

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

Carlos HIDALGO,

Petitioner,
v.

Case No.: **2:25-cv-01214-SPC-NPM**

Garrett J. RIPA, Field Office Director, *et al.*,

Respondents.

The Petitioner's Reply to the Respondents' Response to Habeas Petition

COMES NOW CARLOS HIDALGO, Petitioner in this action, by and through

undersigned, and submits his Reply to the Respondents' Response to Habeas Petition. ECF # 4.

1. ICE's 1/6/2026 Response (ECF # 4 at 2) establishes the Petitioner being detained from "March 23, 2006" to "June 23, 2006" at which time ICE released the Petitioner to an order of supervision ("OSUP") because of ICE's inability to execute the outstanding March 23, 2006, order of removal *to Cuba*.¹

¹ 8 U.S.C. § 1231(a)(3), INA § 241(a)(3), title, "Supervision after 90-day period", provides, in relevant portion,

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General.

2. Indeed, nowhere in its Response (ECF # 4 at 2) do the Respondents notify this Court that the Petitioner was ordered to Cuba, much less to a third country; which is ICE's current unlawful practice (see, *infra*) for executing outstanding orders of removal as advanced by the Plaintiffs against the Defendants in *D.V.D. v. D.H.S.*, No. 25-10676-BEM (D. Mass.).

3. Title 8 U.S.C. § 1231(a)(1)(A) and (B), INA § 241(a)(1)(A) and (B), establishes "the removal period" commencing "[t]he date the order of removal becomes administratively final,"² in the Petitioner's case, June 23, 2006, since the Petitioner did not appeal such order of removal.³

4. Contrary to the Respondent's § 1252(g) jurisdictional argument (ECF # 4 at 3), the Petitioner's habeas petition in no manner challenges ICE's ability to "execute" the outstanding March 23, 2006, order of removal to Cuba.

5. Rather, it is the Respondent's release of the Petitioner to an OSUP on June 23, 2006 which constitutes an implicit admission by the Respondent that they have not been able to *execute* the outstanding March 23, 2006, order of removal to Cuba.

6. The Respondents Response misrepresents that on "December 16, 2025" the Petitioner "was detained to *execute the final removal order against him*". ECF # 4 (*emphasis added*).

² See 8 U.S.C. § 1231(a)(1)(A), INA § 241(a)(1)(A) ("removal period"); also, 8 U.S.C. § 1231(a)(1)(B), INA § 241(a)(1)(B) (titled, "*Beginning of period*", providing in pertinent portion,

"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.

(*emphasis added*).

³ 8 C.F.R. § 1240.14 ("The order of the immigration judge shall become final in accordance with § 1003.39 of this chapter."); and 8 C.F.R. § 1003.39 ("*Finality of decision*. Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first").

7. The foregoing statement is a misrepresentation because nowhere in its Response do the Respondents provide this Court with any evidence that it has scheduled the Petitioner for execution of the March 23, 2006, removal order to Cuba, much less any evidence or statement that a third country has accepted the Petitioner for removal.

8. The Respondents Response goes on to feign that the Petitioner's habeas petition "*is an effort to interfere with or halt ... the legal process*", *to wit*, execution of the March 23, 2006, order of removal to Cuba. ECF # 4 (*emphasis added*).

9. The Petitioner's assertion of his right to be free from arbitrary, capricious and unwarranted detention as well as the right to have an Immigration Court designate the Petitioner's removal to a third country as aptly set forth in *Count One* of the Petitioner's habeas petition (ECF # 1 at 5).

10. In no manner is there a scheme or "effort [by the Petitioner] to interfere with or halt [a] legal process." ECF # 4 at 4.

11. By the Respondents' account, the Petitioner has been detained by ICE a total of "105" days in 2006 and since December 16, 2025, 24 days as of the time the Petitioner files this reply.⁴

12. However, it is clear that Respondent have not been able to execute the outstanding order of removal since 2006.

13. The Respondents assert that the Petitioner "makes no allegation he is scheduled for removal." ECF # 4 at 8.

14. To the Respondent's assertion, the Petitioner alleged in his habeas petition, "[t]he Respondents are detaining the Petitioner for the purpose of executing the outstanding order of removal to Cuba ... and in violation of the March 23, 2006, order of removal to Cuba, the

⁴ ECF # 4-3.

Respondents are alternately seeking to deport the Petitioner from the U.S. to a random third country which not designated in the Petitioner's outstanding order of removal." ECF # 1 at 5, ¶¶ 22-23.

15. The Respondents go on to posit that "even if notice were required prior to removal to a third country, there is no indication ICE would not provide it to Hidalgo", therewith implicitly informing this Court that the Respondents have yet to formulate a manner in which to *execute* the March 23, 2006 order of removal to Cuba. ECF # 4 at 9.

16. Firstly, here, the Respondents misrepresent that "the FOD is exercising his/her discretion under 8 C.F.R. § 241.4(1)(2)(i)-(iv) to revoke your Order of Supervision dated 6/23/2006 because . . . [i]t is appropriate to enforce your removal order", without providing the Petitioner any supporting statement to the cited regulation that the Respondent are ready willing and able to execute the March 23, 2006 order of removal, neither to Cuba, nor to a third country. ECF # 4-1, 12/16/2025 Notice of Revocation of Release.

17. The vague regulatory reference that "the FOD is exercising his/her discretion . . . to revoke your Order of Supervision dated 6/23/2006 because . . . [i]t is appropriate to enforce your removal order" is unsustainable and insufficient notice to allow the Petitioner to formulate a comprehensive response. *Id.*

18. Secondly, the foregoing statement by the Respondents flies in the face of 8 U.S.C. § 1231(b)(2)(A-E), INA § 241(b)(2)(A-E), and 8 C.F.R. § 1240.10(f) ("an immigration judge shall identify for the record a country, or countries in the alternative").

19. The Respondents assert that "[t]o the extent that Hidalgo seeks due process relief for third-country removal, the Court should dismiss without prejudice . . . Alternatively, it should stay that portion of the Petitioner's habeas petition] pending a result in *D.V.D.*" (ECF # 4 at 9-10), thereby, indicating to this District Court that whether *D.V.D.* applies to the Petitioner is not dispositive of the

Petitioner's habeas claim clearly outlined in *Count One* of the Petitioner's habeas petition for which this Court may exercise independent jurisdiction over *Count One* without having to invoke the *D.V.D.* class action case out of the District of Massachusetts.⁵

20. Finally, the Petitioner is not challenging the length of the Petitioner's detention within the stricture of *Zadvydas*.

21. Rather, the Petitioner is challenging the detention arising from the unlawful revocation of the Petitioner's OSUP, accomplished by the Respondents without cause, in an arbitrary and capricious manner sufficient so as to infringe upon the Petitioner's Fifth Amendment Due Process right to be free from detention as well as the right to challenge the Respondent's scheme of removing the Petitioner to a third country to which removal was not designated to, for which the Petitioner's continuing detention serves no purpose whatsoever as contemplated in 8 C.F.R. § 241.4(1)(2)(i)-(iv). See ECF # 4-1, 12/16/2025 Notice of Revocation of Release.

WHEREFORE, the Petitioner implores this Court to GRANT the Petitioner's writ of habeas corpus.

Respectfully submitted,

/s/STEVEN A. GOLDSTEIN
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Counsel for Petitioner

⁵ In no manner is the Petitioner stating that Count One of his habeas petition is not governed by the class action case, *D.V.D.*, rather, the Petitioner is simply asserting that this Court need not invoke the protections outlined to the class action case, *D.V.D.*, to afford the Petitioner relief under Count One of his habeas petition.

CERTIFICATE OF SERVICE

I STEVEN A. GOLDSTEIN, HEREBY CERTIFY, that a true and correct copy of the Petitioner's REPLY to the Respondent's Response to Habeas Corpus Petition was electronically served via this U.S. District Court's CM/ECF system this **JANUARY 9, 2026**, upon,

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