UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

RAFAEL GONZALEZ SANTANA,

Petitioner,

v.

Case No.: 3:24-cv-732-MMH-MCR

PAMELA BONDI, Attorney General; KRISTI NOEM, Secretary of Department of Homeland Security; ALBERTO CORNAVACA, Supervisory Detention & Deportation Officer; and SCOTTY RHODEN, Sheriff of Baker County Detention Center,

Respondents.

_____/

RESPONDENTS' MOTION AND MEMORANDUM TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Respondents, PAMELA BONDI, in her official capacity as Attorney General, KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and ALBERTO CORNAVACA, in his official capacity as Supervisory Detention and Deportation Officer, through their counsel, the United States Attorney, Middle District of Florida, hereby move to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted.

PRELIMINARY STATEMENT

On June 30, 2025, Petitioner filed the instant Petition for Writ of Habeas Corpus, challenging his continued detention pending his removal by Immigration and

Customs Enforcement (ICE). Doc. 1. By Order dated July 3, 3025, this Court ordered service of the Petition and directed Respondents to respond within 30 days from the date of service. Doc. 2. The United States Attorney was served on July 11, 2025. Because the Court lacks jurisdiction to entertain this action, the Court should dismiss Petitioner's action. Further, because Petitioner has not demonstrated that his continued detention is unlawful, the Court should dismiss the instant action for failure to state a claim.

STATEMENT OF FACTS

Petitioner is a native and citizen of Cuba. *See* Doc. 1, ¶¶ 5 & 10. On September 6, 1995, Petitioner was paroled into the United States. Doc. 1, ¶ 11. He adjusted his status to that of a lawful permanent resident on September 20, 1997. *See* Exhibit 1 (Notice to Appear), at p. 3. On August 12, 1998, Petitioner was convicted in the Circuit Court for Dade County, Florida, for the offense of lewd assault act in violation of Fla. Stat. § 800.04. *Id.* Further, on August 19, 1999, Petitioner was convicted in the Circuit Court for Dade County, Florida, for the offenses of false imprisonment, battery, and unnatural and lascivious acts in violation of Fla. Stat. §§ 787.02(2), 784.03, and 800.02. *Id.* After serving his sentence for his two convictions, Petitioner was taken into ICE custody and ordered removed by an Immigration Judge, and the order of removal became final on the same day. *Id.* at ¶¶ 14-15, 27. *See also* Exhibit 2 (Order of the Immigration Judge).

On May 16, 2025, after he was taken into custody during a stop by Florida Highway Patrol officer and a border patrol agent with U.S. Customs and Border Protection, Petitioner was taken into custody and has been detained by Immigration and Customs Enforcement. Doc. 1 at ¶ 17.

MEMORANDUM

Petitioner challenges his detention as a violation of the Fifth Amendment's Due Process Clause. He argues that he has been denied substantive and procedural due process. *See* Counts II and III. However, these claims fail. Even if the Court has jurisdiction to entertain Petitioner's claims, his detention has not extended to a length creating constitutional questions and that removal is not reasonably foreseeable.

I. The Court lacks jurisdiction.

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution and statute." *Id.* (citations omitted). In the context of immigration habeas cases related to removal—like here—the Immigration and Nationality Act ("INA") divests this Court of jurisdiction. *See* 8 U.S.C. §§ 1252(b)(9), (g). Here, Petitioner challenges his detention to execute a final order of removal.

A. Jurisdiction Stripping Under § 1252(g)

There is no jurisdiction to review "any" claim "arising from the decision or action" to "execute removal orders." 8 U.S.C. § 1252(g). This provision bars habeas

review in federal courts when the claim arises from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999).

Courts consistently hold that § 1252(g) eliminates subject-matter jurisdiction over challenges—including constitutional claims—to an arrest or detention for the purpose of executing a final removal order. *E.g.*, *Camarena v. ICE*, 988 F.3d 1268, 1273-74 (11th Cir. 2021) (stating "we do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order."); *Johnson v. U.S. Attorney General*, 847 F. App'x 801, 802 (11th Cir. 2021); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).[1] Likewise, § 1252(g) precludes review of the method by which ICE chooses to commence removal proceedings. *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (stating "[b]y its plain terms, the provision bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.").

[1] *See also Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) (stating "[u]nder a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review."); *Tazu v. U.S. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020) (stating "[t]he plain text of § 1252(g) covers decisions about whether and when to execute a removal order."); *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Petitioner has been detained to execute the final removal order against him. He is well within the presumptively reasonable period of detention (as detailed below). This action is an effort by Petitioner to interfere with or halt that legal process. In the INA, Congress plainly strips the Court's jurisdiction in these instances. *See* 8 U.S.C. § 1252(g).

B. Jurisdiction Stripping Under § 1252(b)(9)

The Court lacks jurisdiction for a separate reason. That is, that there is no jurisdiction to review "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" outside a case reviewing the final removal order. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). The zipper clause is "a jurisdictional bar where" a petitioner seeks "review of an order of removal [or] the decision to seek removal." *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up).

There is a single path for judicial review of removal orders: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). Reading § 1252(a)(5) and (b)(9) together, courts conclude petitioners must funnel all aspects of challenges to removal proceedings through that avenue. *See Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (stating "[t]he 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) (stating there is "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).").

The zipper clause encompasses more than § 1252(g). *See AADC*, 525 U.S. at 483. Under these provisions, "most claims that even relate to removal" are improper in a district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020). There are limitations on how broadly courts interpret the zipper clause. *See e.g. Canal A*, 964 F.3d at 1257. But a claim obviously "arises from a removal proceeding when the parties are challenging removal proceedings." *Id.* (cleaned up); *see also Regents of Cal.*, 591 U.S. at 19. Here, the crux of Petitioner's claim is to challenge the Government's execution of his final removal order. These are the exact claims barred by the zipper clause. *See* 8 U.S.C. § 1252(b)(9).

As discussed above, Petitioner's claims fall squarely within the INA's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). The Court, therefore, lacks subject-matter jurisdiction and must dismiss this action.

II. Petitioner's detention is not unlawful.

This Court should dismiss the Petition because on the face of the Petition, Petitioner cannot show that the 6-month presumptively reasonable detention period had expired when he filed his Petition, and he cannot show that there is no significant likelihood of removal in the reasonably foreseeable future. Accordingly, pursuant to

Rule 12(b)(6), the Petitioner fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6).

Generally, this Court has jurisdiction to consider a challenge to Petitioner's continued detention in habeas corpus proceedings. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). While the Court has jurisdiction to consider Petitioner's challenge to his continued detention, the Petition should be dismissed because Petitioner has failed to establish his detention by ICE is unlawful.

The relevant detention provision governing Petitioner's detention is § 241(a) of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1231(a), which covers detention following entry of a final removal order. This provision generally affords the Attorney General a ninety-day period to accomplish removal. *See* 8 U.S.C. § 1231(a)(1)(A) - (B).[2] The statute provides that, in certain circumstances, the Attorney General may continue to detain an alien after expiration of the ninety-day removal period when

> An alien ordered removed who is inadmissible under [Immigration and Nationality Act] section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

[2] *See* § 241(a)(1)(A) - (B) of the INA.

8 U.S.C. § 1231(a)(6).[3] Hence, Petitioner's continued detention has a basis in law because he is removable as charged under the INA.

As explained above, under 8 U.S.C. § 1231(a)(1),[4] the Attorney General has a 90-day "removal period" in which to remove an alien from the United States.[5] The removal period commences on the latest of the following:

> (i) The date the removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if the 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.

8 U.S.C. §1231(a)(1)(B). During the removal period, the Attorney General must detain the alien. *Id.* at § 1231(a)(2). When that period expires, the Attorney General may continue to detain an alien who is removable because of, among other things, the alien's inadmissibility or his commission of an aggravated felony. See *id.* §1231(a)(6). *See also* Exhibit 3 (Judgment and Commitment Order).

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[3] *See* § 241(a)(6) of the INA.

[4] *See* § 241(a)(1) of the INA.

[5] The Secretary of Homeland Security is now charged with the administration and enforcement of Chapter 12 of Title 8, United States Code, "and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers[.]" *See* 8 U.S.C. §1103(a).

The continued detention under that authority must not be indefinite. The Supreme Court has interpreted the statute as only authorizing detention for as long as "reasonably necessary to bring about that alien's removal from the United States," and there is a presumptively reasonable six-month period of detention for an alien awaiting removal. *See Zadvydas,* 533 U.S. at 689, 701; *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3. Although *Zadvydas* held that detention of six months is presumptively reasonable, the Supreme Court hastened to add that the six-month presumption did not mean that every alien not removed in this timeframe must be released after six months. *Zadvydas*, 533 U.S. at 701. The Supreme Court explained, "[t]o the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Further, the Eleventh Circuit concluded that "in order to state a claim under *Zadvydas* the alien must *not only* 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.*" *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (emphasis added). Therefore, the burden is on Petitioner to demonstrate: (1) post-removal order detention over six months; **and** (2) good reason to believe that there was no significant likelihood of removal in foreseeable future. *Id.*

Thus, the *Zadvydas* period must have expired *before* a petition is filed. *See Akinwale*, 287 F.3d at 1052 (stating "[t]his six-month period thus must have expired at

the time Akinwale's § 2241 petition was filed in order to state a claim under *Zadvydas*.") *See also Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 833 (11th Cir. 2016) (recognizing that rule from *Akinwale*). That rule also controls this case. Here, pursuant to §1231(a)(1)(B)(iii), Petitioner's removal period commenced on or about May 17, 2025, when Petitioner was taken into custody by ICE. Thus, when Petitioner filed his petition on June 30, 2025, he had not been in ICE custody following a final order of removal for six months. Because the six-month presumptively reasonable period had not expired at the time of filing, Petitioner prematurely filed this action and, thus, cannot met the burden of demonstrating post-removal detention of over 180 days. Therefore, the Petition does not state a claim under *Zadvydas*. *See Akinwale*, 287 F.3d at 1052.

Even if Plaintiff had met the first prong of the *Akinwale* test, he has failed to meet the second burden-shifting prerequisite. That is, Petitioner has provided no evidence to show "that there is no significant likelihood of removal in the reasonably foreseeable future." *Akinwale,* 287 F.3d at 1052. Rather, Petitioner simply argues that the United States is unable to remove him to Cuba. *See* Doc. 1 at ¶ 36. He argues this is because there is "no repatriation agreement between the United States and Cuba and[, thus,] Cuba will not accept its citizens who have been ordered removed from the United States." *Id.* However, historically, the United States' efforts to repatriate aliens to Cuba have been successful. Indeed, unlike the aliens at issue in *Zadvydas*, Petitioner

clearly has a country to which he can be removed: Cuba. While the United States does not maintain diplomatic relations with Cuba, the United States removed approximately 138 people to that country during the last fiscal year, *i.e.*, 2021, for which public statistics are available. *See* DHS Yearbook of Immigration Statistics: 2021, Enforcement Data, Table 40.[6] In fact, the United States has returned citizens to Cuba every year since 2012. *Id.* Thus, Petitioner has not demonstrated that his removal is not reasonably foreseeable.

III. No violation of § 241.13.

Petitioner argues that detaining him after being released on an order of supervision (OSUP) following the final order of removal is not in compliance with 8 C.F.R. § 241.13(i)(3) because he has neither had "any formal interview with ICE" nor has been "given a reason regarding his revocation of supervision."[7] Doc. 1 at ¶¶ 28-29. However, this regulatory procedure is not applicable.

Section 241.13 plainly does not apply to Petitioner's circumstances. This regulation "establishes special review procedures for those aliens who are subject to a final order of removal and are detained . . . where the alien has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). As explained above, Petitioner cannot show there is no

[6] https://ohss.dhs.gov/topics/immigration/yearbook/2021/table40 (last visited August 11, 2025).

[7] Petitioner has not provided a copy of his order of supervision.

significant likelihood of removal. So, by its own terms, any requirements of § 241.13 do not apply here. *See Tran v. Baker*, No. 1:25-cv-01598-JRR, 2025 WL 2085020, at *3-5 (D. Md. July 24, 2025) (rejecting § 241.13 challenge because petitioner failed to make showing). Thus, Petitioner has not demonstrated that § 241.13 has been violated, much applies to his situation.

CONCLUSION

Based on the foregoing arguments and citations of authority, Respondents respectfully request that the Court dismiss this Petition.

Dated: August 11, 2025

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

/s/ Ronnie S. Carter
RONNIE S. CARTER
Assistant United States Attorney
Florida Bar No. 0948667
300 North Hogan Street, Suite 700
Jacksonville, FL 32202-4270
Telephone No. (904) 301-6322/6300
Facsimile No. (904) 301-6240
Email: Ronnie.Carter@usdoj.gov
Attorneys for Federal Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 11, 2025, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system. I further certify that, upon filing, I will place, as expeditiously as possible, a copy of the foregoing document in first-class mail to the following non-CM/ECF participant listed below:

Rafael Gonzalez Santana
A No.: [redacted]
Baker County Detention Center
1 Sheriffs Office Drive
MacClenny, FL 32063
Pro se Petitioner

/s/ Ronnie S. Carter
RONNIE S. CARTER
Assistant United States Attorney