

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

Miakel Guerra Morales,

Petitioner,

vs.

Case no. 2:26-cv-133-JES-DNF

Kelei Walker, et al.,

Respondents.

**FEDERAL RESPONDENTS' SUPPLEMENTAL
RESPONSE TO HABEAS PETITION**

As directed by the Court in its most recent order, Doc. 21, Federal Respondents hereby supplement their response to the habeas corpus petition in this matter as follows.

The Federal Respondents examined the background for this detainee in their earlier response, Doc. 9, and will not reiterate his serious criminal background here. He is a Cuban national who was convicted of serious criminal offenses relating to a hijacking incident which led to a sentence of 264 months imprisonment. A final order of removal was entered against him and ICE intends to remove him to Mexico. He has been detained since December

30, 2025. See Doc. 9 at 2-3. He filed his petition for habeas corpus on January 23, 2026. Doc. 1.

To determine whether the length of Mr. Guerra's detention is constitutionally permissible under the Supreme Court's analysis imposed in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court has ordered Federal Respondents to provide it with evidence that there is a significant likelihood that he will be removed in the reasonably foreseeable future. Doc. 21. Although the U.S. Attorney's Office has requested such evidence from ICE, we regret to inform the Court that none has been provided as of the date of this filing.

Nonetheless and for purposes of the record for any appeal in this matter, ICE contends that the petition should be denied because it is premature. Petitioner filed this action on January 23, 2026. Doc. 1. Courts generally have held that the six-month period is calculated from the time the detainee files the habeas petition, even if the petition remains pending beyond the expiration date. *Akinwale*, 287 F.3d at 1052 ("This six-month period thus must have expired at the time [petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*."); see also *Thelemaque v. Barr*, No. 20-20467-CIV, 2020 WL 13551808, at *2 (S.D. Fla. Mar. 30, 2020) (denying habeas petition as premature when petitioner was detained on August 2, 2019, and filed his

petition within the six-month period on January 27, 2020, despite the district court issuing its ruling beyond the six-month period). This rule serves to prevent a flood of premature *Zadvydas* claims in the federal courts. *See Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1364 (N.D. Ga. 2002) (“A strict construction of that time limit serves a gatekeeping function to ensure that federal courts are not unnecessarily weighed down with hasty complaints[.]”); *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) (“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[.]”), *report and recommendation adopted*, 2013 WL 187553 (D. Minn. Jan. 17, 2013). Because Petitioner filed this action before his detention reached 180 days, the Petition is not ripe and the action should be dismissed.¹

In the event that the Court rejects these arguments and finds no significant likelihood of removal in the reasonably foreseeable future, the

¹ ICE also contends the petitioner’s continued detention is also authorized under 8 CFR § 241.13(b)(2)(i), which provides for continued detention where special circumstances exist, as well as under § 241.14(f) which provides for the detention of aliens determined to be dangerous.

Federal Respondents ask that any release ordered by the Court be subject to appropriate conditions of supervision to be set by ICE.

Dated: July 6, 2026

Respectfully submitted,

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Certificate of Service

I hereby certify that on July 6, 2026 a true and correct copy of the foregoing was filed using the Court's CM/ECF filing system, which will send an electronic notice of filing.

/s/ Lacy R. Harwell, Jr.
Lacy R. Harwell, Jr.
Assistant United States Attorney