

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**CARLOS PONCE CASANOVA,
PETITIONER,**

V.

**KRISTI NOEM, ET. AL.
RESPONDENTS.**

NO. 3:26-CV-00297-KC

RESPONSE TO HABEAS PETITION AND COURT'S SHOW CAUSE ORDER

STATEMENT OF ISSUES

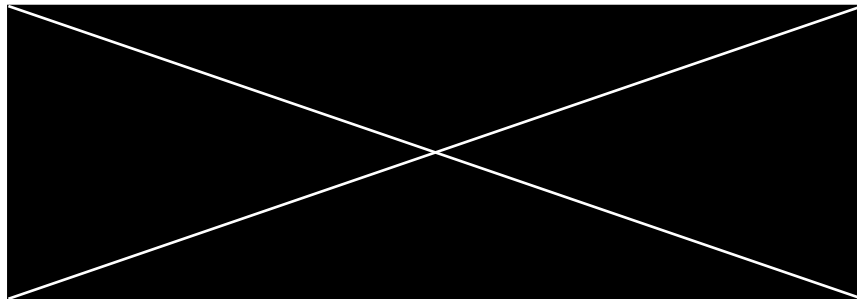
1. Whether Petitioner has shown that removal is unlikely.

Respondents submit this response directing service and ordering a response. In his petition for writ of habeas corpus, Petitioner, seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 3. Petitioner's claims lack merit, and this petition should be denied.

Petitioner argues his continued detention is baseless and violates his substantive and procedural rights under the Constitution's Fifth Amendment. ECF No. 3. 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 in fact, is likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner was detained on August 5, 2025 and was eventually transferred to El Paso on December 1, 2025. ECF Doc. No. 3 and Chart Below. Petitioner was eventually transferred out of El Paso on February 3, 2026. See below:



Petitioner signed his Petition on January 29, 2026. ECF Doc. No. 3 at 8. The Western District of Texas received the Petition on February 2, 2026. *Id.* at 1 (see file stamp). Even though

Petitioner's Motion and Declaration to proceed in Forma Pauperis was initially filed on February 2, 2026, the Western District of Texas, filed the Petition on February 4, 2026. *See* ECF Doc. Nos. 1 and 3. Accordingly, there may be a jurisdictional issue in the case¹².

Despite the possible jurisdictional issues related to the Petition, Federal Respondent's argue that detention for Petitioner is still proper. On October 29, 2024, Ponce Casanova was ordered removed to Cuba by an immigration judge. Ex. A, ¶ 6. On November 27, 2024, Ponce Casanova was released on an order of supervision--humanitarian. *Id.* ¶ 7.

On October 6, 2025, Border Patrol apprehended and detained Ponce Casanova. *Id.* ¶ 8. On November 4, 2025, Ponce Casanova was denied removal by the Government of Cuba. Review for pending nomination of third country removal was initiated. *Id.* On November 23, 2025, Ponce Casanova was transferred from KROME (Miami) to the Service Processing Center (El Paso) and subsequently transferred to Otay Mesa (San Diego). *Id.* ¶ 10. On December 1, 2025, Ponce Casanova was transferred from Otay Mesa to KROME and subsequently to El Paso Camp East Montana. *Id.* ¶ 11. On December 15, 2025, Ponce Casanova requested to be deported. *Id.* ¶ 12. Ponce Casanova refused to go back to Mexico. *Id.* Ponce Casanova stated that he wanted to go back to KROME. *Id.*

¹ *Griffin v. Ebbert*, 751 F.3d 288, 290 (5th Cir. 2014) holds that "[j]urisdiction attached on that initial filing for habeas corpus relief, and it was not destroyed by the transfer of petitioner and accompanying custodial change". Respondents admit that it is unclear on whether jurisdiction attaches when any initial filing is done by the court, or when specifically the Habeas Petition is filed. In *Griffin*, the court specifically stated "when Griffin filed his petition." *Id.* This is different from a case that this court is handling: *Saavedra v. Bondi et. al.*, 3:26-cv-392-KC, where the documents were not received by the Western District of Texas until after the Petitioner was transferred and no documents were filed prior to the Petitioner's transfer.

² If the court wants more briefing related to the jurisdictional issues, Federal Respondents can supplement.

On January 16, 2026, trigger forms for third country (Mexico) were submitted on behalf of Ponce Casanova to USCIS. *Id.* ¶ 13. On January 24, 2026, USCIS rendered a negative decision. ERO clear to proceed with removal to Mexico. Ponce Casanova was pending removal to Mexico. *Id.* ¶ 14. On January 27, 2026, Ponce Casanova declined removal to Mexico. *Id.* ¶ 15.

II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

Petitioner's detention is lawful. 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*, 533 U.S. at 701. 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 Unlikely in the Reasonably Foreseeable Future.

Petitioner cannot show "good reason" to believe that removal to a third country is unlikely in the reasonably foreseeable future. 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 order has been final since October 24, 2024 and he was barely brought into custody in August 2025. Petitioner, nonetheless, urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights. Beyond these conclusory allegations, Petitioner fails to allege any reason, much less a “good reason,” to believe that there is no significant likelihood of removal in the foreseeable future. These claims are wholly insufficient 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, even applying the prior interpretation of the detention authority at issue here, Petitioner cannot meet his burden to establish 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 was taking affirmative steps to obtain Vietnamese travel documents). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

As such, removal is likely in the reasonably foreseeable future, and his continued detention is lawful. Petitioner’s substantive due process claim fails and should be denied.

III. Conclusion

Petitioner’s continued detention is mandatory under 8 U.S.C. § 1231(a)(6), detention here would be considered lawful. Petitioner fails to show good reason to believe that there is no

significant likelihood of removal to a third country 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 could establish that removal is foreseeable. Additionally, ICE has afforded Petitioner procedural due process through his mandatory detention, including post-order custody reviews. Petitioner's continued detention, therefore, is comports with the law and with due process. It is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Respectfully submitted,

JUSTIN R. SIMMONS
UNITED STATES ATTORNEY

By: /s/ Adrian Acosta
ADRIAN ACOSTA
Assistant U.S. Attorney
Texas Bar #24097275
700 E. San Antonio, Suite 200
El Paso, Texas 79901
(915) 534-6884

Certificate of Service

On February 18, 2026, I directed a copy of this response to be mailed to Petitioner at the below address:

Carlos Ponce Casanova

ERO El Paso Camp East Montana
6920 Digital Road
El Paso, Texas 79936
Pro Se

/s/ Adrian Acosta
ADRIAN ACOSTA
Assistant United States Attorney