

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

SERGIO ROBLES-NOA,

Petitioner,

v.

Case No. 2:26-cv-707-KCD-DNF

A No. 

Cuba

MARKWAYNE MULLIN,¹
SECRETARY, U.S. DEPARTMENT
OF HOMELAND SECURITY, et al.
(all official capacity),

Respondents.

Response to Habeas Petition

Petitioner Sergio Robles-Noa challenges his detention by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”). The Federal Respondents maintain that the Court lacks jurisdiction. Apart from that, ICE properly exercised its discretion to revoke Robles-Noa’s OSUP—a decision on which the Court is statutorily prohibited from reviewing. And his detention during this period is reasonable. So the Court should deny the Petition.

Background

Robles-Noa is a citizen and national of Cuba. ECF 1 at ¶ 1. He arrived in the United States in October 1971 and was paroled as part of the Freedom Flights. *Id.*

¹ Secretary Mullin is automatically substituted for his predecessor under Rule 25(d) of the Federal Rules of Civil Procedure.

Robles-Noa status was adjusted to legal permanent resident (LPR) status in 1977, retroactive to May 1972. Composite Exhibit 1 at 2. After a criminal conviction for cocaine possession in 1994, ICE placed him in removal proceedings as an aggravated felon and issued a final removal order and NTA in May 2004. Comp. Exh. 1 at 2, 15, 17. After his release from prison, ICE detained Robles-Noa and thereafter released him on an OSUP when removal could not be effectuated at that time. ECF at ¶ 5; Comp. Exh. 1 at 12.

On January 13, 2026, ICE encountered and detained Robles-Noa during a scheduled ICE appointment. Comp. Exh. 1 at 2. The same day, ICE issued an OSUP revocation and conducted an informal interview record. *Id.* at 4, 7. ICE revoked his OSUP to execute Robles-Noa's removal order because circumstances changed and there is a significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"). *Id.* at 4. To that end, on January 22, 2016, ICE issued a Notice of Removal to Mexico. *Id.* at 6.

Robles-Noa is detained at Florida Soft Side. On March 13, 2026, Robles-Noa filed a habeas petition alleging his detention violates the Due Process clause and the Administrative Procedures Act (APA). ECF 1.

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).

Robles-Noa has a final removal order. At this point, Robles-Noa is removable from the United States. The Attorney General (through her delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(5).

ICE is detaining Robles-Noa under 8 U.S.C. § 1231(a)(6) pending his removal. ICE is working towards executing removal.

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

Discussion

Robles-Noa's habeas claims should fail. As described below, the Court has no jurisdiction. Even if it did, detention has not extended to a length creating constitutional questions; nor did ICE violate any law in proceeding with removal.

A. Lack of Jurisdiction

While Respondents believe the Court lacks jurisdiction, the undersigned realizes it will fail here. Plus, jurisdiction is a non-waivable matter should Respondents choose to appeal. So for the brief purpose of preservation, Respondents contend 8 U.S.C. § 1252(g), (b)(9) strip jurisdiction. Even if the Court finds jurisdiction, Robles-Noa's claims still fail. *See Tran v. Warden*, No. 2:25-cv-1224-KCD-NPM, 2026 WL 672969 (M.D. Fla. Mar. 10, 2026).

B. Constitutionally Lawful Detention

Even if the Court disagrees with the above, it must still deny the writ. Robles-

Noa cannot make a claim for unlawfully prolonged detention at this time. Nor can he litigate SLRRFF prematurely.

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). Yet indefinite detention would present obvious constitutional concerns. *Id.* So the Supreme Court interpreted this 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 v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (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 SLRRFF. *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself 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).² 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*, 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, petition only detained for four months “squarely within window in which his detention is presumptively reasonable”).

Robles-Noa has been in detention for seventy-nine days. He was first detained on January 13 and sued on March 12, 2026. At that point, Robles-Noa had only been detained for fifty-nine 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 Robles-Noa 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

² 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. That was not an invitation to make up exceptions to this ripeness doctrine—like *Cesar* did.

effect removal unless the alien leaves voluntarily. If the Court accepts his position, it is unclear how ICE would be able to remove Robles-Noa—which ICE is actively working toward. *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 vain if those accused could not be held in custody . . . while arrangements were being made for their deportation.”).

As the Court explained in *Tran*, any concern about a never-ending hamster wheel of redetention to manipulate the *Zadvydas* period is misplaced. 2026 WL 672969, at *3-5. Previous detention was a statutory requirement after the ICE ordered Robles-Noa removed. Now, ICE contends SLRRFF exists, and it is attempting to remove. What’s more, these concerns are addressed by courts crafting equitable tests to define the limits of how to address detention claims—as the Court did in *Tran*. *Id.* In the common law way, courts (including likely the Supreme Court) must develop a framework for this judicially created cause of action. And any sort of blanket counting of detention periods, which could span decades, is simply not how *Zadvydas* applies on its face. *Id.* (“Because habeas relief is governed by equitable principles, courts are empowered to look beyond a mere mathematical tally to examine the totality of the circumstances.”). Because Robles-Noa was first detained on January 13, 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.”).

ICE recognizes Judge Chappell and Steele have held the *Zadvydas* period is

coterminous with the statutory removal and post-removal periods—meaning it can run while an alien is outside detention or aggregate periods. *Beltran v. ICE*, No. 2:25-cv-01174-SPC-NPM, 2026 WL 21252 (M.D. Fla. Jan. 5, 2026) (Chappell, J.); *Godinez Perez v. Noem*, No. 2:25-cv-00429-JES-NPM, 2025 WL 2806557, at *2 (M.D. Fla. Oct. 2, 2025) (Steele, J.). This Court, however, disagrees and correctly holds that the *Zadvydas* period runs from actual detention—not a statutory period that may have expired decades ago. *Khalil al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026); *Lageyre-Ravelo v. ICE*, No. 2:25-cv-1171-KCD-DNF, 2026 WL 575183, at *5-6 (M.D. Fla. Mar. 2, 2026).³

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. In *Zadvydas*, the Court “used the words ‘detain’ and ‘custody’ to refer exclusively to physical confinement and restraint.” *Jennings v. Rodriguez*, 583 U.S. 281, 311 (2018). *Zadvydas* protects against unconstitutionally indefinite detention; it did not interpret

³ Notably, Judge Pratt issued a recent decision adopting ICE’s general interpretation of this question. *Da Wu v. ICE*, No. 3:25-cv-1254-JEP-MCR (M.D. Fla. Feb. 3, 2026). Judge Berger just agreed. *Gonzalez Barrera v. U.S. Att’y General*, No. 3:26-cv-282-WWB-SJH, 2026 WL 472340, at *1-2 (M.D. Fla. Feb. 19, 2026). So too did three Southern District cases—agreeing that this period begins at the start of an alien’s actual detention and begins again when ICE makes a renewed effort to remove after failing long ago. *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485 (S.D. Fla. 2025) (holding claim premature and rejecting argument that aggregate prior detentions considered for *Zadvydas* purposes); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300 (S.D. Fla. 2025) (holding claim premature when removal period ended in 2014); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *7-8 (S.D. Fla. 2025) (same for 2011). Other courts agree. *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. 2025) (“The government is entitled to its six-month presumptive period before Petitioner’s continued § 1231(a)(6) [re-]detention poses a constitutional issue.”).

starting an imaginary detention clock based on statutory periods divorced from physical restraint. Again, to conclude the detention period started with the statutory removal time requires a corresponding finding that ICE has been unconstitutionally detaining Robles-Noa since his OSUP revocation. That is a factual impossibility. Yet it also imposes an impossible burden on ICE—requiring it to justify extended detention if the burden shifts. *See Zadvydas*, 533 U.S. at 701 (“And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”).

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 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 Again, *Zadvydas* “exclusively” addressed

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,

“physical confinement and restraint.” *Jennings*, 583 U.S. at 311.

Here, Robles-Noa 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, Robles-Noa is still within that reasonable detention period.

A dicta footnote in *Akinwale* does not alter this outcome. 287 F.3d at 1053 n.3. In part, *Akinwale* decided whether the action was premature. *Id.* at 1051-52. There was no doubt it was since petitioner filed four months after he was “taken into custody.” *Id.* 1051. In dicta and its related footnote, *Akinwale* stated the six-month term was inclusive of the removal period (i.e., six months in total, not six months on top of the ninety-day removal period). ICE does not dispute that. Instead, *Akinwale*’s express holding is relevant: petitioner “must show post-removal order detention in excess of six months.” *Id.* at 1052. Robles-Noa cannot make that showing. It is undisputed he has not been in physical detention for six months.

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

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).

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).

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). The word gets used to “describe a temporal sequence.” *Id.*; *see also Arlaine & Gina Rockey, Inc. v. Cordis Corp.*, No. 02-22555-CIV, 2004 WL 5504978, at *42 (S.D. Fla. Jan. 5, 2004) (giving “after” its “ordinary meanings” like “following in time”). 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 also an infringement on separation of powers principles. *See 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.* Courts “recognize primary Executive Branch responsibility” in this field. *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.*

The Executive branch is attempting to remove Robles-Noa. He is a convicted felon from Cuba—a country whose government is traditionally hostile to the United States. The Executive’s efforts to remove Robles-Noa in these circumstances go to the very core of its power to enforce immigration laws. *See United States v. Texas*, 599 U.S. 670, 679 (2023) (“That principle of enforcement discretion over arrests and prosecutions extends to the immigration context, where the Court has stressed that the Executive’s enforcement discretion implicates not only normal domestic law enforcement priorities but also foreign-policy objectives.” (cleaned up)); *Biden v. Texas*, 597 U.S. 785, 805-06 (2022) (“That is no less true in the context of immigration law, where the dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation’s foreign policy.” (cleaned up)). Until Robles-Noa’s detention raises a constitutional problem—i.e., after six months—the political branches (namely, the Executive) must be permitted to pursue law enforcement and foreign policy objectives without interference.

Even if the Court were to get past the bright-line cutoff, there is no way for Robles-Noa to show no SLRRFF exists. *See Zadvydas*, 533 U.S. at 689. On the contrary, not only is ICE is working toward removal “the reasonably foreseeable

future,” *see id.*, but on January 22, 2026, ICE served a Notice of Removal to Mexico to Robles-Noa. Comp. Exh. 1 at 6. There are no allegations—much less evidentiary support—to rebut ICE’s SLRRFF determination.

C. APA is not available under habeas relief

Robles-Noa does not have standing to bring his APA claim. By the APA’s terms, it is available only for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704. Thus, his APA claim is independently barred by this limitation in 5 U.S.C. § 704. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention.

Even if Robles-Noa’s APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234- 35 (1953)); *see also Tran v. Warden, Florida Soft Side*

South, No. 2:25-cv-1224-KCD-NPM (M.D. Fla. Mar. 10, 2026), Dkt. 16 at pp. 16-17.

Conclusion

Based on the arguments set forth above, the federal Respondents respectfully request that this Court should deny Robles-Noa's Petition. To the extent that the Court grants any relief, the only proper relief would be whatever notice and hearing requirement it believes proper—not outright release.

Date: April 2, 2026

Respectfully submitted,

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