

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

Alberto Flores Reyes,
Petitioner,

CASE NO.: 2:26-cv-862-JES-NPM

v.

Markwayne Mullin, Secretary,
Department of Homeland Security, et al.,
Respondents.

**PETITIONER'S RESPONSE TO RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner, through undersigned counsel, respectfully submits this Response to Respondents' Opposition to Petition for Writ of Habeas Corpus ("Respondents' Response"). (ECF Doc. 7) Respondents' Response does not identify any new facts or law that would warrant departure from this Court's settled precedent, and reprises the same detention-authority arguments that have already been considered and rejected by this Court and other Courts within this District in materially indistinguishable cases, including Cougles Perez v. Miami Field Office Director, Case No. 2:26-cv-00475-SPC-NPM (M.D. Fla. March 5, 2026); Cuesta v. Noem, et. Al., 2:26-cv-224-JES-NPM (M.D. Fla. April 1, 2026); Ankiwale v. Ashcroft 287 F.3d 1050, 1052 n.3 (11th Cir. 2002). Consistent with the holdings in each of these cases, the "presumptively reasonable" period of detention does not reset each time

Petitioner has been detained following revocation of an Order of Supervision (“OSUP”). Because the six-month period of presumptively reasonable detention has expired and Respondents’ have made no arguments to demonstrate the significant likelihood of removal in the reasonably foreseeable future, this Court should grant this petition.

II. PETITIONER’S CONTINUED DETENTION IS UNLAWFUL BECAUSE THE 180-DAY REMOVAL PERIOD HAS EXPIRED

“Once a noncitizen’s order of removal becomes administratively final, the Government ‘shall’ remove the person within 90 days.” Singh v. U.S. Attorney Gen., 945 F.3d 1310, 1313 (11th Cir. 2019) (*quoting* 8 U.S.C. § 1231(a)(1)(A)). The government must detain the noncitizen during the 90-day removal period, which begins when the removal order becomes administratively final. Id. Detention may continue after the removal period, but not indefinitely.

In Zadvydas v. Davis, 533 U.S. 678 (2001), the Supreme Court held that “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” 533 U.S. at 700-701 (2001). If removal is not practically attainable, detention no longer serves its statutory purpose of “assuring the alien’s presence at the moment of removal.” Id. at 699. The Court found it unlikely Congress “believed that all reasonably foreseeably removals could be accomplished in [90 days].” Id. at 701. So, “for the sake of uniform administration in the federal courts,” it established a “presumptively reasonable

period of detention” of six months; the 90-day removal period plus an additional 90 days. Id.

Respondents argue that this claim is premature because Petitioner’s current detention, which commenced on October 29, 2025, has been less than 180 days.¹ Respondents’ Response only considers the period of Petitioner’s current detention. (Doc. 7 at 4). Therefore, Respondents submit that the parties cannot engage in the Zadvydas burden shifting analysis because the six-month period of detention has not expired.

Respondents’ argument assumes that the six-month period of detention clock started on October 29, 2026, the date his current detention began. This assumption is not consistent with Zadvydas. Contrary to Respondents’ arguments, Petitioner has been detained in ICE custody well beyond the six-month period “reasonable period” of detention contemplated in Zadvydas.

Mr. Flores Reyes has now been in ICE custody for the following periods of detention:

- June 8, 2000, through November 20, 2001 (530 days)
- October 29, 2025, to April 13, 2026, (166 days)

¹ Respondents’ Response correctly states that a petition for writ of habeas corpus filed by Petitioner in the Southern District of Florida was denied as premature. It was not adjudicated on the merits. The petition filed with this Court was filed based on Petitioner’s current place of detention and is a new and separate petition and asks that it be considered on its merits.

Therefore, his “presumptively reasonable period of detention” is now in excess of 180 days.

The six-month period for presumptively reasonable detention does not reset every time a noncitizen is detained. Concluding that the period of detention resets upon the alien’s release and does not accumulate based on each and every period during which an alien is detained in an effort to execute an order of removal would frustrate the very concerns regarding indefinite detention discussed in Zadvydas v. Davis. Therefore, this Court should find that Petitioner has been detained beyond the 180-day removal period.

Other courts in this district have treated the 180 removal period as cumulative and have held that the detention clock does not start over for purposes of Zadvydas when a person is re-detained. Krechmar v. Parra, 2:25-cv-01095-SPC-DNF (M.D. Fla Dec. 15, 2025). In Krechmar v. Parra, the court rejected the government’s argument that the removal period resets after a re-detention and found that the six-month period for presumptively reasonable detention is counted in the aggregate. As recognized by the Eleventh Circuit, [t]he Supreme Court’s stated rationale for establishing a presumptively reasonable ‘6-month period’ for detention pending removal supports our conclusion that this period commences at the beginning of the removal period”. Ankiwale v. Ashcroft, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

This Court has already reached this conclusion in a similar case. Cuesta v. Noem, et al., 2:26-cv-224-JES-NPM (M.D. Fla. April 1, 2026). In Cuesta v. Noem, et al., this Court granted a petition for writ of habeas corpus after counting a prior period of detention. In its order, this Court noted that the respondent had been released from immigration custody on an Order of Supervision “after an unspecified number of days”, immediately following his 2009 removal order and had been in ICE custody for another 104 days after his re-detention. This Court counted both the past period and current period of detention in the aggregate and determined the petitioner “carried his initial burden by showing good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future” and granted the petition for writ of habeas corpus. (Cuesta Order at 6-7)

Petitioner was ordered excluded/deported on February 24, 1997. Because the six-month “presumptively reasonable” period has expired, Petitioner’s claims are not premature and the Zadvydas burden-shifting framework applies. The burden now shifts to Respondents to demonstrate whether there is a “significant likelihood of removal in the reasonably foreseeable future.” Zadvydas, 533 U.S. at 689. Respondents have not met this burden.

Respondents’ Response does raise any arguments relating to the foreseeability of Petitioner’s physical removal as described at ¶¶35-37 of the Petition. (ECF Doc.

1) Respondents do not offer evidence that removal to Cuba or to a third country is

practically attainable. ICE has thus far been unable to remove Petitioner to Cuba during his current period of detention or his prior detention by ICE (or its predecessor agency). On information and belief, ICE attempted to remove the Petitioner to Mexico on January 19, 2026, but Mexico did not accept him for removal.² Simply stated, Respondents' Response offers no explanation to rebut Petitioner's showing there is good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future.

² Attached to Respondents' Response is a Notice of Removal dated December 16, 20205, stating that ICE intends to remove Mr. Flores to Mexico. (Doc. 7-1, p. 2) However, Respondents fail to mention that ICE attempted to remove Petitioner to Mexico, but Mexico did not accept him for removal.

III. CONCLUSION

For the foregoing reasons, this Court should find the six-month period for presumptively reasonable detention has expired, that there is no significant likelihood that Petitioner will be removed in the reasonably foreseeable future, and grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release from custody.

DATED: April 13, 2026.

Respectfully submitted,

/s/ Alex Solomiany /s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Instrument was electronically filed with the Clerk of Court on April 13, 2026, using the CM/ECF electronic filing system which will serve a copy to all counsel of record.

/s/ Alex Solomiany /s/
Alex Solomiany, Esquire
Attorney for Petitioner