

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF FLORIDA

JUN 15 2026 AM 11:45
FILED - USDC - FLMD - FTM

PETITIONER

V.

U.S. DEP OF HOMELAND SECURITY,
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, et al.

No. 2:26-CV-01677-KCD-NPM

RESPONDENT

MEMORANDUM OF LAW

Comes now Petitioner, A- and Pro-se comes before the Court in good Faith and AMENDS a (5TH) Ground to his Petition in support for Writ. of Habeas Corpus.

ICE cannot Seriously contend That Petitioner is NOT cooperating. The Relevant Statutory provision provides that the 90-Day Removal period may be extended beyond 90-Days and the alien may remain in detention during that Period only "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). This Statutory provision cannot be applied to Petitioner. Petitioner has made a Timely application in good Faith FOR TRAVEL documents from the (Fill in your Country's name) Consulate. Petitioner also has provided Truthful information to ICE concerning his Place of birth and citizenship.

The Government cites no cases in support of its position that it may indefinitely detain an alien who truthfully admits he is a national of the country to which ICE seeks to remove him, where there is no allegation that he has provided false or misleading information, and where the alien has done whatever has been asked of him to facilitate his removal. That is because the caselaw demonstrates that to constitute noncooperation, an alien must take some actions that impedes the government's efforts to remove him or refuse to provide relevant assistance.

Compare MOROY. IMMIGRATION & NATURALIZATION SERVICE, 58 F. Supp. 2d 854, 858 (N.D. Ill. 1999) ("Although [§] 1231(a)(1)(C) places a burden of good-faith cooperation on aliens in securing their removal, it does NOT, contrary to the government's assertion, require MORO's continued detention because there is no evidence in this case that MORO has impeded the government's efforts to remove him or refused relevant assistance.") With Powell v. Ashcroft, 194 F. Supp. 2d 209, 210-11 (E.D.N.Y. 2002) alien who provided false name, false place of birth, and false date of entry, was NOT cooperating. Petitioner has not done any of these things.

Sincerely &

Respectfully, Augusto Lara Cruz
Signature.

10/6/26
Date

10/6/26

UNITED STATES DISTRICT COURT

For the

MINNIE DISTRICT OF FLORIDA

JUN 15 2025 PM 1:45
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Augusto Laza Cuesta
Petitioner



v.

Case: 2:26-CV-01677-KCD-NPM

U.S. ICE, GARRET ROSE

OLIVIA S. KRISTIN HENRI BOND
Respondents

MEMORANDUM OF LAW

COMPS NEW PETITIONER Laza Cuesta AND PRO-SE comes before the court in good faith and AMENDS a (5th) GROUND to his petition for writ of Habeas Corpus in support of his petition.

PETITIONER raises the ZALWADI V. DAVIS claim which is a STATUTORY challenge under § 1231(a), whether his detention, at this point "bear[s] [a] reasonable relation to the purpose for which he is committed" is a question of due process under the FIFTH AMENDMENT.

Similarly, due process is the proper vehicle to challenge Respondents' failures to follow their own regulations in violation of the ACCARDI doctrine. see AYALA CHAPA V. BOND, 132 F.4th 796, 799 & n.3 (5th) cm. 2025.

PETITIONER ARGUES; ONCE A NONCITIZEN IS ORDERED REMOVED FROM THE U.S., THE INA REQUIRES THAT REMOVAL GENERALLY OCCUR WITHIN NINETY DAYS. 8 U.S.C. § 1231(a)(1)(A).

THE REMOVAL PERIOD MAY BE EXTENDED IN AT LEAST THREE CIRCUMSTANCES. RELEVANT HERE, A NONCITIZEN MAY BE DETAINED BEYOND THE REMOVAL PERIOD IF HE IS "(1) INADMISSIBLE, (2) REMOVABLE AS A RESULT OF VIOLATIONS OF STATUTE REQUIREMENTS, ENTRY CONDITIONS, OR THE CRIMINAL LAW, OR FOR NATIONAL SECURITY OR FOREIGN POLICY REASONS, OR (3) A RISK TO THE COMMUNITY [E] OR UNLIKELY TO COMPLY WITH THE REMOVAL ORDER. IF ANY OF THESE GROUNDS APPLY, THE STATUTE IMPOSES NO LIMIT ON THE TIME A PERSON MAY BE DETAINED. BECAUSE "[E] STATUTE PERMITTING INDEFINITE DETENTION... WOULD RAISE A SERIOUS CONSTITUTIONAL PROBLEM" THE SUPREME COURT HAS "READ AN IMPLICIT LIMITATION" INTO THE STATUTE AND HAS HELD THAT A NONCITIZEN MAY ONLY BE DETAINED FOR "A PERIOD REASONABLY NECESSARY" TO EFFECTUATE THEIR REMOVAL. ZAHY DAS, 533 U.S. 689.

PETITIONER ARGUES THAT CUBA IS A COUNTRY THAT HISTORICALLY REFUSES REPATRIATION OF ITS CITIZENS FROM THE UNITED STATES AND A THIRD COUNTRY NOT OF PETITIONERS ORIGIN IS ILLEGAL AND UNCONSTITUTIONAL. PETITIONERS REMOVAL IS NOT LIKELY TO HAPPEN IN THE FORESEEABLE FUTURE AND "IF REMOVAL IS NOT PRACTICALLY ATTAINABLE DETENTION NO LONGER SERVES ITS STATUTORY PURPOSE OF ASSURING THE ALIENS PRESENCE AT THE MOMENT OF REMOVAL."

PETITIONERS DETENTION IS CLEARLY WITHOUT A VALID REASON IT'S A VIOLATION OF DUE PROCESS AND THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AS WELL AS A VIOLATION OF EQUAL PROTECTION RIGHT.

PETITIONER IS CHALLENGING the legality of his DETENTION under a framework devised by the Supreme Court for district courts to apply. see *ZADVYNAS* 533 U.S. at 682 (stating the court's limitation on post-removal detention "is subject to federal-court review."). A decision in PETITIONER'S FAVOR would not impair ICE's ability to execute the removal order. The INA does NOT strip the court of JURISDICTION over this ACTION.

PETITIONER POINTS TO THE MERITS OF HIS DUE PROCESS CLAIM. "ONCE A NONCITIZEN'S order of removal becomes ADMINISTRATIVELY FINAL, the Government 'shall' remove the PERSON within 90 days." *Singh v. U.S. Attorney Gen.* 945 F.3d 1310, 1313 (11th Cir. 2019) (quoting 8 U.S.C. § 1231(a)(1)(A)).

The Government MUST DETAIN the NONCITIZEN during the 90 day REMOVAL PERIOD, which begins when the REMOVAL order becomes ADMINISTRATIVELY FINAL. *Id.* DETENTION MAY CONTINUE after the REMOVAL PERIOD, but NOT INDEFINITELY.

IN *ZADVYNAS v. NAVIS*, the Supreme Court held, "if removal is NOT reasonably foreseeable, the court should hold continue DETENTION UNREASONABLE AND NO LONGER AUTHORIZED by STATUTE." 533 U.S. 678, 700-01 (2001). IF removal is NOT practically ATTAINABLE, DETENTION NO LONGER SERVES its STATUTORY PURPOSE OF "assuring the aliens presence at the moment of removal." *Id.* at 699. The Court found it unlikely Congress "believed that all reasonably foreseeable removals could be accomplished in [90 days]." *Id.* at 701. So, for the sake of UNIFORM-

ADMINISTRATION IN the federal courts, "it established a presumptive reasonable period of detention" of six months—the 90-day removal period plus an additional 90 days. *Id.* Courts use a burden-shifting framework to judge the constitutionality of additional post-removal detention:

The Government may argue that Petitioner's petition is premature because his current detention has not exceeded 180 days. They assume a six-month presumptively reasonable period of detention starts each time a noncitizen is detained. That assumption is inconsistent with *ZANUYNAS*. It would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every 180 days. As the ELEVENTH CIRCUIT recognized, "[t]he Supreme Court's stated rationale for establishing a presumptively reasonable '6-month period' for detention pending removal supports our conclusion that this period commences at the beginning of the removal period." *AKINWALE V. ASHCROFT*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

Because the six-month period for presumptively reasonable detention has expired, *ZANUYNAS*'s burden-shifting framework applies. Petitioner has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. The Government was unable to remove him in February 1995 or

AND THE CUBAN GOVERNMENT STILL WILL NOT ACCEPT HIM FOR REPARATION.

PETITIONER ARGUES THAT THE BURDEN THUS SHIFTS TO THE GOVERNMENT. ICE HAS CHOSEN MEXICO AS A THIRD COUNTRY FOR REMOVAL BUT THE ATTEMPT TO CARRY OUT THESE REMOVALS HAVE BEEN AN INFORMAL EFFORT TO COMPEL VOLUNTARY DEPARTURE, NOT AN ABOVE-BOARD REMOVAL ATTEMPT THAT COMPLIED WITH STATUTORY AND CONSTITUTIONAL REQUIREMENTS. SEE *ANDRIASIAN V. IMMIGR. AND NATURALIZATION SERV.*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and constitutional rights to due process."); See also *D.V.D. V. U.S. Dep't of Homeland Security*, --- F. Supp.3d ---, 2026 WL 521557 (D. Mass. Feb. 25, 2026) (setting aside DHS's current third-country removal policy because it violates noncitizens' right to seek fear-based relief under the Convention Against Torture). ICE MAKES NO ATTEMPT TO SHOW IT HAS A PLAN IN PLACE TO LAWFULLY REMOVE PETITIONER.

PETITIONER'S DETENTION IS CLEARLY WITHOUT A VALID REASON WITH NO CHANGE IN CIRCUMSTANCES THUS MAKING IT UNLAWFUL AND UNCONSTITUTIONAL.