

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

MICHEL HERNANDEZ DELGADO,

Petitioner,

v.

SECRETARY, U.S. DEPARTMENT
OF HOMELAND SECURITY, et al.
(all official capacity),

Respondents.

Case No. 2:26-cv-686-SPC-NPM

A No. 

Cuba

Response to Habeas Petition

Petitioner Michel Hernandez Delgado challenges his detention by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”) following a revocation of his Order of Supervision (“OSUP”). Hernandez Delgado alleges that detention is unreasonably prolonged. The Federal Respondents disagree.

The Court lacks jurisdiction. Apart from that, ICE properly exercised its discretion to revoke Hernandez Delgado’s OSUP—a decision on which the Court is statutorily prohibited from reviewing. And detention during this period is reasonable. So the Court should deny the Petition.

Background

Hernandez Delgado is a citizen and national of Cuba. (Ex. 1 at 8). He entered the United States illegally in 2001. (Ex. 1 at 9). ICE put him in removal proceedings

in 2011. (Ex. 1 at 9). And in 2012, an immigration judge (“IJ”) ordered him removed. (Ex. 1 at 9). In May 2012, ICE placed him on an OSUP.

On November 7, 2025, ICE revoked the OSUP to execute Hernandez Delgado’s removal order. (Ex. 1 at 3-4). It offered an informal interview to contest the revocation and decision to detain. (Ex. 1 at 2). And ICE served Hernandez Delgado with a warrant of removal. (Ex. 1 at 5-6). Then, on January 11, ICE served notice of intent to remove to Mexico. (Ex. 1 at 1).

According to ICE, Hernandez Delgado refused removal to Mexico in mid-February. The US Attorney’s Office has no documentation to support this claim. But the detention history reflecting his transfer to El Paso and Alexandra Staging Facility in mid-February does support that allegation. (Ex. 2).

Hernandez Delgado is detained at Alligator Alcatraz. Today, he has been in ICE custody for 133 days (not including detention time during previous periods). (Ex. 2). This challenge follows.

Certified Habeas Return

The Court has the power to grant writs of habeas corpus where (among other instances) the petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Petitioners bear the burden to prove custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

Hernandez Delgado has a final removal order. At this point, Hernandez Delgado is removable from the United States. The Attorney General (through her

delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(5).

ICE is detaining Hernandez Delgado under 8 U.S.C. § 1231(a)(6) pending his removal. ICE is working towards executing removal.

The period of Hernandez Delgado's detention is still well within the presumptively reasonable limits established in *Zadvydas*. Even if he were able to challenge detention before then, Hernandez Delgado cannot show that there is no SLRRFF.

Discussion

Hernandez Delgado challenges his detention under various theories. These claims fail. As described below, the Court has no jurisdiction. Even if it did, detention has not extended to a length creating constitutional questions; nor did ICE violate any law in proceeding with removal.

A. Lack of Jurisdiction

While Respondents believe the Court lacks jurisdiction, the undersigned realizes it will fail here. Plus, Jurisdiction is a non-waivable matter should Respondents choose to appeal. So for the brief purpose of preservation, Respondents contend 8 U.S.C. § 1252(g), (b)(9) strip jurisdiction. Even if the Court finds jurisdiction, Hernandez Delgado's claims still fail. *See Tran v. Warden*, No. 2:25-cv-1224-KCD-NPM, 2026 WL 672969 (M.D. Fla. Mar. 10, 2026).

B. Constitutionally Lawful Detention

Even if the Court disagrees with the above, it must still deny the writ. Hernandez Delgado cannot make a claim for unlawfully prolonged detention at this

time. Nor can he litigate SLRRFF prematurely.

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). Yet indefinite detention would present obvious constitutional concerns. *Id.* So the Supremes interpret this 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 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, then a burden-shifting framework comes into play regarding SLRRFF. *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).¹ 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) (Steele, J.); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011) (Steele, J.). *See also Lam v. Dir., ICE*, No. 2:25-cv-1202-KCD-DNF, slip op. at 4-5 (M.D. Fla. Mar. 6, 2026) (dismissal of habeas petition as premature, petition only detained for four months “squarely within window in which his detention is presumptively reasonable”).

Hernandez Delgado has only been in detention for 133 days. He was first detained on November 7 and sued on February 19. At that point, Hernandez Delgado had only been detained for 105 days. Either timeline is under the 180-day period that is presumptively reasonable. That is fatal to jurisdiction. *Akinwale*, 287 F.3d at 1051-52.

To contend ICE cannot detain him for the purpose of removal, as Hernandez Delgado does, would effectively eliminate ICE’s ability to ever remove an alien unless it does so within the presumptively reasonable timeframe. *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (Apr. 25, 2012). *Zadvydas* doesn’t sweep that broad. It goes without saying an alien must be detained (or otherwise in custody) to

¹ Some districts disagree. *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Of course, *Akinwale* binds the Court. Even if it didn’t, *Cesar* and any progeny are wrong. *Zadvydas* recognized the presumptive six-month period for the specific “sake of uniform administration in the federal courts.” *Zadvydas*, 533 U.S. at 701. That was not an invitation to make up exceptions to this ripeness doctrine—like *Cesar* did.

effect removal unless the alien leaves voluntarily. Hernandez Delgado has not left voluntarily, and ICE is attempting to remove him. If the Court accepts his position, it is unclear how ICE would be able to remove Hernandez Delgado—which ICE is actively working toward. *But see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody . . . while arrangements were being made for their deportation.”).

As Judge Dudek explained in *Tran*, any concern about a never-ending hamster wheel of redetention to manipulate the *Zadvydas* period is misplaced. 2026 WL 672969, at *3-5. For starters, from a factual matter, that didn’t happen here. ICE apparently never even detained during the statutorily required time after the IJ ordered Hernandez Delgado removed. Now, ICE contends SLRRFF exists, and it is attempting to remove. What’s more, these concerns are addressed by courts crafting equitable tests to define the limits of how to address redetention claims—as Judge Dudek did in *Tran*. *Id.* In the common law way, courts (including likely the Supreme Court) must develop a framework for this judicially created cause of action. And any sort of blanket counting of detention periods, which could span decades, is simply not how *Zadvydas* applies on its face. *Id.* (“Because habeas relief is governed by equitable principles, courts are empowered to look beyond a mere mathematical tally to examine the totality of the circumstances.”).

Because Hernandez Delgado was first detained on November 7, any *Zadvydas*

challenge fails. *E.g.*, *Jiang*, 2009 WL 260378, at *2 (“This presumptively reasonable six month period must have expired at the time of the filing of a petition.”).

ICE recognizes the Court and Judge Steele have held the *Zadvydas* period is coterminous with the statutory removal and post-removal periods—meaning it can run while an alien is outside detention or aggregate periods. *Beltran v. ICE*, No. 2:25-cv-01174-SPC-NPM, 2026 WL 21252 (M.D. Fla. Jan. 5, 2026) (Chappell, J.); *Godinez Perez v. Noem*, No. 2:25-cv-00429-JES-NPM, 2025 WL 2806557, at *2 (M.D. Fla. Oct. 2, 2025) (Steele, J.). Judge Dudek, however, disagrees and correctly holds that the *Zadvydas* period runs from actual detention—not a statutory period that may have expired decades ago. *Khalil al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026); *Lageyre-Ravelo v. ICE*, No. 2:25-cv-1171-KCD-DNF, 2026 WL 575183, at *5-6 (M.D. Fla. Mar. 2, 2026).

Notably, Judge Pratt issued a recent decision adopting ICE’s general interpretation of this question. *Da Wu v. ICE*, No. 3:25-cv-1254-JEP-MCR (M.D. Fla. Feb. 3, 2026). Judge Berger just agreed. *Gonzalez Barrera v. U.S. Att’y General*, No. 3:26-cv-282-WWB-SJH, 2026 WL 472340, at *1-2 (M.D. Fla. Feb. 19, 2026). So too did three Southern District cases—agreeing that this period begins at the start of an alien’s actual detention and begins again when ICE makes a renewed effort to remove after failing long ago. *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025) (holding claim premature and rejecting argument that aggregate prior detentions considered for *Zadvydas* purposes); *Guerra-Castro v. Parra*, No. 1:25-cv-

22487-GAYLES, 2025 WL 1984300 (S.D. Fla. July 17, 2025) (holding claim premature when removal period ended in 2014); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *7-8 (S.D. Fla. July 8, 2025) (same for 2011). Other courts agree. *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) (“The government is entitled to its six-month presumptive period before Petitioner’s continued § 1231(a)(6) [re-]detention poses a constitutional issue.”).

With *Zadvydas*, the “basic question” is “whether the detention in question exceeds a period reasonably necessary to secure removal.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Court “used the words ‘detain’ and ‘custody’ to refer exclusively to physical confinement and restraint.” *Jennings v. Rodriguez*, 583 U.S. 281, 311 (2018). *Zadvydas* protects against unconstitutionally indefinite detention; it did not interpret starting an imaginary detention clock based on statutory periods divorced from physical restraint. Again, to conclude the detention period started with the statutory removal time requires a corresponding finding that ICE has been unconstitutionally detaining Hernandez Delgado since his OSUP release. That is a factual impossibility. Yet it also imposes an impossible burden on ICE—requiring it to justify extended detention if the burden shifts. *See Zadvydas*, 533 U.S. at 701 (“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.”).

Akinwale and other courts recognize that calculating time will often begin when detention is required (i.e., start of the removal period). 8 U.S.C. § 1231(a)(2)(A). But this would only be the case where petitioner challenges detention beginning at that

time. If—as here—petitioner gets detained years later, no reasonable interpretation of *Zadvydas*, *Akinwale*, or any other binding law suggests the six-month period can expire before detention occurs. Many cases on this exact issue hold the period begins with actual detention. *E.g.*, *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) (rejecting claim as premature for petitioner who was not detained during removal period because “it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody”).² Again, *Zadvydas* “exclusively” addressed “physical confinement and restraint.” *Jennings*, 583 U.S. at 311.

Here, Hernandez Delgado is in the “post-removal period” under 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 683. It is “presumptively reasonable” for ICE to detain an individual with that status for a total of six months. *Id.* at 701. To this day, Hernandez Delgado is still within that reasonable detention period.

A dicta footnote in *Akinwale* does not alter this outcome. 287 F.3d at 1053 n.3. In part, *Akinwale* decided whether the action was premature. *Id.* at 1051-52. There was no doubt it was since petitioner filed four months after he was “taken into custody.” *Id.* 1051. In dicta and its related footnote, *Akinwale* stated the six-month term was

² See also *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 n.7 (S.D.N.Y. 2017); *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017); *Rivera v. Hassell*, No. 4:15-01497-WMA-SGC, 2016 WL 4257692, at *3 (N.D. Ala. July 12, 2016), *R&R adopted*, 2016 WL 4257052 (Aug. 10, 2016); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012); *Raia v. Aviles*, No. 11-3374 (WJM), 2011 WL 2710275, at *5 & n.9 (D.N.J. July 6, 2011); *Thelemaque v. Barr*, No. 20-20467-CIV-ALTONAGA/Reid, 2020 WL 13551808, at *2 & n.1 (S.D. Fla. Mar. 30, 2020); *Aionesei-Lupu v. Barr*, No. 1:20-cv-22998-BLOOM, 2020 WL 8679783, at *2 (S.D. Fla. July 23, 2020); *Cruz v. Lumpkin*, No. H-23-2224, 2023 WL 4566252, at *1 n.7 (S.D. Tex. July 17, 2023).

inclusive of the removal period (i.e., six months in total, not six months on top of the ninety-day removal period). ICE does not dispute that. Instead, *Akinwale*'s express holding is relevant: petitioner "must show post-removal order detention in excess of six months." *Id.* at 1052.

There is no way Hernandez Delgado can make that showing. It is undisputed he has not been in physical detention for six months. As explained, the constitutional detention period cannot start running without some form of constraint. This case is unripe because *Zadvydas* does not protect against detention that never existed.

Importantly, that six-month period is a bright-line, irrebuttable presumption of constitutionally acceptable detention. *See Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F.3d at 1052.³ It is only "after" this time that SLRRFF and *Zadvydas* burden-shifting comes into play. *Guzman Chavez*, 594 U.S. at 529 (cleaned up); *see also Jennings*, 583 U.S. at 298-99; *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). After means "following in time or place or subsequently to the time when or later in time." *Intellectual Ventures I LLC v. Ubiquiti, Inc.*, No. 1:23-cv-00865-JCG, 2025 WL 1640270, at *3 (D. Del. June 10, 2025) (cleaned up). The word gets used to "describe a temporal sequence." *Id.*; *see also Arlaine & Gina Rockey, Inc. v. Cordis Corp.*, No. 02-22555-CIV, 2004 WL 5504978, at *42 (S.D. Fla. Jan. 5, 2004) (giving

³ *See also 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); *Chance v. Napolitano*, 453 F. App'x 535, 536 (5th Cir. 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011); *Okpoju v. Ridge*, 115 F. App'x 302, 302 (5th Cir. 2004).

“after” its “ordinary meanings” like “following in time”). Until the Supreme Court recognizes a *Zadvydas* challenge *during* that six-month period, the Court cannot create that cause of action where none exists in derogation of *Akinwale*. See 287 F.3d at 1052 (“This six-month period thus must have expired . . . in order to state a claim under *Zadvydas*.”).

To require detailed justification from ICE before the *Zadvydas* period expires is a significant infringement on separation of powers principles. Essentially, every question related to immigration is “exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). This isn’t a recent development. *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) (“For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government’s political departments.” (cleaned up)). That power, however, is always “subject to important constitutional limitations.” *Zadvydas*, 533 U.S. at 695. “In these cases, we focus upon those limitations.” *Id.*

Other principles of judicial review come into play too. *Id.* at 700. Courts “recognize primary Executive Branch responsibility” in this field. *Id.* They must also “give expert agencies decisionmaking leeway in matters that invoke their expertise.” *Id.* Important here, that includes “Executive Branch primacy in foreign policy matters.” *Id.* These basic separation-of-powers principles “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.” *Id.*

The Executive branch is attempting to remove Hernandez Delgado. He is from Cuba and has criminal convictions. The Executive’s efforts to remove Hernandez Delgado in these circumstances go to the very core of its power to enforce immigration laws. *See United States v. Texas*, 599 U.S. 670, 679 (2023) (“That principle of enforcement discretion over arrests and prosecutions extends to the immigration context, where the Court has stressed that the Executive’s enforcement discretion implicates not only normal domestic law enforcement priorities but also foreign-policy objectives.” (cleaned up)); *Biden v. Texas*, 597 U.S. 785, 805-06 (2022) (“That is no less true in the context of immigration law, where the dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation’s foreign policy.” (cleaned up)). Until Hernandez Delgado’s detention raises a constitutional problem—i.e., after six months—the political branches (namely, the Executive) must be permitted to pursue law enforcement and foreign policy objectives without interference.

To find otherwise would demand the Executive explain its constitutionally acceptable actions for the Judiciary to decide if it concurs based on an individual judge’s interpretation of current world events. Yet in the American system of delegated, separated powers, coequal branches need not justify to one another the determinations made within their legal discretion. That is especially true where—as here—the law largely entrusts the subject to the Executive alone.

What's more, an interpretation allowing a challenge now grants rights based on the statutory definitions of removal and post-removal periods under 8 U.S.C. § 1231. But that statute literally specifies it "shall [not] be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States." *Id.* § 1231(h). The only way to conclude SLRRFF burden-shifting applies now is by first concluding ICE's failure to remove within the statutory period somehow entitles Hernandez Delgado to review. Again, that's atextual.

Even if the Court were to get past the bright-line cutoff, there is no way for Hernandez Delgado to show no SLRRFF exists. *See Zadvydas*, 533 U.S. at 689. At this point, ICE is working toward removal "the reasonably foreseeable future." *See id.* It recently took Hernandez Delgado into detention and is seeking to effect that removal. According to ICE, it already attempted to remove but Hernandez Delgado refused. There are no allegations—much less evidentiary support—to rebut ICE's SLRRFF determination.

As explained, these claims fail. Apart from that, Hernandez Delgado fails to show any regulatory violation.

Conclusion

For those reasons, the Court should deny the Petition. To the extent that the Court grants any relief, the only proper relief would be whatever notice and hearing requirement it believes proper—not outright release.

Date: March 19, 2026

Respectfully submitted,

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