

United States District Court
Western District of Texas
El Paso Division

Dermo Raul Romero Hidalgo,
Petitioner,

v.

Pam Bondi et al.,¹
Respondents.

No. 3:26-CV-00144-KC

**Response to Petition for Writ of Habeas Corpus
Pursuant to 28 U.S.C. § 2241**

Defendants respectfully submit this response to this petition for writ of habeas corpus under 28 U.S.C. § 2241 (the “Petition”), per this Court’s Show Cause Order dated January 24, 2026 (ECF No. 2). Petitioner Dermo Raul Romero Hidalgo requests the Court grant his writ of habeas corpus, order his immediate release, and prevent his transfer during the pendency of his petition. *See* ECF No. 1. Petitioner is not entitled to this relief for the reasons stated herein.

After an Immigration Judge ordered the removal of Petitioner in April 1996, the Immigration and Customs Enforcement (“ICE”) detained Petitioner on July 11, 2025, to execute the removal order. *See* ECF No. 1 ¶ 12; Ex. 1 ¶¶ 7, 9; 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner argues his continued detention violates 8 U.S.C. § 1231 and his substantive and procedural rights under the Constitution’s Fifth Amendment. ECF No. 1 at 4-5. He also claims he cannot be returned to Cuba, as there is no repatriation agreement between the United States and Cuba. *Id* at 3-4.

¹ Petitioner names as a respondent Michael Watkins, the Warden of Camp Montana East Detention Center. ECF No. 1-1 at 2. But 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 are lawfully detaining Petitioner on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

These arguments are insufficient reason to believe that removal is unlikely in the foreseeable future, which means the burden of proof does not shift to ICE to show the likelihood of removal. *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). Even if the burden has so shifted, Respondents can show that removal to Cuba or a third country is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Relevant Facts and Procedural History.

Petitioner filed this habeas petition on or about January 23, 2026, seeking release from civil immigration detention, claiming that ICE has been unable to remove him under the order. ECF No. 1 at 3; Ex. 1. In 1993, Petitioner was convicted of a drug crime. ECF No. 1 ¶ 12. In April 1996, an Immigration Judge ordered his removal. Ex. 1 ¶ 7.

In July 2025, ICE detained him to execute the removal order. *Id.* ¶ 9. On August 5, 2025, Federal Respondents requested Cuba to approve repatriation of Petitioner. *Id.* ¶ 10. On August 30, 2025, ICE received notice that the request was pending and that Petitioner would be placed on a waitlist. *Id.* ¶ 11. As the request was pending without a timeline, ICE made travel arrangements several times to remove Petitioner to Mexico between October 30, 2025, and January 27, 2026. Ex. 1. Petitioner refused to comply with removal, as he refused to sign the third country notification form. *Id.* ¶¶ 12-16. During an interview, Petitioner expressly stated that he could not go to Cuba and would not go to Mexico. *Id.* ¶ 14.

Claiming that his detention is unlawful because he believes he has been detained for more than six months, Petitioner seeks release from civil immigration detention. ECF No. 1 at 3-4. Federal Respondents, however, deny that Petitioner has been detained for more than six months and avers that even if the Court were to find that the removal period has expired, ICE is permitted

to continue Petitioner's detention unless or until Petitioner shows that his removal is not imminent. 8 U.S.C. § 1231(a)(6). Federal Respondents have diligently attempted to remove Petitioner to Mexico, which they could not achieve only because Petitioner refused to depart or comply. Ex. 1 ¶¶ 12-16. Federal Respondents will continue their efforts to execute Petitioner's final removal order by transferring him to Phoenix from where ICE will remove him to Mexico. *Id.* ¶ 16.

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.

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.

a. 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’s removal order has been final since April 1996 and that the request to Cuba for repatriation of Petitioner was pending without a timeframe. Ex. 1 ¶¶ 7, 11. ICE thus has consistently attempted to remove Petitioner to Mexico. *Id.* ¶¶ 12-15. Between October 30, 2025, and January 27, 2026, ICE has tried to execute the removal order at least twice. *Id.* ¶¶ 12-15. Petitioner obstructed those efforts by repeatedly refusing to comply with removal. *Id.* ¶¶ 12-15. He is lengthening his own detention by obstructing the removal efforts.

Contrary to those facts, Petitioner argues in a conclusory manner that Cuba “will deny any and all requests for travel documents,” ICE has been unable to remove him, and that his detention is “indefinite.” *See generally* ECF No. 1. 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 the government provides 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 can easily meet that burden because ICE is making continuous efforts to remove him to Mexico. ICE anticipates to timely execute Petitioner's removal order by transferring him to Phoenix from where Petitioner will be removed to Mexico. Ex. 1 ¶ 16. Nothing prevents Federal Respondents from removing Petitioner to a third country. *See e.g., Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021); 8 U.S.C. § 1231(b)(1)(c)(iv); 8 C.F.R. §§ 208.16(f); 1208.16(f); 208.17(b)(2); 1208.17(b)(2). There are numerous removal options for ICE to consider under § 1231, including any country willing to accept the alien—which is Mexico in this case. *Guzman Chavez*, 594 at 536-37; 8 U.S.C. § 1231(b)(2). Thus, Petitioner cannot show a substantive due process violation or that his detention is unlawful.

b. ICE Has Afforded Petitioner Procedural Due Process.

To establish a procedural due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit has not provided guidance to lower courts, post-*Arteaga-Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231, but the Fourth Circuit, post-*Arteaga-Martinez*, used the *Zadvydas* framework to analyze a post-order-custody alien's due process claims. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is required beyond the constitutional analysis outlined in *Jennings* and *Thuraiissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

Additionally, the Fifth Circuit finds no procedural due process violation where the constitutional minimum of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

As an applicant for admission, Petitioner has received the maximum process afforded by Congress under the statutes, to include placement in "full" removal proceedings before an immigration judge. Such process included notice and an opportunity to be heard, including judicial review through the appellate court. Even after that process ran its course, ICE is processing the Post Custody Order Review and Failure to Comply documentation. Ex. 1 ¶ 17. This process addresses constitutional concerns that were identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. It also comports with Petitioner's limited due process rights as an applicant for admission

subject to a final order of removal. Petitioner's procedural due process claim, like his substantive one, should be denied.²

III. Conclusion

Petitioner's continued detention is lawful under § 1231(a)(6). Petitioner fails to show good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. As such, the burden has not shifted to ICE to show the opposite. Even if the burden had shifted, ICE establishes that removal is foreseeable. Additionally, ICE has afforded Petitioner procedural due process, including upcoming post-order custody reviews. Petitioner's continued detention, therefore, comports with the law and with due process. It is not unreasonably prolonged or in violation of the Constitution. Accordingly, the Court should deny this petition.

² Lastly, Petitioner seeks attorney's fees and costs under the Equal Access to Justice Act. ECF No. 1-1 at 5. The Act "does not authorize attorney's fees for successful 28 U.S.C. § 2241 motions." *Imran v. Harper*, No. 25-30370, 2026 WL 93131, at *2 (5th Cir. Jan. 13, 2026). Petitioner also cannot raise claims under the Immigration and Nationality Act ("INA") because he "does not address whether § 2241 provides jurisdiction and potential relief from detention based on those claims. Nor does he advance any argument establishing an independent basis for this court's jurisdiction over these claims, so they should be dismissed." *Id.* Likewise, Petitioner asks that the Court order the stay of his transfer from the El Paso division. The declaration shows that a transfer is necessary to execute the removal order, and staying a transfer amounts to staying removal. The Fifth Circuit explicitly held that the district court lacks jurisdiction to grant such relief because "[a] request for stay of removal is a challenge to a removal order." *Imran*, 2026 WL 93131, at *1. "Federal courts lack jurisdiction over claims connected directly and immediately with a decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." *Id.* (internal quotation marks omitted). The Court also sua sponte vacated any stay of removal or transfer. ECF No. 7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 5, 2026, I electronically filed this document with the Clerk of Court using the CM/ECF system. I also served a copy of this document on Petitioner by regular mail addressed as follows:

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