

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

ERNESTO REYNA,

Petitioner,

Case No.: 3:26-cv-1174-JEP-PDB

v.

WARDEN, NORTH FLORIDA  
DETENTION CENTER, et al.,

Respondents.

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**RESPONDENTS' RESPONSE TO AMENDED VERIFIED PETITION FOR  
WRIT OF HABEAS CORPUS**

Petitioner Ernesto Reyna challenges his continued detention by United States Immigration and Customs Enforcement ("ICE") and seeks immediate release. (Doc. 1). The Court should deny the Petition for the reasons set forth below.

**BACKGROUND**

Petitioner is a national and citizen of Cuba. (Ex. A at 35). He was admitted to the United States at Miami, FL on or about August 19, 1994. (*Id.*). On May 23, 2006, the petitioner was convicted of Possession of Cocaine. (*Id.* at 19–30).

On September 24, 2010, Petitioner was issued a Notice to Appear, charged under INA §237(a)(2)(B)(i) based on this conviction. (*Id.* at 23). On December 15, 2010, Petitioner was ordered removed from the United States. (*Id.* at 31). He was placed on an order of supervision ("OSUP") in April 2011. (*Id.* at 9) (noting the date Petitioner was placed on OSUP).

On or about October 13, 2023, Petitioner plead guilty to two counts of possession with intent to distribute a detectable amount of methamphetamine and was sentenced to 32 months in jail and 3 years' probation. (*Id.* at 12–14 ). On March 24, 2026, Petitioner's OSUP was revoked due to a violation of a condition of release. (*Id.* at 9–11). On April 10, 2026, Petitioner was taken into ICE custody. (Ex. B). He was served with Notice of Removal to Safe Third Country indicating Mexico on May 8, 2026. (*Id.* at 2). The petitioner was given an Alien Informal Interview on May 21, 2026. (*Id.* at 3).

Petitioner is currently being detained at Baker Correctional Institute. (Ex. B).

### **CERTIFIED HABEAS RETURN**

Petitioner is detained under 8 U.S.C. § 1231(a)(6). *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**

At its core, Petitioner argues that his detention violates the test set forth in *Zadvydas*. Petitioner argues that: (1) the combined duration of his detention following his final removal order violates the Supreme Court’s six-month bright-line rule of presumptive reasonableness set forth in *Zadvydas*; and (2) there is no significant likelihood that he will be released in the reasonably foreseeable future. (*See generally*

Doc. 1 at 6–8). In addition, Petitioner seemingly argues that his detention is actionable under the *Accardi* doctrine and the Administrative Procedure Act (APA). (*Id.*).

### **I. The Petition is Premature**

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. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

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). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the 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*, 287 F.3d at 1052 (stating six-month period is inclusive of any ninety-day removal period).

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 689. 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. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*,

*Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *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). At bottom, “until the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *E.g.*, *Khalil Al Ellary*, 2:26-cv-00112-KCD-DNF, Doc. 7 M.D. Fla. Feb. 27, 2026); *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at \*2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at \*2 (M.D. Fla. Dec. 21, 2011).

District courts are split on when the six-month *Zadvydas* clock begins. *See Vargas v. U.S. Immigr. & Customs Enft*, No. 3:26-CV-440-JEP-PDB, 2026 WL 815843, at \*1 (M.D. Fla. Mar. 25, 2026) (collecting cases with a split of opinion). Some courts treat the *Zadvydas* period as cumulative and, therefore, aggregate all periods of detention. *See e.g. Krechmar v. Parra*, No. 2:25-CV-01095-SPC-DNF, 2025 WL 3620802, at \*3 (M.D. Fla. Dec. 15, 2025) (explaining only considering an isolated period of ICE custody and ignoring all prior detention “would effectively allow [ICE] to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six month.”).

Other “courts have firmly rejected [the] cumulative approach”. *Tran v. Warden, Fla. Soft Side S. Det. Ctr.*, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at \*4 (M.D. Fla. Mar. 10, 2026). In *Tran*, the court “decline[d] to endorse a blanket rule that all prior periods of confinement automatically aggregate to satisfy the *Zadvydas* six-month

clock.” *Id.* The *Tran* court held that the better approach is to:

afford the government a new six-month presumptively reasonable period for each discrete detention, unless there are facts suggesting the government is acting with an improper motive. If the record reveals a calculated pattern of catch-and-release designed merely to reset the *Zadvydas* clock or evade judicial review, aggregation may be entirely appropriate. But absent evidence of such bad faith or a deliberate strategy of looping confinement, courts should presume that a subsequent detention is a genuine, independent effort to effectuate removal.

*Id.*

Respondents respectfully request that the Court reject the cumulative approach in this case. With respect to his current detention, Petitioner was taken into ICE custody on April 10, 2026. Thus, at the time he filed his petition, and even as of the date of this Response, Petition’s current detention has not exceeded 180 days. Additionally, Petitioner has failed to offer any factual allegations or evidence suggesting that the government has acted with an improper motive to bypass the six-month presumption or avoid judicial oversight.

Petitioner “remains within the six-month presumptively reasonable window established in *Zadvydas*.” *Lam v. Dir., Immigr. & Customs Enft*, Case No. 2:25-cv-1202-KCD-DNF, 2026 WL 628248, at \*4 (M.D. Fla. Mar. 6, 2026). Accordingly, “[h]is due process challenge to the length of his detention is therefore premature.” *Id.*

## **II. Petitioner’s *Accardi* Doctrine Claim Does Not Warrant Habeas Relief**

Petitioner’s arguments under the *Accardi* doctrine are also insufficient to warrant the extraordinary remedy of habeas relief. *See Tran*, 2026 WL 672969, at \*10. The *Accardi* doctrine is derived from *Accardi v. Shaughnessy*, 374 U.S. 260 (1954). *See Chevron*

*Oil Co. v. Andrus*, 588 F.2d 1383, 1386 (5th Cir. 1979). It stands “for the unremarkable proposition that an agency must abide by its own regulations.” *Id.*

Here, Petitioner argues that ICE did not follow the regulations in 8 C.F.R. §§ 241.4 and 241.13 (Doc. 1 at 6). However, the revocation of his supervised release is governed by 8 C.F.R. § 241.3 *Tran*, 2026 WL 672969, at \*7. “When the Government decides it is time to again detain someone on that specific track, it must follow the revocation procedures in § 241.13.” *Id.* This section says the agency can revoke an order of supervision if changed circumstances mean removal is now significantly likely. *Id.* “Upon revocation, the alien will be notified of the reasons for revocation of his or her release” and the agency “will conduct an initial informal interview promptly after his or her return to . . . custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3)).

“Section 241.13(i) leaves the determination of whether circumstances have changed squarely in the agency’s hands.” *Id.* at \*8. “To the extent this Court has any role in questioning that operational judgment, [its] posture must be highly deferential.” *Id.* “As the Supreme Court has cautioned, [federal courts] must take appropriate account of the greater-expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive efforts to enforce in this complex area of law, and the Nation’s need to speak with one voice in immigration matters.” *Id.* (citing *Zadvydas*, 533 U.S. at 700.) Accordingly, “the Court’s review of the [R]espondents’ determination that there are changed circumstances in this case is necessarily limited.” *Id.*

According to the record, Petitioner was given an Alien Informal Interview on May 21, 2026. (Ex. A at 3). Thus, Petitioner has not shown that any arguable violations of the regulatory provisions at issue amount to a due process violation, since he has not shown that he was denied any notice and opportunity to be heard on the basis for the revocation of his OUSP.

Assuming the agency's "initial administrative process was somehow lacking, [Petitioner] can hardly complain that he is being denied a meaningful opportunity to be heard *now*." *Id.* at \*9 (emphasis in original). "Through this very habeas proceeding, he has had a full change to review the Government's evidence, file his briefs, and press his legal arguments before an Article III court." *Id.* "He has had his say." *Id.* "Because this litigation itself has provided him with the exact procedural safeguards he claims to have missed," the Court should "decline to use the extraordinary tool of habeas relief to simply wipe the slate clean." *Id.* "Because habeas is not backward-looking, the process provided now renders forward-looking relief separately inappropriate." *Id.* As such, the Court should deny Petitioner's claim based on the alleged *Accardi* violation.

### **III. Petitioner Cannot Raise Claims under the APA Here**

Petitioner cannot bring his claims under the APA. "The APA is the law's version of a backup plan—a residual remedy that kicks in only when there is no other adequate remedy in a court." *Id.* at \*7 (quoting 5 U.S.C. § 704). "Here, [Petitioner] has a perfectly adequate remedy: the very habeas petition he used to get through the courthouse doors in the first place." *Id.* "Because the writ of habeas corpus exists specifically to challenge the fact or duration of physical confinement, it leaves no room

for a redundant APA tag-along.” *Id.* Consequently, Petitioner’s APA claims should be denied.

### CONCLUSION

Based on the foregoing, the Petitioner’s Writ of Habeas Corpus (Doc. 1) should be denied.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or before May 27, 2026, a copy of the foregoing documents will be sent by U.S. Mail to:

Ernesto Reyna   
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/s/ Lakisha Davis  
Lakisha Davis  
Assistant United States Attorney