

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JUAN A. CABRERA,
Petitioner,

v.

Case No. 2:26-cv-797-KCD-NPM

FLORIDA SOFT SIDE SOUTH,
Respondent.

Response to Habeas Petition

Petitioner Juan A. Cabrera filed this pro se habeas Petition, which argues that he is entitled to parole, that his detention violates the INA and the Due Process clause of the 5th Amendment to the U.S. Constitution, and that he should be released due to his health problems. *See generally* Dkt. 1. Although not expressly raised as such a claim, it is assumed Petitioner is challenging the revocation of his Order of Supervision (OSUP), particularly based on his ultimate prayer for relief. *See id.* at ECF pg. 7, ¶ 15 (seeking “reinstatement of . . . immigration parole”).

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 164 days following revocation of his supervised release on October 26, 2025. 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). Petitioner’s order of supervision was revoked

under 241.13(i)(2). Moreover, regulations provide that ICE may revoke an alien's order of supervision at its discretion; 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.

Background

Petitioner is a citizen of Cuba. *See* Ex. A; *see also* Dkt. 1 at ECF pg. 6, ¶ 13. He was admitted to the U.S. in December 1973 as a lawful permanent resident. *See* Ex. A. On or about July 10, 2014, Petitioner was convicted of State charges of lewd and lascivious molestation of a minor and familial/custodial sexual battery, for which he was sentenced to 10 years' imprisonment. *See* Ex. B. at 2-3. He was incarcerated in Florida State prison from July 29, 2014, until January 7, 2023. *See* Ex. C. Petitioner was expected to be – and, as far as the undersigned can presently determine, was transferred to ICE custody on his release from State prison. *See* Ex. D at 3. On January 26, 2023, an order of removal was entered against Petitioner, *see* Ex. E., which ICE advises has become final following Petitioner's waiver of appeal. Petitioner subsequently filed a Motion to Reopen his proceedings, but by Order of December 31, 2025, the Immigration Court denied that motion. *See* Ex. F. ICE advises Petitioner was released from custody on or about January 31, 2023, for lack of SLRRFF.

ICE again detained Petitioner on October 26, 2025, and he has been in detention since; thus, as of the date (April 8, 2026) of this Response, he has presently been in ICE custody for 164 days. Petitioner is currently detained at Florida Soft-

Sided Facility South. *See* Ex. G. On April 6, 2026, ICE served a Notice of Revocation of Release on Petitioner, *see* Ex. H at 1-2 (citing changed circumstances, as provided in 8 C.F.R. § 241.13(i)(2)), and afforded him an informal interview. *See id.* at 3.

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 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).¹ Likewise, § 1252(g)

¹ *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-

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 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).

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

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).

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 appears to challenge the government’s execution of his final removal order, in 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. F.)

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 October 26, 2025, and filed the present petition on March 16, 2026. (Dkt. 1.) At that point, Petitioner had been detained for 141 days; to date, he has been in detention for 164 days.

Contrary to Petitioner's suggestion, *see, e.g.*, Dkt. 1 at ¶ 13 (Grounds One and Two) (asserting he has been detained for five months and cannot be removed to Cuba because there is no repatriation agreement), Petitioner has not met his burden of establishing he cannot be removed in the reasonably foreseeable future. While some nonbinding cases disagree, the presumptively reasonable period is not rebuttable before it expires. 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.

On April 6, 2026, Petitioner was provided a notice of revocation of release informing him ICE had determined there is a significant likelihood of removal in reasonable foresee future. *See* Ex. H. The implicit contention that he has not been afforded adequate notice regarding the basis for his revocation of supervised release is therefore without merit.

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 and 8 C.F.R. § 241.13. *See* Ex. C.

A. Title 8 C.F.R. § 241.4

Title 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 *Cesay 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. H.* 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).

B. Title 8 C.F.R. § 241.13

Title 8 C.F.R. § 241.13(i)(2) provides,

The Service may revoke an alien’s release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. Thereafter, if the alien is not released from custody following the informal interview provided for in paragraph (h)(3) of this section, the provisions of § 241.4 shall govern the alien’s continued detention pending removal.

Here, agency records show that on April 6, 2026, Petitioner was provided a notice of revocation of release informing him ICE determined there is a significant likelihood of removal in reasonable foresee future. *See* Ex. H. Because revocation of Petitioner's supervision follows – or, at a minimum, substantially follows – the procedure set forth in § 241.13(i)(2), his detention is lawful.

Conclusion

WHEREFORE, the Federal Respondent asserts the Court should deny the Petition.

Respectfully submitted,

April 8, 2026

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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. I further certify I caused a copy of the foregoing documents and any exhibits referenced therein to be mailed to Petitioner via first class mail.

s/ Charles T. Harden III

Charles T. Harden III

Assistant United States Attorney