

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

DAIANOV NIKITA,

Petitioner,

Case No. 3:26-cv-1041-MMH-LLL

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY; and
WARDEN, NORTH FLORIDA
DETENTION FACILITY,

Respondent.

**FEDERAL RESPONDENT'S RESPONSE TO
PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Daianov Nikita, proceeding pro se, seeks a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, on the grounds that his prolonged detention is unlawful and violates due process. (Doc. 1.) His Petition should be denied because it is premature. As such, his continued detention is lawful. In addition, there is a significant likelihood of removal in the reasonably foreseeable future, as his removal to Russia is tentatively scheduled for the week of June 9, 2026.

BACKGROUND

Petitioner is a 36-year-old male, who is a national and citizen of Russia. (Ex. A, Petitioner's Form I-213, p. 1.) On July 11, 2022, Petitioner was admitted into the United States as a parolee pending admission. (*Id.* at 2.) Per his Form I-94, his

admission expired on July 10, 2023. (Ex. B, Petitioner's Form I-94.) According to his Form I-213, he remained in the United States without any permission from a designated immigration official. (Ex. A, p. 2.) He was subsequently processed with a Notice to Appear charging him as subject removal under Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA)¹ and placed in removal proceedings. (*Id.*)

Petitioner was later encountered and arrested on September 23, 2025, by the Florida Department of Agriculture for driving with a suspended license and identified as a habitual offender. (Ex. A, p. 2; Ex. C, Swannee County Sherriff's Office Booking Information.) The same day, Swannee County Jail contacted the Tallahassee Enforcement and Removal Operations (ERO) Criminal Alien Program (CAP) team for an inquiry into Petitioner's immigration status. (Ex. A, p. 2.) A background check of Petitioner's immigration status revealed that he had no immigration status at the time. (*Id.*) Petitioner was ultimately taken into ICE custody on November 12, 2025. (Ex. I, Detention History.)

On March 3, 2026, Petitioner's application for relief was denied by an Immigration Judge. (Ex. D, Immigration Court Order Denying Relief.) That same day, Petitioner was ordered removed from the United States to Russia by an Immigration Judge, and Petitioner reserved his right to appeal. (Ex. E, Removal

¹ INA § 212(a)(7)(A)(i)(I) is codified at 8 U.S.C. § 1182(a)(7)(A)(i)(I) and provides that any immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other required valid entry document, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if required, is inadmissible.

Order.) As stated therein, his deadline to appeal the removal order was April 2, 2026. (*Id.* at 4.) Petitioner's attempts to file an appeal were rejected twice by the Board of Immigration Appeals (BIA) based on defects in the certificate/proof of service. (Ex. F, First BIA Notice of Rejection of Appeal; Ex. G, Second BIA Notice of Rejection of Appeal.) The notices rejecting Petitioner's appeal were sent to both the U.S. Department of Homeland Security/ICE and Petitioner. (*See* Ex. F, p. 1; Ex. G, p. 1.) Both notices stated that the returned appeals and attachments required timely correction of the listed defects and that the returns "D[ID] NOT EXTEND THE ORIGINAL TIME LIMIT within which [Petitioner] must file [his] appeal." (Ex. F, p. 1 (emphasis in original); Ex. G, p. 1 (emphasis in original).) As of April 28, 2026—twenty-six days after the deadline for appealing the removal order—the identified filing defects had still not been cured. (*See* Ex. G.) Despite Petitioner's claim that his appeal was filed on March 23, 2026, and is still pending, BIA's publicly available online case status reflects that no appeal was accepted as filed by the BIA.² (*Compare* Doc. 1, pp. 5, 7, with Ex. H, BIA Online Case Status.) Accordingly, Petitioner's removal order became final on April 2, 2026. *See Riley v. Bondi*, 606 U.S. 259, 267, (2025) ("An order of removal becomes final at the earlier of two points: (1) a determination by the BIA affirming such order, or (2) the expiration of the period in which the alien is permitted to petition the BIA for review of the order.")

² *See* <https://acis.eoir.justice.gov/en/caseInformation>

Petitioner is currently detained at Baker Correctional Institute. (Ex. I.) As of the date of his Petition was filed—April 30, 2026—he had been in post-removal order detention for 28 days.

CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the detention provisions of 8 U.S.C. § 1231(a). *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 to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

ARGUMENT

I. **Petitioner’s Detention Claim is Premature under *Zadvydas***

The Petition should be denied because it is premature. In *Zadvydas v. Davis*, the Supreme Court held that detention **following** a final removal order is presumptively reasonable for six months. 533 U.S. 678, 701 (2001). Here, Petitioner was ordered removed on March 3, 2026, and reserved his right to appeal. (Ex. E, pp. 3–4.) His appeal was due on or before April 2, 2026. (*Id.* at 4.) As explained above, the BIA rejected Petitioner’s appeal twice for certificate/proof of service defects and, as of April 28, 2026, the defects still had not been cured. (Ex. F; Ex. G.) The BIA’s notices rejecting Petitioner’s appeals stated that corrected appeals filed after the original time limits must be accompanied by a written notice entitled “MOTION TO ACCEPT

LATE APPEAL,” and comply generally with the rules and procedures for filing. (Ex. F, p. 1; Ex. G, p. 1.) The BIA’s rejection notices also contained instructions stating that any motion to accept an untimely appeal “must clearly establish both diligence in the filing of the notice of appeal and that extraordinary circumstances prevented timely filing.” (Ex. F, pp. 1–2; Ex. G, p. 1.) Additionally, the notices required that such a motion “be supported by affidavits, declarations, and other evidence.” (Ex. F, p. 1; Ex. G, pp. 2–3.)

The Petitioner represents that the appeal of his removal order was filed on March 23, 2026, and remains pending. (Doc. 1, pp. 2, 5.) But this representation is inconsistent with documentation in the DHS/ICE file for Petitioner, as well as the BIA’s online case status, the latter of which evidences that no appeal was ever accepted by the BIA. (Exs. F, G & H.) Indeed, if the first defect identified in the BIA’s first notice of Rejection of Appeal had been cured, there would have been no need for a second notice.

Based on the foregoing, the Removal Order was deemed administratively final as of April 2, 2026—the expiration of Petitioner’s time to appeal the removal order. (See Ex. E, Removal Order, p. 4); *see also Riley*, 606 U.S. at 267; *cf. Johnson v. Guzman Chavez*, 594 U.S. 523, 534–535 (2021) (“[O]nce the BIA has reviewed the order (or the time for seeking the BIA’s review has expired), DHS is free to remove the alien *unless* a court issues a stay.” (emphasis in original)).

“As relevant here, the removal period begins when an alien is ordered removed, and the removal order becomes administratively final.” *Guzman Chavez*, 594 U.S. at 533–34. Detention for the first ninety days following an administratively final removal order is statutorily required. 8 U.S.C. § 1231(a)(2). Under *Zadvydas*, the constitutional upper limit of post-removal order detention is six months. Petitioner argues that he has been detained for more than 180 days in violation of this constitutional limit in *Zadvydas*; however, in making this argument, he has mistakenly counted his *pre*-removal order detention time. The relevant time period for stating a *Zadvydas* claim is the time spent in detention between the date a detainee’s removal order becomes administratively final and the date that a petitioner files a petition for habeas relief under 28 U.S.C. § 2241. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating that “in order to state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months” and that “[t]his six month period . . . must have expired at the time [the petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*”). Here, Petitioner was ordered removed on March 3, 2026, his removal order became final on April 2, 2026, and the instant Petition was filed on April 30, 2026. As of April 30, 2026—the relevant date as confirmed by the Eleventh Circuit—Petitioner he had been in detention *following* his removal order for twenty-eight days. Consequently, his detention falls significantly short of the six-month—or 180-day—presumptively reasonable length of post-removal order detention set forth in *Zadvydas*. To be sure, here, Petitioner’s length of detention

following removal is still within the statutorily *mandated* ninety-day post-removal period. 8 U.S.C. § 1231(a)(2).

The applicable legal framework concerning post-removal order detention is set forth in 8 U.S.C. § 1231 and the U.S. Supreme Court’s *Zadvydas* decision. After a final removal order, an alien must be removed within ninety days—this is referred to as the removal period. 8 U.S.C. § 1231(a)(1); *see also Zadvydas*, 533 U.S. at 683. During the removal period, the alien *must* be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Guzman Chavez*, 594 U.S. at 528–29.

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Nevertheless, due to constitutional concerns, the U.S. Supreme Court has interpreted the post-removal period to allow extended detention only 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. “This six-month period . . . must have expired *at the time [Petitioner’s] § 2241 petition was filed* in order to state a claim under *Zadvydas*.” *Akinwale*, 287 F.3d at 1052 (emphasis added).

If the presumptively reasonable 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. If an alien “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must either rebut that showing or release the alien. *Id.* 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; *Song v. U.S. Att’y Gen.*, 516 F. App’x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009). 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*, Case No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026).

Here, Petitioner filed the present Petition before the expiration of six months in detention following his order of removal. (*Compare* Doc. 1, with Ex. E and Ex. I.) As previously stated, it is only *after* six months of detention following an administratively final removal order that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (stating that the inquiry is “[a]fter this 6-month period”); *Al Ellary*, 2026 WL 548048, at *1–2 (denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permits a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051–52. Accordingly, the Petition should be denied as premature.

II. Even if the Petition was not Premature, Federal Respondent has Demonstrated a Significant Likelihood of Removal in the Reasonably Foreseeable Future

Though Petitioner has not yet met his burden to show that there is good reason to believe he cannot be removed in the reasonably foreseeable future, Federal Respondent has produced a declaration from a deportation officer that shows a significant likelihood of removal in the reasonably foreseeable future. Indeed, the declaration states that: (1) Petitioner's case was referred to CAO for approval on removal on May 28, 2026; and (2) Petitioner's removal to Russia is tentatively scheduled to occur the week of June 9, 2026. (Ex. J, Declaration of Deportation Officer, ¶ 4.) The CAO appears to be the Code of Administrative Offenses of the Russian Federation. *See* CODE OF ADMIN. OFFENCES OF THE RUSSIAN FED. NO. 195-FZ OF DEC. 30, 2001, https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_63.pdf.

III. Petitioner Improperly Raises Challenges to the Conditions of his Confinement in his Habeas Petition

The Petition also raises a claim regarding Petitioner's access to counsel and legal assistance in his immigration case. (Doc. 1, p. 7.) "Claims challenging the fact or duration of a sentence fall within the 'core' of habeas corpus, while claims challenging the conditions of confinement fall outside of habeas corpus law." *Vaz v. Skinner*, 634 F. App'x 778, 780 (11th Cir. 2015). As such, a habeas petition is not the appropriate vehicle for raising due process violations stemming from complaints

about access to counsel and legal assistance. *See, e.g., Suarez-Garcia v. Warden Fla. Soft Side S.*, No. 2:26-CV-00687-KCD-DNF, 2026 WL 1396082, at *2 (M.D. Fla. May 19, 2026) (concluding that the petitioner's complaint's about access to counsel was a grievance "about the *conditions* of his confinement, not the *fact or duration* of it" (emphasis in original)). "And, in any event, even if Petitioner established a constitutional violation, he would not be entitled to the relief he seeks because release from imprisonment is not an available remedy for a conditions-of-confinement claim." *Vaz*, 634 F. App'x at 781. Accordingly, the Petition should be denied to the extent it seeks release on grounds of inadequate access to counsel or legal assistance.

IV. Petitioner Has Also Failed to Exhaust His Administrative Remedies

Finally, to the extent Petitioner seeks relief from this Court in order to reopen his immigration case (*see* Doc. 1, p. 7), the Petition is also due to be denied because Petitioner has failed to exhaust his administrative remedies. "A petitioner must exhaust all available administrative remedies before filing a [28 U.S.C.] § 2241 petition in federal court." *Bohorquez-Valencia v. Ripa*, Case No. 3:25-cv-1383-MMH-LLL, 2026 WL 662980, at *2 (M.D. Fla. Mar. 9, 2026) (citing *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015)). Here, the notices of the rejection of Petitioner's appeal by the BIA outline the procedure for filing an untimely appeal. (Exs. F, G.) Given Petitioner's representations that his appeal is actively pending with the BIA, it is clear that he has not reviewed his case status or attempted to rectify it.

As such, because Petitioner has not yet exhausted his administrative remedies, “it is premature for the Court to reach the constitutional questions presented in the Petition.” *See Bohorquez-Valencia* 2026 WL 662980, at *2.

As this Court has previously recognized in an analogous context, “this case is distinguishable from those cases in which [district judges within this District] ha[ve] found it unnecessary for petitioners to exhaust claims that they were improperly classified as ‘arriving aliens’ under 8 U.S.C. § 1225(b)(2) and denied bond hearings.” *Bohorquez-Valencia* 2026 WL 662980, at *2. “In those cases, BIA precedent—binding on [Immigration Judges]—foreclosed the possibility of any relief for those petitioners.” *Id.* “That is not the case here.” *Id.* Accordingly, the Court should dismiss the Petition for failure to exhaust available administrative remedies.

CONCLUSION

For the foregoing reasons, Federal Respondent respectfully requests that the Petition for a Writ of Habeas Corpus under 28 U.S.C. 2241 (Doc. 1) be denied.

Dated: June 1, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and that, on or about June 2, 2026, I will serve the forgoing document and notice of electronic filing on Petitioner at the address listed for him on the docket.

/s/ Somadina Sullins

SOMADINA SULLINS

Assistant United States Attorney