UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NORBEY RAMIRO BOLIVAR, Petitioner, v. FIELD OFFICE DIRECTOR GARRETT RIPA, ET AL., Respondents.	Case No. 2:25-CV-1203-SPC-DNF

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

Petitioner Norbey Ramiro Bolivar ("Petitioner") seeks the grant of a petition for writ of habeas corpus, ECF No. 1 ("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 Immigration and Nationality Act ("INA"), regulatory framework, the Fifth and Eighth Amendments to the United States Constitution, and the Accardi Doctrine. His petition must be denied.

BACKGROUND

Petitioner is a citizen of Columbia. *See* Petition, ¶¶ 3, 20, 30. Petitioner was ordered removed from the United States on April 8, 2004. *See* Order of the Immigration Judge ("Exhibit A"). His 2004 removal order was executed on May 11,

2004. *See* Warrant of Removal/Deportation ("Exhibit B") at 2; 2015 Form I-213, Record of Deportable/Inadmissible Alien ("Exhibit C") at 2. Sometime thereafter, Petitioner unlawfully reentered the United State and on July 13, 2015, when his presence became known, his prior final removal order was processed for reinstatement and he was prosecuted for illegal reentry. *Id.*; *see also* Notice of Intent/Decision to Reinstate Prior Order ("Exhibit D"); Petition, ¶¶ 3, 5, 31. Petitioner was placed into withholding-only proceedings based on a claimed fear of return to his home country and as a result of those proceedings, he was granted withholding of removal pursuant to Immigration and Nationality Act ("INA") Section 241(b)(3). Petition, ¶¶ 5, 32; *see also* Order of the Immigration Judge Dated January 14, 2016 ("Exhibit E"). Petitioner was then released on an order of supervision given that removal to Colombia was not imminent at that time. Petition, ¶¶ 6, 33.

On December 7, 2025, while appearing for a routine check-in appointment with ICE, Petitioner's order of supervision was revoked and he was detained once more. Petition, ¶¶ 6, 35, 56; *see also* Notice of Revocation of Release & Informal Interview ("Exhibit F") at 1; 2025 Form I-213, Record of Deportable/Inadmissible Alien ("Exhibit G") at 2. ICE has revoked Petitioner's order of supervision for the purpose of executing his final removal order and facilitating his removal from the United States to Mexico, rather than Colombia. *Id.*; *see also* Exhibits A, E. On December 22, 2025, the instant suit commenced with the filing of a petition for writ of habeas corpus and a motion seeking a temporary restraining order. *See* ECF No. 1. On December 23, 2025, the Court directed Respondents to respond to the Petition by December 30,

2025. ECF No. 3. On December 29, 2025, the Court granted Respondents' unopposed motion for a short extension of time to respond. *See* ECF Nos. 8, 10. In response to this Court's orders, ECF Nos. 3, 10, and for the reasons set forth below, Respondents respectfully request that this Court deny all relief.

STATUTORY AND REGULATORY FRAMEWORK

Reinstatement of a Prior Removal Order

Congress developed a streamlined process for removing aliens who have already been removed from the United States pursuant to a final order in the past. If the Department of Homeland Security ("DHS") "finds that an alien has reentered the United States illegally after having been removed . . . under an order of removal, the prior order of removal is reinstated from its original date." 8 U.S.C. § 1231(a)(5). DHS may "at any time" effect removal "under the prior order." *Id.* The reinstated order "is not subject to being reopened or reviewed" and the alien "is not eligible and may not apply for any relief"[1] from the reinstated order of removal. *Id.*

Though an alien subject to reinstatement of removal is not eligible for any relief, the INA and regulations provide an avenue through which an alien subject to a final order of removal—but who fears that return to his designated country of removal will threaten his life or freedom based on certain specific, enumerated grounds—may seek

[1] 8 U.S.C. § 1231(a)(5) is generally interpreted to foreclose discretionary forms of immigration relief, however as discussed in greater detail *infra*, does not preclude an alien from seeking withholding of removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 530, 141 S. Ct. 2271, 2282, 210 L. Ed. 2d 656 (2021). Thus, though withholding of removal is commonly referred to as "relief" it is distinct from the broader range of potential immigration benefits available to aliens who are not subject to a final order of removal already. *Id.*

a separate order from the immigration court instructing that his removal to that country be withheld or deferred. 8 C.F.R. § 1208.31. The process is straightforward: if an alien is being processed for reinstatement of a final order of removal and expresses a fear of return to his home country, he will be referred to an asylum officer for a determination as to whether his fear is reasonable and credible. 8 C.F.R. § 1208.31(e). If the asylum officer determines that the alien has a reasonable fear, he will be referred to the Executive Office for Immigration Review ("EOIR") where he can seek an order that he not be removed—or that his removal be deferred—with regard to a specific country. 8 C.F.R. § 1208.31(e), (g)(2). In other words, an alien granted withholding of removal is still subject to a final order of removal—it simply cannot be executed at that time to that particular country. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.31(g)(2)(i); *see also Guzman Chavez*, 594 U.S. at 531-32 (an alien granted withholding of removal may not be removed to the country designated in the removal order unless the order of withholding is terminated, but due to the country-specific nature of a withholding order nothing prevents removal to a third country).

Orders of Supervision

While DHS "shall" detain an alien during the 90-day removal period following entry of a final order of removal, the INA gives DHS the authority to grant an order of supervision to the alien if he has not been removed once that period elapses. 8 U.S.C. § 1231(a)(2)(A); 8 U.S.C. § 1231(a)(3). The regulations explain that an alien released after the removal period "shall be released pursuant to an order of supervision." 8 C.F.R. § 241.5(a). This order of supervision comes with conditions. *Id.*

Regulations also permit the government to revoke the order of supervision. 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).

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. Petitioner Has Failed to Identify an Appropriate Respondent in This Habeas Action.

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, none of the Respondents identified in the Petition are proper parties to this action and this matter 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 that DHS intends to reinstate, *see* Exhibits A, F, and G, and he challenges DHS's detention for the purpose of reinstating that order. 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, 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, Petitioner challenges the government's decision to detain him. *See generally*, Petition. 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. Petitioner is Subject to a Final, Executable Order of Removal.

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 a reinstated order of removal. Petition, ¶¶ 5, 20; Exhibit A. Pursuant to 8 U.S.C. § 1231(a)(5), Petitioner's "prior order of removal is reinstated from its original date . . . and [Petitioner] shall be removed under

the prior order at any time after reentry." That Petitioner has been granted an order withholding his removal to Colombia does not negate the validity of his removal order and he remains subject to removal to countries other than Colombia at this time. *See* Exhibits A, E; *see also See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.31(g)(2)(i); *Guzman Chavez*, 594 U.S. at 531-32 (an alien granted withholding of removal may not be removed to the country designated in the removal order unless the order of withholding is terminated, but due to the country-specific nature of a withholding order nothing prevents removal to a third country).

B. Petitioner's Order of Supervision Was Properly Revoked

Contrary to Petitioner's argument, revocation of his order of supervision followed the applicable statutes and regulations. *See* Petition, ¶¶ 7-10, 35-37, 57-60. Petitioner is subject to final order of removal. Exhibit A. While he was released on an order of supervision, that order remained revocable. *See* 8 C.F.R. § 241.4(*l*). On December 7, 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. Exhibit F at 1. 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, ¶¶ 7-10, 35-37, 57-60, 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 F at 1-2. 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 (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 F at 3.

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, ¶¶ 10, 50. This claim fails for three reasons. First, to the extent Petitioner argues that revocation of his order of supervision was procedurally improper for lack of signature, the documentation reflects otherwise. *See* Exhibit F (signed and dated by the officer and served on Petitioner). Furthermore, 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 formal headquarters-level decision concerning the likelihood of his removal in the reasonably foreseeable future. After the February 2001 *Zadvydas* decision issued, 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 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). There is no indication on this record that Petitioner has made such a request.

Further, if 8 C.F.R. § 241.13 is indeed applicable, Petitioner's argument is undercut by the fact that he 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 F; *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 order to a third

country, namely Mexico. *See* Exhibit F. Petitioner participated in the informal interview, providing a written response to revocation. Exhibit F at 3-4. 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 the 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.[2]

C. Respondents Have Demonstrated a Significant Likelihood of Removal in the Reasonably Foreseeable Future.

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 made 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*

[2] 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, 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.

also Akinwale v. Ashcroft, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating six-month period is inclusive of any ninety-day removal period).

When ICE proceeded with reinstatement of the prior order, a new removal period commenced for the purpose of executing his removal for a second time.[3] Petitioner was detained at that time before ultimately proceeding through withholding-only proceedings and being granted withholding of removal. *See* Exhibit C at 2 (reflecting his re-detention on July 13, 2015); Exhibit E (order granting withholding of removal on January 14, 2016); Petition, ¶¶ 5, 32 (same). And as Petitioner concedes, he was released from custody immediately following the issuance of his withholding of removal order. Petition, ¶¶ 6, 33. At that time, the government determined that his removal was not likely and promptly released him. *See* Exhibit F at 1 ("You were released on January 14, 2016, because there was no significant likelihood of removal in the reasonably foreseeable future (SLRRFF) due to there being a granted case of Withholding by the Immigration Judge for removal to Colombia.").

Reading the removal period statute strictly, Petitioner's 90-day removal period pursuant to the reinstatement order thus elapsed on Octboer 11, 2015. *See* Exhibit D at 1 (notice of reinstatement dated July 13, 2015). Notwithstanding the

[3] It would make little sense to interpret the removal period strictly to begin only once the original order of removal becomes final. 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, and without restarting that 90-day clock, the government would potentially be left with a much shorter period of time in which to complete this necessary work. *See Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008) (applying this rationale in the case of documented obstruction).

passage of 90 days however, the government is permitted to detain Petitioner beyond the removal period, a period known as the post-removal period. *See* 8 C.F.R. § 241.4(*l*)(2). And there is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson*, 596 U.S. at 579. 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." *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale*, 287 F.3d 1050 at 1052.

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. 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 most recently for 30 days. *See* Petition, ¶ 6; *see also* Exhibit G at 2. 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 office 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. There are important distinctions here. First, Petitioner's final order has already been executed once. Exhibit B. Thus, a new removal period commenced after his unlawful reentry and reinstatement. Second, though Petitioner was indeed detained in 2015 while under the final order, he was allowed to remain in the United States to pursue his withholding claims—at the point when Respondents determined that their removal plan (to Colombia) was infeasible, Petitioner was immediately released. *See* Exhibit D (indicating intent to reinstate); Exhibit E (order granting withholding of removal on January 14, 2016); Petition, ¶ 6,33 (reflecting release on order of supervision in January 2016 following issuance of the withholding order). In the nine years that have since elapsed, circumstances have changed such that Petitioner's reasonably foreseeable removal to another country is now viable warranting ICE's renewed efforts at executing this longstanding final removal order. Exhibit F.

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*, 542 F.3d at 1231. With both considerations in mind, it would thus make little sense to read *Akinwale* so

strictly as foreclose any presumptively reasonable period here in 2026 based on a period of detention that occurred several years ago under different circumstances. *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—nine 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 prolonged, indefinite detention is simply not triggered under the facts here.

Even were the Court to disagree and determine that Petitioner's detention has exceeded the presumptively reasonable period, the record demonstrates that Petitioner's removal is indeed reasonably foreseeable, albeit to Mexico rather than Colombia. *See* Exhibit F at 1; Exhibit G at 2.

D. Petitioner's Conditions of Confinement Claims are Without Merit.

Petitioner asserts that his ongoing detention violates the Fifth Amendment of the U.S. Constitution because, as a detainee with medical conditions, his confinement at Alligator Alcatraz exacerbates his condition, constituting cruel and unusual punishment. Petition, ¶¶ 39-42. The Fifth Amendment to the United States Constitution prohibits the deprivation of a person's liberty without due process of law—freedom from imprisonment is at the heart of the liberties the Fifth Amendment is designed to protect. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana,* 504 U.S. 71, 80 (1992)). Still, the Supreme Court has repeatedly recognized that detention

during the pendency of immigration proceedings is a "constitutionally valid aspect of the deportation process." *See Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Wong Wing v. United States*, 163 U.S. 228, 235 (1896).

Under the Fifth Amendment Due Process Clause, "a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). For conditions of confinement to constitute "punishment," a petitioner must show either "an expressed intent to punish on the part of detention facility officials," or an implied intent to punish through a condition or restriction that a "is not reasonably related to a legitimate goal—if it is arbitrary or purposeless[.]" *Id.* at 538-39. "Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment.'" *Id.* at 539.

Petitioner fails to show that his detention is not proportionately related to the government's non-punitive responsibilities and administrative purposes. While civil detainees retain greater liberty protections than individuals convicted of crimes, *see, e.g.*, *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982), continued immigration detention pending a removal determination or execution of a final order of removal cannot be described as punitive or excessive in relation to the legitimate government purpose of protecting the public and ensuring compliance with removal proceedings. *See, e.g.*, *Demore*, 538 U.S. at 523 ("[T]his Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process."). "[I]t is a fallacy to think that Respondents do not have a legitimate

government purpose in "preventing detained aliens from absconding and ensuring that they appear for removal.'" *Matos v. Lopez Vega*, No. 20-CIV-60784-RAR, 2020 WL 2298775, at *10 (S.D. Fla. May 6, 2020). Petitioner's medical condition does not change this analysis or weaken Respondents' legitimate interest in his detention during the facilitation of his removal from the United States pursuant to a valid and enforceable order.

V. Petitioner Has Not Demonstrated That Administrative Procedures Act Relief or Injunctive Relief Are Appropriate

Petitioner lacks standing to bring his APA claim. *See* Petition, ¶¶ 119-23. 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, Petitioner's 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 Petitioner'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)).

Finally, though Petitioner has titled his Petition "PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR EXPEDITED REVIEW AND TEMPORARY RESTRAINING ORDER" he has failed to engage in the analysis relevant to determining whether injunctive relief is warranted. *See generally*, Petition. Preliminary injunctive relief—whether through a temporary restraining order or a preliminary injunction—is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The standard for obtaining either form relief is the same. *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001) (per curiam); *Windsor v. United States*, 379 F. App'x 912, 916-17 (11th Cir. 2010) (per curiam). A movant seeking a preliminary injunction or a TRO must show: (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998) (citations omitted); *see also Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995) (per curiam). "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted).

Importantly, the party seeking injunctive relief bears the burden of persuasion as to each of the required elements. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000); *Bongiovanni v. Austin*, No. 3:22-cv-237-MMH-MCR, 2022 WL 1642158, at *5 (M.D. Fla. May 24, 2022). Middle District of Florida Local Rule 6.01(a) requires that a motion for a temporary restraining order set forth specific facts demonstrating entitlement to relief, describe precisely the conduct and persons sought to be enjoined, explain precisely the amount and form of required security, and be accompanied by a supporting legal memorandum and proposed order. Local Rule 6.01(a).

Here, for the reasons discussed *supra*, Petitioner's likelihood of success on the merits is scant. Furthermore, Petitioner has not engaged in any analysis as to the second, third, or fourth preliminary injunction/temporary restraining order factors. Petitioner bears the burden of persuasion and he has failed to carry that burden on the allegations set forth in habeas petition alone. *See Siegel*, 234 F.3d at 1176; *Bongiovanni*, 2022 WL 1642158, at *5. To the extent the habeas petition is construed as a request for injunctive relief, such relief should accordingly be denied.

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 for the purpose of executing a reinstated final order of removal—is being properly detained. All relief should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 6, 2026, 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: January 6, 2026

Signed:

/s/ Amanda Saylor
Amanda Saylor
Assistant United States Attorney