

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ALBERTO FLORES REYES,

Petitioner,

Case No. 2:26-cv-862-JES-NPM

v.

SECRETARY MARKWAYNE MULLIN, et al.,

Respondents.

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

Petitioner Alberto Flores Reyes 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). Flores Reyes had been detained for 147 days when he filed the present petition. His present detention is therefore lawful.

BACKGROUND

Flores Reyes is a national and citizen of Cuba. Ex. 1 at 18. Flores Reyes was paroled into the United States at an unknown place and time. *Id.* In 1996, Flores Reyes was convicted to second degree attempted murder. In 1989, Flores Reyes was

convicted for sale of a controlled substance. *Id.* Flores Reyes was issued a final order of removal on February 24, 1997. *Id.*

ICE made a custody redetermination and Flores Reyes was placed in immigration custody on October 29, 2025. *Id.* Flores Reyes filed a petition for writ of habeas corpus in the Southern District of Florida and that was denied as premature. *Alberto Flores-Reyes v. Ass't Field Office Director, et al.*, Case No. 26-cv-20226-ALTMAN, Dkt. 12 at *3 (S.D. Fla. Feb. 13, 2026) (“Flores-Reyes’s *Zadydas* claim is premature and must be denied. Flores-Reyes was detained on October 29, 2025, so his current detention is presumptively reasonable under April 27, 2026.”) Attached in Ex. 1 at 23.

On March 25, 2026, Flores Reyes filed a petition for writ of habeas corpus alleging his custody violates the Due Process Clause of the Fifth Amendment, and the Fourth Amendment. Dkt. 1. at 12-13. Flores Reyes is currently detained at Florida Soft Side South. *Id.* at 28.

ARGUMENT

I. Flores Reyes’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).

Flores Reyes filed the present petition before expiration of six months in detention. He was detained on October 29, 2025, and filed the present petition on March 25, 2026. At that point, Flores Reyes been detained for 147 days; to date, he has been in detention for 163 days. As the Southern District Court has already observed, Flores Reyes's petition is premature until April 27, 2026. *Flores-Reyes*, Case No. 26-cv-20226-ALTMAN, Dkt. 12 at *3.

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”).

II. Flores Reyes's detention is based on reasonable, objective grounds.

To the extent that Flores Reyes argues that his detention lacks reasonable, objective grounds, he is incorrect. Flores Reyes has been convicted of an aggravated felony and has been ordered removed from the United States. Ex. 1 at 5. Flores Reyes is being detained so that the United States can remove him to Mexico. *Id.* at 2.

CONCLUSION

Respondents respectfully request that Flores Reyes's petition be denied.

DATED this 10th day of April, 2026.

Respectfully submitted,

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