UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EDUARDO YDLIBI TELLISSEH,
Petitioner,

v.

MARKWAYNE MULLIN, et al.,
Respondents.

No. 3:26-CV-01907-KC

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

[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).

STATEMENT OF ISSUES

1. Whether Petitioner has met his burden in showing that there is no significant likelihood of removal in the foreseeable future.
2. If so, whether Respondents are able to show that there is a significant likelihood in the foreseeable future that Petitioner will be removed.

Federal Respondents submit this response per this Court's Order dated July 16, 2026. ECF No. 9. 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 from November 9, 2023, which mandated his detention under 8 U.S.C. § 1231(a) during the 90 days following the entry of his final order. ECF No. 1 ¶ 17. 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.

I. Facts and Procedural History

Petitioner is a native and citizen of Venezuela. ECF No. 1 at ¶ 7. Petitioner the United States on a tourist visa in 2005 and was granted asylum in 2006. *Id.* at ¶ 15. Petitioner lost his status and was placed in removal proceedings after he was convicted of first-degree felony sexual assault. ECF No. 1-3 at ¶¶ 3-4. Petitioner was ordered removed to Venezuela on November 19, 2013, but was granted deferral of removal that prevents his removal to Venezuela. ECF No. 1 at ¶ 17. Petitioner was released on an order of supervision on October 20, 2014. *Id.* at ¶ 18.

On November 25, 2026, Petitioner was detained by immigration officials in order to

execute his final removal order. *Id.* at ¶ 20. Petitioner was nominated for third country removal to Mexico on January 1, 2026, which Petitioner initially stated he was willing to accept. Ex. A (ERO Declaration) at ¶ 5. On January 7, 2026, Petitioner then refused to be removed to Mexico. Respondents continued to work to effectuate removal to Mexico. *Id.* On January 26, 2026, Petitioner was removed to Venezuela. *Id.* Petitioner was returned to the United States on July 8, 2026. *Id.* at ¶ 6

ERO attempted to proceed with third country removal to Mexico once Petitioner has returned and Petitioner claimed fear on July 11, 2026. *Id.* ERO initiated a case for Petitioner's fear of third country and is waiting for the result of the asylum interview to proceed with the appropriate next steps. *Id.* at ¶¶ 6-7.

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 is subject to a final order of removal. ECF No. 1 at ¶ 17. While Petitioner cannot be removed to Venezuela while he has deferral of removal to Venezuela, this relief is country specific and he can be lawfully removed to a third country. *Id.* at ¶ 48. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. *Id.* at ¶¶ 62–88. Petitioner, however, relies on only conclusory allegations and speculation that he will not be afforded appropriate notice and process for third country removal to argue that his removal to a third country is not significantly likely to occur in the foreseeable future. *Id.* at ¶¶ 3, 21, 36, 63-65.

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, Respondents are making efforts to effectuate Petitioner's removal to a third country. *See* Ex. A at ¶¶ 5-7. Despite Petitioner's claims that he is not being given the opportunity to claim fear, ERO has already initiated a case for fear of third country removal for Petitioner. *Id.* at ¶ 6. ERO is currently waiting for an answer from the asylum interview process in order to proceed to the next appropriate steps based on the decision that Petitioner receives. ERO is taking steps to effectuate Petitioner's removal. This Court should not find that there is no significant likelihood of removal for Petitioner's removal because ICE is providing Petitioner with due process protections to determine whether Petitioner is entitled to any protections from removal to Mexico.

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.

Respectfully submitted,

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