United States District Court
Western District of Texas
El Paso Division

Yosvel Machin-Romero, Petitioner, v. Warden, ERO El Paso Camp East Montana, *et al.*, Respondents.	No. 3:26-CV-00322-KC

Federal[1] Respondents' Response to Petitioner's Petition for Writ of Habeas Corpus, and the Court's Show Cause Order of February 5, 2026

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

STATEMENT OF ISSUES

1. Whether mandatory detention under 8 U.S.C. § 1231 is unconstitutional as applied to petitioner.

2. 2. Whether the writ of habeas corpus under 28 U.S.C. § 2241 provides any relief other than release.

Federal Respondents submit this response per this Court's Order dated February 5, 2026, ordering 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 post-removal-order detention has 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. *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 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 who applied for admission to the United States at the Del Rio Port of Entry on or about September 16, 2019, and claimed fear of returning to Cuba. ECF No. 1, at ¶ 1; Exh A, Declaration, at ¶ 5. On October 10, 2019, USCIS made a positive credible fear finding. Exh. A, at ¶ 8. On April 22, 2020, the immigration judge denied Petitioner's I-589 application (Application for Asylum/Withholding of Removal/Convention Against Torture) and entered an order of removal to Cuba. *Id.* at ¶¶ 10-11. There is no record that Petitioner filed an appeal of this decision. *Id.* at ¶ 12. Petitioner was subsequently released under an Order of Supervision Program (OSUP). *Id.* at ¶ 13. Petitioner was detained by ICE on November 4, 2025,

and his order of supervision was revoked to execute his removal. ECF No. 1, at ¶ 6; Exh. A, at ¶ 17. He is currently detained at the El Paso Camp East Montana in El Paso, Texas. *Id.* at ¶ 8.

Significant steps have been taken to effectuate the Petitioner's removal, as set forth in the Declaration of Angelo Garite, Assistant Field Office Director (AFOD), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), attached hereto and incorporated herein by reference. *See* Exh. A, Declaration. In the declaration, AFOD Garite sets forth the steps taken to effectuate removal as well as certain obstacles presented, and steps taken to address those obstacles. Exh. A, ¶¶ 20-22. On January 15, 2026, Petitioner was nominated for return to Cuba through ICE air operations. *Id.*, at ¶ 20. On January 20, 2026, Petitioner was pending approval from Cuba for return. *Id.*, at ¶ 21. As of February 5, 2026, Petitioner has not been approved for any type of relief from removal, and therefore, ICE-ERO is working towards effectuating his removal to Cuba upon receipt of approval from the Cuban government. *Id.*, at ¶ 22.

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 19, 2026

Respectfully submitted,

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