

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

Alberto Flores Reyes,
Petitioner,

Case No.:

v.

Markwayne Mullin, Secretary, Department of
Homeland Security; **Garrett Ripa**, Field Office
Director, U.S. Immigration and Customs
Enforcement, Office of Enforcement and Removal
Operations, Miami, Florida,
Respondents.

**PETITION FOR A WRIT OF HABEAS CORPUS
REQUEST FOR EXPEDITED HEARING
REQUEST FOR ORAL ARGUMENT**

This is an action for habeas corpus relief under 28 U.S.C. §2241 and the Suspension Clause of the U.S. Constitution. Petitioner seeks an Order requiring Respondents to release Petitioner from detention in accordance with 8 U.S.C. §1231(a)(3).

JURISDICTION

1. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §2241 *et seq.*, and Article I, §9, Clause 2 of the U.S. Constitution (“Suspension Clause”). *See INS v. St Cyr*, 533 U.S. 289 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525

U.S. 471, 478 (1999). Petitioner does not challenge Respondents' decision to commence removal proceedings against him, the charges of removal, or the execution of the outstanding order of exclusion/deportation. Petitioner only challenges the legality of his continued detention under the structure conceived by the Supreme Court.

2. Petitioner is in custody for purposes of habeas corpus relief. He is currently detained in the custody of the U.S. Department of Homeland Security ("Department" or "DHS"), acting under color of authority of the United States.

VENUE

3. Venue is proper in the Middle District of Florida, Fort Myers Division, because Petitioner is currently detained at the Florida Soft Side Detention Facility (Alligator Alcatraz") in Ochopee, Florida, within the territorial jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. §§2241, 2243

4. This Court should grant the petition for writ of habeas corpus or issue an order to show cause to Respondents "forthwith" unless Petitioner is not entitled to relief.

5. Habeas corpus is "perhaps the most important writ known to constitutional law...affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 373 U.S. 391, 400 (1963).

6. Petitioner is “in custody” for the purpose of §2241 because he is detained by Respondents at the South Florida Soft Side Detention Facility in Ochopee, Florida. Petitioner is under the direct control of Respondents and their agents.

PARTIES

7. Petitioner, **Alberto Flores Reyes** (A , is a native and citizen of Cuba.

8. Respondent, **Markwayne Mullin**, is the Secretary of Homeland Security and he is being sued in his official capacity. In his official capacity, Respondent Mullin is in charge of enforcing the immigration laws of the United States. It is Respondent Mullin’s refusal to release Petitioner from custody that is the subject of this petition.

9. Respondent, **Garret Ripa**, is the Field Office Director of U.S. Immigration and Customs Enforcement (“ICE”) in Miami, Florida and he is being sued in his official capacity. Respondent Ripa exercises authority over immigration enforcement matters throughout the state of Florida. It is Respondent Ripa’s decision to not effectuate Petitioner’s release that is the subject of this petition.

STATEMENT OF CLAIM

10. Petitioner is a native and citizen of Cuba.

11. Petitioner arrived in the United States on May 3, 1995.

12. On August 19, 1996, Petitioner pled guilty in the Circuit Court in and for Miami-Dade County to one count of attempted murder in the second degree. This conviction prompted the initiation of exclusion/deportation proceedings before the Immigration Court.

13. On February 24, 1997, an Immigration Judge in Miami, Florida ordered Petitioner's exclusion/deportation to Cuba.

14. Neither Petitioner nor government counsel reserved their right to appeal the February 24, 1997, order of the Immigration Judge. Accordingly, this order became the administratively final order of removal ("final order") entered against Petitioner. *See* 8 U.S.C. §1101(a)(47)(B).

15. Following the completion of his four years and two months sentence of imprisonment, Petitioner was transferred to the custody of the legacy Immigration and Naturalization Service ("INS") for the purpose of executing the order of exclusion/deportation.

16. Petitioner remained in the custody of the legacy INS from June 8, 2000, to November 20, 2001. During this period, legacy INS was unsuccessful in deporting Petitioner from the United States to Cuba.

17. On November 20, 2001, legacy INS released Petitioner from custody and placed him under a Form I-220B, Order of Supervision ("OSUP" or "Form I-220B") issued on November 16, 2001. A second OSUP was issued on June 19, 2002.

18. An OSUP does not vitiate an otherwise outstanding order of removal entered against an alien, but does allow an alien to be released from custody while immigration authorities work on effectuating an outstanding order of deportation. Release from ICE custody via OSUP generally requires the alien to report to a local ICE officer as delineated in the Form I-220B.

19. For over twenty two years, the petitioner routinely reported to ICE as required by the aforementioned OSUP.

20. On or about October 29, 2025, Petitioner was arrested by ICE when he appeared for his annual report date. Petitioner was initially detained at the Krome Service Processing Center. While at this facility, Petitioner filed a Petition for a Writ of Habeas Corpus with the Southern District of Florida. U.S. District Court Judge Roy K. Altman denied the petition on February 13, 2026, after finding that Petitioner's *current detention* was presumptively reasonable. The District Court Judge did not consider Petitioner's cumulative period of detention. Flores-Reyes v. Assistant Field Office Director, et al., 26-cv-20226-Altman (S.D. Fla. Feb. 13, 2026).

21. Petitioner has now been in legacy INS and/or ICE custody for the following periods of detention:

- June 8, 2000, through November 20, 2001 (530 days)
- October 29, 2025, to March 25, 2026 (147 days)

22. Pursuant to federal regulation, once an alien is released or placed on an OSUP under 8 U.S.C. §1231(a)(3), the OSUP may only be revoked by certain government officials where one of four conditions have been met: “(i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. §241.4(l)(2).

23. Where an alien’s OSUP is revoked, the alien must be notified of the reasons for revocation and afforded an opportunity to respond through “an initial informal interview promptly after his or her return to custody.” 8 C.F.R. §241.4(l)(1)

24. Petitioner has not committed any acts or omissions in violation of the OSUP and has complied with all its reporting requirements. No facts or circumstances changed for Petitioner that would change Respondents’ assessment of his risk of flight or danger to the community. Further, Respondents have not taken any steps toward effectuating his removal since June most 2000 and through Petitioner’s recent detention on October 29, 2025.

25. Petitioner submits that ICE had not formulated any strategy intent on effectuating the outstanding order of removal *before* his arrest on October 29, 2025.

26. Petitioner submits that on or about January 19, 2026, ICE attempted to remove Petitioner to Mexico by transporting Petitioner from an immigration

detention facility to the United States/Mexico border and presenting him to a representative of the Mexican government. The representative of the Mexican government determined that they would not allow Petitioner to enter Mexico because of his medical condition.

27. Based on information and belief, Petitioner submits that ICE has no agreement with the Cuban government that would allow it to effectuate Petitioner's order of removal were he to be in possession of a valid travel document issued by the government of Cuba.

28. Inasmuch as ICE has thus far failed to provide Petitioner with any basis upon which to believe that it has secured any means through which it can effectuate the outstanding order of removal entered against him, Petitioner submits that no reasonable likelihood of effectuating the outstanding order of deportation exists. Therefore, the regulation allows his release under an OSUP.

29. In defining the term "removal period", 8 U.S.C. §1231(a)(1)(A) provides that:

"[e]xcept as otherwise provided in this section, where an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period")."

30. The Immigration and Nationality Act ("INA" or "Act") further specifies when the "removal period" begins. The Act provides that:

"[t]he removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.
8 U.S.C. §1231(a)(1)(B)

31. 8 U.S.C. §1231(a)(1)(C) provides for certain suspension of the “removal period.” This section states that:

“[t]he removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended 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 or conspires or acts to prevent the alien's removal subject to an order of removal.”

32. 8 U.S.C. §1231(a)(2) provides that during the removal period, the Attorney General shall detain the alien, and under no circumstance during the removal period can release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this Title.

33. Notwithstanding the statutorily mandated 90-day removal period, the Supreme Court has found that this period may be extended for a period reasonably necessary to effectuate a removal. In Zadvydas, the Supreme Court noted that any post removal detention lasting six months or less is “presumptively reasonable.” Zadvydas v. Davis, 533 U.S. at 689 (2001); Clark v. Martinez, 543 U.S. 371 (2005)

(applying the Zadvydas 6-month ruling to inadmissible persons stopped at the border; finding that 8 U.S.C. §1231(a)(6) authorizes post-final order detention of such persons only for the period reasonably necessary to effectuate removal (6 months)). “Although not expressly stated, the Supreme Court appears to view the six-month period to include the 90 day removal period [from section 1231(a)(1)(A)] plus 90 days thereafter.” Akinwale v. Ashcroft, 287 F.3d 1050, 1052 (11th Cir. 2002). Thus, if removal is not reasonably foreseeable in the immediate future, detention beyond a six-month period is unconstitutional. Zadvydas, at 699.

34. Petitioner submits that the removal period began to run when he was apprehended by ICE on June 8, 2000. Petitioner has been in legacy INS and ICE custody for a total time which exceeds the six-month period necessary to secure his removal. His prolonged detention exceeding the presumption of reasonableness and compels review under Zadvydas.

35. Petitioner has not engaged in any conduct described at §1231(a)(1)(C) subsequent to the Immigration Judge’s issuance of a final order of removal on February 24, 1997.

36. Petitioner submits that he has neither taken any course of action nor refused to undertake a course of action which would justify any suspension of the removal period within the meaning of 8 U.S.C. §1231. See Edwards v. Gonzalez, 2007 U.S. Dist. LEXIS 96645 (N.D. Fla. Oct. 2, 2007) (upholding Zadvydas and

Clark but denying petition finding petitioner had not cooperated with ICE to effectuate his removal); Jian Bin Tang v. Gonzalez, 2006 U.S. Dist. LEXIS 93576 (N.D. Fla. Oct. 13, 2006) (same).

37. Petitioner contemplates that he could be removed to a country other than Cuba were ICE intent on effectuating the outstanding final order. *See* 8 U.S.C. §1231(b)(2). However, ICE has thus far been unsuccessful in removing Petitioner to Cuba or a third country.

38. While the INA contemplates that the execution of most orders of removal can be effectuated within the 90-day period defined at 8 U.S.C. §1231(a), the Act provides a pathway allowing certain individuals to be released from detention following completion of the “removal period” if the order of removal could not be executed within this period. Specifically, 8 U.S.C. §1231(a)(3) states that:

“[i]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien--

- (A) to appear before an immigration officer periodically for identification;
- (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
- (C) to give information under oath about the alien’s nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
- (D) to obey reasonable written restrictions on the alien’s conduct or activities that the Attorney General prescribes for the alien.”

39. Petitioner contends that the removal period applicable to his case terminated on September 6, 2000, the expiration of the 90-day period following his initial apprehension. *See Benitez v. Wallis*, 402 F.3d 1133 (11th Cir. 2005) (relying on *Clark* to hold that an inadmissible alien can no longer be detained beyond the statutory 90-day removal period of §1231(a)(1), where there was no significant likelihood of removal in the foreseeable future). Additionally, the six month “reasonable time” period to effectuate the Petitioner’s order of removal as noted in *Zadvydas* was reached no later than December 5, 2000. Petitioner remained in legacy INS custody until November 20, 2001, a period of confinement well beyond the six-month “reasonable period” of detention contemplated in *Zadvydas*.

40. The removal period and the six month “reasonable time” period described in *Zadvydas* has expired. The “presumptively reasonable” period of detention does not reset because Petitioner was re-detained on October 29, 2025.

41. Other courts have treated the *Zadvydas* period as cumulative and have held that the detention clock does not start over for purposes of *Zadvydas* when a person is re-detained. *See Krechmar v. Parra*, 2:25-cv-01095-SPC-DNF (M.D. Fla. Dec. 15, 2025) (rejecting government’s argument that the removal period resets after re-detention and finding six-month period for presumptively reasonable detention is counted in the aggregate); *Rodriguez Romero v. Ladwig*, 25-cv-1106-JWD-EWD

(M.D. La. Feb. 6, 2026) (“in a re-dentition case, a petitioner’s period of post-removal detention entails not only his current detention, but also his initial detention...”).

42. Petitioner has established that there is no significant likelihood of removal in the reasonably foreseeable future. Therefore, Zadvydas requires Respondents to come forward with evidence sufficient to rebut that showing by establishing the likelihood of Petitioner’s removal in the reasonably foreseeable future.

43. Petitioner contends that Respondents cannot rebut this finding. ICE has been unsuccessful in their attempts to remove Petitioner prior to his release under an OSUP, and have been unsuccessful in their attempt to remove him during his current period of detention. As such, Petitioner submits that his ongoing detention is accordingly in violation of the U.S. Constitution because there is not a significant likelihood of his deportation in the reasonably foreseeable future.

44. There is no mechanism for Petitioner to appeal the Respondents failure to release him in accordance with 8 U.S.C. §1231(a)(3). As a result, Petitioner contends that his detention is of indefinite length.

CAUSES OF ACTION

45. **FIRST CLAIM.** Petitioner’s continued detention beyond the 90-day removal period and “reasonable time” period violates his substantive and procedural due process rights under the Fifth Amendment of the United States Constitution. U.S. CONST. amend. V.

46. **SECOND CLAIM.** Petitioner's continued detention beyond the 6-month removal period violates the Fourth Amendment of the United States Constitution because there are no reasonable, objective grounds for the detention. U.S. CONST. amend. IV.

EXHAUSTION

47. Petitioner challenges the constitutionality of his continued detention beyond the 90-day removal period defined in 8 U.S.C. §1231(a)(1) and "reasonable time" period delineated in Zadvydas that, as applied here, mandates his continued and indefinite detention. He does not challenge the Respondents' decision to commence removal proceedings against him, the charges of removal, or the execution of the outstanding order of removal entered against him. He only challenges the legality of his detention and Respondents' refusal to order his release in accordance with 8 U.S.C. §1231(a)(3) and to instead continue his detention.

48. Petitioner has exhausted his administrative remedies. The administrative process allows for no remedy for the injuries inflicted by Respondent's failure to effectuate the provisions of 8 U.S.C. §1231(a)(3). There is no appellate process that provides Petitioner with an opportunity to challenge the Respondents' refusal to apply 8 U.S.C. §1231(a)(3) to him.

49. That to the extent that any administrative process may exist, exhaustion of administrative remedies, which is a prudential requirement, is not required here

because any administrative appeal would be futile, and Petitioner raises a serious constitutional question.

28 U.S.C. §2242 VERIFICATION

50. That in accordance with 28 U.S.C. §2242, the undersigned, acting on behalf of Petitioner, verifies that the contents of this Petition are true and correct to the best of the undersigned's knowledge.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's continued detention is in violation of the Constitution and laws of the United States because his continued and indefinite detention is unconstitutional or otherwise unlawful;
3. Grant temporary and permanent injunctive relief ordering Respondents to release Petitioner in accordance with 8 U.S.C. §1231(a)(3);
4. Award Petitioner attorney's fees and costs in this action as provided by 28 U.S.C. §2412 or other statute; and

5. Grant such further relief as the Court deems just and proper.

Dated: March 25, 2026

Respectfully submitted,

/s/ Alex Solomiany /s/

Alex Solomiany, Esquire

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Table of Contents

Documents in Support of Petition for Habeas Corpus

Alberto Flores Reyes v.

Kristi Noem, Secretary, Department of Homeland Security, et al.

- Exhibit 1: Final Administrative Order of Exclusion issued against Petitioner (February 24, 1997)
- Exhibit 2: Printout from Online Detainee Locator system relating to Petitioner
- Exhibit 3: Order of Supervision dated June 19, 2002
- Exhibit 4: Order of Supervision dated November 16, 2001