UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

YOSVANIS CASTILLO PANEQUE, Petitioner, v. MATTHEW MORDANT, Warden of the South Florida Detention Facility; (ICE)TODD LYONS, in His official capacity as Acting Director of Immigration and Customs Enforcement; GARRET RIPA, in his official capacity as the Miami Field Office Director ICE; (DHS) KRISTI NOEM, in her official capacity as Secretary of Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States. Respondents.	Case No.: 2:25-cv-01179-JES-NPM

PETITIONER'S REPLY TO THE GOVERNMENT'S RESPONSE TO PETITION OF HABEAS CORPUS

Yosvanis Castillo Paneque ("Petitioner"), by and through undersigned counsel, respectfully submits this Reply to Respondents' Response in Opposition to his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. In the aggregate, Petitioner has now spent more than 180 days in ICE custody following his final order of removal, including a prior period of post-order detention that

ended in release due to the lack of a significant likelihood of removal in the reasonably foreseeable future, in violation of his Substantive Due Process Rights under the Fifth Amendment.

Factual Background

Petitioner, Yosvanis Castillo Paneque, is a native and citizen of Cuba who has been subject to a final order of removal since January 30, 2008.

Immediately following the completion of his criminal sentence on May 15, 2020, Petitioner was taken into the custody of U.S. Immigration and Customs Enforcement ("ICE") pursuant to his final order of removal. Petitioner remained detained in ICE custody for approximately five and one-half months. During that period, ICE was unable to effectuate his removal to Cuba. At the conclusion of that detention, the Government determined that Petitioner's removal was not significantly likely in the reasonably foreseeable future and released him on October 30, 2020 under an Order of Supervision ("OSUP"). In summary, Petitioner was previously in ICE custody from May 15, 2020 until October 30, 2020, amounting a total of 168 days of detention in ICE custody.

After his release in October 2020, Petitioner remained under ICE supervision for nearly five years. During that time, he complied fully with all

conditions of his OSUP. He reported to ICE as required, committed no violations, posed no risk of flight, and presented no danger to the community.

On October 29, 2025, Petitioner appeared for a routine supervision check-in with ICE. During that appointment, ICE re-detained Petitioner for the stated purpose of effectuating his removal. Petitioner has remained in ICE custody since that date, which at the time of filing the petition was an aggregate of 216 days.

In their Response, Respondents focus exclusively on the duration of Petitioner's current detention and argue that the period of custody beginning on October 29, 2025 is not prolonged and therefore this Petition premature; however, Respondents do not address Petitioner's prior post-order detention in 2020, which ended only after ICE determined that removal was not significantly likely in the reasonably foreseeable future. Nor do Respondents identify any material change in circumstances that would distinguish Petitioner's current removal prospects from those that existed at the time of his prior release. Petitioner's detention is therefore arbitrary and capricious, as it is not tied to any imminent removal and violated 8 U.S.C. § 1231(a)(6) and the Fifth Amendment of the United States Constitution.

Argument

I. This Court has Jurisdiction Over Petitioner's Habeas Challenge to Post-Order Detention and is not barred under Section 1252(g) or Section 1252(b)(9).

Respondents argue that this Court lacks subject-matter jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9), asserting that Petitioner's claims arise from ICE's execution of a final order of removal and the revocation of his OSUP. (Doc. 9 at 4-7). That argument mischaracterizes both the nature of Petitioner's claims and the scope of the INA's jurisdiction-stripping provisions.

Petitioner does not challenge the validity of his removal order, the commencement of removal proceedings, or the Government's authority to remove him. Nor does he seek to halt or interfere with removal. Instead, Petitioner challenges the legality of his continued civil detention under 8 U.S.C. § 1231(a)(6) and the Fifth Amendment, where removal is not significantly likely in the reasonably foreseeable future. Such claims fall squarely within the scope of habeas jurisdiction and are not barred by §§ 1252(g) or 1252(b)(9).

A. Section 1252(g) Must Be Construed Narrowly and Does Not Bar Review of Post-Order Detention.

Section 1252(g) applies only to three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v.*

American-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999). The Supreme Court expressly rejected an expansive reading of § 1252(g) and cautioned that it does not operate as a general jurisdictional bar over all claims tangentially related to removal. *Id.* at 482–83.

Petitioner does not challenge ICE's decision to execute his removal order. He challenges only his continued detention while removal remains unlikely. The distinction is critical. As the Supreme Court made clear in *Zadvydas v. Davis*, habeas jurisdiction exists to review post-removal-order detention under § 2241, notwithstanding § 1252(g). 533 U.S. 678, 688 (2001). The Court reaffirmed that detention claims are analytically distinct from challenges to removal itself.

Respondents' reliance on cases such as *Camarena v. ICE*, *Gupta v. McGahey*, and *Alvarez v. ICE* is misplaced. Those cases involved challenges that directly sought to interfere with ICE's discretionary decisions regarding when and how to execute removal orders or commence proceedings. Here, by contrast, Petitioner does not contest ICE's discretion to pursue removal; he contests ICE's authority to detain him indefinitely where removal is not reasonably foreseeable. A ruling ordering release under supervision would not invalidate the removal order or prevent ICE from executing it should removal later become feasible.

Courts have consistently recognized that habeas petitions challenging prolonged detention fall outside the scope of § 1252(g). *See Zadvydas*, 533 U.S. at 688; *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018). As well as habeas petitions challenging detention due to ICE noncompliance with statutory requirements. See *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *4-5 (S.D. Fla. Sept. 9, 2025) (finding Section 1252(g) inapplicable to an alien's challenge of immigration detention based on ICE's noncompliance with statutory requirements when revoking an order of supervised release). Section 1252(g) therefore does not strip this Court of jurisdiction.

B. Section 1252(b)(9) Does Not Bar Jurisdiction Because Petitioner Does Not Seek Review of Removal Proceedings

Section 1252(b)(9), the so-called "zipper clause," channels into the courts of appeals claims that seek judicial review of removal orders or decisions to pursue removal. *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). It does not bar district court jurisdiction over claims that are independent of the removal order itself.

The Supreme Court has cautioned against reading § 1252(b)(9) so broadly that it would "swallow all claims that might somehow touch upon removal."

Jennings, 138 S. Ct. at 840–41. Rather, the provision applies where a claim arises directly from the removal proceedings themselves.

Petitioner's claim does not arise from his removal proceedings. It arises from his continued indefinite detention years after the entry of a final order, following repeated failures to effectuate removal and a prior release based on a lack of a significant likelihood of removal. (Doc. 1-3 at 1-2). Courts routinely exercise jurisdiction over such claims because they concern the legality of custody, not the validity or execution of a removal order. *See Zadvydas*, 533 U.S. at 688; *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006)(holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation). The zipper clause only applies to claims requesting review of a removal order. *Id.*

Accepting Respondents' reading of § 1252(b)(9) would effectively eliminate habeas review of indefinite detention altogether, a result squarely foreclosed by *Zadvydas* and inconsistent with the Suspension Clause. *Zadvydas*, 533 U.S. at 688.

For these reasons, the Court has subject-matter jurisdiction over this habeas action. Petitioner does not seek review of his removal order, the commencement of proceedings, or the Government's decision to pursue removal. He challenges only the legality of his continued post-order detention where removal is not

reasonably foreseeable. Sections 1252(g) and 1252(b)(9) must be construed narrowly and do not bar judicial review of such claims. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018). The Supreme Court has expressly recognized habeas jurisdiction over challenges to prolonged post-removal-order detention, and courts routinely distinguish detention claims from challenges to removal itself. Because Petitioner's claims concern the lawfulness of his custody rather than the validity or execution of a removal order, this Court retains jurisdiction to adjudicate the Petition.

II. Prematurity Argument Fails Because Detention is Already Unreasonable Under Zadvydas

Under 8 U.S.C. § 1231(a)(1), the government is required to remove a noncitizen within 90 days of a final order of removal. The Supreme Court in *Zadvydas* interpreted § 1231(a)(6) to permit detention beyond that period only for a reasonable time necessary to effectuate removal, establishing a presumptively reasonable six-month period. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Eleventh Circuit has clarified that this six-month period includes the initial 90-day removal period plus 90 days thereafter. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

Petitioner's removal order became final on January 30, 2008. Accordingly, the 90-day removal period expired in 2008, and the additional presumptively reasonable period ended that same year. The statutory and constitutional limits on detention have long since expired. ICE cannot restart the *Zadvydas* clock by re-detaining Petitioner years later after removal has repeatedly proven unattainable.

Petitioner was previously detained post-order in 2020 for approximately five and one-half months and was released only after the Government determined that removal was not significantly likely in the reasonably foreseeable future. He is now detained again following a routine supervision check-in on October 29, 2025. When the current detention is viewed in conjunction with Petitioner's prior post-order detention and release for lack of foreseeability, the aggregate period of detention renders continued custody unreasonable.

Respondents' attempt to treat the current detention as a fresh six-month period ignores both the Supreme Court's interpretation of § 1231(a)(6) and the Eleventh Circuit's acknowledgment that the presumptive period is not reset by subsequent cycles of detention and release. See *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002)(concluding that the reasonable 6-month period begins at the beginning of the removal period), See *Beltran v. ICE*, No. 2:25-cv-01174-SPC-NPM (M.D. Fla. Jan. 5, 2026)(where the Court states that clock resets "...would

effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months"). For these reasons, Petitioner's claim under *Zadvydas* is not premature.

III. Petitioner's OSUP was unlawfully revoked as Respondents' did not follow their own policy or regulations thus Petitioner's claim is not moot.

A noncitizen may be placed under an Order of Supervision ("OSUP") if he demonstrates to the satisfaction of the Attorney General that his release will not pose a danger to the community or a significant risk of flight pending removal. 8 C.F.R. § 241.4(d)(1). Release may be revoked only when, in the opinion of the revoking official, the purposes of release have been served, the noncitizen has violated a condition of release, enforcement of the removal order has become appropriate, or other circumstances indicate that release is no longer appropriate. 8 C.F.R. § 241.4(l)(2).

The regulations further require ICE to consider all relevant factors before revocation, including the noncitizen's compliance with conditions of release, criminal history, and any other information bearing on whether continued release is appropriate. 8 C.F.R. § 241.4(g)(3). Where ICE asserts that removal has become reasonably foreseeable, the noncitizen must also be provided notice and a meaningful opportunity to rebut that determination. 8 C.F.R. § 241.13(i)(3).

ICE's revocation of Petitioner's OSUP did not comply with these substantive or procedural requirements. Petitioner did not violate any condition of supervision, was not alleged to pose a danger to the community, and was not identified as a flight risk. Instead, ICE relied on a generalized assertion that removal was now significantly likely in the reasonably foreseeable future. The record contains no individualized analysis demonstrating that Petitioner's circumstances had materially changed since his prior release in 2020.

Petitioner had complied fully with the terms of his OSUP for nearly five years and was re-detained during a routine supervision appointment. ICE offered no evidence that his conduct or circumstances rendered continued supervision inappropriate. Nor did ICE provide Petitioner with a meaningful opportunity to rebut its conclusory determination of foreseeability.

Courts have consistently held that an agency's failure to follow its own regulations renders its actions unlawful and violates due process. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Because ICE failed to satisfy the regulatory criteria for revocation and denied Petitioner the procedural protections required by 8 C.F.R. §§ 241.4 and 241.13, the revocation of Petitioner's OSUP was arbitrary and capricious and cannot defeat this Court's jurisdiction or render the habeas claim moot.

IV. ICE Must Sufficiently Establish the Existence of a Significant Likelihood that Removal is Foreseeable.

Under *Zadvydas v. Davis*, once a noncitizen provides good reason to believe that removal is not significantly likely in the reasonably foreseeable future, the burden shifts to the Government to rebut that showing with sufficient evidence. 533 U.S. 678, 701 (2001). The Supreme Court made clear that speculative assertions or good-faith efforts alone are insufficient; the Government must demonstrate a realistic prospect of removal within a reasonably foreseeable timeframe. *Id.* at 702. Mere speculation or generalized assertions do not satisfy this standard. See *Kong v. U.S.*, 62 F.4th 608, 619–20 (1st Cir. 2023); *Pouev v. Smith*, 169 F. Supp. 3d 297, 300–02 (D. Mass. 2016); *Ahmed v. Freden*, 744 F. Supp. 3d 259, 267 (W.D.N.Y. 2024).

Petitioner has satisfied his initial burden. He has been held in ICE custody post-final order of removal for an aggregate period exceeding 180 days. Specifically, Petitioner was detained for approximately 168 days in 2020 following the completion of his criminal sentence, during which time ICE was unable to effectuate his removal and ultimately released him upon determining that removal was not significantly likely in the reasonably foreseeable future. Petitioner has now been re-detained since October 29, 2025, further extending his post-order detention. This prolonged and repeated inability to effectuate removal constitutes

strong evidence that removal is not reasonably foreseeable. At the moment of filing this petition, December 16, 2025, the Petitioner was detained and in ICE custody for an aggregate of 216 days. (Doc. 1)

In response, the Government now alleges an intention to remove Petitioner to Mexico, via a self-created document. (Doc. 9-1 at 7). However, Respondents have not offered a concrete plan to do so, nor have they provided evidence that the Government of Mexico is willing to accept Petitioner, or that there is any ongoing process with the Mexican government. The record is devoid of any documentation reflecting acceptance by Mexican authorities, eligibility for removal to Mexico, or any explanation of the safeguards under which such a removal would occur. An asserted intent to pursue third-country removal, standing alone would amount to mere speculation and does not satisfy the Government's burden under *Zadvydas*. See *Zadvydas v. Davis*, 533 U.S. 678, 702 (2001)(good-faith efforts are insufficient to show that detention will not be indefinite)

Where, as here, ICE has already failed to remove Petitioner for many years, previously released him for lack of foreseeability, and now offers only a generalized assertion of intent to pursue removal to a third country without proof of a time-frame, acceptance by third country, or logistics, the Government has

failed to rebut that removability is unlikely in the reasonably foreseeable future. The burden-shifting framework established in *Zadvydas* has therefore not been satisfied.

Conclusion.

Accordingly, ICE has not established that Petitioner's removal is significantly likely in the reasonably foreseeable future, and continued detention is unauthorized under 8 U.S.C. § 1231(a)(6) and the Fifth Amendment of the United States Constitution.

Respectfully submitted,

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