

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

TALAL ABDEL KHALIL AL
ELLARY,

Petitioner,

Case No. 2:26-cv-00112-KCD-DNF

v.

SECRETARY KRISTI NOEM,
ATTORNEY GENERAL PAM
BONDI, FIELD OFFICE DIRECTOR
GARRET RIPA, DAVID HARDEN,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Talal Abel Khalil Al Ellary petitions for writ of habeas corpus arguing that U.S. Customs and Immigration is detaining him violation of the Fifth Amendment's Due Process Clause. His petition should be denied. At the time Al Ellary filed the petition, he had been detained for 139 days. The Supreme Court has held that detention is presumptively reasonable for six months following a removal order. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Al Ellary's detention is therefore lawful.

FACTS

Al Ellary is a 53-year-old native of Palestine/West Bank who entered the United States at an unknown place and time. (Composite Exhibit, Ex. 1 at 1.) On

May 14, 2001, he was ordered removed from the United States. *Id.* at 28. His appeal to the Board of Immigration Appeals was dismissed on November 21, 2001. *Id.* at 30. Al Ellary was detained by U.S. Immigration and Customs Enforcement on September 4, 2025. *Id.* at 2.

CERTIFIED HABEAS RETURN

ICE is detaining Azahares Gutierrez under the mandatory post-removal detention provisions of 8 U.S.C. § 1231. *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Azahares Gutierrez bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

ARGUMENT

Al Ellary’s detention does not violate the Immigration and Nationality Act or the Fifth Amendment’s Due Process Clause.

After a final removal order, an alien must be removed within ninety days—also known as the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, an alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can also 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 express 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 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).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play regarding the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *Guo Xing Song v. U.S. Attorney General*, 516 F. App’x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009). At bottom, “This presumptively reasonable six month period must have expired at the time of the filing of a petition.” *E.g.*, *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011).

Al Ellary seeks to challenge the likelihood of removal before six months. But the Eleventh Circuit, and *Zadvydas* itself, do not permit a writ challenging length of detention when petitioner has been in detention less than six months. The Eleventh Circuit has established a two-part test to stating these claims. *Akinwale*, 287 F.3d at

1052. The first element follows: “[T]o state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months” *Id.* The Eleventh Circuit has reaffirmed its holding several times. *Guo Xing Song v. U.S. Attorney General*, 516 F. App’x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009); *Vaz v. Skinner*, 634 Fed. App’x 778, 782 (11th Cir. 2015); *Ivantchouk v. U.S. Attorney General*, 417 Fed. App’x 918, 921 (11th Cir. 2011).

At no point has the Eleventh Circuit suggested the six-month period is rebuttable. In fact, *Akinwale* holds the opposite by setting a bright-line rule for six months of detention before a challenge. There are cases in support of Al Ellary’s position. *E.g.*, *Sardinas v. Noem*, 2:26-cv-00067-SPC-NPM, Doc. 9 (M.D. Fla. Jan. 29, 2026); *Godinez Perez v. Noem*, 2:25-cv-00429-JES-NPM, Doc. 24 (M.D. Fla.). This Court, however, should follow *Akinwale*.

Even if the Court were to examine the rationale underlying the Eleventh Circuit’s bright-line rule, *Zadvydas* underscores its reasoning:

We realize that recognizing this necessary Executive leeway will often call for difficult judgments. *In order to limit the occasions when courts will need to make them, we think it practically necessary to recognize some presumptively reasonable period of detention. . . .*

. . .

. . . We do have reason to believe, however, that *Congress previously doubted the constitutionality of detention for more than six months. Consequently, for the sake of uniform administration in the federal courts, we recognize that period.* After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably

foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. 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, 533 U.S. at 700-01 (emphasis added). There is no reading of *Zadvydas* suggesting it left open the opportunity to challenge detention before that period expires. Confirming this, the Supreme Court has explained,

And according to the Court, a period reasonably necessary to bring about the alien’s removal from the United States is presumptively six months. After that point, if the 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.

Johnson v. Guzman Chavez, 594 U.S. 523, 529 (2021) (cleaned up); *see also Jennings v. Rodriguez*, 583 U.S. 281, 298-99 (2018); *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). Along with *Zadvydas* itself, at least four other Supreme Court decisions describe these claims and their burden shifting as occurring “after” the six-month period. *Johnson*, 594 U.S. at 529; *Jennings*, 583 U.S. at 298-99; *Clark*, 543 U.S. at 378; *Jama*, 543 U.S. at 347-48.

Here, Khalil Al Ellary filed the present petition before the expiration of six months in detention. He was detained on September 4, 2025, and filed the present petition on January 21, 2026. (Doc. 1.) At that point, Khalil Al Ellary had been detained for 139 days; to date, he has been in detention for 162 days. As previously

discussed, the presumptively reasonable period is not rebuttable before it expires. It is only afterward that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” *See Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051-52. Indeed, to hold otherwise would impose unnecessary burdens on ICE as it carries out the Executive Branch’s foreign policy responsibilities. *See Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “require courts to listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise”).

CONCLUSION

Khalil Al Ellary’s Petition for Writ of Habeas Corpus should be denied.

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DATED this 13th day of February, 2026.

Respectfully submitted,

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