

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

REYNALDO LUNA-SIVILA

CIVIL ACTION

VERSUS

NO. 25-1082-JWD-EWD

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, et al.

RESPONSE TO PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C.
§ 2241 BY RESPONDENTS U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
AND PAMELA BONDI

Petitioner Reynaldo Luna-Sivila is a Cuban national who U.S. Immigration and Customs Enforcement (ICE) is detaining to execute a final order of removal. ICE currently plans to remove Mr. Luna-Sivila to Mexico and has issued a Notice of Removal to him for that purpose. As a result, Mr. Luna-Sivila's removal is reasonably foreseeable, and his continued detention pending removal is authorized by 8 U.S.C. § 1231(a)(6). The petition should therefore be denied.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Luna-Sivila is a citizen of Cuba who was paroled into the United States at Miami, Florida, on or about December 16, 1994. *See Ex. 1*, Notice to Appear, at 1; *see also Ex. 7*, Warrant of Removal, at 1.² On or about September 19, 2000, an immigration judge ordered Mr. Luna-Sivila to be removed to Guatemala. *See Ex. 2*, Final Order of Removal, at 1.³ In particular, the

¹ The following Respondents join this filing: U.S. Immigration and Customs Enforcement and U.S. Attorney General Pamela Bondi. The undersigned does not represent Kevin Jordan, Warden, Louisiana ICE Processing Center, because he is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to Warden Jordan because he is detaining the Petitioner at the request of the United States.

² Mr. Luna-Sivila's Warrant of Removal lists his date of entry into the United States as December 12, 1994. *See Ex. 7*, at 1. However, any discrepancy with his Notice to Appear is not material to the only issue in this habeas proceeding—i.e., whether Mr. Luna-Sivila's current detention by ICE is legally authorized.

³ The Government's records indicate that Mr. Luna-Sivila is a citizen of Cuba, a fact that Mr. Luna-Sivila also acknowledges. *See Ex. 1*, at 1; Pet'r's Mem. ¶ 6, ECF No. 1-1. Further, there is no indication in the Final Order of

immigration judge found Mr. Luna-Sivila inadmissible under 8 U.S.C. § 1182(a)(2)(B) [INA⁴ Section 212(a)(2)(B)], applicable to “[a]ny alien convicted of 2 or more offenses . . . for which the aggregate sentences to confinement were 5 years or more . . . ,” and 8 U.S.C. § 1182(a)(7)(A)(i)(I) [INA Section 212(a)(7)(A)(i)(I)], applicable to aliens lacking certain identification documents at the time of application for admission to the United States. *See Ex. 1*, at 1 (identifying the charges against Mr. Luna-Sivila for which the Government contended that he was removable). Mr. Luna-Sivila did not request or receive any form of withholding of removal or asylum. *See Ex. 2*, at 1.

On January 26, 2000, Mr. Luna-Sivila was convicted in the Circuit Court of Florida, Miami-Dade County, of the following offenses:

- Burglary with Assault or Battery Therein While Armed;
- Attempted Second Degree Murder with a Weapon; and
- Robbery Using a Deadly Weapon or Firearm.

See Ex. 3, Criminal Case Record, No. 98-013777, Circuit Court, Miami-Dade County, at 1.⁵ In a separate case in the same court, Mr. Luna-Sivila was convicted of Grand Theft in the 3rd Degree. *See Ex. 4*, Criminal Case Record, No. 95-030765, Circuit Court, Miami-Dade County. For both matters, Mr. Luna-Sivila received a sentence of five (5) years of imprisonment. *See Ex. 1*, at 3; *Ex. 3*, at 1; *Ex. 4*, at 1.

Removal that Mr. Luna-Sivila requested or received any type of withholding of removal or asylum that would prevent his removal to Cuba. *See Ex. 2*, at 1. Regardless, the Government retains the authority to remove Mr. Luna-Sivila to a third country under 8 U.S.C. § 1231(b)(2).

⁴ The “INA” refers to the Immigration and Nationality Act.

⁵ Court records from the Miami-Dade Circuit Court are publicly available online at the following address: <https://www2.miamidadeclerk.gov/cjis> (last visited Jan. 12, 2025). The Court may take judicial notice of these records under Rule 201(b) of the Federal Rules of Evidence. *See Garteiser Honea, P.C. v. Moskowitz*, No. 2:18-CV-00372-JRG, 2018 WL 6617780, at *2 n.1 (E.D. Tex. Dec. 18, 2018) (noting that “[i]nformation obtained from online sources is becoming a frequently used basis for judicial notice” and that “government and corporate websites and well-recognized mapping services are among the most commonly relied upon sources” (quoting 2 McCormick on Evid. § 330, Facts Capable of Certain Verification (7th ed. 2016)) (internal quotation marks omitted)).

On August 5, 2025, Mr. Luna-Sivila reported to the ICE Miramar Sub Office in Miramar, Florida, at which time ICE detained him. On August 26, 2025, ICE served Mr. Luna-Sivila with a Notice of Removal, which stated the agency's intention to remove him to the third-party country of Mexico. *See Ex. 5*, Notice of Removal, Aug. 26, 2025. It later served a second Notice of Removal on November 18, 2025, which again stated that ICE intended to remove Mr. Luna-Sivila to Mexico. *See Ex. 6*, Notice of Removal, Nov 18, 2025. ICE then provided Mr. Luna-Sivila with a Warrant of Removal/Deportation and a Warning to Alien Ordered Removed or Deported on December 5, 2025, which confirmed ICE's intention to remove Mr. Luna-Sivila and provided him with notice of his inadmissibility for ten (10) years from the date of his departure from the United States. *See Ex. 7*, Warrant of Removal; *Ex. 8*, Warning to Alien Ordered Removed or Deported.

Mr. Luna-Sivila filed this habeas action on December 3, 2025. Pet'n, ECF No. 1. In his supporting memorandum, he alleges that he "has been detained by ICE for over 90 days" and asserts that "Cuba does not presently have a repatriation agreement with the U.S. concerning the Petitioner." Pet'r's Mem. ¶¶ 11-12, ECF No. 1-1. Further, Mr. Luna-Sivila states that "[t]here exists hardly any diplomatic relations between Cuba and the U.S." *Id.* ¶ 11. However, he does not mention or otherwise address ICE's efforts to remove him to Mexico.

II. LEGAL FRAMEWORK FOR DETENTION PENDING REMOVAL UNDER 8 U.S.C. § 1231

Because Mr. Luna-Sivila is currently subject to a final order of removal, the statutory basis for his detention is 8 U.S.C. § 1231. That statute requires the Government to "remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A). As relevant here, that removal period runs from the later of "[t]he date the order of removal becomes administratively final," *id.* § 1231(a)(1)(B)(i)—which

was September 19, 2000, for Mr. Luna-Sivila—and the date of release from non-immigration detention or incarceration, *id.* § 1231(a)(1)(B)(iii). *See Ex. 2; cf.* 8 C.F.R. § 1241.1.

“During the removal period, the Attorney General shall detain the alien,” and “[u]nder no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.”⁶ 8 U.S.C. § 1231(a)(2)(A); *see also* 8 C.F.R. § 241.3(a). However, even after the 90-day removal period, the alien’s release from detention is not guaranteed. “An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in” 8 U.S.C. § 1231(a)(3). 8 U.S.C. § 1231(a)(6). The decision regarding release is discretionary. Here, because Mr. Luna-Sivila was found by an immigration judge to be inadmissible under 8 U.S.C. § 1182, *see Exs. 1, 2*, his detention is authorized under 8 U.S.C. § 1231(a)(6).

The Supreme Court has held that 8 U.S.C. § 1231(a)(6) does not require bond hearings for aliens after six months of detention or require the Government to bear the burden of proving by clear and convincing evidence that an alien poses a flight risk or a danger to the community. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022). Rather, the alien has the burden to “demonstrate[] to the satisfaction of the Attorney General or her designee that his or her release will not pose a danger to the community or to the safety of other persons or to property or a

⁶ The INA references the Attorney General and is cited in this brief as written. However, while the Attorney General once exercised this authority, much of it has now been transferred to the Secretary of Homeland Security. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005). Many of the INA’s references to the Attorney General are now understood to refer to the Secretary. *Id.*; *see also* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

significant risk of flight pending such alien's removal from the United States." 8 C.F.R. § 241.4(d)(1). "Before making any recommendation or decision to release a detainee," the pertinent reviewing officials "must conclude that: (1) Travel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest; (2) The detainee is presently a non-violent person; (3) The detainee is likely to remain nonviolent if released; (4) The detainee is not likely to pose a threat to the community following release; (5) The detainee is not likely to violate the conditions of release; and (6) The detainee does not pose a significant flight risk if released." *Id.* § 241.4(e). Further, 8 C.F.R. § 241.4(f) sets forth eight factors, which "should be weighed in considering whether to recommend further detention or release of a detainee"

The Supreme Court has interpreted 8 U.S.C. § 1231(a)(6) to limit a noncitizen's detention beyond the removal period to the period "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). While "indefinite detention" is not allowed, the Court has held that a period of six months from the start of the removal period is a "presumptively reasonable period of detention." *Id.* at 689, 701. However, the Supreme Court has cautioned that this "presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* at 701. "To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Thus, it is a petitioner's initial burden to show—after the presumptively reasonable six-month period—that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" *Id.* at 701; *see also Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) ("The alien bears the initial burden of proof in showing that no such likelihood of removal exists."). The mere allegations of post-

removal detention beyond six months and of the unlikelihood of removal in the reasonably foreseeable future are insufficient to meet this burden. *See Truong v. ICE*, No. 1:24-CV-00397, 2024 WL 3155909, at *1 (W.D. La. May 17, 2024) (denying habeas petition where the petitioner “failed to offer more than this conclusory allegation”). The same is true when the petitioner alleges that travel documents have not been issued. *See Harris v. ICE*, No. 1:24-CV-00103 SEC P, 2024 WL 1548653, at *2 (W.D. La. Mar. 22, 2024) (“Absent additional context, these allegations—even taken as true—would only establish that a delay has occurred.”). If the burden shifts, “the Government must respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701.

Through 8 U.S.C. § 1231(b)(1)-(2), Congress has delineated the countries to which an alien with a final order of removal may be removed. In particular, should it become infeasible to remove an alien to the country designated in their final order of removal, Congress has provided a fail-safe option: permitting removal to “another country whose government will accept the alien into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii); *cf. also id.* § 1231(b)(1)(C)(iv).

III. ARGUMENT

A. Mr. Luna-Sivila Has Not Satisfied His Burden of Showing That Removal Is Not Reasonably Foreseeable

The sole reason that Mr. Luna-Sivila offers to explain why his removal is not reasonably foreseeable is the assertion that “Cuba does not presently have a repatriation agreement with the U.S. concerning the Petitioner.” Pet’r’s Mem. ¶ 11. But he nowhere shows that removal to a third country, as permitted under the INA, is unavailable. And ICE is currently pursuing Mr. Luna-Sivila’s third-country removal to Mexico. The petition should therefore be denied.

Relying on *Zadvydas*, Mr. Luna-Sivila states that his detention is not authorized because his removal to Cuba is not significantly likely to occur in the reasonably foreseeable future. *Id.*

That argument mirrors the assertion made by one of the petitioners in *Zadvydas*. See 533 U.S. at 686 (noting the lack of a repatriation treaty with Cambodia). Namely, Mr. Luna-Sivila’s position turns on the lack of a repatriation agreement between the United States and his country of origin, Cuba. Mr. Luna-Sivila contends that his removal is not reasonably foreseeable due to an alleged lack of diplomatic relations between the United States and Cuba, and he argues that the resulting “indefinite detention” violates 8 U.S.C. § 1231 and is unconstitutional. Pet’r’s Mem. ¶¶ 11-12, 25.

It is true that reasonable foreseeability of removal is the touchstone of the *Zadvydas* inquiry, but Mr. Luna-Sivila still “bears the initial burden of proof in showing that no such likelihood of removal exists.” *Andrade*, 459 F.3d at 543. And “[c]onclusory statements” asserted by a petitioner—such as his allegation that “ICE is not likely to remove me in the near future,” Pet’n ¶ 13(a)—are insufficient to satisfy this burden. *Andrade*, 459 F.3d at 543; see also *Duong v. Tate*, No. H-24-4119, 2025 WL 933947, at *3 (S.D. Tex. Mar. 27, 2025) (stating that “[s]peculation and conjecture are not sufficient” to carry the petitioner’s burden of establishing no significant likelihood of removal under *Zadvydas*).⁷

At this stage, whether Mr. Luna-Sivila may be removed to Cuba is irrelevant because even if such removal were not feasible, it does not follow that there is no significant likelihood of Mr. Luna-Sivila’s removal in the reasonably foreseeable future. As previously addressed, if an alien cannot be removed to the country designated in their final order of removal, removal may be permitted to “another country whose government will accept the alien into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii); cf. also *id.* § 1231(b)(1)(C)(iv). Here, ICE intends to remove Mr. Luna-

⁷ See also *Abdimalikkhuzha v. ICE*, No. 1:25-CV-00261, 2025 WL 1196008, at *1 (W.D. La. Apr. 23, 2025) (same and citing *Andrade*) (“When a petitioner comes forward with nothing more than conclusory allegations, he fails to shift the burden to the government under *Zadvydas*.”); *Shah v. Wolf*, No. 3:20-CV-994-C-BH, 2020 WL 4456530, at *3 (N.D. Tex. July 13, 2020) (“Speculation and conjecture are not sufficient to carry this burden; nor is a ‘lack of visible progress’ in his removal sufficient in and of itself to show no significant likelihood of removal in the reasonably foreseeable future.”), *report and recommendation adopted*, 2020 WL 4437484 (Aug. 3, 2020).

Sivila to Mexico. *See Exs. 5, 6.* His removal is therefore foreseeable, and Mr. Luna-Sivila has failed to offer any evidence showing that he cannot be removed to a third country. Mr. Luna-Sivila has therefore not carried his burden under *Zadvydas*.

Otherwise, Mr. Luna-Sivila's current approximate five-month detention is within both the six-month presumptive period under *Zadvydas*⁸—rendering his habeas petition premature⁹—and the length of time that other courts in the Fifth Circuit have found to be reasonable.¹⁰ So there is also no basis to order his release from detention.

Mr. Luna-Sivila's petition for a writ of habeas corpus should therefore be denied.

B. Mr. Luna-Sivila's Continued Detention Is Necessary Because He Poses a Danger to the Community

Based on his criminal history, Mr. Luna-Sivila's continued detention is also necessary to protect the community and to secure his presence for removal from the United States.¹¹

As discussed above, Mr. Luna-Sivila has an extensive criminal history, including convictions for the felonies attempted second-degree murder, burglary, and robbery. *See Exs. 3,*

⁸ As other district courts have noted, even if Mr. Luna-Sivila had been previously detained by ICE following his September 19, 2000 final order of removal, "if the Court counted detentions in the aggregate, any subsequent period of detention, even one day, would raise constitutional concerns. And adjudicating the constitutionality of every redetention would obstruct an area that is in the discretion of the Attorney General—effectuating removals." *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025); *see also Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018) (stating that *Zadvydas* is not a "'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past").

⁹ *See, e.g., Yousef v. Warden Richwood Correctional Ctr.*, No. 25-1947, 2025 WL 3784489, at *2 (W.D. La. Dec. 10, 2025) (denying habeas petition as premature within the six-month presumptive period under *Zadvydas*) (citing *Chance v. Napolitano*, 453 F. App'x 535 (5th Cir. 2011); *Okpoju v. Ridge*, 115 F. App'x 302 (5th Cir. 2004)).

¹⁰ *See, e.g., Delgado-Rosero v. Warden, LaSalle Det. Ctr.*, No. 1:16-CV-01250, 2017 WL 2580509, at *3-4 (W.D. La. May 1, 2017), *report and recommendation adopted*, 2017 WL 2579250 (June 13, 2017) (17 months); *Barrera-Romero v. Cole*, No. 1:16-cv-00148, 2016 WL 7041710, at *5 (W.D. La. Aug. 19, 2016) (20 months); *M.P. v. Joyce*, No. 1:22-CV-06123, 2023 WL 5521155, at *4 (W.D. La. Aug. 10, 2023), *report and recommendation adopted*, 2023 WL 5517263 (Aug. 25, 2023) (18 months at the time of Court's opinion and collecting cases).

¹¹ In *Tran v. Mukasey*, 515 F.3d 478, 483-85 (5th Cir. 2008), the Fifth Circuit held that a risk of danger to the community based on an alien's mental illness does not justify continued, indefinite detention. However, for the reasons discussed above, the Government does not contend that Mr. Luna-Sivila's current detention is indefinite. To the contrary, ICE is actively working to secure Mr. Luna-Sivila's removal to a third country. Mr. Luna-Sivila's criminal history therefore provides an additional basis for why release is not appropriate while ICE continues processing him for removal.

4. Based on these convictions, Mr. Luna-Sivila received a sentence of five years of imprisonment. Ex. 1, at 3; Ex. 3, at 1; Ex. 4, at 1. So there is a cognizable risk that Mr. Luna-Sivila will commit further crimes in the United States—and thereby endanger the community—if released. *Cf. Zadvydas*, 533 U.S. at 700 (“And if removal is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing further crimes as a factor potentially justifying confinement within that reasonable removal period.”).

Because Mr. Luna-Sivila has shown a sustained history of criminal activity, his continued detention is appropriate to execute his final order of removal. His petition for a writ of habeas corpus should therefore be denied.

C. Any Order of Release Should Be with Conditions

For the reasons discussed above, the Government does not believe there is any legal or factual basis to grant Mr. Luna-Sivila’s habeas petition and order his release. But if the Court disagrees, the United States requests that any release be subject to the statutory and regulatory conditions at 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.5(a) and any Order of Supervision issued thereunder.

Consistent with 8 C.F.R. § 241.5(b), the Government also requests that the Court require Mr. Luna-Sivila to post bond in an amount “sufficient to ensure compliance with the conditions of the order, including surrender for removal.” *Cf. also Zadvydas*, 533 U.S. at 695 (“[W]e nowhere deny the right of Congress to remove aliens, to subject them to supervision with conditions when released from detention, or to incarcerate them where appropriate for violations of those conditions.”).

IV. CONCLUSION

The United States requests that the Court deny the petition for a writ of habeas corpus.

Baton Rouge, Louisiana, this 13th day of January, 2026.

UNITED STATES OF AMERICA, by

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CERTIFICATE OF SERVICE

A filed copy of this *Response to Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241* was mailed to the petitioner, Reynaldo Luna-Sivila, at the Louisiana ICE Processing Center, Attn: Reynaldo Luna-Sivila, 17544 Tunica Trace, Angola, LA 70712.

Baton Rouge, Louisiana, this 13th day of January, 2026.

/s/ Chase E. Zachary
Chase E. Zachary, LBN 37366
Assistant United States Attorney

LIST OF EXHIBITS

Respondents submit the attached exhibits with this response:

Exhibit No.	Description
1	Notice to Appear, May 23, 2000
2	Final Order of Removal, Sept. 19, 2000
3	Criminal Case Record, No. 98-013777, Circuit Court, Miami-Dade County
4	Criminal Case Record, No. 95-030765, Circuit Court, Miami-Dade County
5	Notice of Removal, Aug. 26, 2025
6	Notice of Removal, Nov. 18, 2025
7	Warrant of Removal/Deportation, Dec. 5, 2025
8	Warning to Alien Ordered Removed or Deported, Dec. 5, 2025