

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SADIEL VISET-KINET,

Petitioner,

v.

Case No. 2:26-cv-00820-JES-NPM

SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY; PAMELA
BONDI, ATTORNEY GENERAL OF
THE U.S.; TODD M. LYONS, ACTING
DIRECTOR U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; GARRETT
RIPA, ICE ERO MIAMI FIELD OFFICE
DIRECTOR; WARDEN, FLORIDA SOFT
SIDE SOUTH DETENTION CENTER,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Sadiel Viset-Kinet 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. His 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). As of the date of this Response, Petitioner has presently been detained for 89 days; his present detention is therefore lawful.

BACKGROUND

Petitioner is a national and citizen of Cuba whom Border Patrol encountered in the Rio Grande Valley, on or about March 9, 2021. *See* Ex. A. The petitioner was not admitted or paroled after inspection by an Immigration Officer and was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. *See id.* at 2-3. As Petitioner had unlawfully entered the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States, and the petitioner was apprehended within fourteen (14) days of the petitioner's last entry into the United States within one hundred (100) air miles from the United States/Mexico boarder the petitioner was processed for expedited removal. *See id.* at 3. On March 9, 2021, Petitioner was served a Notice and Order of Expedited Removal. *See* Ex. B.

During the interview process, for expedited removal, the petitioner claimed fear. The case was referred to USCIS to determine if there was credible fear of return to the petitioner's country of origin. On March 25, 2021, USCIS determined the petitioner did not have a credible fear, and the petitioner requested an Immigration Court review USCIS' determination. *See* Ex. C. On April 1, 2021, an Immigration Judge determined the petitioner's fear was not

credible and that the petitioner could be removed from the United States. *See* Ex. D. ICE advises that the Order of Expedited Removal then became final. Petitioner was detained from March 10, 2021, until April 12, 2021. On April 8, 2021, the petitioner was placed on Order of Supervision. *See* Ex. E.

On March 20, 2025, US Immigration and Customs Enforcement issued Petitioner an Interim Notice Authorizing Parole. *See* Ex. F. On January 11, 2026, ICE detained Petitioner to effect the removal order. *See* Ex. G; *see also* Ex. H. (Warrant of Removal; Notice). That same date, ICE served Petitioner with a Notice of Revocation of Release, *see* Ex. I at 1-2, and on February 2, 2026, served Petitioner with a Notice of Removal to Mexico. *See* Ex. I at 3.

Petitioner filed an Emergency Motion for Stay of Removal, which the Eleventh Circuit denied by Order of March 6, 2026. *See* Ex. J. Petitioner had a pending form I-485 Application to Register Permanent Residence or Adjust Status, which are decided by U.S. Citizenship and Immigration Services (USCIS). On April 8, 2026, USCIS denied Petitioner's I-485. *See* Ex. K.

The Petitioner is currently being detained at Florida Soft-Sided Facility – South, *see* Ex. L, and, as of the date of this Response (April 10, 2026) has currently been in custody 89 days.

Petitioner has filed this Petition for a writ of habeas corpus alleging, among other things, that his custody violates the Immigration and Nationality

Act, that his removal is not reasonably foreseeable, the Due Process Clause of the Fifth Amendment, *see generally* Dkt. 1, as well as other claims addressed in Part II. below.

ARGUMENT

I. **Petitioner’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. 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).

Petitioner filed the present petition before expiration of six months in detention. He was detained on January 11, 2026, and as of the date of this Response he has presently been in detention for 89 days. *But see, e.g., De Armas v. Warden*, Case No. 2:26-cv-489-SPC-DNF, at *5 (M.D. Fla. Mar. 10, 2026) (holding prior and current periods of detention should be aggregated in calculating six-month *Zadvydas* period). As noted, ICE has

served Petitioner with a Notice of Removal to Mexico. *See* Ex. I at 3.

It is only after that period expires that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” *See Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (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.¹ *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 example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise”).

II. Claims Against USCIS are Moot and, in any event, there is no Jurisdiction to Consider Same

While Petitioner does not expressly name USCIS as a Respondent, his Petition clearly includes claims against USCIS for alleged unlawful

¹ 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).

withholding and unreasonable delay in processing his I-485. *See* Dkt. 1 at ECF pgs. 16-17, ¶ 42. However, with the denial of his I-485, *see* Ex. K, that claim is moot.

Notwithstanding that mootness -- as argued in this matter when it was pending in the Southern District of Florida before transfer to this District, *see* Case No. 0:26-cv-60340-EA, where Petitioner asserted the same claims regarding USCIS and his I-485 -- the Eleventh Circuit has made clear that no subject matter jurisdiction exists under the APA for challenges to USCIS delays in adjudicating form I-485 adjustment of status applications.

“Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted); *see also Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999) (“A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises.”). For these reasons, before this Court can proceed, it must determine whether it has jurisdiction over this action. *See Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1323 (11th Cir. 2012) (“Prior to making an adjudication on the merits, we must assure ourselves that we have jurisdiction to hear the case before us.”).

In Count One, Petitioner brings a claim under the Administrative

Procedure Act (APA) alleging that USCIS has “unlawfully withheld” and “unreasonably delayed” action on his pending Form I-485. *See* Dkt. 1 at ECF pgs. 16-17, ¶¶ 42-45. He seeks injunctive and declaratory relief in the form of an order compelling USCIS to adjudicate his application for permanent residence within a reasonable time frame. *Id.*

As a preliminary matter, on December 2, 2025, USCIS issued Policy Memorandum PM-602-0192, Hold and Review of all Pending Asylum Applications and all USCIS Benefit Applications Filed by Aliens from High-Risk Countries (“December 2, 2025 Policy Memorandum”), which, in relevant part, placed a hold on pending benefit requests for aliens from countries listed in Presidential Proclamation 10949, Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and other National Security and Public Safety Threats.

The December 2, 2025 Policy Memorandum applies to this case, as the Petitioner is a citizen and national of Cuba, one of the 19 countries listed in Presidential Proclamation 10949. This Policy Memorandum mandates “that all aliens meeting these criteria go through a thorough re-review process, including a potential interview and, if necessary, a re-interview, to fully assess all national security and public safety threats along with any other related grounds of inadmissibility or ineligibility. An individualized,

case-by-case review and assessment will be done of all relevant information and facts.” This December 2, 2025 Policy Memorandum states that USCIS will issue operational guidance within 90 days of issuance of the memorandum.

Additionally, on January 1, 2026, USCIS issued Policy Memorandum PM-602-0194, “Hold and Review of USCIS Benefit Applications Filed by Aliens from Additional High-Risk Countries.” (“January 1, 2026 Policy Memorandum”), which, in relevant part, placed a hold on all pending benefit requests for aliens from countries listed in Presidential Proclamation 10998, Restricting and Limiting the Entry of Foreign Nationals To Protect The Security of the United States. *See* Exhibit D, *January 1, 2026 Policy Memorandum*. The January 1, 2026 Policy Memorandum also applies to this case, as Petitioner is a citizen and national of Cuba, one of the 39 countries listed in Presidential Proclamation 10998. This January 1, 2026 Policy Memorandum did not supersede the guidance in the December 2, 2025 Memorandum, except as specified under the “Exceptions to the Adjudication Hold.” Of note, the Petitioner’s Form I-485 does not fit within any of the listed exceptions to the adjudication hold set out in the January 1, 2026 Policy Memorandum. This January 1, 2026 Policy Memorandum also states that USCIS will issue operational guidance

within 90 days of issuance of the memorandum.

The APA bars judicial review over the Petitioner's Form I-485 because both the USCIS pace of adjudication over the Form I-485 and the USCIS policy to place the Petitioner's Form I-485 on hold are committed to the agency's discretion. Judicial review is not available under the APA when "(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." 5 U.S.C. § 701(a). An agency's action is committed to its discretion and not reviewable by the APA when there is "no meaningful standard against which to judge the agency's exercise of discretion." *See Heckler v. Chaney*, 470 U.S. 821, 830 (1985).

The decision to grant or deny an application for adjustment of status under the CAA is discretionary. The CAA provides in pertinent part as follows:

That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, *may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe*, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

Cuban Adjustment Act, Pub. L. No. 89-732, 801 Stat. 1161 (codified as a historical note to 8 U.S.C. § 1255) (emphasis added).

The Eleventh Circuit has found that the APA does not provide the district court with jurisdiction to review USCIS's discretionary denial of an application for adjustment of status under the CAA. *See Garriga v. Hackbarth*, 548 Fed.Appx. 559 (11th Cir. 2013). *See also Mesa Martinez v. Noem*, Case No. 1:25-cv-23758, 2026 WL 472311 (S.D. Fla. 2026) (finding that the court lacked jurisdiction under the APA to review USCIS's discretionary denial of plaintiff's application for adjustment of status under the CAA).

Similarly, USCIS's pace in adjudicating a Form I-485 under the CAA is discretionary. To establish a court's jurisdiction over an APA claim, the Petitioner must demonstrate that there exists some action that USCIS must take within a required time frame. *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004). When there is no statutory or regulatory provision governing the pace of adjudication for a USCIS application, there is no identifiable standard against which the court can determine whether the agency "unlawfully withheld or unreasonably delayed" an adjudication and thus lacks jurisdiction to review a claim under the APA. *See generally Alfassi v. Garland*, 614 F.Supp.3d 1252, (S.D. Fla 2022); *Yilmaz v. Mukasey*, Case No. 08-21242, 2008 WL 11417739 (S.D. Fla. 2008); *Abdouch v. Mayorkas*, Case No. 3:24-cv-310, 2024 WL 5158772 (M.D. Fla. 2024).

There is no statute or regulation that provides a timeframe for

completion of the adjudication process for a Form I-485 filed under the CAA. As a result, there is no “meaningful standard” to judge how long USCIS should take to adjudicate the Petitioner’s Form I-485. *See Heckler*, 470 U.S. at 830. The Petitioner cannot point to an action that USCIS must take within a legally required time in regard to his Form I-485. As a result, this court lacks jurisdiction to compel USCIS to adjudicate the Petitioner’s Form I-485 under the APA.

Moreover, this Court also lacks jurisdiction to review Count I of the Petition because the USCIS policy to place the Petitioner’s Form I-485 on hold is committed to the agency’s discretion and therefore precluded from review under the APA. There is no judicially manageable standards for the Court to apply to determine a remedy in this case. The policy to hold certain cases, including the Petitioner’s Form I-485, for vetting, is committed to agency discretion. The national security considerations impacting the USCIS policy to hold certain cases for further review are within the agency’s discretion to manage its caseload while protecting the nation. *See also Ass’n of Businesses Advocating Tariff Equity v. Hanzlik*, 779 F.2d 697, 701 (D.C. Cir. 1985) (noting that “agencies are empowered to order their own proceedings and control their own dockets.”); *Nader v. F.C.C.*, 520 F.2d 182, 195 (D.C. Cir.1975) (agencies possess discretion to “control the disposition of their

caseload.”). As a result, the APA bars judicial review over the USCIS policy to hold the Petitioner’s Form I-485.

CONCLUSION

Wherefore, the Federal Respondents respectfully request that Petitioner’s Petition be denied.

Respectfully submitted,

April 10, 2026

GREGORY W. KEHOE
United States Attorney

By: s/ Charles T. Harden III
Charles T. Harden III
Assistant United States Attorney
FBN: 97934
400 North Tampa Street, Suite 3200
Tampa, FL 33602
Phone: 813-274-6096
Fax: 813-274-6200
E-Mail: Charles.Harden@usdoj.gov

CERTIFICATE OF FILING

I hereby certify that, on the date set forth above, I filed the foregoing document and any exhibits referenced therein using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/ Charles T. Harden III
Charles T. Harden III
Assistant United States Attorney