

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RENE ALBA FERNANDEZ,

Petitioner,

v.

Case No. 2:26-cv-631-KCD-DNF

WARDEN, EVERGLADES DETENTION
CENTER - FLORIDA SOFT SIDE SOUTH;
U.S. ATTORNEY GENERAL,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Rene Alba Fernandez 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. *See generally* Pet., ECF No. 1. Federal Respondents argue his petition should be denied. In *Zadvydas v. Davis*, the U.S. Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678 (2001). Petitioner had been detained for 142¹ days when he filed the present petition. His present detention is therefore lawful.

¹ The exact length of Petitioner's present detention is, candidly, unclear. Petitioner was encountered by ICE's Enforcement and Removal Operations (ERO) officers on October 14, 2025. Ex. 1 at 2 (2025 Form I-213). Petitioner was served with a Notice of Removal that same day. *Id.* at 4 (Notice of Removal); *but see id.* (dated Oct. 26, 2025). Petitioner's detention history, however, reflects that he has been in custody since October 27, 2025. *Id.* at 5. Petitioner himself claims he has been in detention since October 31, 2025. Pet. ¶ 4. The undersigned has asked for additional documentation

BACKGROUND

Rene Alba Fernandez is a national and citizen of Cuba who last entered the United States on November 28, 1993, through Key West, Florida, and was paroled thereafter. Composite Ex. 1 at 1-2 (2025 Form I-213).

Upon information and belief, on November 9, 1994, Petitioner was charged in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, in part, with five counts of Sexual Battery on a Minor by an Adult. *See* Ex. 2 (1994 Case Docket Sheet). On August 28, 1996, Petitioner was found guilty of those charges and sentenced to seven years in prison. *Id.* at Docs. 226-27.

On April 7, 1997, Petitioner was ordered removed. Composite Ex. 1 at 2.² On January 1, 2000, Petitioner was placed in immigration custody. *Id.* at 6 (Detention History). On July 6, 2001, he was released on an order of supervision (OSUP).³ *Id.*

Upon information and belief, on June 11, 2008, Petitioner was charged in the U.S. District Court for the Middle District of Florida with: (1) one count of Conspiracy to Bring Aliens into the United States for Private Financial Gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(i) and (a)(1)(A)(v)(I); and (2) two counts of

and clarification regarding this matter but has not received an answer as of the time of filing. Accordingly, to ensure Petitioner does not experience any undue prejudice, Federal Respondents will respond as though Petitioner has been detained since October 14, 2025.

² The undersigned has requested a copy of Petitioner's removal order but has not received it as of this filing. If the undersigned receives this document before the Court rules, she will supplement this response with the same.

³ The undersigned has requested a copy of Petitioner's OSUP but has not received it as of this filing. If the undersigned receives this document before the Court rules, she will supplement this response with the same.

Attempting to Bring and Aid and Abet the Bringing of Aliens into the United States for Private Financial Gain, in violation of 8 U.S.C. §§ 1324(a)(2) and (a)(2)(B)(ii). *See* Ex. 3 (2008 Indictment); *see also United States v. Rene Alba Fernandez*, No. 2:08-cv-89 (M.D. Fla. 2008). On December 18, 2008, Petitioner was sentenced to a total of 63 months in prison for all counts. Ex. 4 (2008 Judgment & Sentence). Petitioner was released from federal custody on January 17, 2013. Ex. 5 (BOP Locator Results).

Upon information and belief, on or about May 22, 2013, Petitioner's probation was revoked and the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County sentenced him to prison for a term of 15 years. Ex. 6 (2013 Sentence).

On March 26, 2018, Petitioner was again placed in immigration custody. Composite Ex. 1 at 5. On April 4, 2018, Petitioner was released on an OSUP.⁴ *Id.*

Upon information and belief, on August 13, 2018, the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County entered an Order Finding Petitioner to be a Sexual Predator. Ex. 7 (2018 Order). On November 13, 2018, Petitioner was charged with Trespass of an Occupied Structure or Conveyance. Ex. 8 (2018 Case Docket Sheet). On May 15, 2019, Petitioner was found guilty of the same. Ex. 9 (2019 Judgment). He was sentenced to one year of probation. Ex. 8 at Doc. 36.

On April 5, 2024, Petitioner was charged in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County with numerous criminal

⁴ *Id.*

offenses. Ex. 10 (2023 Docket Sheet). On October 1, 2024, Petitioner was convicted of: (1) one count of Possession of a Firearm by a Convicted Felon; (2) one count of Aggravated Battery (Firearm); and (3) two counts of Aggravated Assault (Deadly Weapon). Composite Ex. 1 at 2-3; Ex. 11 (2024 Judgment). That same day, Petitioner was sentenced to prison for a term of three years. Ex. 12 (2024 Sentence).

On October 14, 2025, ICE ERO encountered Petitioner at the Florida Department of Corrections Apalachee East CI in Sneads, Florida, where he was imprisoned for the aforementioned convictions. Composite Ex. 1 at 2. He was placed in immigration custody that same day⁵ and served with a Notice of Removal, informing him of ICE's intent to remove him to Mexico. *Id.* at 4.⁶ ICE represents that it has since tried to remove Petitioner three times to Cuba and Mexico.

On March 5, 2026, Rene Alba Fernandez filed a petition for writ of habeas corpus alleging his custody violates the Due Process Clause of the Fifth Amendment as interpreted in *Zadvydas*, 533 U.S. 678. Pet. ¶ 13. On March 26, 2026, Petitioner was served with a Notice of Revocation of Release, notifying him that his OSUP issued on April 4, 2018, had been revoked. Ex. 13 at 2-3. ICE revoked Petitioner's OSUP because circumstances have changed such that there is a significant likelihood of

⁵ See *supra* note 1.

⁶ The undersigned recognizes that the Notice of Removal is dated October 26, 2025. The undersigned has asked for clarification about this discrepancy but has not received an answer as of this filing. If the undersigned receives this information before the Court rules, she will supplement this response with the same.

removal in the reasonably foreseeable future. *Id.* at 2 (citing 8 C.F.R. § 241.13(i)). The Notice informed Petitioner that ICE is seeking a travel document to effect his expeditious removal to Mexico. *Id.* at 3. Petitioner was afforded an informal interview that same day. *Id.* at 1 (Alien Informal Interview Statement). Petitioner is currently detained at Florida Soft Side South. Composite Ex. 1 at 5.⁷

CERTIFIED HABEAS RETURN

ICE is detaining Arturo Martinez Gamboa pursuant to 8 U.S.C. § 1231(a)(6). *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.”). Petitioner “has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.” *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001).

MEMORANDUM OF LAW

Petitioner is lawfully detained under the INA and his detention does not violate the Due Process Clause of the Fifth Amendment. Pursuant to the INA, except as otherwise provided and explained below, DHS initially has a 90-day “removal period” to remove Petitioner and is required to detain him during this time. 8 U.S.C. §§ 1231(a)(1)(A) (“[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of

⁷ *See also Online Detainee Locator System*, U.S. Immigr. & Customs Enf’t, <https://locator.ice.gov/odls/#/search> (last accessed Mar. 27, 2026) (enter Petitioner’s A-Number and Cuba as Country of Birth under “Search by A-Number”).

90 day (in this section referred to as the ‘removal period’).”) & (a)(2)(A) (“During the removal period, the Attorney General shall detain the alien.”). Although DHS initially has a 90-day removal period during which an individual with a final removal order must be detained, detention may extend into a “post-removal period.” *Compare* 8 U.S.C. §§ 1231(a)(1)(A) & (a)(2)(A) *with id.* §§ 1231(a)(1)(C) (suspension of removal period in event of certain actions by an alien) & (a)(6) (certain categories of aliens may be detained beyond removal period or released); *see also Zadvydas*, 553 U.S. at 682-83 (referring to 8 U.S.C. § 1231(a)(6) as a “post-removal-period statute”).

The INA does not explicitly define how long ICE can detain an alien subject to the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, due to constitutional concerns, including under the Due Process Clause of the Fifth Amendment, the Supreme Court has interpreted the post-removal period to be limited to “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. 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) (six-month period is inclusive of 90-day removal period).

If the presumptively reasonable six-month 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

701. But before that six-month period expires, a *Zadvydas* habeas challenge is premature. *See, e.g., id.* (the burden-shifting framework applies “[a]fter this 6-month period”) (emphasis added); *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*.”); *Farah v. U.S. Att’y Gen.*, 12 F.4th 1312, 1321 (11th Cir. 2021) (“Under Supreme Court precedent, detention under section 1231(a) is presumptively reasonable for six months, *after which* an alien may challenge his ongoing detention.”) (emphasis added). At bottom, “until the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *Al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026); *see also Texas v. United States*, 523 U.S. 296, 300 (1998) (“A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.”) (cleaned up).

Petitioner was ordered removed on April 7, 1997. Composite Ex. 1 at 2.⁸ It is indisputable that he has been in immigration custody several times since. *Id.* at 5-6. However, as this Court has repeatedly recognized, a blanket rule automatically aggregating all prior periods of Petitioner’s confinement is practically unworkable and effectively penalizes Federal Respondents for their past lawful actions. *See, e.g., Luc Quy Tran v. Warden, Fla. Soft Side South Det. Ctr. et*

⁸ *See supra* note 2.

al., No. 2:25-cv-1224-KCD-NPM, 2026 WL 672969, at *4 (M.D. Fla. Mar. 10, 2026); *Eduardo Diosdado Mendez Arteaga v. Miami Field Office Director et al.*, No. 2:26-cv-449-KCD-DNF, 2026 WL 730312, at *3 (M.D. Fla. Mar. 16, 2026). Indeed, “if every prior day spent in immigration custody simply rolled over into the present calculus, the government’s statutory authority to briefly re-detain a noncitizen to finalize a removal would be severely restricted, if not eliminated entirely.” *Luc Quy Tran*, 2026 WL 672969, at *4. Instead, this Court should, as it has, afford Federal Respondents “a new six-month presumptively reasonable period for each discrete detention, unless there are facts suggesting the government is acting with an improper motive.” *Id.* at *5.

Here, Rene Alba Fernandez filed the present petition before the expiration of the six-month period of his present detention. He was detained on October 14, 2025⁹, and filed the present petition on March 5, 2026. *See* Pet. At that point, Petitioner had been detained for 142 days; to date, he has been in his present detention for 164 days. There are approximately 20 days left of his presumptively reasonable detention, rendering his petition premature and his claims unripe. *See, e.g., Zadvydas*, 533 at 701; *Akinwale*, 287 F.3d at 1052 *Farah v. U.S. Att’y Gen.*, 12 F.4th at 1321; *Al Ellary v. Noem*, 2026 WL 548048, at *1.

Moreover, Federal Respondents aver they are not acting with an improper

⁹ *See supra* note 1.

motive. Rather, because Petitioner is both an inadmissible and criminal alien, Federal Respondents argue they have a legitimate motive to detain him. *See* 8 U.S.C. § 1231(a)(6). ICE represents that they have unsuccessfully tried three times to remove Petitioner to Cuba and Mexico and are actively seeking travel documents to remove Petitioner to Mexico. *See* Ex. 13 (OSUP Revocation). Petitioner's detention history also does not reveal "a calculated pattern of catch-and-release designed merely to reset the *Zadvydas* clock or evade judicial review." *Luc Quy Tran*, 2026 WL 672969, at *5. Rather, nearly 18 years and 7 years, respectively, elapsed between Petitioner's two prior discrete detentions. Composite Ex. 1 at 5-6. Federal Respondents therefore argue the Court should afford them a new six-month presumptively reasonable period for Petitioner's current detention because they have a legitimate, statutory interest in finalizing Petitioner's removal. *Luc Quy Tran*, 2026 WL 672969, at *5.

Ultimately, it is only after Petitioner has been detained for six months, if that occurs, that the parties can engage in *Zadvydas* burden-shifting related to the "significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701; *Al Ellary v. Noem*, 2026 WL 548048, at *2 (denying petition because due process claim under *Zadvydas* was unripe for petitioner detained less than six months); *Texas*, 523 U.S. at 300. Before that time limit runs, his *Zadvydas* habeas challenge should be dismissed. *See Akinwale*, 287 F.3d at 1052.

CONCLUSION

Federal Respondents argue Rene Alba Fernandez's petition should be denied.

DATED this 27th day of March, 2026.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Alexandra N. Karahalios
ALEXANDRA N. KARAHALIOS
Assistant United States Attorney
Florida Bar No. 1055229
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: 813-274-6000
Alexandra.Karahalios@usdoj.gov
Lead Counsel for Federal Respondents