

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**REINALDO LOPEZ ARMAS,
PETITIONER,**

V.

**PAM BONDI, ATTORNEY GENERAL,
ET AL,
RESPONDENTS.**

NO. 3:26-CV-00131-KC

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

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

STATEMENT OF ISSUES

1. Whether detention is lawful under 8 U.S.C. § 1231(a)(6) is unconstitutional as applied to petitioner.
2. Whether the writ of habeas corpus under 28 U.S.C. § 2241 provides any relief other than release.

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. Bazzar ("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. 1 at ¶¶ 43, 45. 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. *See* ECF No. 1 at 3 ¶ 19; Exh. A (ERO Declaration) at ¶ 11; *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner alleges removal is not reasonably foreseeable because Mexico has not provided any documentation to Petitioner, ECF No. 1 at 5 ¶ 29. Petitioner claims that ICE placed him in a vehicle with other detainees and drove to the Mexican border to crossover. ECF No. 1 at 5 ¶ 30. Petitioner claims he questioned the legality of crossing over into Mexico without documentation. *Id.* Petitioner was returned to the detention facility. *Id.* Petitioner questions the legality of his removal to Mexico; however, ICE was attempting to remove Petitioner to Mexico as part of the CVNH initiative, but Petitioner failed to comply. *See* Exh. A at ¶ 23. Petitioner's 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 hearings.

I. Facts and Procedural History

Petitioner is a native and citizen of Cuba. Exh. A at 2. During 1995, Petitioner entered the United States by boat. Exh. A at 2. On February 13, 1998, Petitioner adjusted his status under the Cuban Adjustment Act. *Id.* On October 21, 2003, Petitioner was convicted of burglary, in violation of Fla. Stat. § 810.02 and possession of cocaine in violation of Fla. Stat. § 893.13. *Id.* Petitioner

was sentenced to two (2) years of probation. *Id.*

On January 6, 2007, after a trip abroad, Petitioner was encountered by CBP offices in Miami and was subsequently paroled into the United States for humanitarian reasons because Petitioner was awaiting a kidney transplant. *Id.* On August 7, 2007, Petitioner was issued a Notice to Appear (Form I-862). *Id.* On June 9, 2009, Petitioner was convicted for the offense of conspiracy to possess with the intent to distribute 5 kilograms of more of cocaine in violation of 21 U.S.C. § 846, 18 U.S.C. § 1951 and 18 U.S.C. § 924(c)(1)(A) and sentenced to 180, 120 and 60 months to run consecutively. Exh. A at 3. On August 27, 2009, Petitioner was ordered removed from the United States to Cuba. *Id.* There is no record of Petitioner's removal from the United States. *Id.*

On September 26, 2021, Petitioner was encountered by ICE in Atlanta, Georgia. *Id.* Petitioner was encountered by ICE while he was serving a sentence at the McRae Correction Facility in McRae, Georgia for, *inter alia*, conspiracy to possess with intent to distribute 5 kilograms or more of cocaine. *Id.* On June 25, 2025, Petitioner reported to the ICE/Miramar Office in Miramar, Florida and Petitioner was placed back into ICE custody. *Id.*

On August 16, 2025, a request was made to CMU to remove Petitioner to Mexico. Exh. A at 4. On August 31, 2025, Petitioner was transferred to the El Paso Processing Center. *Id.* On September 8, 2025, a nomination package was submitted to International Operation Division (IOD), for Cuba. *Id.* On September 30, 2025, Cuba responded to ERO El Paso, indicating that the case had been submitted and received by the Cuban government and remains pending. *Id.* On October 1, 2025, ERO El Paso submitted a request for removal via CVNH initiative with Mexico. On October 16, 2025, ERO El Paso attempted to remove Petitioner to Mexico as part of the initiative; however, Petitioner failed to comply. *Id.* On November 6, 2025, Cuba refused to provide travel documents for Petitioner. *Id.* On November 14, 2025, Petitioner was served with

a Warning for Failure to Depart, Form, I-229 and a Notice of Removal to an Alternate Country of Removal Notice to Mexico. *Id.* On November 17, 2025, Petitioner claimed fear of removal to Mexico. *Id.* On December 10, 2025, Petitioner was served with a copy of negative third country asylum decision and a Warning for Failure to Depart. *Id.* On December 28, 2025, EROHQ issued a 180-day POCR decision recommending that Petitioner remain detained. Exh. A at 5. On December 30, 2025, Petitioner was served with his Warning for Failure to Depart, which he refused to sign. *Id.* As of January 12, 2026, Petitioner has failed to comply with removal to Mexico under the CVNH program. *Id.*

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.

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 Mexico 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 no travel documents have been issued by Mexico. ECF No. 1 at 6 ¶ 29. 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. First, as part of the CVNH initiative to remove Petitioner to Mexico,

ERO El Paso attempted to remove Petitioner to Mexico but Petitioner failed to comply. Exh. A at 4. Furthermore, ICE does not need Mexico to issue Petitioner a travel document because removal is pursuant to the CVNH initiative program.

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).

Petitioner has received post order custody reviews on November 6, 2025 and December 28, 2025. See Exh. A at ¶ 24, 29. Respondents argue the post order custody process addresses constitutional concerns identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. See, e.g., 8 C.F.R. § 241.13. This process comports with Petitioner's limited due process rights as an alien subject to a final order of removal. Petitioner's procedural due process claim, like his substantive one, should be denied.

III. Conclusion

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

On or about January 30, 2026, I directed a copy of this filing be mailed to Petitioner at the below address:

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/s/ Tasha May
SAUSA Tasha May