

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MISAEEL YOVANNI GARCIA AVALOS,

Petitioner,

Case No. 2:26-cv-793-SPC-NPM

v.

WARDEN FLORIDA SOUTH SIDE
DETENTION CENTER, et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Misael Yovanni Garcia Avalos (“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 21 days since immigration custody began on March 9, 2026. 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

Misael Yovanni Garcia Avalos is a national and citizen of Mexico who applied for entry to the United States on February 17, 2022 at Miami International Airport. (*See* Doc. 1 at 3). He was processed for expedited removal and removed the following day. (*See* Composite Ex. 1 at 2.) Petitioner unlawfully reentered the United States at an unknown time and place. *Id.* On December 15, 2023, an Immigration Judge ordered Petitioner removed but granted withholding of removal to Mexico (Doc. 1-7; *See also* Composite Ex. 1 at 2, 7, 11.) Petitioner was the placed on an Order of Supervision ("OSUP"). (*See* Doc. 1 at 3).

On March 9, 2026, Petitioner's OSUP was revoked and he was placed in immigration custody. Composite Ex. 1 at 7-9, 11-12. Petitioner is currently in a third country removal posture. *Id.* at 8. ICE attempted an alien informal interview of Petitioner on March 9, 2026. *Id.* at 10.

On March 12, 2026, Misael Yovanni Garcia Avalos filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. (Doc. 1.) Petitioner is currently detained at Florida Soft Side South. *Id.*

CERTIFIED HABEAS RETURN

ICE is detaining Misael Yovanni Garcia Avalos 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.”). Misael Yovanni Garcia Avalos 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) 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).

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).

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 2019. Composite Ex. A at 11. He was issued a Notice of Removal to Mexico on January 12, 2026. *Id.* at 5. On March 2, 2026, he failed to comply with his removal to Mexico and was returned to Florida. *Id.* at 13-14. *See Vaz v. Skinner*, 634 F. App'x 778, 781–82 (11th Cir. 2015) (“The 90–day removal period may be extended and the alien may remain in detention, “if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.”) (*citing* 8 U.S.C. §1231(a)(1)(c)).

He was placed in immigration custody on March 9, 2026 and has been in custody 21 days. He filed the present petition only 18 days ago. At that point, Petitioner had been detained for 3 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 30th day of March, 2026.

Respectfully submitted,

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