

United States District Court  
Western District of Texas  
San Antonio Division

Carlos Villarreal,  
Petitioner,

v.

Warden of the South Texas ICE Processing  
Center, *et al.*,  
Respondents.

No. 5:26-CV-1147-JKP

**Federal<sup>1</sup> Respondents' Response to Petition of Writ for Habeas Corpus**

Respondents submit this response to Petitioner's petition for a writ of habeas corpus [ECF No. 1]. ECF No. 7 (Service Order). Petitioner alleges his detention violates the Due Process Clause, the Administrative Procedure Act<sup>2</sup>, and the Immigration and Nationality Act. *See* ECF No. 1.

Despite being granted relief from removal, referred to as deferral of removal under the Convention Against Torture (DCAT), such relief extends only to the country where Petitioner was found more likely than not to be tortured: Mexico. *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 him. *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

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<sup>1</sup> The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action.

<sup>2</sup> Petitioner did not pay the filing fee for non-habeas claims. *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)). “When a filing contains both habeas and on-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.

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). ICE is actively seeking third country acceptance. Exh. A (ERO declaration).

Petitioner argues removal to a third country is not foreseeable because he doesn't have travel documents. ECF No. 1 at 7. Notably, however, he does not proffer an acceptable third country that would be suitable, nor does he outline any efforts to seek permission to live in any acceptable third countries. *Id.*

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**

After removal proceedings concluded, Petitioner was ordered removed and granted deferral of removal under the convention against torture. *See* ECF No. 1 at 4. On December 20, 2012, ERO released Petitioner on an order of supervision (OSUP) with reporting requirement. Exh. A at ¶ 7. On September 17, 2025, Petitioner reported to ICE, and he was detained to effect the removal order. *Id.* at ¶ 8. ICE served Petitioner with Notification of Release. *Id.*

On February 21, 2026, ERO submitted the 90-day post order custody review for supervisory review which remains pending. Exh. A at ¶ 9. On the same date, ERO interviewed Petitioner pursuant to 8 C.F.R. § 241.4(i). *Id.* ERO contacted Honduras and Guatemala to see if

they would accept Petitioner, but both declined. *Id.* at ¶ 10. ERO at Pearsall has contacted their headquarters component “HQ-RIO” to request assistance with identifying a third country to remove Petitioner. *Id.* at ¶ 11.

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

Petitioner’s detention is lawful. 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 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.

**III. 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. ECF No. 1 at 1 (Petitioner detained on October 28, 2025); *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).

**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 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. *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 he has not been detained ‘post-order’ for more than six months. *See* ECF No. 2 at 1 (alleging detention on September 17, 2025); 8 C.F.R. §§ 1241.1(c); 1003.38(b). Petitioner, nonetheless, urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and the Fourteenth Amendment, because among the reasons, he believes ICE has not received travel documents for a third country for Petitioner. ECF No. 2 at 7. Beyond these conclusory allegations, 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 wholly insufficient under *Zadvydas*. *See 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).

As such, even applying the prior interpretation of the detention authority at issue here, Petitioner cannot meet his burden to establish no significant likelihood of removal in the reasonably foreseeable future. See *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 has already requested the assistance of their headquarters removal component, HQ-RIO to assist with locating a third country to remove Petitioner. Exh. A at ¶ 11. Petitioner's substantive due process claim fails and should be denied.

#### **IV. 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 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).

First, Petitioner's alleged procedural due process violations, if true, do not merit release. 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).

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).

In September 2025, ICE detained Petitioner and served him with Notice his OSUP was revoked to effect his removal order. Exh. A at ¶ 8. This revocation was proper and Petitioner's allegations otherwise should be denied.

In addition, ICE conducts post-order custody reviews ("POCR") of an alien's detention as required by regulation for aliens detained under § 1231. *See* 8 C.F.R. § 241.4. Petitioner does not allege or address the allege the POCR process does not satisfy *Zadvydas* or due process. But even if he had, 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. 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). ERO completed the 90-day POOCR which is pending supervisory review. Exh. A at ¶ 9.

Even if Petitioner had alleged such a procedural due process 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 his substantive ones, should be denied.

**V. Petitioners Cannot Seek APA Review in a Habeas Petition.**

In this proceeding, Petitioners expressly challenge their 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. *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, e.g., Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) (“Relief in the form of . . . release from custody indicates a challenge to ‘the very fact or duration of [one’s] physical imprisonment’ and may be sought *only* through a petition for a writ of habeas corpus[.]” (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, “release from ICE custody . . . is a remedy that is *only* available through a habeas petition.” *Armando C. G. v. Tsoukaris*, No. 20-5652, 2020 WL 4218429, at \*7 (D.N.J. July 23, 2020) (emphasis added). And indeed, a “Petition for a Writ of Habeas Corpus” is exactly what Petitioners filed. ECF 1.

In the Petition, Petitioners purport to assert a claim under the Administrative Procedure Act (“APA”)—a civil claim. *Id* at 17. This they 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, Petitioners did not pay the filing fee for anything beyond the habeas claim.

**VI. The Stay of Removal Should be Dissolved**

The Court issued a stay of removal. *See* ECF No. 7 at 1–2. Respondents respectfully request this stay of removal should be immediately dissolved as this Court lacks jurisdiction to grant a stay of removal. *Imran v. Harper*, No. 25-30370 (5th Cir. 2026) (finding the district court lacked jurisdiction to grant a stay of removal as a stay of removal *is* a challenge to a removal order and federal courts lack jurisdiction over claims directly and immediately with a decision or action by the Attorney General to... execute removal orders (emphasis added); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (citing 8 U.S.C. § 1252(g)).

**VII. Conclusion**

Petitioner is lawfully detained by statute until his removal, and his detention comports with the limited due process he is subject to a final order of removal. This Court should deny the petition.

Respectfully submitted,

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