

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

JUANIER DIAZ HERNANDEZ
Petitioner,

v.

Case No. 3:26-cv-1016-WWB-LLL

SECRETARY MARKWAYNE MULLIN, ET AL.,
Respondents.

FEDERAL RESPONDENTS' RESPONSE TO HABEAS PETITION

Petitioner Juanier Diaz Hernandez challenges his ongoing detention by immigration authorities. He alleges that his detention at the hands of U.S. Immigration and Customs Enforcement's ("ICE") is unlawful because ICE is improperly applying mandatory detention provisions at 8 U.S.C. § 1225(b). Petition for Writ of Habeas Corpus ("Petition"), ECF No. 1. Petitioner's arguments are inapposite because they fail to consider that as an alien now subject to a final, executable order of removal, neither Sections 1225 nor 1226 of the Immigration and Nationality Act apply, rather his detention is governed by Section 1231. Under the proper statutory framework, Petitioner's detention is proper because his detention remains within the presumptively reasonable period. Because his detention is lawful, the Petition should be dismissed.

Background

Diaz Hernandez is a citizen and national of Cuba. See Petition, ¶ 2. He was

paroled into the United States on or about July 20, 2022. See Notice to Appear, attached as Exhibit A. On September 19, 2025, Diaz Hernandez was issued a Notice to Appear placing in removal proceedings. *Id.* Diaz Hernandez was ordered removed from the United States on February 20, 2026. See Order of the Immigration Judge, attached as Exhibit B. The appeal period expired on March 23, 2026 and no appeal was filed. *Id.* at 2; see *also* EOIR Automated Case Information, attached as Exhibit C. Petitioner's motion to reopen immigration proceedings was denied. Exhibit C. Petitioner represents that he is seeking review of the immigration court's denial of his motion to reopen but at this time there is no impediment to execution of his removal order. See Petition, ¶ 28; see *also* 8 C.F.R. § 1003.23(b)(1)(v).

Diaz Hernandez has been detained since his removal order became final. See Detention History, attached as Exhibit D.

On April 28, 2026, this matter commenced with the filing of a petition for writ of habeas corpus. ECF No. 1. Petitioner sought—but was denied—a temporary restraining order. EXF Nos. 2, 5. On May 6, 2026, this Court issued an order to show cause why the petition should not be granted. ECF No. 5. The government now timely responds to the Petition.

Certified Habeas Return

The Court has power to grant writs of habeas corpus where (among other instances) a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner bears the burden

of proof in establishing that his detention violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021). Diaz Hernandez was denied relief from removal and ordered removed from the United States on February 20, 2026. Exhibit B. He is currently detained under 8 U.S.C. § 1231(a) pending ICE's execution of that removal order.

Discussion

I. Petitioner Has Been Detained for the Purpose of Executing His Final Order of Removal.

An alien must be removed within ninety days of issuance of a final removal order—a period known as 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 may be detained beyond that removal period, a period known as the “post-removal” period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683; *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). Though there is no statutory limit on how long ICE can detain an alien during the post-removal period, indefinite detention would present obvious constitutional concerns. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). So the Supreme Court has interpreted this 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 v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir.

2002) (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, a burden-shifting framework comes into play regarding the significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"). *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*, 287 F.3d at 1051-52 (finding Petitioner's detention as of the date on which the petition was filed presumptively reasonable); *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).¹ At bottom, "This presumptively reasonable six month period must have expired at the time of the filing of a petition." *E.g.*, *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009) (Steele, J.); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011) (Steele, J.).

Here, Petitioner was ordered removed on February 20, 2026. His order became final on March 23, 2026 when the appeal period elapsed without the filing of an appeal. See 8 C.F.R. § 1241.31. Petitioner is still within the 90-day removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). Petitioner's claims that detention authority should be considered under 8 U.S.C. §

¹ Some districts disagree. *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Of course, *Akinwale* binds the Court. Even if it did not, *Cesar* and any progeny are incorrect. *Zadvydas* recognized the presumptive six-month period for the specific "sake of uniform administration in the federal courts." *Zadvydas*, 533 U.S. at 701.

1226 is inapposite because that scheme is applicable only in the pre-final order context.

II. Petitioner's APA Claim Fails.

Petitioner does not have standing to bring his APA claim. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234- 35 (1953)); see also *Tran v. Warden, Florida Soft Side South*, No. 2:25-cv-1224-KCD-NPM (M.D. Fla. Mar. 10, 2026), Dkt. 16 at pp. 16-17.

III. Petitioner's Detention Remains Within the Presumptively Reasonable Period.

As discussed above, Diaz Hernandez's detention is permissible under 8 U.S.C. § 1231. Furthermore, the period for which he has been detained remains presumptively reasonable. Petitioner has been in detention with a final order of removal since March 23, 2026. See Exhibits B, D. His 73-day custody is within the mandatory 90-day removal period and well below the 180-day threshold for what is considered to be presumptively reasonable. See *Akinwale*, 287 F.3d at 1051-52. Put simply, this case is unripe. The burden-shifting analysis into SLRRFF has not been triggered and ICE need not show SLRRFF at this moment in time. *Guzman Chavez*, 594 U.S. at 529 (cleaned up); see also *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). Until the Supreme Court recognizes a *Zadvydas* challenge *during* that six-month period, the Court cannot create that cause of action where none exists in derogation of *Akinwale*. See 287 F.3d at 1052 ("This six-month period thus must have expired . . . in order to state a claim under *Zadvydas*.").

IV. SLRRFF Has Been Established.

Even if Diaz Hernandez's detention had exceeded the presumptively reasonable period—and it has not—SLRRFF has been established. Cuba has agreed to Diaz Hernandez's repatriation with a charter flight anticipated later this month. See Declaration of Deportation Officer Angel Diaz, attached as Exhibit E.

Conclusion

For the foregoing reasons the Court should deny the Petition.

Date: June 4, 2026

Respectfully submitted,

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A.I. CERTIFICATION

The undersigned hereby certifies that no generative AI was used in the drafting and preparation of the foregoing filing.

By: /s/Amanda Saylor
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 4, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will furnish copies of these documents to all registered counsel of record.

Dated: June 4, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney