

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Maria Sonia Allaico Pacheco, and M.A. Q-A.,  
a minor,  
Petitioners,

v.

Kristi Lynn Noem, et. al.,  
Respondents.

Civil Action No. 5:25-CV-1856-MA

**Federal<sup>1</sup> Respondents' Supplemental Response to  
Petitioner's Writ of Habeas Corpus**

Federal Respondents timely submit this response per this Court's Order. *See* ECF No. 26. In their petition for writ of habeas Petitioner seeks release from civil immigration detention. *See* ECF No. 25. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has been detained only since November 8, 2025. 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 in fact, significant likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

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<sup>1</sup> 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).

**I. Facts and Procedural History**

ALLAICO PACHECO and Q-A are currently detained in ICE custody at the SOUTH TEXAS FAMILY RESIDENTIAL CENTER, located at 300 El Rancho Way, Dilley, TX 78017, where they have been detained since November 11, 2025. Ex. A, Affidavit ¶ 3. They have had a final removal order since June 13, 2025. *Id.* On August 2, 2021, ALLAICO PACHECO and Q-A entered the United States at or near Hidalgo, TX, without inspection, admission, or parole by an immigration officer. *Id.* ¶ 4. On August 4, 2021, the U.S. Border Patrol (“CBP”) served ALLAICO PACHECO and Q-A with a Notice to Appear (“NTA”), Form I-862, pursuant to 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”). On that same date, CBP served ALLAICO PACHECO and Q-A with an Order of Recognizance, Form I-220A and released them. *Id.* ¶ 5. On November 29, 2022, the Immigration Judge in New York denied ALLAICO PACHECO and Q-A’s application for asylum, withholding of removal and convention against torture, and order ALLAICO PACHECO and Q-A removed from the United States to Ecuador. *Id.* ¶ 6.

On December 13, 2022, ALLAICO PACHECO and Q-A filed an appeal with the Board of Immigration Appeals (“BIA”). On June 18, 2025, the BIA dismissed ALLAICO PACHECO and Q-A’s appeal. *Id.* ¶ 7. On July 2, 2025, ALLAICO PACHECO and Q-A filed a Petition for Review (“PFR”) with the U.S. Court of Appeals for the Second Circuit. On September 8, 2025, the Second Circuit dismissed the PFR and upheld the BIA’s decision. *Id.* ¶ 8. On November 8, 2025, ERO New York arrested ALLAICO PACHECO and Q-A, and served them with a Warrant of Arrest, Form I-200. *Id.* ¶ 9

On November 9, 2025, ALLAICO PACHECO and Q-A filed a Writ of Habeas Corpus with the U.S. District Court. *Id.* ¶ 10. On November 10, 2025, the U.S. District Court granted a Stay of Deportation. *Id.* ¶ 11. On November 11, 2025, ERO New York transferred ALLAICO PACHECO

and Q-A to ERO San Antonio at the South Texas Family Residential Center in Dilley, TX. *Id.* ¶ 12. On December 8, 2025, ERO served ALLAICO PACHECO and Q-A Form I-229(a), Warning for Failure to Depart. ALLAICO PACHECO and Q-A refused to sign the document. *Id.* ¶ 13. On December 22, 2025, ERO served the Petitioners a Notice to Alien of File Custody Review. The petitioners refused to sign the document and indicated they will not sign any documents. *Id.* ¶ 14.

On January 6, 2026, ALLAICO PACHECO and Q-A submitted an Application for a Stay of Deportation and Removal, Form I-246. On January 15, 2026, ERO denied the Application for a Stay of Deportation and Removal. *Id.* ¶ 15. As of February 9, 2026, ERO is continuing to work to identify and secure removal to Ecuador. Therefore, there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* 16.

## **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 to 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).

Since the entry of a final order of removal, Petitioner has appealed the decision to the Second Circuit and has only been in custody for 93 days. ECF Doc. No. 25 ¶ 36. Furthermore, Petitioner does not even make any allegations that removal is unlikely or indefinite.

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.

Nothing in the record indicates that removal is impracticable or barred, nor does Petitioner identify any individualized legal or factual obstacle that would prevent repatriation. Instead,

Petitioners have only been detained for about 93 days. Furthermore, the facts presented in Ex. A, details all of the efforts Respondents have made in attempting to affect removal.

**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,

**JUSTIN R. SIMMONS**  
UNITED STATES ATTORNEY

By: /s/ Adrian Acosta  
**ADRIAN ACOSTA**  
Assistant United States Attorney  
Texas Bar No. 24097275  
700 E. San Antonio, Ste. 200  
El Paso, Texas 79901  
Office: (915) 534-6884  
Facsimile: (915) 534-3490  
Email: [Adrian.Acosta@usdoj.gov](mailto:Adrian.Acosta@usdoj.gov)  
*Attorneys for Federal Respondents*