

United States District Court
Western District of Texas
El Paso Division

Lesly Nerk Pierre Junior
Petitioner,

v.

Pam Bondi, Attorney General, *et al.*,
Respondents.

No. EP-26-CV-00227-DB

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

Federal Respondents timely submit this response per this Court's Order dated January 30, 2026, directing service and ordering a response. *See* ECF No. 3. In his petition for writ of habeas Petitioner seeks release from civil immigration detention, claiming that his 4-month post-removal-order detention has 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 under 8 U.S.C. § 1231 only since September 9, 2025. Only on that day did he receive an administratively final order of removal which 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

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).

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

Petitioner Lesly Nerk Pierre Junior is a citizen of the United Kingdom who has been subject to removal proceedings within the United States. ECF No. 1 ¶ 8. Petitioner entered the United States in 2015. *Id.* ¶ 13. On September 9, 2025, Petitioner received a final order of removal. *Id.* ¶ 15. Since then, Petitioner has remained in custody under 8 U.S.C. § 1231 pending his removal to the United Kingdom.

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 The United Kingdom Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to the United Kingdom 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).

Petitioner’s removal period only began when the removal order became administratively final. See 8 U.S.C. 1231(a)(1)(B). Petitioner acknowledges that his removal order became final on September 9, 2025. ECF No. 1 ¶ 15. This puts his continued post removal order detention within the six months presumptively reasonable period of post-order detention. See *Zadvydas*, at 533 U.S. at 701.

Petitioner presents no substantive evidence to show that there is no significant likelihood of removal in the foreseeable future. Instead, Petitioner repeatedly states that he has not been removed due to ICE’s incompetence. ECF No. 1 ¶¶ 17, 21. Petitioner also relies on the claim that his detention has lasted longer than six months and therefore is no longer presumptively reasonable under *Zadvydas*. *Id.* ¶¶ 5, 19, 21-27, 31. However, this ignores that *Zadvydas* relates to post-removal detention. *Zadvydas* at 682.

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 is making continuous efforts to obtain necessary travel documents from the United Kingdom so that Petitioner may be removed. Indeed, ICE has regularly communicated the British consulate to secure appropriate travel documentation. Ex. A (ERO Declaration) ¶¶ 5-10, 12. ICE has also been working to get approval for funds to pay the required fee. *Id.* ¶¶ 11-13. Once the travel document is issued, ICE anticipates no impediments to the timely execution of Petitioner's removal order. *Id.* ¶ 14.

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 and continuous agency action in processing the removal. The mere passage of about four to five 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 the United Kingdom 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/ Nathan Ripley

Nathan Ripley
Special Assistant United States Attorney
Illinois Bar No. 304097
700 E. San Antonio Ave., Suite 200
El Paso, Texas 79901
(915) 534-6884 (phone)
(915) 534-3490 (fax)
Nathan.Ripley@usdoj.gov

Attorneys for Federal Respondents

Certificate of Service

I hereby certify that on February 4, 2024, I caused the Federal Respondents' Response to Petitioner's Writ of Habeas Corpus (Dkt. 5), Declaration in Support (Dkt. 5-1), to be served on Petitioner, Lesly Nerk Pierre Junior, by sending copies via first-class U.S. mail as follows:

Lesly Nerk Pierre Junior
El Paso Processing Center
8915 Montana Ave.
El Paso, TX 79925

February 4, 2026

/s/ Nathan Ripley

Nathan Ripley
Special Assistant United States Attorney