

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PEDRO BORREGO PINO,

Petitioner,

v.

Case No. 2:26-cv-1236-KCD-NPM

WARDEN, FLORIDA SOFT SIDE
SOUTH DETENTION CENTER et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Pedro Borrego Pino 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. *See generally* Am. Pet., ECF No. 6.¹ Federal Respondents argue his petition should be denied because they represent there is a significant likelihood of removal in the reasonably foreseeable future.

¹ Pedro Borrego Pino originally submitted a habeas petition on April 29, 2026, to which, on April 30, 2026, the Court ordered respondents to respond. *See* Pet., ECF No. 1; *see also* Suppl. to Pet., ECF No. 5; Show Cause Order, ECF No. 4. On May 11, 2026, Pedro Borrego Pino submitted an amended habeas petition, which Federal Respondents understand to be the operative petition for this matter. However, to the extent the original petition and supplement contain arguments the amended petition does not, Federal Respondents will attempt to address them, as well.

BACKGROUND

Pedro Borrego Pino is a national and citizen of Cuba who last entered the United States on or about May 11, 1980, without inspection. *See* Composite Ex. at 9-11 (2025 Form I-213). On October 1, 1985, Petitioner was taken into immigration custody. *Id.* at 23 (Detention History). On February 9, 1987, Petitioner was ordered removed to Cuba. *Id.* at 11 and 19 (2011 OSUP). On March 7, 1988, Petitioner was released from immigration custody on parole. *Id.* at 23.

On October 12, 1991, Petitioner was taken into immigration custody. Composite Ex. at 23. On May 28, 1993, Petitioner was released from immigration custody on parole. *Id.* On June 7, 1994, Immigration and Naturalization Service revoked Petitioner's parole because, between 1985 and 1994, Petitioner was convicted of various crimes including uttering a forged instrument and three counts of grand theft. *Id.* at 1-5 (1994 Parole Revocation). Indeed, between 1981 and 2009, Petitioner was arrested for and, in some instances, convicted of numerous crimes, for which he served numerous periods of incarceration. *See id.* at 12-18 (Fla. Criminal History) and 10. On July 19, 2011, ICE placed Petitioner on an order of supervision ("OSUP"). *Id.* at 19-21.

On January 17, 2017, Petitioner was sentenced to 10 years in prison after being convicted of attempted sexual battery by an adult on a victim less than 12 years of age. Composite Ex. at 11 and 13. On or about May 13, 2025, ICE Enforcement and

Removal Operations encountered Petitioner at the Dade Correctional Institution, where he was serving his sentence for his 2017 conviction. *Id.* at 10. That same day, ICE served Petitioner with a Warning for Failure to Depart and instructions regarding how Petitioner was required to assist in his removal. *Id.* at 7-8. At that time, Petitioner was scheduled to be released on July 14, 2025. *Id.* On July 8, 2025, ICE took Petitioner into immigration custody, where he remains today. *Id.* at 23. That same day, ICE served Petitioner with a Notice of Removal, notifying him that they intended to remove him to Mexico. *Id.* at 6 (2025 Removal Notice). On March 2, 2026, Mexico denied Petitioner's repatriation due to medical concerns. *Id.* at 25 ¶ 8 (Cuevas Decl.). On April 11, 2026, ICE served Petitioner with another Notice of Removal, again notifying him that they intend to remove him to Mexico. *Id.* at 22 (2026 Removal Notice).

On April 29, 2026, Pedro Borrego Pino filed a petition for writ of habeas corpus. *See* Pet; *see also* Suppl. to Pet. On May 11, 2026, Pedro Borrego Pino submitted an amended habeas petition, alleging his custody violates the INA and Due Process Clause of the Fifth Amendment.² Am. Pet. ¶ 13. Petitioner is currently detained at Florida Soft Side South. Composite Ex. at 23.

² Although Petitioner does not explicitly frame his challenge this way, Federal Respondents understand Petitioner's amended habeas petition to challenge the length of his custody under the INA and Due Process Clause based on his allegations regarding the length of his detention under *Zadvydas v. Davis*, 553 U.S. 678 (2001), and the legality of his detention under the framework devised by the U.S. Supreme Court. Am. Pet. ¶ 13.

CERTIFIED HABEAS RETURN

ICE is detaining Pedro Borrego Pino pursuant to 8 U.S.C. § 1231(a)(6). *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner “has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.” *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001).

MEMORANDUM OF LAW

Federal Respondents represent that Petitioner is lawfully detained under the INA and his detention does not violate the Fifth Amendment. Pursuant to the INA, except as otherwise provided and explained below, DHS initially has a 90-day “removal period” to remove Petitioner and is required to detain him during this time. 8 U.S.C. §§ 1231(a)(1)(A) (“[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 day (in this section referred to as the ‘removal period’).”) & (a)(2)(A) (“During the removal period, the Attorney General shall detain the alien.”). Although DHS initially has a 90-day removal period during which an individual with a final removal order must be detained, detention may extend into a “post-removal period.” *Compare* 8 U.S.C. §§ 1231(a)(1)(A) & (a)(2)(A) *with id.* §§ 1231(a)(1)(C) (suspension of removal period in event of certain actions by an alien) & (a)(6) (certain categories of aliens may be detained beyond removal period or released);

see also Zadvydas, 553 U.S. at 682-83 (referring to 8 U.S.C. § 1231(a)(6) as a “post-removal-period statute”).

The INA does not explicitly define how long ICE can detain an alien subject to the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, due to constitutional concerns, including under the Due Process Clause of the Fifth Amendment, the Supreme Court has interpreted the post-removal period to be limited to “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. A reasonable length of detention “is presumptively six months.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (six-month period is inclusive of 90-day removal period).

If the presumptively reasonable six-month 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 701. But before that six-month period expires, a *Zadvydas* habeas challenge is premature. *See, e.g., id.* (the burden-shifting framework applies “[a]fter this 6-month period”) (emphasis added); *Akinwale*, 287 F.3d at 1052 (“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*.”); *Farah v. U.S. Att’y Gen.*, 12 F.4th 1312, 1321 (11th Cir. 2021) (“Under Supreme Court precedent, detention under section 1231(a) is presumptively reasonable for six months, *after which* an alien may challenge his

ongoing detention.”) (emphasis added). At bottom, “until the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *Al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026); *see also Texas v. United States*, 523 U.S. 296, 300 (1998) (“A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.”) (cleaned up).

Pedro Borrego Pino filed the present petition after the expiration of the six-month period. He was detained on July 8, 2025, and filed the original petition on April 29, 2026. *Compare* Composite Ex. at 23 *with* Pet. At that point, Petitioner had been detained for 295 days. Accordingly, the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701; *see also Rudenko v. Sec’y, Dep’t of Homeland Sec.*, No. 2:25-cv-1157-JES-NPM, 2026 WL 291012, at *3 (M.D. Fla. Feb. 4, 2026).

Federal Respondents argue there is a significant likelihood of removal in the reasonably foreseeable future (“SLRRFF”). Deportation Officer (DO) Juan Cuevas represents that, on March 2, 2026, Petitioner was denied repatriation to Mexico due to medical concerns. Composite Ex. at 25 ¶ 8. However, DO Cuevas represents that this does not prevent ERO from attempting removal to Mexico again. *Id.* Rather, DO Cuevas represents that ERO will renominate the Petitioner to Mexico and ERO is looking at alternative third countries. *Id.* Thus, ICE has determined

there is SLRRFF. *Id.* ¶ 12.³

CONCLUSION

Federal Respondents argue Pedro Borrego Pino's petition should be denied.

DATED this 20th day of May 2026.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Alexandra N. Karahalios
ALEXANDRA N. KARAHALIOS
Assistant United States Attorney
Florida Bar No. 1055229
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: 813-274-6000
Alexandra.Karahalios@usdoj.gov
Lead Counsel for Federal Respondents

³ The undersigned recognizes this Court has previously found that Notices of Removal and declarations with similar assertions to those made in this case insufficient to establish SLRRFF. *See, e.g., Betancourt v. Alcatraz*, No. 2:26-CV-1403-KCD-NPM, 2026 WL 1320246, at *2 (M.D. Fla. May 13, 2026). The undersigned has requested additional information to support SLRRFF in this case but has yet to receive any as of this filing. If the undersigned receives additional information before the Court rules, she will supplement this response with the same.