United States District Court
Western District of Texas
San Antonio Division

Luis Cruz Vargas, Petitioner, v. Pamela Bondi, *et al.*, Respondents.	No. 5:26-CV-00512-FB

Federal[1] Respondents' Response to
Petitioner's Petition for Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order to file a response to Petitioner's petition. ECF No. 2. 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 been become indefinite, contrary to statute, and the Due Process Clause. *See* ECF No. 1. 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 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

[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).

future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Mexico. ECF No. 1 at ¶ 1; Exhibit A (ERO Declaration) ¶ 2. In April 1991, Petitioner was granted amnesty in the United States and adjusted his status to that of lawful permanent resident ("LPR"). Exh. A, at ¶ 4. In 1992, he was convicted of 18 U.S.C. § 371 and sentenced to ten (10) months imprisonment. *Id.* at ¶ 5. On March 28, 2000, Petitioner was ordered removed and was removed from the U.S. on September 11, 2000. *Id.* at ¶ 6. Petitioner re-entered on October 14, 2000, without inspection or admission. *Id.* On or about July 25, 2007, Petitioner's removal order was reinstated, and he was removed to Mexico. *Id.* at ¶ 7. On or about July 11, 2012, Petitioner was detained by ERO and issued a Notice of Intent/Decision to Reinstate Prior Order. *Id.* at ¶ 8. On October 26, 2012, Petitioner demonstrated a credible fear to the asylum officer and his case was referred to immigration court. *Id.* at ¶ 9. On April 4, 2013, the immigration judge found Petitioner was not eligible for withholding of removal due to being an aggravated felon, and ordered Petitioner removed but granted a deferral of removal under the Convention against Torture. *Id.* at ¶ 10. On June 7, 2013, Petitioner was released from detention on an Order of Supervision ("OSUP"). *Id.* at ¶ 11. On or about July 17, 2025, Petitioner was taken back into ICE custody. *Id.* at ¶ 12.

On August 15, 2025, ERO submitted Form I-241, Request for Acceptance of Alien to the government of Honduras, however Honduras declined to accept him as he was not a dual-citizen. *Id.* at ¶ 13. On October 20, 2025, the 90-day post order custody review was served on Petitioner, resulting in his continued detention as he poses a danger to the community based on his criminal history. *Id.* at ¶ 14. On December 26, 2025, a 120-day post order custody review was served on Petitioner, resulting in his continued detention due to his criminal history and posing a danger to

the community. *Id.* at ¶ 15. On December 26, 2025, ERO submitted Form I-241, Request for Acceptance of Alien, to the governments of Brazil, Columbia, and Guatemala. *Id.* at ¶ 16. As of February 9, 2026, the ERO had not yet received responses from those countries, but nonetheless considers there to be a significant likelihood of removal in the reasonably foreseeable future as there is no indication that those countries will not accept Petitioner. *Id.* at ¶ 17.

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 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 and that ICE has been making repeated efforts to secure arrangement for his removal. *See* Exh. A. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. Petitioner, however, relies on only conclusory allegations and speculation to argue that his detention is prolonged *Id.* Because the removal efforts have not been fruitful yet, Petitioner argues his detention has become indefinite and prolonged. *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.

Indeed, as stated in the ERO declaration, the ERO has contacted several countries to accept Petitioner and is waiting to hear back. Although there is not a response yet, there is no reason to assume that it will not be accomplished within the reasonably foreseeable future.

IV. Conclusion

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

Dated: February 9, 2026

Respectfully submitted,

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