UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

JESUS VALDES-SANTOVENIA, Petitioner, v. SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL., Respondents.	Case No. 2:25-CV-1063-JES-DNF

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents, by and through undersigned counsel, hereby timely respond to Petitioner Jesus Valdes-Santovenia's Petition for a Writ of Habeas Pursuant to 28 USC § 2241 ("Petition") (ECF No. 1). *See* Order to Respond and Show Cause (ECF No. 3). Respondents oppose the relief sought and seek dismissal of this petition. In support Respondents state as follows:

BACKGROUND

Petitioner is a native and citizens of Cuba. Petition, ¶¶ 1, 3, 10. Notice to Appear ("Exhibit A"); Record of Deportable/Inadmissible Alien ("Exhibit b"). He was paroled into the United States on October 13, 2004 and adjusted status to that of a lawful permanent resident on May 4, 2006. Exhibit A at 1; Exhibit B at 2. After adjusting status, Petitioner was convicted of a drug trafficking offense. Petition, ¶¶ 10,

18; Exhibit B at 2. As a result, Petitioner was placed in immigration proceedings where he ultimately was ordered deported to Cuba. Petition, ¶¶ 3, 11; Exhibit A; Exhibit B at 2; Order of Removal ("Exhibit C"). Sometime thereafter, Petitioner was placed on an order of supervision. Petition, ¶¶ 12-13; Exhibit B at 2. On November 16, 2025, Petitioner's order of supervision was revoked so his final order of removal could be executed. Notice of Revocation of Release ("Exhibit D"). Petitioner was detained and transferred to the Alligator Alcatraz detention facility. Petition, ¶ 3.

On November 19, 2025, Petitioner filed this Petition seeking relief pursuant to the Habeas Corpus Act, All Writs Act, Administrative Procedures Act ("APA"), and the 5th Amendment to the United States Constitution. Petition, ¶¶ 2, 18-19, 21, 23. Specifically, Petitioner asserts that the crime for which he was convicted, and which led to his loss of lawful permanent resident status, is no longer a removable offense, rendering his present detention violative of his due process rights. Petition, ¶¶ 18-19. Petitioner also argues that ICE's revocation of his order of supervision lacked a reasoned explanation in violation of the APA. *Id.*, ¶ 21. Petitioner asks this Court to "reopen the [removal] case and terminate it" and he seeks immediate release from detention. *Id.*, ¶¶ 11, 23.

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).

ARGUMENT

I. Petitioner Lacks Standing to Bring an APA Claim.

Petitioner does not have standing to bring his APA claim. *See* Petition, ¶¶ 20-22. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 604 U.S. 670, 672 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *J.G.G.*, 604 U.S. at 672 (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

II. Because Petitioner Challenges His Detention Pursuant to a Final Order of Removal, this Court is Barred From Considering His Claims.

Federal courts have limited jurisdiction and "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (internal citations omitted); *see also Sheldon v. Sill*, 49 U.S. 441, 449 (1850) ("Courts created by statute can have no jurisdiction but such as statute confers."). As relevant here, in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, which included provisions intended to deprive the Court of jurisdiction over Petitioner's request for relief.

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

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 ordered removed. Petition, ¶¶ 3,11; Exhibit B at 2. He has been detained for the purpose of executing that order. *See* Exhibit B at 2; Exhibit D (indicating revocation for the purpose of enforcement of an administratively final order of removal). Petitioner falls squarely within the confines of 8 U.S.C. § 1252(g)'s jurisdictional bar. This Petition represents nothing more than effort at interfering with or halting the execution of a valid and final order of removal, 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 & Immigr. Servs., 964 F.3d 1250, 1257 (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 contrary to the statutory scheme.

III. Petitioner is Subject to an Executable Order of Removal and His Detention Tethered to that Order Is Lawful.

A. Petitioner is Subject to an Executable Removal Order

Even if the Court were to conclude it has jurisdiction over the Petition, the claims

therein lack merit. Petitioner has been ordered removed from the United States. Petition, ¶¶ 3,11; Exhibit B at 2. Yet Petitioner argues that the Eleventh Circuit's 2022 decision in *Said* makes removal pursuant to that order infeasible. *Id.* at ¶ 11, 18-19; *see Said v. v. U.S. Att'y Gen.*, 28 F.4th 1328, 1333 (11th Cir. 2022). But this conclusion assumes—incorrectly—that the *Said* decision automatically renders his order invalid when that is simply not the case. An alien who is subject to a final order of removal may seek reopening of his immigration court case. 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.23. To do so, the alien must file a motion with the immigration court requesting such relief. 8 C.F.R. § 1003.23(b)(1). He must explain how his request fits within the limited bases on which a court may rely in reopening a case, submit adequate evidence, and ensure he meets certain deadlines. *Id.*; 8 U.S.C. § 1229a(c)(7)(B); *Lie Ye Xiao v. U.S. Att'y Gen.*, 846 F. App'x 745, 747 (11th Cir. 2021). Importantly, reopening is not guaranteed and unless and until reopening has been granted, his order of removal remains valid and executable. 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.23(b)(1)(v).[2]

Here, Petitioner has demonstrated only that he has filed a motion to reopen with the immigration court. Petition, ¶ 15; ECF No. 1-2. Under the circumstances at play here, statute and regulation does not stay execution of his order of removal, and

[2] 8 C.F.R. § 1003.23(b)(4)(iii)(C) allows for an automatic stay of deportation when an alien ordered removed in absentia properly files a motion to reopen that order. Petitioner was not ordered removed in absentia, so the automatic stay contemplated by this regulation does not apply here. *See* Exhibit C at 1-2 (reflecting that appeal was waived and the order was personally served); *see also* Petition at Exhibit 3, Motion to Reopen (indicating bases of motion as changed legal and factual circumstances). 8 U.S.C. § 1229a(c)(7) further indicates that a motion to reopen "shall only stay the removal of a qualified alien (as defined in section 1641(c)(1)(B))" which Petitioner does not meet the definition of either.

Petitioner's argument to the contrary is misplaced. *See* 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.23(b)(1)(v). Furthermore, Petitioner's likelihood of success on the motion to reopen is also speculative at this juncture. Though he argues that the 2022 *Said* decision gives rise to changed circumstances, he fails to address why he has waited over three years to seek reopening—*see* 8 U.S.C. § 1229a(c)(7)(C)(i) and 8 C.F.R. § 1003.23(b)(1)—nor does he demonstrate on the papers before this Court that the holding in *Said* would impact his removal case. For example, in reaching its conclusion in *Said* the Eleventh Circuit considered conviction under Florida Statute § 893.13(6)(a) but the conviction records Petitioner submitted here do not reflect conviction under that statute. *Compare Said*, 28 F.4th at 1333 (finding that violation of Fla. Stat. § 893.13(6)(a) did not relate to a controlled substance as defined under federal law, therefore plaintiff was not convicted of an "aggravated felony" as contemplated by the INA) with Petition, ECF No. 1-1 (incomplete conviction records lacking detail on the statute under which Petitioner was convicted). Put simply, Petitioner's order of removal remains valid and enforceable at this time. His removal is not stayed simply by the filing of a motion to reopen, and his likelihood of success on that motion is speculative.

B. Petitioner's Detention for the Purpose of Effecting Removal is Proper

After the issuance of 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. If an alien subject to a final order of removal

has not been removed by the completion of that 90-day period, statute and regulation dictates that he be released on an order of supervision. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5(a). The regulations also permit the government to revoke the order of supervision. 8 C.F.R. § 241.4(*l*). Revocation can be based on violation of the terms of release—8 C.F.R. § 241.4(*l*)(1)—but also as an exercise of discretion. 8 C.F.R. § 241.4(*l*)(2). Among the circumstances under which the regulations permit the government to discretionarily revoke an order of supervision is revocation for the purpose of enforcing a removal order. 8 C.F.R. § 241.1(*l*)(2)(iii).

Under such circumstances an alien can be detained again, a period commonly referred to as the "post-removal" period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. Where—as here—an alien has not been removed by the end of the 90-day removal period, and where he either remains in custody immediately thereafter or is detained once more, the post-removal period kicks in, and 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." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *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).[3]

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).

Turning to this case, Petitioner suggests that revocation of his order of supervision must be based on violation of the terms of supervision. Petition, ¶ 13. While the regulations indeed permit ICE to revoke an order of supervision if the terms of the order are breached—*see* 8 C.F.R. § 241.4(*l*)(1)—ICE may also do so for a number of other discretionary reasons, among them for the purpose of executing a final order of removal. *See* 8 C.F.R. § 241.4(*l*)(2). Here, Petitioner was ordered removed but not deported before the end of the removal period. Petition, ¶¶ 3,11; Exhibit B at 2.

[3] *Akinwale* considered the post-removal period as inclusive of the removal period, a situation which is factually distinct from this case where many years have elapsed between Petitioner's removal period and his present detention. Nonetheless, even under a conservative reading of the removal period and post-removal period whereby the six months is inclusive of the removal period, Petitioner's detention still falls within the six-month presumptively reasonable period.

Instead, Petitioner remained on an order of supervision for several years. Petition, ¶ 12, Exhibit B at 2. However, ICE recently determined that it is appropriate to execute Petitioner's final order of removal and they revoked the order of supervision. Exhibit B at 2; Exhibit D. ICE's actions in doing so are in keeping with statute and regulation. *See* 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4(*l*)(2)(iii). And the suggestion that removal is not imminent and therefore his detention is unlawful—Petition, ¶¶ 13, 19—is wholly unsupported. Petitioner baldly asserts that Cuba does not ordinarily issue travel documents to expats, and even if so it would take months or years to obtain them.[4] *Id.* at ¶ 19. But Petitioner offers nothing to support this premise nor has he addressed the possibility of removal to an alternate country should repatriation to Cuba be improbably, a possibility he concedes is available in his motion to reopen before the immigration court. *See* 8 U.S.C. § 1231(b)(2)(E); *see also* ECF No. 1-3.

At bottom, Petitioner's conclusion that repatriation is infeasible is pure speculation. Further, as discussed *supra*, caselaw has made clear that ICE has a presumptively reasonable six-month period to coordinate removal and it is only where detention remains ongoing once that period has passed that the burden-shifting analysis into a likelihood of removal comes into play. *See Zadvydas*, 533 U.S. at 689.

[4] Of note, in ECF No. 1-3, pp. 9-10 Petitioner states in his motion to reopen before the immigration court "Moreover, the Honorable Court should respectfully reopen the case based on a change in Mr. Valdes's personal circumstances and his imminent removal by the Service. At the time of Respondent's removal order, DHS rarely effectuated removals to Cuba due to longstanding diplomatic barriers. Today, the U.S. government actively deports Cuban nationals, including through third country transit." This seems to contradict what he asserts in the instant petition.

CONCLUSION

For the foregoing reasons, Petitioner Jesus Valdes Santovenia's Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: December 11, 2025

Signed:

/s/ Amanda Saylor
Amanda Saylor
Assistant United States Attorney