

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

YANICHER MORALES CUNILL

Petitioner,

Case No. 2:26-cv-00825-KCD-DNF

v.

WARDEN

Respondent.

_____ /

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Yanicher Morales Cunill [Cunill] 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). So, the Court should deny the Petition

FACTS

Cunill is 31-year-old native and citizen of Cuba. Ex. 1, I-213. On June 26, 2016, the petitioner entered the United States without inspection. *Id.* A notice to appear was issued and the Respondents later filed additional charges of inadmissibility / deportability (Ex. 2, Additional Charges, dated October 10, 2018).

In August 2018, petitioner was encountered while incarcerated in Miami-Dade County for drug charges. Ex. 1, at 3. Petitioner was then detained by ICE pending removal proceedings. *Id.*

On December 18, 2018, the petitioner was ordered removed from the United States. Ex. 3, Removal Order. The petitioner waived appeal, making the removal order a final order. *Id.* On January 11, 2019, petitioner was released on a OSUP.

On July 6, 2025, petitioner was encountered again while incarcerated in Miami-Dade County for firearms and narcotics charges (it appears the state no filed the firearm charge) and an immigration detainer was issued. Ex. 1, at 3. Petitioner was served with a Notice of Removal to Mexico the same day Ex. 5 (NOR), *Id.*

On November 20, 2025, petitioner was detained by ICE for removal and served with the Notice of Removal. Ex. 4 (Notice of Revocation of Release); Ex. 5. Petitioner is currently in Florida Soft-Sided Facility – South and has been detained for approximately 138 days.

Petitioner is detained pursuant to section 241 of the INA. The petitioner is within the removal period in accordance with *Zadvydas*.

Petitioner does not appear to have any other applications for relief pending. Petitioner has an extensive criminal history in Miami-Dade County including:

- 1) 2018 – Possession of Controlled Substance – Adj. WH
- 2) 2020 – GTMV – Adj. Guilty

3) 2020 – Possession of Controlled Substance; Poss Drug Paraphernalia;
DWLS – Adj. Guilty

4) 2021 – GTMV – Adj. Guilty

5) 2021 – Fleeing and Attempting to Elude – Adj. Guilty

6) 2023 – GTMV; Alter License; Attaching Tag Not Assigned – Adj. Guilty

7) 2025 – Fleeing and Attempting to Elude – Pending

Ex. 1.

On March 17, 2026, Cunill filed a petition for writ of habeas corpus alleging his custody is in violation of his Due process rights and he has been detained longer than 90 days. Dkt. 1.

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).

Cunill has a final removal order. Ex. 3. At this point, Cunill is removable from the United States. The Attorney General (through his delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(5).

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

The period of Cunill's detention is still within the presumptively reasonable limits established in *Zadvydas*. And even if it not, Cunill's refused to comply with removal to Mexico, creating the cause of his own detention¹.

ARGUMENT

Cunill challenges his detention under various theories. These claims fail. As described, below Cunill's detention has not extended to a length creating constitutional questions; nor did ICE violate any law in proceeding with removal.

A. Cunill's detention does not violate the Fifth Amendment's Due Process Clause Lawful 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). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the

¹ *Singh v. U.S. Atty. Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019)

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).

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

Petitioner has been in ICE custody since November 20, 2025, less than six months (139 day as of April 8, 2026). Additionally, Cunill has failed to establish that removal is not likely in the reasonably foreseeable future. Cunill’s asserts that he refused to deport to Mexico and Cuba will not accept him (Dkt. 1, Ground 3) demonstrates that he is self-incarcerating.

Moreover, it appears that ICE attempted to remove Cunill to Mexico. Ex. 6 (detention history); Dkt. 1, Ground 3. He was transferred to Port Isabel SPC, which is located on the Texas/Mexico border. *Id.* Cunill refused to comply with

² District Courts are split on whether prior time in ICE custody should be aggregated to satisfy the six-month *Zadvydas* clock. Respondents acknowledge this Court has previously adopted a cumulative approach to time in detention. See *Chumachenko v. Noem*, 2:26-cv-00344-SPC-NPM, Doc. 6 (M.D. Fla. Feb. 27, 2026); *Carmenates v. Warden, et al.*, 2:26-cv-00592-SPC-DNF (M.D. Fla. March 17, 2026).

removal to Mexico.³ *Id.*, Dk. 1, Ground 3. In addition to being the cause of his own current detention by refusing to be removed to Mexico, Cunill provides no reason for the Court to believe ICE will be unable to execute the removal order in the reasonably foreseeable future, and thus, the Petition should be denied. See also *Bernshtein v. U.S. Atty. Gen.*, No. 3:25-CV-1153-JEP-PDB, 2026 WL 352907, at *3 (M.D. Fla. Feb. 9, 2026) quoting *Sing* 945 F.3d at 1314; *Ramiro-Monteagudo v. Warden, et al*, Case no. 2:26-cv-873-SPC-NPM (M.D. FLA Apr. 7, 2026).

Conclusion

Respondents respectfully request that the court deny Yanicher Morales Cunill's petition.

Date: April 8, 2026,

Respectfully submitted,

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³ "The risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien is the cause of his own detention." *Singh v. U.S. Attorney General*, 945 F.3d 1310, 1314 (11th Cir. 2019) quoting *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003).