

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA**

**Case No.: 26-cv-20419-JB**

MARCELO PENA,

Petitioner,

v.

WARDEN OF KROME CENTER,

Respondent.

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**RESPONDENT'S RETURN IN OPPOSITION TO PETITION FOR WRIT OF HABEAS  
CORPUS**

Respondent, the Warden of Krome Center, by and through the undersigned Assistant United States Attorney, and pursuant to the Court's Order to Show Cause – 28 U.S.C. § 2241 [ECF No. 7], hereby files its Response to the Petition for Writ of Habeas Corpus ("Petition") [ECF No. 1], and in opposition to the same states as follows:

**INTRODUCTION**

On January 22, 2026, Petitioner, Marcelo Pena, filed his Petition for Writ of Habeas Corpus Under Title 28 U.S.C. § 2241 ("Petition") [ECF No. 1]. In the Petition, Petitioner asserts that he has been unlawfully detained for a period exceeding six months. [ECF No. 1] at 5. However, as Respondent details below, the Petitioner has failed to establish sufficient facts to meet his burden of showing no substantial likelihood of his removal within the reasonably foreseeable future. The Petitioner is required to do so under binding Supreme Court and Eleventh Circuit precedent. For this reason, the Petition must be denied.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The Petitioner, Marcelo Pena (Petitioner), is a native and citizen of Cuba, who entered the United States on August 26, 1997, and subsequently adjusted status to that of a Lawful Permanent Resident, which was approved retroactive to his date of entry. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, dated February 10, 2014. On October 1, 1999, Petitioner was convicted of disorderly conduct (fighting) and sentenced to 2 days in jail. *See*, Exh. G, Form I-213, Record of Deportable/Inadmissible Alien, dated June 14, 2025. On June 13, 2002, Petitioner was convicted of driving while license suspended or revoked. *See*, Exh. G. On September 11, 2002, Petitioner was convicted of battery. *See*, Exh. G. Upon information and belief, there are no sentences associated with the latter two convictions. *See*, Exh. G.

On February 11, 2005, Petitioner was convicted of no valid driver's license and adjudication was withheld. *See*, Exh. G. On May 7, 2013, Petitioner was convicted of felony assault and sentenced to 20 - 36 months in jail. *See* Exh. A. *See also*, Exh. G. On January 28, 2014, Petitioner was convicted of trespassing and carrying a concealed weapon and sentenced to 60 days in jail in Hamilton County, Nebraska. *See* Exh. A. *See also*, Exh. G.

On January 28, 2014, Immigrations and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) encountered Petitioner at the Hamilton County Jail during routine jail checks. *See* Exh. A. ICE ERO took Petitioner into custody. *See* Exh. B, Form I-200, Warrant for Arrest of Alien, dated, February 10, 2014. Petitioner requested an order of removal. *See* Exh. A. On February 10, 2014, ERO issued and served Petitioner a Notice to Appear (NTA), pursuant to section 240 of the Immigration and Nationality Act (INA). *See* Exh. D, NTA, dated February 10, 2014. The NTA charged the Petitioner with removability under section 237(a)(2)(A)(iii) of the INA, in that after admission, Petitioner was convicted of an aggravated felony or a crime of

violence, for which the term of imprisonment ordered was at least one year. *See* Exh. D. On that same date, Petitioner executed a Stipulated Request for Removal Order and Waiver of Hearing. *See* Exh. E, Stipulated Request for Removal Order and Waiver of Hearing, dated February 10, 2014. On February 20, 2014, the Immigration Judge entered an order of removal based on Petitioner's request. *See* Exh. F, Order on Stipulated Request, dated February 24, 2014. On May 21, 2014, Petitioner was released on an Order of Supervision (OSUP). *See* Exh. O, Form I-220B, Order of Supervision, dated May 21, 2014.

On November 23, 2023, ICE encountered Petitioner at the Duval County Pre-Trial Detention Facility located in Jacksonville, Florida after Petitioner was arrested for domestic battery and resisting an officer without violence. *See* Exh. G. Both charges were subsequently dropped. *See* Exh. G.

On June 14, 2025, ICE again encountered Petitioner at the Duval County Pre-Trial Detention Facility after Petitioner was arrested for domestic battery/touch or strike-no injury. *See* Exh. G. During this encounter it was discovered that Petitioner was a native and citizen of Cuba who was amenable to removal. *See* Exh. G. *See also*, Exh. H, Form I-205, Warrant of Removal/Deportation, dated June 14, 2025, and Exh. I, Form I-247A, Immigration Detainer-Notice of Action, dated June 14, 2025. Additionally, it was determined that Petitioner was not reporting for his Order of Supervision as required. *See* Exh. G. On June 30, 2025, Petitioner's criminal charges were dropped. *See* Exh. G. *See also*, Exh. J, Form I-294, Warning to Alien Ordered Removed or Deported, dated June 30, 2025.

On July 1, 2025, ICE ERO took Petitioner into custody. *See* Exh. K, Form I-203, Order to Detain or Release Alien, dated July 1, 2025. *See also*, Exh. N, Detention History. From September 2, 2025, through January 16, 2026, Petitioner was transferred to numerous ICE facilities. *See* Exh.

N. On or around November 4, 2025, Cuba denied Petitioner's removal to that country. *See* Exh. M, Declaration of DO Cuevas. On January 16, 2026, Petitioner was transferred to Port Isabel Service Processing Center located in Texas, to effectuate removal to a third country: Mexico. *See* Exh. L, Notice of Removal, dated July 21, 2025. *See also*, Exh. M and Exh. N. On or around January 21, 2026, Mexico denied Petitioner's removal to that country. *See* Exh. M. ICE ERO is in the process of identifying an alternative country for removal. *See* Exh. M. On January 23, 2026, Petitioner was transferred to the Florida Soft-Sided Facility-South (FSSFS), located in Ochopee, Florida where he remains detained. *See* Exh. N.

On January 22, 2026, Petitioner, Marcelo Pena, filed his Petition for Writ of Habeas Corpus Under Title 28 U.S.C. § 2241 ("Petition") [ECF No. 1]. In the Petition, Petitioner asserts that he has been unlawfully detained for a period exceeding six months. [ECF No. 1] at 5. The Court Ordered a Response to the Petition on or before January 28, 2026. [ECF No. 7].

#### **MEMORANDUM OF LAW**

Section 1231 of Title 8 of the United States Code directs ICE to remove an alien subject to a final order of removal within the 90-day removal period prescribed therein. But in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court recognized that the 90-day removal period was not an absolute deadline for removal: "we doubt that when Congress shortened the removal period to 90 days in 1996, it believed that all reasonably foreseeable removals could be accomplished in that time." *Zadvydas*, 533 U.S. at 701. The Supreme Court, therefore, constructed a presumptive six-month detention period "for the sake of uniform administration in the federal courts." *Id.* The *Zadvydas* Court held that ICE may continue to detain an alien for an additional three months—creating a presumptively reasonable detention period of 180 days. *Id.* at 701. Later, in *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court extended the *Zadvydas* ruling to noncitizens,

like Petitioner here, who are detained based on their status as inadmissible to or subject to removal from the United States.

*Zadvydas* and its progeny set forth a presumptively reasonable detention period of 180 days. *See Zadvydas*, 533 U.S. at 701. After the conclusion of this 180-day removal period, a noncitizen in ICE custody may challenge his or her continued detention via a petition for writ of habeas corpus on those grounds, but must also establish that there is no significant likelihood that removal will occur in the reasonably foreseeable future. *Id.* Federal regulations now implement *Zadvydas*'s requirements. *See* 8 C.F.R. § 241.13 (setting out "special review procedures" when alien "subject to a final order of removal" and detained "after the expiration of the removal period . . . has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future"). The plain text of 8 U.S.C. § 1231(a)(6) authorizes Petitioner's detention past the removal period.

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit held that in order to state a claim under *Zadvydas*, "the [alien] not only must show post removal order detention in excess of six months, but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052. Where an alien cannot meet his burden with evidence establishing that there is not a substantial likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g., Oladokun v. U.S. Atty. Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012); *Akinwale*, 287 F.3d at 1052.

Here, Petitioner has not carried his burden of showing that removal is not reasonably foreseeable. Under *Zadvydas*, Petitioner bears the initial burden to show that removal is not significantly likely in the foreseeable future. *Zadvydas*, 533 U.S. at 701. To do so, Petitioner cannot

merely rest on his own conclusory assertions—actual proof or evidence is needed. *Akinwale*, 287 F.3d at 1052. (“[T]o state a claim under *Zadvydas* the alien . . . must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.”). Here, Petitioner has failed to allege sufficient facts—or, really, any facts—to show there is no significant likelihood of his removal in the reasonably foreseeable future. The Petition instead relies entirely on the bare legal assertion that his removal to Cuba or another country is not significantly likely to occur in the foreseeable future. *See* Petition [ECF No.1] at 6, 7.

While the Petition is technically ripe, as it was filed more than six months after the Petitioner was detained, it is barely so, as it was filed less than seven months after his initial date of detention. *See Akinwale*, 287 F.3d at 1052-53. Concluding that release is mandated based upon the bare legal conclusions in the Petition would contradict the requirements expressed in *Akinwale*, and render *any* detention beyond 180 days presumptively unreasonable, relieving the Petitioner from his burden.

To the contrary, as set forth in the Declaration, the government has made diligent efforts to remove the Petitioner, including attempts to remove the Petitioner to Cuba and most recently to Mexico, an effort that was denied only one week ago, on January 21, 2026. *See* Exh. M. Dec. at ¶ 32. ICE is presently working to identify an alternative country for removal. *Id.* at ¶ 33. Accordingly, Petitioner cannot meet his burden of showing no significant likelihood of removal in the reasonably foreseeable future.

The Respondent recognizes that the Petitioner is proceeding *pro se* and is accorded some degree of latitude. However, while *pro se* litigants are entitled to some degree of latitude, a court may not re-write their pleadings. *Peterson v. Atlanta Hous. Auth.*, 998 F.2d 904, 912 (11th Cir. 1993)(“[A] court's duty to liberally construe a plaintiff's complaint in the face of a motion to

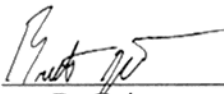
dismiss is not the equivalent of a duty to re-write it.”); *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (a pro se litigant “is subject to the relevant law and rules of court including the Federal Rules of Civil Procedure”).

**CONCLUSION**

As the Petition fails to allege sufficient facts or otherwise establish a lack of a significant likelihood of removal in the reasonably foreseeable future, the Petition should be denied. Respondent respectfully requests and order to that effect and granting any further relief the Court deems proper.

Respectfully submitted,

JASON A. REDING QUIÑONES  
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By:   
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 28, 2026, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, giving notice to all those registered to receive the same. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified.

  
\_\_\_\_\_  
BRETT R. GEIGER  
ASSISTANT U.S. ATTORNEY

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