

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROLANDO MARTINEZ GARCIA,

Petitioner,

Case No. 2:26-cv-00010-JES-NPM

v.

KELIE WALKER, et al.,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO MAY 13, 2026, ORDER

Petitioner Rolando Martinez Garcia has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Federal Respondents filed an opposition on January 26, 2026. (Doc. 11.) On May 13, 2026, the Court issued an order directing the government to “explain how (and whether) Martinez Garcia’s removal is likely in the reasonably foreseeable future.” (Doc. 16 at 3.)

FACTS

Martinez Garcia is a 70-year-old citizen of Cuba. (Composite Exhibit, Ex. 1 at 1.) He entered the United States at Key West, Florida on or about May 6, 1980, through a place not designated as a port of entry by the Attorney General of the United States or the Secretary of Homeland Security. *Id.* at 2. He was convicted of for lewd or lascivious assault on a child on September 21, 1995. *Id.* at 3, 5, 17. He has also been convicted of trafficking in cocaine. *Id.* at 5, 18.

On November 28, 2005, Martinez Garcia was ordered removed from the United States. *Id.* at 7. On October 31, 2025, he was detained following ICE's determination there is a significant likelihood of Martinez Garcia's removal in the reasonably foreseeable future. *Id.* at 10, 17.

On or about March 30, 2026, third country removal to Mexico was attempted at the Hidalgo, Texas Port of Entry. (Herrero Decl., Ex 2 ¶ 3.) During the third country removal, Martinez Garcia refused to exit the bus after several verbal commands by Immigration Officials. *Id.* ¶ 4. Following the refusal, Martinez Garcia was transported back to the Krome facility. *Id.* ¶ 5.

ICE continues to seek out third country removal to Mexico. *Id.* ¶ 6. Mexico has not refused, nor has there been any ceased diplomatic negotiations that would prevent this removal. *Id.* According to ICE, Martinez Garcia's removal to Mexico depends on his willingness to be removed. *Id.* ¶ 7.

Martinez Garcia is currently detained at Krome North Special Processing Center.

ARGUMENT

Martinez Garcia's detention does not violate the Fifth Amendment's Due Process Clause.

As an initial matter, Federal Respondents maintain their position the present petition should be denied because Martinez Garcia filed it before the expiration of six months in detention. Martinez Garcia was detained on October 31, 2025, and filed the present petition on January 2, 2026. At that point, Martinez Garcia been

detained for 63 days. *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*.”).¹

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 Martinez Garcia’s third country removal to Mexico. As recently as March 2026, Martinez Garcia impeded removal by refusing to cooperate. (Herrero Decl., Ex 2 ¶¶ 3-4.)

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

¹ See also *Mehighlovesky v. U.S. Dep’t of Homeland Sec.*, No. CIV. 12-902 RHK/JJG, 2012 WL 6878901, at *2 (D. Minn. Dec. 7, 2012), *report and recommendation adopted*, No. CIV. 12-902 RHK/JJG, 2013 WL 187553 (D. Minn. Jan. 17, 2013) (“There is a good policy reason for dismissing premature *Zadvydas* actions, even when post-removal-order detention has exceeded six months by the time the case is decided. If the rule were otherwise, removable aliens would have no incentive to wait for their potential *Zadvydas* claims to ripen, and the federal courts might then be inundated with pre-emptive *Zadvydas* claims brought by aliens who are unwilling to give the Government six months to effect their removal.”)

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—Martinez Garcia 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, Judge Dudek 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 Martinez Garcia—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 Martinez Garcia's refusal. Because the failure to remove is the result of Martinez Garcia's conduct, detention is still permitted. 8 U.S.C. § 1231(a)(1)(C); *Pelich*, 329 F.3d at 1060.

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

Respondents respectfully request Martinez Garcia’s petition be denied.

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DATED this 18th day of May, 2026.

Respectfully submitted,

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