

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

RANDY TAMAYO PEREZ,
Petitioner,

v.

DIRECTOR, U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT, *et al.*,
Respondents.

CAUSE NO. 3:26-CV-00018-KC

**FEDERAL¹ RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S WRIT
OF HABEAS CORPUS**

Respondents timely submit this response per this Court's Order. ECF No. 7. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Tamayo ("Petitioner"), *pro se*, seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 5. Petitioner's claims lack merit, and this petition should be denied.

Despite his allegation that there is "no basis" for his continued detention, Petitioner is subject to a final order of removal, which mandates his detention. Exh. A (ERO Declaration dated Jan. 20, 2026); *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner alleges removal is not reasonably foreseeable because he cannot be returned to his country of birth and ICE has not obtained travel documents for him. ECF No. 5 at 6. These arguments are insufficient reason to believe that removal is unlikely to occur in the foreseeable future.

For these reasons, the Court should deny this habeas petition without further evidentiary

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent the warden in this action.

hearings.

I. Facts and Procedural History

Petitioner is a native and citizen of Cuba. Exh. A at 2. On August 30, 2018, Petitioner was ordered removed from the United States to Cuba. *Id.* On November 28, 2018, ERO released Petitioner from custody because ERO was unable to remove Petitioner to Cuba at that time. *Id.* Petitioner has several convictions including four counts of Criminal Possession of a Forged Instrument and 14 counts of False Making/Embossing of Credit Cards, in violation of Kentucky law in November 2017; conviction in Florida for Resisting an Officer in February 2020; conviction in Florida for Petit Theft and Operating a Motor Vehicle Without a Valid License in October 2020; conviction in Florida for Petite Theft and Possession an Anti-Shoplifting or Inventory Control Device in June 2023; conviction in Florida for petite theft in April 2025; conviction in Florida for Resisting an Officer in April 2025; and arrest in Florida for Petit Theft and Operating a Vehicle Without a Valid License in June 2025. *Id.*

ERO took custody of Petitioner on July 8, 2025 pursuant to a detainer following Petitioner's most recent arrest in Florida. Exh. A at 2. ERO began efforts to remove Petitioner to a third country. *Id.* On October 30, 2025, ERO attempted to remove Petitioner to Mexico, but Petitioner refused to comply with said removal. *Id.* at 3. On January 12, 2026, ERO reviewed Petitioner's case to determine if there are any updates for Petitioner's removal. Exh. A at 3. ERO has requested to transfer Petitioner to Phoenix for a third country failure to comply removal. Exh. A at 3.

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 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.

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 Cuba 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 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 he cannot be returned to his country of birth and ICE has not obtained travel documents for him. ECF No. 5 at 6. Petitioner fails to allege a “good reason” to believe that there is no significant likelihood of removal in the foreseeable future. These claims are 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, 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 could show that removal is likely in the foreseeable future. ERO is internally reviewing Petitioner's case to determine if there are any updates for his removal. Exh. A at 3. ERO has requested to transfer Petitioner to Phoenix for a third country failure to comply removal. *Id.*

ICE can execute the order of removal. As such, removal is likely in the reasonably foreseeable future, and his continued detention is lawful. Petitioner's substantive due process claim fails and should be denied.

b. ICE Has Afforded Petitioner Procedural Due Process.

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 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 v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is required beyond the constitutional analysis outlined in *Jennings* and *Thuraiissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

Additionally, 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).

Due to an internal case review oversight, ERO did not conduct a 90-day post order custody review, but has indicated that as of January 20, 2026, ERO is in the process of remedying the matter and conducting a 90 day post order custody review. Exh. A at 3.

III. Conclusion

The Court should deny the habeas petition without the need for further evidentiary hearings.

Respectfully submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

On or about January 20, 2026, I directed a copy of this filing be mailed to Petitioner at the below address:

Randy Tamayo Perez

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Camp East Montana Detention Facility
6920 Digital Road
El Paso, TX 79936

/s/ Barbara Falcón

AUSA Barbara Falcón

