UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JOSE ANTONIO MARTINEZ-MARINO

Petitioner,

v. Case No. 3:25-cv-00854-MMH-MCR

SHERIFF OF BAKER COUNTY SHERIFF'S OFFICE, U.S. DEPARTMENT OF HOMELAND SECURITY, and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Respondents.
_____/

RESPONDENTS' MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

The UNITED STATES OF AMERICA, on behalf of the U.S. Department of Homeland Security and the U.S. Immigration and Customs Enforcement ("ICE") (hereinafter jointly "Respondents") hereby move to dismiss this Petition for Writ of Habeas Corpus ("Petition") (Doc. 1) pursuant to Rule 12(b)(6), Fed. R. Civ. P. because Petitioner's claim is not ripe for review pursuant to 8 U.S.C. § 1231(a), nor has he demonstrated that there is good reason to believe that there is no significant likelihood of his removal from the United States in the reasonably foreseeable future. Accordingly, this Petition should be dismissed.

Factual Background

Petitioner, Jose Antonio Martinez-Marino, is 58-year-old male who is a native

and citizen of Cuba. Exhibit 1, Declaration of Deportation Officer Luke Tine ("Tine Decl."), at ¶ 3. Petitioner was paroled into the United States on June 18, 2005, at Brownsville, Texas and placed into removal proceedings. *Id.* at ¶ 4. On February 4, 2008, Petitioner's status was adjusted to a lawful permanent resident, which was backdated to June 18, 2005. *Id.* at ¶ 5.

On November 12, 2015, Petitioner was convicted in the Eleventh Judicial Circuit Court, in and for Miami-Dade County, Florida, pursuant to Section 893.135(1)(b)1c, Florida Statutes, for trafficking in Cocaine in an amount greater or equal to 400 grams, but less than 150 kilograms. *Id.* at ¶ 6. Petitioner was initially sentenced to 30-years imprisonment that was later vacated and reduced to a 10-year imprisonment with two years of probation on May 27, 2021. *Id.*

A Notice to Appear was issued for Petitioner on November 4, 2024, and was served upon him on December 9, 2024, at which time he was removed from the Florida Department of Corrections and taken into ICE custody. *Id.* at ¶¶ 7-8. On January 8, 2025, an immigration judge ("IJ") ordered Petitioner's removal to Spain or Cuba pursuant to INA ("Immigration and Nationality Act") § 237(a)(2)(B)(i), as amended, 8 U.S.C. § 1227(a)(2)(B)(i). *Id.* at ¶ 9. Petitioner did not appeal his order of removal; thus, it was deemed final on January 8, 2025. *Id.* at ¶ 10.

On January 27, 2025, Enforcement and Removal Operations ("ERO") was informed that the Government of Spain would not issue travel documents for Petitioner. *Id.* at ¶ 11. At the same time, the ERO Headquarters ("HQ") Removal and International Operations ("RIO") determined that there was no significant likelihood

of removing Petitioner to Cuba in the reasonably foreseeable future. *Id.* at ¶ 12. Accordingly, ERO conducted a Post-Order Custody Review ("POCR") on March 26, 2025, which resulted in a decision to continue Petitioner's detention citing his criminal history and potential for a third country removal. *Id.* at ¶ ¶ 13-14. Subsequently, a 180-day POCR was conducted on June 20, 2025, and it concluded that Petitioner's continued detention was warranted. *Id.* at ¶ 16.

ERO investigated possible third country removal options, and on September 17, 2025, transported Petitioner to the U.S.-Mexico border, but Petitioner refused to be removed to Mexico. *Id.* at ¶ 17. On November 4, 2025, the government of Cuba again denied Petitioner's removal to Cuba. *Id.* at ¶ 18. After which, Petitioner was offered a second opportunity to be removed to Mexico, to which Petitioner responded that if he could not go back to Cuba, he wanted to stay in the United States. *Id.* at ¶ 19.

Despite Petitioner's intransigence, ERO continues to explore third country removal options and believes there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. *Id.* at ¶ 21.

Discussion

Generally, this Court has jurisdiction to consider a challenge to a petitioner's continued detention in habeas corpus proceedings. S*ee Zadvydas v. Davis*, 533 U.S. 678, (2001). While the Court has jurisdiction to consider Petitioner's challenge to his continued detention, the Petition should be dismissed because Petitioner has failed to establish his detention by ICE is unlawful.

The relevant detention provision governing Petitioner's detention is § 241(a) of the Immigration and Nationality Act, as amended 8 U.S.C. §1231(a), which covers detention following entry of a final removal order. This provision generally affords the Attorney General a 90-day period to accomplish removal. *See* 8 U.S.C.§1231(a)(1)(A). The statute provides that, in certain circumstances, the Attorney General may continue to detain an alien after expiration of the 90-day removal period when the alien is:

> An alien ordered removed who is inadmissible under 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. §1231(a)(6). Hence, Petitioner's continued detention has a basis in law in that he is removable as charged under the INA. *See generally* Tine Decl.

The statute provides that the removal period commences on the latest of the following events:

> i. The date the order of removal becomes administratively final.
> ii. If the removal order is judicially reviewed and if the 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.

8 U.S.C. § 1231(a)(1)(B). Here, Petitioner order of removal order became final on January 8, 2025, when he waived his right of appeal.

In *Zadvydas,* the Supreme Court held that 8 U.S.C. § 1231(a) permits the

government to detain an alien during the 90-day removal period in § 1231(a)(1), and an additional 90 days to effectuate the alien's removal from the United States. 553 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Stated differently, the Supreme Court "confirmed that six months is a presumptively reasonable period to detain a removable alien awaiting deportation under such circumstances." *Akinwale v. Ashcroft,* 287 F.3d 1050, 1051-1052 (11th Cir. 2002) (*citing Zadvydas,* 533 U.S. at 701).

While six months is a presumptively reasonable detention period, the *Zadvydas* Court also made clear that the six-month presumption did not mean that every alien not removed within this timeframe must be released after six months. *Zadvydas* at 701. The Court explained, "[t]o the contrary, an alien may be held in confinement until it had been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

In *Akinwale*, the Eleventh Circuit concluded 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 of removal in the reasonably foreseeable future." 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post removal order detention for a period exceeding six months; **and** (2) that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.*

A. Petitioner failure to cooperate in his removal from the United States means that he must fails both prongs of the Zadvydas/Akinwale test.

Petitioner's order of removal was final on January 8, 2025; thus, the six-month/180-day period concluded on or about July 7, 2025. As such, he obstensibly has met the first prong of the test. However, because Petitioner has twice failed to accept a removal to Mexico, and continues to insist if he cannot be removed to Cuba, he wants to remain in the United States, his non-cooperation is his only barrier to his removal, he fails to show both that his detention is unreasonably long or that there is no significant likelihood of removal in the reasonably foreseeable future. *See, e.g., Oladokun v. U.S. Attorney General*, 479 Fed. App'x 895, 897 (11th Cir. 2012) (noting that, among other things, the petitioner had created such a commotion on his flight departing the United States that he was removed from the flight and returned to the custody of the Department of Homeland Security).

Petitioner is required to assist in efforts to remove him pursuant to INA § 243(a), as amended 8 U.S.C. § 1253(a). Specifically, the statute provides that any alien with a final order who:

> [W]illfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure, or who connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, may be fined under Title 18 or imprisoned for not more than four years or both.

8 U.S.C. § 1253(a)(1)(B), (C). Thus, repatriation is a shared responsibility of the alien, his sovereign, and the U.S. government.

Petitioner's refusal to be removed to Mexico, or any other country but Cuba, is the sole reason that he remains detained today. Thus, "for like the orphan who sought sympathy after murdering his parents, petitioner cannot claim that his pre-removal detention is unreasonably long when he is the cause of the delay in his removal." *Olajide v. BICE*, 402 F. Supp.2d 688, 689 (E.D. Va. 2005).

The Fifth Circuit has held that "if it is shown that petitioner by his conduct has intentionally prevented the INS from effectuating his deportation, the six-month period should be equitably tolled until petitioner begins to cooperate with the INS in effectuating his deportation or his obstruction no longer prevents the INS from bringing that about." *Balogun v. I.N.S.*, 9 F.3d 347, 351 (5th Cir. 1993) ("The alien should not be allowed to profit from his own wrong and *contra non valentem agere nulla currit praescriptio.*"). Other circuit and district courts have found the same. *See Lema v. INS*, 341 F.3d 853, 856-57 (9th Cir. 2003) (stating "the risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when the alien "has the keys [to freedom] in his pocket and could likely effectuate his removal by providing the information requested by the INS") (alteration in original); *Riley v. Greene*, 149 F.Supp.2d 1256, 1262 (D. Colo. 2001) (tolling the detention period when an alien intentionally causes a delay); *Sango–Dema v. District Director,* 122 F.Supp.2d 213, 221 (D.Mass.2000) (alien cannot trigger right to freedom from indefinite detention "with his outright refusal to cooperate with INS officials").

Accordingly, Petitioner's period of detention should be tolled because Petitioner

has refused to be removed, despite being given the opportunity. *Akinwale*, 287 F.3d at 1052 ("in order to state a claim under *Zadvydas* the alien [. . .] must show post-removal order detention in excess of six months."). Petitioner is additionally not entitled to relief under *Zadvydas* because he prevented his own removal and thus cannot now state that his removal is not reasonably foreseeable. *Oladokun* at 867. Accordingly, Petitioner's continued detention is lawful under § 1231, and his constitutional rights have not been violated.

Conclusion

Based on the foregoing, ICE's continued detention of the Petitioner is lawful. Not only has Petitioner failed to meet his burden in establishing detention in excess of six months prior to filing his Writ of Habeas Corpus, his Petition should also be dismissed because he has failed to meet the second prong of the *Akinwale* test in failing to establish that his removal is not reasonably foreseeable. Rather, ICE has been working diligently to effectuate his removal such that his removal is reasonably foreseeable. Consequently, as the Petitioner's detention is legal, the Court should dismiss the instant Petition

Dated: December 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system. I further certify that a copy of the foregoing document will be sent to the below non-CM/ECF participant via U.S. Mail.

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