

United States District Court
Western District of Texas
El Paso Division

RAFAEL CARLOS BARRIOS,
Petitioner,

v.

PAM BONDI, et al.,

Respondents.

No. EP-26-CV-430-KC

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

Federal Respondents timely submit this response per this Court's Order dated February 13, 2026, directing service and ordering a response by February 20, 2026. *See* ECF No. 2. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Barrios ("Petitioner") seeks release from civil immigration detention, claiming that his 7-month post-removal-order detention has been become indefinite, contrary to statute and the Due Process Clause. *See* ECF No. 3. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a final order of removal from November 20, 1998, which mandated his detention under 8 U.S.C. § 1231(a) during the 90 days following the entry of his final order. Ex. A (ERO Declaration) ¶ 4. 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

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).

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.

I. Facts and Procedural History

Petitioner is a native and citizen of Cuba. ECF No. 3 at ¶ 1. Petitioner was ordered removed from the United States on November 20, 1998. Ex. A (ERO Declaration) ¶ 4; *see also* Automated Case Information (last accessed Feb. 20, 2026).

Petitioner was encountered by immigration officials again after he was recently arrested and held at St. Lucie County Jail. *Id.* at ¶ 5. ICE placed an immigration detainer to take Petitioner into custody once he was released by local authorities. *Id.* On July 16, 2025, Petitioner was transferred to ICE custody. *Id.* at ¶ 6. On August, 16, 2025, Petitioner was moved to Camp East Montana in El Paso, Texas, and on August 31, 2025, Petitioner was moved to the El Paso Service Processing Center. *Id.* at ¶¶ 7-8.

On September 16, 2025, ICE made a nomination request to remove Petitioner to Cuba to ICE Headquarters. *Id.* at ¶ 9. On September 17, 2025, ICE Headquarters indicated that Petitioner's nomination for removal to Cuba was declined. ICE explored third country removal to Mexico and served Petitioner with notice of alternate country removal to Mexico. *Id.* at ¶¶ 10-11.

Petitioner twice refused to be removed to Mexico, and on the second refusal, indicated that he feared removal to Mexico. *Id.* at ¶¶ 12-13. After Petitioner claimed fear, USCIS conducted a credible fear screening and made a negative fear finding for Petitioner's removal to Mexico. *Id.* at ¶ 14. Petitioner again refused to depart to Mexico on February 2, 2026. *Id.* at ¶ 15. On February 7, 2026, Petitioner was moved to Florence Staging Facility and was then moved to Florence Correctional Facility on February 10, 2026, in order to facilitate removal.

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 to Mexico Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to Mexico 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 is subject to a final order of removal and that ICE has been making efforts to effectuate the removal. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. ECF

No. 3 ¶¶ 36–42. Petitioner, however, relies on only conclusory allegations and speculation to argue that his removal is unlikely. *Id.* at ¶ 24.

Petitioner claims that he cannot be removed to Mexico because he lacks legal documentation and Mexico would not accept him. *Id.* at ¶ 24. This argument is purely speculative. Petitioner has presented no evidence that Mexico would be unwilling to accept him onto its territory. The only known issue preventing Petitioner’s removal to Mexico up to this point has been Petitioner’s refusal to go to Mexico. Ex. A (ERO Declaration) ¶¶ 12-15, 19.

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.

Even if the burden did shift to ICE, Petitioner concedes that ICE is making efforts to effectuate his removal to Mexico. *Id.* at ¶ 24. ICE has repeatedly attempted to remove Petitioner to Mexico, but Petitioner has refused to go despite a negative credible fear finding. Ex. A (ERO Declaration) ¶¶ 11-15.

Moreover, ICE is complying with post-order-custody-review regulations. *Id.* ¶ 17. There is no basis for a due process argument here when ICE is complying with *Zadvydas* standards and providing Petitioner sufficient procedural safeguards throughout his post-removal detention.

IV. Conclusion

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2026, I caused the Federal Respondents' Response to Petitioner's Writ of Habeas Corpus (Dkt. 5), Declaration in Support (Dkt. 5-1), to be served on Petitioner, Rafael Carlos Barrios, by sending copies via certified U.S. mail to his address listed in the case docket as follows:

Rafael Carlos Barrios
A#
El Paso Service Processing Center
8915 Montana Avenue
El Paso, TX 79925

Dated: February 20, 2026

Respectfully submitted,

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