

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JUAN CARLOS MARADIAGA,

Petitioner,

v.

JAIL WARDEN PINELLAS, ICE
DETENTION FACILITY, ET AL.,

Respondents.

Case No. 8:25-cv-3443-SDM-AEP

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Juan Carlos Maradiaga's ("Petitioner") seeks the grant of a petition for writ of habeas corpus ("Petition") pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody. Petitioner also brings challenges pursuant to the Immigration and Nationality Act ("INA") and the Fifth Amendment to the United States Constitution. His petition must be denied.

Petitioner is properly detained under 8 U.S.C. § 1231 as his prior order of removal—which remains final and executable—is being reinstated. Petitioner is ineligible for release under 8 U.S.C. § 1226(a) as he so alleges. He seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing that he is not entitled to. Finally, and importantly, Petitioner's

repeated claim that he is in asylum proceedings and therefore cannot be removed pursuant to his order at this time, is incorrect. Petitioner is in withholding-only proceedings, distinct from asylum proceedings, and his final order of removability remains executable.

BACKGROUND

Petitioner is a citizen of Honduras. See ECF No. 1-1 at 3. The date and location of his first entry is unknown but government records reflect that Petitioner was issued a final order of removal on December 1, 2004. *Id.* at 2. On January 20, 2005, Petitioner was removed from the United States pursuant to that order. *Id.* He then reentered the United States without authorization once more, purportedly in 2005, where he remained without detection until 2012. Petition at ¶ 6; ECF No. 1-1 at 4. In 2012, Petitioner was encountered by immigration officials at which time he was advised that the government intended to reinstate his prior order of removal. ECF No. 1-1 at 2. However, Petitioner expressed a fear of return to Honduras. *Id.* at 3-5. Accordingly, an asylum officer conducted a reasonable fear review and determined that Petitioner had a reasonable fear of return to Honduras. *Id.* Because of this development, the government did not remove Petitioner under his reinstated 2004 order, rather referred him to EOIR for withholding proceedings pursuant to Section 241 of the Immigration and Nationality Act (“INA”), proceedings which remain ongoing. ECF No. 1-1 at 1. Petitioner’s claim that he is in asylum proceedings, Petition at ¶ 12, is incorrect.¹ When

¹ Immigration and Nationality Act (“INA”) Section 240, codified at 8 U.S.C. § 1229a, governs removal proceedings. These proceedings are used for individuals over which a determination on

ICE referred Petitioner to EOIR in 2012 for withholding proceedings, it also released him under an order of supervision. ECF No. 1-2.

At a December 15, 2025 supervision check-in with ICE, Petitioner was detained. Petition at ¶ 10; *see also* ECF No. 9-1. The following day the instant suit commenced with the filing of a petition for writ of habeas corpus and a motion seeking a temporary restraining order. *See* ECF Nos. 1, 2. On December 17, 2025, the Court ordered Respondents to respond to Petitioner's TRO motion by noon on December 18, 2025. *Id.* Respondents timely complied. ECF No. 9. Petitioner then filed an amended TRO motion. ECF No. 11. On Friday, December 19, 2025 at 3:30pm, the Court issued an order temporarily restraining Respondents from transferring Petitioner outside of the Middle District of Florida. ECF No. 12. Alleging that Respondents had violated that order by transferring him to the detention facility at Miami Krome, Petitioner filed a motion seeking relief to which Respondents replied with information reflecting that Petitioner had been transferred out of the district prior to the entry of that order.² *See* ECF Nos. 13, 14. Still before the Court is Petitioner's

removability has not yet been made. *See* 8 U.S.C. § 1229a(a)(1) ("An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien." Where—like here—an alien has already been determined to be removable and he has already received an order of removability, the proceedings set forth at INA § 241, codified at 8 U.S.C. § 1231, apply and, as discussed *infra*, the alien may seek withholding of removal. *See* 8 U.S.C. § 1231(b)(3). The application for both asylum and withholding of removal is the same. *See* Form I-589, available at <https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf> (last accessed Dec. 22, 2025) and Form I-589 Filing instructions, available at <https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf> (last accessed Dec. 22, 2025) ("This application is used to apply for asylum in the United States and for withholding of removal (formerly called 'withholding of deportation').").

² Respondents also assert that once jurisdiction is properly acquired, a petitioner's removal to another judicial district does not destroy a court's jurisdiction. *Ex parte Endo*, 323 U.S. 283, 306 (1944); *Major v. Warden, FCC Coleman - Low*, No. 5:18-CV-269-OC-02PRL, 2019 WL 4194673, at *1 (M.D. Fla.

habeas Petition. In response to this Court's order, ECF No. 5, and for the reasons set forth below, Respondents respectfully request that this Court deny habeas relief.

STATUTORY AND REGULATORY FRAMEWORK

Reinstatement of a Prior Removal Order

Congress developed a streamlined process for removing aliens who have already been removed from the United States pursuant to a final order of removal at some point in the past. If the Department of Homeland Security ("DHS") "finds that an alien has reentered the United States illegally after having been removed . . . under an order of removal, the prior order of removal is reinstated from its original date." 8 U.S.C. § 1231(a)(5). DHS may "at any time" effect removal "under the prior order." *Id.* The reinstated order "is not subject to being reopened or reviewed" and the alien "is not eligible and may not apply for any relief"³ from the reinstated order of removal. *Id.*

Though an alien subject to reinstatement of removal is not eligible for any relief (including asylum), the INA and regulations provide an avenue through which an

Sept. 4, 2019). Indeed, "[j]urisdiction attaches upon the initial filing of the § 2241 petition and will not be destroyed by a petitioner's subsequent Government-effectuated transfer and accompanying change in physical custodian." *Major*, 2019 WL 4194673 at *1. Here, where this case commenced in the Middle District of Florida when Petitioner was indeed detained in the Middle District of Florida, jurisdiction properly attached. His transfer to Miami Krome does not destroy that jurisdictional attachment and this case can proceed on the merits without the need for him to physically remain in this District.

³ 8 U.S.C. § 1231(a)(5) is generally interpreted to foreclose discretionary forms of immigration relief, however as discussed in greater detail *infra*, does not preclude an alien from seeking withholding of removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 530, 141 S. Ct. 2271, 2282, 210 L. Ed. 2d 656 (2021). Thus, though withholding of removal is commonly referred to as "relief" it is distinct from the broader range of potential immigration benefits available to aliens who are not subject to a final order of removal already. *Id.*

alien subject to a final order of removal—but who fears that return to his designated country of removal will threaten his life or freedom based on certain specific, enumerated grounds—may seek a separate order from the immigration court instructing that his removal to that country be withheld or deferred. 8 C.F.R. § 1208.31. The process is straightforward: if an alien is being processed for reinstatement of a final order of removal and expresses a fear of return to his home country, he will be referred to an asylum officer for a determination as to whether his fear of torture is reasonable and credible. 8 C.F.R. § 1208.31(e). If the asylum officer determines that the alien has a reasonable fear, he will be referred to the Executive Office for Immigration Review (“EOIR”) where he can seek an order that he not be removed—or that his removal be deferred—with regard to a specific country. 8 C.F.R. § 1208.31(e), (g)(2). In other words, an alien granted withholding of removal is still subject to a final order of removal—it simply cannot be effected at that time to that particular country. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.31(g)(2)(i); *see also* *Guzman Chavez*, 594 U.S. at 531-32 (an alien granted withholding of removal may not be removed to the country designated in the removal order unless the order of withholding is terminated, but due to the country-specific nature of a withholding order nothing prevents removal to a third country).

Orders of Supervision

While DHS “shall” detain an alien during the 90-day removal period following entry of a final order of removal, the INA gives DHS the authority to grant an order of supervision to the alien if he has not been removed once that period elapses. 8

U.S.C. § 1231(a)(2)(A); 8 U.S.C. § 1231(a)(3). The regulations explain that an alien released after the removal period “shall be released pursuant to an order of supervision.” 8 C.F.R. § 241.5(a). This order of supervision comes with conditions. *Id.* Regulations also permit the government to revoke the order of supervision. 8 C.F.R. § 241.4(d). Among the reasons for which supervision may be revoked are violation of the conditions of release—in which the alien must be notified of those reasons and given the opportunity to respond—and at DHS’s discretion when: “(i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(d)(1)-(2).

LEGAL STANDARD

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. Respondents Lyons, Noem, Bondi, and Ripa Are Improperly Named.

The only appropriate respondent to a habeas case is the official with physical custody of petitioner. 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”); *Rumsfeld v. Padilla*,

542 U.S. 426, 434-36 (2004) (“[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”). Accordingly, all Respondents with the exception of the Warden of the Krome Detention Center⁴, are improper parties to this action and should be dismissed.

II. 8 U.S.C. § 1252(g) Precludes Review of Petitioner’s Claims

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.*

This bar is subject to limitations and must be applied “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). Here, Petitioner is subject to a final order of removal

⁴ Substituted in place of the Warden of the Pinellas County detention center, given the change in detention location.

that DHS intends to reinstate,⁵ ECF No. 1-1 at 2, and he challenges DHS's detention for the purpose of reinstating that order. This matter thus falls squarely within the specific actions *Jennings* contemplated, namely the discrete action of executing a removal order, and this Court lacks jurisdiction to hear Petitioner's claims.

III. 8 U.S.C. § 1252(b)(9) Also Bars This Court's Review

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*, 964 F.3d at; *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)—the subsection that 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), which takes place after a final order of removal has issued. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The REAL ID Act clarified that final orders of removal

⁵ That Petitioner remains in withholding proceedings does not invalidate his removal order, nor would even a grant of withholding of removal invalidate that order. *Guzman Chavez*, 594 U.S. at 536 ("If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States. The removal order is not vacated or otherwise set aside. It remains in full force, and DHS retains the authority to remove the alien to any other country authorized by the statute.") (emphasis in original). In other words, notwithstanding the outcome of Petitioner's withholding proceedings—whatever it may be—he is still subject to a final order of removal that the government intends to reinstate and the only question withholding proceedings will resolve is whether his removal can be effectuated to Honduras.

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 falls within its parameters. *See Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings).

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, notwithstanding Petitioner’s creative framing of the issues as that of which detention authority to apply, he does indeed challenge the government’s decision to detain him the first place. *See, e.g., TRO Mtn.* at ¶ 13. The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

IV. Petitioner's Detention is Lawful

Should the Court determine that it retains jurisdiction over Petitioner's habeas claims—and it should not—he still cannot establish eligibility for habeas relief because his detention is lawful. Petitioner is subject to a reinstated order of removal. ECF No. 1-1 at 2. Pursuant to 8 U.S.C. § 1231(a)(5), Petitioner's "prior order of removal is reinstated from its original date . . . and [Petitioner] shall be removed under the prior order at any time after reentry." Following Petitioner's 2005 removal from the United States, he illegally reentered the country once more. ECF No. 1-1. When ICE proceeded with reinstatement of the prior order, a new removal period commenced for the purpose of executing his removal for a second time.⁶ Petitioner was detained at that time before ultimately being permitted to remain in the United States on an order of supervision, as authorized by 8 U.S.C. § 1231(a)(3), while withholding proceedings remained pending. Petitioner's 90-day removal period pursuant to the reinstatement order elapsed in 2012 when he was detained for reinstatement for 118 days. *See* ECF No. 2-1 at 4 (stating Petitioner was detained on July 18, 2012); ECF No. 2-2 at 3 (stating Petitioner was released from detention on November 13, 2012). Notwithstanding the passage of 90 days, the government is permitted to detain Petitioner again outside of the removal

⁶ It would make little sense to interpret the removal period strictly to begin only once the original order of removal becomes final. The purpose of the removal period is to allow the government a reasonable amount of time to make travel and documentation arrangements necessary to remove an individual, and without restarting that 90-day clock, the government would potentially be left with a much shorter period of time in which to complete this necessary work. *See Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008) (applying this rationale in the case of documented obstruction).

period, a period known as the post-removal period. *See* 8 C.F.R. § 241.4(D)(2). 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). However, 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 v. Davis*, 533 U.S. 678, 689 (2001). 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). Here, Petitioner was detained for 118 days in 2012. *See* ECF No. 1-1 at 4; ECF No. 1-2 at 3. He has been detained most recently for only seven

days, bringing his total number of days in detention to 125. Accordingly, ICE remains within the six-month presumptively reasonable period and Petitioner's habeas action is premature.⁷

Petitioner has made two critical errors. First, he has speculated incorrectly as to the authority under which ICE has detained him. Though he asserts he has been subjected to mandatory detention under 8 U.S.C. § 1225(b)(2), see Petition at ¶ 27, he has in fact been detained under the authority set forth at 8 U.S.C. § 1231 because he is being processed for reinstatement of a prior removal order. ECF No. 1-1. Petitioner's detention is therefore lawful. Furthermore, the regulations make clear that ICE may revoke Petitioner's order of supervision at their discretion, so he need not violate the terms to trigger revocation as he seemingly suggests. See 8 C.F.R. § 241.4(D); see also Petition at ¶ 10. And though Petitioner's 90-day removal period has elapsed, his cumulative period of detention remains under the presumptively reasonable six-month period contemplated by *Zadvydas*. 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.

Petitioner's second critical error is his repeated representation to the Court that he has a pending asylum application, which is incorrect. See ECF No. 1 at ¶ 13;

⁷ Furthermore, Petitioner's withholding proceeding should soon be placed on the detained docket with a much shorter hearing date than that available on the non-detained docket. See ECF No. 9-1 (notifying EOIR of Petitioner's now-detained status); see also ECF No. 14-1 (reflecting detention at Krome facility). With his placement on this docket it is foreseeable that the withholding proceedings that have stretched on for a staggering 13 years will be resolved expeditiously.

ECF No. 2 at ¶ 10; ECF No. 11 at ¶¶ 4, 13; ECF No. 11-3 at 1-2. Given his status as an alien subject to a final order of removal—ECF No. 1-1 at 2—who is being processed as a reinstated order of removal—ECF No. 1-1 at 1—and who has expressed a reasonable fear of return to Honduras—ECF No. 1-1 at 3-5—Petitioner is an applicant for withholding of removal, *not asylum*. See 8 U.S.C. § 1231(b)(3); see also 8 C.F.R. § 1208.31(e), (g)(2). This is relevant because Petitioner is statutorily ineligible for asylum and thus the asylum statute’s prohibition on removal during the pendency of asylum proceedings does not attach to him. See 8 U.S.C. § 1231(a)(5) (where a prior removal order is reinstated “the alien is not eligible and may not apply for any relief under this chapter”); see also *Lucas v. U.S. Att’y Gen.*, 652 F. App’x 854, 858-59 (11th Cir. 2016) (citing *Jimenez–Morales v. U.S. Att’y Gen.*, 821 F.3d 1307, 1309-10 (11th Cir. 2016) (abrogated on other grounds)). This means that today, Petitioner is subject to a final order of removal and there is no impediment to executing that order. While his withholding proceedings remain pending, the outcome—even if favorable to Petitioner—will not undercut the finality of his underlying removal order at all. In fact, it will remain in place. What withholding proceedings will impact is to what country he may be removed to. See *Guzman Chavez*, 594 U.S. at 536.

CONCLUSION

The court should deny this petition. This Court is barred from considering his claims under two separate provisions of the INA. Furthermore, Petitioner—detained for the purpose of reinstating his final order of removal—is being properly detained

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 22, 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 22, 2025

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney