UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ALEJANDRO OSVALDO
GHYSELS REALES,

Plaintiff,

v. Case No. 2:26-cv-425-KCD-NPM

DIRECTOR OF ENFORCEMENT
AND REMOVAL OPERATIONS,
MIAMI FIELD OFFICE,
SECRETARY U.S. DEPARTMENT
OF HOMELAND SECURITY,
U.S. ATTORNEY GENERAL,
DEPARTMENT OF JUSTICE,
DIRECTOR IMMIGRATION AND
CUSTOMS ENFORCEMENT,
WARDEN, FLORIDA SOFT SIDE
SOUTH DETENTION CENTER,

Defendant.
_________________________________/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Alejandro Osvaldo Ghysels Reales filed this Petition for writ of habeas corpus challenging U.S. Customs and Immigration Enforcement's revocation of his order of supervision and his resulting detention.

The Petition should be denied. The Court lacks jurisdiction over the petition, as Petitioner's claims fall within the Immigration and Nationality Act's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). Furthermore, Petitioner has been detained for 38 days following revocation of his supervised release on February 2, 2026. 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). Moreover, regulations provide that ICE may revoke an alien's order of supervision at its discretion; thus, an alien need not have violated terms of supervision to trigger revocation. *See* 8 C.F.R. § 241.4(l)(2)(iii). Petitioner's detention is therefore lawful.

FACTS

Petitioner is a native and citizen of Argentina. *See* Dkt. 1 at ¶18. ICE advises he was admitted to the United States on or about October 3, 2000 on a B-2 (tourist) visa and authorized to remain for six months but did not depart.[1] *See also* Dkt. 1 at ¶19 (alleging admitted on a visitor visa).

On or about March 3, 2010, an Immigration Judge entered a final order of removal against Petitioner. *See* Ex. A at 2; *see also* Dkt. 1 at ¶19. He was released on an order of supervision on or about October 12, 2010. *See* Dkt. 1 at ¶20.

On February 2, 2026, ICE: detained Petitioner, *see* Ex. A; served him with a Notice of Revocation of Release, *see* Ex. B. at 1-2; and attempted to interview him.

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[1] Through ICE, the undersigned has requested and is presently awaiting supporting documents. However, given the March 13th response deadline set by the Court, it was necessary to file this response before receiving any such supporting documents. If such documents are received before the Court rules on this Petition, the undersigned will seek such leave as may then be required to file same.

See id. at 3. Petitioner is currently held at the Florida Soft-Sided Facility[2] and, as of the date of this Response (March 12, 2026), has been in ICE custody for 38 days. ICE is detaining Petitioner under INA § 241, 8 U.S.C. § 1231.

ARGUMENT

I. This Court lacks jurisdiction over Petitioner'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

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[2] *See* Dkt. 1 at ¶28 (alleging Petitioner does not appear in the ICE Detainee Locator). The undersigned counsel has likewise been unable to locate Petitioner on that Locator, has inquired of ICE counsel regarding same, and will update the Court as appropriate and as permitted.

In the interim, in preparation for filing this Response, and to ensure for example, Petitioner had not been released or moved to another facility, the undersigned conferred with Counsel for Petitioner. Counsel graciously confirmed that Petitioner is still detained at Florida Soft Side South facility, as relayed by Petitioner's family who spoke with him by phone there as recently as last night.

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).[3] 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 the agency should have used a different statutory procedure to initiate the removal process.").

Petitioner 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). *But see Lageyre -Ravelo v. Acting Dir.*, Case No. 2:25-cv-1171-KCD-DNF, at **4-5 (M.D. Fla. March 2, 2026) (holding § 1252(g) does not preclude jurisdiction) (copy attached as Ex. C).

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[3] *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 General*, 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. 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, Petitioner 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). *But see Lageyre -Ravelo*, at *7 (holding petitioner was not challenging removal order and thus that §1252(b)(9) does not preclude jurisdiction) (copy attached as Ex. C.)

II. Petitioner's detention does not violate the Immigration and Nationality Act or the Fifth Amendment's Due Process Clause.

Even if the Court were to conclude it has jurisdiction over Petitioner's petition, his claims lack merit. After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can 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).

While there is no statutory limit on how long ICE can detain an alien during the post-removal period, *see Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022), the U.S. Supreme Court has ruled that constitutional concerns only 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).

Petitioner filed the present petition before expiration of six months in detention. He was detained on February 2, 2026, and filed the present petition on February 18, 2026. (Dkt. 1.) At that point, Petitioner had been detained for 16 days; to date, he has been in detention for 38 days. While some nonbinding cases disagree, the presumptively reasonable period is not rebuttable before it expires.

Contrary to Petitioner's suggestion, *see* Dkt. 1 at ¶66 (alleging Respondents have not met their burden of showing a significant likelihood Petitioner may be removed in the reasonably foreseeable future), 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. Requiring ICE to respond during the presumptively reasonable timeframe would impose unnecessary burdens on ICE during a lawful detention. *See Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025) ("[I]f the Court counted detentions in the aggregate, any subsequent period of detention, even one day, would raise constitutional concerns."); *Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018) (stating the court "does not read *Zadvydas* to be a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past.").

III. ICE has served Petitioner with a Notice of Revocation.

Contrary to Petitioner's suggestion, *see* Dkt. 1 at ¶29 (alleging Petitioner was not served with a notice of revocation "prior to or following" his detention), on the date of his detention (February 2, 2026), ICE provided Petitioner a notice of revocation of release informing him ICE had exercised its discretion to revoke his OSUP him and remove him. *See* Ex. B at 1.

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

ICE has revoked Petitioner's Order of Supervision (OSUP), as authorized by 8 C.F.R. § 241.4. *See* Ex. B at 1. Specifically, 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.

Id. § 241.4(l)(2).

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 Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025), those decisions ignore 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.

Petitioner's only possible challenge to the lawfulness of detention is based on ICE's technical compliance with § 241.4(l)(2)(iii). 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 Petitioner's supervised release. *See* Ex. B. Courts "will not further scrutinize ICE's discretionary decision" in that regard. *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).

V. Petitioner's Administrative Procedure Act claims are not properly before the Court.

Because habeas corpus actions and non-habeas corpus actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *Burnam v. Marberry*, 313 F. App'x 455, 456 n.2 (3d Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedures Act in a single case); *accord Malcom v. Starr*, No. 20-cv-2503 (MJD/LIB), 2021 U.S. Dist. LEXIS 45387, 2021 WL 931213, at *2 (D. Minn. Mar. 11, 2021) ("As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees.").

For example, Petitioner did not pay the required filing fee for any non-habeas claims. The statute governing filing fees in district court states, "The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5." 28 U.S.C. § 1914(a). "The payment of the $5 habeas filing fee relegates this action to habeas relief only. One cannot pay the minimal habeas fee and pursue non-habeas relief." *Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107, at *2 (W.D. Tex. June 18, 2020); *King v. Carlton*, No. 21-cv-21634, 2021 U.S. Dist. LEXIS 83778, at *4 (S.D. Fla. Apr. 30, 2021) (Bloom, J.) (finding that petitioner could not circumvent filing fee requirements by filing a "joint or hybrid" habeas action).

CONCLUSION

WHEREFORE, Petitioner's Petition for Writ of Habeas Corpus should be denied.

March 12, 2026

Respectfully submitted,

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CERTIFICATE OF FILING

I hereby certify that, on the date set forth above, I filed the foregoing documents and any exhibits referenced therein using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/ Charles T. Harden III
Charles T. Harden III
Assistant United States Attorney