

United States District Court
Western District of Texas
El Paso Division

Oswaldo Camacho-Gonzalez,
Petitioner,

v.

Pamela Bondi, U.S. Attorney
General, *et al.*,
Respondents.

No. 3:26-CV-00005-LS

**Federal¹ Respondents' Response in Opposition to
Petitioner's Petition for Writ of Habeas Corpus**

Respondents timely submit this response per this Court's Order [ECF No. 4]. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Camacho-Gonzalez ("Petitioner"), seeks release from civil immigration detention, alleging his removal is not reasonably foreseeable and that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause.² See ECF No. 2. Petitioner is not entitled to the relief sought, including attorney's fees under the Equal Access to Justice Act ("EAJA").³ Petitioner's claims lack merit, and this petition should be denied.

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 on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

² 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 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.

³ *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

Despite his allegation that there is “no basis” for his continued detention, 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. 8 U.S.C. § 1231(a)(6); *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The burden of proof has not shifted to Respondents, but even if it had, Respondents can show that removal is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Cuba. *See* Exh. A, Declaration, at ¶ 3. In July 1998, Petitioner was convicted of criminal charges for infliction of corporal injury to a spouse/cohab in California. *Id.* at ¶ 6. In October 1999, he was convicted of violation of probation, also in California. *Id.*

On October 4, 2001, an immigration judge ordered Petitioner removed from the United States. Exh. A at ¶ 4. Since being ordered removed, ICE released Petitioner from custody on an Order of Supervision (OSUP) numerous times, but he was re-encountered following his arrests from criminal conduct, including: a September 10, 2004, conviction for domestic violence/unlawful imprisonment in California; a November 22, 2004, conviction for threat/intimidate in Arizona; an October 2007 conviction for assault causing bodily injury to a family member, aggravated assault with a deadly weapon, and obstruction and retaliation; a December 12, 2008, conviction in El Paso County, Texas, for aggravated assault with a deadly weapon, and obstruction and retaliation; an October 21, 2010, conviction in El Paso County, Texas, for assault, assault with a deadly weapon, and obstruction; and an arrest in Socorro, Texas, on March 16, 2015, for assault causing bodily injury to a family member. *Id.* at ¶¶ 5, 6.

On September 30, 2025, ERO El Paso took custody of Petitioner to effectuate his order of removal. *Id.* at ¶ 7. On October 3, 2025, ERO ELP requested travel documents from the government of Cuba. *Id.* at ¶ 8. On October 23, 2025, ERO ELP received notification that the government of Cuba would not accept Petitioner for repatriation. *Id.* at ¶ 9. Therefore, ICE is exploring removal to a third country.

On November 12, ERO ELP interviewed Petitioner for removal to Mexico under the Cuba Venezuela Nicaragua and Haiti (CVNH) repatriation agreement, but Petitioner indicated he did not want to be removed to Mexico. *Id.* at ¶ 10. On November 19, 2025, Petitioner claimed fear of removal to a third country. *Id.* at ¶ 11. On the same day, ERO ELP referred Petitioner for a third country removal fear screening before U.S. Citizenship and Immigration Services (USCIS). *Id.* at ¶ 12. On November 21, 2025, USCIS conducted a fear screening of Petitioner to Mexico. *Id.* at ¶ 13. On December 9, 2025, USCIS issued a negative fear determination as to Mexico. *Id.* at ¶ 14. On December 11, 2025, ERO ELP attempted to remove Petitioner to Mexico, but he failed to comply by refusing to board the transportation bus. *Id.* at ¶ 15.

On December 27, 2025, ERO ELP conducted a 90-day post custody review (POCR) of Petitioner and determined that continued detention was proper to effectuate his removal to Mexico. *Id.* at ¶ 16. On December 29, 2025, ERO ELP attempted to serve the continued detention determination to Petitioner, but he refused to sign. *Id.* at ¶ 17. On January 1, 2026, ERO ELP served Petitioner with a warning for failure to depart. *Id.* at ¶ 18.

ERO ELP continues to explore third-country removal and intends to request transfer of Petitioner to Phoenix, Arizona, for removal through the Nogales Port of Entry, where his removal is reasonably likely to be effectuated. *Id.* at ¶ 19.

II. 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 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. *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).

IV. 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 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 claims his removal is not reasonably foreseeable, but these 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.

Even if the burden did shift to ICE, ICE could show that removal is likely in the foreseeable future. *See* Exh. A. Petitioner's substantive due process claim fails here as a matter of law.

V. 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).

VI. Conclusion

Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6). Petitioner's continued detention is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Dated: January 28, 2026

Respectfully submitted,

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