

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

HASSAN JAGNE,

Petitioner,

v.

Case No. 2:26-cv-734-KCD-NPM

WARDEN, ALLIGATOR ALCATRAZ,
U.S. ATTORNEY GENERAL, et al.,

Respondents.

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

Petitioner Hassan Jagne 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). Hassan Jagne has been detained for 38 days, and he has not established that ICE will not be able to execute the removal order in the reasonably foreseeable future.

BACKGROUND

Hassan Jagne is a national and citizen of Gambia who first entered the United States on or about July 1, 1993 in Washington, D.C. as a B-2 visitor. (Composite Exhibit A at 15.) He was eventually placed in removal proceedings, applied for various forms of relief, all of which were denied, and ultimately requested voluntary

departure in lieu of deportation on August 12, 1998. *Id.* at 1, 15. He failed to depart the United States, which converted the immigration judge's decision to a final order of removal. *Id.* at 15. On December 19, 2008, Hassan Jagne was arrested for the purpose of enforcing the removal order and removing him to Gambia, but with the inability to remove Petitioner at that time, he was released on an OSUP. Doc 1-1. Petitioner complied with his OSUP for several years and was issued another OSUP on September 24, 2024. (Doc. 1-1).

On March 7, 2026, Hassan Jagne was detained as he reported for an OSUP check-in at the Miramar ICE office. Ex. A at 15. He was served with a warrant for his arrest, a notice of revocation of release, and a notice of intent to remove him to Gambia. *Id.* at 17-31. Hassan Jagne is currently detained at Florida Soft-Sided Facility South. *Id.* at 32. He has been in current ICE custody for a total of 38 days.¹ *Id.* On March 16, 2026, Hassan Jagne filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. (Doc. 1.)

ARGUMENT

Hassan Jagne'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

¹ Hassan Jagne was in ICE custody for 403 days in 2009-2010. Ex. A at 32.

(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).

Respondent recognizes that Judges Chappell and Steele have held the *Zadvydas* period is coterminous with the statutory removal and post-removal periods—meaning it can run while an alien is outside detention. *Beltran v. ICE*, No. 2:25-cv-01174-SPC-NPM, 2026 WL 21252 (M.D. Fla. Jan. 5, 2026) (Chappell, J.); *Godinez Perez v. Noem*, No. 2:25-cv-00429-JES-NPM, 2025 WL 2806557, at *2 (M.D. Fla. Oct. 2, 2025 (Steele, J.)). This Court, however, disagrees and correctly holds that the *Zadvydas* period runs from actual detention – not a statutory period that may have expired decades ago. *Al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF (M.D. Fla. Feb. 27, 2026); see also *Tran v. Warden, Florida Soft Side South, et al.*, No. 2:25-cv-01224-KCD-NPM (M.D. Fla. March 10, 2026) (“the better approach is to afford the government a new six-month presumptively reasonable period for each discrete detention, unless there are facts suggesting the government is acting with improper motive.”). There is no evidence that the government is acting in bad faith or with an improper motive here, so the current time in custody should not be aggregated with his prior time in ICE custody from 2009-2010.

Hassan Jagne filed the present petition well before expiration of six months in detention. He was most recently detained on March 7, 2026, and filed the present

petition on March 16, 2026. At that point, Hassan Jagne had been detained for 10 days; to date, he has been in current detention for 38 days. Because he has been in current custody for less than six months, he remains within the window in which his detention is presumptively reasonable.

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. 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”).

In addition to still being in the presumptively reasonable detention period, Hassan Jagne has failed to establish that removal is not likely in the reasonably foreseeable future. Hassan Jagne’s conclusory assertion that Gambia is a historically recalcitrant country that refuses to accept deportees from the United

States is not enough to carry his initial burden. *See* Doc. 1 at ¶ 16, 18. Notably, Petitioner's Notice of Revocation of Release outlined that ICE is seeking travel documents to effect Hassan Jagne's removal to Gambia or a third country that will accept him. Ex. A at 29. Therefore, the Petition should be denied.

CONCLUSION

Respondents respectfully request that Hassan Jagne's petition be denied.

DATED April 13, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on April 13, 2026, 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.

s/ Stephanie S. Leuthauser
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