

United States District Court
Western District of Texas
El Paso Division

Yirandy Rosales Almaral,
Petitioner,

v.

No. 3:26-CV-00041-LS

Pam Bondi, et. al.
et al,
Respondents.

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

Federal Respondents timely submit this response per this Court's Order dated January 13, 2026, directing service and ordering a response. *See* ECF No. 6. In his petition for writ of habeas Petitioner seeks release from civil immigration detention, claiming that her 4-month 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 been detained only since October 29, 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.

I. Facts and Procedural History

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 Yirandy Rosales Almaral is a native and citizen of Cuba who has been subject to immigration proceedings and removal proceedings within the United States. Ex. A, Declaration ¶¶5-9. On November 26, 2013, Petitioner presented himself at the Gateway to the Americas Port of Entry in Laredo, Texas and was granted parole based on a claim of political asylum. *Id.* ¶ 5. On or about February 22, 2015, Petitioner again presented himself at the Brownsville, Texas Port of Entry without valid, unexpired immigration documents. *Id.* ¶ 6. On May 23, 2017, Petitioner was convicted in the United States District Court for the Western District of Texas of one count of Conspiracy to Transport Illegal Aliens and two counts of Transportation of Illegal Aliens in violation of 18 U.S.C. § 1324 and was sentenced to sixteen months in Bureau of Prisons custody. *Id.* ¶ 7. Petitioner was thereafter served with a Notice to Appear on January 10, 2018. *Id.* ¶ 8. An Immigration Judge entered a final order of removal to Cuba on February 27, 2018. *Id.* ¶ 9. Petitioner was released under an Order of Supervision on May 29, 2018. *Id.* ¶ 10. In 2022, Petitioner was arrested for assault, and that charge remains pending. *Id.* ¶ 11. On October 29, 2025, Petitioner was taken back into immigration custody in the Atlanta Holding Room and transferred to Stewart Detention Center on October 31, 2025. *Id.* ¶ 13. Petitioner was subsequently transferred to Camp East Montana in El Paso, Texas on December 11, 2025. *Id.* ¶ 14. On December 23, 2025, ERO attempted to remove the petitioner to Mexico, which he refused to depart his pod and refused to sign. *Id.* ¶ 15. On January 20, 2026, an Immigration Judge denied Petitioner's bond request for lack of jurisdiction. *Id.* ¶ 16. On January 30, 2026, Petitioner was transferred back to Stewart Detention Center. *Id.* ¶ 17.

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 South Africa Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to South Africa 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 was released under an order of supervision, later incurred an arrest for assault that remains pending, and was subsequently taken back into immigration custody on October 29, 2025. Ex. A. He has been housed in designated federal immigration detention facilities and transferred as part of routine custodial processing, and he sought release on bond, which an Immigration Judge denied for lack of jurisdiction. The period of detention at issue therefore began in late October 2025 following re-apprehension by

immigration authorities and has continued in connection with the existing final order of removal and ongoing removal efforts. *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.

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, the record reflects an active custodial status pursuant to a final order of removal, recent agency processing, inter-facility transfers consistent with ongoing detention management, and a bond determination by an Immigration Judge. The mere passage of about three months in post-order custody, without more, does not establish that removal is not reasonably foreseeable, particularly where the detention period remains well within the timeframe routinely upheld by courts applying § 1231(a)(6) and *Zadvydas*.

IV. Conclusion

There is no good reason to believe that removal to South Africa 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
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