

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JORGE S. PEREZ-MARRERO,

Petitioner,

Case No. 2:26-cv-674-SPC-DNF

v.

KRISTI NOEM, et al.,

Respondents.

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

Petitioner Jorge Perez-Marrero seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that the length of his detention is unlawful. His petition should be denied. 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). Perez-Marrero had been detained for 135 days when he filed the present petition. Perez-Marrero's detention is therefore lawful.

BACKGROUND

Perez-Marrero is a national and citizen of Cuba who was paroled into the United States at Key West, Florida on May 14, 1980. (Composite Exhibit, Ex. 1 at

2.) On April 1, 2016, he was convicted of attempted sexual battery and sentenced to 163 days imprisonment and 15 years probation. *Id.*

Perez-Marrero was ordered removed from the United States on May 4, 2016. *Id.* at 2, 17. He was released on an order of supervision on August 2, 2016. *Id.* at 4, 22. Perez-Marrero was again placed in immigration custody on October 26, 2025. *Id.* at 1, 22. That same day, Supervisory Deportation and Detention Officer Marshall Vliet, signed a notice of revocation of release. *Id.* at 9; Vliet, Decl., Ex. 2 ¶ 4; Dec. 18, 2023, Delegation Memo, Ex. 3. Perez-Marrero was served with the notice the same day. *Id.* at 10. ICE intends to remove him to Mexico. *Id.* at 11.

On March 10, 2026, Perez-Marrero filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act. (Doc. 1.)

He is currently detained at Florida Soft Side South.

ARGUMENT

I. Perez-Marrero'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 nevertheless 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).

Perez-Marrero filed the present petition well before expiration of six months in detention. He was detained on October 26, 2025, and filed the present petition on March 10, 2026. At that point, Perez-Marrero been detained for 135 days; to date, he has been in detention for 143 days.

As previously stated, it is only after six months that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” *See Jennings*, 583 U.S. at 299 (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”); *Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF (M.D. Fla. Feb. 27, 2026) (denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal.¹ *See Akinwale*, 287 F.3d at 1051-52. *See Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “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

¹ Respondents acknowledge this Court has previously disagreed. *See Chumachenko v. Noem*, 2:26-cv-00344-SPC-NPM, Doc. 6 (M.D. Fla. Feb. 27, 2026).

Government appropriate leeway when its judgments rest upon foreign policy expertise”).

II. Perez-Marrero’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, Perez-Marrero 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 Perez-Marrero 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 Perez-Marrero 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 Perez-Marrero’s petition be denied.

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DATED this 18th day of March, 2026.

Respectfully submitted,

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