

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

YUSNEY CABRERA GONZALEZ,

Petitioner,

v.

RANDY TATE, *et al.*,

Respondents.

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CIVIL NO. 4:25-cv-5888

**RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS
AND MOTION TO DISMISS**

The Government¹ hereby responds to Yusney Cabrera Gonzalez's habeas petition and respectfully requests that this Court deny his petition under 28 U.S.C. § 2241.

This habeas petition fails to state a plausible claim for relief. Petitioner alleges he should be immediately released because "the government cannot articulate any meaningful reason why he should continue to remain in detention." Dkt. 1 at ¶ 23. The petition makes no meaningful, substantive argument concerning why his detention is unlawful. As explained below, the Supreme Court has long recognized that detention while removal proceedings are ongoing is a lawful part of the deportation process. Thus, the instant habeas petition should be denied.

¹ The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

I. BACKGROUND

Petitioner, Yusney Cabrera Gonzalez, is a native and citizen of Cuba. Dkt. 1 at ¶ 12, 42. In 2022, Petitioner entered the United States without inspection. *Id.* U.S. Immigration and Customs Enforcement (ICE) detained Petitioner on or about November 13, 2025. *Id.* at ¶ 13. ICE charged him with removability pursuant to Immigration and Nationality Act (“INA”) section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled. Dkt. 1 at ¶ 13.

An immigration judge has entered a removal order for Petitioner. Dkt. 1 at ¶ 15. Petitioner has appealed that removal order to the Board of Immigration Appeals. Dkt. 1 at ¶ 15. Because of the pending appeal, Petitioner’s removal order is not administratively final.

II. ARGUMENT

A. PETITIONER IS LAWFULLY DETAINED WHILE HIS REMOVAL PROCEEDINGS ARE PENDING.

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). Here, Petitioner makes no substantive legal arguments explaining why his detention is unlawful. He merely asserts that he should be released “because there has been no final order of removal issued against him, and the government cannot articulate any meaningful reason why he should continue to remain in detention while his removal proceedings are pending.” Dkt. at ¶ 23. However, when it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as “[d]etention is necessarily a part of th[e] deportation procedure.” *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v.*

United States, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”). As the Supreme Court has stated in no unmistakable terms, “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003). Accordingly, Petitioner’s detention while his removal proceedings are ongoing is lawful.

Lastly, in Count Two, Petitioner incorrectly argues that his detention violates the principles of *Zadvydas v. Davis*, 533 U.S. 6787 (2001). Dkt. 1 at ¶¶ 24-32. As the Court is aware, the *Zadvydas* framework applies to aliens subject to final removal orders, which the Petitioner is not. He is in pre-removal detention. Thus, *Zadvydas* does not apply. *See, e.g., Sanchez v. Smith*, No. 4:25-CV-05384, 2025 WL 3687914, at *3 (S.D. Tex. Dec. 19, 2025) (“*Zadvydas* thus doesn’t suggest that detention during removal proceedings itself violates due process.”). Moreover, the length of detention at issue, since November of 2025, raises no constitutional concerns and is in no way an unconstitutional “indefinite detention.”

III. CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner’s request for habeas relief.

Dated: January 7, 2026

Respectfully submitted,

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/s/ Jimmy A. Rodriguez

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CERTIFICATE OF SERVICE

I certify that, on January 7, 2026, the foregoing was filed and served on all attorneys of record via the District's ECF system.

/s/ Jimmy A. Rodriguez

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