

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

CASE NO. 25-cv-22586-MARTINEZ

JULIO CESAR TAMAYO,

Petitioner,

v.

KROME NORTH SERVICE
PROCESSING CENTER,

Respondent.

RESPONSE TO ORDER TO SHOW CAUSE

Respondent, by and through the undersigned Assistant United States Attorney and pursuant to this Court's Order dated June 9, 2025, [DE 6], hereby responds to the Petition for a Writ of Habeas Corpus ("Petition") under 28 U.S.C. § 2241 filed by Petitioner, Julio Cesar Tamayo, and respectfully requests that the Court deny the Petition.

I. INTRODUCTION

Petitioner is a native and citizen of Cuba who is subject to a removal order and has been civilly detained pursuant to 8 U.S.C. § 1231. He filed the Petition asserting that "[t]he Immigration Judge ordered removal on February 13, 2025. The Petitioner/Detainee has not been removed from the facility." [DE 1] at 3. Then, the Petition requests that "[t]he order of the Immigration Judge is requested to be imposed." *Id.* at 4. Petitioner requests release from detention but provides no facts or legal authority on which to base this request. He has not requested a hearing or any other relief, nor has he appealed the ruling of the Immigration Judge; he simply wants to be released. *Id.* Petitioner fails to show that he is entitled to any of this relief and has received all process he is due. Therefore, the Court should deny the Petition.

II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner is a native and citizen of Cuba. *See* Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien (Form I-213), dated December 22, 2015. On December 21, 2015, Petitioner presented himself at the Gateway to the Americas Bridge port of entry in Laredo, Texas, and requested admission into the United States. *Id.* Officials of U.S. Customs and Border Protection (CBP) inspected Petitioner, determined that he was inadmissible under Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA), and issued a Notice to Appear (NTA). *See* Exhibit B, NTA, dated December 22, 2015. Thereafter, on December 24, 2015, Petitioner was detained by Immigration and Customs Enforcement, Enforcement and Removal Operations (ERO) at the Rio Grande Detention Center in Laredo, Texas. *See* Exhibit C, Detention History. Petitioner's NTA was ultimately not filed with the immigration court. *See* Exhibit D, Declaration of Deportation Officer Christopher A. Jenson (Jenson Declaration), ¶ 7. On December 30, 2015, Petitioner was released by way of a parole under section 212(d)(5) of the INA, 8 U.S.C. § 1182(d)(5). *See* Exhibit E, CBP Form I-94.

On January 9, 2017, Petitioner applied for adjustment of status under section 1 of the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161, as amended (Cuban Adjustment), with the U.S. Citizenship and Immigration Service (USCIS). *See* Exhibit D, Jenson Declaration, ¶ 9. USCIS denied the application on July 25, 2018. *Id.* Petitioner applied for Cuban Adjustment three subsequent times with USCIS—on June 19, 2019, October 12, 2020, and January 23, 2020. *Id.* USCIS denied each application on July 23, 2020, July 16, 2021, and July 25, 2024, respectively. *Id.* USCIS determined that Petitioner is ineligible for Cuban Adjustment because he is subject to grounds of inadmissibility that require a waiver. *See* Exhibit F, USCIS denial letter, dated July 25, 2024. USCIS further determined that even if Petitioner were to file the

requisite waiver, the application would be denied as a matter of discretion. *Id.* at 2.

On June 29, 2023, Petitioner was arrested in Miami-Dade County for burglary of an occupied structure under Florida Statute § 810.02(3)(C), burglary of an occupied conveyance under Florida Statute § 810.02(4)(B), and grand theft of a vehicle under Florida Statute § 812.014(2)(C)(6). Exhibit D, Jenson Declaration, ¶ 10. On December 21, 2023, Petitioner was convicted of burglary of an occupied conveyance and grand theft of a vehicle. He was sentenced to one year of probation. *See* Exhibit G, Conviction Records, certified June 20, 2025.

On May 15, 2024, Petitioner was arrested and detained by the Miami-Dade County Sheriff's Office for violation of his probation relating to his 2023 convictions for burglary of an occupied conveyance and grand theft of a vehicle. *See* Exhibit H, Form I-213, dated June 13, 2024. On June 13, 2024, ICE issued a warrant for Petitioner's arrest and lodged an Immigration Detainer with the Miami-Dade County Jail. *See* Exhibit I, Warrant for Arrest of Alien, and Exhibit J, Immigration Detainer. ICE also placed Petitioner in removal proceedings by issuance of an NTA that was filed with the Miami Immigration Court at the Krome North Service Processing Center. *See* Exhibit K, NTA, dated June 13, 2024. Petitioner was charged with removability under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as amended, in that at the time of application for admission, Petitioner was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act. *Id.*

On June 25, 2024, Petitioner was released from Miami-Dade County criminal custody, transferred into ICE custody, and detained at the Krome North Service Processing Center (Krome) in Miami, Florida. *See* Exhibit C, Detention History. On this same day, ERO issued a Notice of Custody Determination, electing to keep Petitioner in custody pending his removal proceedings. *See* Exhibit L, Notice of Custody Determination. Petitioner thereafter requested a custody

redetermination by an immigration judge. *See* Exhibit D, Jenson Declaration, ¶ 15. On July 25, 2024, the Immigration Judge denied Petitioner's request to be released based on lack of bond jurisdiction under 8 C.F.R. § 1003.19(h)(2)(i) over arriving aliens, as defined under 8 C.F.R. § 1001.1(q). *See* Exhibit K, NTA; Exhibit M, Immigration Judge Bond Order, dated July 25, 2024. On August 1, 2024, Petitioner requested a second bond redetermination hearing with the Krome Immigration Court. It was denied on August 13, 2024, for the same reason—lack of jurisdiction. Exhibit N, Immigration Judge Bond Order, dated August 13, 2024.

On August 13, 2024, Petitioner applied for relief before the Immigration Judge. On November 21, 2024, Petitioner also applied, for the fifth time, for Cuban Adjustment with USCIS.¹ *See* Exhibit D, Jenson Declaration, ¶ 9. This application is pending. *See id.* On February 14, 2025, a merits hearing was held on Petitioner's applications for relief before the Krome Immigration Court. The Immigration Judge denied all forms of relief and ordered Petitioner removed to Cuba. Exhibit O, Immigration Judge Order, dated February 14, 2025. Petitioner waived appeal of the decision and his order became administratively final. *Id.*

On April 14, 2025, Petitioner was transferred from Krome to the Glades County Detention Center in Moore Haven, FL. *See* Exhibit C, Detention History. On June 6, 2025, Petitioner was then transferred to the Adelanto ICE Processing Center (Adelanto) in Adelanto, CA. *See id.*

On or about May 5, 2025, ICE requested Petitioner's repatriation to Cuba with the Cuban government. No response has been received to date. *See* Exhibit D, Jenson Declaration, ¶ 19. On June 20, 2025, Petitioner was advised by ICE in his native Spanish language that it intends to remove him to Mexico. *See* Exhibit P, Notice of Removal. He was given warnings for failing to

¹ Under 8 C.F.R. § 245.2(a)(1), USCIS retains sole jurisdiction over applications for adjustment of status filed by arriving aliens, as defined under 8 C.F.R. § 1001.1(q), even if an applicant is in immigration proceedings or has a removal order. *See Matter of Yauri*, 25 I&N Dec. 103 (BIA 2009).

depart and provided instructions regarding the requirement of assisting in removal. *See* Exhibit Q, Warning for Failure to Depart, & Exhibit R, Instruction Sheet to Detainee Regarding Requirement to Assist in Removal. Petitioner refused to sign any of these documents. *See id.* Petitioner also declared he was not willing to be removed to Mexico but has not expressed a fear of returning to Mexico. *See* Exhibit S, Record of Sworn Statement in Administrative Proceedings; Exhibit D, Jenson Declaration, ¶ 21.

On June 27, 2025, Petitioner was served with a Decision to Continue Detention, advising him his removal in the future is likely. *See* Exhibit T, Decision to Continue Detention. Petitioner refused to sign the document. *Id.* Petitioner remains in Adelanto awaiting removal, which is forthcoming. *See* Exhibit D, Jenson Declaration, ¶ 23.

III. STATUTORY AND REGULATORY BACKGROUND

Title 8 U.S.C. § 1231 governs the detention of a non-citizen subject to a final order of removal from the United States. “During the removal period, the [Department of Homeland Security (“DHS”)] *shall* detain the alien”; that is, while Immigration and Customs Enforcement (“ICE”) takes the necessary steps to execute the non-citizen’s final removal order and, ultimately, remove the non-citizen from the United States. 8 U.S.C. § 1231(a)(2) (emphasis added). The “removal period” begins on the latest of: (i) “[t]he date the order of removal becomes administratively final”; (ii) “[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order”; or (iii) “[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” *Id.* § 1231(a)(1)(B)(i)-(iii). The government is required to remove the Petitioner within 90 days of the date on which the “removal period” begins, *id.* § 1231(a)(1)(A), although that period may be extended under certain circumstances, *id.* § 1231(a)(1)(C), (a)(6). Section

1231(a)(5) explicitly insulates the removal orders from review, while also “generally foreclos[ing] discretionary relief from the terms of the reinstated order.” *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 (2006). However, an alien may “pursu[e] withholding-only relief to prevent DHS from executing [the non-citizen’s] removal to the particular country designated in his reinstated removal order.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021); *see also* 8 U.S.C. § 1231(b)(3)(A). Withholding-only proceedings begin once an alien subject to a reinstated removal order expresses a fear to DHS of returning to the country of removal. *See* 8 C.F.R. §§ 208.31(a), 1208.31(a).

The Supreme Court held in *Zadvydas* that an alien subject to a final removal order may be detained for “a period reasonably necessary to secure removal.” 533 U.S. at 699. Such detention is “presumptively reasonable” for six months. *Id.* at 701. However, “[t]his 6-month presumption . . . does not mean that every alien not removed must be released after six months.” *Id.* Rather, a non-citizen, such as Petitioner, “may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

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 [non-citizen] 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.” *Akinwale*, 287 F.3d at 1052. Where a non-citizen cannot meet his burden of establishing that the evidence shows that there is 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.

Aliens detained under 8 U.S.C. § 1231(a)(6) have their custody reviewed under applicable regulations. 8 C.F.R. §§ 241.4, 231.13. One set of regulations, operative at the time of *Zadvydas*,

see 533 U.S. at 683-84, governs ICE's discretionary decisions to continue detention beyond the removal period. An ICE field office conducts a custody review before the conclusion of the removal period, and a review panel at ICE headquarters conducts a further review at six months of detention. 8 C.F.R. §§ 241.4(k)(1), (2). Thereafter, the review panel conducts a further review each year if there has been "a material change in circumstances since the last annual review." *Id.* § 241.4(k)(2)(iii). While ICE initiates an annual custody review, the noncitizen may request a custody review once every 90 days "based on a proper showing of a material change in circumstances since the last annual review." *Id.* In effect, if the alien makes timely requests, ICE is required to review an alien's custody every 90 days.

Federal regulations now implement *Zadvydas*'s requirements. *See* 8 C.F.R. § 241.13 (setting out "special review procedures" when non-citizen "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"). Such an alien may seek release from post-removal-order detention from ICE; consistent with the provisions of 8 U.S.C. § 1231, he is not entitled to a bond hearing before an immigration judge. *See id.*; *see also id.* § 1003.19 (authorizing immigration judges to review only custody determinations under 8 U.S.C. § 1226).

IV. ARGUMENT

The Petition presents no details, omits key facts, and fails to cite any legal authority to show why he should be released from custody. Indeed, Petitioner concedes that he is subject to removal pursuant to the Immigration Judge's order, that he has not appealed the order, and he is requesting that the order "be imposed." [DE 1] at 3. Even if the Petition had presented more information, it is premature and fails to state a claim, as Petitioner has been in post-removal

detention for less than 180 days and he has failed to meet his burden to prove there is no significant likelihood of his removal in the reasonably foreseeable future.

Petitioner's removal order was entered February 14, 2025, and he filed the Petition June 6, 2025, less than four months later. *See* Exhibit O; [DE 1]. At the time of filing as well as at the present time, his post-removal detention is well under the "presumptively reasonable" six-month period under *Zadvydas* and, therefore, his claim is not cognizable. *See, e.g. Allotey v. Miami Field Office Dir., ICE*, No. 24-cv-24765, 2024 WL 5375519, at *2 (S.D. Fla. Dec. 10, 2024) (finding habeas petition non-cognizable and subject to dismissal when petitioner had not yet been detained 180 days); *Thelemaque v. Barr*, No. 20-cv-20467-CMA, 2020 WL 13551877, at *2 (S.D. Fla. Mar. 4, 2020). Thus, Petitioner fails to satisfy the first requirement under *Akinwale*, to show post removal order detention in excess of six months, and the Petition must be dismissed. *Akinwale*, 287 F.3d at 1052.

In addition, Petitioner fails to even allege that there is no significant likelihood of removal in the reasonably foreseeable future. The opposite is the case, as ICE is working to secure Petitioner's removal to Mexico² and there is no indication that ICE will not be able to effect the removal. *See* Exhibit D, Jenson Decl. ¶¶ 21-22; Exhibit T. In fact, if anything, it is Petitioner attempting to impede removal by refusing to sign paperwork. *Id.*; Exhibit I. Thus, even if Petitioner had been detained longer than six months, he cannot meet the second requirement of showing that removal is not likely in the reasonably foreseeable future. *See Ngoma-Ndoye v. USCIS*, No. 24-cv-20554, 2024 WL 4165293 (S.D. Fla. Apr. 29, 2024) (habeas petition dismissed when petitioner failed to establish there was no significant likelihood of removal in the reasonably foreseeable

² Section 241(b) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b), permits DHS to remove Petitioner to a third country.

future and when petitioner failed to cooperate in the process); *Zadvydas*, 533 U.S. at 701 (After the end of the presumptively reasonable six-month detention period, a non-citizen must “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.”). Petitioner has made no showing whatsoever, and this Petition should be dismissed.

V. CONCLUSION

Based on the foregoing, Respondent respectfully requests that the Court dismiss the Petition and grant such other and further relief the Court deems appropriate.

Respectfully submitted,

HAYDEN O’BYRNE
UNITED STATES ATTORNEY

Date: June 30, 2025

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and mailed a copy to pro se Petitioner at Adelanto ICE Processing Center, 10250 Rancho Road, Adelanto, CA 92301.

/s/ Darcie A. Thompson
Assistant U.S. Attorney