

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
FEB 18 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

YENIER CRUZ GONZALEZ,
Petitioner,

Civil Action No. 3:26-CV-00390-DB

v.

KRISTI NOEM, et al.,
Respondents.

PETITIONER'S REPLY IN SUPPORT OF WRIT OF HABEAS CORPUS

I. CONTINUED DETENTION IS LIMITED BY ZADVYDAS

Zadvydas v. Davis, 533 U.S. 678 (2001), makes clear that post-removal-order detention under 8 U.S.C. § 1231(a)(6) is not indefinite. The Supreme Court held that the statute must be interpreted to avoid serious constitutional concerns under the Fifth Amendment's Due Process Clause. The Court explicitly stated that the statute does not permit indefinite detention. Id. at 689.

The Court further explained that once removal is no longer reasonably foreseeable, continued detention is no longer authorized. Id. at 699. After six months of post-removal detention, once the detainee provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the Government to produce evidence sufficient to rebut that showing. Id. at 701.

Petitioner has been detained well beyond six months and has demonstrated that removal is not reasonably foreseeable, particularly in light of prior failed removal efforts and the absence of documentary proof of present country acceptance.

II. RESPONDENTS HAVE NOT PRODUCED CONCRETE EVIDENCE OF FORESEEABLE REMOVAL

Respondents attach no travel documents, no written confirmation from any receiving country, no formal acceptance, and no scheduled removal date. Under Zadvydas, generalized assertions that removal efforts are ongoing are insufficient. The inquiry is evidence-based and individualized.

The Fifth Circuit has reaffirmed that once the presumptively reasonable six-month period has elapsed, the Government must present concrete evidence demonstrating a significant

likelihood of removal in the reasonably foreseeable future. See *Andrade v. Gonzales*, 459 F.3d 538 (5th Cir. 2006). Here, Respondents provide no documentary evidence establishing that removal is significantly likely. The absence of travel documentation or formal country acceptance is dispositive under the *Zadvydas* framework.

III. THE ASSERTED 90-DAY AND 180-DAY CUSTODY REVIEWS DO NOT SATISFY DUE PROCESS

Respondents state that 90-day and 180-day custody reviews were conducted. However, they attach no written determinations, no decision memoranda, and no documentary record of the findings made during those reviews.

Under 8 C.F.R. § 241.4 and related regulations, post-order custody reviews must be meaningful and documented. The regulatory framework contemplates individualized assessment and written determinations evaluating factors such as likelihood of removal, risk of flight, danger to the community, and cooperation.

The Respondents' filing contains no copy of any custody review decision, no written explanation of continued detention, and no documentation reflecting the factors considered. A conclusory statement that a review occurred does not satisfy constitutional due process requirements.

The Fifth Amendment requires meaningful review supported by evidence. Without written determinations or documentary proof, this Court cannot assess whether the reviews were constitutionally adequate. Once the six-month period has passed, continued detention must be justified by evidence demonstrating that removal remains significantly likely in the reasonably foreseeable future. The absence of documentary proof further reinforces that the Government has not met its burden.

IV. PRIOR FAILED REMOVAL CONFIRMS LACK OF FORESEEABILITY

Petitioner was previously detained following a final order of removal in 2018 and could not be removed to Cuba. He was released under supervision because removal could not be effectuated.

Respondents do not demonstrate any material change in circumstances. They do not provide evidence that Cuba has now issued travel documents. They do not provide documentation establishing that any third country has formally accepted Petitioner.

Speculative discussions or theoretical diplomatic possibilities do not constitute lawful removal arrangements under § 1231(a)(6). *Clark v. Martinez*, 543 U.S. 371 (2005), reaffirmed that detention authority under § 1231(a)(6) is constitutionally limited.

V. THE PENDING STATE MATTER DOES NOT JUSTIFY CONTINUED IMMIGRATION DETENTION

Petitioner was not arrested or detained in Hillsborough County. Rather, he personally and voluntarily appeared to respond to the accusation. The pending state matter remains unresolved primarily because he has been held in immigration custody and unable to attend proceedings.

As reflected in Exhibit A (Letter from Spouse), dismissal of that matter is being pursued. The existence of a pending state charge does not convert civil immigration detention into punitive confinement. Civil detention must remain regulatory rather than punitive. *Bell v. Wolfish*, 441 U.S. 520 (1979).

VI. FIFTH CIRCUIT PRECEDENT CONFIRMS THE GOVERNMENT'S BURDEN

The Fifth Circuit has consistently applied the burden-shifting framework articulated in *Zadvydas*. In *Andrade v. Gonzales*, the court reaffirmed that once the six-month period has passed, the Government must provide concrete evidence demonstrating a significant likelihood of removal in the reasonably foreseeable future.

Generalized diplomatic improvements or theoretical removal possibilities do not satisfy this standard. The inquiry is individualized and evidence-based. Here, the absence of travel documents, formal acceptance, or scheduled removal demonstrates that the Government has not satisfied its burden under binding Fifth Circuit precedent.

VII. RESPONDENTS MISAPPLY THEIR OWN AUTHORITIES

Zadvydas requires individualized, evidence-based proof of a significant likelihood of removal in the reasonably foreseeable future. The question is not whether removal is theoretically possible, but whether it is significantly likely in the reasonably foreseeable future based on concrete evidence.

Absent documentary evidence of travel documents, formal country acceptance, or a scheduled removal plan, continued detention exceeds statutory authority and raises serious Fifth Amendment concerns.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Order Petitioner's immediate release under reasonable conditions of supervision;
3. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

4726 Kellogg Drive
Woodbridge, VA 22193
Phone: 239-308-3944
Email: herlincruz95@gmail.com

A handwritten signature in black ink, appearing to read 'Herlim', is written over a horizontal line.

Herlim Cruz Gonzalez
Next Friend for Petitioner

EXHIBIT A

Letter from Spouse
Regarding Pending State Matter

"Dear Prosecutor, a cordial greeting, the reason for this letter is to ask you to please drop the charges against Mr. Yenier Cruz Gonzalez, he and I have been together for 8 years, we are a married couple, we have two children, he is a very good man, very hard-working, a very good father and a very good husband, I want to drop all charges against him including the restraining order that was placed on him, it is not fair for him to be going through this bad time because of a few words between a couple, nothing happened between us, I apologize, I said things that did not happen. This case has already gone too far and it is not right for him not to be able to see his children. I love him and I want my husband back with his family, I beg you please dismiss this case, I strongly ask that the restraining order be withdrawn and all charges be dropped.

My name is Hanny Lago Torres my phone number is 813-483-9176



May 2 2025.

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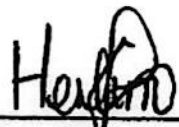
CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of February, 2026, a true and correct copy of the foregoing Petitioner's Reply in Support of Writ of Habeas Corpus was served by United States Mail, postage prepaid, upon the following:

Office of the United States Attorney
Western District of Texas
Attn: Civil Process Clerk
700 East San Antonio Avenue, Suite 200
El Paso, Texas 79901

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17 day of February, 2026.



Herlim Cruz Gonzalez
Next Friend for Petitioner

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