UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

PAUL JOHN BOJERSKI,

Petitioner,

v. Case No.: 6:25-cv-2052-JSS-RMN

SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY and FIELD OFFICE DIRECTOR OF THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT IN MIAMI, FLORIDA,

Respondents.
______________________________/

RESPONSE IN OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

Respondents, by and though the undersigned Assistant U.S. Attorney, hereby timely respond to Paul John Bojerski's Petition for Writ of Habeas Corpus Request for Expediated Hearing Request for Oral Argument ("Petition") (Doc. 1). *See* Doc. 4. Respondents oppose the relief sought and seek dismissal of this action. In support, Respondents state as follows:

BACKGROUND

Paul John Bojerski ("Petitioner") was born in Germany and at that time, his parents were both Polish nationals. Petition at ¶ 9-10. Petitioner entered the United States on or about January 29, 1952. *Id.* at ¶ 12. On or about June 21, 1967, after a

series of criminal convictions that rendered him deportable, Petitioner was served with an Order to Show Cause charging him as deportable under Section 241(a)(4) of the Immigration and Nationality Act ("INA"). Petition, Exhibit 1. On or about August 13, 1968, a Special Inquiry Officer ordered Petitioner deported to Poland. *Id.* After Petitioner appealed seeking to challenge the order, the Board of Immigration Appeals affirmed the entry of an order of deportation against Petitioner on December 27, 1968. *Id.* Petitioner was placed on an order of suspension in 1969. Petition at ¶ 19. On or about June 4, 2008, Petitioner was arrested and released on that same date, via a new order of suspension. Petition at ¶ 33; *see* attached Exhibit A. Petitioner was most recently placed on a new order of suspension on or about June 15, 2010. Petition at ¶ 35. On or about July 24, 2025, Petitioner was issued a Form G-56 stating that, "you are to present travel arrangements and travel docxuments (sic) to depart the United States due to your removal order." Petition, Exhibit 12. On October 30, 2025, Petitioner was detained for the purpose of effecting his removal from the United States. *See* attached Exhibit B.

Petitioner filed this Petition on October 24, 2025, before he was detained on October 30, 2025. Doc. 1. Petitioner alleges that his detention violates the Fourth and Fifth Amendments to the U.S. Constitution. *Id.* at ¶ 38-39. Specifically, Petitioner alleges that his detention violates his substantive and procedural due proves rights under the Fifth Amendment and violates the Fourth Amendment as there are no reasonable, objective grounds for his detention. *Id.* Petitioner seeks a declaratory

judgment concluding that he is not subject to any outstanding order of deportation. *Id.* at ¶ 40. On October 28, 2025, the Court denied Petitioner's request for expediated hearing and temporary injunctive relief. Doc. 4.

LEGAL STANDARDS

The Court has the power to grant a writ of habeas corpus where a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). "The burden rests on the person in custody to prove his detention is unlawful." *Benito Vasquez v. Moniz*, No. 25-11737-NMG, 2025 WL 1737216, at *1 (D. Mass. June 23, 2025).

Federal Rule of Civil Procedure 12(b)(1) requires dismissal of claims where the Court "lack[s] jurisdiction over the subject matter." Fed. R. Civ. P. 12(b)(1). A motion to dismiss may be brought pursuant to Fed. R. Civ. P. 12(b)(1) in two ways: a facial challenge or a factual challenge. *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1230 (11th Cir. 2021). "A facial attack challenges whether a plaintiff "has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Id.* By contrast, a factual attack "challenges the existence of subject matter jurisdiction irrespective of the pleadings, and extrinsic evidence may be considered." *Id.*

Finally, Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of a complaint. To survive a motion to dismiss under this Rule, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on

its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

ARGUMENT

I. The Court has no Jurisdiction over Petitioner's Claims.

Petitioner challenges his detention as a violation of the Fifth Amendment due process clause. Petition at ¶ 38. This claim fails as the Court has no jurisdiction over this action under two separate sections of the INA.

a. 8 U.S.C. § 1252(g)'s Jurisdictional Bar

Federal courts have limited jurisdiction and "possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In this case, Section 1252(g) of the INA divests this Court's jurisdiction to consider Petitioner's claims of unlawful detention.

There is no jurisdiction to review "any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from "discrete acts of commencing proceedings, adjudicating cases, and executing removal orders." *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) ("AADC") (cleaned up). These activities "represent the initiation or prosecution of various stages in the deportation process" that Congress had "good reason" to withhold from judicial review. *Id.*

Courts have consistently held that Section 1252(g) eliminates subject-matter jurisdiction over challenges—including constitutional claims—to an arrest or detention made for the purpose of executing a final removal order. *E.g., Camarena v. ICE*, 988 F.3d 1268, 1273-74 (11th Cir. 2021) ("[W]e 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, 709 F.3d at 1065.[1]

Here, Petitioner has been detained for the purpose of executing a final, executable deportation order. *See* Doc. 1. This Petition represents nothing more than effort at interfering with or halting that valid legal process, action the INA explicitly prohibits.

b. Jurisdiction Stripping Under 8 U.S.C. § 1252(b)(9)

The Court also lacks jurisdiction on separate grounds. The INA precludes the Court's review of "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" except when brought pursuant to judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause" and applies where a petitioner seeks "review of an order of removal [or] the decision to seek removal." *Canal A Media Holding, LLC v. United*

1 *See also Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under 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) ("The 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).

States Citizenship & Immigration Servs., 964 F.3d 1250 (11th Cir. 2020); *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up).

In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—which provides the single, proper path for judicial review of removal orders—courts have concluded that petitioners must funnel all aspects of challenges to removal proceedings through the avenue set forth in Section 1252(a)(5). *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The 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) (There is "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).").

The zipper clause's restrictions are broad, but not without limitation. *See e.g., Canal A*, 964 F.3d at 1257. However, a claim that arises from actions or proceedings brought to remove an alien clearly fall within its parameters. *See Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings). Here, where Petitioner effectively challenges ICE's execution of his final order of deportation, Section 1252(b)(9)'s zipper clause has been triggered and judicial review in this Court is inappropriate and contrary to the statutory scheme.

II. Petitioner's Detention is Lawful

Even if the Court were to conclude it has jurisdiction over the instant Petition, the claims therein lack merit. 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 (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 v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (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 that considers 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*, 287 F.3d at 1051-52; *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). Thus, the six-month presumptively reasonable period must have elapsed

before a habeas petition is filed. *See e.g., 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).

Petitioner here was ordered removed in 1968. Petition, Exhibit 1. Petitioner does not allege at any point after 1968 until October 2025, that he was detained for purpose of executing the order. Based upon documentation, it appears Petitioner was arrested in Orlando, Florida on June 4, 2008, but released that same date via an order of supervision. Exhibit A. Petitioner was not detained again until October 30, 2025. Exhibit B. ICE is still well within the six month presumptively reasonable time frame contemplated by *Zadvydas* for the post-removal period. At the time Petitioner filed the Petition on October 24, 2025, he had only been detained for 1 day previously on June 4, 2008. To date, Petitioner has only been detained for a total of 61 days from October 30, 2025, including the 1 day on June 4, 2008. The six-month presumptively reasonable period must have elapsed before a habeas petition is filed. *See e.g., 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). As such, Petitioner's Petition is premature.

Petitioner further alleges that "no such 'order of deportation' actually exists inasmuch as any such order or deportation was effected when he departed the United States and entered Canada in or about 1988." Petition at ¶ 43. Petitioner admits that that the December 27, 1968 was an order of deportation. *Id.* at ¶ 17. Petitioner further

admits that he "self-deported upon his entry to Canada." *Id.* at ¶ 24. Petitioner is unable to provide any documentation that he lawfully returned to the United States from Canada. *Id.* at ¶ 28. Pursuant to 8 U.S.C. § 1231(a)(5),

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

Assuming arguendo that Petitioner "self-deported" to Canada and then returned to the United States, the 1968 prior order of removal is reinstated and not subject to any review. Petitioner's argument that there is no "order of deportation" is meritless as the 1968 order of deportation remains even if he did self-deport as alleged. Because Petitioner has been detained under the correct statutory scheme, ICE was within its authority to revoke his order of supervision, and because he has not been detained for an unreasonable period of time, Petitioner's habeas filing is premature.

CONCLUSION

For the foregoing reasons, Petitioner's Petition should be denied and all claims against Respondents should be dismissed.

Local Rule 3.01(g) Certificate

Pursuant to Local Rule 3.01(g), the undersigned contacted Petitioner's counsel via email on December 22 and 26, 2025 regarding Petitioner's position on the instant motion. The undersigned also called and emailed Petitioner's counsel on December

29, 2025 regarding conferral on the motion. The undersigned has not received Petitioner's position prior to filing this motion and will continue to comply with her obligations to obtain Petitioner's position on the instant motion.

Dated: December 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 29, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of the filing to the following CM/ECF participant:

David Stoller, Esq.

/s/ Joy Warner
Assistant United States Attorney