

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No: 0:26-CV-60278-EA

Ernesto Garcia Romero,

Petitioner,

v.

Kristi NOEM, Secretary, U.S.  
Department of Homeland Security et  
al.,

Respondents.

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**RESPONSE TO JURISDICTIONAL ORDER**

Petitioner, Ernesto Garcia Romero, responds to the Court's February 10, 2026, sua sponte order requesting briefing on jurisdiction [DE 5]. As set forth below, this Court has jurisdiction under 8 U.S.C. § 1252(b)(9) and 8 U.S.C. § 1252(g).

**8 U.S.C. § 1252(b)(9)**

Section 1252(b)(9), commonly known as the "zipper clause," prevents courts from reviewing claims arising from actions or proceedings brought to remove an alien. *Canal A Media Holding, LLC v. United States Citizenship & Immgr. Svs.*, 964 F.3d 1250, 1257 (11th Cir. 2020) (quoting *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The zipper clause does not present a jurisdictional bar if a petitioner is not seeking review of a removal order, the decision to seek removal, or the process by which removability will be determined. *Id.* Claims that are independent of or collateral to the removal process do not fall within the scope of the zipper clause. *Id.* The zipper clause thus does not apply if a petitioner is not challenging his removal proceedings. *Id.*

Petitioner is not seeking review in this habeas case of a removal order or of the government's decision to seek his removal. Rather, Petitioner is challenging the legality of his continued detention, the government's failure to classify his detention under the correct statutory authority, and his entitlement to a bond hearing.

The zipper clause does not divest a district court of jurisdiction to review a habeas petition brought under 28 U.S.C. § 2241 which challenges the petitioner's detention pending deportation proceedings. *Madu v. United States*, 470 F.3d 1362, 1367 (11th Cir. 2006). Thus, the zipper clause "does not strip our jurisdiction over a petition that seeks a bond hearing while the petitioner is being detained and does not challenge removal itself." *Arroyo v. Diaz*, \_\_ F. Supp. 3d \_\_, 2026 U.S. Dist. LEXIS 22573, 2026 WL 279656, No. 25-62676-CIV-SINGHAL (S.D. Fla. Feb. 2, 2026); *see also Garcia-Gomez v. Ripa*, 2025 U.S. Dist. LEXIS 268338, No.: 25-cv-25567-JB (S.D. Fla. Dec. 31, 2025) ("Petitioners are challenging their mandatory detention under section 1225(b), and their entitlement to a bond hearing. For these reasons, the Court concludes that section 1252(b)(9) does not divest the Court of its jurisdiction to consider the Petition.").

Therefore, section 1252(b)(9) does not bar the Court's jurisdiction to consider this habeas petition on its merits.

**8 U.S.C. § 1252(g)**

Section 1252(g) “bars judicial review over ‘any cause or claim by or on behalf of any alien arising from the decision or action . . . to commence proceedings, adjudicate cases, or execute removal orders.’” *Canal A Media Holding, LLC v. United States Citizenship & Immgr. Svs.*, 964 F.3d 1250, 1257 (11th Cir. 2020). Section 1252(g) is narrow, and does not bar all claims arising from deportation proceedings or impose a general jurisdictional limitation. *Id.* Instead, section 1252(g) only bars challenges to the three discrete actions stated in the statute. *Id.* Section 1252(g) does not bar all challenges to the legality of detention, but instead bars attacks on the Attorney General’s discretionary decisions in removal proceedings. *Arroyo v. Diaz*, \_\_ F. Supp. 3d \_\_, 2026 U.S. Dist. LEXIS 22573, 2026 WL 279656, No. 25-62676-CIV-SINGHAL (S.D. Fla. Feb. 2, 2026) (citing *Madu v. United States*, 470 F.3d 1362, 1367–68 (11th Cir. 2006)). As Judge Singhal recently explained:

Section 1252(g) protects the Attorney General’s discretion and decision-making in removal matters. The Attorney General decides whether to commence proceedings, how to adjudicate them, and when and how to remove aliens. But it is the role of the Court, not the Attorney General, to decide whether § 1226 entitles the Petitioner to a bond hearing. Challenging the authority of the Government to detain an alien post-removal proceedings is not a challenge of discretion but of authority. . . . As such, it is justiciable by this Court. Petitioner is not challenging any aspect of the Attorney General’s decision to remove him; rather he is arguing that he is statutorily entitled to a bond hearing while being detained. That challenge is not prohibited by § 1252(g). This Court has jurisdiction over this Petition.

*Id.*; see also *Penagos Quintero v. Ripa*, 2026 U.S. Dist. LEXIS 736, No.: 25-cv-25746-JB (S.D. Fla. Jan. 5, 2026) (ruling that a petitioner was entitled to an individualized bond hearing, citing multiple cases ruling that challenges to the legality of detention are not barred by section 1252(g)).

Here too, Petitioner is not challenging the Attorney General’s discretion in this removal action. He is challenging the government’s authority to detain him without a bond hearing, which

is a question that is justiciable by this Court in a habeas petition. Therefore, section 1252(g) also does not bar the Court's jurisdiction to consider this habeas petition on its merits.

WHEREFORE Petitioner, Ernesto Garcia Romero requests that this Court recognize that it has jurisdiction over Petitioner's 28 U.S.C. § 2241 petition for habeas corpus, and that the Court decide his petition on its merits.

Dated: February 17, 2026

/s/ Scott J. Edwards

Scott J. Edwards, Esq.

scott@scottjedwards.com

Florida Bar No.: 40958

Scott J. Edwards, P.A.

150 E. Palmetto Park Road, Suite 800

Boca Raton, FL 33432

Phone: 561-609-0760

*Attorney for Petitioner, Ernesto Garcia  
Romero.*

**CERTIFICATE OF SERVICE**

I certify that a copy of this document has been served via this Court's CM/ECF filing system on February 17, 2026, to:

Noticing 2241/Bivens US Attorney usafls-2255@usdoj.gov

Noticing INS Attorney usafls-immigration@usdoj.gov

*/s/ Scott J. Edwards*

Scott J. Edwards, Esq.

scott@scottjedwards.com

Florida Bar No.: 40958

Scott J. Edwards, P.A.

150 E. Palmetto Park Road, Suite 800

Boca Raton, FL 33432

Phone: 561-609-0760

*Attorney for Petitioner, Ernesto Garcia  
Romero.*