

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

YOANDYS CHAVEZ CRUZ,

Petitioner,

Case No. 3:26-cv-1112-WWB-SJH

v.

MARKWAYNE MULLIN,
et al.,

Respondents.

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

Petitioner Yoandys Chavez Cruz seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that his detention violates the due process clause and the Administrative Procedures Act. 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). Cruz had been detained for 109 days when the present petition was filed, rendering it premature. Additionally, Petitioner refused a third party refusal attempt to Mexico on June 3, 2026. Petitioner's continued refusal to cooperate with ICE is the very roadblock keeping him in custody. Petitioner has been in custody for 147 days. The Court should deny the petition.

BACKGROUND

Cruz is a national and citizen of Cuba. Doc. 1, Exhibit A at 1. On October 15, 1996, Cruz was paroled into the United States. *Id.* at 2. On February 16, 2008, Cruz adjusted his status to legal permanent resident. *Id.* On June 2, 2018, Cruz received eight convictions for theft by taking, three counts of entering an auto, criminal trespass, and financial transaction card fraud. in Georgia. *Id.* at 3. On June 21, 2018, Cruz was taken into ICE custody. Exhibit B. On July 14, 2018, a Final Order of Removal was entered for Cruz. Exhibit C. On October 23, 2018, Cruz was released on an Order of Supervised Release. Exhibit B.

On January 13, 2026, ICE-ERO officers took Cruz into custody in Jacksonville. Exhibit A.¹ On that same day, ICE revoked Cruz's Order of Supervised Release. Exhibit D.² On February 18, 2026, ICE informed Cruz that he would be removed to Mexico. Exhibit E. Cruz refused to sign the notice. *Id.* On June 3, 2026, 142 days after being taken into detention, Cruz refused to removal to Mexico. Exhibit F.

On May 1, 2026, after 109 days in custody, and prior to refusing removal to Mexico, Cruz filed the Petition in this case. Doc. 1. Petitioner will have been in custody for a total of 142 days at the time of the response. *Id.*

¹ The I-213 has a typographical error and refers to January 13, 2025, not 2026.

² Exhibit contains the same 2025 typo.

ARGUMENT

I. Cruz's detention does not violate the Fifth Amendment's Due Process Clause.

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 post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Due to constitutional concerns, the U.S. Supreme Court has 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, “[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).

Cruz filed the present petition before the expiration of six months in detention. He was detained on January 13, 2026, and filed the present petition on May 1, 2026. The petition is premature. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (“This six-month period thus must have expired at the time [the petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*.”). The Respondent, however, does recognize that more than six months will have elapsed at the time of this filing.

II. Cruz has impeded removal by twice failing to cooperate with his final removal order.

Even if the Court were to shift the burden to U.S. Immigration and Customs Enforcement to show a significant likelihood of removal in the foreseeable future, the record shows ICE has been actively seeking Cruz's third country removal to Mexico. As recently as June 3, 2026, Cruz impeded removal by refusing to cooperate. Exhibit F, at 2, ¶3. 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).

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)).

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—Cruz 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).

As some courts have recognized, third-country removal to Mexico has been difficult recently for aliens—like Cruz—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 Cruz's refusal. Because the failure to remove is the result of Cruz's conduct, detention is still permitted. 8 U.S.C. § 1231(a)(1)(C); *Pelich*, 329 F.3d at 1060.

Cruz 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 Rodriguez 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, Rodriguez has no *Zadvydas* claim. ICE did its part to secure removal to Mexico and tried to remove him. If Cruz 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, Cruz has refused removal to an acceptable third country that ICE attempted to provide. Until Cruz 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).

III. Cruz's Administrative Procedure Act claim is not properly before the Court.

Because habeas corpus actions and non-habeas corpus actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *Burnam v. Marberry*, 313 F. App'x 455, 456 n.2 (3d Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedure Act in a single case); accord *Malcom v. Starr*, No. 20-cv-2503 (MJD/LIB), 2021 U.S. Dist. LEXIS 45387, 2021 WL 931213, at *2 (D. Minn. Mar. 11, 2021) ("As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees.").

For example, Cruz did not pay the required filing fee for any non-habeas claims. The statute governing filing fees in district court states, "The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a writ of habeas corpus the filing fee shall be \$5." 28 U.S.C. § 1914(a). "The payment of the \$5 habeas filing fee relegates this action to habeas relief only. One cannot pay the minimal habeas fee and pursue non-habeas relief." *Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107, at *2 (W.D. Tex. June 18, 2020); *King v. Carlton*, No. 21-cv-21634, 2021 U.S. Dist. LEXIS 83778, at *4 (S.D. Fla. Apr.

30, 2021) (Bloom, J.) (finding that petitioner could not circumvent filing fee requirements by filing a “joint or hybrid” habeas action).

Finally, the Administrative Procedure Act provides, “Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy* in a court are subject to judicial review.” (Emphasis added). As Judge Dudek recently noted, a petitioner such as Cruz has an adequate remedy—“the very habeas petition he filed to get through the courthouse doors.” *See Gomez- Alcina v. Noem, Garret*, No. 2:25-CV-1164-KCD-DNF, 2026 WL 607614, at *5 (M.D. Fla. Mar. 4, 2026) (*citing Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring)). Because habeas corpus review provides Cruz an adequate judicial remedy for his allegations of unlawful detention, he cannot state a claim for relief under the Administrative Procedure Act.

CONCLUSION

Respondents respectfully request Cruz's petition be denied.

DATED this 8th day of June, 2026.

Respectfully submitted,

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