

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

MARIO HIDALGO PEREZ,

Petitioner,

v.

KRISTI NOEM, *et al.*;

Respondents.

Case No. 2:26-cv-00819-SPC-NPM

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

INTRODUCTION

Petitioner, Mario Hidalgo Perez, was brought to the United States in 1979 as a nine-year old child from Cuba. He has continuously resided in this country for the last forty-seven years. The Petition is a straightforward application for Mr. Hidalgo Perez's release from his unlawful detention based on violations of his due process rights. The Petition clearly establishes that Mr. Hidalgo Perez has been subject to a final order of removal for over twenty years, that the government permitted Mr. Hidalgo Perez's release from detention on an Order of Supervision (OSUP) after he had been detained for the 90 day removal period, that he strictly complied with every aspect of his OSUP release, and there is no evidence that the Government has

established that his removal is significantly likely in the reasonably foreseeable future.

To continue Mr. Hidalgo Perez's detention under this circumstance, the Government must establish that his removal period is tolled, or that removal is likely in the reasonably foreseeable future; it has not. As further demonstrated below, the Response fails to rebut the Petition's basis for Mr. Hidalgo Perez's immediate release, makes arguments against the statute and fails to establish any facts for a Court to find grounds to extend an otherwise unlawful detention. Here the Petition plainly establishes the unlawfulness of Mr. Hidalgo Perez's detention, and release should be granted immediately and without further delay.

I. This Court's review is not barred by INA § 1252(g) or (b)(9).

The Respondents argue two sections of the Immigration and Nationality Act ("INA") strip the Court of jurisdiction over this action. They first point 8 U.S.C. § 1252(g) which bars courts from hearing certain claims. The jurisdictional bar at 8 U.S.C. § 1252(g) is narrow. "The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret this language to sweep in any claim that technically can be said to 'arise from' the three listed actions of the Attorney

General. Instead, we read the language to refer to just those three specific actions themselves.”). “When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. United States Citizenship and Immigration Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020).

The respondents also raise the INA's “zipper clause,” which states:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court should have jurisdiction, by habeas corpus under section 2241 or title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such question of law or fact.

8 U.S.C. § 1252(b)(9).

The zipper clause only applies to claims requesting review of a removal order. *See Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).

The Petitioner does not challenge the commencement of a proceeding, the adjudication of a case, or the execution of his removal order. Nor does he ask the Court to review the removal order. Rather, the Petitioner challenges the legality of his detention under a framework devised by the Supreme Court. The INA does not strip the Court of jurisdiction over this action.

II. Petitioner's continued detention is unlawful.

“Once a noncitizen's order of removal becomes administratively final, the Government ‘shall’ remove the person within 90 days.” *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (*quoting* 8 U.S.C. § 1231(a)(1)(A)). The government must detain the noncitizen during the 90-day removal period, which begins when the removal order becomes administratively final. *Id.*

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court found it unlikely Congress “believed that all reasonably foreseeably removals could be accomplished in [90 days].” *Id.* at 701. So, “for the sake of uniform administration in the federal courts,” it established a “presumptively reasonable period of detention” of six months—the 90-day removal period plus an additional 90 days. *Id.* (*emphasis added*) Courts use a burden-shifting framework to judge the constitutionality of additional post-removal detention:

After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut the showing.

Id.

The Court held, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” 533 U.S. at 700-01 (2001). If removal is not practically attainable, detention no longer

serves its statutory purpose of “assuring the alien's presence at the moment of removal.” *Id.* at 699.

The Respondents argue that Mr. Hidalgo Perez’s detention is within the reasonable period. The evidence offered tells a different story. The Petitioner was ordered removed on March 23, 2006, and was detained until June 23, 2006, before ICE placed him on an Order of Supervision due to no significant likelihood of removal in the reasonably foreseeable future. *See* DE 8-1 at 1, 14. That means he was already in fact held for the 90 day removal period. By their own concession, he has now been detained an additional 107 days. *See* DE 8 at 8. Despite Respondents’ assertions that “it would make little sense to calculate the 180-day period starting with the date of the order of removal,” that is precisely what the statute, *Zadvydas*, *supra*, and courts have dictated. *See* DE 8 at 9.

Pursuant to 8 U.S.C. § 1231(a)(1)(B), in pertinent part, “the removal period begins on the date the order of removal becomes administratively final.” *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) (stating that the removal period begins on the date the order of removal becomes administratively final or the date the alien is released from detention or confinement unrelated to immigration, whichever is later).

Respondents argue contrary to the statute that the removal period begins when ICE decides to re-detain the Petitioner and Petitioner’s claim is premature. Not so.

Their argument assumes the six-month clock started on December 16, 2025, when his current detention began. That calculation would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months. As the Eleventh Circuit recognized, “[t]he Supreme Court's stated rationale for establishing a presumptively reasonable ‘6-month period’ for detention pending removal supports our conclusion that this period commences at the beginning of the removal period.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).¹

The Petitioner has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. In fact, ICE made that determination after he was ordered removed on March 23, 2006, when it released him under an order of supervision on June 23, 2006. There has been no change and no significant likelihood of removal in the reasonably foreseeable future. In fact, the Respondents kept him on his OSUP for twenty years. *See* DE 8-1 at 1, 8. There is no evidence that ICE has ever obtained travel documents for the Petitioner. There is no fact alleged that makes removal significantly likely in

¹ *See also Guo Xing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013) (the alien's § 2241 habeas challenge to his continued detention after final administrative removal order (FARO) was premature, where at the time alien filed petition for review and appellate brief, he had not been detained for more than six months **following issuance of FARO.**) (*Emphasis added*); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (the statutory removal period was triggered on October 24, 2006, when INS issued its Final Administrative Removal Order.) Notably, neither individual had been ordered removed, released after detention for the removal period and then re-detained.

the foreseeable future. Nothing in the record suggests removal is more likely now than it was in 2006 or in the twenty years that followed.

“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.” *See* DE 8 at 8-9 *citing* *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008). The government has had their reasonable time. Respondents have had years to work on effectuating Mr. Hidalgo Perez’s removal while he remained on his OSUP and more than three months since his redetention to continue their efforts. The lack of any progress demonstrated towards removal while Mr. Hidalgo Perez remained detained is reason enough to believe that his removal is not reasonably foreseeable under even the most generous understanding of the standard. *See* *Misirbekov v. Venegas*, 2025 WL 3033732, at *2 (S.D. Tex. Oct. 29, 2025) (finding that a “lack of progress in removing Petitioner makes removal unlikely in the foreseeable future” for a petitioner detained over nine months post-removal). “A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future.” *Balouch v. Bondi*, 2025 WL 2871914, at *3 (E.D. Tex. Oct. 9, 2025) (citation omitted).

The Respondents include a Notice that they “intend” to remove Mr. Hidalgo Perez to Mexico. DE 8-1 at 20. No travel or documentation arrangements have been made. The Respondents would ask this honorable court to find that the Notice is

sufficient to rebut the presumption that removal is not significantly likely in the reasonably foreseeable future. However, that does not meet the standard. Consequently, Respondents have failed to meet their burden. The constitution forbids such an infringement on liberty. Mr. Hidalgo Perez's continued detention violates the INA and his rights under the Due Process Clause.

III. The revocation of the Petitioner's Order of Supervision was unlawful.

A. The revocation violates ICE's regulations and the Fifth Amendment.

ICE failed to provide Petitioner with meaningful notice or opportunity to contest the revocation of his OSUP through timely notice and an informal interview. This violates both ICE's own regulations and the Due Process Clause of the Fifth Amendment.

Upon revocation of an OSUP an alien must be "notified of the reasons for revocation." 8 C.F.R. § 241.4(l)(1). "[A]fter his or her return to [ICE] custody" the alien must be "afforded an initial informal interview promptly to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172, (2021). In its most elemental formulation, "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"

Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, (1965)).

The Notice provided by Respondents states plainly that the revocation of Mr. Hidalgo Perez's release is pursuant to 8 C.F.R. § 241.4(l)(2) and he will be afforded an informal interview and provided with the opportunity to respond to the reasons for revocation and provide evidence to demonstrate that his removal is unlikely. *See* DE 8-1 at 1. The Respondents failed to comply with that detailed process in any meaningful way. The "informal interview" contains three lines stating the detainee did not provide a written statement or documents. *See* DE 8-1 at 3. There is no indication that the Petitioner was made aware of the reasons for revocation, or that he was then provided an opportunity to respond to them. The process afforded here fails to comply with ICE's own regulations or comport with traditional notions of due process.

B. Notice of Revocation is signed by the incorrect official.

ICE's regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." 8 C.F.R. §§ 1.2, 241.4(l)(2). In *Ceesay v. Kurzdorfer*, the district court found that the ICE assistant field office director, like the one in the instant case,

lacked authority to revoke noncitizen's release. 781 F. Supp. 3d 137 (W.D.N.Y. 2025).

The Notice of Revocation dated December 16, 2025, is allegedly signed by Zoelle Rivera, an Assistant Field Office Director in Miami, FL. See DE 8-1 at 1. The signature belongs to an unknown official, with “SDDO” after the signature. *Id.* The government has not argued the unidentified signing SDDO has the equivalent authority of a district director. As a result, this Court cannot conclude that the signor had the authority to revoke release and should find that the Petitioner’s release was not lawfully revoked and hold that he is entitled to release on that basis alone.

CONCLUSION

WHEREFORE, Petitioner renews his requests that this honorable Court exercise jurisdiction over this matter; declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations, Order Petitioner’s immediate release and Order such other relief as this Court may deem just and proper.

Respectfully submitted,

/s/Carolina A. Collado
Attorney for Petitioner
JIMENEZ MAZZITELLI MORDES
9350 S. Dixie Highway, PH 5
Miami, FL 33156
Carolina@jmmlawfirm.com
305-461-3077