

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

DENIS FERNANDEZ-GUERRA,
Petitioner,

v.

Case No. 2:26-cv-722-KCD-DNF

I.C.E.,
Respondent.

Response to Habeas Petition

Petitioner Denis Fernandez-Guerra¹ filed this pro se habeas Petition, which seeks to argue that he is entitled to bond under 8 U.S.C. § 1226, that his detention violates the Due Process clause of the 5th Amendment to the U.S. Constitution, that he should be released due to his health problems, and that he should be released because he lost his property and his job. *See* Dkt. 1 at ECF pg. 6.

To the extent that Petitioner argues, or the Court concludes he is arguing, an unconstitutionally lengthy detention, the Federal Respondent recognizes that Petitioner has been detained for longer than 180 days. They nevertheless contend he has not established lack of significant likelihood of removal in the reasonably foreseeable future (“SLRRFF”), and thus the SLRRFF burden does not shift to the Respondent, precluding any *Zadvydas* claim.

Background

¹ Some documents identify Petitioner as Denis Fernandez-Guerro, *see, e.g.*, Ex. D., and some identify him as Denis Fernandez-Guerra. *See, e.g.*, Ex. E. Both Guerro and Guerra – as well as other variations of that name – are among his known aliases. *See* Ex. G at 2.

Petitioner is a 59 year-old male, native and citizen of Cuba. *See* Ex. A. at 1. The Respondent does not know when and where he last entered the United States. He was first encountered by Border Patrol in Miami in 1993. *See id.* at 2. Various proceedings followed, notably the 1996 denial of his application to adjust his status. *See id.* In June 2002 he was encountered in Florida State Prison² and issued an NTA whereafter, on October 28, 2002, he was ordered removed to Cuba. *See id.* He was detained for 101 days and released on an Order of Supervision (OSUP) on October 30, 2003. *See* Ex. B.

In May 2018, Petitioner was convicted on federal charges of conspiracy to buy or receive goods from an interstate or foreign shipment and was sentenced to 21 months of imprisonment. *See* Ex. C.

In March 2024, Petitioner was convicted on State charges of Grand Theft of cargo, *see* Ex. D, and State charges of Aggravated Battery with a Deadly Weapon, *see* Ex. E, for which he was sentenced (concurrently) to 34 months incarceration (time served) followed by five years of probation. *See* Ex. F; *see also* Ex. G (Fla DOC history, showing only the probation).

While incarcerated on those State charges, ICE encountered and detained Petitioner. *See* Ex. A. ICE advises Petitioner was served with an immigration detainer and warrant of removal in September 2025 and a third country removal notice indicating intent to remove him to Mexico. *See* Composite Ex. H. Petitioner has

² It is not clear on what charges he was then imprisoned, as his Florida Department of Corrections history does not show a detention during that time period. *See* Ex. G.

presently been in ICE detention since September 16, 2025, *see* Ex. B, which is 199 days as of the date (April 3, 2026) of this Response. Petitioner is currently detained at Florida Soft-Sided Facility South. *See id.*; *see also* Ex. I.

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 Petitioner removed and, though no copy can presently be located, that Order appears to have become final. (Petitioner certainly does not assert it has not become final.) Petitioner is thus 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 Petitioner under 8 U.S.C. § 1231(a)(6) pending his removal. ICE is working towards executing removal. Petitioner has failed to show that there is no SLRRFF.

Discussion

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

A. CHALLENGE TO OSUP REVOCATION

Petitioner’s pro se Petition is hard to parse. Nevertheless, based on his request

for “reinstatement of immigration parole,” Dkt. 1 at ECF pg. 7, he appears to challenge the revocation of his supervised release. However, to the extent he brings such a challenge, he offers no supporting facts, rendering it difficult for Respondent to respond. The Petition should be dismissed without prejudice on such grounds, leaving Petitioner the opportunity to file later with more specificity, should he choose.

B. No *Zadvydas* Claim Stated

The Petition more clearly challenges the length of Petitioner’s detention and appears to assert there is no SLRRFF based on the fact that he “has been detained for over 5 months and has been to the border 3 times and been rejected by Mexico.” See Dkt. 1 at ECF pg. 6 (Ground One). However, it is not clear whether Petitioner asserts he has been to the Mexican border three times and been rejected by Mexico once, or if he has been to the Mexican border three times and been rejected by Mexico three times. As far as the Respondent is aware, Petitioner has only been denied entry to Mexico once, on January 30, 2026, due to his medical issues. See Ex. J at ¶ 13 (SLRRFF declaration). In any event, whether he has been presented to Mexico and denied entry one or three times, he has not carried his burden on SLRRFF.

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 Supreme Court has 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 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.”).

Petitioner was most recently detained on September 15 and thus has been in detention for 199 days. *See* Ex. B. 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 is 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 he has failed to do so. There are no allegations suggesting any past failure(s) 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 Respondent asserts that 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). Nevertheless, the Respondent asserts that the attached declaration shows diligent attempts that would counter the burden, if it has been shifted. *See* Ex. J.

While not expressly raised by Petitioner, one possibly basis (his Cuban citizenship) fails without more. While some Cuban petitioners have claimed repatriation to Cuba is not foreseeable, there has been at least one such petitioner recently 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 appear possible. And since Petitioner is not known to have a withholding to his

home country, there is nothing apparent that prevents his repatriation.

Even if the burden shifted, ICE asserts it is working toward removal in the reasonably foreseeable future, as evidenced by his renomination for third-country removal, as set forth in the SLRFF declaration. *See* Ex. J at ¶ 14. Petitioner has thus not carried his burden—much less offered evidentiary support—to rebut ICE’s SLRFF allegations.

The Respondent of course acknowledges that Petitioner is pro se and that the period of detention now exceeds the presumptively reasonable period by 19 days, but they assert that is not 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.”). The Respondent asserts that 19 days beyond the presumptive *Zadvydas* period is not indefinite enough to merit immediate release. Rather Respondent asserts that at most the Court should deny the Petition without prejudice to Petitioner filing a new habeas Petition to further pursue a *Zadvydas* theory, should he wish. *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

WHEREFORE, the Federal Respondent asserts the Court should deny the Petition.

Respectfully submitted,

April 3, 2026

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CERTIFICATE OF FILING

I hereby certify that, on the date set forth above, 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 I caused a copy of the foregoing documents and any exhibits referenced therein to be mailed to Petitioner via first class mail.

s/ Charles T. Harden III

Charles T. Harden III

Assistant United States Attorney