

United States District Court
Western District of Texas
El Paso Division

Jorge Luis Correa Reyes,
Petitioner,

v.

Pam Bondi, *et al.*,
Respondents.

No. EP-26-CV-53-KC

**Federal Respondents' Response to
Petitioner's Writ of Habeas Corpus**

Statement of Issues

1. Whether Petitioner is lawfully detained in immigration custody pending the execution of his final removal order.

I. Introduction

Federal¹ Respondents timely submit this response per this Court's Order dated January 15, 2026, ordering a response on or before January 22, 2026. *See* ECF No. 4. Mr. Correa Reyes ("Petitioner") seeks release from civil immigration detention, claiming that his detention is unlawful. The petitions consists of three counts: (1) Violation of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a)(6), claiming removal is not reasonably foreseeable; (2) Substantive Violation of the Fifth Amendment Due Process Clause, claiming his detention is indefinite; and (3) Procedural Violation of the Fifth Amendment Due Process Clause, claiming ICE denied Petitioner a timely and meaningful opportunity to demonstrate that he should not be detained. *See* ECF No. 1 at ¶¶ 20–26. Petitioner's continued post-order detention is permitted by statute and comports with due process. This habeas petition should be denied.

II. Relevant Facts and Procedural History

Petitioner, *pro se*, claims to have been born in Cuba and paroled into the United States in 1995. *Id.* at ¶ 11. In that same year, Petitioner was convicted of trafficking, possession with intent. *Id.* He has a final order of removal to Cuba issued in 1998. *Id.* Following that removal order, Petitioner was arrested both by criminal law enforcement and immigration law enforcement several times until he self-deported in 2009. *See* Ex. A (Estrada Declaration) ¶¶ 6–11. Petitioner faced several additional felony charges from 2016 through 2018, and his last unlawful entry into the United States was in February 2019. *Id.* ¶¶ 12, 14. DHS reinstated his removal order in 2019 but released him from custody because his removal to Cuba was not feasible at that time and because of his medical condition. *Id.* ¶ 13.

¹ The Department of Justice (DOJ) represents only the United States and its agencies.

His current detention began September 29, 2025, which he erroneously calculates in his Petition as six months ago. *Id.* ¶ 15; *see* ECF No. 1 ¶ 12. ICE served Petitioner with a Notice of Revocation of Release on the same day he was detained. Ex. A (Estrada Declaration). To assist ICE with his removal, Petitioner alleges that he filled out travel document requests for Cuba. *Id.* ¶ 13. Petitioner further alleges that, on December 29, 2025, ICE conducted a custody review after being in detention for 90 days. *Id.* at ¶ 14. Petitioner's deportation officer explained to him that ICE Headquarters Post-Order Detention Unit (HQPDU) decided to continue his detention. *Id.*

Petitioner alleges that on December 10, 2025, ICE "attempted to persuade" Petitioner to voluntarily go to Mexico, but Petitioner avers that Mexico has not accepted him or issued him a travel document. *Id.* ¶ 15. Petitioner reports that his deportation officer told him that ICE decided to keep him in mandatory detention, but that to his knowledge, Cuba has not issued any travel documents to him. *Id.* ¶ 16.

Petitioner has been hospitalized at various times and lengths since being taken into custody in September 2025, which has delayed efforts to remove him from the United States. Ex. A (Estrada Declaration) ¶ 15. Cuba declined to accept Petitioner, so ICE began negotiating with Mexico to accept him. *Id.* ¶¶ 18–19. Mexico denied acceptance of Petitioner via the CVNH program due to his medical condition. *Id.* ¶ 20. ICE attempted twice to remove Petitioner to Mexico through the El Paso Juarez port of entry, but both times Mexico refused him due to his medical condition. *Id.* ¶¶ 21–22. But for this Court's order restricting Petitioner's transfer outside of this district during this litigation, ICE would transfer Petitioner to Phoenix, Arizona, where third country removal to Mexico through the Nogales port of entry is likely to be successful. *Id.* ¶ 23; *see also* ECF No. 4.

III. 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 v. Davis*, at 533 U.S. 678, 680 (2001). Specifically, the 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.

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

Petitioner here has not been in post-order custody for the presumptively reasonable period, so his claim is not ripe. Even if the claim were ripe, Petitioner 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.* Petitioner cannot show “good reason” to believe that removal is unlikely in the reasonably foreseeable future.

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 has been in post-order custody for less than six months, and he concedes that ICE has been actively working to remove him to either

Cuba or Mexico. He claims that ICE cannot remove him to Cuba, because Cuba will not accept its own citizens, but ICE records show that 138 Cuban nationals were successfully removed from the United States in FY2025.² Beyond 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 reasonably foreseeable future. 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 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, ICE avers that removal is likely in the foreseeable future. *See generally* Ex. A

V. ICE Continues to Afford Petitioner Procedural Due Process During His Post-Order Custody Pending Removal.

Petitioner has not been deprived of any due process protections. To establish a procedural due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). While an agency is required to follow its own procedural regulations, 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). In any event, a remedy for a procedural due process violation 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

² *See* <https://www.ice.gov/statistics> (last accessed Jan. 22, 2026).

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).

Like his substantive due process claim, Petitioner provides only conclusory allegations to support his procedural due process claim. ECF No. 1 at ¶¶ 25–26. The record, however, disputes this claim. *See* Ex. A (Estrada Declaration). Indeed, Petitioner concedes in his Petition that ICE provided him with the required 90-day custody review, explaining to him the decision to continue his detention. ECF No. 1 at ¶ 14. ICE also timely served Petitioner with a Notice of Revocation of Release on the same day he was taken into custody. Ex. A (Estrada Declaration). ICE is complying with its statutory and regulatory obligations, and Petitioner’s continued detention comports with his due process rights as an alien subject to a reinstated final order of removal.

VI. Conclusion

Petitioner’s detention is lawful under 8 U.S.C. § 1231(a)(6). Petitioner fails to show good reason to believe that there is no likelihood of removal. As such, the burden has not shifted to ICE to show the opposite. Even if the burden had shifted, ICE avers that removal is significantly likely in the reasonably foreseeable future. Additionally, ICE has afforded Petitioner procedural due process over the course of his four-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.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Lacy L. McAndrew

Lacy L. McAndrew
Assistant United States Attorney
Florida Bar No. 45507
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (phone)
(210) 384-7312 (fax)
lacy.mcandrew@usdoj.gov

Attorneys for Federal Respondents

Certificate of Service

I certify that on January 22, 2026, I mailed a copy of Federal Respondents' Response to
Petition for Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

Jorge Luis Correa Reyes



El Paso Service Processing Center
8915 Montana Ave
El Paso, Tx 79925
PRO SE

/s/ Lacy L. McAndrew
Lacy L. McAndrew
Assistant United States Attorney