

United States District Court
Western District of Texas
San Antonio Division

Tony Ruiz Fonseca
Petitioner,

v.

Miguel Vergara, *et al.*,
Respondents.

No. 5:26-CV-691-MA

**Federal¹ Respondents' Response in Opposition to
Petitioner's Writ of Habeas Corpus**

Respondents submit this response per this Court' Order dated February 04, 2026, extending the time to file a response. *See* ECF No. 3 In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner, seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See generally* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Despite his argument that there is no basis for his continued detention, Petitioner is an citizen of Cuba, an order removal dated January 14, 2026², which mandates his detention. ECF No. 1 at ¶ 1; *see also* Ex. A (ERO Declaration) ¶8 ; *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner argues his continued detention violates the immigration statutes his substantive and procedural rights under the Constitution's Fifth Amendment. ECF No. 1 at

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 are lawfully detaining Petitioner on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

² The appeal deadline for this order is February 13, 2026. As of the time of this filing Respondents have not been able to verify if any appeal has been filed. Respondents note that there is a delay in the electronic system recording the notice of appeal. Respondents note that Petitioner has not filed any supplement updating the record with any appeal, as such Respondents proceed under the assumption that no appeal has been filed.

¶¶22-33. These arguments are insufficient reason to believe that removal is unlikely in the foreseeable future, which means the burden of proof does not shift to ICE to show the likelihood of removal. *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). Additionally, Petitioner has been detained post-final order for just over 30 days, as such this petition is premature and the burden could not have shifted. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Cuba. Exh A (ERO Declaration) at ¶ 2. Petitioner first arrived in the United States in November 2023 through a port of entry, and subsequently paroled. Exh. A (ERO Declaration) at ¶¶4-5. On March 23, 2025, Petitioner moved to terminate proceedings, but said motion was denied. *Id* at ¶ 6. On October 23, 2025, Petitioner was encountered at the Sutton County Jail, and his parole was terminated as a matter of discretion. *Id.* at 7. On January 14, 2026, Petitioner as ordered removed from the United States and Petitioner reserved appeal. *Id.*at ¶8. Petitioner’s appeal deadline was February 13, 2026, and as of the time of the declaration, no appeal was recorded in the electronic system. *Id.* at ¶ 9.

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 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.* In this case, barely 30 days has

elapsed, and thus Respondents are still well within the statutory authority to detain pursuant to removal.

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’s removal order has been final since February 13, 2026. ; *see* 8 C.F.R. § 241.1; 1241.1(a). Petitioner, nonetheless, urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth,. ECF No. 1 at¶¶ 22–33. **Petitioner fails to consider or address that detention during the first 90 days is mandated by statute and thus this petition is premature. 8 U.S.C. § 1231(a)(2).**

Beyond these premature and 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

foreseeable future. These claims are wholly 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).

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.

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 the maximum process afforded by Congress under the statutes, to include placement in “removal proceedings before an immigration judge”. Such process included notice and an opportunity to be heard, and the opportunity for judicial review through the appellate court. This process addresses constitutional concerns that were identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. Petitioner’s procedural due process claim, like his substantive one, should be denied.

III. Conclusion

Petitioner’s continued detention is mandatory under 8 U.S.C. § 1231(a)(6), detention here would be considered lawful. Petitioner’s petition is premature, 90 days have not elapsed. As such, the burden has not shifted to ICE to show the opposite. Petitioner’s continued detention, therefore, is comports with the law and with due process. It is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Respectfully submitted,

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