

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ERICK BANOS CONTRERAS,

A. 

Petitioner,

Case No. 2:26-CV-01714-KCD-NPM

v.

WARDEN, SOUTH FLORIDA
DETENTION FACILITY, U.S.
ATTORNEY GENERAL,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Erick Banos Contreras (“Petitioner”) petitions for writ of habeas corpus arguing that U.S. Immigration and Customs Enforcement (“ICE”) 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 a final order of removal and has been detained for 93 days since immigration custody began on March 14, 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).

Notably, ICE has attempted to remove Petitioner to Mexico but he has not cooperated in these efforts. Until Petitioner complies with ICE's removal efforts or removal to Mexico is otherwise not available, he has no *Zadvydas* claim. 8 U.S.C. § 1231(a)(1)(C). (*See* Declaration of Mitchell Bacon, attached as Ex. B).

FACTS

Erick Banos Contreras is a national and citizen of Cuba who paroled into the United States on or about May 11, 1980. (*See* Composite Ex. A at 2.) On February 1, 1989, Petitioner adjusted his status to Lawful Permanent Resident ("LPR") (*Id.*) Petitioner was convicted of Witness Tampering and, on April 10, 2013, an Immigration Judge ordered him removed. (*Id.* at 2, 8-9.) Between 1995 and 2012, Petitioner was convicted of numerous felonies. (*Id.* at 3.)

He was taken into immigration custody on March 14, 2026 after a he was arrested for Operating a Chop Shop and Grand Theft. (*Id.* at 2; *see also* Ex. B, Declaration of Mitchell Bacon at ¶ 4.) On March 15, 2026, he was served a Notice of Revocation of Release. (*Id.* at 10-11.) On March 18, 2026, Petitioner was served a Warrant of Removal and Notice of Intent of Removal to Mexico. (*Id.* at 13-16.) On

April 10, 2026, Petitioner was taken by bus to Hidalgo, Texas port of entry for removal but he refused to exit the bus. (*See* Ex. B, Declaration of Mitchell Bacon at ¶¶ 8-9.)

On May 20, 2026, Erick Banos Contreras filed a petition for writ of habeas corpus. (Doc. 1.) He is currently detained at Florida Soft Side South. *Id.*

CERTIFIED HABEAS RETURN

ICE is detaining Erick Banos Contreras under the 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.”). Erick Banos Contreras 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

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).

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 has a final order of removal and has been detained for 93 days since immigration custody began on March 14, 2026. This is still within the timeframe contemplated under *Zadvydas* and Petitioner’s detention is lawful.

Attempted Removal To Mexico

Significantly, ICE attempted to remove Petitioner to Mexico, but he failed to comply with ICE’s removal efforts. (*See* Ex. B, Declaration of Mitchell Bacon at ¶¶ 8-9.) The removal period is extended if an alien refuses to provide documentation in good faith or acts to prevent removal. 8 U.S.C. § 1231(a)(1)(C). “*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal.” *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003). “The reason is self-evident: the detainee cannot convincingly argue that there is no [SLRRFF] if the detainee controls the clock.” *Id.* In sum, a *Zadvydas* claim fails if petitioner holds the “keys to his

freedom in his pocket and could likely effectuate his removal by providing the information requested by” ICE. *Id.* (cleaned up).

The Eleventh Circuit recognizes these commonsense principles. *Singh v. U.S. Att’y General*, 945 F.3d 1310, 1314 (11th Cir. 2019). Specifically, it reads the plain language of § 1231(a)(1)(C) for what it says—extending the detention period if the alien “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure.” *Id.* (citation omitted). Likewise, detention may continue where an alien “conspires or acts to prevent the alien’s removal.” *Id.* (quoting 8 U.S.C. § 1231(a)(1)(C)).

As other courts note, failure to comply with ICE’s lawful removal efforts will extend the detention period even without an end date in sight:

[Petitioner] was not removed at those times solely because of his own refusal to cooperate. The government, therefore, could continue to have an interest in detaining [petitioner] to effect his removal, and the detention remained authorized by § 1231(a)(6). That the detention did not have a certain end date does not change the analysis.

Diouf v. Mukasey, 542 F.3d 1222, 1233 (9th Cir. 2008) (internal citations omitted); *see also Souleymane v. ICE*, No. 1:26-cv-00425-TWP-TAB, 2026 WL 785596, at *5 (S.D. Ind. Mar. 20, 2026) (Petitioner “obstructed his removal one time, on May 12, 2025, when he refused to board a plane.”).

This rule even applies where—as here—petitioner refuses removal to a third country willing to accept the alien. *Laguardia v. ICE*, No. C26-4003-LTS-KEM, 2026

WL 440749, at *2 (N.D. Iowa Feb. 17, 2026) (applying when Cuba petitioner refused removal to Mexico); *Rivero v. FNU LNU*, No. 2:26-cv-00349-KG-KRS, 2026 WL 607416, at *1 (D.N.M. Mar. 4, 2026) (same). In fact, Judge Chappell just denied several habeas petitions on *Zadvydas* grounds for Cuban petitioners who refused to cooperate with removal to Mexico at the border. *Jose Duque v. DHS*, No. 2:26-cv-884-SPC-NPM, 2026 WL 943774, at *1 (M.D. Fla. Apr. 8, 2026); *Ramiro-Monteagudo v. DHS*, No. 2:26-cv-873-SPC-NPM, 2026 WL 937971, at *1 (M.D. Fla. Apr. 7, 2026); *Cabrera Prieto v. Bondi*, No. 2:26-cv-746-SPC-DNF, 2026 WL 872590, at *1 (M.D. Fla. Mar. 31, 2026); *Mayea v. ICE*, No. 2:26-cv-574-SPC-DNF, 2026 WL 770041, at *1-2 (M.D. Fla. Mar. 19, 2026). Until Petitioner complies with ICE's removal efforts or removal to Mexico is otherwise not available, he has no *Zadvydas* claim. 8 U.S.C. § 1231(a)(1)(C).

CONCLUSION

The Petition should be denied.

DATED this 15th day of June, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2026, a true and correct copy of the foregoing response was sent by United States Mail to the Petitioner at the facility address.

/s/ Sean P. Keefe
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