UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RAUL PEREZ,

Petitioner, Case No. 2:26-cv-9-SPC-DNF

v.

KELIE WALKER, et al.,

Respondents.
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RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS

Raul Perez petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, arguing his he is being detained in violation of the Fifth Amendment, the Immigration and Nationality Act, and the *Accardi* doctrine. His petition should be denied.

BACKGROUND

Perez is a 66-year-old national and citizen of Cuba who was paroled into the United States on or about June 13, 1980, in Key West, Florida. (Composite Exhibit, Ex. 1 at 1, 6.) His has a criminal history of cocaine possession, burglary, and theft. *Id.* at 6. On November 2, 2010, he was ordered removed from the United States. *Id.* at 7. He was placed under an Order of Supervision on November 5, 2010. *Id.*
On November 10, 2025, his Order of Supervision was revoked, and Perez was taken into ICE custody. *Id.* at 9-10. He is currently detained at Florida Soft Side South. *Id.*

at 13. U.S. Immigration and Customs Enforcement is pursuing Perez's removal to Mexico. *Id.* at 12.

LEGAL STANDARD

The Court has the power to grant a writ of habeas corpus where a Perez "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 Walker, Noem, Lyons, and Bondi are improperly named.

The only appropriate respondent to a habeas case is the official with physical custody of Perez. 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 other than the Warden of Florida Soft Side South, are improper parties to this action and should be dismissed.

II. The Immigration and Nationality Act precludes review of Perez's claims.

A. 8 U.S.C. § 1252(g)

Respondents acknowledge that this Court's prior rulings concerning

jurisdiction under 8 U.S.C. § 1252(g) control the result in this case should the Court adhere to its legal reasoning. *See e.g.*, *Hernandez v. Bondi, et al.*, No. 2:25-cv-01082-SPC-NPM, Doc. 8 (M.D. Fla. Dec. 10, 2025). While Respondents respectfully disagree, in the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents incorporate by reference the legal arguments regarding jurisdiction under Sections 1252(g) as presented in *Hernandez.*[1] *See Hernandez v. Bondi, et al.*, No. 2:25-cv-01082-SPC-NPM, Doc. 6 (M.D. Fla.). Should the Court prefer more exhaustive briefing, Respondents respectfully request leave to provide it upon the Court's request.

B. 8 U.S.C. § 1252(b)(9)

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 Perez 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

[1] Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of judicial economy, Respondents respectfully request the Court to suspend application of the rule. *See* Local Rule 1.01(a) and 1.01(b).

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.

Here, Perez challenges the government's failure to reopen removal proceedings and obtain a new order of removal with a third country designation—a direct attack to his existing deportation order. (Petition, Doc. 1 ¶ 53.) While Perez's challenge to

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), his attack on the sufficiency of that order places his claims within 8 U.S.C. § 1252(b)(9)'s jurisdictional bar. The Court should therefore dismiss Perez's petition for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

III. Perez's detention is lawful.

A. The INA mandates Perez's detention.

Should the Court determine that it retains jurisdiction over Perez's habeas claims, he still cannot establish eligibility for habeas relief because his detention is lawful. 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). If the government is unable to remove an individual during that statutory period, the INA empowers ICE to release him on an order of supervision. 8 U.S.C. § 1231(a)(3). Importantly, an order of supervision is not indefinite, rather the regulations permit the government to revoke the order for a variety of reasons, among them because the purposes of the release have been served, and it is appropriate to enforce a removal order. *See* 8 C.F.R. § 241.4(*l*)(2). When removal is not facilitated within the 90-day statutory period, the government is still 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).[2]

Here, Perez was ordered removed in 2010 and he remains subject to a final, executable removal order. While he was initially released on an order of supervision, ICE recently determined that it is appropriate to proceed with executing the order. Perez is therefore an alien subject to a final order of removal and has been properly detained pursuant to 8 U.S.C. § 1231. Perez contends his detention for the purpose of removal is unlawful because his removal to Cuba is improbable and there is "no indication that any viable removal country had been identified" suggesting that third-country removal would run afoul of Fifth Amendment Due Process principles. *See* Petition, Doc. 1 ¶ 44. Perez misconstrues the law. The INA provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered removed are in fact removed from the United States. *See* 8 U.S.C. § 1231(b). This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b)(2); *see also Jama v. ICE*, 543 U.S. 335, 338-41 (2005). Such countries are referred to as "third countries" for removal.

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[2] 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)

While the INA authorizes the removal of aliens who have received a final order of removal to a third country, *see* 8 U.S.C. § 1231(b)(1)(C), (2), it does not delineate a particular process for carrying out third country removals to ensure that they remain consistent with the United States' obligations under the Convention Against Torture (CAT).[3] Instead, Congress delegated the decision regarding the appropriate process entirely to the Executive Branch. *See* 8 U.S.C. § 1231 note (providing that the "heads of the appropriate agencies shall prescribe regulations to implement" the United States' CAT obligations). In other words, Respondents do not need to demonstrate that Cuba is willing to issue travel documents to Perez or agree to his repatriation; rather, third country removal is available. Furthermore, the process for implementing third country removal has been delegated exclusively to the Executive Branch. Here, Perez is being processed for removal to a third country. ICE's actions in doing so are within its statutory powers.

Furthermore, to the extent Perez argues this case presents a violation of his Due Process rights to challenge a specific third country removal effort—*see* Petition, Doc. 1 ¶ 53—Perez cannot do so before this Court. Believing that the government's efforts to remove aliens with final orders of removal to third countries are unlawful, four aliens commenced a lawsuit in the District Court for the District of Massachusetts in

[3] The Convention Against Torture regulations prohibit an alien's removal to a country where he faces a clear probability of torture—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by or with the consent of the public official. *See* 8 C.F.R. §§ 208.16(c), 208.18(a), 1208.16(c), 1208.18(a) (2020).

March 2025 and sought class certification. *See D.V.D. et al., v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-10676, Doc. 1 (D. Mass.) The *D.V.D.* plaintiffs challenge the government's procedures for conducting third country removals under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551, *et seq.*, the Fifth Amendment Due Process Clause, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the INA. *Id.* ¶¶ 99-138. Their requested relief includes "declar[ing] and "set[ting] aside Defendants' current policy of failing to provide Plaintiffs and class members with written notice and a meaningful opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country." *Id.* ¶¶ a-o. The District of Massachusetts certified a Rule 23(b)(2) non-opt-out class and entered a nationwide preliminary injunction establishing certain procedures that DHS must follow before removing an alien with a final order of removal to a third country. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 365 (D. Mass. 2025). The class is defined as

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. at 378. On May 21, 2025, the *D.V.D.* court issued a memorandum order clarifying that its preliminary injunction required the government to provide extra-statutory remedies including that all third-country removals be preceded by written notice to the

alien and alien's counsel along with a meaningful opportunity to raise a fear-based claim for protection from removal. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). The *D.V.D.* court stated that its order applied "to the Defendants, including the Department of Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction." *Id.* On June 23, 2025, the Supreme Court stayed the district court's preliminary injunction pending appeal, both as to the class and the named plaintiffs. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (Mem.) (2025). Nevertheless, that same day, the *D.V.D.* court ordered that its May 21, 2025, order remain in effect. No. 1:25-cv-10676, Doc. 176, Electronic Order Entered (June 23, 2025). The government returned to the Supreme Court for clarification. On July 3, 2025, the Supreme Court granted the government's motion and clarified that the *D.V.D.* court's May 21, 2025, order is no longer in force. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2629 (2025). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See D.V.D.*, 145 S. Ct. at 2629 (explaining that the Court's July 23, 2025 order "stayed the preliminary injunction").

Generally, parties are limited to one bite at the apple, a principle the Eleventh Circuit recognizes in its claim-splitting jurisprudence. *See Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 841 (11th Cir. 2017). To determine whether a claim has been improperly split, courts look at two factors: whether the same parties are involved and

whether separate cases arise from the same transaction. *Vanover*, 857 F.3d at 841-42. Borrowing from res judicata principles, the Eleventh Circuit has determined that "[s]uccessive causes of action arise from the same transaction or series of transactions when the two actions are based on the same nucleus of operative facts" but importantly, the question is not whether judgment is final, but rather whether—assuming that it was—the first suit would preclude the second. *Id.* at 841-42; *see also Klayman v. Porter*, No. 22-13025, 2023 WL 2261814, at *3 (11th Cir. Feb. 28, 2023). Critically, for classes under Rule 23(b)(2)—the type of class certified in *D.V.D.*, *see D.V.D.*, 778 F. Supp. 3d at 385—there is no notice to class members required to bar them from later seeking injunctive relief. *See Wal-Mart Stores, Inc.*, 564 U.S. at 362 ("[Rule 23(b)] provides no opportunity for (b)(1) or (b)(2) class members to opt out.")

Perez appears to be a *D.V.D.* class member as he (1) has a final removal order and (2) is an individual who DHS will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed. *See D.V.D.*, 778 F. Supp. 3d at 378. Perez therefore raises the same claims and legal theories currently being litigated on his behalf in the District of Massachusetts. *Compare* Petition, Doc. 1 ¶ 53 ("ICE and DHS have failed to provide Petitioner or his counsel with any advance notice of a third country of removal and has failed to provide Petitioner and his counsel with the requisite due process to ensure he is not tortured in any third country that they may be potentially

removed to."), *with D.V.D.*, 778 F. Supp. 3d at 369 ("Plaintiffs challenge Defendants' policy or practice of failing to provide notice and an opportunity to be heard prior to removal to a country that was not designated in their removal orders"). Because Perez's Fifth Amendment claims challenging third country removal overlap with those at issue before the Massachusetts court in *D.V.D.*, a grant of relief would be improper as any grant of relief to Perez individually here may conflict with the eventual relief, if any, provided to the *D.V.D.* class. *See, e.g.*, *Qasemi v. Kurzdorfer*, No. 25-cv-668-FPG, 2025 WL 2938607, *6 (W.D.N.Y. Oct. 16, 2025) ("Although Petitioner is no longer subject to preliminary injunctive relief in the *D.V.D.* case, he remains a class member whose equitable claims are presently being litigated in that forum. It would be inappropriate for the Court to inject itself into that ongoing litigation.").

B. Revocation of Perez's Order of Supervision compiles with agency regulations.

As discussed, an alien subject to a final order of removal that was not executed in the 90-day removal period may be released on a revocable order of supervision. As relevant here, the Cuban Review Plan sets forth regulations for when parole can be withdrawn or revoked for a Mariel Cuban. 8 C.F.R. § 212.12(e), (h). That authority confers broad discretion on the government. *See, e.g., id.* § 212.12(e) (providing that the authorized official may, "in his or her discretion, withdraw approval for parole of any detainee prior to release when, in his or her opinion, the conduct of the detainee, *or any other circumstance*, indicates that parole would no longer be appropriate" (emphasis

added)). The regulations also establish procedures for periodic review, after a parole revocation, of a Mariel Cuban's continued detention. *Id.* § 212.12(g) (providing that such review "will *ordinarily* be expected to occur within *approximately* three months after parole is revoked") (emphasis added)).

Perez argues that ICE should not have revoked his parole and that it should have reviewed his detention by under § 212.12. He argues that any defects in failing to follow these regulations amount to a due process violation. This argument fails for multiple reasons. First, Perez has not shown a regulatory violation. Section 212.12 grants the government broad discretion granted to the government to revoke parole. Perez has not shown that there is no circumstance at all that warrants his detention, especially given ICE's efforts to effectuate his removal. Nor has Perez shown that any timing of a file review violates § 212.12. Section 212.12(g) provides, "The review process will commence with a scheduling of a file review, which will ordinarily be expected to occur within approximately three months after parole is revoked." Because Perez's Order of Supervision of was revoked on November 10, 2025, his petition is premature.

Second, Perez has not shown that any deviation from the procedures set forth in 8 C.F.R. § 212.12 amounts to a due process violation. Perez relies on *United States ex rel. Accardi v. Shaughnessy*, where the Supreme Court established a doctrine—now known as the "*Accardi* doctrine"—that generally requires an agency to follow its regulations. *See* 347 U.S. 260 (1954). But the Supreme Court in *Accardi* did not

determine the sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that affects a party's rights. As the Supreme Court has clarified, *Accardi* "enunciates[s] principles of federal administrative law rather than of constitutional law." *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). "*Accardi* is based on administrative law principles, not constitutional due process requirements." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (explaining limits on the *Accardi* doctrine). Here, Perez has not shown that any arguable violations of the regulatory provisions at issue amount to a due process violation, since he has not shown that he will be denied any notice and opportunity to be heard on the basis for his parole revocation.

Third, the proper remedy for lack of procedural due process is additional process, not immediate release. A procedural due process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. Indeed, in *Accardi* the Supreme Court did not order substantive relief (there, the suspension of deportation) but rather ordered the agency to afford the process provided in its regulations. *See Accardi*, 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving BIA's failure to comply with its regulations, "he should receive a new hearing before the Board").

C. Perez is lawfully detained under U.S. Immigration and Customs Enforcement authority.

Finally, Perez is lawfully detained at Florida Soft Side South, also known as

Alligator Alcatraz. As declared by U.S. Immigration and Customs Enforcement in litigation also pending in this district, immigration detainees at the facility detained by the State of Florida pursuant to 8 U.S.C. § 1357(g):

> Federal law authorizes state officers and employees to "perform a function of an immigration officer," including the "detention of aliens," pursuant to an agreement with the federal government. See 8 U.S.C. § 1357(g)(1). The aliens at Alligator Alcatraz are detained by the State of Florida pursuant to that authority. . . . State officers detaining aliens pursuant to this authority are also subject to the "direction and supervision of the" federal government. 8 U.S.C. § 1357(g)(3).

C.M. et al v. Noem et al., 2:25-cv-00747-SPC-DNF, Doc. 53 (M.D. Fla.) (Fed. Def.'s Resp. to Pls' Expedited Disco. Req.)

In a recent order by Judge Dudek, the Court denied a plaintiffs' motion for a preliminary injunction seeking to prevent the State of Florida from holding immigration detainees at the facility. *M. A. v. Guthrie*, No. 2:25-CV-765-KCD-DNF, 2025 WL 3677008 (M.D. Fla. Dec. 18, 2025). The Court concluded plaintiff and the proposed the class were unable to show an irreparable injury absent an injunction, because "he (and the proposed class) is subject to confinement by the Attorney General. *M. A. v. Guthrie*, No. 2:25-CV-765-KCD-DNF, 2025 WL 3677008, at *2 (M.D. Fla. Dec. 18, 2025)." As recognized by *M.A.*, individuals at Alligator Alcatraz—including Perez—are subject to the Attorney General's detention regardless of whether they are located at that facility or another location. Perez's requested release from custody is therefore incongruous with the nature of his complaint.

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CONCLUSION

Respondents respectfully request that Perz's petition be denied.

DATED this 13th day of January, 2026.

Respectfully submitted,

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