UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

ROBERTO SANCHEZ PEREZ,
Petitioner,

v.

WARDEN, OF CAMP MONTANA; TODD M. LYONS, DIRECTOR OF ICE; MARKWAYNE MULLIN, DHS SECRETARY; MARY DE YBARRA, DIRECTOR OF ICE, AND TODD BLANCHE,
Respondents.

No. 3:26-CV-02205-LS

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

Federal Respondents submit this response per this Court's Order dated August 26, 2026. *See* ECF No. 4. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner seeks release from civil immigration detention, claiming that his 2-month post-removal-order detention has been 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 from 1996, which mandated his detention under 8 U.S.C. § 1231(a) during the 90 days following the entry of his final order. ECF No. 2 at 6 ¶ 13. 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).

[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).

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 to a third country 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 that entered the United States in May 1988, and was issued a final removal order in 1996. ECF No. 2 at 6. Petitioner was previously released on an order of supervision on July 8, 2004. *Id.*

On July 13, 2026, Petitioner was detained by immigration authorities in order to effectuate his removal. *Id.* at 4. On July 25, 2026, Petitioner was referred for third country removal as International Operations Division Cuba advised that the government of Cuba was unlikely to accept Petitioner for repatriation. Ex. A at 1. Petitioner was transferred to El Paso on August 4, 2026, to pursue third country removal to Mexico under the Cuba, Venezuela, Nicaragua, Haiti (CVNH) agreement between the United States and Mexico. *Id.* at 2.

Petitioner was scheduled for third country removal to Mexico on August 19, 2026, but Petitioner refused to comply with removal efforts. *Id.* Due to his refusal to comply with removal efforts, ERO is working to identify an alternative third country that will accept petitioner other than Mexico. *Id.*

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 to a third country 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 1996. ECF No. 2 at 4. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. *Id.* at 6-7. Petitioner, however, relies on only conclusory allegations and speculation to argue that his detention is "indefinite." *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.

Even if the burden did shift to ICE, ICE has made attempts to remove Petitioner that have only been frustrated by Petitioner's refusal to comply. *See* Ex. A (Martinez Declaration) at 2. While Cuba is unlikely to accept Petitioner for repatriation, ICE has made efforts to effectuate Petitioner's removal to a third country. *Id.* at 1-2. Despite Petitioner's claim that he was detained with no plan for removal, he was actually scheduled for removal to Mexico under the Cuba, Venezuela, Nicaragua, Haiti (CVNH) agreement that the United States has with Mexico, but this removal was unsuccessful due to Petitioner's failure to comply. *Id.* at 2; ECF No. 2 at 6 ¶ 13. Petitioner's failure to comply with removal efforts should not be used as the basis to grant Petitioner release into the United States. Such a ruling would simply incentivize Petitioner to refuse compliance with United States immigration law and reward him with continued presence in the United States despite his removal order. In addition to removal attempts to Mexico, Petitioner has been placed on the a list to find alternative third country for removal other than Mexico since Petitioner has refused to comply with removal efforts to Mexico. Ex. A at 2.

IV. Conclusion

There is no good reason to believe that removal to a third country 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 September 2, 2026, I caused the Federal Respondents' Response to Petitioner's Writ of Habeas Corpus to be served on Petitioner by sending copies via certified U.S. mail as follows:

Roberto Sanchez Perez
A# [redacted]
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Dated: September 2, 2026

Respectfully submitted,

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