UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JOSE EDUARDO SOBERANIS SERMENO,

Petitioner,

v. Case No. 3:25-cv-01437-MMH-SJH

Warden of North Florida Detention Center; Director of the U.S. Immigration and Customs Enforcement Miami Field Office; Attorney General of the United States,

Respondents.
_____/

RESPONSE TO HABEAS PETITION

Respondents, Director of the U.S. Immigration and Customs Enforcement ("ICE") and the Attorney General of the United States, through counsel, the U.S. Attorney for the Middle District of Florida, hereby respond to Petitioner's, Petition for Writ of Habeas Corpus (Doc. 6-1). The Court should deny the Writ and dismiss this action pursuant to Rule 12(b)(1), Fed. R. Civ. P. because it lacks jurisdiction pursuant to 8 U.S.C. § 1252(g). Or in the alternative, the Court must deny Petitioner's claim because he has failed to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6), Fed. R. Civ. P. In support thereof, Respondents state as follows.

Background

Petitioner, Jose Eduardo Soberanis Sermeno, petitioner is a 27-year-old male, who is a national and citizen of Guatemala. *Exh. 1*: *Record of Deportable Alien,* at pg. 1

of 3. He last entered the United States on or about January 4, 2016, where he applied for admission at the San Luis, Arizona Pot of Entry. *Id* at pg. 2 of 3. On January 5, 2016, he was served an I-862, which identified Petitioner as an arriving alien and placed him in removal proceedings. *Id.*; *Exh. 2*: *Notice to Appear*. On January 13, 2016, Petitioner was released on his own recognizance. *Record of Deportable Alien,* at pg. 1.

On or about December 1, 2017, the petitioner filed an I-589, Application for Asylum and Withholding of Removal, with the U.S. Citizenship and Immigration Services who then referred the case to the Immigration Court. *Exh. 3: Order of the Immigration Judge*, pg. 1. His application was denied by the Immigration Judge ("IJ") on November 18, 2024, and he was ordered removed to Guatemala pursuant to INA § 212(a)(7)(A)(i)(I), as amended 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* Petitioner timely appealed to the Board of Immigration Appeals ("BIA") on December 16, 2024. *Id.* Petitioner's appeal before the BIA is still pending and his order of removal is not final. *Id.*; Doc. 1 at ¶ 4.

On February 27, 2025, Petitioner was arrested by the Broward County Sheriff's Office for violating probation in for domestic violence criminal case. *Record of Deportable Alien* at pg. 3 of 3. The ICE enforcement removal office Miami CAP team subsequently encountered Petitioner at the Broward County Jail. *Id.* at pg. 2 of 3. And on March 13, 2025, the petitioner was placed in ICE custody. Id at pg. 1 of 3.

On November 24, 2025, as Petitioner waited for the BIA to issue a decision on his appeal, he filed this Petition challenging his detention pursuant to 28 U.S.C.

§ 2241. Petitioner contends that he is entitled to release because he has been in custody for more than 180 days. However, as Petitioner is not subject to a final order of removal, his removal period has not yet begun.

Legal Standard

Federal courts may grant writs of habeas corpus for a petitioner "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). However, in such cases, Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021); *Martin v. Beto*, 397 F.2d 741, 749 (5th Cir. 1968).

Discussion

This Court should dismiss this petition because Petitioner is properly detained under 8 U.S.C. § 1225 and the Court lacks subject matter jurisdiction pursuant to 8 U.S.C. § 1252(g). In the alternative, if the Court were to determine it does maintain subject matter jurisdiction over Petitioner's claim, it must still be dismissed because Petitioner's removal order is not final; thus, Zadvydas does not apply.

A. Habeas Return on Detention

As an initial matter, in a habeas case, the respondent "shall make a return certifying the true cause of the detention." 28 U.S.C. § 2243. ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2).

B. Jurisdiction

1. **8 U.S.C. § 1252(g) bars review of Petitioner's claims**

Federal courts have 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 immigration habeas cases related to removal proceedings—as here—the Immigration and Nationality Act ("INA") divests this Court's jurisdiction to consider Petitioner's claims challenging his detention pending a removal determination. 8 U.S.C. § 1252(g).

The Eleventh Circuit has stated that challenges to the actions of agents to detain an alien to commence removal proceedings is "exactly the claim[] that §1252(g) bars from the subject-matter jurisdiction of federal courts." *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). "Section 1252(g) is unambiguous and bars federal courts' jurisdiction over any claim for which the 'decision or action' of the Attorney General [. . .] to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim." *Id.* 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) (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.*

When construing § 1252(g), one must limit the application "to just those three specific actions" listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, "courts must focus on the action being challenged." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). Accordingly, 8 § 1252(g) strips the Court's jurisdiction over habeas petitions challenging detention pending removal proceedings. *Gupta*, 709 F.3d at 1065; *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("Because [the alien] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*."); *Johnson v. U.S. Attorney General*, 847 F. App'x 801, 802 (11th Cir. 2021). "By its plain terms, [§ 1252(g)] 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." *Alvarez*, 818 F.3d at 1203.

"[S]ecuring an alien while awaiting a removal determination constitutes an action taken to commence proceedings." *Gupta*, 709 F.3d at 1065 Under *Gupta*'s binding interpretation of § 1252(g), the Court has no jurisdiction over this action. *Id.* As the Eleventh Circuit made clear, what matters is whether the challenged conduct arose from decisions or actions to commence removal proceedings. *Gupta*, 709 F.3d at 1065 ("Each of these claims, then, challenges the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.").

Following this Eleventh Circuit precedent, other courts in this District have held that it lacks subject matter jurisdiction over cases in which a petitioner challenges their detention while awaiting a removal determination. *Marcelo v. United States*, Case No.: 8:24-cv-757-TPB-NHA, 2024 WL 1417394, *1 (M.D. Fla. Apr. 2, 2024) ("Because a detainer has been lodged to secure Plaintiff while awaiting a removal determination, the Court is without jurisdiction."); *Terraza v. DHS*, Case No.: 8:24-cv-584-TPB-AEP, 2024 WL 1095947, *1 (M.D. Fla. Mar. 13, 2024) (same); *Bey v. Pereira*, Case No.: , (M.D. Fla. Jul. 13, 2020) ("Because Plaintiff's challenge concerns the Attorney General's decision to commence proceedings against him, the Court is without subject-mater jurisdiction over this action pursuant to Section 1252(g).").

2. The Zipper Clause further illustrates the Court's lack of subject matter jurisdiction over this Petition.

The INA precludes 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 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*, 964 F.3d at 1257; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—which limits review—courts conclude petitioners must funnel all aspects of challenges to removal proceedings through the avenue set out in § 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 restrictions are broad but not unlimited. *Canal A*, 964 F.3d at 1257. Still, a claim arising from actions or proceedings brought to remove an alien clearly falls within the clause. *See Regents of Cal.*, 591 U.S. at 19. Here, Petitioner challenges ICE's detention determination. This was an action arising from ICE's choice to carry out proceedings to remove him from the United States. The zipper clause is in full force; judicial review by this Court is inappropriate and contrary to the INA. 8 U.S.C. § 1252(b)(9).

C. Even if the Court were to reach the merits of Petitioner's claim, it must still be denied.

1. Petitioner is an arriving alien subject to mandatory detention

Petitioner sought admission to the United States as San Luis, Arizona Port of Entry ("POE") and sought asylum which was subsequently denied. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) provides that "[a]ny subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." While Petitioner, an applicant for admission, has never been subject to expedited removal proceedings and is therefore not subject to detention under 8 U.S.C. § 1225(b)(1), he is an applicant for admission in 8 U.S.C. § 1229a removal proceedings. Thus, he is subject to detention under 8 U.S.C. § 1225(b)(2)(A).

The statutory scheme in § 1225(a) provides: "An alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a). *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Applicants for admission under this section fall into one of two categories. First, those initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation fall under § 1225(b)(1). Second, everyone else not encompassed by § 1225(b)(1) fall under the § 1225(b)(2) catchall. *Jennings*, 583 U.S. at 287.

Under § 1225(b)(1), aliens are detained for the purpose of expedited removal. Under § 1225(b)(2), the "alien shall be detained for a proceeding under section 1229a"—i.e., full removal proceedings—after "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Read plainly, these subsections "mandate detention of applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297.

Due to Petitioner's unlawful immigration status, ICE now again pursues removal proceedings. Petitioner has not stipulated that he is removable; nor has he indicated he will not contest removal. In fact, the opposite is true—Petitioner is currently appealing his order of removal before the BIA. At any point, Petitioner can seek release from detention to depart the United States voluntarily. 8 U.S.C. § 1229c(a). But again, there is no indication he has any intention of doing so.

Further, the recent enactment of the Laken Riley Act bolsters this conclusion. *See* Pub. L. No. 119-1, 139 Stat. 3 (2025). There, the categories of individuals subject to mandatory detention expanded to include those who entered the United States and were charged as inadmissible under § 1182(a)(6)(A)(i) or (a)(7) and have committed—or been charged or convicted of—certain specified crimes. *See* 8 U.S.C. § 1226(c)(1)(E). Were "applicant for admission" under § 1225 interpreted as narrow as Patel argues, then there would be no need to pass Laken Riley. Those aliens now covered by § 1226(c)(1)(E) would have already been subject to mandatory detention. Even if there are redundancies, those "are common in statutory drafting" and provide no "license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 229 (2020) ("The Court has often recognized: Sometimes the better overall reading of the statute contains some redundancy.") (cleaned up). Thus, Petitioner's detention is lawful.

2. Because Petitioner's order of removal is not final, the provisions of Zavydas are not applicable.

Petitioner alleges that his detention is unlawful because he has been in ICE custody for more than six months. Although *Zadvydas* held that detention of six months is presumptively reasonable, the Supreme Court's ruling referred to aliens subject to detention pursuant to 8 U.S.C. § 1231(a), i.e. an alien with a final order of removal. *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court held that 8 U.S.C. § 1231(a) permits the government to detain an alien during the 90-day removal period in § 1231(a)(1), and an additional 90 days to effectuate the alien's removal from the United States. 553 U.S.

at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Stated differently, the Supreme Court "confirmed that six months is a presumptively reasonable period to detain a removable alien awaiting deportation under such circumstances." *Akinwale v. Ashcroft,* 287 F.3d 1050, 1051-1052 (11th Cir. 2002) (*citing Zadvydas,* 533 U.S. at 701). However, Petitioner's order of removal is not final, thus, 8 U.S.C. § 1231(a) is not applicable and the *Zadvydas* presumptively reasonably six-month clock has not begun.

As the Supreme Court explained, "the period of detention at issue in *Zadvydas* was 'indefinite' and 'potentially permanent.'" *Demore v. Kim*, 538 U.S. 510, 528 (2003). In contrast, detention pending a determination of removability has an obvious termination point. Id. at 529. Where, as here, Petitioner is not subject to a final removal order, the "detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid." Id. at 531 (*quoting Wong Wing*, 163 U.S. 228, 235 (1896)). Accordingly, Petitioner's Petition must also be dismissed because it is prematurely filed.

Conclusion

For those reasons, the Court must deny the Petition and dismiss this action.

Dated: January 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system. I further certify that a copy of the foregoing document will be sent to the below non-CM/ECF participant via U.S. Mail.

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Exhibit 1	Record of Deportable Alien	2/28/2025	DHS Form describing Petitioner's immigration history and remand into ICE custody.
Exhibit 2	Notice to Appear	1/15/2016	The document initiating Petitioner's removal proceedings.
Exhibit 3	Order of the Immigration Judge	11/18/2024	IJ Order denying Petitioner's Asylum Request and ordering him removed to Guatemala.