

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

RICARDO MACHADO,

Petitioner,

v.

NORMAN BRADLEY, ET AL.,

Respondents.

Case No. 6:25-cv-2457-GAP-DCI

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

Petitioner Ricardo Machado (“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 Accardi Doctrine and the Fifth Amendment to the United States Constitution. His petition must be denied.

BACKGROUND

Petitioner is a citizen of Cuba. *See* Petition, ¶ 5; Form I-213, Record of Deportable/Inadmissible Alien, (Exhibit A) at 1; Order to Show Cause and Notice of Hearing (Exhibit B) at 1. He adjusted status to that of a lawful permanent resident on April 1, 1980 and entered the United States lawfully on April 8, 1980. Petition, ¶¶ 5,

13; ECF No. 1-2; Exhibit A at 2; Exhibit B at 1. In the 1990s, Petitioner was convicted in Dade County, Florida of a weapons offense, aggravated assault of a person 65 or older, carrying a concealed firearm, aggravated assault with a firearm, possession of cocaine, and sale, manufacture, or delivery of cocaine. *See* Exhibit A at 3; Exhibit B at 6. Petitioner's criminal convictions led the legacy Immigration and Naturalization Service to issue an Order to Show Cause charging him as deportable from the United States. Exhibit B at 7. Petitioner was ultimately ordered deported from the United States on January 14, 1997. Petition, ¶ 15; ECF No. 1-3; ECF No. 1-4; *see also* EOIR Automated Case Information for Ricardo Machado (Exhibit C); Exhibit A at 2. While initially detained, Petitioner was ultimately released from immigration detention on February 29, 2000. Petition, ¶ 16; ECF No. 1-3 at 1. Petitioner was placed on an order of supervision thereafter. Petition, ¶ 17; ECF No. 1-3 at 3. In 2005, Petitioner filed a motion seeking reopening of immigration proceedings which was denied. Exhibit A at 2; EOIR Order on Motion to Reopen (Exhibit F). On December 15, 2025, Petitioner filed a second motion to reopen his immigration proceedings with EOIR which remains pending. Petition, ¶ 20; Exhibit A at 2-3; Exhibit C. On December 17, 2025, ICE revoked Petitioner's order of supervision and detained him. Petition, ¶ 14; Notice of Revocation of Release (Exhibit D). Two days later, he filed a petition seeking habeas relief. *See generally* Petition. On December 22, 2025, Petitioner filed an emergency motion seeking a temporary restraining order and preliminary injunction ("TRO Motion"). ECF No. 5. On December 23, 2025, this Court granted Petitioner's emergency TRO Motion and issued an expedited briefing schedule. ECF No. 8. A

hearing is scheduled for January 7, 2025 to consider Petitioner’s request for injunctive relief and his habeas petition. *Id.*

In response to this Court’s order, ECF No. 8, and for the reasons set forth below, Respondents respectfully request that this Court deny all relief.

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 Bradley, Lyons, Noem, and Walker 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 the Warden of the facility in which Petitioner is detained, 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 removal¹—Petition, ¶ 15; ECF No. 1-3 at 2-3; ECF No. 1-4—and he challenges ICE’s detention for the purpose of executing that order. *Id.* 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. *See e.g., Rivera-Amador v. Rhoden*, No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452,

¹ That Petitioner seeks reopening of his immigration proceedings does not invalidate Respondents’ ability to execute that order. *See* 8 U.S.C. § 1229a(b)(5)(C) (providing the only scenario in which the filing of a Motion to Reopen automatically stays execution of a removal order, namely where the order is issued based upon failure to appear either due to exceptional circumstances or lack of notice); *see also* ECF No. 1-4 (reflecting Petitioner’s presence at the hearing in which he was ordered deported “Appeal: Reserved by Resp.”). Furthermore, motions to reopen are time and numerically limited and Petitioner has already sought—unsuccessfully—reopening of his immigration proceedings. *See* Exhibit F; *see also* 8 C.F.R. § 1003.23(b)(1) (a party is permitted one motion to reopen and as a general rule, a motion to reopen must be filed within 90 days of an Immigration Judge’s final order.).

at *2 (M.D. Fla. Dec. 19, 2025); *see also Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025) (finding 8 U.S.C. § 1252(g) to bar habeas petitioner's claims that OSUP had been improperly revoked).

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

The Court also lacks jurisdiction on separate grounds. 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 for the purpose of removal. *See* generally, Petition (extensively discussing detention as related to removal); *see also* ECF No. 5, ¶ 14 (discussing Petitioner’s possible permanent separation from family). Even still, 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 under Section 237 of the INA, codified at 8 U.S.C. § 1227, is governed by the regulations set forth at 8 C.F.R. § 241.4. *See* 8 C.F.R. § 241.4(a)(3).²

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 Properly Revoked.

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 because, contrary to Petitioner's argument, revocation of his

² Petitioner was not ordered deported under INA § 237, codified at 8 U.S.C. § 1227, because his order of deportation predates the current statutory scheme, as the INA was amended in 1996. Nonetheless, Petitioner's convictions rendered him deportable because they constituted aggravated felony, firearm, and drug offenses. *See* Exhibit A at 7 (reflecting sustained charges of removability based on aggravated felony, drugs, and firearms convictions). In the current version of the INA, aggravated felony, drug, and firearms offenses rendering an alien removable are governed by INA Section 237, codified at 8 U.S.C. § 1227.

order of supervision followed the applicable statutes and regulations. *See* Petition, pp. 10-12. Petitioner is subject to final order of removal. Petition, ¶ 15; ECF No. 1-3 at 2-3; ECF No. 1-4; Exhibit A at 2. While he was released on an order of supervision, that order remained revocable. *See* 8 C.F.R. § 241.4(D). On December 17, 2025, ICE lawfully exercised its discretion to revoke Petitioner's supervision under 8 C.F.R. § 241.4(D)(2)(iii) for the purpose of executing his final order of removal. Exhibit D. 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, pp. 11, 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 D at 2-3. Second, the discretionary revocation of an alien's order of supervision under 8 C.F.R. § 241.4(D)(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(D)(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(D)(2) (no such language); *see also* Exhibit C (reflecting basis for revocation as for the purpose of enforcing a final removal order); *see also* *Barrios*, 2025 WL 2280485, at *6. Still, even so, Petitioner was provided with an informal interview concerning revocation of his order of supervision. Exhibit D at 3.

Petitioner's caselaw to the contrary is unavailing. While the District Court in the Eastern District of California indeed found a due process violation in *Arzate*, the facts are entirely distinguishable from this case. *See Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025). There, the alien was afforded a bond hearing under the standards utilized in 8 U.S.C. § 1226 (considering flight risk and danger to the community) because of a preliminary injunction issued in a class action case for which he was a class member. *Id.* at *2. Here, Petitioner is subject to detention under an alternate statutory scheme, 8 U.S.C. § 1231, and the unique circumstances presented by an ongoing class action litigation have not impacted his detention. *See supra*, Argument, IV.A. Furthermore, following his bond hearing under 8 U.S.C. § 1226, *Arzate* was placed on an alternative to detention program which was later revoked due to an arrest, not because of the government's intent to effect removal. *Arzate*, 2025 WL 2230521 *2. This differs from the facts at hand here because Petitioner's order of supervision was revoked for the purpose of executing his final order of removal, not due to an allegation of violation of the terms of release. *Compare* 8 C.F.R. § 241.4(D)(1) (requiring notice and an opportunity to respond where an order of supervision is revoked on account of violation of the terms of release) to 8 C.F.R. § 241.4(D)(2) (no such requirement); *see also* Notice of Removal (Exhibit E) (reflecting government's intent to remove Petitioner to Mexico).³

³ Respondents respectfully disagree with the New Jersey court's decision in *Tadros v. Noem*, No. 25CV4108 (EP), 2025 WL 1678501 (D.N.J. June 13, 2025). In *Tadros* the court deployed the burden-

In addition to arguing that his revocation was improperly revoked under 8 C.F.R. § 241.4, Petitioner has also asserted that revocation was violative of 8 C.F.R. § 241.13. *See* Petition, pp. 10-12. This claim fails for two reasons. First, Respondents assert that they are still within the presumptively reasonable detention period. *See infra*, Argument Section C. However, should the Court disagree, Petitioner has failed to demonstrate how 8 C.F.R. § 241.13 is applicable here where he has not yet requested, much less received, a headquarters-level decision concerning the likelihood of his removal in the reasonably foreseeable future. After the February 2001 *Zadvydas* decision, discussed at greater length *infra*, regulations were promulgated to govern administrative review of alien detention determinations made beyond the removal period. *See 8 C.F.R. § 241.13* (enacted in November 2001); *see also Zadvydas v. Davis*, 533 U.S. 678 (2001). Under this regulatory scheme, an alien who believes his detention falls within its parameters may submit a request for release to the Headquarters Post-Order Detention Unit (“HQPDU”) stating the basis for which he believes there is no significant likelihood of his removal in the reasonably foreseeable future. *See 8 C.F.R. § 241.13(c)* (“The HQPDU shall conduct a review under this section, *in response to a request from a detained alien*, in order to determine whether there is no significant likelihood that the alien will be removed in the

shifting framework on the government prematurely, notwithstanding that petitioner’s total period of detention was well under the presumptively reasonable 180-day mark. *Id.* at *3 (conceding that Tadros had been released 2 days after his removal order became final but finding that his “release suggests he was determined not to present a flight risk, and that the Government was unlikely to find a third country to accept him in the reasonably foreseeable future.”). This conclusion is simply inconsistent with *Zadvydas*’s reading of the presumptively reasonable detention period and this Court should give no weight to this out-of-circuit decision.

reasonably foreseeable future) (emphasis added); *see also* 8 C.F.R. § 241.13(d)(1). A written request must include sufficient information to establish his compliance with his obligation to cooperate in the process of obtaining necessary travel documents necessary to effect removal. 8 C.F.R. § 241.13(d)(2). The HQPDU must respond to the alien's request in writing to acknowledge receipt of the request for a review of his continued detention and immigration officials may continue to detain the alien until the HQPDU has made a determination as to whether there is a significant likelihood that the alien can be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(e)(1).

Second, if 8 C.F.R. § 241.13 is indeed applicable, Petitioner has been provided with notice of the basis for which his order of supervision was revoked and he was provided with an informal interview. *See* Exhibit D; *see also* *Barrios*, 2025 WL 2280485, at *6 (finding unlikelihood of success on a nearly identical legal challenge where the habeas petitioner was provided with an informal interview). As evidenced by the record documents, Petitioner has been advised that his order of supervision was revoked for the purpose of executing his removal to a third country, namely Mexico. Exhibits D, E. Petitioner participated in the informal interview, providing an oral response to revocation. Exhibit D at 3. Therefore, even if the Court determines that 8 C.F.R. § 241.13 is applicable here, Respondents have sufficiently complied.

Petitioner has not demonstrated a violation of this regulatory framework. There is no indication whatsoever that Petitioner has requested release from HQPDU *See* 8 C.F.R. § 241.13(c) (indicating that HQPDU *must* conduct a review upon an alien's request), (d)(1) (providing the criteria for written requests for review). And even reading this regulation in

a manner most favorable to Petitioner—whereby 8 C.F.R. § 241.13 automatically transfers jurisdiction over custody determinations for individuals in this procedural posture to HDPDU even absent formal request for HQPDU review—Petitioner’s claim fails because he cannot demonstrate that he has exhausted 8 C.F.R. § 241.13’s HQPDU review process before turning to this Court for habeas intervention. *See Abdelghani v. Lynch*, No. 3:16-CV-1594-J-39JRK, 2017 WL 11696739, at *2 (M.D. Fla. Jan. 3, 2017) (dismissing habeas petition as premature where petitioner had not yet received a decision from HQPDU concerning his significant likelihood of removal in the reasonably foreseeable future); *see also Royer v. Holder*, No. 3:12-CV-1319-J-12MCR, 2012 WL 6553114, at *3 (M.D. Fla. Dec. 14, 2012) (same). Even if it applies, Respondents have demonstrated sufficient compliance with 8 C.F.R. § 241.13 because they have advised Petitioner of the reason for revocation and provided him with an informal interview to respond. Furthermore, because the regulations set forth at 8 C.F.R. § 241.4 continue to apply during the 8 C.F.R. § 241.13 review process—*see* 8 C.F.R. § 241.13(b)(1)—and for the reasons discussed *supra*, there has been no regulatory violation with regard to revocation of Petitioner’s order of supervision. 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.⁴

⁴ 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*, 533 U.S. at 689. 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 premature. *E.g., Akinwale*, 287 F.3d at 1051-52; *Guo Xing Song v. U.S. Attorney General*,

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.

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 15 days. *See* Petition, ¶ 14; *see also* Exhibit D. 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 making up the front end of that four months should properly be included into the presumptively reasonable calculation. *Id.* at 1052. Here, however, a staggering 25 years has elapsed between Petitioner's initial detention period and his most recent detention for the purpose of attempting to effect removal once more.

The very spirit of *Zadvydas* is to prevent prolonged ongoing 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 foreclose any presumptively reasonable period here in 2025 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). Petitioner was detained once prior for the purpose of attempting removal—over 25 years ago—and Respondents should be afforded a reasonable period of time to arrange for his removal once more given the passage of time. Any concern over ICE “detain[ing] noncitizens indefinitely and avoid judicial scrutiny by releasing and redetaining them every six months”—*see* TRO Mtn. at 8—is simply not triggered under the facts here. Finally, the record demonstrates that Petitioner’s removal is not as improbable as he suggests—though prior efforts to deport to Cuba may have not been fruitful, Respondents are now pursuing an alternate country of removal. *See* Exhibit E.

D. Equitable Principles Do Not Invalidate Petitioner’s Removal Order

Petitioner’s final argument seemingly suggests a “you snooze, you lose” approach whereby the government’s previous unsuccessful attempt at removal should eliminate its ability to resume removal efforts in the future. *See* Petition, pp. 21. But this ignores the fact that Petitioner remains subject to a final order directing his removal from the United States and Respondents should not be prohibited from making reasonable efforts to execute that order simply on account of the passage of time. That Petitioner has continued to live and work in the United States

notwithstanding his final order of removal does not impact the enforceability of that order. In fact, Petitioner's failure to depart notwithstanding his final order only demonstrates a continued disregard for United States immigration law. Petitioner has cited no case or law that demonstrates that his approach is appropriate. Though he relies on the Board of Immigration Appeals' decision in *Matter of Pena-Diaz* for the premise that the passage of time affording a new form of relief bears relevance, he fails to demonstrate how that applies to *his* case. In fact, he has presented nothing to show that a new form of relief has been made available to him with the passage of time. Rather, he seeks reopening of his immigration proceedings to pursue a waiver that was available to him in 1997 by his own admission. See Petition at ¶ 20 ("The motion . . . asks Immigration Court to re-open *sua sponte* deportation proceedings because the Petitioner (formerly a lawful permanent resident) should be accorded the opportunity to apply for a waiver under INA §212(c)(repealed 1996), *a benefit he was in retrospect eligible for in 1997 when he was ordered deported without applying for any relief.*") (emphasis added). Furthermore, the time and numerical limitations on motions to reopen immigration proceedings suggest that Petitioner's second effort at reopening are unlikely to be successful. See 8 C.F.R. § 1003.23(b)(1); see also Exhibit F.

In fact, there is no support for the contention that equitable principles should automatically unwind a valid order of removal. Understandably, Petitioner wants to remain here in the United States. However, he remains subject to a final order of removal. Respondents cannot be restrained from executing that valid order simply because Petitioner has chosen to remain in the United States contrary to the court

order issued against him.

CONCLUSION

The court should deny this petition. This Court is barred from considering Petitioner's claims under two separate provisions of the INA. Furthermore, Petitioner—detained for the purpose of executing his final order of removal—has been properly detained pursuant to 8 U.S.C. § 1231 consistent with the applicable regulations. Respondents have acted lawfully and this Petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 31, 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 31, 2025

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney