

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 26-cv-60340-ARTAU

SADIEL VISET-KINET,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

PETITIONER'S BRIEF ON SUBJECT MATTER JURISDICTION

Pursuant to the Court's order (D.E. 9), the petitioner, by and through the undersigned, submits this brief explaining why the Court has subject matter to rule upon all four Counts in his Petition for Writ of Habeas Corpus (D.E. 1).

Background

The petition in this case pleads four causes of action. (D.E. 1, pp. 14–21.) Three of the causes of action sound in habeas, and the fourth is brought under the Administrative Procedure Act (APA), 5 U. S. C. §§ 701 et seq.

Count I pleads an APA claim seeking to compel agency action in the form of an adjudication of the petitioner's pending application for lawful permanent residence under Section I of the Cuban Refugee Adjustment Act of 1966 (CAA), Pub. L. No. 89-732, 80 Stat. 1161, as amended, which is pending before U. S. Citizenship and Immigration Services (USCIS). (D.E. 1, p. 14.) Count II is a habeas claim seeking constitutionally adequate notice and meaningful opportunity to be heard on claims of fear of persecution or torture as to any country not of the

petitioner's nationality that the government intends to remove the petitioner to. (D.E. 1, pp. 14–18.) Counts III and IV allege that the petitioner's order of supervision under 8 U.S.C. § 1231(a)(3) and its implementing regulations was: (1) unlawfully revoked via failure to comply with applicable binding procedures and without the assistance of counsel (Count III (D.E. 1, pp. 18–20)); and (2) was unlawfully revoked on substantive grounds because the permissible bases for revocation did not, and still do not, exist (Count IV, D.E. 1, pp. 20–21).

Argument

In a multi-count complaint or petition, subject matter jurisdiction must be determined on a count-by-count basis:

In this Report and Recommendation, the Court must approach each claim and its exhaustion separately rather than determining if Plaintiff has globally exhausted all claims, because **subject matter jurisdiction must be established claim by claim, not based on the action as a whole.** See, e.g., *United States ex rel. Boothe v. Sun Healthcare Grp., Inc.*, 496 F.3d 1169, 1176 (10th Cir. 2007) (Gorsuch, J.) (“[W]e hold that district courts should assess jurisdiction on a claim-by-claim basis ... [.]” because “[t]his is ... how federal courts traditionally assess challenges to their jurisdiction under Fed. R. Civ. P. 12(b)(1).”) (citation omitted).

Gregg v. McDonough, No. CV422-114, 2023 WL 2825332, at *2 (S.D. Ga. Feb. 9, 2023), report and recommendation adopted, No. CV422-114, 2023 WL 2730665 (S.D. Ga. Mar. 31, 2023) (emphasis added); see also *Watson v. Kingdom of Saudi Arabia*, 159 F.4th 1234, 1250 (CA11 2025) (“When the FSIA is invoked, courts generally consider whether foreign sovereign immunity applies on a claim-by-claim basis.”; *Behr v. Campbell*, 8 F.4th 1206, 1213 (CA11 2021) (applying “claim-by-claim” approach when applying the *Rooker-Feldman* jurisdictional bar); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1326 (CA DC 1996) (“[S]ubject-matter jurisdiction must be determined claim by claim.”).

The Court ordered briefing regarding 8 U.S.C. §§ 1252(b)(9) & (g). (D.E. 9.) Section 1252(b)(9) is not a jurisdictional bar as to any type of subject matter, but is rather a channeling

provision that places certain types of claims before the courts of appeals, as opposed to the district courts. *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 180 (CA3 2020) (“When a detained alien seeks relief that a court of appeals cannot meaningfully provide on petition for review of a final order of removal, § 1252(b)(9) does not bar consideration by a district court.”).

Section 1252(b)(9)'s text provides:

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. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U. S. C. § 1252(b)(9) (emphasis added).

As for § 1252(g), in turn, is not a “‘zipper’ clause” like § 1252(b)(9). *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 482 (1999). “In fact, what § 1252(g) says is much narrower.” *Id.* “The provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Id.* (emphasis in original). Further, § 1252(g) is a “discretion-protecting provision.” *Id.*, at 487. “While this provision bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.” *Madu v. U. S. Att’y Gen.*, 470 F.3d 1362, 1368 (CA11 2006) (citing *Reno*, 525 U. S., at 485 n. 9; and *Kwai Fun Wong v. United States*, 373 F.3d 952, 964 (CA9 2004)). Section 1252(g) provides:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear 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 under this chapter.

8 U. S. C. § 1252(g).

I. The Court has jurisdiction over Count I of the petition.

Count I of the petition pleads an APA claim seeking to compel agency action in the form of an adjudication of the petitioner's pending application for lawful permanent residence under Section 1 of the Cuban Refugee Adjustment Act of 1966 (CAA), Pub. L. No. 89-732, 80 Stat. 1161, as amended, which is pending before U. S. Citizenship and Immigration Services (USCIS). (D.E. 1, p. 14 (Count I); D.E. 1-1, pp. 9–11 (USCIS receipt and biometric processing).)

Under binding regulations, USCIS has exclusive jurisdiction over this application because no immigration judge has, or has ever had, jurisdiction to hear such application. See 8 CFR §§ 245.2(a)(1) (“USCIS has jurisdiction to adjudicate an application for adjustment of status filed by any alien, **unless the immigration judge has jurisdiction** to adjudicate the application under 8 CFR 1245.2(a)(1).”) (emphasis added); § 1245.2(a)(1)(i) (“In the case of any alien who has been placed in deportation proceedings or **in removal proceedings** (other than as an arriving alien), the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file.”) (emphasis added).

As background, “removal proceedings” refer to the statutory proceeding providing for maximum due process under 8 U. S. C. § 1229a (entitled “Removal Proceeding”), and its implementing regulations 8 CFR pt. 1003, subpt. C & pt. 1240, subpt. A. See 8 U. S. C. §§ 1229a(a)(3) (“Unless otherwise specified in this Act, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.”); § 1229(a)(1) (“In removal proceedings under section 1229a of this title . . .”); *Campos-Chaves v. Garland*, 602 U. S.

447, 451 (2024) (“When the Federal Government decides to place an alien in removal proceedings, the INA requires that the alien be provided with ‘written notice.’”) (citing 8 U. S. C. §§ 1229(a)(1), (2)). Removal proceedings are conducted by immigration judges. 8 U. S. C. § 1229a(1)(a) (“An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.”); 8 CFR § 1240.1(a)(1) (“In any removal proceeding pursuant to section 240 of the Act, [8 U. S. C. § 1229a,] the immigration judge shall have the authority to”); *Pereida v. Wilkinson*, 592 U. S. 224, 227 (2021) (“Removal proceedings begin when the government files a charge against an individual, and they occur before a hearing officer at the Department of Justice, someone the agency refers to as an immigration judge.”).

However, there are alternative summary procedures to remove foreign nationals under certain circumstances that are not “removal proceedings” under 8 U. S. C. § 1229a. As relevant here, “expedited removal proceedings” under § 1225(b)(1) can remove a foreign national without any involvement from an immigration judge. In the first phase of such a proceedings, if an alien “who is arriving in the United States or is described in clause (iii) is inadmissible under” specified sections of the code, an “immigration officer”¹ “shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.” § 1225(b)(1)(A)(i). If such a claim is made, then “credible fear proceedings” are conducted by a USCIS asylum officer. § 1225(b)(1)(B); 8 CFR §§ 235.3(b)(4) & 208.30(d). If the asylum officer makes a negative

¹ “The term ‘immigration officer’ means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.” 8 U. S. C. § 1101(a)(18). In contrast, “[t]he term immigration judge means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act.” 8 CFR § 1001.1(f).

finding, then that finding can be reviewed by an immigration judge in a “credible fear review proceeding” — which is not a removal proceeding. 8 U. S. C. § 1225(b)(1)(B)(iii)(III); 8 CFR §§ 208.30(g)(1)(i) & (2), 1003.42, & 1208.30(g)(2); OCIJ Immigr. Ct. Pract. Manual ch. 6.4(d)(4); *id.*, at ch. 6.4(d)(4) (“Rather, a credible fear review is simply a review of the USCIS asylum officer’s decision.”).

It is only after an alien has established a credible fear of persecution or torture, 8 U. S. C. § 1225(b)(1)(B)(v) (defining “credible fear”), that they are usually, but not always, referred to an immigration judge, in “removal proceedings” with its attendant procedural protections, to be heard on an asylum application, § 1225(b)(1)(B)(ii), 8 CFR §§ 1003.42(f) & 1208.30(g)(2)(iv)(A)-(B). But that has never happened to the petitioner. The petitioner was issued an expedited removal order under § 1225(b)(1), and was later released on an order of supervision under § 1231(a)(3). (D.E. 1-1, pp. 2–7.) The petitioner has never made it to a removal proceeding before an immigration judge.

In other words, because the petitioner has never “been placed in deportation proceedings or in removal proceedings,” 8 CFR § 1245.2(a)(1)(i), there is no “immigration judge hearing [such a] proceeding [to have] exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file,” *id.* Thus, USCIS has exclusive jurisdiction over the petitioner’s application for permanent residence under the Cuban Adjustment Act because no immigration judge has, or has ever had, jurisdiction to hear such application. § 245.2(a)(1).

With that background in mind, the Court has subject matter jurisdiction over Count I of the petition. When USCIS has exclusive jurisdiction over a Cuban Adjustment application, there are no administrative remedies to exhaust before an immigration judge or the Board of Immigration Appeals in a removal proceeding. *Perez v. USCIS*, 774 F. 3d 960, 966 (CA11 2014). Such an

application, under the circumstances of exclusive USCIS jurisdiction, can form no part of a removal proceeding because an immigration judge would “lac[k] jurisdiction to adjudicate or to readjudicate [the] application for adjustment of status under the CAA” *Id.* (citing 8 CFR §§ 245.2(a)(5)(iii), 1245.2(a)(1)(ii), (a)(5)(iii)). Importantly, none of the jurisdictional bars relating to adjustments of status under 8 U. S. C. § 1252(a)(2)(B) apply to Cuban Adjustment applications “the CAA is not part of [8 U. S. C.] § 1255.” *Id.*, at 967; see *id.*, at 967–68.

As for §§ 1252(b)(9) & (g), the fact that USCIS can potentially grant legal status to a person in some sort of removal proceeding or subject to some sort of removal order is not a jurisdictional impediment for this Court. See *Canal A Media Holding, LLC v. USCIS*, 964 F. 3d 1250, 1253 (CA11 2020) (“[W]e hold that 8 U.S.C. § 1252(b)(9) and (g) do not bar the Plaintiffs’ challenge to the visa petition denial.”). The *Canal A Media* case involved “a major news and entertainment media company” where the parent company “wanted its president, Erick Archila, to serve as president of Canal A Media” in the United States. *Id.* To do so, “Canal A Media filed with USCIS a Form I-129 Petition for a Nonimmigrant Worker (“I-129”) on behalf of Mr. Archila” which “is the first step on the road to an ‘L-1A’ visa, which allows a multinational corporation to transfer one of its ‘managerial’ or ‘executive’ employees to a branch, ‘affiliate,’ or ‘subsidiary’ of that company located in the United States.” *Id.*

However, USCIS denied the petition and then “initiated removal proceedings against Mr. Archila.” *Id.* The plaintiffs then filed an APA action against USCIS for review of the denial, ultimately ending up in the Southern District of Florida. *Id.*, at 1254. Among other reasons, “the District Court granted [a] motion to dismiss,” holding “that § 1252(g) bars review of the I-129 denial ‘because this action was filed after Mr. Archila’s removal proceedings commenced and unmistakably sought to moot those proceedings,’ ” and “also ruled that § 1252(b)(9) requires any

claims the IJ or BIA cannot resolve be brought to the Court of Appeals after Mr. Archila is ordered removed.” *Id.* (citations omitted). The Eleventh Circuit disagreed.

1. Regarding § 1252(b)(9), the Court explained its function and scope as a jurisdictional channeling provision:

Section 1252(b)(9)—commonly known as the “zipper clause”—“bars review of claims arising from ‘action[s]’ or ‘proceeding[s] brought to remove an alien.’ ” DHS v. Regents of Univ. of Cal., 591 U.S. —, 140 S. Ct. 1891, 1907, 207 L.Ed.2d 353 (2020) (alterations in original) (quoting 8 U.S.C. § 1252(b)(9)). As the Supreme Court recently explained, the zipper clause “does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.” *Id.* (alterations adopted) (quotation marks omitted). Our Court has similarly clarified that the zipper clause only affects cases that “involve[] review of an order of removal.” Madu, 470 F.3d at 1367.

Id., a 1257. Below, the District Court “applied the zipper clause because it found the Plaintiffs’ claims to be ‘inextricably linked to any ultimate removal order against Mr. Archila.’ ” *Id.* (citation omitted). “This was error.” *Id.* Specifically:

The District Court’s expansive interpretation of the zipper clause does not square with that provision’s “narrow” scope. see Regents, 140 S. Ct. at 1907. **The zipper clause is not intended to cut off claims that have a tangential relationship with pending removal proceedings. see J.E.F.M. v. Lynch, 837 F.3d 1026, 1032 (9th Cir. 2016) (“[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9).”). Instead, a claim only “aris[es] from” a removal proceeding when the parties are “challenging . . . removal proceedings.” Regents, 140 S. Ct. at 1907; see Madu, 470 F.3d at 1367. This rule makes sense. The zipper clause promotes judicial economy by consolidating “challenges to any action related to removal proceedings . . . with the review of the final order of removal.” 14A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 3664 (4th ed. Apr. 2020 update). Here, **because the Plaintiffs have not brought any challenge to Mr. Archila’s removal proceedings, the zipper clause’s channeling function has no role to play.****

Id. (emphasis added). The same is true here. An order granting relief under Count I for USCIS to simply adjudicate a pending application (the denial on the merits of which is ultimately reviewable by this Court under *Perez*, 774 F.3d, at 966–68), will have no effect on any order of

removal which does or which may later exist against the petitioner. Given that “final orders of removal encompass only the rulings made by the immigration judge or Board of Immigration Appeals that affect the validity of the final order of removal,” *Nasrallah v. Barr*, 590 U. S. 573, 582 (2020), and that USCIS has exclusive jurisdiction over the petitioner’s application under the Cuban Adjustment Act, there is at most a mere “tangential relationship with pending removal proceedings,” *Canal A Media*, 964 F. 3d, at 1257 (citation omitted). In sum, “the zipper clause’s channeling function has no role to play.” *Id.*

2. As for § 1252(g), it:

“is similarly narrow.” *Regents*, 140 S. Ct. at 1907. This provision 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.” 8 U.S.C. § 1252(g). **Section 1252(g) does not “cover[] ‘all claims arising from deportation proceedings’ or impose[] ‘a general jurisdictional limitation.’ ”** *Regents*, 140 S. Ct. at 1907 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AAADC”), 525 U.S. 471, 482, 119 S. Ct. 936, 943, 142 L.Ed.2d 940 (1999)). Instead, § 1252(g) bars challenges only to the “three discrete actions” enumerated in the statute. *AAADC*, 525 U.S. at 482, 119 S. Ct. at 943.

Id. (emphasis added). “When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Id.*, at 1257–58. For example:

Because [a USCIS status benefit] denial “is not a decision to ‘commence proceedings,’ much less to ‘adjudicate’ a case or ‘execute’ a removal order,” the Plaintiffs’ challenge to it is not barred. *Regents*, 140 S. Ct. at 1907; see also *AAADC*, 525 U.S. at 485, 119 S. Ct. at 944 (stating that § 1252(g) ensures challenges to the three discretionary actions mentioned in the statute are not heard “outside the streamlined process that Congress has designed”).

Id., at 1258. The fact that “the relief sought in [a] case might have the practical effect of ‘moot[ing]’ the removal proceedings against [someone],” *id.*, at 1257 (second alteration in original) (citation omitted), is irrelevant. Under such circumstances, like those presented by the petitioner’s claim in Count I, § 1252(g) similarly has no role to play as well.

II. Sections 1252(b)(9) and (g) do not preclude habeas claims regarding the lawfulness of a person's detention.

The Court has jurisdiction over Counts II, III, and IV of the petition. District Courts retain jurisdiction under 28 U. S. C. § 2241 to review the lawfulness of immigration detention where one challenges the fact, duration, or constitutional validity of that detention. The Supreme Court has long held that noncitizens may seek habeas relief to challenge unlawful or prolonged detention, and that habeas jurisdiction survives unless Congress has clearly and expressly stripped it away. *Zadvydas v. Davis*, 533 U. S. 678, 687–88 (2001) (recognizing habeas jurisdiction over post-order detention); *Demore v. Kim*, 538 U. S. 510, 516–17 (2003) (affirming jurisdiction to review the legality of detention under § 1226(c)); *Jennings v. Rodriguez*, 583 U. S. 281, 290–91 (2018) (district courts retain § 2241 jurisdiction to adjudicate statutory and constitutional challenges to immigration detention); *Nielsen v. Preap*, 586 U. S. 392, 401–04 (2019) (same).

I. Section 1252(g) does not “cove[r] the universe of deportation claims.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 482 (1999). “In fact, what § 1252(g) says is much narrower.” *Id.* “The provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Id.* (emphasis in original). “There are of course many other decisions or actions that may be part of the deportation process” *Id.* “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.” *Id.*

As the Supreme Court, the Eleventh Circuit, and Courts in this District have continually held, § 1252(g) does not strip district courts of jurisdiction to consider habeas challenges over the “extent of the Attorney General’s [ICE’s] authority” to detain noncitizens. *Zadvydas v. Davis*, 533 U. S. 678, 688 (2001) (dismissing in a parenthetical any notion that § 1252(g) would bar

review of the government’s detention authority); *INS v. St. Cyr*, 533 U. S. 289, 311 n. 34 (2001) (dismissing in a footnote any notion that § 1252(g) would bar habeas review of unlawful detention); *Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U. S. 1, 19 (2020) (“That provision limits review of cases ‘arising from’ decisions ‘to commence proceedings, adjudicate cases, or execute removal orders.’ § 1252(g). We have previously rejected as ‘implausible’ the Government’s suggestion that § 1252(g) covers ‘all claims arising from deportation proceedings’ or imposes ‘a general jurisdictional limitation.’ . . . The rescission, which revokes a deferred action program with associated benefits, is not a decision to ‘commence proceedings,’ much less to ‘adjudicate’ a case or ‘execute’ a removal order.”); *Jennings v. Rodriguez*, 583 U. S. 281, 294 (2018) (“We did not interpret this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General.”) (discussing § 1252(g)); *Madu*, 470 F. 3d, at 1368 (“While this provision bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions. . . . Here, Madu does not challenge the INS’s exercise of discretion. Rather, he brings a constitutional challenge to his detention and impending removal. . . . Accordingly, section 1252(g) does not apply.”) (citations omitted); *Morales v. Noem*, — F. Supp. 3d —, No. 25-62598-CIV-SINGHAL, 2026 WL 236307, at *3 (S.D. Fla. Jan. 29, 2026) (discussing § 1252’s inapplicability to habeas detention challenges).

“When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Canal A Media*, 9664 F. 3d, at 1257–58. Here, the three habeas counts make three different types of claims. Count II seeks constitutionally adequate notice and meaningful opportunity to be heard on claims of fear of persecution or torture as to any country not of the

petitioner's nationality that the government intends to remove him to. (D.E. 1, pp. 14–18.) Counts III and IV allege that the petitioner's order of supervision under 8 U. S. C. § 1231(a)(3) and its implementing regulations was: (1) unlawfully revoked via failure to comply with applicable binding procedures and without the assistance of counsel (Count III (D.E. 1, pp. 18–20)); and (2) was unlawfully revoked on substantive grounds because the permissible bases for revocation did not, and still do not, exist (Count IV, D.E. 1, pp. 20–21)

Beginning with Counts III and IV. Courts in this Circuit have found jurisdiction to hear those types of claims. In *Grigorian v. Bondi*, Judge Ruiz began by stating foundational background principles governing habeas in immigration cases:

Immigration officials have “broad discretion” to enforce federal immigration law. *Arizona v. United States*, 567 U.S. 387, 396, 132 S.Ct. 2492, 183 L.Ed.2d 351 (2012). But discretion is not a license to cut corners. When effectuating immigration policy, immigration officials must comply with the requirements of applicable regulations, statutes, and the Constitution. Because they failed to do so here, Petitioner demonstrates entitlement to a writ of habeas corpus.

No. 25-CV-22914-RAR, 2025 WL 2604573, at *1 (S.D. Fla. Sept. 9, 2025). Finding that § 1252(g) is inapplicable, Judge Ruiz explained:

Grigorian does not challenge the decision to execute his removal, the decision to detain him, the methods by which he was detained, or the Government's authority to deport or detain him. Rather, the “basis of the claim” is that ICE did not “comply with the statutory requirements required to revoke an OSUP outlined in 8 C.F.R. § 241.4(l)(2).” Pet. ¶ 5. And Grigorian maintains that he “is not challenging the validity of the final order of removal, but rather the legality of detention.” [ECF No. 8] at 5. Accordingly, the Petition does not challenge any *decision* or *action* to detain Grigorian in furtherance of the execution of his Removal Order— instead, it constitutes a challenge to the “underlying legal bases” of those decisions or actions. *Madu*, 470 F.3d at 1368 (citations omitted). Reading § 1252(g) as foreclosing judicial review of such claims risks running afoul of the Supreme Court's admonition that § 1252(g) is not “a general jurisdictional limitation” on “all claims arising from deportation proceedings.” *AAADC*, 525 U.S. at 482, 487, 119 S.Ct. 936. And, as the Supreme Court has made clear, § 2241 “confers jurisdiction upon the federal courts to hear” challenges to the “lawfulness of immigration-related detention.” *Zadvydas*, 533 U.S. at 687, 121 S.Ct. 2491.

Id., at *4 (footnote omitted); see also Order, at *4 (D.E. 10), *Mora Arellano v. Ripa*, No. 26-20044-CIV-ALTONAGA (S.D. Fla. Jan. 23, 2026) (“The Court’s jurisdiction extends to challenges involving immigration-related detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).”); *id.*, at *6–*12 (reviewing and granting immediate release as to a claim of revocation of release in violation of procedural due process).

In a case out of the Middle District of Florida, Judge Polster Chappell found jurisdiction, notwithstanding both §§ 1252(g) & (b)(9), to review an order of supervision revocation just like Judge Ruiz did:

Perez 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, Perez challenges the legality of his detention based on the process used to revoke his release, and he alleges the respondents lack legal authority to detain him at Alligator Alcatraz. Judgement in Perez’s favor will not impair the government’s ability to execute the removal order. The INA does not strip the Court of jurisdiction over this action.

Perez v. Warden, No. 2:26-CV-0009-SPC-DNF, 2026 WL 131650, at *2 (M.D. Fla. Jan. 19, 2026).

In another Middle District case, the Court found jurisdiction, again, notwithstanding both §§ 1252(g) & (b)(9), over both a procedural and a substantive challenge to the revocation of an order of supervision:

Beltran 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, Beltran challenges the legality of his detention under a framework devised by the Supreme Court. A decision in Beltran’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.

Beltran v. Ripa, No. 2:25-CV-01174-SPC-NPM, 2026 WL 21252, at *2 (M.D. Fla. Jan. 5, 2026).

And in a third Middle District case involving a challenge to the revocation of an order of supervision, Judge Steele found jurisdiction notwithstanding § 1252(g):

Here, Petitioner maintains that he “is not challenging the validity of the final order of removal, but rather the legality of detention in violation of federal regulations and the due process under the Fifth Amendment.” *Id.* at 6. The basis of the claim is that Petitioner was detained at an ICE check-in “without prior notice, without identifying any parole or supervision violation, and without providing an opportunity to contest the revocation[.]” (*Id.* at 30). He argues that “[t]he regulations governing the custody and review of Mariel Cubans, 8 C.F.R. § 212.12, and the general OSUP revocation procedures, 8 C.F.R. §§ 241.4(l), 241.13, create enforceable rules that Respondents must follow before re-initiating detention, or attempting removal. Respondents have ignored these rules entirely.” (*Id.* at 31).

The Court agrees that the petition does not appear to challenge any decision or action to detain Petitioner in furtherance of the execution of his removal—only the process afforded Petitioner pursuant to that detention. As such, § 1252(g) does not bar review of this case to the extent Petitioner seeks only “substantive review of the underlying legal bases” for his detention. *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) (citations omitted). See also *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (finding that § 1252(g) does not bar “judicial consideration of collateral challenges to the legality of a petitioner’s detention”); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (finding that § 1252(g) did not bar review of a claim related to detention where the petitioner “did not ask the district court to block a decision ‘to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter’ ”).

Banega v. Warden of Soft Side S. Facility, No. 2:25-CV-1152-JES-DNF, 2026 WL 234042, at *2 (M.D. Fla. Jan. 29, 2026).

As to Count II, Judge Williams considered the merits of not only procedural and substantive claims regarding the revocation of an order of supervision, but also a claim relating to protection against removal to third countries without the opportunity pursue claims of future persecution or torture. See also Order, at *5–*12 (D.E. 26), *Losada Diaz v. Parra*, No. 25-22624-WILLIAMS (S.D. Fla. Jan. 25, 2025) (deciding merits of unlawful revocation of supervision claim). As Judge Williams noted, “The Court has jurisdiction to adjudicate ‘statutory and constitutional challenges to post-removal-period detention.’ ” *Id.*, at *5 (quoting *Zadvydas*, 533 U. S., at 688). Additionally, Judge Dimitrouleas granted habeas in a case where a petitioner filed a petition to “‘challenge her unlawful re-detention by Respondent and to prevent her imminent

and unlawful deportation to Haiti or any third country where she will likely be harmed or likely returned to Haiti.’ ” Order Granting Petition for Writ of Habeas Corpus, at *4 (D.E. 28), *Pierre v. Field Off. Dir.*, No. 25-62475-CIV-DIMITROULEAS (S.D. Fla. Jan. 29, 2026) (citation omitted). As Judge Dimitrouleas noted, “a district court’s habeas jurisdiction includes challenges to immigration-related detention.” *Id.*, at *6 (citing *Zadvydas*, 533 U. S. 678; *Demore*, 538 U. S., at 517).

Courts in other Circuits have found jurisdiction to rule on challenges to third country removal without constitutionally adequate notice and meaningful opportunity to be heard on claims of fear of persecution or torture. Two cases (out of the many out there) are illustrative.

In one case, a petitioner from was previously “granted . . . withholding of removal in 2019 based on a finding that he was likely to be persecuted or tortured in Honduras,” but was later detained upon a “government . . . propos[al] to remove him to Mexico,” after failure to remove him to “El Salvador.” *Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2841488, at *1 (D. Md. Oct. 7, 2025). There, the Court granted the petitioner “a preliminary injunction to stay his removal pending review by an immigration judge of the asylum officer’s negative reasonable fear determination,” after finding “a strong likelihood of success on his claim that removing Petitioner to Mexico without an immigration judge reviewing his claim would be unconstitutional.”

Id. Regarding § 1252(g), the Court ruled:

[A]lthough “§ 1252(g) precludes review of the execution of removal orders, it does not bar ‘consideration of purely legal questions that do not challenge the Attorney General’s discretionary authority.’ ” *Ortiz v. Mayorkas*, No. 22-cv-0647-SAG, 2023 WL 2931851, at *3 (D. Md. Apr. 13, 2023) (quoting *Wanrong Lin v. Nielsen*, 377 F. Supp. 3d 556, 563 (D. Md. 2019)), *aff’d sub nom. Ortiz v. Noem*, No. 23-1468, 2025 WL 1392162 (4th Cir. May 14, 2025); *see also Ibarra-Perez v. United States*, — F.4th. —, —, No. 24-631, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (holding that § 1252(g) does not apply to claims that raise “a ‘purely legal question’ that ‘does not challenge the Attorney General’s discretionary authority.’ ”) (quoting *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir.

2004)). The issue presented here—whether due process requires an immigration judge to review a negative reasonable fear determination made outside the context of expedited removal proceedings—is a purely legal question; petitioner does not challenge an exercise of discretion by the government. Thus, Section 1252(g) does not prevent this Court from adjudicating Petitioner’s claim.

Id., at *2.

In another case out of Texas, the Court “ORDER[ED] that Respondents and all of their officers, agents, servants, employees, attorneys, successors, assigns, and persons acting in concert or participation with them are hereby ENJOINED from removing Petitioner from the continental United States until seven (7) days after an Immigration Judge reviews Petitioner’s denied Reasonable Fear Interview, and only if the Immigration Judge affirms such denial.” *Sagastizado v. Noem*, 802 F. Supp. 3d 992, 1016 (S.D. Tex. 2025). Regarding § 1252(g), the Court explained at length:

First, the Court is not persuaded that § 1252(g) restricts review of Sagastizado’s request for a preliminary injunction. The Fifth Circuit “has long recognized that [§ 1252(g)] is designed to protect the discretionary decisions of immigration authorities in matters related to removal and deportation.” *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (citing *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)). The distinction between claims that are linked to a removal order and those that are not depends on the relief that a petitioner seeks. See *Duarte*, 27 F.4th at 1055.

Sagastizado does not ask the Court to review the Executive Branch’s decision to remove him. Instead, he challenges the post-removal process he has been afforded. Sagastizado received a final order of removal on February 22, 2024. (Dkt. 1, Attach. 1.) The Government made decisions to commence those proceedings against him, to adjudicate the case, and most recently, to execute his removal order after terminating his order of supervision. (*See id.*; Dkt. 7, Attachs. 5, 6.) Sagastizado challenges none of those decisions, which the Court would be precluded from reviewing under § 1252(g). Instead, Sagastizado seeks narrow relief and challenges the process he has been afforded after the Government made those decisions to remove him.

This is not a challenge to the Government’s discretionary choice of “whether and when” to remove him. See *Duarte*, 27 F.4th at 1055. Essentially, Sagastizado “do[es] not seek review of a decision that could invalidate [his] removal order[.]” See *id.* So § 1252(g) cannot bar the Court’s review.

Id., at 1005. For the foregoing reasons, § 1252(g) is not an impediment to this Court’s jurisdiction over any of the petitioner’s habeas claims.

2. As for § 1252(b)(9), the petitioner is not seeking review of an order of removal, and thus that channeling provision is inapplicable. It is “clear that subsection (b)(9) applies only ‘[w]ith respect to review of an order of removal.’” *Madu*, 470 F.3d, at 1367 (alteration in original) (citations omitted). None of the petitioner’s habeas claims “aris[e] from any action taken or proceeding brought to remove an alien from the United States.” § 1252(b)(9). “Because section 1252(b)(9) applies only ‘[w]ith respect to review of an order of removal,’ and this case does not involve review of an order of removal,” the result is “that section 1252(b)(9) does not apply to this case.” *Id.* (alteration in original); see also *Canal A. Media*, 964 F.3d, at 1257 (“As the Supreme Court recently explained, the zipper clause ‘does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.’”) (citation omitted).

The petitioner is not challenging any action or decision involving the “review of an order of removal.” *Madu*, 470 F.3d, at 1367. In *Jennings*, while finding that § 1252(b)(9) did not bar petitioner’s habeas claims, the Court held that the “arising from” language in that section should not be read in an “extreme way.” 138 S. Ct., 839-41, 840. Without “attempt[ing] to provide a comprehensive interpretation,” the Court found it “enough to note that [the claimants] are not asking for review of an order of removal; they are not challenging the **decision** to detain them **in the first place or to seek removal**; and they are not even challenging any part of the **process by which their removability will be determined.**” *Id.*, at 841 (emphasis added); see also *Nielsen v. Preap*, 586 U. S. 392, 402 (2019).

Regarding Counts III and IV which challenge the revocation of the petitioner’s supervision

on procedural and substantive grounds, as noted above, Judge Polster Chappell found jurisdiction, notwithstanding both §§ 1252(g) & (b)(9), to review an order of supervision revocation:

Perez 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, Perez challenges the legality of his detention based on the process used to revoke his release, and he alleges the respondents lack legal authority to detain him at Alligator Alcatraz. Judgement in Perez's favor will not impair the government's ability to execute the removal order. The INA does not strip the Court of jurisdiction over this action.

Perez, 2026 WL 131650, at *2. The same occurred in another case which found jurisdiction, again, notwithstanding both §§ 1252(g) & (b)(9), over both a procedural and a substantive challenge to the revocation of an order of supervision:

Beltran 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, Beltran challenges the legality of his detention under a framework devised by the Supreme Court. A decision in Beltran'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.

Beltran, 2026 WL 21252, at *2.

As to Count II, Courts have found that § 1252(b)(9) is not an impediment to District Court review of procedural claims relating fear of persecution and torture in third countries not of a petitioner's nationality:

But Petitioner's current claim arose long after entry of his final removal order and completion of his removal proceedings; he is not seeking judicial review of an issue arising from an "action taken or proceeding brought to remove" him. *See Ibarra-Perez*, — F.4th at —, 2025 WL 2461663, at *9 (explaining that instead of challenging his removal, "Ibarra-Perez challenges ICE's separate and post-hearing decision to remove him to Mexico," which he "could not have contested . . . through the normal petition-for-review process because it was made after his removal proceedings had ended"; "[t]o state the obvious, Ibarra-Perez could not seek review of a decision that had not been made."). Moreover, § 1252(b)(9), which is sometimes called the "zipper clause," *see Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 230, 140 S.Ct. 1062, 206 L.Ed.2d 271 (2020), is entitled "Consolidation of questions for judicial review." Its clear purpose is to prevent piecemeal appeal of removal issues. But as in *Ibarra-Perez*, at the time of Mr. Cruz Medina's removal

proceedings, he could not possibly have appealed a *future* determination by the government that he was removable to Mexico. Concluding that Section 1252(b)(9) applies to Petitioner's current claim would lead to an absurd result that could not feasibly have been contemplated by Congress.

Cruz Medina, 2025 WL 2841488, at *3. And a District Court in Texas ruled likewise with regard to § 1252(b)(9):

Other § 1252 subsections also fail to strip the Court of jurisdiction. Sections 1252(a)(5) and (b)(9) cabin review of final orders of removal in the courts of appeal. 8 U.S.C. § 1252(a)(5), (b)(9). Sagastizado argues that because he challenges a process occurring *after* his removal proceedings ended, neither section applies. See *Riley v. Bondi*, — U.S. —, 145 S.Ct. 2190, 2199, 222 L.Ed.2d 497 (2025) (distinguishing between the finality of a removal order and subsequent withholding proceedings). Indeed, the Supreme Court has indicated that where a Petitioner is not “asking for review of an order of removal” “challenging the decision to detain them in the first place or seek removal” or “challenging any part of the process by which their removability will be determined,” § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402, 139 S.Ct. 954, 203 L.Ed.2d 333 (2019); see also *Duarte*, 27 F.4th at 1056–57; see also *Texas v. United States*, 809 F.3d 134, 163 (5th Cir. 2015). The Court applies the same reasoning here in finding that § 1252 does not bar jurisdiction.

Sagastizado, 802 F. Supp. 3d, at 1005–06.

For the foregoing reasons, § 1252(b)(9) is not an impediment to this Court's jurisdiction over any of the petitioner's habeas claims.

Conclusion

The Court has subject matter jurisdiction over every one of the petitioner's claims.

Dated: February 18, 2026

Respectfully submitted,

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