removal in the reasonably foreseeable future.

IV. ICE Has Afforded Petitioner Procedural Due Process During His Post-Order Custody Pending Removal.

To establish a procedural due process violation, Petitioner must show that he 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*, at 10–14 (discussing *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). This Court should also follow *Zadvydas* to review the procedural claim at issue here. *Id.* Under the *Zadvydas* framework, six months post-order detention is reasonable, and unless that time frame has passed, any procedural due process claim is also premature.

In any event, 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).

Petitioner argues he has complied with every ICE check-in, and he has not violated his conditions of supervised release. ECF No. 1 at 5 ¶ 17. He further argues he was provided no explanation for retaining him. ECF No. 1 at 8¶ 28. These allegations are insufficient to establish ICE has failed to provide procedural protections, and even if it did, it would not result in his release from custody or a stay of his removal order.

V. Conclusion

Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6) and any due process claim is premature under *Zadvydas*. Moreover, Petitioner fails to show good reason to believe that there is no significant likelihood of third country removal 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 Petitioner procedural due process over the course of his two-month post-order detention. Petitioner's continued detention, therefore, is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Date: February 16, 2026

[*Signature appears on following page*]

Respectfully submitted,

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