

United States District Court
Western District of Texas
El Paso Division

Reinaldo Moreno-Rodriguez,
Petitioner,

v.

Warden, *et. al.*,
Respondents.

No. 3:26-CV-00084-DCG

**Federal¹ Respondents' Response to
Petitioner's Amended Petition for Writ of Habeas Corpus**

Federal Respondents timely submit this response per this Court's Order directing service and ordering a response. *See* ECF No. 12. In his amended petition for writ of habeas Petitioner seeks release from civil immigration detention, claiming detention has been become indefinite, contrary to statute and the Due Process Clause. *See* ECF No. 12. 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

MORENO is a native and citizen of Cuba. Ex. A, Dec. ¶ 5. On January 16, 1996, the former U.S. Immigration and Naturalization Service (INS) at the Miami International Airport, Miami, FL, paroled MORENO into the United States pursuant to Section 212(d)(5) of the Immigration and Nationality Act (INA), pending adjustment through the Cuban Refugee Act. *Id.* ¶ 6.

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).

On November 5, 1999, Miami-Dade County, State of Florida convicted MORENO of battery on a law enforcement officer, firefighter, or intake officer 2 counts; fleeing/attempting to elude police officer and resisting officer with violence to his person 2 counts, in violation of Florida Statute 784.07(2)(B), 316.1935(2), and 843.01 and sentenced him to 90 days incarceration. *Id.* ¶ 7. On April 16, 2002, Polk County, State of Florida convicted MORENO of petit, retail theft, in violation of Florida Statute 812.014(3A) and sentenced him to 12 months' probation. *Id.* ¶ 8.

On or about June 17, 2005, MORENO filed an application to Register Permanent Residence or Adjust Status, Form I-485, with U.S. Citizenship and Immigration Services (USCIS). *Id.* ¶ 9. On April 20, 2006, USCIS denied MORENO's Form I-485 application. *Id.* ¶ 10. On November 25, 2009, Miami-Dade County, State of Florida convicted MORENO of battery, in violation of Florida Statute 784.03 and sentenced him to probation and money imposed. *Id.* ¶ 11.

On August 20, 2010, Miami-Dade County Sheriff's Office (MDCSO) arrested MORENO for Cannabis/Trafficking >25 but <2000 lbs./300 or more plants, controlled substance/possession of place/purpose of trafficking, grand theft 3rd. degree, and cannabis/sell/delivery/possession with intent 1000 ft. school in violation of Florida Statute 893.135 (1A1), 893.135(2), 812.014(2C), and 893.13(1C2) and detained him at the Miami-Dade Training and Treatment Detention Center (MDTTDC) in Miami, FL. *Id.* ¶ 12. On August 21, 2010, ERO Miami encountered MORENO at MDTTDC and lodged an Immigration Detainer- Notice of Action, Form I-247A on MORENO. *Id.* ¶ 13.

On August 30, 2010, MDTTDC released MORENO to the custody of ERO Miami who served him with a Notice to Appear, Form I-862, pursuant to Section 212(a)(2)(A)(i)(I) conviction or commission of a crime involving moral turpitude and detained him at Krome North Service Processing Center in Miami, FL. *Id.* ¶ 14. On June 27, 2011, an immigration judge ordered MORENO removed from the United States. *Id.* ¶ 15.

On July 11, 2011, ERO Miami released MORENO on an Order of Supervision, Form I-220B, due to lack of significant likelihood of removal in the reasonably foreseeable future (SLRRFF) to Cuba and enrolled him in the Alternatives to Detention (ATD) Program. *Id.* ¶ 16. On June 25, 2025, ERO Miami arrested MORENO while reporting to the Miramar Sub-Office in Miami, FL, ERO Miami processed MORENO as a final order, and detained him at the Pinellas County Jail (PCJ) in Clearwater, FL. *Id.* ¶ 17. On June 29, 2025, ERO Miami transferred MORENO to Orange County Jail (OCJ) in Orlando, FL. *Id.* ¶ 18. On July 9, 2025, ERO Miami transferred MORENO to the South Florida Soft Sided Facility in Ochopee, FL. *Id.* ¶ 19. On August 12, 2025, ERO Miami transferred MORENO to the custody of ERO El Paso who detained him at Enhanced Hardened Facility (EHF) located in El Paso, TX. *Id.* ¶ 20.

On August 16, 2025, ERO El Paso transferred MORENO to CEM detention facility. *Id.* ¶ 21. On September 2, 2025, MORENO was scheduled to be removed to Mexico, but he failed to comply with removal to Mexico under Cuba, Venezuela, Nicaragua, and Haiti (CVNH) repatriation agreement. *Id.* ¶ 22. On November 4, 2025, MORENO again failed to comply with removal to Mexico under CVNH that was scheduled for November 10, 2025. *Id.* ¶ 23.

On January 21, 2026, ERO El Paso transferred MORENO to Florence Staging Facility in Florence, AZ pending removal. *Id.* ¶ 24. On February 3, 2026, the U.S. District Court for the Western District of Texas issued an order prohibiting MORENO's removal from the United States. *Id.* ¶ 25. On February 6, 2026, ERO Phoenix returned MORENO to CEM detention facility. *Id.* ¶ 26. The anticipated timeline to remove MORENO is currently unknown due to the District Court's order prohibiting removal from the United States. *Id.* ¶ 27.

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 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).

Respondents have shown that removal of Petitioner is likely. Federal Respondents have taken steps to remove petitioner and have not been able to do so because of the order prohibiting removal.

IV. Conclusion

There is no good reason to believe that removal in the reasonably foreseeable future is unlikely. Continued detention under 1231(a), therefore, is lawful. Accordingly, the Court should deny this petition.

Date: April 6, 2026

Respectfully submitted,

JUSTIN R. SIMMONS
UNITED STATES ATTORNEY

By: /s/ Adrian Acosta
ADRIAN ACOSTA
Assistant United States Attorney
Texas Bar No. 24097275
700 E. San Antonio, Ste. 200
El Paso, Texas 79901
Office: (915) 534-6884
Facsimile: (915) 534-3490
Email: Adrian.Acosta@usdoj.gov
Attorneys for Federal Respondents