

United States District Court
Western District of Texas
El Paso Division

Bismarck Martinez,
Petitioner,

v.

Kristi Noem, *et al.*,
Respondents.

No. 3:26-CV-00368-LS

**Federal¹ Respondents' Response to
Petitioner's Petition for Writ of Habeas Corpus**

Federal Respondents provide the following response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. 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. 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 future. For these reasons, the Court should deny this habeas petition.

¹ The Department of Justice represents only federal employees in this action.

I. Facts and Procedural History

Petitioner is a native and citizen of Cuba. ECF No. 2 at pg 4; Exh. A, Declaration, at ¶ 5. Petitioner first entered the country in 1980. *See* Exh. A, at ¶ 6. On October 24, 1996, Petitioner was ordered removed to Cuba. *See id.* at ¶ 7. On September 14, 1993, Petitioner was convicted of the second-degree robbery and was sentenced to 15 years' imprisonment. *See id.* at ¶ 8. On November 17, 2015, he was convicted of transporting and possession of a controlled substance and sentenced to 3 years in prison. *See id.* at ¶ 10. Petitioner was convicted of second-degree burglary on August 6, 2024, and sentenced to one year and 4 months in prison. *See id.* at ¶ 13.

Petitioner was detained on April 15, 2025, by ICE to effectuate the final order of removal to Cuba or a third country. *See id.* at ¶ 14. However, on September 8, 2025, Cuba denied entry of the Petitioner. *See id.* at ¶ 16. In November 2025, on two separate occasions, ERO attempted to effectuate removal to Mexico, but Petitioner refused to comply. *See id.* at ¶¶ 18, 19. On December 11, 2025, ERO conducted a 180-day POCR periodic custody review. *See id.* at ¶ 20. On January 27, 2026, ERO again attempted to effectuate removal to Mexico, but Petitioner failed to comply. *See id.* at ¶ 21. Therefore, ERO will coordinate removal efforts to Mexico with the ERO locations that handle third country removals for detainees who have failed to comply with removal orders. *See id.* at ¶¶ 24, 25.

According to its confirmed records, within the past six months, ERO has successfully removed a total of 901 Cuban Nationals to Mexico and 711 Cuban Nationals to Cuba. *See id.* at ¶ 26. ERO anticipates a significant likelihood of removing the Petitioner in the reasonably foreseeable future. *See id.* at ¶ 27.

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 has been final since Petitioner waived appeal. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. ECF No. 1 at ¶¶ 46–66. 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.

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: March 2, 2026

Respectfully submitted,

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Certificate of Service

I certify on March 2, 2026, that a copy of the foregoing document was mailed to Petitioner (*pro se*) at the following address:

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