UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PEYMAN HAGHNEJAD,

Petitioner,

v. Case No. 3:25-cv-01143-MMH-PBD

GARRETT J. RIPA, in his official capacity as Field Office Director, Miami Field Office; TODD LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security;

Respondents.
_______________________________________/

Response to Habeas Petition

Respondents respond to Petitioner's Petition for Writ of Habeas Corpus and Request for Emergency Injunctive Relief (Doc. 1). The Court should deny Petitioner's writ because the Court lacks jurisdiction. Separately, even if the Court did have jurisdiction, Petitioner's detention is lawful and his Writ is premature. Thus, it should be denied.

Background

Petitioner is a 55-year-old male, who is a national and citizen of Iran. In September 1999, Petitioner obtained a visitor visa, and entered the United States at or near Miami, Florida on November 10, 1999. The Petitioner was charged under INA §212(a)(6)(A)(i), and on February 2, 2000, he was served with a Notice to Appear and subsequently placed in removal proceedings. Ex. 5, Notice to Appear. On May 18, 2001, Petitioner applied for and was subsequently denied asylum, withholding of removal, and convention against torture and ordered removed to Iran. Ex. 4, IJ Removal Order. Petitioners appeal of the removal was dismissed by the Board of Immigration Appeals ("BIA") on May 6, 2002. Ex. 2, BIA Appeal. Subsequently, in 2009, Petitioner had adjudication withheld in the state of Florida for criminal battery. Ex. 1, 2009 Criminal Battery Documents.

On April 15, 2025, the petitioner filed a Motion to Reopen before the BIA. On February 25, 2025, Form I-130, Petition for Alien Relative, was approved by USCIS. Ex. 3, I-130 Approval. On June 23, 2025, the petitioner reported to the Miramar ERO office and was placed in custody without bond. As the date of the petition, September 24, 2025, Petitioner was detained for 93 days.

Legal Standard

Federal courts may grant writs of habeas corpus for a petitioner "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner 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); *Martin v. Beto*, 397 F.2d 741, 749 (5th Cir. 1968).

Discussion

As explained, the Court lacks jurisdiction. Even if it disagrees, however, Petitioner's claims fail on the merits because his detention is still lawful and the length of his detention is still presumptively reasonable under *Zadvyas*.

A. Habeas Return on Detention

As an initial matter, in a habeas case, the respondent "shall make a return certifying the true cause of the detention." *Id.* ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). Petitioner is free to contend his detention under § 1225 is unlawful or argue he should instead be detained under § 1226. However, § 1225(b)(2)—not § 1226—is the certified basis on which ICE is detaining Petitioner.

B. The Court lacks Jurisdiction over Petitioner's claim

1. Jurisdiction Stripping

Federal courts have limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution and statute." *Id.* (citations omitted).

In immigration habeas cases related to removal proceedings—as here—the Immigration and Nationality Act ("INA") divests this Court's jurisdiction to consider Petitioner's claims challenging his detention pending a removal determination. 8 U.S.C. § 1252(g). There is no jurisdiction to review "any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from "discrete acts of commencing proceedings, adjudicating cases, and executing removal orders." *Reno v. American-Arab Anti-*

Discrimination Committee, 525 U.S. 471, 483 (1999) (cleaned up). These activities "represent the initiation or prosecution of various stages in the deportation process" that Congress had "good reason" to withhold from judicial review. *Id.*

When construing § 1252(g), one must limit the application "to just those three specific actions" listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, "courts must focus on the action being challenged." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). At bottom, § 1252(g) bars review if the conduct "to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim." *Gupta*, 709 F.3d at 1065.

"Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings." *Id.*; *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("Because [the alien] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*."); *Johnson v. U.S. Attorney General*, 847 F. App'x 801, 802 (11th Cir. 2021). "By its plain terms, [§ 1252(g)] 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." *Alvarez*, 818 F.3d at 1203. So § 1252(g) strips the Court's jurisdiction over habeas petitions challenging detention pending removal proceedings.

ICE is detaining Petitioner "while awaiting a removal determination." *Gupta*, 709 F.3d at 1065. Under *Gupta*'s binding interpretation of § 1252(g), the Court does not have jurisdiction. *Id.* ICE decided to pursue removal proceedings against Petitioner. And Congress specifically stripped the Court's jurisdiction to review those discretionary decisions.

ICE recognizes the Court's previous ruling not to apply *Gupta* where petitioner's NTA was served after petitioner was detained. *Brito Matom v. ICE*, No. 2:25-cv-648-JES-NPM, 2025 WL 2577424, at *2 (M.D. Fla. Sept. 5, 2025). This case is different.

Petitioner received his NTA in 2000 (well before the current detention). Removal proceedings concluded in 2001. Petitioner then filed for Asylum, Withholding Removal, and Convention Against Torture that was denied on May 18, 2001. Petitioner appealed this denial to the Board of Immigration Appeals ("BIA") and it was denied on May 6, 2002, and a renewed order of removal was issued. Ex. 2, BIA Appeal Dismissal; Ex. 6, Removal Order May 2002. Now, removal proceedings that are formally underway, and ICE is actively pursuing Petitioner's removal.

As the Eleventh Circuit made clear, what matters is whether the challenged conduct arose from decisions or actions to commence removal proceedings. *Gupta*, 709 F.3d at 1065 ("Each of these claims, then, challenges the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts."). The Eleventh expressly reaffirmed this in several other decisions (both published and unpublished):

> Because [plaintiff] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*.

Alvarez, 818 F.3d at 1204; *see also Johnson*, 847 F. App'x at 802. The decisions and actions to detain Petitioner (under either § 1225 or § 1226) arise from the commencement of removal proceedings. The INA strips jurisdiction over that review. *Gupta*, 709 F.3d at 1065; 8 U.S.C. § 1252(g).

What's more, "the sole function of habeas corpus is to provide relief from Unlawful imprisonment or custody, and it cannot be used for any other purpose." *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979). So, the only relief a habeas petitioner may receive is release. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020). Put differently, this case is only about whether ICE can detain Petitioner pending removal proceedings. *Gupta* and its progeny hold the Court has no jurisdiction over such actions. The Court also lacks jurisdiction on separate grounds.

2. Zipper Clause

The INA precludes review of "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" except judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause" and applies where a petitioner seeks "review of an order of removal [or] the decision to seek removal." *Canal A*, 964 F.3d at 1257; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—which limits review—courts conclude petitioners must funnel all aspects of challenges to removal proceedings through the avenue set out in § 1252(a)(5). *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 restrictions are broad but not unlimited. *Canal A*, 964 F.3d at 1257. Still, a claim arising from actions or proceedings brought to remove an alien clearly falls within the clause. *See Regents of Cal.*, 591 U.S. at 19.

Here, Petitioner challenges ICE's detention determination. This was an action arising from ICE's choice to carry out proceedings to remove him from the United States. The zipper clause is in full force; judicial review by this Court is inappropriate and contrary to the INA. 8 U.S.C. § 1252(b)(9). As such, the Court lacks jurisdiction over this habeas action. However, even the Court disagrees, Petitioner's Writ should be denied because his detention is lawful.

C. Petitioner's continued detention is lawful because Petitioner has failed to demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future.

The relevant detention provision governing Petitioner's detention is § 241(a) of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1231(a), which covers detention following entry of a final removal order. This provision generally affords the Attorney General a ninety-day period to accomplish removal. *See* 8 U.S.C. § 1231(a)(1)(A) - (B).[1] The statute provides that, in certain circumstances, the Attorney General may continue to detain an alien after expiration of the ninety-day

1*See* § 241(a)(1)(A) of the INA.

removal period when:

> An alien ordered removed who is inadmissible under [Immigration and Nationality Act] section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6).[2] Petitioner's continued detention has a basis in law because he is removable as charged under the INA. Exhibit A at ¶ 5.

As explained above, under 8 U.S.C. § 1231(a)(1),[3] ICE has a 90-day "removal period" in which to remove an alien from the United States. In *Zadvydas,* the Supreme Court held that 8 U.S.C. § 1231(a) permits the government to detain an alien during the 90-day removal period in § 1231(a)(1) and for an additional 90 days in order to effect the alien's removal from the United States. *Zadvydas*, 533 U.S. at 701. *See Clark v. Martinez*, 543 U.S. 371, 125 S. Ct 716 (2005). Further, "six months is a presumptively reasonable period to detain a removable alien awaiting deportation under such circumstances." *Akinwale v. Ashcroft,* 287 F.3d 1050, 1052 (11th Cir. 2002) (citing *Zadvydas,* 533 U.S. at 701). Thus, under *Zadvydas* and *Clark,* the government has at least six months, the 90-day removal period plus an additional 90 days, to effectuate an alien's removal.

Although *Zadvydas* held that detention of six months is presumptively reasonable, the Supreme Court hastened to add that the six-month presumption did not mean that every alien not removed in this timeframe must be released after six months. *Zadvydas,* 533 U.S. at 701. The Supreme Court explained, "[t]o the contrary, an alien may be held in confinement until

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2*See* § 241(a)(6) of the INA.
3*See* § 241(a)(1) of the INA.

it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Further, the Eleventh Circuit concluded that "in order to state a claim under *Zadvydas* the alien must *not only* show post-removal order detention in excess of six months but also *must provide evidence* of a *good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future*." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (emphasis added). Therefore, the burden is on Petitioner to demonstrate: (1) post-removal order detention over six months; **and** (2) good reason to believe that there was no significant likelihood of removal in foreseeable future. *Id.*

Petitioner entered ICE's custody on June 23, 2025; thus the six-month/180-day timeframe as set forth in *Zavydas* and *Akinwale* does not expire until approximately December 20, 2025, which has not yet passed. Because the instant petition was filed after only 95 days, Petitioner has not met his burden of demonstrating post-removal order of over 180 days. Thus, Petitioner's petition must be denied because he has failed to rebut the presumptive reasonableness of the length of his detention.

D. Avoiding a transfer to another facility is not a cognizable claim for relief under 28 U.S.C. § 2241.

To the extent Petitioner seeks to enjoin Respondents from transferring him outside this district because it will impede his removal proceedings, such relief is not warranted. "Claims regarding prison transfers are generally not cognizable under § 2241." Rathod v. Barr, No. 1:20-CV-161-P, 2020 WL 1492790, at *2 (W.D. La. Mar. 5, 2020) (denying immigration detainee's request to enjoin ICE from transferring him to another facility), report and recommendation adopted, No. 1:20- CV-161-P, 2020 WL 1501891 (W.D. La.

Mar. 25, 2020); *citing Greenhill v. Menifee*, 202 F. App'x 799, 800 (5th Cir. 2006) (affirming denial of claim as not cognizable under § 2241 "because prisoners lack a constitutionally protected interest in where they are incarcerated"); *Zapata v. United States*, 264 F. App'x 242, 243-44 (3d Cir. 2008) (district court lacked jurisdiction over a § 2241 petition that challenged a transfer).

Further, the Attorney General is tasked with determining where aliens will be detained. See 8 U.S.C. §1231(g)(1) ("The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal."). Petitioner "does not have a right to be housed in any particular facility, nor does this court have the authority to order the ICE to house [him] in any particular facility." *Rathod*, 2020 WL 1492790, at *2; *see also Woldegiorgise v. ICE*, 1:12 CV-02778, 2013 WL 664160, at *2 (W.D. La. Jan.23, 2013) (denying request to enjoin ICE from transferring detainee because a detainee "does not have a right to be housed in any particular facility, nor does this court have the authority to order the ICE to house [the detainee] in any particular facility"), report and recommendation adopted, 2013 WL 672388 (W.D. La. Feb. 22, 2013); *Sasso v. Milhollan*, 735 F. Supp. 1045, 1047 (S.D. Fla. 1990) (denying motion for preliminary injunction to enjoin ICE from transferring the petitioner). Finally, there is no indication that Petitioner's transfer will hinder his removal proceedings or his ability to participate in his removal proceedings other than Petitioner's conclusory speculative statements.

Conclusion

For those reasons, the Court must deny the Petition and dismiss this action.

Date: December 2, 2025

Respectfully submitted,

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