

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

NORDEIS DELGADO RODRIGUEZ,

Petitioner,

v.

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

Respondents.

Case No. 2:26-cv-692-KCD-DNF
A No. 
Cuba

Response to Habeas Petition

Petitioner Nordeis Delgado Rodriguez filed a Habeas Petition. (Doc. 1). It appears he only challenges his final order of removal and seeks release to facilitate that challenge. Simply put, that isn't cognizable habeas relief.

To the extent that the Court makes argument on his behalf, the Federal Respondents recognize that Delgado Rodriguez has been in detention for longer than 180 days. He has not, however, established lack of significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"). So the SLRRFF burden does not shift to U.S. Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE"). That dooms any implied *Zadvydas* claim.

Background

Delgado Rodriguez is a citizen and national of Cuba. (Ex. 1 at 1). He entered the United States in parole in 2004. (Ex. 2 at 2). Delgado Rodriguez picked up several

criminal convictions. (Ex. 2 at 2-3). In 2011, ICE issued a notice to appear (“NTA”) and placed him in removal proceedings. (Ex. 3).

In 2012, an immigration judge (“IJ”) ordered Delgado Rodriguez removed. (Ex. 4 at 1). He waived appeal, so the removal order became final. (Ex. 4 at 1-2). About a month later, ICE released Delgado Rodriguez on an order of supervision (“OSUP”).

On September 10, 2025, Border Patrol encountered him as part of enforcement operations in Miami. (Ex. 1 at 3). He was taken into detention for removal. On November 7, ICE served Delgado Rodriguez with notice of intent to remove to Mexico that he refused to sign. He did, however, claim fear of removal to Mexico.¹

Delgado Rodriguez is detained at Alligator Alcatraz. Today, he has been in ICE custody for 204 days (not including detention time during 2012). 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).

An IJ ordered Delgado Rodriguez removed. After he waived appeal, the

¹ The US Attorney’s Office (“USAO”) currently does not have records to support ICE’s allegations on notice of intent, informal interview, or Delgado Rodriguez resulting fear claim. But ICE requested additional time to provide those to the Court if it is entertaining relief.

removal order became final. At that point, Delgado Rodriguez was 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)(1)(A), (a)(3).

ICE is detaining Delgado Rodriguez under 8 U.S.C. § 1231(a)(6) pending his removal. ICE is working towards executing removal. Delgado Rodriguez failed to show that there is no SLRRFF.

Discussion

Delgado Rodriguez challenges his detention under various theories. These claims fail. As described below, the Court has no jurisdiction. Even if it did, Delgado Rodriguez did not carry his initial burden.

A. Lack of Jurisdiction

Jurisdiction gets argued and rejected in these cases ad nauseum. But if there were ever a jurisdiction-stripping case (and there certainly are), then this is it. Both claims alleged by Delgado Rodriguez are direct challenges to (1) his removal order itself and (2) the past decision to pursue removal proceedings following a DUI. (Doc. 1 at 6). These matters are certainly beyond the Court's jurisdiction.

There is no jurisdiction to review “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” outside a case reviewing the final removal order. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). The zipper clause is “a jurisdictional bar where” petitioner seeks “review of an order of removal [or] the decision to seek removal.” *DHS v. Regents of Univ. of*

Cal., 591 U.S. 1, 19 (2020) (cleaned up).

There is a single path for judicial review of removal orders—“a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). Reading § 1252(a)(5) and (b)(9) together, courts conclude petitioners must funnel all aspects of challenges to removal proceedings through that avenue. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”).

The zipper clause encompasses more than § 1252(g). *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999). Under these provisions, “most claims that even relate to removal” are improper in a district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020). There are limitations on how broadly courts interpret the zipper clause. *E.g.*, *Canal A*, 964 F.3d at 1257. But a claim obviously “arises from a removal proceeding when the parties are challenging removal proceedings.” *Id.* (cleaned up); *see also Regents of Cal.*, 591 U.S. at 19.

Even liberally construed to try to avoid the jurisdictional defect, it still exists. Delgado Rodriguez makes clear he is “challenging the order of removal.” (Doc. 1 at 2). And for relief, Delgado Rodriguez seeks release for a long-belated appeal of the final order and legal advice on how to pursue that case. (Doc. 1 at 7). Two challenges to the final removal order are all that the Petition alleges. (Doc. 1 at 6). Without more,

there is simply no stated claims that are possibly within the Court's jurisdiction.

Since there are no other theories alleged by Delgado Rodriguez, the Court need not continue under *Zadvydas*. After all,

While substituting the correct regulation and forging ahead to address this claim might seem like a win for judicial economy, that would be inappropriate. Efficiency cannot override the strict limits of the judicial role. We are umpires, not backup counsel. *See United States v. Campbell*, 26 F.4th 860, 872 (11th Cir. 2022) ("American courts function in an adversarial system of adjudication whereby we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.").

Gomez-Alcina v. Noem, No. 2:25-cv-1164-KCD-DNF, 2026 WL 607614, at *4 (M.D. Fla. Mar. 4, 2026). The Federal Respondents, however, address this alternative argument in an abundance of caution in the Court sees fit to raise it.

B. No *Zadvydas* Claim Stated

Even if the Court disagrees with the above, it must still deny. Delgado Rodriguez didn't carry the initial burden on a claim of unlawfully prolonged detention.

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. To start, petitioner “must provide evidence of a good reason to believe that there is no” SLRRFF. *E.g.*, *Akinwale*, 287 F.3d at 1052; *Guo Xing Song v. U.S. Attorney General*, 516 F. App’x 894, 899 (11th Cir. 2013). If he can make that showing, then “the government has the burden of rebutting the alien’s claim.” *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009); *see also Zadvydas*, 533 U.S. at 701 (“[O]nce the alien provides good reason to believe that there is no [SLRRFF], the Government must respond with evidence sufficient to rebut that showing.”).

Delgado Rodriguez has been in detention for 204 days. He was first detained on September 10. So his detention has reached the point where he could attempt to raise a *Zadvydas* claim. *E.g.*, *Akinwale*, 287 F.3d at 1051-52; *Banjoko v. Rambosk*, No. 2:26-cv-58-KCD-DNF, 2026 WL 772462, at *3-5 (Mar. 19, 2026).

That said, it’s petitioner’s initial burden to provide “good reason to believe that there is no” SLRRFF. *Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F.3d at 1052. But Delgado Rodriguez has entirely failed to do so. There are no allegations suggesting

past failure to remove impacts current SLRRFF. Nor are there any clear impediments to removal. This is simply an unexplained circumstance of a removable alien that ICE contends it is attempting to remove. Without any showing there is a “good reason to believe” SLRRFF is absent, the burden has not shifted to ICE to establish SLRRFF. *E.g.*, *Hernandez Delgado v. DHS*, No. 2:26-cv-686-SPC-NPM, 2026 WL 804168, at *2 (M.D. Fla. Mar. 24, 2026) (holding complete absence of allegations on removal efforts (past or present) failed to carry initial burden); *Aleman Diaz v. DHS*, No. 2:26-cv-647-SPC-DNF, 2026 WL 787653, at *3 (M.D. Fla. Mar. 20, 2026) (same); *Godinez Perez v. DHS*, No. 2:25-cv-00429-JES-NPM, 2025 WL 2806557, at *3 (M.D. Fla. Oct. 2, 2025) (holding conclusory allegations insufficient to meet SLRRFF).

To the extent that that Court raises reasons on Delgado Rodriguez’s behalf, the most obvious would fail without more. Specifically, he is Cuban. While petitioners often claim repatriation to Cuba is not foreseeable, removals to Cuba are currently happening. At the top of the undersigned’s mind is one petitioner who was just removed (albeit improperly) to Cuba. *Otero Novoa v. DHS*, No. 2:26-cv-753, Doc. 5 at 2 (M.D. Fla. Mar. 25, 2026). So direct removals from the United States to Cuba are now occurring. And since Delgado Rodriguez does not have a withholding to his home country, there is nothing apparent that prevents his repatriation.

Even if the burden shifted, ICE claims it is working toward removal in the reasonably foreseeable future. And ICE apparently served Delgado Rodriguez with notice of intent to remove to Mexico. There are no reasons alleged—much less evidentiary support—to rebut ICE’s SLRRFF allegations.

The USAO is still cognizant that Delgado Rodriguez is pro se. Crucially, the period of detention now exceeds the presumptively reasonable period by just twenty-four days—which is not approaching an unconstitutionally indefinite period. *Zadvydas* review is inversely related to the time spent in detention. 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.”). Twenty-four days beyond the presumptively *Zadvydas* period is not indefinite enough to begin acting as counsel for Delgado Rodriguez. Instead, the proper result would be to explain the defects, deny habeas without prejudice, and allow Delgado Rodriguez to refile a new habeas if he believes that he can get relief on a *Zadvydas* theory. *Hernandez Delgado*, 2026 WL 804168, at *2; *Aleman Diaz*, 2026 WL 787653, at *3.

As explained, any implied *Zadvydas* claim would fail on the current record.

Conclusion

For those reasons, the Court should deny the Petition.

Certificate of Service

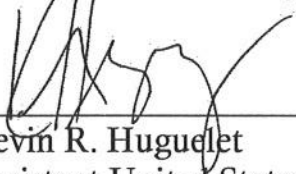
I certify that a copy of this Response and Exhibits will be sent tomorrow by regular US Mail to the following:

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Date: April 1, 2026

Respectfully submitted,

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