

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT MYERS DIVISION**

LAZARO BELTRAN,



Petitioner-Plaintiff,

v.

**Garrett Ripa, in his official capacity
as Field Office Director, Miami field
Office, U.S. Immigration and
Customs Enforcement; Warden,
Florida Soft Side South Detention
Center; U.S. Department of
Homeland Security; and U.S.
Immigration and Customs
Enforcement,**

Respondents-Defendants.

Case No. 25-cv-01174

**PETITIONER'S RESPONSE TO
GOVERNMENT'S POSITION
ON THE PETITION FOR WRIT
OF HABEAS CORPUS**

**REPLY TO GOVERNMENT'S POSITION ON THE PETITION FOR
WRIT OF HABEAS CORPUS**

JURISDICTION AND VENUE

The Government argues that the Immigration and Nationality Act (“INA”) strips the Court of jurisdiction over this action. Beltran does not challenge the commencement of a proceeding, the adjudication of a case, or the execution of his removal order. Nor does he ask the Court to review the removal order. Rather, Beltran challenges the

legality of his detention under a framework devised by the Supreme Court. The INA does not strip the Court of jurisdiction over this action.

This Court has subject matter jurisdiction under *28 U.S.C. § 2241* and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under *28 U.S.C. § 1331* because this action arises under federal law, including the Immigration and Nationality Act, *8 U.S.C. § 1101, et seq.*, and Administrative Procedure Act, *5 U.S.C. § 551, et seq.* Because Petitioner is in custody under the authority of the United States, and he claims he is being detained in violation of federal law, Petitioner has properly invoked the Court's habeas jurisdiction pursuant to *28 U.S.C. § 2241*.

LEGALITY OF DETENTION

“Once a noncitizen’s order of removal becomes administratively final, the Government ‘shall’ remove the person within 90 days.” *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (quoting *8 U.S.C. § 1231(a)(1)(A)*). The government must detain the noncitizen during the 90-day removal period, which begins when the removal order becomes administratively final. *Id.* Detention may continue

after the removal period, but not indefinitely. The Government detained Beltran in 2007. The order of removal became final on September 11, 2007. **(Exhibit 6-3, page 4)**

In *Zadvydas*, the Supreme Court held, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Zadvydas v. Davis*, 533 U.S. 678 (2001). If removal is not practically attainable, detention no longer serves its statutory purpose of “assuring the alien’s presence at the moment of removal.” *Id.* at 699. The Court found it unlikely Congress “believed that all reasonably foreseeably removals could be accomplished in [90 days].” *Id.* at 701. So, “for the sake of uniform administration in the federal courts,” it established a “presumptively reasonable period of detention” of six months—the 90-day removal period plus an additional 90 days. *Id.* That time has since long passed. Over 18 years have come and gone. To rearrest someone and have the 6-month period start over is unreasonable.

The respondents argue **Beltran’s** petition is premature because he has not been detained for longer than six months. Their argument assumes the six-month clock started on November 10, 2025, when Beltran’s current detention began, despite his six-month detention in 2007. That assumption is inconsistent with *Zadvydas*. It would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months. As the Eleventh Circuit recognized, “[t]he

Supreme Court’s stated rationale for establishing a presumptively reasonable ‘6-month period’ for detention pending removal supports our conclusion that this period commences at the beginning of the removal period.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

Because the six-month period for presumptively reasonable detention has expired, *Zadvydas*’s burden-shifting framework applies. Courts use a burden-shifting framework to judge the constitutionality of additional post-removal detention:

After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut the showing.

Id.

Beltran has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. In fact, ICE made that determination in 2013, when it released **Beltran** under an order of supervision. The burden thus shifts to the respondents, but they make no attempt at rebuttal. There is no evidence before the Court to suggest removal is more likely now than it was in 2013.

The Government argues that “ICE properly exercised its discretion to revoke **Beltran**’s OSUP—a decision on which the Court is statutorily prohibited from

reviewing.” The Government curiously notes that the OSUP set out various conditions that Beltran was required to follow while allowed to stay in America on supervision.

One of the conditions was that Beltran was to report when required. The Government argues that **Beltran** violated his condition by not reporting for his OSUP. The Government argues that ICE can revoke release due to violations of OSUP conditions. They erroneously cite several missed appointments, yet for every missed appointment in **Exhibit 6-4**, there is a corresponding entry and signature that the Petitioner did report. (**Exhibit 6-3, page 3**) Each and every date that the government indicates that Beltran missed his appointment, there is a signature that Beltran did report. The Government did not reproduce the back page of the signature page, where there are several other entries. The Government is wrong when they say that Petitioner missed his appointments. Petitioner has never missed an appointment. ICE did cancel one of his appointments during COVID, when during the closure of the Miramar ICE office because of the COVID virus, the Petitioner appeared and was told the office was closed. **Beltran** called the number he was given by an officer at the Miramar office, and immediately set up another appointment and was seen by ICE. It is disingenuous to say that **Beltran** missed any appointments because ICE itself has provided proof that **Beltran** did report. (**Exhibit 6-3, page 3**)

The Government also argues that ICE can revoke OSUPs in its discretion based

on its determinations—which are substantively unreviewable. This statutory bar against judicial review precludes a Court from exercising jurisdiction over the Government’s decision to “commence proceedings, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C § 1252(g). However, the Supreme Court has narrowly interpreted § 1252(g) as applying “only to three discrete actions that the Attorney General may take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis omitted) (*quoting 8 U.S.C. § 1252(g)*); *see Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025) (noting courts have “distinguished between challenges to ICE’s discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not.”).

Here, Petitioner does not challenge the legitimacy of his April 2001 order of removal or ICE’s discretionary authority to decide “when” or “whether” to execute such removal order. *See Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (quoting *Tazu v. Att’y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020)). Rather, Petitioner challenges his present detention as unlawful, as well as the Government’s authority to re-detain him under the post-removal detention statute without notice and an opportunity to respond. Accordingly, this Court has jurisdiction to consider Petitioner’s claims. *See Zadvydas*, 533 U.S. at 687 (confirming that *28 U.S.C. § 2241* confers jurisdiction on the

federal courts to hear cases about the detention of individuals with final removal pending their removal).

CONCLUSION

WHEREFORE, Petitioner requests that this Court:

- a. finds no significant likelihood Beltran will be removed in the reasonably foreseeable future.
- b. That he is entitled to release from detention under *Zadvydas*, but remain subject to the terms of the 2013 order of supervision.

Respectfully submitted,

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/s/ **Julio Gutierrez**

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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 Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized

manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Julio Gutierrez