United States District Court
Western District of Texas
El Paso Division

Eduardo Moya-Cruz,
Petitioner,

v.

Angel Garite, *et al.*,
Respondents.

No. 3:26-CV-00614-DB

Federal[1] Respondents' Response to Petitioner's Petition for Writ of Habeas Corpus

Federal Respondents provide the following response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Petitioner seeks release from civil immigration detention, claiming that his post-removal-order detention has been become indefinite, contrary to statute, and the Due Process Clause. *See* ECF No. 2. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a reinstated order of removal originally entered in 2015, which mandates his detention under 8 U.S.C. § 1231(a) for a 90-day removal period. 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 is, in fact, significant likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

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[1] The Department of Justice represents only federal employees in this action.

I. Facts and Procedural History

Petitioner is a native and citizen of Mexico who entered the country unlawfully on or about September 29, 2015. ECF No. 1-2; Exh. A, Form I-213, dated March 5, 2026 (redacted). On that date, he was encountered, processed for expedited removal, and removed to Mexico. Exh A. On or about October 16, 2015, Petitioner re-entered the U.S. and was apprehended and processed as a reinstatement of deportation order. ECF No. 1-3; Exh. A. On October 26, 2015, he was removed to Mexico. Exh. A. Petitioner re-entered at an unknown date and was encountered on January 26, 2026, and processed as a reinstatement of prior order. Exh. A. He currently remains in custody pursuant to the reinstated removal order. ECF No. 1, at p. 3; Exh. A. Petitioner has expressed fear of returning to Mexico, and claims he has a pending application for T Non-immigrant status. ECF No. 1, at p. 3.

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 a 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 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 is subject to a reinstated removal order. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. *See generally* ECF No. 1. Petitioner, however, relies on only conclusory allegations and speculation to argue that he is not subject to continued detention *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.

IV. Conclusion

There is no good reason to believe that removal in the reasonably foreseeable future is unlikely. Continued detention, therefore, is lawful. Accordingly, the Court should deny this petition.

Dated: March 10, 2026

Respectfully submitted,

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