UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FRANCISCO **PORTELA-MORA,** CASE NO. 2:26-cv-00013-JES-DNF

Petitioner,

v.

KRISTI **NOEM**, Secretary, United States Department of Homeland Security; *et. al.*,

Respondents.

________________________________/

REPLY TO PETITION FOR HABEAS CORPUS

COMES NOW the Petitioner ("Petitioner"), FRANCISCO PORTELA-MORA, by and through his undersigned counsel, and files his reply to the Respondents' Response to Habeas Petition (ECF No.9) and respectfully states as follows:

Respondents claim this court lacks subject matter jurisdiction arguing that: (a) 8 U.S.C. § 1252(g) strips the Court of jurisdiction over claims arising from actions to commence, adjudicate, or execute removal, which includes detaining a noncitizen while removal is pending; (b) 8 U.S.C. § 1252(b)(9)'s "zipper clause" likewise channels all questions of law or fact arising from removal into the Petition for Review process mandated at 8 U.S.C. § 1252(a)(5) following entry of a final order of removal by the Immigration Judge; (c) the continued detention of the Petitioner is presumptively valid for 6 months and Petitioner has not been detained in excess of that period of time; and (d) ICE properly revoked Petitioner's Order of Supervision. These arguments lack merit.

A. Section 1252(g) Does Not Preclude Jurisdiction.

Respondents argue that 8 U.S.C. § 1252(g) specifically deprives district courts of jurisdiction, including habeas corpus jurisdiction, to review any cause or claim by or on behalf of any alien "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien . . . ." *See* 8 U.S.C. § 1252(g). But as the Supreme Court has held, Section 1252(g)'s jurisdictional bar should be narrowly construed and, under the plain language of the statute, applies only to three discrete actions: (1) the commencement of removal proceedings, (2) the adjudication of removal proceedings, and (3) the execution of removal orders. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings.").

Respondents' reliance on 8 U.S.C. § 1252(g) is misplaced because it rests on a fundamental mischaracterization of Petitioner's claim. Petitioner does not challenge the Attorney General's discretionary decision to execute the removal order against him. Rather, Petitioner challenges the legality of his detention under a framework devised by the Supreme Court. The INA does not strip this Court of jurisdiction over this action. *See, Krechmar v. Parra,* 2025 WL 3620802 (M.D. Fla. Dec. 15, 2025). Here, the action being challenged is not the validity of a removal order, but the manner in which DHS is detaining Petitioner without constitutionally adequate process. A due process challenge to unlawful detention is categorically distinct from a challenge to the government's authority to remove.

The Respondents cite two Eleventh Circuit cases to support their argument that Section 1252(g) strips the Court of jurisdiction to consider Petitioner's claims: *Gupta v. McGahey,* 709 F.3d 1062 (11th Cir. 2013) and *Alvarez v. ICE,* 818 F.3d 1194 (11th Cir. 2016). In both cases, the plaintiffs filed Bivens[1] actions against ICE officials after their release from detention. The Eleventh Circuit found Section 1252(g) barred both actions because they challenged methods the defendants used to commence removal proceedings.

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[1] *Bivens v. Six Unknown Name Agents,* 403 U.S. 388 (1971).

"When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. United States Citizenship and Immigration Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020).

In this case Petitioner 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, Petitioner challenges the legality of his detention based on procedural deficiencies and under a framework devised by the Supreme Court for district courts to apply. *See Zadvydas v. Davis*, 533 U.S. 678, 682 (2001) (stating the Court's limitation on post-removal detention "is subject to federal-court review."). A decision in Petitioner's favor would not impair ICE's ability to execute the removal order. The INA does not strip the Court of jurisdiction over this action. *See also Bolivar v. Ripa,* 2026 WL 98776 (M.D. Fla. Jan 14, 2026).

B. <u>Section 1252(b)(9) Does Not Preclude Jurisdiction</u>.

Under 8 U.S.C. § 1252(b)(9), which Respondents also cite in support of their jurisdictional challenge, "judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." *See* 8 U.S.C. § 1252(b)(9). But where an immigration detainee is "not asking for review of an order of removal" or "challenging any part of the process by which their removability will be determined . . . § 1252(b)(9) does not present a jurisdictional bar." *See Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018); *see also Hasan v. DHS, et al.*, ___ F.Supp.3d ___; 2025 WL 2682255 at *3 (E.D. Va. Sept. 19, 2025) ("Section 1252(b)(9) does not insulate detention orders from judicial review because they are separate and apart from orders of removal.") (internal quotations omitted).

Petitioner is not challenging his removal order. Rather, Petitioner challenges the lawfulness and constitutionality of his continued detention. As a result, 8 U.S.C. § 1252(b)(9) does not apply and does not strip this Court of subject matter jurisdiction.

C. <u>Petitioner's Detention is Not Lawful.</u>

"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. *Zadvydas v. Davis*, 533 U.S. 678 (2001)

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." 533 U.S. at 700-01 (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.* Courts therefore 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* at 701.

Respondents argue Someillan's petition is premature because his current detention has not exceeded 90 days. They assume the 90-day presumptively reasonable period of detention resets each time a noncitizen is detained. 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 90 days. 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); *Bolivar v. Ripa,* 2026 WL 98776 at *3 (M.D. Fla. Jan 14, 2026).

D. Violations of the INA and its Regulations

The Government has promulgated regulations in the Code of Federal Regulations concerning the release of noncitizens who are subject to a final removal order. *See* 8 C.F.R. § 241.4; 8 C.F.R. § 241.13. These regulations also govern the revocation of such noncitizens' release. Both 8 C.F.R. § 241.4(l)(1) and § 241.13(i)(3) provide that, upon revocation of release, the noncitizen "will be notified of the reasons for revocation of his or her release."

The documents Respondents have submitted to show compliance with these requirements contain hearsay and are not credible. The Record of Deportable Alien (Form I-213) was clearly not prepared by the arresting officer, being written in the third person, and is not executed ("On December 29, 2025 ICE ERO Miami Non-Detained encountered [Petitioner]"). *See* ECF No. 9-1, pp. 1-3. The Notice of Revocation is dated December 30, 2025, and purportedly signed by Zoelle Rivera, Assistant Field Office Director, but the signature is illegible. *See* ECF No. 9-4, p.1. The Proof of Service document does not indicate what document was purportedly served on the Petitioner, but refers to a "Notice to Alien of File Custody Review," not the Notice of Revocation. *See* ECF No. 9-4, p. 2. A review of these documents evinces the Notice of Revocation was not prepared contemporaneously when Petitioner was taken into custody on December 29, 2025, but the day after. Petitioner therefore did not receive notice at any point before, or at the time of, his arrest as required by 8 C.F.R. § 241.4(l)(1). At least one other Court has found failure to provide Petitioner with notice before, or at the time of, his arrest to be a violation of Petitioner's constitutional due process rights, and ordered release based upon Respondent's failure to properly revoked an Order of Supervision. *See Constantinovici v. Bondi*, 2025 WL 2898985, at *7 (S.D. Cal. Oct. 10, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267, at *12 (D. Or. Aug. 21, 2025) (ICE failed to follow its own regulations in detaining Petitioner by (1) failing to provide a timely Notice of Revocation of Petitioner's Order of Supervision; (2) failing to provide a Notice of Revocation signed by an official authorized to revoke Petitioner's release; and (3) failing to provide Petitioner with a "prompt" informal interview so that she could contest the reasons for her revocation).

Further, Counsel for the Petitioner represents another alien before this Court with similar facts as this matter and the Notice of Revocation submitted by the Respondents in that case has inconsistent signatures as well. *See* Declaration of Jeffrey A. Devore, Exhibit No. 1. At least one other Court has found these inconsistencies to be unacceptable and ordered release based upon Respondent's failure to properly revoked an Order of Supervision. *See Bolivar v. Ripa,* 2026 WL 98776 (M.D. Fla. Jan 14, 2026) (Court reviewed signature on revocation notices from three other cases and none matched).

E. Petitioner's Removal is not Reasonably Foreseeable.

The Respondents have tacitly admitted that they are unable to remove the Petitioner to Cuba by stating their intention to remove him to Mexico,[2] but have submitted no documents to show that removal to Mexico is reasonably foreseeable. In this case, the 6 month period has expired and the government is unable to establish a significant likelihood of removal in the reasonably foreseeable future. While Respondents have submitted documents in this case in support of their position that Petitioner's removal is reasonably foreseeable, they are not supported by a declaration by an ICE officer attesting to the actions taken by ICE to effectuate removal, whether to Cuba or Mexico, the anticipated timeline, and whether a travel document has been secured. *See* Respondent's Exhibits 1 thorough 5 (ECF No. 9-1 thorough 9-5) to their Response to Petition For a Writ of Habeas Corpus (ECF No. 9).

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[2] *See* Response to Petition For Writ of Habeas Corpus, ECF No. 9, p.3.

WHEREFORE, Petitioner prays that this Honorable Court will grant his Petition for Habeas Corpus and order his immediate release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court and that to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served electronically through the Court's ECF system to all parties of record this 2nd day of February, 2026.

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