

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

LAZARO RODRIGEZ SANTANA,

Petitioner,

v.

ICE, BILL ALLEY, FLORIDA
SOFT SIDE SOUTH (ALLIGATOR
ALLEY),

Respondents.

Case No. 2:26-cv-615-SPC-DNF

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Lazaro Rodriguez Santana ("Petitioner") seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody.

BACKGROUND

Petitioner is a citizen of Cuba who was paroled in the United States at or near Miami, Florida, on April 27, 1994, and subsequently adjusted status to that of a lawful permanent resident retroactive to that date. Exhibit 1 (I-213). Petitioner was convicted of several criminal offenses (in 1997, 2006, and 2018) which led to his being placed in removal proceedings and ultimately ordered removed from the United States on

December 23, 1998. *Id.* ICE records reflect two additional periods of detention: one in the Laredo Processing Center for 85 days, and a second from March 11, 2014, through March 30, 2014 (98 days).¹ Exhibit 2 (detention history). Petitioner was not arrested by ICE again until July 7, 2025, when he was detained at a Florida probation office in Orlando, Florida. Exhibit 1. Petitioner remains detained at the Florida Soft Side South detention facility, which as of February 14, 2026, he had been detained for 247 days. Exhibit 2.

On March 3, 2026, Petitioner filed the instant *pro se* Petition seeking his release from detention. *See* ECF 1. On March 5, 2026, this Court ordered that Respondents show cause why the petition should not be granted.

LEGAL STANDARD

The Court has the power to grant a writ of habeas corpus where a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). “The burden rests on the person in custody to prove his detention is unlawful.” *Benito Vasquez v. Moniz*, No. 25-11737-NMG, 2025 WL 1737216, at *1 (D. Mass. June 23, 2025).

ARGUMENT

I. Jurisdictional Bar.

Respondents acknowledge that this Court’s prior rulings concerning jurisdiction pursuant to 8 U.S.C. § 1252(g) in similar cases would control the result in

¹ These dates are based on ICE’s detention history but do not include information as to the reason for detention, or any revocation or other records, other than the two exhibits attached hereto.

this case should the Court adhere to its legal reasoning in those prior decisions and find the facts sufficiently common. *See e.g., Garcia v. Noem, et al.*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025) and *Vasquez Carcamo v. Noem*, 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025). (challenging whether the statutory authority the government utilized in making a custody determination was proper). While Respondents respectfully disagree, in the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents hereby rely upon and incorporate by reference the legal arguments regarding jurisdiction under Section 1252(g) as presented in *Garcia* and *Vasquez Carcamo*.² Should the Court prefer to receive a more exhaustive and fulsome opposition brief on these issues, Respondents respectfully request leave to file such a brief and will do so upon the Court's request.

II. Petitioner's 2025-2026 Detention.

A. Statutory Authority

An alien with a final order of removal is subject to the detention and removal standards set forth at 8 U.S.C. § 1231. The statute directs that an alien ordered removed be removed within 90 days of his order becoming final and that he remain detained during that timeframe. 8 U.S.C. § 1231 (a)(1)(A), (a)(2)(A). If the government is unable to remove an individual during that statutory period, the INA empowers ICE to

² Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of judicial economy, Respondents respectfully request the Court to suspend application of the rule. *See* Local Rule 1.01(a) and 1.01(b).

release him on an order of supervision. 8 U.S.C. § 1231(a)(3). Importantly, an order of supervision is not indefinite, rather the regulations permit the government to revoke the order for a variety of reasons, among them because the purposes of the release have been served and it is appropriate to enforce a removal order. *See* 8 C.F.R. § 241.4(l)(2).

When removal is not effectuated within the 90-day statutory period, the government is still permitted to continue an alien's detention—or to detain him again in the future for the purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). 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.

Here, Petitioner was ordered removed in 1998 and he remains subject to a final, executable removal order today. Exhibit 1. While he was under an order of supervision, the government recently determined that it is appropriate to move forward with attempting to execute his order once more and Petitioner has been detained for that purpose. Petitioner, an alien subject to a final order of removal, has thus been properly detained pursuant to 8 U.S.C. § 1231.

B. Significant likelihood of removal in the reasonably foreseeable future

The INA requires that an alien ordered removed be detained for the 90-day removal period after his order of removal becomes final. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). But even where removal is not effected on that schedule, the government is permitted to continue to detain an alien—or to detain him again in the future for the

purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, 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.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, as it has here, then a burden-shifting framework comes into play that considers 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*, 287 F.3d at 1051-52; *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).

Significantly, Petitioner’s present period of detention exceeds the presumptively reasonable period of 180 days under *Zadvydas*, although it appears from his detention history that they unsuccessfully attempted to remove him at the 180-day mark (*see* Exhibit 2), so the burden-shifting framework comes into play. To that end, though

Petitioner is a national of Cuba, ICE is considering third country removal,³ which is permissible under the INA. *See* 8 U.S.C. § 1231(b). This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b)(2); *see also Jama v. ICE*, 543 U.S. 335, 338-41 (2005). Such countries are referred to as “third countries” for removal. While the INA authorizes the removal of aliens who have received a final order of removal to a third country, *see* 8 U.S.C. § 1231(b)(1)(C), (2), it does not delineate a particular process for carrying out third country removals to ensure that they remain consistent with the United States’ obligations under the Convention Against Torture.⁴ Instead, Congress delegated the decision regarding the appropriate process entirely to the Executive Branch. *See* 8 U.S.C. § 1231 note (providing that the “heads of the appropriate agencies shall prescribe regulations to implement” the United States’ CAT obligations).

In other words, Respondents need not demonstrate that Cuba is willing to issue travel documents to Petitioner or agree to his repatriation, rather third country removal is indeed available. Furthermore, the process for implementing third country removal has been delegated exclusively to the Executive Branch. Whether third country

³ Undersigned has requested documentation as to specific removal plans from ICE but as of this filing has not received anything beyond the agency’s intention noted in Exhibit 1 (“Subject now has SLRRFF”), leaving little to offer on significant likelihood of removal in the reasonably foreseeable future.

⁴ The Convention Against Torture regulations prohibit an alien’s removal to a country where he faces a clear probability of torture—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by or with the consent of the public official. *See* 8 C.F.R. §§ 208.16(c), 208.18(a), 1208.16(c), 1208.18(a) (2020).

removal is pursued remains within the realm of duties allowable by statute and Petitioner has demonstrated no violation of statute or precedent to the contrary.

CONCLUSION

Respondents assert that this Court is barred from considering Petitioner's claims under the INA and that his detention for the purpose of executing his final order of removal is proper under 8 U.S.C. § 1231; however, should the Court determine that inadequate process has been provided or that detention has been unlawfully extensive, Respondents respectfully defer to the Court as to the appropriate remedy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 12, 2026, a copy of the foregoing will be mailed to the *pro se* Petitioner at the address listed at page 9 of his Petition.

Dated: March 12, 2026

Signed:

/s/ Kelley C. Howard-Allen

Kelley Howard-Allen

Assistant United States Attorney