

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

YOSVANY CABRERA PRIETO,

Petitioner,

v.

Case No. 2:26-cv-746-SPC-DNF

PAMELA BONDI et al.,¹

Respondents.

RESPONSE TO HABEAS PETITION

Petitioner Yosvany Cabrera Prieto challenges his detention by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”) as unreasonably prolonged because he has been detained since July 14, 2025, over 180 days. The Federal Respondents oppose.

Background

Cabrera Prieto is a citizen of Cuba. Ex. 1 at 17. He entered the United States not designated as a U.S. Port of Entry. *Id.* He was encountered by U.S. Border Patrol on or about March 11, 2007. *Id.* He was processed as a Notice to Appear. *Id.* He was issued a Final Order of Removal on August 8, 2013. *Id.* at 12-13. As DHS records

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. *See, e.g., Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE either to bring petitioner for a bond hearing or release by a specific date).

reflect, he “was encountered many times over the years” but could not be removed to Cuba. *Id.*

Petitioner has an extensive criminal history. *See* Ex. 1 at 26-36. In 2015, he was adjudicated guilty of Battery/Aggravated/Bodily Harm/Deadly Weapon. *Id.* at 33. Petitioner was issued a Final Order of Removal on August 8, 2013 after being convicted of crimes involved moral turpitude. *Id.* at 17. On September 24, 2025, Petitioner was encountered at the Turner Guilford Knight Correctional Center in Miami-Dade County after he arrest for possession of crystal meth. *Id.* at 17; 14-15. He has been detained since November 19, 2025. *Id.* at 2-3.

On January 20, 2026, Petitioner was served with a Notice of Removal to a third country (Mexico). Ex. 1 at 1. On February 16, 2026, Petitioner refused removal to Mexico. Ex. 2 at ¶ 8. ICE provides a sworn declaration from Deportation Office Francisco Fondeur, Jr., who declares that “[t]here are new plans being established for the removal of Petitioner” to Mexico. *Id.* at ¶¶ 9-13. “ICE determines that there is a significant likelihood of removal in the reasonably foreseeable future.” *Id.* at ¶ 14.

Petitioner is currently detained at Florida Soft-Sided Facility South. Ex. 1 at 25. At the time he filed his petition, Petitioner had been detained for 113 days. Adding Petitioner’s prior detentions, he has been in ICE custody for more than 180 days total. *Id.*

Certified Habeas Return

The Court has power to grants writs of habeas corpus where (among other

instances) petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Petitioner bears the burden to prove custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021). The period of Cabrera Prieto’s detention is outside the presumptively reasonable limits established in *Zadvydas*, so ICE must show that there is SLRRFF.

Cabrera Prieto was ordered removed by an Immigration Judge in 2013. Ex. 1 at 12-13. At that point, Cabrera Prieto was removable from the United States. The Attorney General (through her delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(1)(A), (a)(3). ICE is detaining Cabrera Prieto under 8 U.S.C. § 1231(a)(6) pending his removal. ICE declares that plans are being established for Petitioner’s removal, which is significantly likely in the reasonably foreseeable future. Ex. 2 at ¶¶ 9-14.

Discussion

A. Lack of Jurisdiction

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.* (citations omitted).

In the context of immigration habeas cases related to removal—like here—the INA divests this Court’s jurisdiction. 8 U.S.C. §§ 1252(b)(9), (g). As discussed, the Court lacks jurisdiction over Cabrera Prieto’s claims. Regardless of how he words the matter, Cabrera Prieto challenges detention to execute a final order of removal.

1. Jurisdiction Stripping Under § 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).² 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.”).

² 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).

ICE detained him to execute the final removal order. He is well within the presumptively reasonable period of detention (as detailed below). And ICE is in the process of executing removal. This action is an effort to interfere with or halt that legal process. The INA plainly strips the Court's jurisdiction in these instances. 8 U.S.C. § 1252(g).

The Court lacks jurisdiction for a separate reason.

2. *Jurisdiction Stripping Under § 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 obviously “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, the crux of this case challenges ICE’s execution of Cabrera Prieto’s final removal order to stop the removal process. These are the exact claims barred by the zipper clause. 8 U.S.C. § 1252(b)(9).

3. *Conclusion of Jurisdiction Stripping*

As discussed above, Cabrera Prieto’s claims fall squarely within the INA’s jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). The Court, therefore, lacks subject-matter jurisdiction and must dismiss.

B. **Constitutionally Lawful Detention**

1. *Relevant Case Law*

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).

There is no 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). Yet indefinite detention would present obvious constitutional concerns. *Id.* So the Supremes interpret this 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 v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (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 SLRRFF. *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*, 287 F.3d at 1051-52; *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).³ 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) (Steele, J.); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011) (Steele, J.).

³ Some districts disagree. *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Of course, *Akinwale* binds the Court. Even if it didn’t, *Cesar* and any progeny are wrong. *Zadvydas* recognized the presumptive six-month period for the specific “sake of uniform administration in the federal courts.” *Zadvydas*, 533 U.S. at 701. That was not an invitation to make up exceptions to this ripeness doctrine—like *Cesar* did.

2. *Analysis*

Respondents maintain that only the time of the current detention should be considered in the 180-day calculation, but respect the Court's prior ruling on that issue in other cases and the Court's position that all prior detentions should be considered. Based on this combined interpretation, Cabrera Prieto has been in ICE custody for more than 180 days combined.

The sworn declaration of Deportation Officer Francisco Fondeur, Jr. establishes that on February 16, 2026, Petitioner refused removal to Mexico. Ex. 2 at ¶ 8. There are new plans being established for the removal of Petitioner" to Mexico. *Id.* at ¶¶ 9-13. "ICE determines that there is a significant likelihood of removal in the reasonably foreseeable future." *Id.* at ¶ 14.

Conclusion

For those reasons, the Court should deny the Petition.

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Respectfully submitted,

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