

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

MAYKEL CABALLERO LEEN

Petitioner,

Civil Case No.: 4:26-cv-00685

v.

MARKWAYNE MULLIN as Secretary
for the Department of Homeland
Security (DHS);

KRISTEN SULLIVAN as Acting Director
Atlanta Field Office, Enforcement and
Removal Operations (ERO), Department
of Homeland Security;

TODD BLANCHE in his official capacity
as United States Attorney General,

**WARDEN OF STEWART DETENTION
CENTER;** and

CORECIVIC, INC.,

Respondents.

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**PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, through undersigned counsel, respectfully submits this Reply in opposition to Respondent's Motion to Dismiss. For the reasons set forth below, Respondent's Motion should be denied because the record already shows that

removal to Cuba is not reasonably foreseeable and Respondent has not carried its burden under *Zadvydas*.

I. INTRODUCTION

Respondent's Motion relies on an overly rigid reading of *Zadvydas* that treats the six-month period as a bar to review, rather than a rebuttable presumption. The government argues that Petitioner's challenge is premature because he had been detained for only 62 days when he filed his Petition. But the relevant question is not whether the government can point to a short detention period and declare the case too early. The question is whether the government has shown a significant likelihood of removal in the reasonably foreseeable future. On the record presented here, it has not.

The government's own motion establishes the critical facts: Petitioner is a native and citizen of Cuba; an Immigration Judge ordered him removed to Cuba on October 6, 2020; Cuba denied repatriation; and ICE/ERO is now processing him for removal to a third country. Doc. 6. Those facts do not support dismissal. They support Petitioner's request for habeas relief because they show that removal to Cuba has already failed and that Respondent has not identified any concrete, reasonably foreseeable alternative destination.

This habeas petition is ripe because Petitioner is in present custody and the legality of that custody turns on a concrete factual record showing that removal to Cuba is not reasonably foreseeable. *Zadvydas* does not impose a rigid

jurisdictional bar before six months; it creates a rebuttable presumption and burden-shifting framework. Courts have also rejected attempts to evade *Zadvydas* through successive release-and-redetention cycles or by isolating only the most recent detention period.

II. GOVERNING LEGAL PRINCIPLES

Respondent is correct that detention following a final order of removal is governed by 8 U.S.C. § 1231 and that the Supreme Court in *Zadvydas v. Davis* recognized a six-month benchmark as presumptively reasonable. 544 U.S. 678, 701 (2001). But that is not the end of the inquiry. *Zadvydas* also makes clear that once the alien provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing. *Id.*

The government cannot avoid that burden by invoking labels like “premature” or “unripe” while the record itself shows that removal to the country named in the removal order has already failed. Nor can it rely on a generalized assertion that it is processing a third-country removal without identifying an actual receiving country, acceptance by that country, or any concrete timeline.

The Eleventh Circuit in *Akinwale* likewise recognizes that the inquiry is not limited to the passage of time; the petitioner must show post-removal-order detention and a good reason to believe removal is not significantly likely in the

reasonably foreseeable future. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

III. PETITIONER'S CLAIM IS NOT PREMATURE

Respondent's principal argument is that the Petition was filed before the six-month period expired because Petitioner had been detained only 62 days at the time of filing. That argument overlooks the substance of Petitioner's claim. Petitioner is not merely pointing to the passage of time since his last detention. He is pointing to the government's inability to remove him to Cuba despite years of opportunity after the final order of removal, Cuba's denial of repatriation, and the government's decision to turn to an unspecified third country. That is precisely the kind of factual showing that makes a *Zadvydas* challenge ripe for judicial review.

The government has not identified a country that has agreed to accept Petitioner. Cuba has denied repatriation. The government has not identified a removal date in the near future. It has not shown that removal is likely within any meaningful timeframe. Instead, it asks the Court to accept speculation in place of evidence. *Zadvydas* does not permit that result.

Respondent's attempt to reduce the case to the age of the current detention period is unpersuasive in light of the broader history reflected in the pleadings. Petitioner was ordered removed to Cuba on October 6, 2020 and released on supervision in November 2020. Doc 6-1, Declaration of Deportation Officer Charles Gillikin, ¶¶ 8-9. Cuba most recently denied repatriation on March 26, 2026 and

ICE/ERO is now pursuing third-country removal *Id.* ¶¶ 13-14. That history matters. It shows that Respondent has not been able to remove Petitioner for more than five years after the final order of removal, and has not shown that removal is significantly likely in the reasonably foreseeable future.

Ripeness is not speculative, nor is this an advisory dispute. The petitioner is detained now, and the question whether removal is reasonably foreseeable is already fit for judicial review. Courts have held that the six-month benchmark is presumptively reasonable but not an irrebuttable bar to relief before six months have elapsed. See e.g., *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 395 (D.N.J. 2025); *Medina v. Noem*, 794 F. Supp. 3d 365, 375 (D. Md. 2025).

The record shows that Cuba denied repatriation, and that is exactly the kind of evidence that makes continued detention reviewable now. *Zadvydas* places the burden on the Government to rebut the noncitizen's showing with evidence of a significant likelihood of removal. The government's inability to secure repatriation has also been enough in analogous cases involving Cuban nationals. *Losada Diaz v. Parra*, 2026 WL 1223375, at *4 (S.D. Fla. Jan. 25, 2026) (ordering release because, among other things, no guarantee Mexico would take Cuban national); see also *id.* (quoting *Arenado-Borges v. Bondi*, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19, 2025) (“[S]tanding alone, the fact that removals to a particular country are in fact occurring, says nothing about whether Mexico will accept

[Petitioner] any time soon.”). This makes a strong argument that ripeness is satisfied because the issue is not hypothetical or premature; the record already shows removal to Cuba is not reasonably foreseeable.

IV. THE GOVERNMENT'S THIRD-COUNTRY THEORY DOES NOT SAVE THE MOTION

Respondent argues that Petitioner's challenge to a third-country removal is speculative because no third country has yet been formally designated. Doc. 6. But that argument cuts against the government, not in its favor. The government concedes that Cuba has denied repatriation as of March 26, 2026 and that ICE/ERO is processing Petitioner for third-country removal. Doc 6-1, Declaration of Deportation Officer Charles Gillikin, ¶¶ 13,14. In other words, the government has already shifted away from the country identified in the final order of removal because Cuba has not accepted and will not accept Petitioner.

That is not a basis to dismiss the Petition. It is evidence that removal to Cuba is not presently feasible and that the government lacks a concrete, reasonably foreseeable plan to remove Petitioner at all. A vague possibility of removal somewhere other than Cuba is not the same thing as a significant likelihood of actual removal. *Losada Diaz*, 2026 WL 1223375, at *4 (in addition to Mexico's policy of refusing resettlement where the Cuban national does not accept the same, the government provided no evidence for “why it believes Mexico will accept [Petitioner] specifically”).

V. THE GOVERNMENT HAS NOT MET ITS BURDEN

Respondent repeatedly suggests that Petitioner has failed to prove enough to shift the burden. But the burden does not turn on conclusory assurances from the government. It turns on evidence. Here, the evidence in Respondent's own motion (Doc. 6) shows that:

- Petitioner is Cuban and was ordered removed to Cuba;
- Cuba denied repatriation;
- ICE/ERO is now pursuing third-country removal;
- No country has accepted Petitioner; and
- No removal date has been provided.

Those facts are enough to defeat dismissal. Respondent's filing offers no concrete evidence that Petitioner will actually be removed soon. Instead, it relies on the mere existence of ongoing administrative efforts. But efforts are not outcomes. Processing is not acceptance. And speculation is not a substitute for proof.

VI. THE GOVERNMENT'S RESPONSE IS INTERNALLY INCONSISTENT

Respondent's Motion contains several tensions that further undermine dismissal.

First, Respondent argues that the Petition is premature because Petitioner had been detained only 62 days, yet it also relies on the fact that Petitioner has been under a final removal order for years and that the government has repeatedly attempted, without success, to effectuate removal. That history shows why the

case is ripe: the government has already had substantial time beyond the removal period to remove Petitioner and has been unable to do so.

Second, Respondent claims that Petitioner's challenge to third-country removal is unripe because no specific country has yet been designated. Doc. 6. At the same time, Respondent insists that the government is already authorized to remove Petitioner to some other country and is actively processing that removal. Those positions are difficult to reconcile. There is no order of removal to any other country other than Cuba. If the government is already taking steps to remove Petitioner elsewhere yet it cannot identify where or when that removal will occur, then it has not shown a significant likelihood of removal in the reasonably foreseeable future.

Third, Respondent asserts that Cuba's denial of repatriation does not matter because the government may still remove Petitioner to another country. Doc. 6. But that is exactly the point: the government's inability to execute removal to Cuba is why detention cannot continue indefinitely. *Zadvydas* does not permit open-ended confinement while the government searches for alternatives after the original removal destination refuses acceptance.

VII. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondent's Motion to Dismiss, grant the Petition for Writ of Habeas Corpus, and order Petitioner's immediate release from custody under reasonable

conditions of supervision, including reinstatement to his prior release status under Form I-220B or substantially equivalent conditions. If appropriate, Petitioner further requests such other and further relief as the Court deems just and proper.

Respectfully submitted this 2nd day of June, 2026.

/s/ James M. Slater

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*As Lead Counsel for Petitioner**

** Pro Hac Vice Counsel*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this June 2 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

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