UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MARIO ORLANDO HIDALGO PEREZ,

Petitioner, Case No. 2:26-cv-819-SPC-NPM

v.

SECRETARY KRISTI NOEM, et al.,

Respondents.
_______________________________/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Mario Orlando Hidalgo Perez seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by U.S. Immigration and Customs Enforcement ("ICE") as unreasonably prolonged. The Court lacks jurisdiction. At the time Hidalgo Perez filed the petition, he had been detained for 93 days. The Supreme Court has held that detention following a removal order is presumptively reasonable for six months. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Hidalgo Perez's detention is therefore lawful, and his petition should be denied.

BACKGROUND

Petitioner is a national and citizen of Cuba, who first entered the United States on or about May 1, 1979 at or near Miami, Florida. (Composite Exhibit, Ex. A at 12.) On September 18, 1996, he was granted lawful permanent resident status, retroactive to November 14, 1993. *Id.* at 6. On April 27, 1999, Petitioner was convicted of conspiracy to possess with intent to distribute cocaine, and received a sentence of imprisonment for seven years. *Id.* On March 23, 2006 he was ordered removed from the United States. *Id.* at 4-5. Petitioner was not removed but was placed on an order of supervision. *Id.* at 14, 21.

On December 16, 2025, ICE revoked Petitioner's order of supervision and detained him for the purpose of executing his longstanding removal order. Ex. A. at 1-3. Petitioner remains detained at this time, and as of this filing, has been detained for a total of 104 days. *See generally* Doc. 1. On March 19, 2026, Petitioner initiated this case with the filing of a petition seeking habeas corpus relief. Doc. 1. The Court issued an order directing Respondents to show cause why the petition should not be granted no later than March 30, 2026. Doc. 3. For the reasons set forth below, Respondents respectfully assert that the petition should be denied.

LEGAL STANDARD AND CERTIFIED HABEAS RETURN

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). ICE is detaining Petitioner under the mandatory post-removal detention provisions of 8

U.S.C. § 1231. *See* 28 U.S.C. § 2243 ("The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.").

ARGUMENT

I. 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—Ex. A at 4—and he challenges ICE's detention for the purpose of executing that order. *See generally* Petition. 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).

II. 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. Here, the crux of this case challenges ICE's execution of Petitioner's final removal order to stop the removal process. These are the exact claims barred by the zipper clause. 8 U.S.C. § 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 Court should dismiss the Petitioner's claims for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

III. Petitioner's Detention is Lawful

A. <u>Statutory and Regulatory Framework</u>

An alien with a final order of removal is subject to the detention and removal standards set forth at 8 U.S.C. § 1231. The statute directs that an alien ordered removed be removed within 90 days of his order becoming final and that he remain detained during that timeframe. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). Where the removal period elapses without the alien's departure, the INA and regulations give DHS the authority to grant an order of supervision pending his removal. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5(a). Important here, continued detention of an alien ordered removed who remains in the United States beyond the removal period and who is deportable under Section 237 of the INA is governed by the regulations set forth at 8 C.F.R. § 241.4. *See* 8 C.F.R. § 241.4(a)(3); *see also* Ex. A at 13, 15 (reflecting charges of removability under INA § 237).

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

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

Should the Court determine that it retains jurisdiction over Petitioner's habeas claims, he still cannot establish eligibility for habeas relief because his detention is lawful. Petitioner is subject to final order of removal. Ex. A at 4. While he was released on an order of supervision, that order remained revocable. *See* 8 C.F.R. § 241.4(*l*). Here, on December 16, 2025, ICE lawfully exercised its discretion to revoke Petitioner's supervision under 8 C.F.R. § 241.4(*l*)(2)(iii) for the purpose of executing his final order of removal. *See* Ex. A at 1-3. ICE was within its authority to revoke Petitioner's order of supervision and it did so in accordance with the regulations.

C. Petitioner's Period of Detention is Presumptively Reasonable

Even if the Court disagrees with the above, it should still deny the writ. Petitioner cannot make a claim for unlawfully prolonged detention at this time. As discussed *supra* the INA requires that an alien ordered removed be detained for the 90-day removal period after his order of removal becomes final. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). But even where removal is not effected on that schedule, the government is permitted to continue to detain an alien—or to detain him again in the future for the purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, due to constitutional concerns, the U.S.

Supreme Court has nevertheless interpreted the post-removal period to allow extended detention for "a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). In all, a reasonable length of detention "is presumptively six months." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play that considers the "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale*, 287 F.3d at 1051-52; *Guo Xing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009).

Here, the presumptively reasonable detention period has not elapsed, and Petitioner's habeas petition is premature. Petitioner has only been detained for 104 days. *See* Ex. A at 12-16. Petitioner was detained on December 16 and sued on March 19. At that point, he had been detained for 93 days. Either timeline is well under the 180-day period that is presumptively reasonable. That is fatal to jurisdiction. *Akinwale*, 287 F.3d at 1051-52.

The very spirit of *Zadvydas* is to prevent prolonged detention. *Zadvydas*, 533

U.S. at 679. And the purpose of the removal period is to allow the government a reasonable amount of time to make travel and documentation arrangements necessary to remove an individual. *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008). With both considerations in mind, it would thus make little sense to read *Akinwale* so strictly as to cut the 180-day presumptively reasonable period here based on Petitioner's prior periods of detention, or to calculate the 180 day period starting with the date of the order of removal and include periods of time when Petitioner was not actually detained. *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).

To contend ICE cannot detain Petitioner for the purpose of removal would effectively eliminate ICE's ability to ever remove an alien unless it does so within the presumptively reasonable timeframe. *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (Apr. 25, 2012). *Zadvydas* does not make such a broad pronouncement. It goes without saying that an alien must be detained (or otherwise in custody) to effect removal, unless the alien leaves voluntarily. Petitioner has not left voluntarily, and ICE is attempting to remove him. If the Court determines that the presumptively reasonable period of detention expired years ago, it is unclear how ICE would be able to remove Petitioner—which ICE is actively working toward. Ex. A. at 20; *see Wong Wing v. United States*, 163 U.S.

228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody . . . while arrangements were being made for their deportation."). Because Petitioner was first detained on December 16, any *Zadvydas* challenge fails. *E.g.*, *Jiang*, 2009 WL 260378, at *2 ("This presumptively reasonable six month period must have expired at the time of the filing of a petition.").

ICE recognizes that this Court has held the *Zadvydas* period is coterminous with the statutory removal and post-removal periods—meaning it can run while an alien is outside detention. *Beltran v. ICE*, No. 2:25-cv-01174-SPC-NPM, 2026 WL 21252 (M.D. Fla. Jan. 5, 2026). Respectfully, ICE disagrees based on the INA and *Zadvydas* itself. Notably, Judge Pratt issued a recent decision adopting ICE's general interpretation of this question. *Da Wu v. ICE*, No. 3:25-cv-1254-JEP-MCR (M.D. Fla. Feb. 3, 2026). Judge Berger just agreed too. *Gonzalez Barrera v. U.S. Att'y General*, No. 3:26-cv-282-WWB-SJH, 2026 WL 472340, at *1-2 (M.D. Fla. Feb. 19, 2026). Judge Dudek recently has as well. *Al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF (M.D. Fla. Feb. 27, 2026). So did three Southern District cases that recently agreed that this period begins at the start of an alien's actual detention and begins again when ICE makes a renewed effort to remove after failing long ago. *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL

2280485 (S.D. Fla. Aug. 8, 2025) (holding claim premature and rejecting argument that aggregate prior detentions considered for *Zadvydas* purposes); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300 (S.D. Fla. July 17, 2025) (holding claim premature when removal period ended in 2014); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *7-8 (S.D. Fla. July 8, 2025) (same for 2011). Other courts agree as well. *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) [re-]detention poses a constitutional issue.").

With *Zadvydas*, the "basic question" is "whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Court "used the words 'detain' and 'custody' to refer exclusively to physical confinement and restraint." *Jennings v. Rodriguez*, 583 U.S. 281, 311 (2018). *Zadvydas* protects against unconstitutionally indefinite detention; it did not interpret starting an imaginary detention clock based on statutory periods divorced from physical restraint. Again, to conclude the detention period started with the statutory removal time requires a corresponding finding that ICE has been unconstitutionally detaining Petitioner since his release. That is a factual impossibility. Yet it also imposes an impossible burden on ICE—requiring it to justify over decades of detention if the burden shifts. *See Zadvydas*, 533 U.S. at 701 ("And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink.").

Akinwale and other courts recognize that calculating time will often begin when detention is required (i.e., start of the removal period). 8 U.S.C. § 1231(a)(2)(A). But this would only be the case where petitioner challenges detention beginning at that time. If—as here—petitioner gets detained years later, no reasonable interpretation of *Zadvydas*, *Akinwale*, or any other binding law suggests the six-month period can expire before detention occurs. Many cases on this exact issue hold the period begins with actual detention. *E.g.*, *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) (rejecting claim as premature for petitioner who was not detained during removal period because "it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody").[1] Again, *Zadvydas* "exclusively" addressed "physical confinement and restraint." *Jennings*, 583 U.S. at 311.

Here, Petitioner is in the "post-removal period" under 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 683. It is "presumptively reasonable" for ICE

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[1] *See also Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 n.7 (S.D.N.Y. 2017); *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017); *Rivera v. Hassell*, No. 4:15-01497-WMA-SGC, 2016 WL 4257692, at *3 (N.D. Ala. July 12, 2016), *R&R adopted*, 2016 WL 4257052 (Aug. 10, 2016); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012); *Raia v. Aviles*, No. 11-3374 (WJM), 2011 WL 2710275, at *5 & n.9 (D.N.J. July 6, 2011); *Thelemaque v. Barr*, No. 20-20467-CIV-ALTONAGA/Reid, 2020 WL 13551808, at *2 & n.1 (S.D. Fla. Mar. 30, 2020); *Aionesei-Lupu v. Barr*, No. 1:20-cv-22998-BLOOM, 2020 WL 8679783, at *2 (S.D. Fla. July 23, 2020); *Cruz v. Lumpkin*, No. H-23-2224, 2023 WL 4566252, at *1 n.7 (S.D. Tex. July 17, 2023).

to detain an individual with that status for a total of six months. *Id.* at 701. To this day, Petitioner is still within that reasonable detention period.

Importantly, that six-month period is a bright-line, irrebuttable presumption of constitutionally acceptable detention. *See Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F.3d at 1052.[2] It is only "after" this time that SLRRFF and *Zadvydas* burden-shifting comes into play. *Guzman Chavez*, 594 U.S. at 529 (cleaned up); *see also Jennings*, 583 U.S. at 298-99; *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). Until the Supreme Court recognizes a *Zadvydas* challenge *during* that six-month period, the Court cannot create that cause of action where none exists in derogation of *Akinwale*. *See* 287 F.3d at 1052 ("This six-month period thus must have expired . . . in order to state a claim under *Zadvydas*.").

To require detailed justification from ICE before the *Zadvydas* period expires is a significant infringement on separation of powers principles. Essentially every question related to immigration is "exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). This isn't a

[2] *See also Guo Xing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009); *Vaz v. Skinner*, 634 Fed. App'x 778, 782 (11th Cir. 2015); *Ivantchouk v. U.S. Attorney General*, 417 Fed. App'x 918, 921 (11th Cir. 2011); *Chance v. Napolitano*, 453 F. App'x 535, 536 (5th Cir. 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011); *Okpoju v. Ridge*, 115 F. App'x 302, 302 (5th Cir. 2004).

recent development. *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments." (cleaned up)). That power, however, is always "subject to important constitutional limitations." *Zadvydas*, 533 U.S. at 695. "In these cases, we focus upon those limitations." *Id.*

Other principles of judicial review come into play too. *Id.* at 700. Courts "recognize primary Executive Branch responsibility" in this field. *Id.* They must also "give expert agencies decisionmaking leeway in matters that invoke their expertise." *Id.* Important here, that includes "Executive Branch primacy in foreign policy matters." *Id.* These basic separation-of-powers principles "require courts to listen with care when the Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise." *Id.*

The Executive branch is attempting to remove Petitioner—a convicted felon. The Executive's efforts to remove Petitioner go to the very core of its power to enforce immigration laws and conduct delicate, ever-shifting foreign policy negotiations. *See United States v. Texas*, 599 U.S. 670, 679 (2023) ("That principle of enforcement discretion over arrests and prosecutions extends to the immigration context, where the Court has stressed that the Executive's enforcement discretion implicates not only normal domestic law enforcement priorities but also foreign-policy objectives." (cleaned up)); *Biden v. Texas*, 597 U.S. 785, 805-06 (2022) ("That is no less true in the context of immigration law, where the dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation's foreign policy." (cleaned up)). Until Petitioner's detention raises a constitutional problem—i.e., after six months—the political branches (namely, the Executive) must be permitted to pursue law enforcement and foreign policy objectives without interference.

To find otherwise would demand the Executive explain its constitutionally acceptable actions for the Judiciary to decide if it concurs based on an individual judge's interpretation of current world events. Yet in the American system of delegated, separated powers, coequal branches need not justify to one another the determinations made within their legal discretion. That is especially true where—as here—the law largely entrusts the subject to the Executive alone.

What's more, an interpretation allowing a challenge now grants rights based on the statutory definitions of removal and post-removal periods under 8 U.S.C. § 1231. But that statute literally specifies it "shall [not] be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States." *Id.* § 1231(h). The only way to conclude SLRRFF burden-shifting applies now is by first concluding ICE's failure to remove within the statutory period somehow entitles Petitioner to review, which is beyond the text of the statute.

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

DATED this 30th day of March, 2026.

Respectfully submitted,

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