

United States District Court
Western District of Texas
El Paso Division

Eric Gonzalez-Pena,
Petitioner,

v.

No. 3:26-CV-1822

Todd Blanche, *et. al.*

Respondents.

**Federal¹ Respondents' Response to
Show Cause**

Federal Respondents timely submit this response. In his petition for writ of habeas Petitioner seeks release from civil immigration detention, *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

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

Petitioner was ordered removed from the United States by an immigration judge on December 19, 2019. Petitioner's removal order became final on December 19, 2019. ICE ERO continues to work on removing Petitioner to Cuba and Mexico. ICE ERO has taken the concrete

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).

steps to effectuate Petitioner's removal from the United States. ICE ERO's several attempts to affect Petitioner's removal include (please list all ERO's attempts to remove the Petitioner).

On 06/01/2026: An e-mail was sent to IOD-Cuba requesting an update on the subject's nomination for removal. On 06/03/2026: An entry noted that the subject was being nominated for the "CVNH" (Third Country National) program after he declined to sign the third-country removal form. On the same date, A status update indicated that RIO-DDO would not accept the case for repatriation and the subject would need to be removed under the CVNH program. On 06/10/2026: The subject was formally notified that his removal to Cuba was not accepted by that country and that he would instead be allocated for an upcoming mission to a third country. On 06/12/2026: An email referral was sent for a USCIS third-country screening. It was noted that if the subject received a negative fear finding and was subsequently forwarded to Mexico via the CVNH program, a request would be made to HQ-RIO to add the subject to the third-country national (TCN) list. On 07/01/2026: A negative fear finding was documented following the USCIS third-country screening, supporting the continued effort to process the subject for removal.

The steps taken by ICE ERO have proven unsuccessful because on 06/03/2026: ICE ERO's initial efforts to facilitate repatriation to Cuba were delayed when RIO-DDO indicated they would not accept the case for repatriation, requiring the subject to be processed under the CVNH (Third Country National) program. 06/10/2026: A specific attempt to remove the subject to Cuba was rendered unsuccessful because the Government of Cuba did not accept the nomination for his removal. On 06/12/2026 – 07/01/2026: The removal process was further extended by the requirement to complete a USCIS third-country screening after the subject expressed a fear of removal to Mexico. The process was contingent upon this screening, which concluded with a negative fear finding on 07/01/2026. On 07/11/2026: All efforts to effectuate removal have been

halted by a Temporary Restraining Order (TRO) issued on 07/09/2026 (entered in the record on 07/11/2026). This order explicitly prohibits ICE ERO from removing or deporting the Petitioner from the United States or transferring him from any facility outside the El Paso Division of the Western District of Texas, until the court orders otherwise or the case is closed.

In the alternative, ICE ERO has attempted to remove Petitioner as a CVNH case, on 06/03/2026: It was noted that the subject needed to be removed under the CVNH program after the repatriation request to Cuba was not accepted. On 06/12/2026: ICE ERO noted that the subject expressed a fear of removal to Mexico during the "current CVNH mission," and that if the subject received a negative fear finding, he would be forwarded to Mexico via the CVNH program.

Petitioner expressed fear of being removed to Mexico. ICE ERO referred the Petitioner to U.S. Citizenship and Immigration Services (USCIS) for a third-country screening. On or about July 1, 2026, USCIS found that the subject did not establish that it is more likely than not that he would be persecuted or tortured in Mexico (the third-country removal destination). On 06/12/2026: After the Petitioner expressed fear of removal to Mexico during the CVNH mission, ICE ERO referred the Petitioner to U.S. Citizenship and Immigration Services (USCIS) for a third-country screening. On 06/16/2026 – 06/22/2026: The case remained pending for the results of the USCIS third-country screening, with a third interview scheduled for 06/25/2026. On 07/01/2026: USCIS concluded the screening process, and it was documented that the subject did not establish that it is more likely than not that he would be persecuted or tortured in Mexico, resulting in a negative fear finding.

When ICE ERO requested to remove the Petitioner, Petitioner verbally expressed he/she was unwilling to comply. 05/27/2026: The Petitioner refused to sign the "Foreign Terrorist Organizations notification form," explicitly stating he would not sign any documents without his

attorney present. 05/31/2026: The Petitioner refused to sign both the I-229 (Notice of File Custody Review) and the Notice to Alien of File Custody Review (FCR). Upon being informed that Cuba did not accept his removal and he would be allocated for an upcoming mission to a third country, the Petitioner expressed that he would only accept removal to Cuba. On 06/12/2026: During the CVNH mission, while ICE ERO staff were speaking with the detainee, the detainee refused to dress out and claimed a fear of being removed to Mexico. On 06/12/2026: During the CVNH mission, while ICE ERO staff were speaking with the detainee, the detainee refused to dress out and claimed a fear of being removed to Mexico.

ICE HQ RIO has been actively working on removal to a third country other than Mexico. But there are no updates currently. Continued Coordination for Repatriation: Despite the subject stating he would only accept removal to Cuba, ICE/ERO continued to work through official channels (specifically with IOD-Cuba and HQ-RIO) to attempt to effectuate his removal. This included multiple e-mail inquiries and requests for status updates on his nomination (e.g., 06/01/2026 and 06/03/2026). Documentation of Refusals: ICE ERO staff consistently documented the subject's refusal to sign mandatory forms, including the I-229, file custody review notices, the Foreign Terrorist Organizations notification form, and the third-country removal form (05/27/2026, 05/31/2026, and 06/03/2026). Alternative Removal Planning (CVNH): Following the subject's refusal to accept removal to any country other than Cuba, and the subsequent notification that Cuba would not accept his nomination, ICE ERO moved to allocate the subject for the CVNH (Third Country National) mission to Mexico (06/03/2026 and 06/10/2026). Addressing Operational Non-Compliance: When the subject refused to dress out for the CVNH mission on 06/12/2026, ICE ERO initiated a referral for a USCIS third-country screening to

address his claimed fear and move forward with the established removal protocols, which resulted in a negative fear finding on 07/01/2026.

The lack of a travel document from the Petitioner's country and the Petitioner's lack of cooperation. ICE ERO repeatedly asked the Petitioner for cooperation, but he refused. Petitioner's Lack of Cooperation: The Petitioner has repeatedly refused to cooperate with the removal process, specifically by refusing to sign required documentation, including the I-229 (Notice of File Custody Review), the Foreign Terrorist Organizations notification form, and the third-country removal form. On 06/12/2026, the Petitioner further obstructed the process by refusing to dress out for the CVNH mission.

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 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).

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 his removal. In fact, the only action preventing his removal is his own refusal and his own actions. Petitioner is attempting to have his cake and eat it too, by saying that removal is unlikely in the future, but the reason why removal has been difficult is because of his own refusal to cooperate.

IV. Conclusion

There is no good reason to believe that removal 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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Certificate of Service

I hereby certify that on July 13, 2026, I sent this document to the following by Certified,

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