

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

JUAN CARLOS ANDINO GONZALEZ,

Petitioner,

v.

SECRETARY KRISTI NOEM, ET AL.,

Respondents.

Case No. 2:25-cv-1176-SPC-DNF

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**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT  
OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Juan Carlos Andino Gonzalez (“Petitioner”) seeks the grant of a petition for writ of habeas corpus (“Petition”) pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement (“ICE”) and seeking his immediate release from custody. Petitioner also brings challenges pursuant to the INA, Accardi Doctrine, and the Fifth Amendment to the United States Constitution. His petition must be denied.

**BACKGROUND**

Petitioner is a citizen of Cuba. Petition, ¶ 20. He was paroled into the United States on October 13, 1965. *Id.*, ¶¶ 12, 20; *see also* Notice to Appear (Exhibit A), 1. In 1988, Petitioner was convicted of conspiracy to traffic in illegal drugs. Petition, ¶ 29; Exhibit A, 1. Petitioner was placed into removal proceedings with the issuance of a Notice to Appear dated December 21, 2000, and as a result of those proceedings, was

ordered removed from the United States by an Immigration Judge on January 23, 2001. Exhibit A, 1; *see also* Order of Removal, (Exhibit B); Petition, ¶ 30. Petitioner was not removed from the United States following the entry of his final order of removal and instead placed on an order of supervision. Petition, ¶ 31.

On November 14, 2025, ICE revoked Petitioner's order of supervision and detained him for the purpose of effecting his removal from the United States. *See* Petition, ¶¶ 2-3; *see also* Notice of Revocation of Release (Exhibit C). Petitioner remains detained at this time. *See generally* Petition. On December 17, 2025, Petitioner initiated this case with the filing of a petition seeking habeas corpus relief. *Id.* The Court issued an order directing Respondents to show cause why the petition should not be granted no later than December 29, 2025. ECF No. 4. For the reasons set forth below, Respondents respectfully assert that the petition should be denied.

### LEGAL STANDARD

The Court has the power to grant a writ of habeas corpus where a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). “The burden rests on the person in custody to prove his detention is unlawful.” *Benito Vasquez v. Moniz*, No. 25-11737-NMG, 2025 WL 1737216, at \*1 (D. Mass. June 23, 2025).

### ARGUMENT

#### **I. Respondents Lyons, Noem, Bondi, Ripa, Agudelo, and ICE Are Improperly Named.**

The only appropriate respondent to a habeas case is the official with physical

custody of petitioner. 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (“[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”). Accordingly, all Respondents, with the exception of Respondent Mordant, are improper parties to this action and should be dismissed.

## **II. 8 U.S.C. § 1252(g) Precludes Review of Petitioner’s Claims**

There is no jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (“*AADC*”) (cleaned up). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

This bar is subject to limitations and must be applied “to just those three specific actions” listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, “courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). Here, Petitioner is subject to a final order of removal—Petition, ¶ 30; Exhibit B—and he challenges ICE’s detention for the purpose

of executing that order. *See generally* Petition; *see also* Exhibit C. This matter thus falls squarely within the specific actions *Jennings* contemplated, namely the discrete action of executing a removal order, and this Court lacks jurisdiction to hear Petitioner’s claims.

### **III. 8 U.S.C. § 1252(b)(9) Also Bars This Court’s Review**

The INA precludes the Court’s review of “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” except when brought pursuant to judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause” and applies where a petitioner seeks “review of an order of removal [or] the decision to seek removal.” *Canal A*, 964 F.3d at; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—the subsection that provides the single, proper path for judicial review of removal orders—courts have concluded that petitioners must funnel all aspects of challenges to removal proceedings through the avenue set forth in Section 1252(a)(5), which takes place after a final order of removal has issued. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”). The zipper clause’s restrictions are broad, but not without limitation. *See, e.g., Canal A*, 964 F.3d at 1257. However, a claim that arises from actions or proceedings brought to

remove an alien clearly falls within its parameters. *See Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings).

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294-95. In this case, notwithstanding Petitioner’s creative framing of the issues, he does indeed challenge the government’s decision to detain him the first place. *See, e.g.*, Petition, ¶¶ 2, 8-9. The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

#### **IV. Petitioner’s Detention is Lawful**

##### **A. Statutory and Regulatory Framework**

An alien with a final order of removal is subject to the detention and removal standards set forth at 8 U.S.C. § 1231. The statute directs that an alien ordered removed be removed within 90 days of his order becoming final and that he remain detained during that timeframe. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). Where the removal period elapses without the alien’s departure, the INA and regulations give DHS the authority

to grant an order of supervision pending his removal. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5(a). Important here, continued detention of an alien ordered removed who remains in the United States beyond the removal period and who is inadmissible under Section 212 of the INA is governed by the regulations set forth at 8 C.F.R. § 241.4. *See* 8 C.F.R. § 241.4(a)(1); *see also* Exhibit A (reflecting two sustained charges of removability under INA § 212) and Exhibit B (removal order).

An order of supervision is not indefinite, rather the regulations permit the government to revoke the order for a variety of reasons. 8 C.F.R. § 241.4(l). Among the reasons for which supervision may be revoked are violation of the conditions of release—in which the alien must be notified of those reasons and given the opportunity to respond—and at DHS’s discretion when: “(i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(1)-(2).

B. Petitioner’s Order of Supervision Has Been Lawfully Revoked for the Purpose of Effecting His Removal From the United States.

Should the Court determine that it retains jurisdiction over Petitioner’s habeas claims—and it should not—he still cannot establish eligibility for habeas relief because his detention is lawful. Petitioner is subject to final order of removal. Petition, ¶ 30; Exhibit B. While he was released on an order of supervision, that order remained revocable. *See* 8 C.F.R. § 241.4(l). Here, on November 14, 2025,

ICE lawfully exercised its discretion to revoke Petitioner's supervision under 8 C.F.R. § 241.4(l)(2)(iii) for the purpose of executing his final order of removal. *See* Exhibits B & C. Petitioner argues that he was not afforded notice of the reasons underlying ICE's decision to revoke his order of supervision nor provided the opportunity to respond, *see* Petition, ¶¶ 2, 53-54, but the record and a simple reading of the regulations belie his argument. First, notice of the revocation of his order of supervision was indeed provided to Petitioner as was the basis for which his supervision was revoked. *See* Exhibit C, 2. Second, the discretionary revocation of an alien's order of supervision under 8 C.F.R. § 241.4(l)(2) does not require that the individual be afforded an interview or opportunity to respond to the agency's revocation. *Compare* 8 C.F.R. § 241.4(l)(1) ("The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.") with 8 C.F.R. § 241.4(l)(2) (no such language); *see also* Exhibit C (reflecting basis for revocation as for the purpose of enforcing a final removal order). For these reasons, ICE was within its authority to revoke Petitioner's order of supervision and it did so in accordance with the regulations and not in violation of the *Accardi* Doctrine.<sup>1</sup>

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<sup>1</sup> The *Accardi* doctrine arises from *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). "The seeds of the *Accardi* doctrine are found in the long-settled principle that the rules promulgated by a federal agency, which regulate the rights and interest of others, are controlling upon the agency." *Montilla v. INS*, 926 F.2d 162, 166 (2d Cir. 1991). The Eleventh Circuit applies this principle and "require[s] an] agency to follow its regulations where failure to enforce such regulations would adversely affect substantive rights of individuals." *Washington v. Comm'r of Soc. Sec.*, 906 F.3d 1353,

C. Petitioner's Period of Detention is Presumptively Reasonable

As discussed *supra* the INA requires that an alien ordered removed be detained for the 90-day removal period after his order of removal becomes final. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). But even where removal is not effected on that schedule, the government is permitted to continue to detain an alien—or to detain him again in the future for the purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, 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 v. Davis*, 533 U.S. 678, 689 (2001). In all, 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) (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 that considers 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

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1361 (11th Cir. 2018) (internal quotation marks and citation omitted). Here, for the foregoing reasons, there has been no violation of the *Accardi* Doctrine because ICE has followed the relevant regulations.

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).

Here, Respondents urge the Court to find that the presumptively reasonable detention period has not elapsed, and Petitioner's habeas petition is premature. Petitioner has only been detained for 39 days. *See* Petition, ¶ 2; *see also* Exhibit C. Furthermore, though *Akinwale* counsels that the initial removal period should be included in 180-day the presumptively reasonable period, there are important factual distinctions there from the case at hand that warrant consideration of a different application here. In *Akinwale*, the habeas petitioner had been detained pursuant to his removal order immediately following his incarceration for a criminal offense and his immigration detention spanned a *continuous* four-month period of time at the time the habeas petition was filed. *Akinwale*, 287 F.3d at 1051. It was during that four-month period of time that the government continued to make efforts to effect removal and during that period of time that the Court determined that the 90-day removal period should properly be included into the presumptively reasonable calculation. *Id.* at 1052. Here, however, a staggering 24 years has elapsed between the removal period and Petitioner's recent detention for the purpose of effecting removal.

The very spirit of *Zadvydas* is to prevent prolonged detention. *Zadvydas*, 533 U.S. at 679. And the purpose of the removal period is to allow the government a reasonable amount of time to make travel and documentation arrangements

necessary to remove an individual. *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008). With both considerations in mind, it would thus make little sense to read *Akinwale* so strictly as to cut the 180-day presumptively reasonable period in half here based on a period of detention that occurred nearly a quarter of a century ago. See e.g., *Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, at \*3 (M.D. Ga. Mar. 14, 2018) (rejecting strict adherence to 180-day time period and urging analysis based upon removal efforts at present).

Even rejecting Respondents' reading of *Akinwale's* applicability here, and assuming for the sake of argument that Petitioner was detained for the full 90-day removal period before being released in 2001, the presumptively reasonable period of detention has still not elapsed because Petitioner has been detained for only 39 days. See Petition, ¶ 3; see also Exhibit C.<sup>2</sup> Thus the cumulative period of confinement is only 129 days. Because Petitioner has been detained under the correct statutory and regulatory scheme, his order of supervision was properly revoked, and because he has not been detained for an unreasonable period of time, Petitioner's habeas filing is premature.

## CONCLUSION

The court should deny this petition. This Court is barred from considering his claims under two separate provisions of the INA. Furthermore, Petitioner—detained

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<sup>2</sup> It is unclear on this record how long Petitioner was detained in 2001. See Petition, ¶ 31. On information and belief, Respondents assert that he was detained for 99 days between 2000 and 2001 but recognize that this record lacks documentation to support that contention. But for the sake of argument, even considering a 99-day period of detention, the presumptively period would not have elapsed here as the total period of confinement would be 138 days.

for the purpose of reinstating his final order of removal—is being properly detained pursuant to 8 U.S.C. § 1231. ICE has committed no error in revoking Petitioner’s order of supervision and habeas relief should be denied.

Respectfully submitted,

GREGORY W. KEHOE  
United States Attorney

By: /s/ Amanda Saylor  
Amanda Saylor  
Assistant United States Attorney  
Florida Bar No. 1031480  
400 North Tampa Street, Suite 3200  
Tampa, Florida 33602  
Telephone: (813) 274-6020  
Email: [Amanda.Saylor@usdoj.gov](mailto:Amanda.Saylor@usdoj.gov)  
*Attorney for Respondents*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 29, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: December 29, 2025

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney