

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

RENE RODRIGUEZ-ALES,

Petitioner,

v.

Case No. 2:26-cv-612-SPC-DNF

WARDEN, FLORIDA SOFT
SIDE SOUTH, et al.,

Respondents.

**U.S. ATTORNEY GENERAL'S OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Rene Rodriguez-Ales seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that the length of his detention is unlawful. His petition should be denied. In *Zadvydas v. Davis*, the Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678 (2001). Rene Rodriguez-Ales had been detained for 44 days when he filed the present petition, and his cumulative time in ICE custody totals only 142 days. His present detention is therefore lawful.

BACKGROUND

Rene Rodriguez-Ales is a national and citizen of Cuba. (Composite Exhibit A at 1.)

Rene Rodriguez-Ales last entered the United States on or about January 18, 2005 as an Arriving Alien. *Id.* at 2. He was then paroled into the United States and convicted in the Circuit Court for the Thirteenth Judicial Circuit in Hillsborough County, Florida for aggravated battery with a weapon and aggravated assault with a deadly weapon. *Id.* at 2-5. He was placed in removal proceedings and on April 8, 2010 he was ordered removed from the United States by an Immigration Judge. *Id.* at 6-7. He waived appeal, which caused the Immigration Judge's decision to become administratively final. *Id.* at 6.

Rene Rodriguez-Ales was previously placed in immigration custody from March 15, 2010 to July 7, 2010,¹ after which he was released on an OSUP. *Id.* at 4-5, 9, 11-12. He was recently arrested for burglary while on an OSUP and taken back into ICE custody on January 20, 2026. *Id.* at 10. Rene Rodriguez-Ales is currently detained at Florida Soft-Side Facility South. *Id.* at 12-13. He has been in current ICE custody for a total of 52 days. *Id.* at 8-10.

On March 4, 2026, Rene Rodriguez-Ales filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. (Doc. 1.)

ARGUMENT

Rene Rodriguez-Ales' detention does not violate the Fifth Amendment's Due Process Clause.

¹ Only Rene Rodriguez-Ales' detention following the April 8, 2010 removal order is final order detention—a total of 90 days.

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. An alien, however, 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 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, “[U]ntil the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *E.g.*, *Khalil Al Ellary*, 2:26-cv-00112-KCD-DNF, Doc. 7 (M.D. Fla. Feb. 27, 2026); *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).

Rene Rodriguez-Ales filed the present petition well before expiration of six months in detention, even if this Court took a cumulative approach to his time in custody. He was most recently detained on January 20, 2026 and filed the present petition on March 4, 2026. At that point, Rene Rodriguez-Ales had been detained for 44 days; to date, he has been in current detention for 52 days. In 2010, Rene Rodriguez-Ales was in ICE custody for 90 days between his April 8, 2010 removal and his July 7, 2010 release on an OSUP. Cumulatively, his detention amounts to only 142 days. Because he has been in current custody for less than two months, and for less than six months in total, he remains within the window in which his detention is presumptively reasonable.

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”); *Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF (M.D. Fla. Feb. 27, 2026)

(denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal.² See *Akinwale*, 287 F.3d at 1051-52. 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

Respondents respectfully request Rene Rodriguez-Ales’ petition be denied.

DATED this 12th day of March, 2026.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

s/ Stephanie S. Leuthauser
STEPHANIE S. LEUTHAUSER
Assistant United States Attorney
Florida Bar No. 0044981
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: 813-274-6000
Facsimile: 813-274-6198
Stephanie.leuthauser@usdoj.gov
Lead Counsel for the Attorney General

² Respondents acknowledge this Court has previously disagreed. See *Chumachenko v. Noem*, 2:26-cv-00344-SPC-NPM, Doc. 6 (M.D. Fla. Feb. 27, 2026).

CERTIFICATE OF SERVICE

I hereby certify that, on March 12, 2026, I filed the foregoing documents and any exhibits referenced therein using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

I further certify that I caused a copy of the foregoing documents and any exhibits referenced therein to be sent via FedEx to Rene Rodriguez-Ales, at the address listed in the Petition (Doc. 1).

s/ Stephanie S. Leuthauser
STEPHANIE S. LEUTHAUSER
Assistant United States Attorney