United States District Court
Western District of Texas
El Paso Division

Maikel Gallo Surera, Petitioner, v. Kristi Noem, Secretary, U.S. Department of Homeland Security *et al*, Respondents.	Case No. 3:25-cv-00710-LS

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents timely file this response per this Court's Order dated December 30, 2025. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Gallo Surera ("Petitioner"), *pro se*, 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. 1 at ¶ 2. Petitioner's claims lack merit, and this petition should be denied. As explained below, Petitioner has failed to satisfy his burden of proof showing a clear entitlement to the extraordinary relief he seeks in his Petition for Writ of Habeas Corpus.

SUMMARY OF ARGUMENT

Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the SPC ICE Processing Center ("SPC") in El Paso, Texas. ECF No. 1 at 2 ¶ 3. Petitioner filed this habeas corpus Petition, seeking immediate release from immigration detention. ECF No. 1 at 1 ¶ 2. Petitioner, however, is lawfully detained under 8 U.S.C. § 1231 while Enforcement and

Removal Operations ("ERO") works to find a third country that will accept Petitioner's removal. Additionally, Petitioner has not complied with the special review procedures established in the DHS regulations that implement the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001) to determine whether there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. *See* 8 C.F.R. 241.13. As such, the Petition for a Writ of Habeas Corpus should be denied and summary judgment entered in favor of the Government.

STATEMENT OF JURISDICTION

The Court has jurisdiction to review this habeas petition as it challenges the lawfulness of the Petitioner's detention. *See* 28 U.S.C. § 2241.

BACKGROUND

Petitioner is a native and citizen of Cuba. *See* Exh. A., *Declaration of Acting Assistant Field Office Director Maria E. Estrada* at ¶ 6. Petitioner entered the United States on or about July 7, 2010, and was admitted to the United States at Miami, Florida as a refugee. *Id.* On or about July 19, 2011, Petitioner adjusted his status to Lawful Permanent Resident ("LPR"). *Id.* at 2 ¶ 7.

On or about July 25, 2014, Petitioner was convicted in the Tenth Circuit Court at Polk County, Florida for cultivation of cannabis, in violation of Fla. Stat. § 893.13.*Id.* at ¶ 8. On September 6, 2013, Petitioner was charged and convicted of (1) Tampering with or theft of cable service, in violation of Fla. Stat. § 812.14.4.; (2) manufacturing produce cultivate of cannabis in violation of Fla. Stat. § 893.13.1a2; and (3) conviction for own/lease/rent/possess trafficking controlled substances in violation of Fla. Stat. § 893.1351.2. *Id.* at 3 ¶ 9.

On April 24, 2020, Petitioner was issued a Notice to Appear ("NTA") and placed in removal proceedings. *Id.* at 3 ¶ 10. Petitioner was charged with being **removable** under section INA § 237(a)(2)(B)(i), as amended. *Id.* On September 25, 2020, Petitioner was ordered removed

to Cuba. *Id.* at 3 ¶ 11. On October 13, 2020, Petitioner was released under an Order of Supervision ("OSUP") after his removal did not appear reasonably foreseeable at that time. *Id.* at 3 ¶ 12. On May 29, 2025, Petitioner was referred to ICE/ERO Tampa after being arrested in Polk, County, Florida for a parole violation. *Id* at 3 ¶ 13. Upon Petitioner's arrest his OSUP was revoked because it was determined that he could be removed to Cuba in the reasonably foreseeable future, or alternatively to a third country. *Id.*

On June 13, 2025, Petitioner was transferred to the El Paso Processing Center Detention Facility, in El Paso, Texas. *Id.* at 3 ¶ 15. Between June 15, 2025 and December 5, 2025, Petitioner was transferred to medical centers for medical attention. *Id.* at ¶ ¶ 16-21. On September 8, 2025, ERO attempted to remove Petitioner to Mexico but Petitioner refused. *Id.* at 4 ¶ 22. On September 23, 2025, ERO El Paso, was informed that the removal request for petitioner to Cuba was still pending. *Id.* at 4 ¶ 23. ICEHQ advised ERO EL Paso, to facilitate removal of Petitioner to Mexico. *Id.* As of September 23, 2025, the Mexican government agreed to accept Cuban nations with final orders of removal (case by case basis). *Id.* On October 13, 2025, ERO thought it best to transfer Petitioner to Florence, Arizona's area of responsibility for removal because ERO Florence has an agreement with the local Mexican government that allows for a more effective removal process for aliens subject to final removal orders. *Id.* at 5 ¶ 24. On November 6, 2025, ICE HQ, Removal International Operations (RIO) advised ERO El Paso that Cuba declined the removal request. *Id.* at 5 ¶ 25. ERO EL Paso, determined that removal to a third country needed to be re-attempted. *Id.* On November 13, 2025, Petitioner was served with a Notice of Third Country removal to Mexico. *Id.* at 5 ¶ 26. Petitioner did not claim fear of removal to Mexico. *Id.* On November 17, 2025, Petitioner was served again with a Notice of Third Country removal. *Id.* at 5 ¶ 27. This time Petitioner claimed he was fearful of being removed to Mexico. *Id.* On November 26, 2025 ERO

El Paso referred Petitioner to USCIS for a Third Country Fear Screening. *Id.* at 5 ¶ 28. On December 3, 2025, USCIS issued a negative fear determination for the Petitioner with respect to Mexico. *Id.* at 5 ¶ 29.

On January 2, 2026, ERO El Paso completed and served a 90-day post order custody review on Petitioner. *Id.* at 5 ¶ 31. On January 11, 2026, ERO El Paso initiated the 180-day (Form I-229) post order custody review process on Petitioner. *Id.* at 5 ¶ 32. ICE anticipates no impediments to removing Petitioner to Mexico, following his successful transfer to Florence. *Id.* at 6 ¶ 34.

APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarily a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As the Supreme Court has stated in no unmistakable terms, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

ARGUMENT

A. PETITIONER'S CONTINUED DETENTION IS LAWFUL.

Petitioner is subject to a final order of removal that was entered on September 25, 2020. ECF No. 1 at 3 ¶ 10; *see also*, Exh. A at ¶ 11. As such, Petitioner is subject to mandatory detention

pending his removal. 8 U.S.C. § 1231. The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231, which provides in pertinent part that the Attorney General is afforded a 90-day period within which to remove an alien from the United States following entry of a final order of removal. *See* 8 U.S.C. § 1231(a)(1)(A). This removal period "shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." *Id.* § 1231(a)(1)(C). Additionally, there is a "special statute [that] authorizes further detention if the government fails to remove the alien" during the removal period. *Zadvydas*, 533 U.S. at 682.

Specifically, under 8 U.S.C. § 1231(a)(6), the government has discretion to detain "[a]n alien ordered removed who is inadmissible under [8 U.S.C. § 1182] ...beyond the removal period and, if released, shall be subject to [certain] terms of supervision..." *Id.* (quoting 8 U.S.C. § 1231(a)(6)). In *Zadvydas*, the 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 the alien's removal from the United States. It does not permit indefinite detention." *Zadvydas*, 533 U.S. at 689. The Court further reasoned that in "interpreting the statute [§ 1231(a)(6)] to avoid a serious constitutional threat, [it concluded] that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

The Court in *Zadvydas* designated six months as a presumptively reasonable period of post-order detention with a significant caveat:

> This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. 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. at 701; *see Clark v. Martinez*, 543 U.S. 317, 386 (2005) (extending the Court's interpretation of 8 U.S.C. § 1231(a)(6) to inadmissible aliens). After the expiration of the six-month period, an alien is eligible for release but only if he shows "no such likelihood of removal exists." *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (citing *Zadvydas*, 533 U.S. at 701). "Removal is not 'reasonably foreseeable' in cases 'where no country would accept the detainee, the country of origin refused to issue the proper travel documents, the United States and the country of origin did not have a removal agreement in place, or the country to which the deportee was going to be removed was unresponsive for a significant period of time.' *Alam v. Nielsen*, 312 F. Supp. 3d 574, 581 (S.D. Tex. 2018) (citing *Clarke v. Kuplinski*, 184 F.Supp.3d 255, 260 (E.D. Va. 2016)). Afterward, if the petitioner "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the federal government to either rebut that showing or release her. *Zadvydas*, 533 U.S. at 701; *see also* 8 C.F.R. § 241.13 (establishing the *Zadvydas* procedures).

Finally, DHS regulations implementing the Supreme Court's decision in *Zadvydas* establish special rule procedures for determining whether there is a significant likelihood that a post-order alien will be removed in the reasonably foreseeable future. 8 C.F.R. 241.13. Under these review procedures, a post-order alien who remains detained beyond the removal period may present to ICE his written claim that he should be released from detention because there is no significant likelihood that he will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(d). Upon a written claim, DHS's Headquarters Post-order Detention Unit ("HQPDU") will analyze the likelihood of removal under the circumstances and information available. 8 C.F.R. § 241.13(d)(1),

(f). HQPDU will then respond in writing, determining first if the alien has failed to make reasonable efforts to comply with the removal order, has failed to cooperate fully in effecting removal, or has obstructed or hampered the removal process. *Id.* at § 241.13(e)(2). Unless and until ICE determines that there is no significant likelihood of removal in the foreseeable future, the alien will continue to be detained, and his detention will continue to be governed by the post-order detention standards. *Id.* at § 241.13(g)(2).

Petitioner challenges the lawfulness of ICE holding him in custody beyond the 6-month presumptive reasonable period under *Zadvydas*. ECF No. 1 at 18 ¶ 37. However, Petitioner has not met his initial burden of demonstrating that there is no significant likelihood of removal in the near future. *Andrade,* 459 F.3d 538 (5th Cir. 2006). The essence of Petitioner's claim is that ICE alone carries the burden of effectuating his removal, irrespective of whether Petitioner himself has engaged in any efforts to facilitate his removal. ECF No. 1 at ¶¶ 19,37. This argument contradicts the statutory requirement that the 90-day removal period shall be extended if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure." 8. U.S.C. § 231(a)(1)(C). Petitioner's argument further contravenes the purpose of the special review procedures established in 8 C.F.R. § 241.13, which require post-order aliens to cooperate with ICE in securing their removal.

Petitioner has failed to demonstrate compliance with the special review procedures in C.F.R. § 241.13. Petitioner has not presented any evidence that he has submitted a written claim to HQPDU in which he asserts that there is no likelihood of his removal in the reasonably foreseeable future, as required under 8 C.F.R. § 241.13(d)(1). Petitioner also has not demonstrated meaningful efforts to comply with his removal order. 8 C.F.R. § 241.13(d)(2). Compliance with the regulations is crucial because the Supreme Court emphasized in *Zadvydas* the need to "take

appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive [Government] efforts to enforce this complex statute, and the Nation's need 'to speak with one voice' in immigration matters." 121 S. Ct. at 2504. Because Petitioner has not complied with the special review procedures that are available to post-order aliens, this alone serves as a basis to deny the Petition.

In addition, Petitioner has not identified any self-made efforts to comply with his removal order. Petitioner has not provided evidence that he has applied for a visa to a third country where he is not afraid of going. Until Petitioner endeavors to comply with the order that he be removed from the United States, the removal period should be tolled to account for his failure to make an effort to secure his own removal. *See Lawal v. Lynch*, 156 F. Supp. 3d 846, 850 (S.D. Tex. 2016) (finding petitioner "has prolonged his detention and delayed his removal, equitably tolling the six-month detention period"). Because Petitioner has not demonstrated any efforts to secure his removal, the Court should deny the instant Petition because Petitioner has not met his initial burden of showing there is no likelihood he will be removed from the United States in the near future.

The Fifth Circuit has determined that a petitioner fails to meet his initial burden under *Zadvydas* when he offers "nothing beyond his conclusory statements suggesting that he will not be immediately removed" to his home country. *Andrade*, 459 F.3d at 543-44; *see Triumph v. Holder*, 314 F. App'x 719, 720 (5th Cir. 2009) ("Liberally construing [petitioner's] pro se brief as challenging his continued detention as unlawfully indefinite, we never nevertheless conclude that Triumph has failed to meet the initial burden of proof in showing that no significant likelihood of removal in the reasonably foreseeable future exists."). That is the case here. ERO has submitted requests to Cuba and Mexico to accept the Petitioner's removal. Exh. A *at* ¶¶ 15, 26.

The evidence shows that ERO is seeking to facilitate the Petitioner's removal to a third country. Furthermore, Petitioner's failure to comply with the special review procedures in C.F.R. § 241.13 and failure to assist ICE with finding a third country that will accept him negatively impacts ERO's ability to timely remove Petitioner and has done nothing but further delay and extend what is a long, costly, and complicated process. The Government urges the Court to allow this process to play out.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's request for habeas relief and grant the instant motion. The Court should enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1231.

Dated: January 15, 2025

[*Signature to follow on the next page*]

Respectfully submitted,

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Certificate of Service

I certify that on January 15, 2026, I mailed a copy of Response in Opposition to Petition for Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

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