

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

CASE NO. 25-22699-CIV-ALTMAN

DANIEL FERNANDES ALVES,

Petitioner,

vs.

**KRISTI NOEM, SECRETARY,
U.S. DEPARTMENT OF
HOMELAND SECURITY; GARRETT RIPA,
FIELD OFFICER DIRECTOR, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT,**

Respondents.

**RESPONDENTS' MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS**

Respondents¹, through the undersigned Assistant United States Attorney, hereby move to dismiss Petitioner Daniel Fernandes Alves's petition for writ of habeas corpus (D.E. 1, "Petition") because he has failed to present any evidence that his removal will not occur in the reasonably foreseeable future.

¹ The Petition names as Garrett Ripa, Field Office Director, Immigration and Customs Enforcement and Kristi Noem, Secretary, Department of Homeland Security. A writ of habeas corpus, however, must "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court has reaffirmed that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is presently detained at the Broward Transitional Center in Pompano Beach, FL. Accordingly, the proper Respondent is his immediate custodian, Assistant Field Office Director Juan Gonzalez, in his official capacity. All other Respondents should be dismissed.

FACTUAL BACKGROUND

Petitioner, Daniel Fernandes Alves (Petitioner), is a native and citizen of Brazil. *See* Ex. A, Record of Deportable/Inadmissible Alien (I-213), March 22, 2005; *see also* Ex. B, Declaration of Officer Ruiz ¶ 6. Petitioner first entered the United States without inspection near Hidalgo, Texas on or about March 22, 2005. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 7. On the same day, Petitioner was issued a Notice to Appear (NTA), charging him with removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), as an alien present in the United States without admission or parole. *See* Ex. C, NTA; *see also* Ex. B, Declaration, ¶ 8. Petitioner was released on his own recognizance. *See* Ex. A, I-213; *see also* Ex. B, Declaration, ¶ 9. The NTA included an initial hearing date requiring Petitioner’s presence before the immigration court in Harlingen, Texas on April 27, 2005. *See* Ex. C, NTA; *see also* Ex. B, Declaration, ¶ 10. On April 27, 2005, Petitioner failed to appear at his immigration hearing and was ordered removed in absentia. *See* Ex. D, April 27, 2005 Removal Order; *see also* Ex. B, Declaration, ¶ 11.

On August 19, 2019, Petitioner filed a motion to reopen the removal proceedings. *See* Ex. E, Order Denying Petitioner’s Motion to Reopen, February 26, 2020; *see also* Ex. B, Declaration, ¶ 12. On February 26, 2020, the immigration court denied Petitioner’s motion to reopen, finding that Petitioner received proper notice of the hearing. *See* Ex. E, Order Denying Petitioner’s Motion to Reopen, February 26, 2020; *see also* Ex. B, Declaration, ¶ 13. On March 16, 2020, Petitioner filed a Notice of Appeal with the Board of Immigration Appeals (the Board), appealing the Immigration Judge’s denial of Petitioner’s motion to reopen. *See* Ex. F, Board Order; *see also* Ex. B, Declaration, ¶ 14. On September 15, 2020, the Board dismissed Petitioner’s appeal due to Respondent receiving proper notice of hearing. *See id*; *see also* Ex. B, Declaration, ¶ 15.

On October 15, 2020, Petitioner filed a petition for review (PFR) with the United States Court of Appeals for the Fifth Circuit. *See* Ex. G, Petition for Review; *see also* Ex. B, Declaration, ¶ 16. On February 22, 2021, Petitioner filed an unopposed motion to dismiss the PFR, which the Fifth Circuit granted. *See* Ex. H, PFR Dismissal; *see also* Ex. B, Declaration, ¶ 17.

On March 22, 2021, Petitioner filed a second motion to reopen the removal proceedings. *See* Ex. I, Order Denying Petitioner's Second Motion to Reopen, May 20, 2021; *see also* Ex. B, Declaration, ¶ 18. On May 20, 2021, the immigration court denied Petitioner's second motion to reopen due to lack of jurisdiction. *See* Ex. I, Order Denying Petitioner's Second Motion to Reopen, May 20, 2021; *see also* Ex. B, Declaration, ¶ 19. On June 21, 2021, Petitioner filed an appeal with the Board. *See* Ex. J, Board Order; *see also* Ex. B, Declaration, ¶ 20. On May 5, 2025, the Board sustained Petitioner's appeal, finding the immigration judge had jurisdiction over the motion to reopen, and remanded to the immigration court to adjudicate Petitioner's motion on the merits. *See* Ex. J, Board Order, May 5, 2025; *see also* Ex. B, Declaration, ¶ 21. On May 29, 2025, the immigration court denied Petitioner's second motion to reopen. *See* Ex. K, Order Denying the Second Motion to Reopen, May 29, 2025; *see also* Ex. B, Declaration, ¶ 22. On June 5, 2025, U.S. Immigration and Customs Enforcement ("ICE") detained Petitioner at the Krome Service Processing Center, after being encountered by Orlando Fugitive Operations. *See* Ex. L, Detention History; *see also* Ex. B, Declaration, ¶ 23.

On June 10, 2025, Petitioner, through counsel, filed a motion for bond redetermination, which was withdrawn by the Petitioner. *See* Ex. M, Order Granting Petitioner's Motion to Withdraw Bond Redetermination, June 13, 2025; *see also* Ex. B, Declaration, ¶ 24. On June 22, 2025, ICE transferred Petitioner to the Broward Transitional Center in Pompano Beach, Florida, where he remains detained. *See* Ex. B, Declaration, ¶ 25.

On June 25, 2025, ICE requested a travel document from the Consulate of Brazil to effectuate Petitioner's removal. *See id.* at ¶ 26. On August 12, 2025, Petitioner was interviewed by the Brazilian consulate. *See id.* at ¶ 27. To date, Petitioner's travel document to Brazil remains pending with the Brazilian consulate. *See id.* at ¶ 28.

STATUTORY AND LEGAL FRAMEWORK

Petitioner's detention pending removal from the United States is governed by section 241(a) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a). That section provides that the Attorney General is afforded a 90-day period to accomplish the noncitizen's removal from the United States following the entry of a final order of deportation or removal, or, if the alien is confined (not by immigration process), the date the alien is released from confinement. *See* 8 U.S.C. § 1231(a)(1)(A)-(B). During the 90-day period, known as the "removal period", Congress has mandated the detention of a noncitizen who has been ordered removed. *See* 8 U.S.C. § 1231(a)(2).

The Attorney General may continue to detain a noncitizen after the expiration of the 90-day removal period, subject to periodic custody reviews conducted by ICE pursuant to 8 C.F.R. 241.4. *See* 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that section 241(a) of the INA authorizes detention, after entry of an administratively final order of deportation or removal, for a period "reasonably necessary" to accomplish the noncitizen's removal from the United States. *Zadvydas*, 533 U.S. at 699-700. The Supreme Court recognized six months as the presumptively reasonable period of time to allow the government to accomplish a noncitizen's removal after the removal period has commenced. *Id.* at 701.

However, the Supreme Court recognized the "6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* "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.* *Zadvydas* places an initial burden on the detainee to establish that the no significant likelihood standard has been met. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Thus, to state a claim under *Zadvydas*, a noncitizen subject to a final removal order “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.” *Id.*

ANALYSIS

A. Petitioner is lawfully detained under 8 U.S.C. § 1231(a).

Section 241 of the Act directs the Attorney General to remove an alien subject to a final order of removal within the 90-day removal period prescribed therein. *See* INA § 241(a)(1)(A), 8 U.S.C. §1231(a)(1)(A). The removal period begins on the on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If 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.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

See INA § 241(a)(1)(B).

Here, where Petitioner is subject to an *in absentia removal order*, the removal period begins on June 5, 2025, when ICE detains him following his failure to appear for his removal proceedings.

B. Petitioner has not established that his removal will not occur in the reasonably foreseeable future. met his burden of showing no likelihood of his removal within the reasonably foreseeable future.

In the context of post-order custody, the Eleventh Circuit instructs that 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 or removal in the reasonably foreseeable future.*” 287 F.3d at 1052 (emphasis added).

The Petition is premature as it has not been six months. The Supreme Court has held that the post-removal period of detention for aliens ordered to be removed must be reasonable and that the reasonable duration of post-removal detention is six months. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). However, the Eleventh Circuit Court of Appeals held in *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051 (11th Cir. 2002) that the six-month period must have expired at the time the petition was filed in order to state a claim under *Zadvydas*. And, a six-month period can be interrupted by a petitioner's motion for a stay of deportation or removal. *See Akinwale*, 287 F.3d at 1052, n.4.

“District courts recognize[] that a delay in the issuance of a travel document does not, without more, establish that Petitioner's removal will not occur in the reasonably foreseeable future even when detention continues past the 180 day presumptively reasonable period under *Zadvydas*.” *See Brown v. United States Att’y Gen.*, No. 20-20055-CV, 2020 WL 13548089, at *4 (S.D. Fla. Jan. 31, 2020) (citing *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1365-66 (N.D. Ga. 2002)). Petitioner has not met his burden of showing that there is no reasonable likelihood of removal in the reasonably foreseeable future. Petitioner’s focus on the removal order entered in 2005 completely ignores his failure to appear, subsequent appeals and litigation which tolled the time for removal. Now, the measuring date for his removal would be from the June 5, 2025 date, not even three months prior to the date of this filing and well within the reasonableness permitted by *Zadyvas*.

Petitioner’s native country, Brazil, is accepting individuals removed from the United States and flights are regularly being scheduled to Brazil. *See* Ex. B, Declaration ¶ 29. Brazil also routinely issues travel documents. *Id.* at ¶ 30. Contrary to Petitioner’s assertions, ICE has diligently processed Petitioner for removal since Petitioner was subject to a final removal order and more recently again, when Petitioner was taken in custody by ICE on June 5, 2025. ICE has

been in communication with Brazil and has been diligently responding to requests from the Consulate of Brazil to complete Petitioner's travel document request packet. As of this date, Petitioner's removal has been progressing. *See id.* ¶¶ 26-30. While the Brazilian consulate has not issued a travel document for Petitioner, Brazil routinely issues travel documents and there is significant likelihood of removal in the reasonably foreseeable future. *See id.* at ¶ 30.

Accordingly, Petitioner cannot meet his burden of showing no significant likelihood of removal in the reasonably foreseeable future. In fact, the evidence before the Court shows just the opposite, and the Petition must therefore be dismissed.

CONCLUSION

For the reasons stated above, Respondents respectfully requests the Court deny and dismiss Daniel Fernandes Alves's petition for writ of habeas corpus.

Dated: August 26, 2025

Respectfully submitted,

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