

United States District Court
Western District of Texas
El Paso Division

Daniel Antonio Villar Aguilar,
Petitioner,

v.

Mary De Anda-Ybarra, *et al.*,

Respondents.

No. 3:26-CV-00088-KC

**Federal¹ Respondents' Response to
Petitioner's Petition for Writ of Habeas Corpus, and the
Court's Show Cause Order of February 6, 2026**

Federal Respondents submit this response per this Court's Order dated February 6, 2026, ordering a response. *See* ECF No. 6. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, and reply to Respondents' response, Petitioner seeks release from civil immigration detention, claiming that his post-removal-order detention has become indefinite, contrary to statute, and the Due Process Clause. *See* ECF Nos. 1, 5. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a final order of removal, which mandates his detention under 8 U.S.C. § 1231(a) for a 90-day removal period. Exh. A (ERO Declaration). Detention can be extended past the removal period in the exercise of discretion where removal is reasonably foreseeable. 8 U.S.C. § 1231(a)(6). ICE decided in its discretion to continue Petitioner's detention past the 90-day removal period, which is a decision protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

Petitioner has not shown here that there is no likelihood of removal in the reasonably

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, however, have detention authority over aliens detained under 8 U.S.C. § 1231(a).

foreseeable future. Even if Petitioner were able to make such a showing, the burden would shift to Respondents who can show that removal is, in fact, significant 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. ECF No. 1 at ¶ 42. Petitioner first entered the country in September 2004. *See* Exh. A, Declaration, at ¶ 5. On January 29, 2007, Petitioner's status was adjusted to Lawful Permanent Resident (LPR). *See id.* at ¶ 6. On February 24, 2011, Petitioner was convicted of the offense of arson in the U.S. District Court for the Southern District of Florida and was sentenced to 60 months imprisonment and two years of supervised probation. *See id.* at ¶ 7. On May 27, 2014, an immigration judge ordered Petitioner removed from the United States, to which Petitioner waived appeal, rendering the removal order final and terminating Petitioner's LPR status. *See id.* at ¶ 8. On June 11, 2014, Petitioner was released from custody on an order of supervision since removals to Cuba and/or third countries were not viable at the time. *See id.* at ¶ 9.

Petitioner was detained on July 17, 2025, by ICE to effectuate the final order of removal. *See id.* at ¶ 10. On August 16, 2025, Petitioner was transferred to the El Paso Camp East Montana for staging and removal arrangements to effectuate his removal to a third country. *See id.* at ¶ 11.

On September 5, 2025, ERO denied Petitioner's application to stay removal. *See id.* at ¶¶ 12, 13. Two additional stay of removal packets were delivered to ERO but were returned with no action taken. *See id.* at ¶¶ 14, 15.

Concrete Steps to effectuate Petitioner's Removal

On November 7, 2025, ERO El Paso received notification that list of approved Cubans for removal was imminent. *See id.* at ¶ 16. On November 18, 2025, the Cuban government refused

Petitioner's repatriation. *See id.* at ¶ 17. ERO El Paso initiated removal arrangements to Mexico under their agreement to accept Cuban, Venezuelan, Nicaraguan, and Haitian (CVNH) citizens for third country removal to Mexico. *See id.* On ERO El Paso's December 8, 2025, CVNH mission, deportation officers made several attempts to remove Petitioner to Mexico, but Petitioner refused to comply. *See id.* at ¶ 18.

Obstacles to effectuating Petitioner's removal

The first obstacle to Petitioner's removal is Petitioner's failure to comply with removal efforts to Mexico from El Paso, Texas. *See id.* at ¶ 19. Secondly, due to the Court's order enjoining transfer of Petitioner from its jurisdiction or removal of Petitioner from the United States, authorization from the Court will be required to allow transfer of Petitioner to effectuate his removal. *See id.* at ¶ 20.

Concrete steps taken to address existing obstacles

On December 8, 2025, deportation officers made several efforts to obtain Petitioner's compliance with removal to Mexico. *See id.* at ¶ 21. Officers explained the consequences of failing to comply with removal, however, Petitioner refused to comply. *See id.* at ¶ 22. When aliens refuse to comply with CVNH removal from USA to Mexico at an El Paso port of Entry, ERO transfers the individual to the Phoenix facility that effectuates third country removals to Mexico for detainees who have failed to comply with removal orders. *See id.* at ¶ 23. However, ERO is enjoined from transferring Petitioner to a facility that can effectuate the removal, and also from removing him from the United States. *See id.* ERO can make arrangements to transfer Petitioner to Phoenix within two weeks of receiving permission to do so. *See id.* at ¶ 24. Once Petitioner is in Phoenix, he will be added to the removal cycle and will be removed to Mexico. *See id.* at ¶ 25. The time frame will depend on when he arrives, as he will likely be placed on a manifest in

chronological order with other detainees scheduled for CVNH removal from Phoenix. *See id.* According to its confirmed records, within the past six months, ERO has successfully removed a total of 901 Cuban Nationals to Mexico and 711 Cuban Nationals to Cuba. *See id.* at ¶ 26. ERO anticipates no impediments to removing the Petitioner to Mexico in the reasonably foreseeable future. *See id.* at ¶ 27.

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 v. Davis*, 533 U.S. 678, 701 (2001). 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. There Is No Good Reason to Believe That Removal to Cuba Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to Cuba is unlikely. 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).

There is no dispute that Petitioner’s removal order has been final since Petitioner waived appeal. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. ECF No. 1 at ¶¶ 46-66. Petitioner, however, relies on only conclusory allegations and speculation to argue that he is subject to continued detention *Id.*

Petitioner’s conclusory and speculative claims are wholly insufficient to meet his burden of proof 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 show that there is 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 travel documents). The burden of proof, therefore, does not shift to Federal Respondents to prove that removal is likely.

IV. Conclusion

There is no good reason to believe that removal to Cuba in the reasonably foreseeable future is unlikely. Continued detention under 1231(a)(6), therefore, is lawful. Accordingly, the Court should deny this petition.

Dated: February 17, 2026

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Deborah L. Fischer
Deborah L. Fischer
Assistant United States Attorney
Texas State Bar No. 00786039
700 E. San Antonio , Suite 200
El Paso, Texas 79901
(915) 534-6884 (phone)
Deborah.Fischer@usdoj.com

Attorneys for Federal Respondents