

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JORGE HERNANDEZ MENENDEZ,

Petitioner,

Case No. 2:26-cv-754-SPC-NPM

v.

GARRET RIPA, et al.,

Respondents.

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Jorge Hernandez Menendez seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody. Hernandez Menendez argues that the length of his detention is unlawful, ICE did not follow its regulations when revoking his order of supervision, and any removal to a third country would be unlawful. Hernandez Menendez's petition should be denied. In *Zadvydas v. Davis*, the Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678 (2001). Hernandez Menendez had been detained for 132 days when he filed the present petition, and he has failed to cooperate with removal efforts. ICE has also afforded Hernandez Menendez proper notice of his revocation and an informal interview. Finally,

Hernandez Menendez's arguments regarding third country are not properly before the Court. Hernandez Menendez's detention is therefore lawful.

BACKGROUND

Hernandez Menendez¹ is a national and citizen of Cuba who was paroled into the United States on or about August 29, 1992. (Composite Exhibit, Ex. 1 at 1-2.) He was ordered removed from the United States on November 2, 2015. *Id.* at 2. Hernandez Menendez was placed on an order of supervision on November 5, 2015. (Doc. 1-1 at 5.) Hernandez Menendez was placed in immigration custody on or about November 4, 2025. (Composite Exhibit, Ex. 1 at 1, 10.)

On February 13, 2026, Hernandez Menendez was served with a notice of revocation of release. *Id.* at 6. The notice provides that Hernandez Menendez's release has been revoked pursuant to 8 C.F.R. § 241.13(i). *Id.* at 5-6. It further indicates that circumstances have changed such that there is a significant likelihood of removal in the reasonably foreseeable future, and Hernandez Menendez's case is under review for removal to an alternate country. *Id.* Hernandez Menendez was provided an informal interview the same day in which he was provided an opportunity to respond to the reasons for revocation. *Id.* at 7. On February 27, 2026, Hernandez Menendez was served with a notice of removal that ICE intends to remove him to Mexico. *Id.* at 4.

¹ The Petitioner's name is alternatively spelled "Hernandez Mendez" in ICE's records. *See generally* Composite Exhibit, Ex. 1.

According to a March 23, 2026, notice of failure to comply pursuant to 8 C.F.R. § 241.4(g), on February 18, 2026, Hernandez Menendez was given 30 days to comply with his obligation to assist in obtaining a travel document. *Id.* at 8. The notice informs Hernandez Menendez that he has failed to comply with his obligation and is acting to prevent his removal from the United States. *Id.* His removal period was therefore extended. *Id.* The notice provides, “As you are still within the removal period, you are to remain in ICE custody until you demonstrate that you are making reasonable efforts to comply with the order of removal, and that you are cooperating with ICE's efforts to remove you.” *Id.*

Hernandez Menendez has filed a petition for writ of habeas corpus alleging that his custody violates regulations regarding revocation of an order of supervision, the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment. (Doc. 1.)

He is currently detained at Krome North Service Process Center.

ARGUMENT

I. Hernandez Menendez’s detention does not violate the Fifth Amendment’s Due Process Clause.

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). 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.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale*, 287 F.3d at 1052 (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 the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 689. If an alien “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must either rebut that showing or release the alien. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *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). At bottom, “[U]ntil the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not

ripe.” *E.g., Khalil Al Ellary*, 2:26-cv-00112-KCD-DNF, Doc. 7 (M.D. Fla. Feb. 27, 2026); *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011).

Hernandez Menendez filed the present petition well before expiration of six months in detention. He was detained on November 4, 2025, and filed the present petition on March 16, 2025. At that point, Hernandez Menendez been detained for 132 days; to date, he has been in detention for 141 days.

As previously stated, it is only after six months that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” *See Jennings*, 583 U.S. at 299 (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”); *Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF (M.D. Fla. Feb. 27, 2026) (denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal.² *See Akinwale*, 287 F.3d at 1051-52. *See Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “require courts to listen with care when the Government’s foreign policy judgments, including, for

² Respondents acknowledge this Court has previously disagreed. *See Chumachenko v. Noem*, 2:26-cv-00344-SPC-NPM, Doc. 6 (M.D. Fla. Feb. 27, 2026).

example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise”).

Moreover, when ICE executes a removal order, an alien must comply and assist. Failure to do so results in detention and tolling any *Zadvydas* time. 8 U.S.C. § 1231(a)(1)(C). “*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal.” *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003). “The reason is self-evident: the detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock.” *Id.* In sum, a *Zadvydas* claim fails if petitioner holds the “keys to his freedom in his pocket and could likely effectuate his removal by providing the information requested by” ICE. *Id.* (cleaned up).

The Eleventh Circuit recognizes these commonsense principles. *Singh v. U.S. Att’y General*, 945 F.3d 1310, 1314 (11th Cir. 2019). Specifically, it reads the plain language of § 1231(a)(1)(C) for what it says—extending the detention period if the alien “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure.” *Id.* (citation omitted). If an alien withheld travel documents needed for removal in bad faith, detention continues. *Id.*

Here, agency records show Hernandez Menendez was given 30 days to comply with his obligation to assist in obtaining a travel document. (Composite Exhibit, Ex. 1 at 8.) The notice further informs Hernandez Menendez that he has failed to comply

with his obligation and is acting to prevent his removal from the United States. *Id.* Therefore, Hernandez Menendez's removal period was extended. *Id.* As explained, the *Zadvydas* period is on hold until Hernandez Menendez complies with ICE's requests to secure travel documentation for his removal.³

II. Hernandez Menendez cannot bring a procedural challenge to third party removal in this Court.

To the extent Hernandez Menendez argues this case presents a violation of his Due Process rights to challenge a specific third country removal effort, he cannot do so before this Court. Believing that the government's efforts to remove aliens with final orders of removal to third countries are unlawful, four aliens commenced a lawsuit in the District Court for the District of Massachusetts in March 2025 and sought class certification. *See D.V.D. et al., v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-10676, Doc. 1 (D. Mass.) The *D.V.D.* plaintiffs challenge the government's procedures for conducting third country removals under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551, *et seq.*, the Fifth Amendment Due Process Clause, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the INA. *Id.* ¶¶ 99-138. Their requested relief includes "declar[ing] and "set[ting] aside Defendants' current policy of failing to provide Plaintiffs and class members with written notice and a meaningful

³ *But see Vega Hernandez v. U.S. Immigration & Customs Enforcement*, No. 3:26-CV-8-MMH-MCR, 2026 WL 776166, at *3 (M.D. Fla. Mar. 19, 2026) (finding *Zadvydas* violation when the petition has previously been provided with a Notice of Failure to Comply pursuant to 8 C.F.R. § 241.4(g)).

opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country.” *Id.* ¶¶ a-o. The District of Massachusetts certified a Rule 23(b)(2) non-opt-out class and entered a nationwide preliminary injunction establishing certain procedures that DHS must follow before removing an alien with a final order of removal to a third country. *See D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 365 (D. Mass. 2025). The class is defined as

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. at 378. On May 21, 2025, the *D.V.D.* court issued a memorandum order clarifying that its preliminary injunction required the government to provide extra-statutory remedies including that all third-country removals be preceded by written notice to the alien and alien’s counsel along with a meaningful opportunity to raise a fear-based claim for protection from removal. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 1:25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). The *D.V.D.* court stated that its order applied “to the Defendants, including the Department of Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction.” *Id.* On June 23, 2025, the Supreme Court stayed the district court’s preliminary injunction pending appeal, both as to the class and the named plaintiffs.

Dep't of Homeland Sec. v. D.V.D., 145 S. Ct. 2153 (Mem.) (2025). Nevertheless, that same day, the *D.V.D.* court ordered that its May 21, 2025, order remain in effect. No. 1:25-cv-10676, Doc. 176, Electronic Order Entered (June 23, 2025). The government returned to the Supreme Court for clarification. On July 3, 2025, the Supreme Court granted the government's motion and clarified that the *D.V.D.* court's May 21, 2025, order is no longer in force. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2629 (2025). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See D.V.D.*, 145 S. Ct. at 2629 (explaining that the Court's July 23, 2025 order "stayed the preliminary injunction").

On February 25, 2026, the *D.V.D.* district court dissolved its preliminary injunction and entered a declaratory judgment that "class members have the right to meaningful notice before removal to any third country" and "to a meaningful opportunity to raise a country-specific claim against removal before removal to any third country." *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2026 WL 521557, at *44 (D. Mass.). The court stayed its judgment until March 12, 2026, "or until the First Circuit Court of Appeals rules on any motion for an administrative stay or stay pending appeal, whichever occurs first." *Id.* On March 16, 2026, the First Circuit granted the government's emergency motion for stay pending appeal. *D.V.D.*, No. 26-1212, Order of Court (1st Cir.).

Generally, parties are limited to one bite at the apple, a principle the Eleventh Circuit recognizes in its claim-splitting jurisprudence. *See Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 841 (11th Cir. 2017). To determine whether a claim has been improperly split, courts look at two factors: whether the same parties are involved and whether separate cases arise from the same transaction. *Vanover*, 857 F.3d at 841-42. Borrowing from res judicata principles, the Eleventh Circuit has determined that “[s]uccessive causes of action arise from the same transaction or series of transactions when the two actions are based on the same nucleus of operative facts” but importantly, the question is not whether judgment is final, but rather whether—assuming that it was—the first suit would preclude the second. *Id.* at 841-42; *see also Klayman v. Porter*, No. 22-13025, 2023 WL 2261814, at *3 (11th Cir. Feb. 28, 2023). Critically, for classes under Rule 23(b)(2)—the type of class certified in *D.V.D.*, *see D.V.D.*, 778 F. Supp. 3d at 385—there is no notice to class members required to bar them from later seeking injunctive relief. *See Wal-Mart Stores, Inc.*, 564 U.S. at 362 (“[Rule 23(b)] provides no opportunity for (b)(1) or (b)(2) class members to opt out.”)

Hernandez Menendez appears to be a *D.V.D.* class member as he (1) has a final removal order and (2) is an individual who DHS will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed. *See D.V.D.*, 778 F. Supp. 3d at 378.

Hernandez Menendez therefore raises the same claims and legal theories currently being litigated on his behalf. *Compare* Petition, Doc. 1 ¶ 77 (“The INA, FARRA, and the implementing regulations do not permit Respondents to remove Petitioner to a third country while depriving him of *meaningful* notice and a *meaningful* opportunity to present fear-based objections.”) (emphasis in original), *with D.V.D.*, 778 F. Supp. 3d at 369 (“Plaintiffs challenge Defendants’ policy or practice of failing to provide notice and an opportunity to be heard prior to removal to a country that was not designated in their removal orders”). Because Hernandez Menendez’s Fifth Amendment claims challenging third country removal overlap with those at issue before the Massachusetts court in *D.V.D.*, a grant of relief would be improper as any grant of relief to Hernandez Menendez individually here may conflict with the eventual relief, if any, provided to the *D.V.D.* class. *Cf. Qasemi v. Kurzdorfer*, No. 25-cv-668-FPG, 2025 WL 2938607, *6 (W.D.N.Y. Oct. 16, 2025) (“Although Petitioner is no longer subject to preliminary injunctive relief in the *D.V.D.* case, he remains a class member whose equitable claims are presently being litigated in that forum. It would be inappropriate for the Court to inject itself into that ongoing litigation.”).

Finally, even this Court were to concluded Hernandez Menendez is not a member of the *D.V.D.* class, district courts are stripped of jurisdiction to restrain or prevent execution of a removal order. 8 U.S.C. § 1252(g). Here, Hernandez Menendez candidly asks this Court to “[t]emporarily restrain and preliminarily and permanently enjoin Respondents from removing Petitioner to Mexico or any other

third country unless and until Respondents comply with all applicable statutory, regulatory, and constitutional requirements” (Doc. 1 at 24-25.) As Judge Dudek recently observed, districts courts lack the power to block a petitioner’s request for a preemptive injunction to block removal to third country. *Tran v. Warden*, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at *10 (M.D. Fla. Mar. 10, 2026). In sum, § 1252(g) strips this Court of jurisdiction to restrain Hernandez Menendez’s removal to a third country.

III. ICE has complied with its regulations regarding revocation of an order of supervision.

ICE complied with its regulations in revoking Hernandez Menendez’s order of supervision under 8 C.F.R. § 241.13(i). Title 8 C.F.R. § 241.13(i)(3) provides,

Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Here, agency records show that on February 13, 2026, Hernandez Menendez was provided a notice of revocation of release informing him ICE determined there is a significant likelihood of removal in reasonably foreseeable future. (Composite Exhibit, Ex. 1 at 5-6.) The same day, Hernandez Menendez was provided an

informal interview and opportunity to respond to the reasons for revocation of his order of supervision. *Id.* at 7. Even if there was a delay in providing Hernandez Menendez notice of revocation and an informal interview, any delay does not mandate release now that he has received procedures set forth in § 241.13(i)(3). *See Tran v. Warden*, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at *10 (M.D. Fla. Mar. 10, 2026) (“Even if the agency’s initial administrative process was somehow lacking, [the petitioner] can hardly complain that he is being denied a meaningful opportunity to be heard *now*.”) Hernandez Menendez’s present detention is therefore lawful.

CONCLUSION

Respondents respectfully request Hernandez Menendez’s petition be denied.

DATED this 25th day of March, 2026.

Respectfully submitted,

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