

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

LUIS SANTIAGO RIVERO GONZALEZ,

Petitioner,

No. 2:26-cv-00114-KCD-NPM

v.

WARDEN, ALLIGATOR DETENTION  
CENTER, OCHOPEE, FL et al.

Respondents.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Luis Rivero Gonzalez petitions for writ of habeas corpus arguing that U.S. Customs and Immigration Enforcement unlawfully revoked his order of supervision. Rivero Gonzalez's petition should be denied. As an initial matter, this Court lacks jurisdiction over the petition, as Rivero Gonzalez's claims fall within the Immigration and Nationality Act's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). Furthermore, Rivero Gonzalez has been detained for 79 days following his arrest on December 3, 2025. In *Zadvydas v. Davis*, the Supreme Court held that continued detention under § 1231(a)(6) is presumptively reasonable for six-months following a removal order. *See* 533 U.S. 678, 701 (2001). Finally, Rivero Gonzalez committed numerous crimes following his order of supervised release.

ICE therefore properly exercised its discretion in revoking that order. Rivero Gonzalez's detention is therefore lawful.

### FACTS

Rivero Gonzalez is a 42-year-old citizen of Cuba who was paroled into the United States on September 18, 1999. (Composite Exhibit, Ex. at 1.) He was ordered removed on April 23, 2007. *Id.* at 12. Caballero-Murillo was detained on June 10, 2017, and released on an order of supervision on September 7, 2017. *Id.* at 24-25. He has a lengthy criminal history, including a conviction for aggravated battery in 2023; resisting arrest with violence in 2022; depriving an officer of means of protection or communication in 2022; domestic battery by strangulation in 2020; false imprisonment in 2020; burglary and grand theft in December 2017; and resisting an officer with violence in December 2017. *Id.* at 2-3, 13-23.

Rivero Gonzalez was placed in immigration custody on December 3, 2025. *Id.* at 24. That same day, he was served with a notice revoking his supervised release under 8 C.F.R. § 241.4(l)(2)(i)-(iv). (Composite Exhibit, Ex. 1 at 7.) The notice informs Rivero Gonzalez of the following:

### Notice of Revocation of Release

Pursuant to 8 C.F.R. § 241.4(l)(2), this letter is to inform you that the Field Office Director (FOD) of the Enforcement Removal Operations (ERO) Miami Field Office has determined in his/her discretion that revocation of your release is in the public interest. Because circumstances do not reasonably permit referral of your case at this time to the Executive Associate Director or his delegatee for revocation of your release, the FOD is exercising his/her discretion under 8 C.F.R. § 241.4(l)(2)(i)-(iv) to revoke your Order of Supervision dated 12/3/2025 because

- ☒ The purposes of release have been served;
- ☐ You have violated any condition of release, to wit: \_\_\_\_\_
- ☒ It is appropriate to enforce your removal order, which became administratively final on 5/24/2007;
- ☒ Your conduct, or any other circumstance, indicates that release would no longer be appropriate.

*Id.* at 7. ICE intends to remove Rivero Gonzalez to Mexico. *Id.* at 6. The undersigned has been advised ICE intends to remove the petitioner to Mexico on or about February 27, 2026.

### ARGUMENT

#### I. Rivero Gonzalez has not signed or verified his petition.

Title 28 U.S.C. § 2242 provides, “Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.” The present petition is not signed by Rivero Gonzalez or any individual purporting to act on his behalf. Instead, the petition merely reads, “Respectfully submitted, . . . Authorized Representative.” (Doc. 1 at 4.) The present petition should therefore be dismissed for failure to comply with § 2242.<sup>1</sup>

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<sup>1</sup> Lisandra Trejo, the ex-wife of Rivero Gonzalez, provides a letter attached to the complaint containing her typed signature. (Doc. 1-1.) Trejo, however, cannot

## II. This Court lacks jurisdiction over Rivero Gonzalez's petition.

### A. Title 8 U.S.C. § 1252(g).

There is no jurisdiction to review “any” claim “arising from the decision or action” to “execute removal orders.” 8 U.S.C. § 1252(g). This provision bars habeas review in federal courts when the claim arises from a decision or action to “execute” a final order of removal. *Reno v. American-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999).

Courts consistently hold that § 1252(g) eliminates subject-matter jurisdiction over challenges—including constitutional claims—to an arrest or detention for the purpose of executing a final removal order. *E.g.*, *Camarena v. ICE*, 988 F.3d 1268, 1273-74 (11th Cir. 2021) (“[W]e do not have jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the government’s decision to execute a removal order.”); *Johnson v. U.S. Attorney General*, 847 F. App’x 801, 802 (11th Cir. 2021); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). Likewise, § 1252(g) precludes review of the method by which ICE chooses to commence removal proceedings. *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, the provision bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether

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bring this case on behalf of Rivero Gonzalez pro se. *See Simon v. Warden*, 2:26-cv-00181-KCD-NPM, Doc. 3 (M.D. Fla. Feb. 4, 2026) (stating a pro se litigant cannot bring a case on behalf of a petitioner as the petitioner’s next friend).

the agency should have used a different statutory procedure to initiate the removal process.”).

Rivero Gonzalez was detained to execute the final removal order against him. He is well within the presumptively reasonable period of detention. This action is an effort to interfere with or halt that legal process. The Immigration and Nationality Act strips the Court’s jurisdiction in these instances. 8 U.S.C. § 1252(g).

**B. Title 8 U.S.C. § 1252(b)(9)**

There is no jurisdiction to review “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” outside a case reviewing the final removal order. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). The zipper clause is “a jurisdictional bar where” petitioner seeks “review of an order of removal [or] the decision to seek removal.” *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up).

There is a single path for judicial review of removal orders—“a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). Reading § 1252(a)(5) and (b)(9) together, courts conclude petitioners must funnel all aspects of challenges to removal proceedings through that avenue. *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 encompasses more than § 1252(g). *AADC*, 525 U.S. at 483. Under these provisions, “most claims that even relate to removal” are improper in a district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020). There are limitations on how broadly courts interpret the zipper clause. *E.g. Canal A*, 964 F.3d at 1257. But a claim “arises from a removal proceeding when the parties are challenging removal proceedings.” *Id.* (cleaned up); *see also Regents of Cal.*, 591 U.S. at 19. Here, Rivero Gonzalez challenges the government’s execution of his final removal order to stop the removal process. These are the claims barred by the zipper clause. 8 U.S.C. § 1252(b)(9).

### **III. Rivero Gonzalez’s detention does not violate the Immigration and Nationality Act or the Fifth Amendment’s Due Process Clause.**

After a final removal order, an alien must be removed within ninety days—also known as the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, an alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can also be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). There is no express 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). 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*, 533 U.S. at 689. In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale*, 287 F.3d at 1052 (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 regarding 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 v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *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). At bottom, “This presumptively reasonable six month period must have expired at the time of the filing of a petition.” *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).

Rivero Gonzalez seeks to challenge the likelihood of removal before six months. But the Eleventh Circuit, and *Zadvydas* itself, do not permit a writ challenging length of detention when petitioner has been in detention less than six months. The Eleventh Circuit has established a two-part test to stating these claims. *Akinwale*, 287 F.3d at

1052. The first element follows: “[T]o state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months . . . .” *Id.* The Eleventh Circuit has reaffirmed its holding several times. *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); *Vaz v. Skinner*, 634 Fed. App’x 778, 782 (11th Cir. 2015); *Ivantchouk v. U.S. Attorney General*, 417 Fed. App’x 918, 921 (11th Cir. 2011).

At no point has the Eleventh Circuit suggested the six-month period is rebuttable. In fact, *Akinwale* holds the opposite by setting a bright-line rule for six months of detention before a challenge. There are cases in support of Rivero Gonzalez’s position. *E.g.*, *Sardinas v. Noem*, 2:26-cv-00067-SPC-NPM, Doc. 9 (M.D. Fla. Jan. 29, 2026); *Godinez Perez v. Noem*, 2:25-cv-00429-JES-NPM, Doc. 24 (M.D. Fla.). This Court, however, should follow *Akinwale*.

Even if the Court were to examine the rationale underlying the Eleventh Circuit’s bright-line rule, *Zadvydas* underscores its reasoning:

We realize that recognizing this necessary Executive leeway will often call for difficult judgments. *In order to limit the occasions when courts will need to make them, we think it practically necessary to recognize some presumptively reasonable period of detention. . . .*

. . .

. . . We do have reason to believe, however, that *Congress previously doubted the constitutionality of detention for more than six months. Consequently, for the sake of uniform administration in the federal courts, we recognize that period.* 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 that showing. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

*Zadvydas*, 533 U.S. at 700-01 (emphasis added). There is no reading of *Zadvydas* suggesting it left open the opportunity to challenge detention before that period expires. Confirming this, the Supreme Court has explained,

And according to the Court, a period reasonably necessary to bring about the alien’s removal from the United States is presumptively six months. After that point, if the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must either rebut that showing or release the alien.

*Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021) (cleaned up); see also *Jennings v. Rodriguez*, 583 U.S. 281, 298-99 (2018); *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). Along with *Zadvydas* itself, at least four other Supreme Court decisions describe these claims and their burden shifting as occurring “after” the six-month period. *Johnson*, 594 U.S. at 529; *Jennings*, 583 U.S. at 298-99; *Clark*, 543 U.S. at 378; *Jama*, 543 U.S. at 347-48.

Here, Rivero Gonzalez filed the present petition before the expiration of six months in detention. He was detained on December 3, 2025, and filed the present petition on January 22, 2026. (Doc. 1.) At that point, Rivero Gonzalez had been detained for 50 days; to date, he has been in detention for 79 days. As previously

discussed, the presumptively reasonable period is not rebuttable before it expires. It is only afterward that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” *See Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051-52. Indeed, to hold otherwise would impose unnecessary burdens on ICE as it carries out the Executive Branch’s foreign policy responsibilities. *See Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “require courts to listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise”).

**IV. ICE has complied with its regulations regarding revocation of an order of supervision.**

ICE has revoked Rivero Gonzalez’s order of supervision under 8 C.F.R. § 241.4(l)(2)(i)-(iv). *See* Composite Exhibit 1 at 7. Title 8 C.F.R. § 241.4(l)(2) provides,

Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

- (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.

Section 241.4(l)(2) does not require notice, explanation, or an interview for the alien to respond. *Compare id.*, with *id.* § 241.4(l)(1); *Tanha v. Warden, Balt. Detention Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at \*6 n.10 (D. Md. July 22, 2025). This “regulation permits the Government extraordinarily broad discretion to revoke an OSUP.” *Tran*, 2025 WL 2085020, at \*4. In fact,

the regulation does not compel the Government to demonstrate what facts or factors, if any, it considered in deciding to revoke; nor does the regulation (or any other authority of which the court has been made aware) require the Government to demonstrate what, if any, steps it took to effect or secure removal prior to OSUP revocation.

*Id.*; see also *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at \*6 (S.D. Fla. July 8, 2025) (noting differences between both subsections).

While some courts disagree, see *Banega v. Warden*, 2:25-cv-01152-JES-DNF, Doc. 25 (M.D. Fla. Jan. 29, 2026); *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025), those decisions disregard the plain language of § 241.4(l)(2). Courts cannot find ICE violated its own regulations for failing to follow notice and hearing requirements that do not exist. The provisions exclude such demands from § 241.4(l)(2). “When a deliberative body includes particular language in one section of a [regulation] but omits it in another, it is generally presumed that it acts intentionally and purposely in the disparate inclusion or exclusion.” *SEC v. Levin*, 849 F.3d 995,

1004 (11th Cir. 2017) (cleaned up). The Court must read those regulations as they are written without engrafting notice and hearing provisions where they were not otherwise provided.

Rivero Gonzalez's only possible challenge to the lawfulness of detention is based on ICE's technical compliance with § 241.4(l)(2). But the provision permits revocation based on a discretionary "opinion" that "[i]t is appropriate to enforce a removal order or to commence removal proceedings." *Id.* ICE made that determination and revoked Rivero Gonzalez's supervised release. *See* Composite Exhibit, Ex. 1 at 7. Doing so was indeed appropriate given his extensive criminal history while on an order of supervision. Courts "will not further scrutinize ICE's discretionary decision . . . ." *Roe v. Oddo*, No. 3:25-CV-128, 2025 WL 1892445, at \*8 (W.D. Pa. July 9, 2025); *Yi Mei Zhen v. ICE*, No. 3:25-cv-01507-PAB, 2025 WL 2258586, at \*10 (N.D. Ohio Aug. 7, 2025).

### CONCLUSION

Rivero Gonzalez's Petition for Writ of Habeas Corpus should be denied.

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DATED this 20th day of February, 2026.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 20, 2026, I sent the foregoing  
document via U.S. mail to:

Luis Santiago Rivero Gonzalez



/s/ Chad C. Spraker  
Assistant United States Attorney