

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RAFAEL MOREJON CANIZARES,

Petitioner,

Case No. 2:26-cv-798-SPC-NPM

v.

SOUTH FLORIDA DETENTION
FACILITY,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Rafael Morejon Canizares (“Petitioner”) petitions for writ of habeas corpus arguing that U.S. Customs and Immigration Enforcement is unlawfully detaining him. Petitioner has a final order of removal and his petition should be denied as premature. As an initial matter, this Court lacks jurisdiction over the petition, as the claims fall within the Immigration and Nationality Act’s jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). Additionally, Petitioner is within the removal period in accordance with *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner has been detained for 111 days since immigration custody began on December 6, 2025. In *Zadvydas*, 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. at 701. Moreover, regulations provide that ICE may revoke an

alien's order of supervision at its discretion; thus, an alien does not need to violate the terms of supervision to trigger revocation. *See* 8 C.F.R. § 241.4(l)(2)(iii).

FACTS

Rafael Morejon Canizares is a national and citizen of Cuba who last entered the United States in 1980. (*See* Composite Ex. A at 1.) On or about April 25, 1983, Petitioner was convicted of sexual battery and on or about August 8, 2011, was convicted of arson, burglary/unoccupied dwelling, and a violation of domestic violence injunction. *Id.* at 2-3, 13-21. On or about September 23, 1991, an Immigration Judge ordered Petitioner removed. *Id.* at __. On or about January 15, 2010, Petitioner was placed under an Order of Supervision ("OSUP"). On December 6, 2025, Petitioner was placed in immigration custody. Doc. 1. On January 12, 2026, Petitioner was served with a Notice of Removal to Mexico. Composite Ex. At. at 8.

On March 17, 2026, Rafael Morejon Canizares filed a petition for writ of habeas corpus alleging his custody violates the Due Process Clause of the Fifth Amendment. (Doc. 1.) He is currently detained at Florida Soft Side South.

CERTIFIED HABEAS RETURN

ICE is detaining Rafael Morejon Canizares under the mandatory detention provisions of 8 U.S.C. § 1231(a). *See* 28 U.S.C. § 2243 ("The person to whom the writ or order is directed shall make a return certifying the true cause of the detention."). Rafael Morejon Canizares bears the burden to prove his custody violates federal law.

Whitfield v. U.S. Sec’y of State, 853 F. App’x 327, 329 (11th Cir. 2021).

ARGUMENT

I. This Court lacks jurisdiction over the 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-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).

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.”).

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).

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).

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). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the 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*, 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).

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.”).

Petitioner was ordered removed in 1991. Composite Ex. A at 4. He was issued a Notice of Removal to Mexico on January 12, 2026. *Id.* at 8. He was placed in immigration custody on December 6, 2025 and has been in custody 111 days. He filed the present petition only 10 days ago. At that point, Petitioner had been detained for 101 days. This is well within the timeframe contemplated under *Zadvydas* and Petitioner’s detention is lawful.

CONCLUSION

The Petition for Writ of Habeas Corpus should be denied.

DATED this 27th day of March, 2026.

Respectfully submitted,

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