

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

ARTURO MARTINEZ GAMBOA,

Petitioner,

v.

Case No. 2:26-cv-704-SPC-DNF

MATTHEW MORDANT et al.,

Respondents.

_____ /

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Arturo Martinez Gamboa 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 or, alternatively, a constitutionally adequate bond hearing. *See generally* Pet., ECF No. 1. Federal Respondents argue his petition should be denied. In *Zadvydas v. Davis*, the U.S. Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678 (2001). Petitioner had been detained for 7 days when he filed the present petition. Federal Respondents argue his present detention is therefore lawful.

BACKGROUND

Arturo Martinez Gamboa is a national and citizen of Mexico. Ex. 1 at 1 (Form I-213). Petitioner first entered the United States on an unknown date at an unknown

place. *Id.* On June 2, 2009, Petitioner was granted voluntary departure in lieu of removal pursuant to Section 240B of the Immigration and Nationality Act, codified at 8 U.S.C. § 1229c. Ex. 2 at 1 (2009 Order of Immigr. J.). He was ordered to voluntarily depart on or before July 2, 2009. *Id.*

ICE represents that Petitioner voluntarily departed at some point between June 2, 2009, and June 18, 2009. However, on or about June 19, 2009, Petitioner reentered the United States without permission. Ex. 3 at 3 (Form I-867A, Record of Sworn Statement in Proceedings). Accordingly, on June 21, 2009, the U.S. Department of Homeland Security (DHS) issued Petitioner a Notice and Order of Expedited Removal. Ex. 4 at 1 (Form I-860). DHS determined Petitioner was inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the INA, codified at 8 U.S.C. § 1182(a)(7)(A)(i)(I), because he “did not possess or present a . . . valid entry document” and “entered into the United States illegally with the intent to reside in the United States.” *Id.* That same day, Petitioner was removed from the United States. *Id.* at 2 (Form I-296, Notice to Alien Ordered Removed/Departure Verification).

At some point thereafter, Petitioner again entered the United States without inspection or permission on an unknown date at an unknown place. Ex. 5 (Form I-871, Notice of Intent/Decision to Reinstate Prior Order). On March 2, 2026, the Polk County Sheriff’s Office encountered Petitioner due to a traffic stop and arrested him for operating a vehicle with a driver’s license that was suspended, canceled, or

revoked. Ex. 1 at 2. It was determined that Petitioner had previously been removed from the United States on June 21, 2009. *Id.*

On March 5, 2026, Petitioner was placed in immigration custody and served with a Notice of Intent/Decision to Reinstate Prior Order. *Id.*; Ex. 5. The Notice informed Petitioner that, pursuant to Section 241(a)(5) of the INA, codified at 8 U.S.C. § 1231(a)(5), and 8 C.F.R. § 241.8, the Secretary of Homeland Security intends to reinstate the order of removal entered against him on June 21, 2009, because he was removed on that date and illegally reentered the United States thereafter on an unknown date at an unknown place. Ex. 5. The Notice also informed Petitioner that he “**do[es] not** have a right to a hearing before an immigration judge.” *Id.* (emphasis in original). Petitioner is currently detained at Florida Soft Side South.¹

On March 12, 2026, Arturo Martinez Gamboa 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.² *See generally* Pet.

CERTIFIED HABEAS RETURN

ICE is detaining Arturo Martinez Gamboa pursuant to 8 U.S.C. § 1231(a)(5).

¹ *See Online Detainee Locator System*, U.S. Immigr. & Customs Enft, <https://locator.ice.gov/odls/#/search> (last accessed Mar. 23, 2026) (enter Petitioner’s A-Number and Mexico as Country of Birth under “Search by A-Number”).

² Although Petitioner claims he is challenging his detention pursuant to the Administrative Procedure Act, he does not actually allege any violations of the same. *Compare* Pet. at 2 *with* Pet. ¶¶ 32-44. Accordingly, Federal Respondents only address what Petitioner has alleged.

See 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner “has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.” *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001).

MEMORANDUM OF LAW

I. Petitioner’s Detention Does Not Violate the INA

Petitioner is lawfully detained under the INA. On June 21, 2009, DHS ordered Petitioner be removed because it determined Petitioner was inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the INA. Ex. 4 at 1; 8 U.S.C. § 1182(a)(7)(A)(i)(I) (“[A]ny immigrant at the time of application for admission who is not in possession of a . . . valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document . . . is inadmissible.”). On March 5, 2026, Petitioner was determined to have reentered the United States illegally after having been removed. Ex. 5.

Accordingly, as the INA requires, on March 5, 2026, DHS reinstated the removal order from June 21, 2009. *Id.*; see also 8 U.S.C. § 1231(a)(5) (“If the Attorney General finds that an alien has reentered the United States illegally after having been removed . . . the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.”); 8 C.F.R. § 241.8(a) (“An

alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order.”). Because the reinstated removal order is not subject to being reopened or reviewed, it is a final order of removal. 8 U.S.C. § 1231(a)(5).

Pursuant to the INA, except as otherwise provided and explained below, DHS initially has a 90-day “removal period” to remove Petitioner and is required to detain him during this time. 8 U.S.C. §§ 1231(a)(1)(A) (“[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 day (in this section referred to as the ‘removal period’).”) & (a)(2)(A) (“During the removal period, the Attorney General shall detain the alien.”). The removal period begins, as relevant here, the date the order of removal becomes administratively final, *id.* § 1231(a)(1)(B)(i), which is March 5, 2026. Ex. 5. As of the date of this filing, DHS has only detained Petitioner for 18 days, which is well within the initial 90-day removal period. Petitioner’s detention therefore does not violate the INA and his request for a bond hearing should be denied. *See* 8 U.S.C. § 1231(a)(5) (“[T]he alien is not eligible and may not apply for any relief under this chapter.”); 8 C.F.R. § 241.8(a) (“The alien has no right to a hearing before an immigration judge in such circumstances.”).

II. Petitioner’s Detention Does Not Violate the Due Process Clause

Although DHS initially has a 90-day removal period during which an

individual with a final removal order must be detained, detention may extend into a “post-removal period.” *Compare* 8 U.S.C. §§ 1231(a)(1)(A) & (a)(2)(A) *with id.* §§ 1231(a)(1)(C) (suspension of removal period in event of certain actions by an alien) & (a)(6) (certain categories of aliens may be detained beyond removal period or released); *see also Zadvydas*, 553 U.S. at 682-83 (referring to 8 U.S.C. § 1231(a)(6) as a “post-removal-period statute”).

The INA does not explicitly define how long ICE can detain an alien subject to the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, due to constitutional concerns, including under the Due Process Clause of the Fifth Amendment, the Supreme Court has interpreted the post-removal period to be limited to “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. A reasonable length of detention “is presumptively six months.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (six-month period is inclusive of 90-day removal period).

If the presumptively reasonable six-month 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 701. But before that six-month period expires, a *Zadvydas* habeas challenge is premature. *See, e.g., id.* (the burden-shifting framework applies “[a]fter this 6-month period”) (emphasis added); *Akinwale*, 287 F.3d at 1052 (“This six-month period thus

must have expired at the time [Petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*."); *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1321 (11th Cir. 2021) ("Under Supreme Court precedent, detention under section 1231(a) is presumptively reasonable for six months, *after which* an alien may challenge his ongoing detention.") (emphasis added). At bottom, "until the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe." *Al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026); *see also Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (cleaned up).

Arturo Martinez Gamboa filed the present petition well before expiration of the 90-day period, let alone the six-month period. He was detained on March 5, 2026, and filed the present petition on March 12, 2026. *Compare* Exs. 1 & 5 with Pet. At that point, Petitioner had been detained for 7 days; to date, he has been in detention for 18 days.

It is only after Petitioner has been detained for six months, if that occurs, that the parties can engage in *Zadvydas* burden-shifting related to the "significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701; *Al Ellary v. Noem*, 2026 WL 548048, at *2 (denying petition because due process claim under *Zadvydas* was unripe for petitioner detained less than six months); *Texas*, 523 U.S. at 300. Before that time limit runs, his *Zadvydas* habeas challenge should be

dismissed. *See Akinwale*, 287 F.3d at 1052.

CONCLUSION

Federal Respondents argue Arturo Martinez Gamboa's petition should be denied.

DATED this 23rd day of March, 2026.

Respectfully submitted,

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