

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

FERNANDO GONZALEZ
BONELLY,

Petitioner,

v.

Case No. 2:26-cv-00804-KCD-NPM

U.S. ATTORNEY GENERAL, et al.,

Respondents.

**THE U.S. ATTORNEY GENERAL'S OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Fernando Gonzalez Bonelly 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). Fernando Gonzalez Bonelly has been detained for 159 days, and he has not established that ICE will not be able to execute the removal order in the reasonably foreseeable future.

BACKGROUND

Fernando Gonzalez Bonelly is a national and citizen of Cuba who became a Lawful Permanent Resident of the United States on or about March 10, 1981. (Composite Exhibit A at 34.) In the 90s and 2000s he was convicted of several drug crimes and grand theft. *Id.* at 35-49. On March 18, 2010 Fernando Gonzalez Bonelly

arrived at the Miami International Airport from Cuba and applied for admission as a returning LPR of the United States. *Id.* at 49. He was placed in removal proceedings and on May 25, 2010 a final order of removal was entered against Petitioner by a Miami Immigration Judge. *Id.* at 23. With the inability to remove Petitioner at that time, he was released on an OSUP and he continued to report to Miramar/ICE/ERO as required. *Id.* at 12-18. On November 1, 2025 Fernando Gonzalez Bonelly reported to ERO Miramar and was taken into ICE custody. *Id.* at 9. His OSUP was revoked that day. *Id.* at 5-6. Fernando Gonzalez Bonelly is currently detained at Florida Soft-Sided South. (Doc.1) He has been in current ICE custody for a total of 159 days.¹ *Id.* at 50.

On March 19, 2026, Fernando Gonzalez Bonelly filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. (Doc. 1.)

ARGUMENT

Fernando Gonzalez Bonelly'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

¹ Fernando Gonzalez Bonelly was in ICE custody for 98 days in 2010. Ex. A at 50.

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. 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).

Respondent recognizes that Judges 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. *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. *Al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF (M.D. Fla. Feb. 27, 2026); see also *Tran v. Warden, Florida Soft Side South, et al.*, No. 2:25-cv-01224-KCD-NPM (M.D. Fla. March 10, 2026) (“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 improper motive.”). There is no evidence that the government is acting in bad faith or with an improper motive here, so the current time in custody should not be aggregated with Fernando Gonzalez Bonelly’s prior time in ICE custody in 2010.

Fernando Gonzalez Bonelly filed the present petition before expiration of six months in detention. He was most recently detained on November 1, 2025 and filed the present petition on March 19, 2026. At that point, Fernando Gonzalez Bonelly had been detained for 139 days; to date, he has been in current detention

for 159 days. Because he has been in current custody for less than six months, he remains within the window in which his detention is presumptively reasonable.

It is only afterward that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” See *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (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. 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 Government appropriate leeway when its judgments rest upon foreign policy expertise”).

In addition to still being in the presumptively reasonable detention period, Fernando Gonzalez Bonelly has also failed to establish that removal is not likely in the reasonably foreseeable future. Fernando Gonzalez Bonelly’s conclusory assertion that he “reasonably believes that removal is not significantly likely in the foreseeable future” is not enough to carry his initial burden. See Doc. 1 at ¶ 13, Ground Four. Petitioner alleges that ICE attempted to remove him to Mexico, but

that removal was not completed. *Id.* Fernando Gonzalez Bonelly provides no reason for the Court to believe ICE will be unable to execute the removal order in the reasonably foreseeable future, and thus, the Petition should be denied.

CONCLUSION

Respondent respectfully requests Fernando Gonzalez Bonelly's petition be denied.

DATED April 8, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on April 8, 2026, I caused a copy of the foregoing documents and any exhibits referenced therein to be sent via FedEx to Fernando Gonzalez Bonelly, at the address listed in the Petition (Doc. 1).

s/ Stephanie S. Leuthauser
STEPHANIE S. LEUTHAUSER
Assistant United States Attorney