

United States District Court
Western District of Texas
El Paso Division

Yordan Romy Valdes,
Petitioner,

v.

Pam Bondi, U.S. Attorney
General, *et al.*,

Respondents.

No. 3:26-CV-00146-LS

**Federal¹ Respondents' Response to
Petitioner's Petition for Writ of Habeas Corpus, and the
Court's Show Cause Order of January 27, 2026**

Federal Respondents submit this response per this Court's Order dated January 27, 2026, ordering a response. *See* ECF No. 4. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, 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 No. 2. 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. *See* 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 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, significantly likely in the reasonably

¹ The Department of Justice represents only the Federal Respondents in this action.

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 and paroled into the country on or about March 18, 2008. ECF No. 2, at 1, 3. After his arrest on October 14, 2017, for driving under the influence, an ICE detainer was placed on him. *See* Exh. A, Declaration at ¶ 8. Petitioner was ordered removed by an immigration judge on January 25, 2018. ECF No. 2 at 1; Exh. A, at ¶ 10. On April 26, 2018, Petitioner was released on an Order of Supervision. Exh. A, at ¶ 11. Petitioner was convicted of alien smuggling on January 17, 2025, and received a 12-month sentence. *See* Exh. A, at ¶ 12. Petitioner was then detained by ICE on or about July 14, 2025. *Id.* at 2; Exh. A, at ¶ 13. He is currently detained at the Stewart Detention Center in Lumpkin, Georgia. ECF No. 11.

Significant steps have been taken to effectuate the Petitioner's removal as set forth in the Declaration of Vanessa Martinez, Assistant Field Office Director, and Supervisory Detention and Deportation Officer (SDDO) for U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), attached hereto and incorporated herein by reference. *See* Exh. A, Declaration. In her declaration SDDO Martinez sets forth the steps taken to effectuate removal as well as certain obstacles presented and steps taken to address those obstacles, including Petitioner's failure and/or refusal to comply with removal efforts to Mexico. *See* Exh. A, ¶¶ 14-19. On January 30, 2026, Petitioner was transferred to the Stewart Detention Center for continued removal efforts. *Id.* at ¶ 18. Within the last six months, ERO has successfully removed a total of 901 Cuban Nationals to Mexico and 711 Cuban Nationals to Cuba. *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 v. Davis*, 533 U.S. 678, 701 (2001). 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.

III. There Is No Good Reason to Believe That Removal Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal 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 is final. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. ECF No. 2. 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, and even if it did, Respondents have shown the significant likelihood of removal in the reasonably foreseeable future.

IV. Conclusion

There is no good reason to believe that removal 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 18, 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

Certificate of Service

I certify on February 18, 2026, that a copy of the foregoing document was mailed to Petitioner (*pro se*) at the following address:

Yordan Romay Valdes



Stewart Detention Center

146 CCA Rd.

Lumpkin, GA 31815

Petitioner PRO SE

/s/ Deborah L. Fischer

Deborah L. Fischer

Assistant United States Attorney