

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Hugo Alberto Muniz-Morales,

Petitioner,

v.

Warden, Bobby Thompson, *et. al.*
Respondents.

Case No. 5:26-CV-00610-XR

Federal Respondents Response to Petition for Habeas Corpus

Petitioner has a final order of removal, and he fails to overcome the presumption that his mandatory post-order detention is reasonable. This Court should deny the petition without an evidentiary hearing.

I. Introduction

Petitioner is a native and citizen of Mexico. *See* Ex. A (ERO Declaration) ¶¶ 2. Petitioner concedes that he is subject to a final order of removal. ECF No. 1 ¶ 4; *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). He is detained in ICE custody in Pearsall, Texas, and he requests immediate release, arguing that his detention, despite his final order of removal, violates the Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), and the Due Process Clause. *See* ECF No. 1 ¶¶ 20–22.

As a threshold issue, Petitioner's *Zadvydas* claim fails, as he has been in post-order detention for less than the presumptively reasonable period of six months and has not overcome that presumption with anything beyond speculation and conjecture. *See Chance v. Napolitano*, 453 F. App'x 535, 536 (5th Cir. 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011). At the time Petitioner filed this petition, he had been in post-order custody for exactly 90 days. *See*

ECF No. 1. Absent a showing to the contrary, Petitioner's detention is *presumptively reasonable through May 3, 2026*, at which time he will have been continuously detained with a final order of removal for six months.

II. ARGUMENT AND AUTHORITIES

A. Petitioner's Post-Order Mandatory Detention Comports with the INA and 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); *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”).

Indeed, Petitioner cites *Zadvydas* in his first claim for relief. Even if *Zadvydas* did not squarely govern Petitioner’s claim, as it does, he would not be entitled to immediate release. Courts across the country have applied different approaches to determine the constitutionality of continued detention under various immigration statutes. *See, e.g., Rintobaye 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). But that analysis is not necessary where, as here, the Supreme Court has spoken on the issue at hand under § 1231: “[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 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. *See, e.g., Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).

Petitioner has a final order of removal that can be executed to any country willing to receive him, except Mexico, which is where he was granted withholding of removal. ICE requested acceptance from Colombia, and the request remains pending. If the request is denied, ICE will re-evaluate for other third country possibilities. *See* Exh. A at ¶¶ 10, 14.

B. Petitioner's APA Claim Is Not Cognizable.

Petitioner raises additional arguments under the APA which are not cognizable in habeas, and which are not covered under the \$5 habeas filing fee. As such, the APA claim should be dismissed. *See Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)); *Lopez Contreras v. Bondi*, No. SA-25-CV-177-OLG at 2 n.1 (W.D. Tex. Feb. 20, 2026). “When a filing contains both habeas and non-habeas claims, ‘the district court should separate the claims and decide the [non-habeas] claims’ separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the “vast procedural differences between the two types of actions”). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3; *see also Montoya v. Noem*, SA-CV-1410-FB

(W.D. Tex. Jan. 26, 2026) (dismissing all non-habeas claims without prejudice under Rules 12(b)(1) and (6)).

Even if this APA claim were cognizable, there is no final action for this Court to review. When review of an agency action is sought “under the general review provisions of the APA, the ‘agency action’ in question must be ‘final agency action.’” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 882 (1990) (quoting 5 U.S.C. § 704) (“Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review”) (emphasis added). “Agency action must meet two conditions to be final: (1) ‘the action must mark the ‘consummation’ of the agency’s decisionmaking process’ and (2) ‘the action must be one by which ‘rights or obligations have been determined,’ or from which ‘legal consequences will flow.’” *Patterson v. Def. POW/MIA Acct. Agency*, 343 F. Supp. 3d 637, 651 (W.D. Tex. 2018) (citing *Am. Airlines, Inc. v. Herman*, 176 F.3d 283, 287 (5th Cir. 1999)). If, as in this case, there is no final agency action, federal courts lack subject matter jurisdiction. *Qureshi v. Holder*, 663 F.3d 778, 781 (5th Cir. 2011).

Qureshi is relevant and binding precedent. *Qureshi* affirmed dismissal of an APA challenge to USCIS’s termination of asylum, finding that termination of asylum is not a final agency action because it is “only an intermediate step in a multi-stage administrative process, succeeded (or accompanied) by removal proceedings.” 663 F.3d at 781. The Court noted that “the IJ and BIA lack jurisdiction to review asylum terminations, they both retain the power to halt removal proceedings altogether, either by an alien’s successful contest to removability . . . or by a successful new asylum application . . .” *Id*; see also *Santiago Santiago v Noem*, 3:25-CV-361-KC, 2025 WL 2792588 at *5-6 (W.D. Tex. Oct. 2, 2025) (finding no jurisdiction to rule on an APA claim due to lack of final agency decision); *Bhatia v. United States*, No. 16-cv-11, 2016 WL 6127799, at *2

(S.D. Miss. Sept. 19, 2016), *report and recommendation adopted*, 2016 WL 6126666 (Oct. 20, 2016) (citing *Qureshi*, 663 F.3d at 781); *see also Gamez Lira v. Noem*, No. 25-cv-855, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025).

The decision whether to continue Petitioner's post-order detention is not only discretionary, but it is also not final. Petitioner has been detained just over 4 months, meaning that only one post-order custody review has been conducted per the pertinent regulations. ICE has conducted the post order custody review and determined detention should continue. *See* Exh. A at ¶ 13 At the 180-day mark, his post-order custody will be reviewed again to determine whether it should continue. That decision will not only be made at the field office level, but it will be reviewed at a headquarters level, where it will be re-reviewed again at the 270-day and one-year marks, should he remained detained at that time. The APA claim, therefore, is not reviewable, not only because it is a discretionary agency decision, but also because it is not a final one.

III. Conclusion

The Court should deny the habeas petition without the need for an evidentiary hearing.

Respectfully submitted,

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