UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EDGAR EDUARDO REYES GONZALEZ,	)	
	)	Civil Action No. 1:26-cv-510
Petitioner-Plaintiff,	)	
	)	District Judge Susan J. Dlott
v.	)	
	)	Magistrate Judge Stephanie K. Bowman
	)	
KEVIN RAYCRAFT,	)	
Field Office Director for Enforcement and	)	
Removal Operations, United States	)	
Immigration and Customs Enforcement	)	
Department of Homeland Security, *et al.,*	)	
	)	
Respondents-Defendants.	)	

PETITIONER'S REPLY TO RESPONDENTS' RETURN OF WRIT

INTRODUCTION

The Respondents' Return of Writ relies on a legally unsustainable framework that treats Petitioner's reinstated removal order as "administratively final" even though execution of that order has been stayed by the Sixth Circuit Court of Appeals. Respondents' position further attempts to bypass the nationwide injunction issued in *Immigration Center for Women & Children v. Mullin*, No. 2:25-cv-09848, Order Granting Class Certification and Preliminary Injunction (C.D. Cal. May 20, 2026).

Petitioner does not seek review of the underlying removal order, but rather challenges the lawfulness of ongoing detention where the statutory authority to execute deportation has been suspended by federal courts in two distinct ways. Because Respondents have chosen to detain Petitioner in direct contravention of both a circuit court stay and a binding nationwide injunction, this Court possesses jurisdiction to address their overreach and grant the petition.

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ARGUMENT

I. THIS COURT HAS JURISDICTION

A. 8 U.S.C. § 1252 Does Not Strip this Court of Jurisdiction

Petitioner is not seeking review of the underlying expedited removal order in this venue. Instead, the immediate issue before this Court is the unlawfulness of his detention. The lawfulness of the reinstatement order is a distinct matter currently being contested in a separate proceeding before the Sixth Circuit Court of Appeals. *See* Exh. 1-2. Respondents argue that this Court does not have subject matter jurisdiction because 8 U.S.C. § 1252 precludes review. *See* ECF No. 10, PageID 51-55. The Supreme Court "narrow[ly] read[ ]" § 1252 and held that it does not encompass "all claims arising from deportation proceedings." *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025) (citing *Reno v. AmArab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999). Rather, it only blocks courts from having jurisdiction over claims arising from three "discrete actions," "to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Barrios*, 2025 WL 2280485 at *4. Accordingly, claims that do not seek "review of an order of removal, the decision to seek removal, or the process by which removability will be determined" are not barred by § 1252(g). *Elgharib v. Napolitano*, 600 F.3d 597, 605 (6th Cir. 2010); s*ee also Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018) (A "district court's jurisdiction over the detention-based claims is independent of its jurisdiction over the removal-based claims."); *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) ("The Government's argument that the Court is barred from adjudicating a challenge to detention as inherently implicating a challenge to removal is incorrect, and, if left unchecked,would lead to "absurd" results."); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 152 (W.D.N.Y. May 2, 2025) (The court observed that detention related to a final order of removal

"always is related to the execution of an immigration order, but courts routinely hear habeas petitions filed by individuals challenging detention during the removal process.") (citing *Jennings*, 583 U.S. 281, 292-95).

Petitioner solely requests this Court to hold that his ongoing detention is unlawful and violates his Fifth Amendment Due Process rights, given that his physical removal is barred by both a judicial stay and a nationwide injunction. "Such claims do not fall within the three enumerated categories set forth in § 1252(g)." *Hammouda v. Department of Homeland Security*, No. 4:2025- CV-02696, at *5-6 (N.D. Ohio Jan. 13, 2026) (Order denying motion on other grounds). Respondents' reliance on *Moreno-Martinez v. Barr* and *Sanchez-Gonzalez v. Garland* is flawed because both cases are confined to direct or collateral challenges against the removal order itself in the appellate court, specifically addressing the 30-day filing deadline and the prohibition on improper collateral attacks in separate proceedings. *See Moreno-Martinez v. Barr,* 932 F.3d 461 (6th Cir. 2019)*; Sanchez-Gonzalez v. Garland,* 4 F.4th 411 (6th Cir. 2021).

Petitioner has already followed the correct path; his Petition for Review is currently active and pending before the Sixth Circuit Court of Appeals, which issued a judicial stay of removal. *See* Exh. 1-2. In this habeas action, Petitioner is not seeking to vacate, set aside, or review the merits of the underlying removal order. Instead, he challenges the statutory authority of ICE to subject him to ongoing civil detention while his physical removal is legally blocked on two fronts. The jurisdictional bar against untimely collateral attacks on an order has no application here, and it does not strip a district court of its core 28 U.S.C. § 2241 habeas jurisdiction to review the legality of physical custody.

A. Petitioner's Claims are Not Barred by Sections 1252(a)(5) and (b)(9)

This Court retains jurisdiction over Petitioner's claims despite 8 U.S.C. § 1252(a)(5) and (b)(9). § 1252(a)(5) provides that "[n]otwithstanding any other provision of law (statutory or nonstatutory) . . . or any other habeas corpus provision . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal . . . ." As Respondents' reference, the Sixth Circuit has explained that district courts "are prohibited from reviewing and vacating a removal order." *Hamdi v. Napolitano*, 620 F.3d 615, 625 (6th Cir. 2010). Here, however, Petitioner is not challenging the merits of the removal order or requesting review of the reinstatement. While 8 U.S.C. § 1252(b)(9) provides that "[j]udicial review of all questions of law and fact . . . arising from any action taken or proceedings brought to remove a [non-citizen] from the United States under this subchapter shall be available only in judicial review of a final order," that consolidation provision does not encompass independent detention claims. Petitioner asserts that his continued detention is executed in direct violation of an active circuit stay and a binding nationwide injunction. Because this challenge targets the legality of his ongoing confinement rather than the validity of the removal order itself, it escapes the channelization of § 1252(b)(9). Therefore, this Court retains clear jurisdiction to review Petitioner's challenge to his unlawful custody. *See Mantena v. Johnson*, 809 F.3d 721, 728 (2d Cir. 2015) (noting that even when a statute strips jurisdiction over a substantive discretionary decision, it does not strip jurisdiction over foundational procedural or legal challenges).

II. PETITIONER'S DETENTION IS UNLAWFUL

A. Under 8 U.S.C. § 1231(a)(1)(B)(ii), the Active Sixth Circuit Stay Precludes the Commencement of the Removal Period

Respondents allege that Petitioner is lawfully detained under 8 U.S.C. § 1231(a)(5) pursuant to an administratively final reinstated removal order. ECF No. 10, PageID 50. However, regardless of the reinstatement label, the very legality of which is currently being litigated before the Sixth Circuit Court of Appeals, the plain language of 8 U.S.C. § 1231(a)(1)(B)(ii) controls. Under 8 U.S.C. § 1231(a)(1)(B)(ii), if a removal order is judicially reviewed and a court orders a stay of removal, the removal period does not begin until "the date of the court's final order." Because the Sixth Circuit Court of Appeals has issued an active stay of removal pending its review, the statutory removal period has not legally commenced. An administrative stay issued by a Circuit Court is an exercise of its inherent authority under the All Writs Act (28 U.S.C. § 1651(a)) to preserve its jurisdiction and maintain the status quo. For the purposes of § 1231(a)(1)(B)(ii), an administrative stay is a binding judicial order. Because the execution of the removal order is stayed by a court, Respondents cannot claim they are actively working to execute removal. Consequently, the Respondents entirely lack post-order statutory authority under 8 U.S.C. § 1231 to hold Petitioner, rendering his continued detention unlawful and necessitating his immediate release.

The issue before this Court is not the duration of the detention; the issue is the government's legal *authority* to detain. Respondents argue that Petitioner fails to state a claim upon which relief can be granted because his immigration detention has lasted "for less than one month," invoking the six-month presumptively reasonable detention period established in *Zadvydas v. Davis*, 533 U.S. 678 (2001). ECF No. 10, PageID 50. This argument fundamentally misapplies *Zadvydas* and confuses administrative delay with judicial bars. The six-month safe harbor articulated in *Zadvydas* applies strictly to scenarios where removal is legally permissible but practically delayed, such as when the government is waiting for travel documents or

logistical clearances. It does not grant Respondents a blank check to detain a noncitizen for at least six months when a federal court has stripped the government of the operational authority to remove them, or when a nationwide injunction has barred their removal. Detention under 8 U.S.C. § 1231 is justified entirely by the purpose of effectuating an imminent deportation. *See Zadvydas*, 533 U.S. at 697 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Because the administrative stay and the nationwide injunction in this case halts the removal, the statutory justification for detention evaporates. Petitioner's injury is immediate, the claim is ripe, and the Respondents cannot insulate an unconstitutional detention behind a mechanical count of days. Whether Petitioner has been in custody for ten days, twenty days, or six months is completely irrelevant to the constitutional injury occurring *every day* he remains behind bars since his physical removal became legally impossible.

B. The Nationwide Injunction in *Immigration Center for Women and Children v. Mullin* Imposes an Absolute Legal Barrier to Petitioner's Continued Detention and Removal

Respondents' Return of Writ attempts to evade the application of the nationwide preliminary injunction issued in *Immigration Center for Women and Children ("ICWC") v. Mullin.* In *ICWC*, the federal court certified three specific, distinct classes of non-citizen crime and trafficking survivors protected from enforcement action. The certified classes comprise three distinct, nationwide subclasses of immigrant crime survivors entitled to protection from civil enforcement action. *See* Exh. 5. First, Class I encompasses all individuals with a pending principal or derivative petition for U nonimmigrant status, T nonimmigrant status, or self-petition under the Violence Against Women Act, whom Immigration and Customs Enforcement ("ICE")

detains or seeks to detain. *See Immigration Center for Women & Children v. Mullin*, No. 2:25-cv-09848, Order Granting Class Certification and Preliminary Injunction (C.D. Cal. May 20, 2026). Second, Class II covers all individuals who have been granted deferred action by U.S. Citizenship and Immigration Services ("USCIS") based on a pending or approved U or T nonimmigrant status petition, and who were detained by ICE or removed from the United States without notice or a hearing. *Id.* Third, Class III protects all individuals with a pending U or T nonimmigrant status petition who requested stays of removal before ICE enforced removal orders. *Id.*

Petitioner squarely fits within the first certified class under *ICWC*. He is a survivor of human trafficking with an active, pending Form I-914, Application for T Nonimmigrant Status, who was arrested by ICE and against whom ICE is currently seeking continued detention. *See* Exh. 4. Because he meets the explicit criteria of Class I, the nationwide preliminary injunction operates as a bar to his ongoing confinement in addition to the stay from the Sixth Circuit Court of Appeals. Respondents counter in their Return that they are "in the process" of reviewing Petitioner's ongoing detention pursuant to ICE Directive 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021). ECF No. 10, Page ID 60. This is an impermissible stalling tactic.

As a threshold matter, Directive 11005.3 sets forth explicit, mandatory operational constraints rather than an open-ended schedule for discretionary detention. Specifically, Section 2.1 of Directive 11005.3 explicitly mandates that, "When a noncitizen has a pending or approved application or petition for a victim-based immigration benefit, absent exceptional circumstances, ICE will exercise discretion to defer decisions on civil immigration enforcement action against the applicant or petitioner... until USCIS makes a final determination for pending T visa

applications." Furthermore, Section 3.4 of the Directive defines "exceptional circumstances" strictly as narrow situations where a noncitizen poses an "articulable risk of death, violence, or physical harm" or a national security concern. Respondents have alleged no such exceptional circumstances here.

More fundamentally, Respondents cannot utilize a self-paced internal administrative review to undercut a nationwide injunction. The preliminary injunction issued in *ICWC* prohibits ICE from detaining members of the Pending Petition Class. ICE's open-ended inquiry into its own protocols does not suspend the operation of a nationwide injunction, nor does it buy Respondents the right to prolong an unlawful detention. Because Petitioner is a covered member of an *ICWC* class, his ongoing custody is legally indefensible and necessitates release.

C. Continued Physical Confinement Violates the Fifth Amendment Due Process Clause, the Administrative Procedure Act, and the Immigration and Nationality Act

Despite Respondents' assertions, Petitioner does indeed vigorously contest ICE's attempt to execute a summary reinstatement of an expedited removal order, and as Respondents are well aware, the legal merits of that underlying reinstatement action, including the fact that Petitioner properly addressed all historical inadmissibilities through valid applications and waivers submitted directly to USCIS, which the agency refused to adjudicate before summarily transferring him to ICE custody, are currently being actively litigated before the United States Court of Appeals for the Sixth Circuit. *See* Exh. 1-3. That issue is not before this District Court, as this petition soundly requests habeas relief in the form of immediate physical release.

Because the underlying removal action is blocked, continuing to hold Petitioner under a mandatory post-removal-order framework violates the Fifth Amendment, the Administrative Procedure Act ("APA"), and the core enforcement boundaries of the Immigration and Nationality

Act ("INA"). Respondents have completely disconnected civil detention from its sole permissible statutory purpose. By utilizing an active administrative stay of removal as an excuse to lock an individual in a cell indefinitely while a complex appeal makes its way through the circuit court docket, the government is transforming civil administrative detention into a punitive mechanism.

The reality is that deportation is highly unlikely to occur in the foreseeable future. Petitioner's pending Petition for Review and Emergency Motion for Stay before the Sixth Circuit are extensive, voluminous, and highly meritorious, supported by a dense evidentiary record detailing substantial legal errors by the agency. The Court of Appeals recognized the weight of these claims when it immediately issued an administrative stay to preserve the status quo. *See* Exh. 2. There is no definitive timeline for how long the formal adjudication of this appeal will take. Respondents are fully aware that they cannot lawfully deport Petitioner with such a stay in place, yet they intentionally choose to exhaust public enforcement resources to maintain his confinement. The lawfulness of short term detention in other distinct cases is entirely irrelevant here because those individuals did not possess an active, binding federal court stay alongside an independent, nationwide injunction protecting them as a certified class.

Respondents possess the authority to release Petitioner yet they flatly refuse to do so. This refusal is completely uncoupled from any traditional risk assessment. Petitioner has zero criminal history, no gang affiliations, is in excellent physical health, requires no medication, and has demonstrated consistent self-improvement by completing his GED and English language classes while remaining gainfully employed in construction. ECF No. 10, PageID 79-83. Respondents are also aware that Petitioner's spouse is in her final month of pregnancy and projected to give birth within weeks. ECF No. 1, Page ID 5. Rather than exercising routine

administrative discretion to allow for Petitioner's release, Respondents have chosen to maximize his time in custody out of sheer administrative obstinacy. Because ongoing physical confinement under these circumstances is inherently arbitrary, punitive, and unauthorized by statute, Petitioner's continued detention violates the law.

CONCLUSION

Wherefore, Petitioner respectfully requests that this Court assert its jurisdiction, grant the Petition for a Writ of Habeas Corpus, and order his immediate release from custody.

Respectfully Submitted,

s/ Maria A. Reyes, Esq.
Maria A. Reyes, Esq.
Attorney for Petitioner
6489 Colonial Orchard Ct.
Liberty Township, OH 45011
PH: 330-324-3033
mariaautumnreyes@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2026, I electronically filed the foregoing Petitioner's Reply to Respondents' Return of Writ through the CM/ECF system, which will automatically send a Notice of Electronic Filing and service to all counsel of record who are registered to receive electronic notices in this case.

s/ Maria A. Reyes, Esq.
Maria A. Reyes, Esq.
Attorney for Petitioner