UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:25-cv-62676-AHS

JUAN ALONSO ARROYO

Petitioner,

v.

MITCHELL DIAZ, *et al.*,

Respondents.
_____/

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] through the undersigned Assistant U.S. Attorney and pursuant to the Court's *Order to Show Cause* [DE 4], respond to the *Petition for Writ of Habeas Corpus* [DE 1] (the Petition). For the reasons below, the Court should dismiss the Petition as prematurely filed or, alternatively, for lack of subject-matter jurisdiction.

OVERVIEW

Petitioner Juan Alonso Arroyo (Petitioner) asks the Court to order his release from immigration detention at the Broward Transitional Center (BTC), or, to order Respondents to provide him with a bond hearing before an immigration judge.

But the Petition is framed on an incorrect legal premise—that Petitioner's detention is governed by 8 U.S.C. § 1226(a) and he is therefore not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), as interpreted by the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See* Petition at ¶¶ 4, 6-7; *see also id.* at ¶ 26 (framing this case as one concerning the detention provisions of Sections 1226(a) versus

[1] As explained below, and only in the event the Court does not deny the Petition in full, several of the named respondents are not proper parties-defendant to a habeas action and should be dismissed.

1225(b)(2)). But as described below, Petitioner illegally re-entered the United States after having been previously removed. He is now subject to a reinstated removal order and his detention is therefore governed by 8 U.S.C. § 1231, under which Petitioner is not entitled to a bond hearing. *Johnson v. Guzman Chavez*, 594 U.S. 523, 541-42 (2021); *see also e.g.* Petition at ¶ 25. With Petitioner's detention properly framed under Section 1231(a)(5), it then becomes clear the Petition is premature; Petitioner had not yet been detained for the presumptively reasonable 6-month removal period at the time he filed it. He also has not alleged or shown that there is no likelihood of removal within the reasonably foreseeable future. Accordingly, under binding Eleventh Circuit precedent, Petitioner cannot state a claim under *Zadvydas* and its progeny, and the Petition must be dismissed as premature.

Alternatively, the jurisdiction-stripping provisions of the Immigration and Nationality Act (INA) apply to Petitioner's claims and the Court should dismiss for lack of subject-matter jurisdiction.

FACTUAL & PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Mexico. *See* **Exhibit A**, Form I-213 dated April 14, 2001. On April 14, 2001, Petitioner first applied for admission from Mexico at the Calexico Port of Entry, in Calexico, California, by falsely representing himself as a bona fide non-resident alien border crosser. *See id.* Legacy Immigration and Naturalization Services (INS) found Petitioner inadmissible pursuant to section 212(a)(6)(C)(i) of the INA and processed him for expedited removal under section 235(b)(1) of the INA. *See* **Exhibit B**, Form I-860. Petitioner was removed to Mexico by foot at the Calexico Port of Entry. *Id.*

On April 22, 2001, and April 23, 2001, Petitioner attempted to re-enter the United States and was encountered by Customs and Border Protection (CBP). *See* **Exhibit C**, Form

I-213 dated August 14, 2025. On both occasions Petitioner was processed as a Voluntary Return. *Id.*

On January 13, 2013, Petitioner was encountered by a Designated Immigration Officer at the Collier County Jail after having been arrested for violation of a nonresident driver's license. *See* **Exhibit D**, Form I-213 dated January 13, 2013. The Designated Immigration Officer determined that the Petitioner illegally re-entered the United States and was subject to removal in accordance with section 241(a)(5) of the INA. *Id.* On January 13, 2013, the Designated Immigration Officer issued a notice of intent/decision to reinstate the removal order from April 14, 2001. *See* **Exhibit E**, Form I-871 dated January 13, 2013. The Petitioner was taken into ICE custody and then, on February 19, 2013, was released on an Order of Supervision. *See* **Exhibit F**, Form I-220B; *see also* **Exhibit G**, Detention History.

On August 14, 2025, Petitioner reported to ICE ERO Office for his regular check in and was detained pursuant to the final order of removal dated April 14, 2001. *See* Exhibit C.

On September 26, 2025, DHS filed a Notice to Appear (NTA) with the EOIR, Miami Immigration Court, charging Petitioner with inadmissibility under INA § 212(a)(7)(A)(i)(I). *See* **Exhibit H**, Form I-862. On October 7, 2025, DHS filed a Form I-261, with the sole charge of inadmissibility under INA § 212(a)(6)(A)(i). *See* **Exhibit I**, Form I-261. On October 29, 2025, Petitioner conceded the charge of removability under INA § 212(a)(6)(A)(i). *See* **Exhibit J**, Declaration of Deportation Officer Jiesys Miranda (the Declaration), at ¶ 17. Petitioner's individual hearing is scheduled with the EOIR Miami Immigration Court on January 20, 2026. *See* **Exhibit K**, Notice of Hearing.

On November 25, 2025, Petitioner requested a custody hearing. Declaration at ¶ 19. On December 5, 2025, the EOIR Krome Immigration Court issued an order explaining that

the court lacked authority to redetermine Petitioner's custody status because he is an applicant for admission subject to mandatory detention, citing *Matter of Yajure Hurtado. See* **Exhibit L**.

On January 5, DHS filed a motion to terminate the NTA dated September 26, 2025 as improvidently issued because Petitioner is subject to the reinstated removal order from January 13, 2013. *See* **Exhibit M**, DHS Motion to Terminate; *see also* Declaration at ¶ 21. On January 5, 2026, ICE ERO revoked the Order of Supervision in order to enforce the removal order dated April 14, 2001. *See* **Exhibit N**, Notice of Revocation of Release; *see also* Declaration at ¶ 22.

Petitioner is detained at the Broward Transitional Center.[2] Declaration at ¶ 23; *see also* Exhibit G.

ARGUMENT

Because Petitioner's 2001 removal order was reinstated in 2013 and it remains final, Petitioner is in *post-removal order* detention under 8 U.S.C. § 1231(a)(5). The Petition must be therefore dismissed as premature because Petitioner had not yet been detained for the presumptively reasonably 6-month removal period at the time he filed it, nor has he alleged or shown that there is no significant likelihood of his removal in the reasonably foreseeable future. Or, alternatively, the Petition should be dismissed because the Court lacks subject matter jurisdiction under the jurisdiction stripping provisions of the INA.

I. Improper parties-defendant must be dismissed

First, as a preliminary matter, Petitioner has named several improper parties to this suit. Petition, ¶¶ 15-21. But a writ of habeas corpus should "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. In cases involving physical confinement,

[2] Having verified that Petitioner is detained at BTC and was so at the time the Petition was filed, Respondents agree with the Court that paragraph 11 of the Petition must contain a scrivener's error. *See* DE 4.

Supreme Court precedent confirms that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004).

Petitioner is detained at BTC, a detention facility in Broward County, Florida. His immediate custodian is ICE Assistant Field Office Director Juan Gonzalez. Accordingly, the only proper respondent to this case is Mr. Gonzalez, in his official capacity. He should be substituted as the sole respondent to this action and all other named respondents should be dismissed. *See id.* at 435 ("[I]n habeas challenges to present physical confinement—'core challenges'—the 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."); *see also Masingene v. Martin*, 424 F. Supp. 3d 1298, 1300 (S.D. Fla. 2020) (Williams, J.) (citing *Padilla* for the proposition that the sole proper respondent to a habeas petition is the official who has custody over the petitioner).

II. Petitioner is subject to a reinstated final removal order; he is therefore in *post*-order custody under 8 U.S.C. § 1231(a)(5)—not *pre*-order custody under Sections 1225 or 1226 as asserted in the Petition

In *Chavez*, the Supreme Court clearly instructed that aliens with reinstated removal orders (*i.e.*, the Petitioner, here) are legally detained under Section 1231, not Section 1226, and they are therefore not entitled to individualized bond hearings. *Chavez*, 594 U.S. at 526 ("We conclude that § 1231, not § 1226, governs the detention of aliens subject to reinstated orders of removal, meaning those aliens are not entitled to a bond hearing while they pursue withholding of removal."). *Chavez* resolves any doubt that Petitioner's detention is governed by Section 1231 and not by Sections 1225 or 1226. The BIA's decision in *Matter of Yajure*

Hurtado—and any decisions by district courts rejecting the BIA's analysis[3]—are thus inapposite to resolving Petitioner's claims. *See e.g.* Petition at ¶ 26 (incorrectly asserting that "[t]his case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).").[4]

III. Because Petitioner is in post-removal order detention under 8 U.S.C. § 1231(a)(5), the Petition was filed prematurely and must be dismissed

Because Petitioner had been detained for less than 6 months at the time the Petition was filed, Petitioner cannot state a claim under *Zadvydas* and its progeny and the Petition must be dismissed.

Section 1231 governs the detention and removal of aliens ordered removed and, in light of *Chavez*, is the statutory basis for Petitioner's detention. That statute provides that "when an alien is ordered removed," ICE *shall* detain and "remove the alien from the United States within a period of 90 days (referred to as the "removal period")." 8 U.S.C. § 1231(a)(1)(A) (emphasis added). The statute further provides that the removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

See 8 U.S.C. § 1231(a)(1)(B). During this 90-day period, ICE *must* detain aliens, *see* 8 U.S.C. § 1231(a)(2), but it may continue to detain them, constitutionally, beyond that 90-day period.

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[3] *See e.g. Perez v. Parra*, Case No. 25-cv-24820, DE 9 (S.D. Fla. October 27, 2025); *see also* Petition at ¶¶ 35-36.

[4] In fairness to Petitioner and his counsel, at the time the Petition was filed this may have been correct, but solely as a result of the improvidently issued NTA. As explained in Exhibit M, the September 2025 NTA was unnecessary; because Petitioner had been previously removed from the United States, he is subject to reinstatement of his prior removal order.

See 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Specifically, *Zadvydas* provides that ICE may continue to detain a noncitizen under a final order of removal for an additional three months—creating a presumptively reasonable detention period of 180 days. *See Zadvydas*, 533 U.S. at 701. After the conclusion of this 180-day removal period, an alien in ICE custody may challenge his continued detention in habeas corpus proceedings on the ground that there is no significant likelihood that his removal will occur in the reasonably foreseeable future. *See id.*

And in *Akinwale*, the Eleventh Circuit held that, to state a claim under *Zadvydas*, "the alien not only must show *post removal order detention in excess of six months*, but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052 (emphasis added). In other words, the 180 days in post-order custody must have expired before an alien can challenge their custody under 8 U.S.C. § 1231. *Id.* ("[The] six-month period thus must have expired at the time [a habeas] petition was filed in order to state a claim under *Zadvydas.*").

Setting aside whether Petitioner made any effort to allege or show no significant likelihood of removal in the reasonably foreseeable future (which, he did not, due primarily to the improper framing of this case as one involving *pre-order of removal* detention), here, the removal period began on August 14, 2025, Petition at ¶ 14, and the 180-day removal period does not expire until February 10, 2026. And as of the date he filed his Petition, Petitioner has been in post-order custody for 134 days. Under *Zadvydas* and *Akinwale*, the Petition was filed too early. And even then, Petitioner has neither alleged nor shown that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (quotation

marks omitted); *see also Akinwale*, 287 F.3d at 1052. Accordingly—and because Petitioner is in post-order detention under Section 1231—then under *Zadvydas* and *Akinwale*, the Petition is premature, fails to state a claim, and should be dismissed.

IV. The INA's jurisdiction-stripping provisions apply and the Court lacks subject-matter jurisdiction over Petitioner's claims

While deeming the Petition premature under *Akinwale* is the most direct path to denial, the Court alternatively lacks subject-matter jurisdiction.

1. 8 U.S.C. § 1252(g) bars review of Petitioner's claims

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] *to commence proceedings*, adjudicate cases, *or execute removal orders against any alien.*" 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security's decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly "aris[es] from" the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) ("The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. 08-cv-2943, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his

hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]") (emphasis added); *Wang v. United States*, No. 10-cv-0389, 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) ("[Plaintiff's] detention necessarily *arises from* the decision to initiate removal proceedings against him.") (emphasis added); *Herrera-Correra v. United States*, No. 08-cv-2941, 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) ("The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings ... Thus, an alien's detention throughout this process *arises from* the [Secretary]'s decision to commence proceedings[]" and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno v. Am.-Arab Anti- Discrimination Comm. (AADC)*, 525 U.S. 471, 485 n.9 (1999) ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'").

Accordingly, judicial review of the Petitioner's claim is barred by § 1252(g).

2. 8 U.S.C. § 1252(b)(9) also bars review of Petitioner's claims

This Court alternatively lacks jurisdiction to hear Petitioner's claim because jurisdiction only arises in the Court of Appeals.

Under Section 1252(b)(9), "judicial review of all questions of law ... including interpretation and application of statutory provisions ... arising from any action taken ... to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *AADC*, 525 U.S. at 483. Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels

judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*

Moreover, Section 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), ... a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges ... whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[Section] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, Section 1252 provides that "[n]othing ... in any other provision of this chapter ... shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." 8 U.S.C. § 1252(a)(2)(D); *see also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims

is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate … Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]").

Here, Petitioner unquestionably challenges the decision and action to detain him, *see e.g.* Petition at ¶¶ 41, 48, which—under applicable authority—is an "action taken … to remove [him] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95*; Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings").

And while noting 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. Here, Petitioner does not challenge the government's decision to detain him in the first place. Though the Petitioner incorrectly frames his challenge as relating to detention authority, *see* Petition at ¶ 16, rather than a challenge to DHS's decision to detain him in the first instance, such framing does not evade the preclusive effect of § 1252(b)(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 Petitioner must present his claims before the appropriate court of appeals because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9). The Court may therefore alternatively dismiss the Petitioner's claims for lack of subject-matter jurisdiction under § 1252(b)(9).

CONCLUSION

Because Petitioner's detention is governed by Section 1231(a)(5) and, at the time the Petition was filed, he had not yet been detained in excess of the presumptively reasonable 6-month detention period, the Petition is premature and must be dismissed. Or, alternatively, the Court lacks subject matter jurisdiction under the INA's jurisdiction-stripping provisions. Either way, Respondents request that the Court dismiss the Petition in full.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: *Zakarij N. Laux*

ASSISTANT U.S. ATTORNEY
Florida Bar No. 93784
United States Attorney's Office
99 N.E. 4th Street, Suite 500
Miami, Florida 33132
(305) 961-9053
Zakarij.Laux@usdoj.gov

Counsel for Respondents