

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RAUL ROBERT LOPEZ CHAVIANO,

Petitioner,

Case No. 2:26-CV-01668-KCD-NPM

v.

WARDEN, FLORIDA SOFT SIDE
SOUTH DETENTION CENTER,
U.S. ATTORNEY GENERAL,

Respondents.

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Raul Lopez Chaviano 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. His petition should be denied. 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 (2001). Lopez Chaviano had been detained for 49 days when he filed the present petition. His present detention is therefore lawful.

BACKGROUND

Lopez Chaviano is a national and citizen of Cuba who was paroled into the United States on March 31, 2006. (Composite Exhibit, Ex. 1 at 1.) On October 20,

2008, he was sentenced to 25 months imprisonment for manufacturing marijuana. *Id.* at 2. He was ordered removed on November 19, 2009, and released on an order of supervision on February 16, 2010. *Id.* at 2, 10.

Lopez Chaviano's detention history indicates he was again placed in immigration custody on March 30, 2026,¹ following an arrest for driving with a suspended license. *Id.* at 2, 7.

On May 18, 2026, Lopez Chaviano filed a petition for writ of habeas corpus alleging his custody violates the Fifth Amendment of the U.S. Constitution. (Doc. 1.)

He is currently detained at Florida Soft Side South.

ARGUMENT

I. Lopez Chaviano's detention does not violate the Fifth Amendment.

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). 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

¹ Lopez Chaviano's Form I-213 indicates a detainer was issued on January 12, 2026, and his case was processed the following day. (Composite Exhibit, Ex. 1 at 2, 10.)

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 v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (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, “[U]ntil 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).

Lopez Chaviano filed the present petition well before expiration of six months in detention. His detention history indicates he was placed in immigration custody on March 30, 2026, and filed the present petition on May 18, 2026. At that point, Lopez Chaviano been had detained for 49 days; to date, he has been in detention for 72 days.

As previously stated, it is only after six months that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” *See Jennings*, 583 U.S. at 299 (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”); *Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF (M.D. Fla. Feb. 27, 2026) (denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051-52. *See Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “require courts to listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise”).

II. Lopez Chaviano has failed to show ICE violated its regulations governing revocation of his order of supervision.

ICE has revoked Lopez Chaviano's order of supervision (OSUP) under 8 C.F.R. § 241.13(i). *See* Composite Exhibit, Ex. 1 at 7. Title 8 C.F.R. § 241.13(i)(3) provides,

Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Here, agency records show that on March 31, 2026, Lopez Chaviano was served with a notice of revocation of release informing him ICE determined there is a significant likelihood of removal in the reasonably foreseeable future. (Composite Exhibit, Ex. 1 at 7-8.) The same day, he was provided an informal interview and opportunity to respond to the reasons for revocation of his order of supervision. *Id.* at 9. ICE therefore followed its procedures in revoking Lopez Chaviano's order of supervision. His present detention is therefore lawful.

CONCLUSION

Respondents respectfully request Lopez Chaviano's petition be denied.

DATED this 10th day of June, 2026.

Respectfully submitted,

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