UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RAUL MARTINEZ GONZALEZ,

Petitioner,

Case No. 2:26-cv-1730-KCD-KRH[1]

v.

MARKWAYNE MULLIN, U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,

Respondents.
_____/

Response to Habeas Petition

Petitioner Raul Martinez Gonzalez again challenges his detention by U.S. Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE") as unreasonably delayed as not likely to be removed in the reasonably foreseeable future.[2]

Background

Petitioner's immigration background was detailed in the federal Respondent's

[1] After the federal Respondents filed a notice of related case (ECF 3), Judge Chappelle entered an order (ECF 4) transferring the case to Judge Dudek.

[2] Martinez Gonzalez filed a previous habeas petition on in M.D. Fla. in Case Number 2:26-cv-904-KCD-NPM. Judge Dudek denied his habeas petition on April 20, 2026, "without prejudice to him refiling a new petition should his current detention exceed the six-month mark." On May 21, 2026, Gonzalez filed a new pro se habeas petition in the M.D. Fla., Case No. 2:26-cv-1730-SPC-KRH, alleging that a "serious medical emergency requir[es] immediate judicial intervention." The only information related to his medical condition that was provided to the undersigned by ICE is his detention history, attached as Exh. 1, which reflects that he was hospitalized on May 22, 2026, and discharged on May 25.

initial petition (ECF 9) to Petitioner's April 16, 2026, Petition filed in Case No. 2:26-cv-904-KCD-NPM, which response is incorporated herein, and as set forth by the Court in its April 20, 2026 Order, 2026 WL 6030199, in that case:

> Martinez Gonzalez is a citizen and national of Cuba. (Ex. 1 at 1). He entered the country as a parolee. (Ex. 1 at 1). And Martinez Gonzalez became a lawful permanent resident ("LPR"). (Ex. 1 at 2). After an aggravated felony conviction, however, he was placed in removal proceedings. (Ex. 1 at 2, 7). An immigration judge ("IJ") ordered Martinez Gonzalez removed to Cuba. (Ex. 1 at 7-8). He waived appeal—making the removal order final. (Ex. 1 at 7). ICE detained Martinez Gonzalez before releasing on an OSUP. (Ex. 1 at 9).
>
> On February 23, 2026, ICE encountered Martinez Gonzalez while he was in state custody for charges relating to controlled substances, tampering with physical evidence, and curb drinking. (Ex. 1 at 2). ICE lodged a detainer. (Ex. 1 at 2). And it took Martinez Gonzalez into ICE custody on March 9. (Ex. 1 at 9). That day, ICE revoked his OSUP. (Ex. 1 at 4-5). A day later, it offered an informal interview to contest the revocation and detention. (Ex. 1 at 6). ICE determined that it was proper to revoke the OSUP at this time to seek travel documents for removal to Cuba or a third country. (Ex. 1 at 4-5).

As of the date of Judge Dudek's order, Judge Dudek found that Martinez Gonzalez had "been in ICE custody for thirty-nine days (not counting any previous periods of detention)." With such a limited time in detention, Judge Dudek denied his petition on April 20, 2026:

> Martinez-Gonzalez's due process claim under *Zadvydas* is not yet ripe, so the habeas petition is **DENIED WITHOUT PREJUDICE** to him refiling a new petition should his current detention exceed the six-month mark, and he can demonstrate there is no significant likelihood of removal in the reasonably foreseeable future.

In his May 21 Petition, in addition to the requesting "constitutionally adequate medical care," Martinez Gonzalez continues to claim that his removal is not "realistically foreseeable" and argue that his clean supervision precluded ICE from revoking his supervision, an argument that Judge Dudek specifically found to have

failed as relief under a habeas petition. *Id.* at 10.

As of the date of the filing of this petition, Martinez Gonzalez had been detained for 74 days; to date, 82 days.

Certified Habeas Return

The Court has the power to grant writs of habeas corpus where (among other instances) the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioners bear the burden to prove custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

Martinez Gonzalez has a final removal order. At this point, Martinez Gonzalez is removable from the United States. The Attorney General (through his delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(5). ICE is detaining Martinez Gonzalez under 8 U.S.C. § 1231(a)(6) pending his removal

The period of Martinez Gonzalez's detention is still well within the presumptively reasonable limits established in *Zadvydas*. Even if he were able to challenge detention before then, Martinez Gonzalez cannot show that there is no SLRRFF.

Discussion

Martinez Gonzalez continues to challenge his detention under *Zadvydas* in his second petition. In the April 20 Order, Judge Dudek applied a "flexible standard" to the 180-day window under *Zadvydas*, declining "to endorse a blanket rule that all prior

periods of confinement automatically aggregate to satisfy the *Zadvydas* six-month clock. Such a categorical approach is practically unworkable and effectively penalizes the government for its past lawful actions," instead, finding "the better approach is to afford the government a new six-month presumptively reasonable period for each discrete detention, unless there are facts suggesting the government is acting with an improper motive." April 20, 2026 Order at 7-8 (2026 WL 6030199). In exercising "its equitable discretion," the Court found that "Martinez-Gonzalez's argument for aggregation falls short. While he points to his prior period of ICE custody, the record is devoid of evidence that immigration officials manipulated his release and rearrest to bypass the six-month presumption or avoid judicial oversight. Without proof of such tactical maneuvering, this Court treats his present custody as an independent, good-faith endeavor to secure his deportation." *Id.* at 9-10.

Here, as with his first petition which was filed before that six-month period expires, his habeas challenge to his continued detention is premature. *E.g.*, *Akinwale*, 287 F.3d at 1051-52; *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).[3] At bottom, "This presumptively reasonable six month period must have expired at the time of the filing of a petition." *E.g.*, *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009) (Steele, J.); *Noel v. Glades Cnty. Sheriff*,

[3] Some districts disagree. *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Of course, *Akinwale* binds the Court. Even if it didn't, *Cesar* and any progeny are wrong. *Zadvydas* recognized the presumptive six-month period for the specific "sake of uniform administration in the federal courts." *Zadvydas*, 533 U.S. at 701.

No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011) (Steele, J.). *See also Lam v. Dir., ICE*, No. 2;25-cv-1202-KCD-DNF, slip op. at 4-5 (M.D. Fla. Mar. 6, 2026) (dismissal of habeas petition as premature, petitioner only detained for four months "squarely within window in which his detention is presumptively reasonable"). Martinez Gonzalez has only been in detention for 82 days. He was first detained on March 9 and filed a habeas petition (again) on May 21. At that point, Martinez Gonzalez had only been detained for 74 days. Either timeline is well under the 180-day period that is presumptively reasonable. That is fatal to jurisdiction. *Akinwale*, 287 F.3d at 1051-52.

To contend ICE cannot detain him for the purpose of removal, as Martinez Gonzalez does, would effectively eliminate ICE's ability to ever remove an alien unless it does so within the presumptively reasonable timeframe. *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (Apr. 25, 2012). *Zadvydas* doesn't sweep that broad. It goes without saying an alien must be detained (or otherwise in custody) to effect removal unless the alien leaves voluntarily. Martinez Gonzalez has not left voluntarily, and ICE is attempting to remove him. If the Court accepts his position, it is unclear how ICE would be able to remove Martinez Gonzalez. *But see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Proceedings to exclude or expel would be in vain if those accused could not be held in custody . . . while arrangements were being made for their deportation."). Because Martinez Gonzalez

was first detained on March 9, any *Zadvydas* challenge fails. *E.g.*, *Jiang*, 2009 WL 260378, at *2 ("This presumptively reasonable six month period must have expired at the time of the filing of a petition.").

With *Zadvydas*, the "basic question" is "whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. *Akinwale* and other courts recognize that calculating time will often begin when detention is required (i.e., start of the removal period). 8 U.S.C. § 1231(a)(2)(A). But this would only be the case where petitioner challenges detention beginning at that time. If—as here—petitioner gets detained years later, no reasonable interpretation of *Zadvydas*, *Akinwale*, or any other binding law suggests the six-month period can or should expire before detention occurs. Many cases on this exact issue hold the period begins with actual detention. *E.g.*, *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) (rejecting claim as premature for petitioner who was not detained during removal period because "it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody").[4]

[4] *See also Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 n.7 (S.D.N.Y. 2017); *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017); *Rivera v. Hassell*, No. 4:15-01497-WMA-SGC, 2016 WL 4257692, at *3 (N.D. Ala. July 12, 2016), *R&R adopted*, 2016 WL 4257052 (Aug. 10, 2016); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012); *Raia v. Aviles*, No. 11-3374 (WJM), 2011 WL 2710275, at *5 & n.9 (D.N.J. July 6, 2011); *Thelemaque v. Barr*, No. 20-20467-CIV-ALTONAGA/Reid, 2020 WL 13551808, at *2 & n.1 (S.D. Fla. Mar. 30, 2020); *Aionesei-Lupu v. Barr*, No. 1:20-cv-22998-BLOOM, 2020 WL 8679783, at *2 (S.D. Fla. July 23, 2020); *Cruz v. Lumpkin*, No. H-23-2224, 2023 WL 4566252, at *1 n.7 (S.D. Tex. July 17, 2023).

Here, Martinez Gonzalez is in the "post-removal period" under 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 683. It is "presumptively reasonable" for ICE to detain an individual with that status for a total of six months. *Id.* at 701. To this day, Martinez Gonzalez is still within that reasonable detention period.

Importantly, that six-month period is a bright-line, irrebuttable presumption of constitutionally acceptable detention. *See Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F.3d at 1052.[5] It is only "after" this time that SLRRFF and *Zadvydas* burden-shifting comes into play. *Guzman Chavez*, 594 U.S. at 529 (cleaned up); *see also Jennings*, 583 U.S. at 298-99; *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). After means "following in time or place or subsequently to the time when or later in time." *Intellectual Ventures I LLC v. Ubiquiti, Inc.*, No. 1:23-cv-00865-JCG, 2025 WL 1640270, at *3 (D. Del. June 10, 2025) (cleaned up). Until the Supreme Court recognizes a *Zadvydas* challenge *during* that six-month period, the Court cannot create that cause of action where none exists in derogation of *Akinwale*. *See* 287 F.3d at 1052 ("This six-month period thus must have expired . . . in order to state a claim under *Zadvydas*.").

To require detailed justification from ICE before the *Zadvydas* period expires is a significant infringement on separation of powers principles. Essentially, every

[5] *See also 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); *Vaz v. Skinner*, 634 Fed. App'x 778, 782 (11th Cir. 2015); *Ivantchouk v. U.S. Attorney General*, 417 Fed. App'x 918, 921 (11th Cir. 2011); *Chance v. Napolitano*, 453 F. App'x 535, 536 (5th Cir. 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011); *Okpoju v. Ridge*, 115 F. App'x 302, 302 (5th Cir. 2004).

question related to immigration is "exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). This isn't a recent development. *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments." (cleaned up)). That power, however, is always "subject to important constitutional limitations." *Zadvydas*, 533 U.S. at 695. "In these cases, we focus upon those limitations." *Id.*

Other principles of judicial review come into play too. *Id.* at 700. Courts "recognize primary Executive Branch responsibility" in this field. *Id.* They must also "give expert agencies decisionmaking leeway in matters that invoke their expertise." *Id.* Important here, that includes "Executive Branch primacy in foreign policy matters." *Id.* These basic separation-of-powers principles "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." *Id.*

What's more, an interpretation allowing a challenge now grants rights based on the statutory definitions of removal and post-removal periods under 8 U.S.C. § 1231. But that statute literally specifies it "shall [not] be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States." *Id.* § 1231(h). The only way to conclude SLRRFF burden-shifting applies now

is by first concluding ICE's failure to remove within the statutory period somehow entitles Martinez Gonzalez to review. Again, that's atextual.

Even if the Court were to get past the bright-line cutoff, there is no way for Martinez Gonzalez to show no SLRRFF exists. *See Zadvydas*, 533 U.S. at 689. At this point, ICE is working toward removal in "the reasonably foreseeable future." *See id.* It recently took Martinez Gonzalez into detention and is working towards removal. There are no allegations—much less evidentiary support—to rebut ICE's SLRRFF determination. The inability to remove to Cuba over a decade ago says nothing about whether ICE can remove now to Cuba; it says even less about whether ICE could remove to a third country like Mexico.

As to Martin Gonzalez's conditions of confinement claim with respect to his medical treatment, to the extent he is alleging his conditions of confinement are unconstitutional, release from custody is not available in this action. "[R]elease from imprisonment is not an available remedy for a conditions-of-confinement claim." *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015 (per curiam)); *see also Hidalgo v. Parra*, No. 2:25-cv-01214-SPC-NPM, 2026 WL 113587, at *1 (M.D. Fla. Jan. 15, 2026) ("Claims challenging the conditions of confinement, rather than the fact or duration of confinement, are not grounds for habeas relief."). Indeed, in *Gomez v. United States*, the Eleventh Circuit stated that if conditions of confinement violate a prisoner's constitutional rights, "[t]he appropriate Eleventh Circuit relief . . . is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Gomez v. United States*, 899 F.2d 1124, 1126-

27 (11th Cir. 1990).

The Eleventh Circuit has further indicated that its holding in *Gomez* applies to civil detainees in ICE custody. *See Vaz*, 634 F. App'x at 781-82 (noting that a detained alien could not obtain release based on his conditions of confinement claim). This district has further refused to permit any exception for civil detainees in ICE custody. In *St. Louis v. Martin*, the court found "release under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner's confinement." No. 2:20-cv-349-FTM-60-NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020). Because Eleventh Circuit precedent precludes the Court from ordering release from custody, Petitioner's arguments on the basis of his conditions of confinement should also be rejected.

Conclusion

For those reasons, the Court should deny the Petition.

Certificate of Service

I certify that a copy of this Response and Exhibits will be mailed by regular US Mail on Friday, May 29, to the following:

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Date: May 29, 2026

Respectfully submitted,

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