UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 26-cv-23508-GAYLES

ADRIAN MORALES HERNANDEZ,

Petitioner,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, et al.,

Respondent
_____/

RESPONDENT'S RETURN TO WRIT OF HABEAS CORPUS

Respondent,[1] through the undersigned Special Assistant U.S. Attorney, consistent with this Court's Order [DE 4], respectfully submit this response to petitioner Adrian Morales Hernandez's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Petitioner and Petition) [DE 1]. Respondent maintains that Petition should be denied.

Petitioner is subject to a final order of removal and lawfully detained pending his removal under 8 U.S.C. § 1231(a)(6). Because Petitioner has only been in custody from January 15, 2025, to April 3, 2025, and then from March 26, 2026, until May 18, 2026 (the date he filed), he has only been detained 132 days. As a result, Petitioner has not yet been detained long enough to state a viable claim for unreasonably prolonged detention because

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at Broward Transitional Center. *See* Petition, at ¶ 2(a). The only appropriate respondent is Juan Gonzalez, in his official capacity as the Assistant Field Office Director of the Broward Transitional Center. All other respondents should be dismissed.

he has been detained less than the 180 days the Supreme Court found presumptively reasonable and constitutionally permissible in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

BACKGROUND

The petitioner, Adrian Morales Hernandez (Petitioner), is a native and citizen of Cuba. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated March 26, 2026; *see also* Exh. B Form I-213 dated December 22, 2024; Exh. C, Form I-213 dated July 13, 2021; Exh. D, Form I 213 dated October 28, 2019. On January 16, 2016, Petitioner presented himself at a Port of Entry (POE) in Brownsville, Texas seeking admission. *See* Exh. E, Declaration of Deportation Officer Partidas. Petitioner was paroled into the United States for two years pursuant to the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161. *Id.*

On September 01, 2016, Petitioner was arrested for trafficking of marijuana in excess of twenty-five pounds or three hundred plants or more, and drug trafficking possess structure or vehicle with knowledge of drug trafficking in Lee County, Florida. *See* Composite Exh. F, *State of Florida v. Adrian Morales Hernandez*, No. 16-CF-017845 (FL. Cnty. Ct. Lee County). On October 13, 2016, the State declined to file charges. *Id.*

On January 19, 2018, Petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status pursuant to the Cuban Refugee Adjustment Act of November 2, 1966, Pub. L. No. 89-732, 80 Stat. 1161 with U.S. Citizenship and Immigration Services (USCIS). *See* Exh. G, USCIS Decision. On January 16, 2020, USCIS denied Petitioner's application for adjustment of status. *Id.*

On February 07, 2018, Petitioner was arrested transporting dangerous material in Lee County, Florida. *See* Composite Exh. H, *State of Florida v. Adrian Morales Hernandez*, No. 18-

CF-014642 (FL. Cnty. Ct. Lee County). On February 26, 2018, the State of Florida formally charged Petitioner with unlawful conveyance of fuel and trafficking in counterfeit credit cards. *Id.* On February 12, 2020, Petitioner was convicted of both charges and was sentenced to twenty-two months in prison with credit for sixty days already served followed by sixty months of probation. *Id.*

On July 02, 2021, Petitioner was encountered by Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) at the Dade Correctional Institution, in Miami-Dade County, Florida while serving his state sentence. *See* Exh. C, Form I-213 dated July 13, 2021. ICE ERO determined that Petitioner was amenable for removal and lodged an immigration detainer against him. *Id.*

On July 14, 2021, ICE ERO issued Petitioner a Notice to Appear (NTA) charging him with inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. *See* Exh. I, Notice to Appear. On January 19, 2021, the NTA was filed with the Miami Immigration Court thereby initiating removal proceedings. *Id.*

After Petitioner completed his state sentence, he was issued an order of release on his own recognizance. Exh. J, Form I-220A, Order of Release on Recognizance. On June 26, 2023, Petitioner was arrested for petit theft in Sarasota County, Florida. *See* Composite Exh. K, *State of Florida v. Adrian Morales Hernandez*, No. 2023 MM 006364 NC (FL. Cnty. Ct. Sarasota County).

Petitioner's arrest for petit theft in Sarasota County violated the terms of his probation for his February 12, 2020, conviction in Lee County for unlawful conveyance of fuel and trafficking in counterfeit credit cards. *See* Composite Exh. H, *State of Florida v. Adrian Morales Hernandez*, No. 18-CF-014642 (FL. Cnty. Ct. Lee County). On July 10, 2023, a violation of probation report was filed with the Lee County Court. *Id.* On September 05, 2023, the Court issued an order revoking Petitioner's probation and sentencing him to thirty-six months in prison with credit for seventy two days served. *Id.*

On May 17, 2024, Petitioner pled no contest to the charge of petit theft in Sarasota County and the county court withheld adjudication and sentenced Petitioner to time served. *See* Composite Exh. K, *State of Florida v. Adrian Morales Hernandez*, No. 2023 MM 006364 NC (FL. Cnty. Ct. Sarasota County).

On December 17, 2024, Petitioner was arrested in Charlotte County, Florida for possession of a controlled substance, possession of drug paraphernalia, and possession of a firearm or ammunition by a convicted felon. *See* Composite Exh. L, *State of Florida v. Adrian Morales Hernandez*, No. 24002018F (FL. Cnty. Ct. Charlotte County).

At that time, Petitioner had numerous out-of-county warrants and pending criminal cases in other counties in Florida. *See* Exh. E, Declaration of Deportation Officer Partidas. While in state custody, Petitioner was encountered by ICE ERO. *See* Form I-213 dated December 22, 2024. An ICE detainer was placed on Petitioner, and he was detained by ICE ERO. *See* Exh. M, Form I-247A, Immigration Detainer- Notice of Action; *see also* Exh. N, Form I-200, Warrant for Arrest of Alien; Exh. O, Form I-286, Notice of Custody Determination.

On December 27, 2024, the Department of Homeland Security filed a motion with the Miami Immigration Court requesting that Petitioner's case be transferred to the Krome Immigration Court. *See* Exh. P, Motion for Change of Venue. On January 07, 2025, the Immigration Judge granted the motion. *See* Exh. Q, Order of the Immigration Judge dated January 07, 2025.

On January 15, 2025, Petitioner attended a master calendar hearing where he admitted allegations 1-7 in the NTA, and the Immigration Judge sustained the sole charge of inadmissibility. *See* Exh. E, Declaration of Deportation Officer Partidas. Petitioner stated he would not be filing any applications for relief from removal and, consequently, the Immigration Judge ordered him removed to Cuba. *See* Exh. R, Order of the Immigration Judge dated January 15, 2025. Petitioner waived appeal of the Immigration Judge's decision; therefore, the removal order became final. *Id.*

On April 01, 2025, ICE ERO placed an ICE detainer on Petitioner before transferring him from ICE ERO custody. *See* Exh. A, Form I-213 dated March 26, 2026. On April 03, 2025, Hillsborough County Sherriff took custody of Petitioner for prosecution of a pending criminal case. *See* Exh. S, Detention History.

On April 17, 2025, Petitioner was convicted of grand theft in Hillsborough County, Florida and sentenced to time served. *See* Composite Exh. T, *State of Florida v. Adrian Morales Hernandez*, No. 24-CF-019778-A (FL. Cnty. Ct. Hillsborough County).

On July 17, 2025, Petitioner was convicted of grand theft in Manatee County, Florida and sentenced to nine months in county jail. *See* Composite Exh. U, *State of Florida v. Adrian Morales Hernandez*, No. 2024CF003541AX (FL. Cnty. Ct. Manatee County). On the same day, July 17, 2025, Petitioner was convicted of grand theft in Manatee County, Florida and

sentenced to nine months in county jail to run concurrent to above-referenced case. *See* Composite Exh. V, *State of Florida v. Adrian Morales Hernandez*, No. 2025CF000283AX (FL. Cnty. Ct. Manatee County).

On September 04, 2025, Petitioner was convicted of petit theft in Manatee County, Florida and sentenced to time served. *See* Composite Exh. W, *State of Florida v. Adrian Morales Hernandez*, No. 2024MM003545AX (FL. Cnty. Ct. Manatee County).

On January 27, 2026, Petitioner was convicted of possession of a controlled substance without prescription and use or possess drug paraphernalia and sentenced to eleven months and twenty-nine days in jail with credit for two-hundred and ninety days served in Charlotte County, Florida. *See* Composite Exh. L, *State of Florida v. Adrian Morales Hernandez*, No. 24002018F (FL. Cnty. Ct. Charlotte County). The pending charge of possession of a firearm by a Florida convicted felon was dismissed. *Id.*

On March 25, 2026, Petitioner was convicted of hit and run with property damage, driving with suspended license, and driving with no motor vehicle registration in Charlotte County, Florida and sentenced to 60 days in county jail with credit for time served. *See* Composite Exh. X, *State of Florida v. Adrian Morales Hernandez*, No. 24-003610CT (FL. Cnty. Ct. Charlotte County).

On March 26, 2026, Petitioner was released from Charlotte County jail, and detained by ICE ERO. *See* Exh. S, Detention History; *see also* Exh. Y, Form I-205, Warrant of Removal/Deportation.

On April 03, 2026, ICE served Petitioner a Notice of Removal informing Petitioner that ICE intends to remove him to Mexico. *See* Exh. Z, Notice of Removal dated April 03, 2026. On April 11, 2026, Petitioner was served with Form I-229(a), Warning for Failure to

Depart informing him of his obligation to cooperate with his removal from the United States. *See* Exh. AA, Form I-229(a), Warning for Failure to Depart dated April 11, 2026. Petitioner refused to sign the form. *Id.*

On April 17, 2026, 2026, ICE attempted to effectuate Petitioner's removal to Mexico, but Petitioner refused to depart his holding cell. *See* Exh. E, Declaration of Deportation Officer Partidas.

On the same day, Petitioner was served with Form I 229(a), Warning for Failure to Depart again reminding him of his obligation to cooperate with his removal from the United States. *See* Exh. BB, Form I-229(a) dated April 17, 2026. Again, Petitioner refused to sign the form. *Id.*

Petitioner remains in ICE custody at the Krome North Service Processing Center in Miami, Florida pending his removal from the United States. *See* Exh. S, Detention History.

ARGUMENT

I. Petitioner's Detention Pending Removal Does Not Violate his Constitutional Rights

Petitioner's claim that his detention violates his constitutional rights lacks merit. Petitioner is subject to a final order of removal and is being lawfully detained, under 8 U.S.C. § 1231(a)(6). His allegation that his removal is not reasonably foreseeable lacks merit.

A. ICE Lawfully Detained Petitioner under 8 U.S.C. § 1231.

Section 241 of the Immigration and Nationality Act (8 U.S.C. § 1231) states, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231 (a)(1)(A). That period is called the "removal period," and the Attorney General must detain the alien during the "removal period". 8 U.S.C. § 1231(a)(2)(A). The removal period is "extended beyond a period of 90

days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C).

In *Zadvydas v. Davis*, the Supreme Court held that an alien subject to a final removal order may be detained beyond § 1231's 90-day removal period for an additional period "reasonably necessary to secure removal." 533 U.S. 678, 699 (2001). Such detention is "presumptively reasonable" for six months. *Id.* at 701. But "[t]his 6-month presumption . . . does not mean that every alien not removed must be released after six months." *Id.* Rather, an alien, such as Petitioner, "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit held that in order to state a claim under *Zadvydas*, "the [alien] not only must show post removal order detention in excess of six months, but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052. To do so, a petitioner cannot merely rest on his own conclusory assertions—actual proof or evidence is needed. *Akinwale*, 287 F.3d at 1052 ("[T]o state a claim under *Zadvydas* the alien . . . must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."). When an alien cannot meet his burden of establishing that there is not a substantial likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g.*, *Oladokun v. U.S. Atty. Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012); *Akinwale*, 287 F.3d at 1052.

Petitioner here has only been in custody for 132 days as the time of his filing –shorter than necessary to state a claim for unreasonable detention under *Zadvydas* and *Akinwale.*[2] Even as of the date of this filing, Petitioner's detention has been 140 days. As a result, his claim in premature.

But, even setting aside Petitioner's failure to clear the threshold bar of detention longer than six months, the Court should deny Petitioner's constitutional challenge because he has not met his burden of proving there is no significant likelihood that he will be removed. *Callender v. Shanahan*, 281 F. Supp. 3d 428, 434 (S.D.N.Y. 2017) (describing how *Zadvydas* "places an initial burden on the detainee" to establish that the "no significant likelihood" standard has been met). To satisfy his burden under *Zadvydas*, the petitioner must present more than "mere assertions that removal is unforeseeable." *Juma v. Mukasey*, 2009 WL 2191247, at *3 (S.D.N.Y. July 23, 2009). Unsupported allegations that the relevant embassy or consulate "will not issue a travel document in the foreseeable future" are insufficient. *Id.* Nor is it sufficient for the petitioner to show that the government has been unable to obtain a travel document to date.

Instead, Petitioner simply asserts without support that Respondents have no viable avenue to remove him. Petition at ¶ 13. Petitioner abdicates his burden to prove "there's no significant likelihood of removal in the foreseeable future." As a result, the Court should deny the Petition.

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[2]Additionally, this Court has held that aggregating periods of detention in evaluating *Zadvydas* claims "would obstruct an area that is in the discretion of the Attorney General—effectuating removals." *Barrios v. Ripa*, 2025 WL 2280485, at 8 (S.D. Fla. August 8, 2025); *See also, Flores-Reyes v. Assistant Field Office Director*, 2026 WL 406708, at *2-3 (S.D. Fla. February 13, 2026) (Altman, J.), *and Habash v. Warden,* 2026 WL 1217754, at *3 (S.D. Fla. May 5, 2026) (Ruiz, J.). Applied to Petitioner's claim, without last years period of detention Petitioner has only been detained for 62 days, far shorter than the presumptive 180-day period recognized under *Zadvydas* and *Akinwale.* Regardless, under either calculation Petitioner's claim is premature.

II. The Court Cannot Hear Petitioner's Challenge to the Validity of his Removal Order

Title 28 U.S.C. § 2241 grants this Court jurisdiction to hear habeas corpus petitions from aliens claiming they are held "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *Zadvydas*, 533 U.S. 678, 687, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (citing 28 U.S.C. § 2241(c)(3)). That said, the REAL ID Act of 2005, Pub. L. No. 109-13, § 106(a), 199 Stat. 231 (May 11, 2005) amended the Immigration and Nationality Act ("INA") to provide that petitions for review filed in the appropriate Courts of Appeals were to be the "sole and exclusive means for judicial review" of final orders of removal. *Ruiz-Martinez v. Mukasey*, 516 F.3d 102, 113 (2d Cir. 2008) (citing REAL ID Act § 106(c); 8 U.S.C. § 1252(a)(5)). In other words, the REAL ID Act "strips district courts of jurisdiction to hear habeas petitions challenging final orders of deportation...." *De Ping Wang v. Dep't of Homeland Sec.*, 484 F.3d 615, 615-16 (2d Cir. 2007). Accordingly, the Court lacks jurisdiction to hear Petitioner's challenge to his removal order as having been unlawfully entered without notice.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted); *see also Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999) ("A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises."). For these reasons, before this Court can proceed, it must determine whether it has jurisdiction over this action. *See Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1323 (11th Cir. 2012) ("Prior to making an adjudication on the merits, we must assure ourselves that we have jurisdiction to hear the case before us.").

In his Petition, Petitioner is, in essence, asking this Court to prevent ICE from executing Petitioner's removal order by ordering the immediate release of Petitioner. *See* Petition. This Court, however, lacks jurisdiction to grant such relief.

Federal law precludes a district court from interfering with government's decision or action to execute orders of removal. 8 U.S.C. § 1252(g). Section 1252(g) specifically state that "no court shall have jurisdiction to hear any cause or claim by … any alien arising from the decision or action by [ICE] to … execute removal orders against any alien.' 8 USC § 1252(g). This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." *Id.*

As the Eleventh Circuit explained, "Section 1252(g) bars review over 'any' challenge to the execution of a removal order – and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021) (holding that where there is challenge to the validity of a removal order, district courts lack jurisdiction to hear any "cause or claim brought by an alien arising from the government's decision to execute a removal order").

Here, as the petitioners in *Camarana*, Petitioner does not challenge the validity or existence of the order of removal. Instead, he requests immediate release from detention. *See* Petition, at ¶ 15. Section 1252(g), as interpreted by the Eleventh Circuit in *Camarana*, deprives this Court of jurisdiction to grant such relief. *See Pedrozo Echevarria v. Krome*, Case No. 1:26-CV-20204-SMITH (S.D. Fla. Feb. 13, 2026); *see also Rivera-Amador v. Rhoden*, Case No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *3 (M.D. Fla. Dec. 19, 2025) (holding that Section 1252(g) "divests the Court of jurisdiction" from enjoining respondents from detaining and deporting petitioner subject to a removal order); *Mapoy v. Carroll*, 185 F.3d 224, 230 (4th

Cir. 1999) (holding that district court lacked jurisdiction to hear a challenge to execution of order of deportation pursuant to § 1252(g)).

In summary, Congress divested this Court of jurisdiction to prevent the execution of removal orders, meaning it should dismiss the Petition for lack of jurisdiction.

CONCLUSION

Based upon the foregoing, Petition should be denied because detention is lawful under 8 U.S.C. § 1231(a)(6).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 26, 2026, I electronically filed the foregoing response with the Clerk of the Court using CM/ECF and delivered the document by U.S. Mail to the pro se Petitioner, at:

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