

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

**VLADIMIR RICARDO
HERNANDEZ,**

Petitioner,

Case No. 3:26-cv-01050-JEP-PDB

v.

GARRETT RIPA, Field Office Director
of Enforcement and Removal Operation,
Miami Field Office, Immigration and
Customs Enforcement; **MARKWAYNE
MULLIN**, Secretary of Homeland
Security; **TODD BLANCHE**, United
States Acting Attorney General; **TODD
M. LYONS**, Acting Director of U.S.
Immigration Customs and Enforcement;
WARDEN, Florida Baker Correctional
Institution,¹

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Vladimir Ricardo Hernandez (Petitioner) challenges his detention by
the U.S. Immigration and Customs Enforcement (ICE), arguing that he is entitled to

¹The individual having physical custody of a petitioner is the only appropriate respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec'y, Fla. Dep't of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned within the power of the immediate custodian or ICE/DHS. *See, e.g., Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE *either* to bring petitioner for a bond hearing or release by a specific date).

a bond hearing under 8 U.S.C. § 1226. But because Petitioner has a final order of removal, Petitioner is subject to detention under 8 U.S.C. § 1231. *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491 (2001). Because Petitioner's order of removal is final, and because Petitioner filed this action on April 29, 2026—within the 180 day period of reasonable detention under *Zadvydas*—Petitioner's due process is not yet ripe. Thus, this Court should deny the Petition.

PRELIMINARY STATEMENT

On April 29, 2026, Petitioner filed the Petition, challenging his detention as unlawful. Doc. 1. By Order dated May 7, 2026, this Court ordered service of Petition and directed Respondents to respond within five days. At the time that Petitioner filed the instant habeas petition on April 29, 2026, Petitioner had been in custody for approximately 148 days. Accordingly, Petitioner's detention is lawful.

BACKGROUND

1. Petitioner is a 32-year-old male, native and citizen of Cuba, who entered the United States on or about July 30, 2019, at or near El Paso, Texas. *See Exhibit A* (Petitioner's I-213); *see also*, Doc. 1-2 (Notice to Appear); Doc. 1 at ¶ 62.

2. On March 24, 2021, Petitioner was admitted via parole, scheduled to expire on March 22, 2022. Doc. 1 at ¶ 63; *see also*, Doc. 1-4.

3. Petitioner remained in the United States beyond the expiration date.

4. On February 14, 2025, an Immigration Judge (IJ) ordered Petitioner removed. *See Exhibit B* (IJ Removal Order); *see also*, Doc. 1-5 (finding that the

Department of Homeland Security (DHS) “submitted documentary evidence relating to Respondent that established the truth of the factual allegations contained in the Notice to Appear” and “[t]he Immigration Court finds removability established as charged.”). The IJ ordered that Petitioner be removed to Cuba. *See id.*

5. On December 2, 2025, Petitioner went into ICE custody. Doc. 1 at ¶ 64.

6. On January 6, 2026—at approximately 35 days in custody— Petitioner filed a Motion to Reopen the removal proceeding and rescind the order of removal. *See Exhibit C* (Motion to Re-Open).

7. On January 29, 2026, DHS filed an opposition to Petitioner’s Motion to Re-Open. *See Exhibit D* (DHS Opposition to Motion to Re-Open).

8. Petitioner’s Motion to Reopen the Removal Period remains pending and the order of removal, accordingly, remains final.

9. To date, Petitioner has been in ICE custody at the Baker Correctional Institution for approximately 162 days. *See Exhibit E* (Detention History).

MEMORANDUM OF LAW

I. CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1231. *See* 28 U.S.C. § 2243 (stating “[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner bears the burden of proving Petitioner’s custody violates federal law. *Whitfield v. Unites States Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

II. ARGUMENT

A. Petitioner's Detention is Lawful Under 8 U.S.C. § 1231.

Following entry of an order of removal, immigration detention is governed by 8 U.S.C. § 1231. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 544 (2021) (“§ 1231 explains what to do if the alien is ordered removed.”); *see also Deshati v. Noem*, No. 25-CV-15940-ESK, 2025 WL 3204227, at *2 (D.N.J. Nov. 17, 2025) (“The statute governing post-final order of removal immigration detention is 8 U.S.C. § 1231.”). Pursuant to section 1231(a)(1)(A), “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” Detention during the removal period is mandatory. 8 U.S.C. § 1231(a)(2)(A). The Government may detain an alien beyond the statutory removal period if he is inadmissible under 8 U.S.C. § 1182, was ordered removed because of certain criminal convictions, or has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal. 8 U.S.C. § 1231(a)(6). If such an alien is later released, they are subject to supervision as provided for in 8 U.S.C. § 1231(a)(3).

In *Zadvydas*, the Supreme Court held that indefinite detention of aliens raises serious constitutional concerns. 533 U.S. 678, 690-99 (2001). Once an order of removal is final, the Government may continue to detain an alien only for a reasonable amount of time. *See id.* at 699-701. The reasonableness of the detention is to be measured “primarily in terms of the statute’s basic purpose, namely, assuring

the alien's presence at the moment of removal." *Id.* at 699. The Supreme Court held that six months is a presumptively reasonable period to detain a removable alien awaiting deportation. *Id.* at 700-01. "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).

After that six-month period has passed, if the alien "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 1052 (quoting *Zadvydas*, 533 U.S. at 701). Thus, "in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* If an alien makes these showings, then the burden shifts to the Government to rebut the presumption with sufficient evidence establishing that there is "a significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

Courts generally have held that the six-month period is calculated from the time the detainee files the habeas petition, even if the petition remains pending beyond the expiration date. *Akinwale*, 287 F.3d at 1052 (emphasis added) ("This six-month period thus must have expired at the time [petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*."); see also *Thelemaque v. Barr*, No. 20-20467-

CIV, 2020 WL 13551808, at *2 (S.D. Fla. Mar. 30, 2020) (denying habeas petition as premature when petitioner was detained on August 2, 2019, and filed his petition within the six-month period on January 27, 2020, despite the district court issuing its ruling beyond the six-month period). This rule serves to prevent a flood of premature *Zadvydas* claims in the federal courts. See *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1364 (N.D. Ga. 2002) (“A strict construction of that time limit serves a gatekeeping function to ensure that federal courts are not unnecessarily weighed down with hasty complaints[.]”); *Mehighlovesky v. U.S. Dep’t of Homeland Sec.*, No. CIV 12-902 RHK/JJG, 2012 WL 6878901, at *2 (D. Minn. Dec. 7, 2012) (“If the rule were otherwise, removable aliens would have no incentive to wait for their potential *Zadvydas* claims to ripen, and the federal courts might then be inundated with pre-emptive *Zadvydas* claims[.]”), *report and recommendation adopted*, 2013 WL 187553 (D. Minn. Jan. 17, 2013).

Here, Petitioner filed the instant habeas petition approximately 148 days into detention. Because Petitioner filed this action before detention reached 180 days, the Petition is not ripe under *Zadvydas* and should be dismissed. Petitioner’s

B. Petitioner Has Failed to Cooperate With Removal.

As noted above, an alien may continue to be detained where he has acted to prevent his removal. 8 U.S.C. § 1231(a)(1)(C) states:

The 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.

The courts have generally taken two different approaches when applying § 1231(a)(1)(C) in the context of a *Zadvydas* claim:

Many courts conduct an analysis using the burden-shifting framework from *Zadvydas*, considering an alien's failure to cooperate in determining whether the alien can show "good cause" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Other courts contend that an alien's failure to cooperate precludes an analysis under *Zadvydas* altogether. Finally, some courts find an alien's failure to cooperate or filing of litigation equitably tolls, possibly indefinitely, the six-month removal period. In fact, a couple of courts covered both bases finding obstruction tolled the removal period, and in the alternative, the alien did not meet the *Zadvydas* standard.

Glushchenko v. United States Dep't of Homeland Sec., 566 F. Supp. 3d 693, 705-06 (W.D. Tex. 2021) (footnotes omitted). In *Akinwale*, the Eleventh Circuit recognized that the six-month period may be tolled if the alien "acts to prevent [his] removal" by filing litigation "challeng[ing] issues related to his removal order and his post-removal period detention." *Akinwale*, 287 F.3d at 1052 n.4 (quoting 8 U.S.C. § 1231(a)(1)(C)). More recently, the Eleventh Circuit noted that "if the removal period was extended by operation of § 1231(a)(1)(C), then ICE can continue to detain [the petitioner] because 'the keys to [the petitioner's] freedom [are] in his pocket and [he] could likely effectuate his removal by providing the information requested,' so he 'cannot convincingly argue that there is no significant likelihood of removal.'" *Singh*, 945 F.3d at 1314 (quoting *Pelich v. Immigration & Naturalization Serv.*, 329 F.3d 1057, 1060 (9th Cir. 2003)); see

Vaz v. Skinner, 634 F. App'x 778, 782 (11th Cir. 2015) ("Because Petitioner is responsible for thwarting his removal, he cannot show that there is no reasonable likelihood that he will not be removed in the reasonably foreseeable future if he cooperates with DHS and voluntarily signs for the travel document."); *Oladokun v. U.S. Att'y Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012) ("Oladokun fails to 'provide[] good reason to believe that there is no significant likelihood of [his] removal in the reasonably foreseeable future,'" because his "non-cooperation is the only barrier to his removal." (quoting *Zadvydas*, 533 U.S. at 701)).

Here, at approximately 35 days into detention, Petitioner filed a Motion to Re-Open the removal proceeding and rescind the final order of removal. *See Exhibit C.* Petitioner's Motion and DHS's response remain pending before the immigration judge. If Petitioner cooperates with removal efforts, as required by 8 U.S.C. § 1253(a), removal is reasonably foreseeable. But if Petitioner fails to cooperate, Petitioner "cannot convincingly argue that there is no significant likelihood of removal." *Singh*, 945 F.3d at 1314 (quoting *Pelich*, 329 F.3d at 1060. Accordingly, pursuant to 8 U.S.C. § 1231(a)(1)(C), Petitioner's period of detention should be tolled because Petitioner has refused to cooperate with ICE to effectuate removal.

CONCLUSION

Based on the foregoing arguments and citations of authority, the Federal Respondents respectfully request that the Petition be denied.

EXHIBIT LIST

- 1) Exhibit A (Petitioner's I-213) dated December 2, 2025;
- 2) Exhibit B (Removal Order) dated February 14, 2025;
- 3) Exhibit C (Motion to Re-Open Removal Proceedings) dated January 7, 2026;
- 4) Exhibit D (DHS Opposition to Motion to Re-Open) dated January 28, 2026;
- 5) Exhibit E (Detention History).

Dated: May 14, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 14, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following CM/ECF participant:

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