UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

HUMBERTO ALEJANDRO CERVANTES CANCIO,

Petitioner,

Case No.: 3:26-cv-148-MMH-MCR

v.

FIELD OFFICE DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCMENT, JACKSONVILLE FIELD OFFICE,

Respondent.

______________________________________/

RESPONSE TO PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

In the instant petition, Petitioner Humberto Alejandro Cervantes challenges the legality and constitutionally of his continued detention by United States Immigration and Customs Enforcement ("ICE"), arguing that ICE continues to detain him without a significant likelihood of removal. (Doc. 3, pp. 1–2, 9.) Specifically, Petitioner argues that: (1) his prolonged immigration detention without a bond hearing violates the Fifth Amendment due process clause; (2) his continued detention has become unreasonably prolonged and arbitrary; (3) the government has failed to provide him with a constitutionally adequate bond hearing where the government bears the burden of proof; (4) detention without adequate procedural safeguards violates substantive and procedural due process; and (5) his continued detention exceeds statutory authority as applied. (*Id.* at 6–8, 9–10.) Ultimately, Petitioner requests that the Court grant his Petition, order his immediate release from ICE custody, and any other relief the Court deems just and proper. (*Id.* at 7, 10.) Because Petitioner's detention period is reasonable under the circumstances, the Petition is due to be denied.

BACKGROUND

Petitioner is a 65-year-old native and citizen of Cuba. (Ex. B, Petitioner's 2025 Form I-213, pp. 1, 2.) He initially entered the United States legally as an immigrant—with a P5-3 green card—on October 2, 1980, through New York, New York. (Ex. A, Petitioner's 2008 Form I-213, p. 2; *see also* Ex. B, p. 2.) However, on July 19, 1988, Petitioner pled guilty to cocaine smuggling in the United States District Court for the Eastern District of New York; specifically, to the offense of Importation of Cocaine in violation of 21 U.S.C. §§ 952(a), 960(a)(1), and 960(b)(3). (Ex. A, p. 2; Ex. B, p. 2.) He was sentenced to five years of imprisonment on December 16, 1998. (Ex. A, p. 2; Ex. B, p. 2.) Petitioner was also convicted of counterfeiting on June 25, 1990. (Ex. B, p. 2.) Accordingly, on December 3, 1991, an Immigration Judge entered a removal order against Petitioner, ordering him removed from the United States. (Ex. A, p. 2; Ex. B, p. 2.) He was subsequently removed from the United States to Venezuela on December 20, 1991, through Miami, Florida. (Ex. A, p. 2; Ex. B, p. 2.)

At some point, Petitioner reentered the United States at an unknown place and time without being admitted or paroled by an immigration officer. (Ex. A, p. 2.) On June 19, 2008, immigration enforcement agents of the Criminal Alien Program identified Petitioner at the Puerto Rico Department of Corrections, where he was incarcerated under child support charges. (Ex. A, Petitioner's 2008 Form I-213, p. 2.)

The child support charges were later dropped. (Ex. A, p. 2.) However, Petitioner was administratively charged with being a previously removed alien with an aggravated felony conviction for trafficking controlled substances. (Ex. A, Petitioner's 2008 Form I-213, p. 2.) The administrative charges were brought under the Immigration and Nationality Act (INA); specifically, Sections 212(a)(9)(A)(ii)[1], 212(a)(2)(C)[2] and 237(a)(2)(A)(iii).[3] (Ex. A, p. 2.) Petitioner was subsequently served with a Notice to Appear. (Ex. A, p. 2.)

According to ICE, Petitioner was released on an order of supervision ("OSUP") in December 2008 and was generally compliant with his OSUP reporting requirements. ICE did not provide the undersigned with supporting records concerning Petitioner's OSUP or reporting record. Notably, record checks revealed that Petitioner had previously escaped from federal custody. (Ex. A, p. 2.)

In accordance with current U.S. Department of Homeland Security guidelines, Petitioner was taken into custody on July 24, 2025, pending his removal, when he reported to ICE in Guaynabo, Puerto Rico. (Ex. B, pp. 2, 3.) Petitioner was found to be noncompliant with alien registration requirements under 8 C.F.R. § 264.1(a) and (b), as he failed to present any of the listed documentation, such as a Form I-94 Arrival-

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[1] Codified at 8 U.S.C. § 1182(a)(9)(A)(ii) (providing, in relevant part, that any alien not described in 8 U.S.C. § 1182(a)(9)(A)(i) who has been ordered removed under 8 U.S.C. § 1229a or any other provision of law and who seeks admission within 10 years of the date of such alien's departure or removal or at any time after the conviction of an aggravated felony is inadmissible).
[2] Codified at 8 U.S.C. § 1182(a)(2)(C) (providing, in relevant part, that any alien who the consular officer or the Attorney General has reason to believe is or has been an illicit trafficker in any controlled substance is inadmissible).
[3] Codified at 8 U.S.C. § 1227(a)(2)(A)(iii) (providing that any alien who is convicted of an aggravated felony at any time after admission is deportable).

Departure Record or a Permanent Resident Card (Form I-551). (Ex. B, p. 3.) At the time of his detention, Petitioner claimed to be unemployed. (Ex. B, p. 3.) He also claimed fear of persecution or torture if returned to his country of origin, Cuba. (Ex. B, p. 3.) Petitioner was administratively charged with being an alien previously removed as an arriving alien having an aggravated felony conviction under Section 212(a)(9)(A)(i) of INA.[4] (Ex. B, p. 2.)

According to ICE, Petitioner's native country, Cuba, denied petitioner repatriation and, in September 2025, he was transferred to the Otay Mesa Detention Center so that he could be removed to Mexico.[5] Petitioner was issued a Notice of Removal on September 10, 2025, informing him that ICE intended to remove him to Mexico. (Ex. C, Petitioner's Notice of Removal to Mexico.) The contents of the notice were read to Petitioner in both Spanish and English, but he refused to sign it. (*Id.*)

According to ICE, on or about September 17, 2025, Enforcement and Removal Operations (ERO) reported that Petitioner resisted removal to Mexico and was consequently returned to the detention center. According to ERO, on October 21, 2025, Petitioner noted that "he is willing to remain in ICE custody until the current administration changes." ICE did not provide the undersigned with records supporting Petitioner's resistance of removal or his statement that he was willing to

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[4] Codified at 8 U.S.C. § 1182(a)(9)(A)(i) (providing, in relevant part, that any alien who has been ordered removed at the end of proceedings under 8 U.S.C. § 1229a initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal is inadmissible).

[5] The undersigned was not provided supporting records.

remain in ICE custody until an administration change.

CERTIFIED HABEAS RETURN

Due to his previous order of removal, which has been reinstated, Petition is detained under INA § 241(a)(5), codified at 8 U.S.C. § 1231(a)(5). *See* 28 U.S.C. § 2243 (stating "[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention."). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021). Respondent contends that Petitioner is removable pursuant to Section 212(a)(9)(A)(i) of the INA, codified at 8 U.S.C. § 1182(a)(9)(A). (Ex. B, p. 3.)

DISCUSSION

The instant Petition should be denied. First, Respondents respectfully contend that the Court lacks jurisdiction to adjudicate this matter. Second, Plaintiff's detention is lawful under the circumstances, and he has been given reasonable notice and opportunity to be heard in line with due process.

I. The Court Lacks Jurisdiction to Adjudicate the Petition

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "They possess only that power authorized by Constitution and statute[.]" *Id.* In the context of immigration habeas cases concerning removal—such as here—the INA divests this Court of jurisdiction. 8 U.S.C. §§ 1252(b)(9) & (g). As discussed below, the Court lacks jurisdiction over Petitioner's claims because the Petition challenges his detention related to the execution of a final order of removal. Because Petitioner's claims fall within the INA's jurisdiction-stripping provisions, the Court lacks subject-matter jurisdiction here.

A. Jurisdiction Stripping Under § 1252(g)

This Court lacks jurisdiction to review any claim arising from the decision or action to execute removal orders against any alien under the INA. 8 U.S.C. § 1252(g). This provision also bars habeas review in federal courts when the claim arises from a decision or action to execute a final order of removal. *Id.*

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, 1274 (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. Acting U.S. Attorney Gen.*, 847 F. App'x 801, 802 (11th Cir. 2021); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).[6]

ICE detained Petitioner to execute a final removal order, and ICE is in the process of executing removal. For these reasons, Respondent contends that this action is an effort to interfere with or halt that legal process. The INA strips the Court's jurisdiction in this instance. 8 U.S.C. § 1252(g).

[6] *See also Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review."); *Tazu v. U.S. Attorney Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) ("The plain text of § 1252(g) covers decisions about whether and when to execute a removal order."); *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

B. Jurisdiction Stripping Under § 1252(b)(9)

The Court also lacks jurisdiction for a separate reason—the INA prohibits judicial review of "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).

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 that 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 [Congressional] 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). *See Reno v. American-Arab Anti-Discrimination Comm.* (*AADC*), 525 U.S. 471, 483(1999). Under its 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. *See, e.g.*, *Canal A*, 964 F.3d at 1257. But a claim obviously "arises from a removal proceeding when the parties are challenging removal proceedings." *See id.*; *see also Regents of Cal.*, 591 U.S. at 19. Here, the crux of this case challenges Petitioner's detention related to ICE's execution of his final removal order. Such claims are barred by the zipper clause. 8 U.S.C. § 1252(b)(9).

II. Petitioner's Continued Detention is Lawful

Petitioner is being detained under INA § 241(a)(5), which is codified at 8 U.S.C. § 1231(a)(5). This provision provides the following:

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

8 U.S.C. § 1231(a)(5). Contrary to Petitioner's arguments, he is **not** detained under 8 U.S.C. § 1226 and has presented no basis for claiming so.

Under 8 U.S.C. § 1231, detention during the removal period is mandatory. 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General *shall* detain the alien." (emphasis added)). This statute clearly precludes any entitlement to release on bond. *Id.* ("Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under [8 U.S.C. §§ 1182(a)(2) or (a)(3)(B)] or is deportable under [8 U.S.C. §§ 1227(a)(2) or 1227(a)(4)(B)]."). Notably, Petitioner is both inadmissible under 8 U.S.C. § 1182(a)(2) and deportable under 8 U.S.C. § 1227(a)(2) due to his criminal convictions. (*See* Ex. A, p. 2; *see also* Ex. B, p. 2.)

With respect to Petitioner's mandated detention, "[w]hen a noncitizen is subject to a final removal order, like here, the INA starts a 90-day clock." *Tran v. Warden, Fla. Soft Side S. Det. Ctr.*, Case No. 2:25-cv-1224-KCD-NPM, 2026 WL 672969, at *3 (citing 8 U.S.C. § 1231(a).) Indeed, 8 U.S.C. § 1231 "provides for a 90-day removal period calculated from the time the removal order becomes final, during which time detention of the removable alien is mandatory." *Rivera-Amador v. Rhoden*, Case No. 3:25-cv-1460-WWB-SJH, 2025 WL 3687452, at *2 (M.D. Fla. Dec. 19, 2025) (citing 8 U.S.C. § 1231(a)(1) & (a)(2)).

Ultimately, if the initial 90-day mandatory detention period following a removal order "expires without a successful removal, the government has a choice: it may release the individual on supervision or keep them locked up." *Tran*, 2026 WL 672969, at *3 (citing 8 U.S.C. § 1231(a)(6)). For example, 8 U.S.C. § 1231 "also provides that a removable alien who is not removed during the 90-day removal period may be granted supervised release." *Rivera-Amador*, 2025 WL 3687452, at *2 (citing 8 U.S.C. § 1231(a)(3)). "Also a removable alien may be detained beyond the 90-day removal period if the alien is found to be a risk to the community or is unlikely to comply with the order of removal." *Id.* (citing 8 U.S.C. 1231(a)(6)).

"The Supreme Court in *Zadvydas* held that indefinite detention of aliens following a final order of removal raises serious constitutional concerns." *Martinez-Marino v. Sherriff of Baker Cnty. Sheriff's Off.*, Case No. 3:25-cv-854-JEP-MCR, 2026 WL 681812, at *2 (Mar. 11, 2026) (citing *Zadvydas*, 533 U.S. at 690–99). Indeed, "[o]nce an order of removal is final, the government may continue to detain an alien only for a reasonable amount of time." *Id.* (citing *Zadvydas*, 533 U.S. at 699–701). However, "[t]he reasonableness of the detention is to be measured primarily in terms of the statute's basic purpose, namely, assuring the alien's presence *at the moment of removal*." *Id.* (emphasis in original) (citing *Zadvydas*, 533 U.S. at 699).

To this end, in *Zadvydas*, the Supreme Court held that "§ 241(a) of the INA authorizes detention, after entry of an administrative final order of deportation or removal, for a period 'reasonably necessary' to accomplish the alien's removal from the United States." *Rivera-Amador*, 2025 WL 3687452, at *2 (citing *Zadvydas*, 533 U.S. 678, 699–700 (2011)). In doing so, the Supreme Court "recognized six months as a presumptively reasonable extended period of detention to allow the government to accomplish an alien's removal after the removal period has commenced." *Id.* (citing *Zadvydas*, 533 U.S. at 701). However, the Supreme Court "explicitly instructed lower courts to measure reasonableness in light of the specific circumstances of the case and the actual likelihood of a future deportation." *Tran*, 2026 WL 672969, at *5 (citing *Zadvydas*, 533 U.S. at 699).

Accordingly, to state a claim under *Zadvydas*, an alien "not only must show post-removal order detention in excess of six months but also provide evidence of a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Tran*, 2026 WL 672969, at *3 (citing *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002)). Nevertheless, given the Supreme Court's caution concerning how lower courts should evaluate the reasonableness of such a detention period, the circumstances here warrant a finding that Petitioner's post-removal detention period is **not** presumptively unreasonable. To be sure, "[b]ecause habeas relief is governed by equitable principles, courts are empowered to look beyond a mere mathematical tally to examine the totality of the circumstances." *Tran*, 2026 WL 672969, at *5 (citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008) *and Duckworth v. Eagan*, 492 U.S. 195, 213 (1989) (O'Connor, J., concurring)).

In light of Petitioner's history, which includes a record of a prior escape from federal custody, Petitioner's detention beyond the presumptively reasonable six-month period set forth in *Zadvydas* is reasonable under the purpose of assuring his presence at the moment of removal. (Ex. A, p. 2.) Moreover, according to ICE, Plaintiff has resisted removal to Mexico, despite receiving a Notice of Removal to Mexico dated September 10, 2025—well within six months of his most recent ICE detention on July 24, 2025. (*See* Ex. C (documenting Plaintiff's refusal to sign the Notice of Removal to Mexico) *and* Ex. B, p. 3 (documenting Plaintiff's July 24, 2025 detention date).)

ICE has also represented that Petitioner has stated his intent to stay in the United States until the current administration changes. Given Petitioner's prior illegal reentry into the country following his removal in 1991 and his prior escape from federal custody as documented in his 2008 Form I-213 (Ex. A, p. 2), his continued detention pending removal is very likely the only means to ensure his presence at the time of removal. *See Martinez-Marino*, 2026 WL 681812, at *2.

Nor does Petitioner's detention violate due process. "When the Government determines that circumstances have changed and it is finally time to carry out its removal order, the Constitution does not demand a full-dress, pre-deprivation trial." *Tran*, 2026 WL 672969, at *6. Rather, due process is flexible and "calls for such procedural protections as the particular situation demands." *Id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). "In the context of revoking a noncitizen's supervised release, ICE's regulations strike that constitutional balance by guaranteeing written notice and an informal interview that allows the individual to respond." *Id.* (citing 8 C.F.R. §§ 241.4(l)(1), 241.13(i)). Here, Petitioner has been given all the process he is due—notice of removal (Ex. C) and an opportunity to respond, which he demonstrated via his refusal to sign the Notice of Removal. (*Id.*) *See Tran*, 2026 WL 672969, at *6 ("Due process is not a rigid straitjacket. It requires only that the Government provide fair notice and a meaningful opportunity to be heard. By handing [the petitioner] a written notice that identified the agency's decision and sitting him down for an interview to present rebuttal evidence, ICE gave him exactly that.").

Under these circumstances, due process does not require the Court to grant Petitioner bond or supervised release. Indeed, "[a]n order of supervision is not a permanent entitlement." *Lageyre-Ravelo v. Lyons*, Case No. 2:25-cv-1171-KCD-DNF, 2026 WL 575183, at *5 (M.D. Fla. Mar. 2, 2026). Rather, "[t]he regulations expressly allow ICE to revoke that release in its discretion when circumstances change." *Id.*

(citing 8 C.F.R. § 241.4(l)). That is precisely what ICE did here. (*See* Ex. B, pp. 2, 3.)

CONCLUSION

Based on the foregoing, the instant Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (Doc. 3) should be denied.

Dated: March 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and that, on or about March 13, 2026, I will serve the forgoing document and notice of electronic filing on Petitioner by mail, pursuant to Rule 5(b)(2)(C), at the following address:

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Baker Correctional Institute
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Sanderson, FL 32087

/s/ Somadina Sullins
SOMADINA SULLINS
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