

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Carlos Hidalgo,

Petitioner,

No. 2:25-cv-01214-SPC-NPM

v.

Garrett Ripa, in his official capacity as
Assistant Field Director, et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Carlos Hidalgo petitions for a writ of habeas corpus arguing U.S. Customs and Immigration Enforcement unlawfully revoked his order of supervision and failed to provide adequate notice of removal to a third country. He also alleges that he will be deprived of access to counsel should he be transferred to another facility. Hidalgo's petition should be denied.

This Court lacks jurisdiction over the petition, as Hidalgo's claims fall within the Immigration and Nationality Act's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). Furthermore, Hidalgo has been detained for 21 days following revocation of his supervised release on December 16, 2025. In *Zadvydas v. Davis*, 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. 678, 701 (2001).

Hidalgo's allegation he lacks adequate notice regarding third-country removal is unripe, as he does not claim he is scheduled for removal. Moreover, he appears to be a member of a class action making similar allegations. *D.V.D. v. D.H.S.*, No. 25-10676-BEM (D. Mass.). Finally, Hidalgo's contention he will be deprived of counsel if he is transferred to another facility is unripe and incognizable in a petition for writ of habeas corpus.

FACTS

Hidalgo is a native and citizen of Cuba who was paroled into the United States on May 1, 1979. (Composite Exhibit, Ex. A at 1.) He adjusted his status to a lawful permanent resident on September 18, 1996, retroactive to May 1, 1979. *Id.* at 3. On April 23, 1999, Hidalgo was sentenced to three years imprisonment following a conviction for conspiracy to possess cocaine with intent to distribute. *Id.* at 7.

He was served with a Notice to Appear on September 28, 2005, and was transferred to ICE custody on May 10, 2006. *Id.* at 3. He was ordered removed from the United States on March 23, 2006. *Id.* On June 23, 2006, he was released from ICE custody on an order of supervision. *Id.* at 3; Detention History, Ex. C.

On December 16, 2025, Hidalgo was served with a notice revoking his supervised release under 8 C.F.R. § 241.4(l)(2). (Composite Exhibit, Ex. A at 24.) The notice informs Hidalgo,

[T]his letter is to inform you that the Field Office Director (FOD) of the Enforcement Removal Operations (ERO) Miami Field Office has determined in his/her discretion that revocation of your release is in the public interest. Because circumstances do not reasonably permit referral of your case at this time to the Executive Associate Director or his delegate for revocation of your release, the FOD is exercising his/her discretion under 8 C.F.R. § 241.4(1)(2)(i)-(iv) to revoke your Order of Supervision dated 6/23/2006 because . . . [i]t is appropriate to enforce your removal order

That same day Hidalgo was provided an informal interview and opportunity to respond the reasons for revocation of his order of supervision. *Id.* at 26. He is currently detained at Florida Soft-Sided Facility-South (Alligator Alcatraz). (Detainee Locator, Ex. B.)

ARGUMENT

I. This Court lacks jurisdiction over Hidalgo's 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.”).

Hidalgo was detained to execute the final removal order against him. He is well within the presumptively reasonable period of detention. This action is an effort to interfere with or halt that legal process. The Immigration and Nationality Act strips the Court’s jurisdiction in these instances. 8 U.S.C. § 1252(g).

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 Bonhomie 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, Hidalgo 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. Hidalgo's detention does not violate the Fifth Amendment's Due Process Clause.

Even if the Court were to conclude it has jurisdiction over Hidalgo'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).

Hidalgo filed the present petition well before expiration of six months in detention. He was detained on December 16, 2025, and filed the present petition on December 26, 2025. (Doc. 1.) At that point, Hidalgo had been detained for 10 days; to date, he has been in detention for 21 days.

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; *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.”).

III. Hidalgo’s allegation he lacks adequate notice of removal to a third-country is unripe.

Hidalgo’s allegation he lacks adequate notice regarding third-country removal is unripe. Procedural due process demands (1) notice and (2) opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). But “[a] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998). The principle similarly applies to due process claims. *E.g.*, *Thorpe v. Hous. Authority of City of Durham*, 393 U.S. 268, 283-84 (1969). Here, Hidalgo makes no allegation he is scheduled for removal. And even if notice were required prior to removal to a third-country, there is no indication ICE would not provide it to Hidalgo.

IV. Hidalgo’s membership in a pending class action precludes relief.

Separate but related, Hidalgo appears to be a member of a class action pending

in Boston. *D.V.D. v. D.H.S.*, No. 25-10676-BEM (D. Mass.). *D.V.D.* is a case related to a nationwide injunction regarding notice before third-country removals. *D.V.D.*, 2025 WL 1142968 (Apr. 18, 2025) (certifying Rule 23(b)(2) class and enjoining). The injunction order required certain notice and opportunity to respond before ICE removed to a third country. *Id.* at *24. Yet the Supreme Court later stayed that injunction. *DHS v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025)

Class actions, of course, have specific rules related to class membership, along with when and how members can opt out. *See generally Juris v. Inamed Corp.*, 685 F.3d 1294, 1329-34 (11th Cir. 2012) (discussing 23(b)(2) classes); *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1152 (11th Cir. 1983). In fact, Rule 23(b)(2) class members have no right to opt out and prosecute an entirely separate case for injunctive or declaratory relief. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1554 (11th Cir. 1986); *see also Demler v. Inch*, No. 4:19cv94-RH-GRJ, 2020 WL 8182121, at *3-4 (N.D. Fla. Dec. 10, 2020). In short, any remedy that Hidalgo seeks related to due process requirements for third-country removal must be sought in *D.V.D.* The general class action rules would not permit him to pursue the same remedies outside that suit.

To the extent that Hidalgo seeks due process relief for third-country removal, the Court should dismiss without prejudice. *See Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979) (holding court may dismiss “those portions of [the] complaint which duplicate the [class action’s] allegations and prayer for relief”); *McNeil v. Guthrie*, 945

F.2d 1163, 1165-66 (10th Cir. 1991) (finding individual suits for injunctive relief inappropriate where same class action exists). Alternatively, it should stay that portion of the case pending a result in *D.V.D.* See *Munaf v. Green*, 553 U.S. 674, 693 (2008) (“We have therefore recognized that prudential concerns, such as comity and the orderly administration of criminal justice, may require a federal court to forgo the exercise of its habeas corpus power.” (cleaned up)); see also *Cicero v. Olgiati*, 410 F. Supp. 1080, 1099 (S.D.N.Y. 1976) (“Moreover, the very nature of the issue raised requires the consistency of treatment of the subject which Rule 23(b)(2) was intended to assure.”).

V. Hidalgo’s claim that he will not be able to access counsel is unripe and incognizable in a habeas petition.

In *Gomez v. United States*, the Eleventh Circuit stated that if conditions of confinement violate a prisoner’s constitutional rights, “[t]he appropriate Eleventh Circuit relief . . . is to require the discontinuance of any improper practices” *Gomez v. United States*, 899 F.2d 1124, 1126-27 (11th Cir. 1990). The Eleventh Circuit has further indicated that its holding from *Gomez* applies to civil detainees in ICE custody. See *Vaz*, 634 F. App’x at 781-82 (noting that a detained alien could not obtain release based on his conditions of confinement claim); see also *St. Louis v. Martin*, No. 220CV349FTM60NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020) (“[R]elease under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner’s confinement.”) Here, Hidalgo argues

relocation another facility would deny him access to counsel. (Petition, Doc. 1 ¶ 51.) Because Hidalgo's contention speculates about the future conditions of confinement, his claim is both unripe and incognizable in a petition for habeas relief.

CONCLUSION

Hidalgo's Petition for Writ of Habeas Corpus should be denied.

DATED this 6th day of January, 2025.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/Chad C. Spraker
CHAD C. SPRAKER
Assistant United States Attorney
USA No. 198
2110 First Street, Ste. 3-137
Fort Myers, Florida 33901
Telephone: 239-461-2200
Fax: 239-461-2219
Email: chad.spraker@usdoj.gov
Lead Counsel for Respondents