

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

HASSAN JAGNE,

Petitioner,

v.

Case No. 2:26-cv-734-KCD-NPM

WARDEN, ALLIGATOR ALCATRAZ,
U.S. ATTORNEY GENERAL, et al.,

Respondents.

**FEDERAL RESPONDENTS' AMENDED OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Hassan Jagne seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that the length of his detention is unlawful and his removal is not reasonably foreseeable, that he was denied due process, and under the APA. His petition should be denied because the challenge to the length of his detention is premature because he has been detained for only 48 days, there are no procedural defects here, and the APA does not apply.

BACKGROUND

Hassan Jagne is a national and citizen of Gambia who first entered the United States on or about July 1, 1993 in Washington, D.C. as a B-2 visitor. (Composite Exhibit A at 15.) He was eventually placed in removal proceedings, applied for various forms of relief, all of which were denied, and ultimately requested voluntary departure in lieu of deportation on August 12, 1998. *Id.* at 1, 15. He failed to depart

the United States, which converted the immigration judge's decision to a final order of removal. *Id.* at 15. On December 19, 2008, Hassan Jagne was arrested for the purpose of enforcing the removal order and removing him to Gambia, but with the inability to remove Petitioner at that time, he was released on an OSUP. Doc 1-1. Petitioner complied with his OSUP for several years and was issued another OSUP on September 24, 2024. (Doc. 1-1).

On March 7, 2026, Hassan Jagne was detained as he reported for an OSUP check-in at the Miramar ICE office. Ex. A at 15. He was served with a warrant for his arrest, a notice of revocation of release, a notice of intent to remove him to Gambia, and was offered an interview. *Id.* at 17-31. Hassan Jagne is currently detained at Florida Soft-Sided Facility South. *Id.* at 32. He has been in current ICE custody for a total of 48 days.¹ *Id.* On March 16, 2026, Hassan Jagne filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act. (Doc. 1.)

ARGUMENT

A. Substantive Due Process.

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683

¹ Hassan Jagne was in ICE custody for 403 days in 2009-2010. Ex. A at 32.

(2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). 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 at 1052 (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 regarding 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 v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *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). At bottom, “[U]ntil the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any

due process claim is not ripe.” *E.g.*, *Khalil Al Ellary*, 2:26-cv-00112-KCD-DNF, Doc. 7 (M.D. Fla. Feb. 27, 2026); *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011).

Respondent recognizes that Judges Chappell and Steele have 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) (Chappell, J.); *Godinez Perez v. Noem*, No. 2:25-cv-00429-JES-NPM, 2025 WL 2806557, at *2 (M.D. Fla. Oct. 2, 2025 (Steele, J.)). This Court, however, disagrees and correctly holds that the *Zadvydas* period runs from actual detention – not a statutory period that may have expired decades ago. *Al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF (M.D. Fla. Feb. 27, 2026); see also *Tran v. Warden, Florida Soft Side South, et al.*, No. 2:25-cv-01224-KCD-NPM (M.D. Fla. March 10, 2026) (“the better approach is to afford the government a new six-month presumptively reasonable period for each discrete detention, unless there are facts suggesting the government is acting with improper motive.”). There is no evidence that the government is acting in bad faith or with an improper motive here, so the current time in custody should not be aggregated with Jagne’s prior time in ICE custody from 2009-2010.

Hassan Jagne filed the present petition well before expiration of six months in detention. He was most recently detained on March 7, 2026, and filed the present

petition on March 16, 2026. At that point, Hassan Jagne had been detained for 10 days; to date, he has been in current detention for 48 days. Because he has been in current custody for less than six months, and there is no evidence that immigration officials have acted with improper motive here, Hassan Jagne remains within the window in which his detention is presumptively reasonable.

It is only afterward that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” See *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”); *Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF (M.D. Fla. Feb. 27, 2026) (denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. See *Akinwale*, 287 F.3d at 1051-52. See *Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “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”).

In addition to still being in the presumptively reasonable detention period, Hassan Jagne has failed to establish that removal is not likely in the reasonably foreseeable future. Hassan Jagne’s conclusory assertion that Gambia is a

historically recalcitrant country that refuses to accept deportees from the United States is not enough to carry his initial burden. *See* Doc. 1 at ¶ 16, 18. As this Court has recognized, the presumptively reasonable six-month detention period was intended to allow a government to negotiate with foreign countries, obtain travel documents, and accomplish removals. *See Justo Betancourt v. Warden*, 2:26-cv-00307-KCD-DNF, 2026 WL 914792, at * 7 (M.D. Fla. April 3, 2026).

Moreover, even with a purported prior recalcitrant country, diplomatic relations are constantly evolving. *Id.* at Doc. 11, p. 7-8 (“If a foreign government that previously refused repatriation suddenly agrees to issue travel documents, the United States needs a practical opportunity to effectuate that newly viable removal.”).² Petitioner’s Notice of Revocation of Release outlined that ICE is seeking travel documents to effect Hassan Jagne’s removal to Gambia or a third country that will accept him. Ex. A at 29. ICE should be allowed the remaining time on Jagne’s 180-day window to accomplish his removal. Because Petitioner’s brief confinement to allow ICE to execute a valid removal order is not an unconstitutional penalty and it is tied to a legitimate civil immigration purpose, the Petition should be denied.

B. Procedural Due Process.

Evaluating a procedural due process claim is a two-step process: (1) is there

² Notably, Petitioner’s OSUP required him to make regular attempts to obtain travel documents from Gambia. ICE advises that his last documented attempt was in 2018.

a protected liberty interest under the Due Process Clause; and (2) whether the procedures followed by the government were constitutionally sufficient. *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011). The first step is satisfied here—when Hassan Jagne was placed on an OSUP, he obtained a “conditional liberty interest that triggered constitutional protection before it could be taken away.” *See Betancourt*, 2026 WL 914792, at * 10-11.

As for the second step, the Due Process clause requires that the government must provide Hassan Jagne notice and a meaningful opportunity to be heard. For ICE, that means guaranteeing written notice and an informal interview that allows the individual to respond. Indeed, 8 CFR 241.13(i)(3) describes the procedures required for revocation of release—that the alien be notified of the reasons for revocation and an informal interview. It permits the alien to submit evidence demonstrating there is no SLRRFF.

In this case, Respondents assert that they complied with the regulation by providing Petitioner with notice and an interview on the same day they gave notice. Comp. Ex. A at 10-13. Respondents informed Petitioner that they were once again trying to obtain travel documents to Gambia, or a third country and offered Petitioner an informal interview in which he declined to participate. *Id.* Hassan Jagne was offered an immediate forum—the interview—where he could contest his return to custody and he was provided notice that the United States is seeking travel documents for his removal to the Gambia. Respondents did not skip

these procedural safeguards. Their actions were constitutionally sufficient, and the Petition should be denied.

Even if this Court were to find that Hassan Jagne's OSUP was not properly revoked, or he wasn't afforded sufficient procedural due process despite his notice paperwork and interview, his immediate release from custody is not the appropriate remedy. Any procedural defect in the form of the agency failing to follow its own guidelines is harmless error that can be corrected by the agency. Indeed, this Court has previously stated that "when an agency skips a step in its own rulebook, the typical judicial response is to force the agency to go back and do its job right—not to throw open the jailhouse doors." *See Betancourt*, 2026 WL 914792, at * 13.

8 CFR 241.13 applies to aliens who were released on OSUP after the 90-day removal period, including those released after 180 days. 8 CFR 241.13(i) states that an alien described who has been released on an OSUP due to SLRRFF may be returned to custody for either (1) violating a condition of release, or (2) if ERO determines that circumstances have changed such that the alien may now be removed in the foreseeable future. This case concerns the latter. Petitioner claims he doesn't know whether his OSUP was revoked under 241.13(i) or 241.4 because both boxes are checked on his OSUP revocation notice. This appears to have been a scrivener's error. The correct authority for detention of an alien previously released on an OSUP is 241.13 and the checked boxes indicate circumstances have

changed such that there is now SLRRFF and ICE is trying to remove him to Gambia. Regardless, Petitioner was on notice of the basis for his redetention, even if the statutory source was unclear, which is procedurally sufficient.

Petitioner further claims he was unlawfully detained in violation of 8 CFR 241.13(g), (i)(2)-(3) because there was no warrant of finding of probable cause, exigent circumstances, or changed circumstances before his redetention. 241.13 has no warrant or probable cause requirement. All that is required is a finding by the agency that changed circumstances have led to SLRFF. There is no requirement for the agency to provide this finding to Petitioner under 241.13(g) until he makes a written request for release pursuant to 241.13(d), which he has not done.

Petitioner next claims his redetention has not been reviewed or authorized by any member of the HQPDU or ERO HQ. (Doc. 1 at 9.) However, 8 CFR 241.4, which contains the procedures that govern detention under 241.13, describes delegation authority. See 241.4(c) and attached Exhibit B, Delegation of Signature Authority memo, which authorizes SDDOs to sign revocations of release. Even if this was done improperly, which Respondents dispute, the correct remedy would be to reissue the notice with a different signature, not order Jagne's outright release.

In sum, Respondents assert that there are no procedural shortcomings in this case. If the Court disagrees, the appropriate cure for said procedural defects is

to order Respondents to cure the procedural defects, not order Petitioner's immediate release.

3. Administrative Procedure Act.

The Administrative Procedure Act is not an appropriate vehicle for remedy in a petition for habeas corpus. As this Court explained in *Betancourt*, a “writ of habeas corpus exists to challenge the fact or duration of physical confinement. It is not a catch-all funnel for standard administrative grievances.” *Betancourt*, 2026 WL 914792, at * 15. The two proceedings are vastly different, with distinct procedural requirements, rules, and financial commitments. It is not appropriate to seek APA relief under the umbrella of a habeas filing. Moreover, the APA is an available avenue only when there is no other adequate remedy. *Id.* at 15-16. Hassan Jagne has another adequate remedy here—his habeas petition. Accordingly, his APA claims must fail.

CONCLUSION

Respondents respectfully request that Hassan Jagne's petition be denied.

DATED April 24, 2026.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

s/ Stephanie S. Leuthauser
STEPHANIE S. LEUTHAUSER
Assistant United States Attorney
Florida Bar No. 0044981
400 North Tampa Street, Suite 3200

Tampa, Florida 33602
Telephone: 813-274-6000
Facsimile: 813-274-6198
Stephanie.leuthauser@usdoj.gov
Lead Counsel for Federal Respondents

CERTIFICATE OF SERVICE

I hereby certify that, on April 24, 2026, I filed the foregoing documents and any exhibits referenced therein using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/ Stephanie S. Leuthauser
STEPHANIE S. LEUTHAUSER
Assistant United States Attorney