

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LARRY RUIZ ABREU,

Petitioner,

v.

Case No. 2:26-cv-01678-JES-KRH

WARDEN, FLORIDA SOFT SIDE
DETENTION CENTER,

Respondent.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Larry Ruiz Abreau challenges his detention by the U.S. Department of Homeland Security (“DHS”) and the U.S. Immigration and Customs Enforcement (“ICE”), arguing that he is unlawfully detained in violation of 8 U.S.C. § 1231(a)(6) and the Due Process Clause of the Fifth Amendment because his detention has exceeded 180 days and he alleges that is no significant likelihood that he will be removed to Cuba in the reasonably foreseeable future.

FACTS

Petitioner is a native and citizen of Cuba. Doc. 1 at 6, ¶ 13. Petitioner was ordered removed in 2004. Doc. 1 at 10, ¶ 11. Petitioner was released on an Order of Supervision (“OSUP”) on September 7, 2004, after ICE determined there was no significant likelihood of removal at that time, and was issued a revised OSUP in June 2005. Doc. 1 at 12, ¶ 7; *see also* Doc. 1-1 at 20-28. Petitioner’s OSUP was revoked, and he was re-detained by ICE on November 14, 2025. Doc. 1 at 10, ¶ 14. Petitioner was

given a Notice of Revocation of Release on November 14, 2025, advising him that his OSUP was being revoked to enforce his removal order. Ex. 3, Notice of Revocation of Release dated November 14, 2025. Cuba refused repatriation, and Petitioner refused to comply with removal to Mexico. Ex. 1, Decl. of Deportation Officer Kristian Estrada at ¶¶ 5, 8. On June 4, Petitioner was served with a new notice of removal to third country, but refused to sign and expressed that he will not comply with removal to Mexico. Ex. 1 at ¶ 11; *see also* Ex. 2, Warning for Failure to Depart dated June 4, 2026.

Petitioner filed a prior action on April 14, 2026, which was denied as premature without prejudice to refiling. *See* Doc. 16 in *Abreu v. Warden*, No. 2:26-cv-1171-KCD-NPM (M.D. Fla. May 8, 2026). On the day the current action was filed, Petitioner had been detained for 185 days. As of the date of this response, Petitioner has been detained for 202 days.

MEMORANDUM OF LAW

I. LEGAL STANDARD

Federal courts may grant writs of habeas corpus for a petitioner “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 proving his custody violates federal law. *Whitfield v. United States Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

II. CERTIFIED HABEAS RETURN

In a habeas case, the respondent “shall make a return certifying the true cause of the detention.” 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 is detained pursuant to 8 U.S.C. § 1231(a)(6).

III. ARGUMENT

Generally, this Court has jurisdiction in a habeas corpus proceeding to consider a challenge to a petitioner’s continued detention by immigration authorities. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). While the Court has jurisdiction to hear Petitioner’s challenge to his continued detention, the Petition should be dismissed because Petitioner has not established that his removal is not reasonably foreseeable.

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.”). 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 90-day removal period shall be extended, and the noncitizen may remain in detention, if the noncitizen (1) ‘fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure’ or (2) ‘conspires or acts to prevent the alien’s

removal.” *Singh v. U.S. Att’y Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (quoting 8 U.S.C. § 1231(a)(1)(C)). The Government may also detain an alien beyond the statutory removal period if the alien 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. at 690-99. Once an order of removal is final, the Government may continue to detain an alien only for a reasonable amount of time. *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.

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.

8 U.S.C. § 1231(a)(1)(C). 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, ICE revoked Petitioner’s OSUP and re-detained him in anticipation of his removal to Mexico. In February, Petitioner refused to comply with removal to Mexico, Ex. 1 at ¶ 8, and continues to do so today, Ex. 1 at ¶ 11. Because Petitioner has not cooperated with efforts to remove him by failing to cross into Mexico and by

failing to sign the Notice of Removal, the removal period is tolled pursuant to 8 U.S.C. § 1231(a)(1)(C).

C. Petitioner Has Not Demonstrated that His Removal Is Not Reasonably Foreseeable.

Petitioner has failed to provide any evidence to suggest that his removal is not significantly likely to occur in the reasonably foreseeable future. In *Akinwale*, the Eleventh Circuit—in establishing a two-part test—concluded that “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.” 287 F.3d at 1052 (emphasis added). Petitioner alleges that ICE is not likely to remove him to Cuba, but fails to address or acknowledge that ICE intends to remove him to Mexico, not Cuba, and fails to adduce any evidence that his removal to Mexico is not likely to occur if he participates in the removal process.

The 90-day removal period found in 8 U.S.C. § 1231(a)(1)(A) is extended, and the noncitizen may remain in detention, if the alien (1) “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure” or (2) “conspires or acts to prevent the alien’s removal” 8 U.S.C. § 1231(a)(1)(C). Here, ICE has attempted to effectuate Petitioner’s removal, but Petitioner refused to depart earlier this year, and refused to sign the necessary paperwork to attempt removal again. If Petitioner cooperates with removal efforts, his

removal is reasonably foreseeable. If Petitioner fails to cooperate, he “cannot convincingly argue that there is no significant likelihood of removal.” *Singh v. U.S. Att’y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019) (quoting *Pelich v. Immig. & Naturalization Serv.*, 329 F.3d 1057, 1060 (9th Cir. 2003)).

CONCLUSION

Based on the foregoing reasons and citations of authority, the Court should deny the instant Petition and dismiss this action. However, if the Court grants the Petition and orders Petitioner’s release, such release “shall be subject to supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3); *Zadvydas*, 533 U.S. at 699-700 (holding that when continued detention is unreasonable because removal is not reasonably foreseeable, “the alien’s release may and should be conditioned on any of the various forms of supervised release.”).

Dated: June 5, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 5, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, and mailed a copy of the foregoing to the following individual, who is not a CM/ECF participant:

Larry Ruiz Abreu, A# 
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/s/ Katherine R. Branch
KATHERINE R. BRANCH
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