

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GABRIEL ANTONIO PEREZ
ROMERO,

Petitioner,

Case No. 2:26-cv-12-JES-NPM

v.

KELIE WALKER, et al.,

Respondents.

**FEDERAL RESPONDENTS' RESPONSE
TO ORDER FOR SUPPLEMENTAL BRIEFING**

Petitioner Gabriel Perez Romero has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, arguing he is being detained in violation of the Fifth Amendment, the Immigration and Nationality Act, and the *Accardi* doctrine. On May 28, 2026, the Court issued an order directing the government to “must explain how (and whether) Perez Romero’s removal is likely in the reasonably foreseeable future.” (Doc. 15 at 2.)

Federal Respondents’ position is that Perez Romero’s is lawfully detained under 8 U.S.C. § 1231(a)(1) due to his failure to comply with removal efforts. The undersigned nevertheless recognizes that this Court has concluded the government has not shown a significant likelihood of removal in the foreseeable future under

similar facts. *See, e.g., Valdez v. Warden, Fla. Side S. Det. Facility*, No. 2:26-CV-1340-JES-NPM, 2026 WL 1382373, at *2 (M.D. Fla. May 18, 2026)

FACTS

According to the declaration of Deportation Officer Juen Cuevas, on or about January 28, 2026, ICE officers, attempted to execute Perez Romero's removal to Mexico via the San Ysidro Port of Entry. (Cuevas Declaration, Ex. A at 2.) Perez Romero failed to comply with the attempted removal. *Id.* According to Cuevas, Perez Romero's "refusal to comply was not based on any legal impediment to removal, but rather a voluntary and deliberate decision to disregard lawful instructions." *Id.*

ARGUMENT

Perez Romero has failed to show that his detention is unlawful.

As an initial matter, Federal Respondents maintain their position the present petition should be denied because Perez Romero filed it before the expiration of six months in detention. Perez Romero was detained on November 28, 2025, and filed the present petition on January 2, 2026. At that point, Perez Romero been detained for 35 days. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("This six-month period thus must have expired at the time [the petitioner's] § 2241 petition

was filed in order to state a claim under *Zadvydas*.”)¹

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. Significantly, “[t]he removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien . . . conspires or acts to prevent the alien's removal subject to an order of removal.”

Furthermore, an alien can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the post-removal period to

¹ See also *Mehighlovesky v. U.S. Dep't of Homeland Sec.*, No. CIV. 12-902 RHK/JJG, 2012 WL 6878901, at *2 (D. Minn. Dec. 7, 2012), *report and recommendation adopted*, No. CIV. 12-902 RHK/JJG, 2013 WL 187553 (D. Minn. Jan. 17, 2013) (“There is a good policy reason for dismissing premature *Zadvydas* actions, even when post-removal-order detention has exceeded six months by the time the case is decided. If the rule were otherwise, removable aliens would have no incentive to wait for their potential *Zadvydas* claims to ripen, and the federal courts might then be inundated with pre-emptive *Zadvydas* claims brought by aliens who are unwilling to give the Government six months to effect their removal.”)

allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale*, 287 F.3d at 1052 (stating six-month period is inclusive of any ninety-day removal period).

Following the conclusion of the presumptively reasonable 180-day period, a detainee may file a habeas petition challenging his continued detention. However, aliens who remain in custody after the expiration of the six-month period are not necessarily entitled to relief. “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.” *Zadvydas v. Davis*, 533 U.S. at 701. Thus, at the conclusion of this 180-day period, an alien who challenges his continued detention “must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). If an alien “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must either rebut that showing or release the alien. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018).

The record shows Perez Romero impeded his removal to a third country in January 2026, thereby tolling the removal period under 8 U.S.C. § 1231(a)(1)(C). Even if the Court were to employ *Zadvydas*’s burden shifting framework, Perez

Romero's petition fails to address his previous failure to cooperate with removal or show there is no significant likelihood of removal in the reasonably foreseeable future should he decide to cooperate.

When ICE executes a removal order, an alien must comply and assist. Failure to do so results in detention and tolling any *Zadvydas* time. 8 U.S.C. § 1231(a)(1)(C). "*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal." *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003). "The reason is self-evident: the detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock." *Id.* In sum, a *Zadvydas* claim fails if petitioner holds the "keys to his freedom in his pocket and could likely effectuate his removal by providing the information requested by" ICE. *Id.* (cleaned up).

The Eleventh Circuit recognizes these commonsense principles. *Singh v. U.S. Att'y General*, 945 F.3d 1310, 1314 (11th Cir. 2019). Specifically, it reads the plain language of § 1231(a)(1)(C) for what it says—extending the detention period if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure." *Id.* (citation omitted). Likewise, detention may continue where an alien "conspires or acts to prevent the alien's removal." *Id.* (quoting 8 U.S.C. § 1231(a)(1)(C)).

As other courts note, failure to comply with ICE's lawful removal efforts

will extend the detention period even without an end date in sight:

[Petitioner] was not removed at those times solely because of his own refusal to cooperate. The government, therefore, could continue to have an interest in detaining [petitioner] to effect his removal, and the detention remained authorized by § 1231(a)(6). That the detention did not have a certain end date does not change the analysis.

Diouf v. Mukasey, 542 F.3d 1222, 1233 (9th Cir. 2008) (internal citations omitted); see also *Souleymane v. ICE*, No. 1:26-cv-00425-TWP-TAB, 2026 WL 785596, at *5 (S.D. Ind. Mar. 20, 2026) (Petitioner “obstructed his removal one time, on May 12, 2025, when he refused to board a plane.”). Similarly, this district has concluded a petitioner fails to state a claim under *Zadvydas* when the petitioner refuses to cooperate with removal efforts. *Sarria Alfonso v. Warden*, No. 2:26-CV-1255-KCD-NPM, 2026 WL 1345888, at *2 (M.D. Fla. May 14, 2026).

This rule even applies where—as here—petitioner refuses removal to a third country willing to accept the alien. *Laguardia v. ICE*, No. C26-4003-LTS-KEM, 2026 WL 440749, at *2 (N.D. Iowa Feb. 17, 2026) (applying when Cuba petitioner refused removal to Mexico); *Rivero v. FNU LNU*, No. 2:26-cv-00349-KG-KRS, 2026 WL 607416, at *1 (D.N.M. Mar. 4, 2026) (same). As some courts have recognized, third-country removal to Mexico has been difficult recently for aliens—like Perez Romero—who refuse departure to that nation. *Leyva Lambert v. ICE*, No. EP-26-CV-00427-DB, 2026 WL 926216, at *2 (W.D. Tex. Apr. 6, 2026); *Gustavo Delgado v. Bondi*, No. 2:26-cv-00649-GJL, 2026 WL 914806, at *4 (W.D. Wash. Apr. 3, 2026).

But nothing about this is a get-out-of-removal-free-card. Because the failure to remove is a result of Perez Romero's conduct, detention is still permitted. 8 U.S.C. § 1231(a)(1)(C); *Pelich*, 329 F.3d at 1060.

Perez Romero has no enforceable rights to prevent removal to an acceptable third country that ICE already provided. Or—at least—he cannot use that his refusal for leverage to effectively stay in this country on the off chance that maybe ICE finds a country Perez Romero deems subjectively acceptable. After all, the statute on third-country removal is plain: an alien does not get a trump card to pick his country of removal. 8 U.S.C. § 1231(b)(1)-(2). While an alien can designate a country, the Attorney General has express statutory power to disregard and remove elsewhere under many circumstances. *Id.* § 1231(b)(2)(A)-(E). Until Perez Romero complies with ICE's removal efforts or removal to Mexico is otherwise not available, he has no *Zadvydas* claim. 8 U.S.C. § 1231(a)(1)(C).

CONCLUSION

Respondents respectfully request Perez Romero's petition be denied.

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DATED this 1st day of June, 2026.

Respectfully submitted,

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