

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

YOHANY HERNANDEZ HERNANDEZ,
Petitioner,

v.

Case No. 2:26-cv- 1718-KCD-KRH

WARDEN, FLORIDA SOFT SIDE SOUTH
DETENTION CENTER, ET AL.,¹
Respondents.

FEDERAL RESPONDENT'S RESPONSE TO HABEAS PETITION

Petitioner Yohany Hernandez Hernandez challenges his ongoing detention by immigration authorities. He alleges that he has been detained for an impermissibly long period in violation of the Fifth Amendment Due Process Clause and the Immigration and Nationality Act ("INA"). Though Petitioner's detention has exceeded the presumptively reasonable period contemplated by *Zadvydas v. Davis*, he has impeded removal efforts and U.S. Immigration and Customs Enforcement's ("ICE") continued detention for the purpose of seeking his removal from the United States is permissible.

Background

Hernandez Hernandez is a citizen and national of Cuba. *See* Petition for Habeas

¹ Interim Attorney General Todd Blanche is automatically substituted for his predecessor under Rule 25(d) of the Federal Rules of Civil Procedure.

Corpus, ECF No. 1, (“Petition”), ¶ 9. Petitioner alleges to have entered the United States without inspection where he has resided since October 6, 2004. *See Hernandez Hernandez v. Warden, Florida Soft Side South, et al.*, No. 2:26-cv-900-KCD-DNF (“*Hernandez Hernandez 1*”) (M.D. Fla.), Dkt. 1, ¶¶ 11, 22(b). He is subject to a final order of removal date January 25, 2018. *Hernandez Hernandez 1*, Dkt. 9-1, p. 10. Though initially released on an order of supervision, on November 3, 2025 the order was revoked so that ICE could seek removal. *Id.* at 17-22, 29. In December, Cuba denied repatriation. *Id.* at 29. ICE has since been pursuing removal to Mexico however efforts have been thwarted by Petitioner’s failure to cooperate. *Id.* (describing Petitioner’s refusal to get dressed, board the bus, and sign necessary forms to obtain travel documentation).

On March 27, 2026, Petitioner filed his first habeas petition. *See Hernandez Hernandez 1*, Dkt. 1. This Court denied that petition in an order dated April 29, 2026. *Id.*, Dkt. 10. The instant Petition is Petitioner’s second habeas filing. *See* ECF No. 1. The Court has ordered Respondents to respond to this petition no later than June 11, 2026. ECF No. 3. Petitioner has also filed a third habeas petition which remains pending now with an answer deadline on June 22, 2026. *See Hernandez Hernandez v. Warden, Florida Soft Side South, et al.*, No. 2:26-cv-01794-KCD-NPM (M.D. Fla).

Certified Habeas Return

The Court has power to grant writs of habeas corpus where (among other instances) a petitioner “is 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 proof in establishing that his detention violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021). Hernandez Hernandez was denied relief from removal and ordered removed from the United States on January 25, 2018. He is thus detained under 8 U.S.C. § 1231(a) pending ICE’s execution of that removal order.

Discussion

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 may be detained beyond that removal period, a period known as the “post-removal” period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683; *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 yet indefinite detention would present obvious constitutional concerns. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). So the Supreme Court has interpreted this 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 (“SLRRFF”). *Zadvydas*, 533 U.S. at 689.

The record here shows ICE has sought Hernandez Hernandez’s third country removal to Mexico. On February 2, 2026, Hernandez Hernandez impeded removal by refusing to cooperate. See *Hernandez Hernandez* 1, Dkt. 9-1, p. 29. When ICE executes a removal order, an alien must comply and assist. Failure to do so results in detention and tolling any *Zadvydas* time. 8 U.S.C. § 1231(a)(1)(C). “*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal.” *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003). “The reason is self-evident: the detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock.” *Id.* In sum, a *Zadvydas* claim fails if petitioner holds the “keys to his freedom in his pocket and could likely effectuate his removal by providing the information requested by” ICE. *Id.* (cleaned up).²

The Eleventh Circuit recognizes these commonsense principles. *Singh v. U.S. Att’y General*, 945 F.3d 1310, 1314 (11th Cir. 2019). Specifically, it reads the plain language of § 1231(a)(1)(C) for what it says—extending the detention 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.” *Id.* (citation omitted). Likewise, detention may continue where an alien “conspires or acts to prevent the alien’s removal.” *Id.* (quoting 8 U.S.C. § 1231(a)(1)(C)).

² Attached at Exhibit A is ICE’s most recent decision continuing Petitioner’s custody.

As other courts note, failure to comply with ICE's lawful removal efforts will extend the detention period even without an end date in sight:

[Petitioner] was not removed at those times solely because of his own refusal to cooperate. The government, therefore, could continue to have an interest in detaining [petitioner] to effect his removal, and the detention remained authorized by § 1231(a)(6). That the detention did not have a certain end date does not change the analysis.

Diouf v. Mukasey, 542 F.3d 1222, 1233 (9th Cir. 2008) (internal citations omitted); see also *Souleymane v. ICE*, No. 1:26-cv-00425-TWP-TAB, 2026 WL 785596, at *5 (S.D. Ind. Mar. 20, 2026) (Petitioner “obstructed his removal one time, on May 12, 2025, when he refused to board a plane.”).

This rule even applies where—as here—Hernandez Hernandez refuses removal to a third country willing to accept the alien. *Laguardia v. ICE*, No. C26-4003-LTS-KEM, 2026 WL 440749, at *2 (N.D. Iowa Feb. 17, 2026) (applying when Cuba petitioner refused removal to Mexico); *Rivero v. FNU LNU*, No. 2:26-cv-00349-KG-KRS, 2026 WL 607416, at *1 (D.N.M. Mar. 4, 2026) (same). Judge Chappell recently denied several habeas petitions on *Zadvydas* grounds for Cuban petitioners who refused to cooperate with removal to Mexico. *Jose Duque v. DHS*, No. 2:26-cv-884-SPC-NPM, 2026 WL 943774, at *1 (M.D. Fla. Apr. 8, 2026); *Ramiro-Monteagudo v. DHS*, No. 2:26-cv-873-SPC-NPM, 2026 WL 937971, at *1 (M.D. Fla. Apr. 7, 2026); *Cabrera Prieto v. Bondi*, No. 2:26-cv-746-SPC-DNF, 2026 WL 872590, at *1 (M.D. Fla. Mar. 31, 2026); *Mayea v. ICE*, No. 2:26-cv-574-SPC-DNF, 2026 WL 770041, at *1-2 (M.D. Fla. Mar. 19, 2026). Similarly, this Court has concluded a petitioner fails to state a claim under *Zadvydas* when the petitioner refuses to cooperate with removal efforts—even

when the petitioner has been in detention more than 180 days. *Sarria Alfonso v. Warden*, No. 2:26-CV-1255-KCD-NPM, 2026 WL 1345888, at *2 (M.D. Fla. May 14, 2026).

As some courts have recognized, third-country removal to Mexico has been difficult recently for aliens—like Hernandez Hernandez—who refuse departure to that nation. *Leyva Lambert v. ICE*, No. EP-26-CV-00427-DB, 2026 WL 926216, at *2 (W.D. Tex. Apr. 6, 2026); *Gustavo Delgado v. Bondi*, No. 2:26-cv-00649-GJL, 2026 WL 914806, at *4 (W.D. Wash. Apr. 3, 2026). But nothing about this is a get-out-of-removal-free-card. So the only thing stopping removal is Hernandez Hernandez's refusal. Because the failure to remove is the result of Hernandez Hernandez's conduct, detention is still permitted. 8 U.S.C. § 1231(a)(1)(C); *Pelich*, 329 F.3d at 1060.

Hernandez Hernandez has no enforceable rights to prevent removal to an acceptable third country that ICE already provided. Or—at least—he cannot use that his refusal for leverage to effectively stay in this country on the off chance that maybe ICE finds a country Hernandez Hernandez deems subjectively acceptable. After all, the statute on third-country removal is plain: an alien does not get a trump card to pick his country of removal. 8 U.S.C. § 1231(b)(1)-(2). While an alien can designate a country, the Attorney General has express statutory power to disregard and remove elsewhere under many circumstances. *Id.* § 1231(b)(2)(A)-(E).

On these facts, Hernandez Hernandez has no *Zadvydas* claim. ICE did its part to secure removal to Mexico and tried to remove him. If Hernandez Hernandez wants release from detention, he holds the “keys to his freedom in his pocket” by complying with removal to Mexico. *Pelich*, 329 F.3d at 1060. As it stands now, however,

Hernandez Hernandez has refused removal to an acceptable third country that ICE attempted to provide. Until Hernandez Hernandez complies with ICE's removal efforts or removal to Mexico is otherwise not available, he has no *Zadvydas* claim. 8 U.S.C. § 1231(a)(1)(C).

Conclusion

For the foregoing reasons the Court should deny the Petition. To the extent that the Court grants any relief, the only proper relief would be whatever notice and hearing requirement it believes proper—not outright release.

Date: January 23, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 4, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will furnish copies of these documents to all registered counsel of record. In addition, undersigned certifies that the foregoing was served via mail at the following address:

Yohany Hernandez Hernandez

A# 

Florida Soft Side South

Inmate Mail/Parcels

54575 Tamiami Trail E Na

Ochopee, FL 34141

Dated: June 4, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney