

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

SHAIR ALI, ET AL.,
Petitioners,

v.

WARDEN, ALLIGATOR ALCATRAZ,
Respondent.

Case No. 2:26-cv-44-KCD-DNF

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Shair Ali ("Petitioner"), through next friend Vanessa Ponce, seeks the grant of a petition for writ of habeas corpus, ECF No. 1 ("Petition"), pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody. Petitioner also brings challenges pursuant to the Fifth Amendment to the United States Constitution. His petition must be denied.

BACKGROUND

Petitioner is a citizen of Pakistan. *See* Form I-213, Record of Deportable/Inadmissible Alien ("Exhibit A") at 1; *see also* ICE Travel Document Submission ("Exhibit B") at 4, 6. Petitioner entered the United States in 1990. Petition, ¶ 1. Though he entered on a valid tourist visa, Petitioner stayed past the lawful period,

later applying for immigration relief in 1994. Exhibit A at 2. His application was referred to the immigration court where he had a second opportunity to pursue relief, however in 1996, an Immigration Judge denied the application but granted Petitioner voluntary departure. *See* Exhibit A at 2; Exhibit B at 3; *see also* Board of Immigration Appeals Order (“Exhibit C”) at 1. Petitioner appealed the 1996 order but the appeal was dismissed. Exhibit C at 3. Petitioner then sought to have his removal proceedings reopened. Exhibit A at 3. On January 8, 2009, the Board of Immigration Appeals dismissed the final appeal. *Id.* Petitioner’s removal order is now final.

On December 17, 2025, Petitioner was detained by ICE for the purpose of executing his longstanding removal order. Exhibit A at 2. On January 7, 2026, the instant suit commenced with the filing of a petition for writ of habeas corpus in the Southern District of Florida. *See* ECF No. 1. On January 9, 2026, having recognized that the petition was filed in the incorrect district, the Court in the Southern District transferred the case to the Middle District of Florida. ECF Nos. 3, 4, 5. Respondents have been directed to respond to the Petition by February 2, 2026. ECF No. 6. In response to this Court’s order, ECF Nos. 6, and for the reasons set forth below, Respondents respectfully request that this Court deny all relief.

LEGAL STANDARD

The Court has the power to grant a writ of habeas corpus where a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). “The burden rests on the person in custody to prove his detention is unlawful.” *Benito Vasquez v. Moniz*,

No. 25-11737-NMG, 2025 WL 1737216, at *1 (D. Mass. June 23, 2025).

ARGUMENT

I. This Court Lacks Jurisdiction

A. 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) (“*AADC*”) (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.*

This bar is subject to limitations and must be applied “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). Here, Petitioner is subject to a final order of removal that DHS intends to execute—see Exhibit A at 2; Exhibit B—and he challenges ICE’s detention for the purpose of reinstating that order. See Petition. This matter thus falls squarely within the specific actions *Jennings* contemplated, namely the discrete action of executing a removal order, and this Court lacks jurisdiction to hear Petitioner’s claims. See e.g., *Rivera-Amador v. Rhoden*, No. 3:25-CV-1460-WWB-SJH, 2025 WL

3687452, at *2 (M.D. Fla. Dec. 19, 2025); *see also Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025) (finding 8 U.S.C. § 1252(g) to bar habeas petitioner's claims that OSUP had been improperly revoked).

B. 8 U.S.C. § 1252(b)(9)

The Court also lacks jurisdiction on separate grounds. The INA precludes the Court's 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 when brought pursuant to 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; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—the subsection that provides the single, proper path for judicial review of removal orders—courts have concluded that petitioners must funnel all aspects of challenges to removal proceedings through the avenue set forth in Section 1252(a)(5), which takes place after a final order of removal has issued. *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's restrictions are broad, but not without limitation. *See, e.g., Canal A*, 964 F.3d at 1257. However, a claim that arises from actions or proceedings brought to remove an alien clearly falls within its

parameters. *See Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings).

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, Petitioner challenges the government’s decision to detain him. *See generally*, Petition. The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

II. Ms. Ponce Cannot Bring a Habeas Case on Mr. Ali’s Behalf

Federal Rule of Civil Procedure 17(c)(2) provides that “[a] minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem.” Here, Ms. Ponce fails to meet the requirements of Rule 17(c)(2), as Ali is not a minor nor is it alleged that he is incompetent. Because the Federal Rules of Civil Procedure do not authorize Ms. Ponce to bring this case on behalf of Ali, the petition must be dismissed. Even if Ms. Ponce were permitted to file a petition on behalf of Ali as a next friend, she cannot do so *pro se*. *See Marcia Turner v.*

Neptune Towing & Recovery, Inc., No. 8:09-CV-I071-T-27AEP, 2011 WL 2981786, at *2 (M.D. Fla. July 22, 2011) (“Under Rule 17(c), a representative does not have the right to appear on behalf of a minor or an incompetent person unless that representative is represented by counsel.”).

III. Ali’s Detention is Lawful

An alien with a final order of removal is subject to the detention and removal standards set forth at 8 U.S.C. § 1231. The statute directs that an alien ordered removed be removed within 90 days of his order becoming final and that he remain detained during that timeframe. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). Where the removal period elapses without the alien’s departure, the INA and regulations give DHS the authority to grant an order of supervision pending his removal. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5(a). An order of supervision however is not indefinite, rather the regulations permit the government to revoke the order for a variety of reasons. 8 C.F.R. § 241.4(l). Among the reasons for which supervision may be revoked are violation of the conditions of release—in which the alien must be notified of those reasons and given the opportunity to respond—and at DHS’s discretion when: “(i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(1)-(2).

In this case, Petitioner is subject to final order of removal. Petition at pp. 1; Exhibits A, B, C. While he was released on an order of supervision, that order

remained revocable and ICE's discretionary decision to resume custody for the purpose of seeking his removal was proper. Furthermore, the period for which Petitioner has remained detained is permissible.

As discussed *supra* the INA requires that an alien ordered removed be detained for the 90-day removal period after his order of removal becomes final. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). But even where removal is not effected on that schedule, the government is permitted to continue to detain an alien—or to detain him again in the future for the purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, 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.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (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 that considers 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*, 287 F.3d at 1051-52; *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).

Here, reading the removal period statute strictly, Petitioner's 90-day removal period pursuant to the reinstatement order elapsed on September 2, 2000.¹ *See* Exhibit C at 3; *see also* 8 C.F.R. § 1241.1(f) (converting a voluntary departure order to a final order of removal where the alien fails to depart). Respondents aver that Petitioner was detained in 2007 for the purpose of executing his order of removal however was unable to secure removal at that time.² Notwithstanding the passage of that period however, the government is permitted to detain Petitioner again. *See* 8 C.F.R. § 241.4(l)(2). And though ICE has previously attempted removal, it has not done so in nearly twenty years. *Petition*, ¶ 6.

Because an extended period of time has elapsed since ICE's last attempt at removal, and because circumstances have sufficiently changed, Respondents urge the Court to find that the presumptively reasonable detention period has not elapsed and Petitioner's habeas petition is premature. Petitioner has only been detained most recently for 47 days. *See* Exhibit A at 2 (reflecting assumption of custody on December 17, 2025). Thus, assuming that Petitioner remained detained for the full 90-day removal period, his cumulative period of detention does not exceed 180 days.³ Given the lack of clarity on the exact number of days in detention, however, Respondents aver that even under the burden-shifting framework in *Zadvydas* the government can

¹ Petitioner's removal order became final on June 4, 2000 as his May 5, 2000 Board of Immigration Appeals decision granted him 30-day voluntary departure. Exhibit C at 3. At the conclusion of that 30 days when Petitioner had not departed the United States, the voluntary departure order converted to a final order of removal.

² Undersigned counsel was provided this date but does not have a record to substantiate this date nor the cumulative period of detention.

show that there is a significant likelihood of removal in the reasonably foreseeable future here. *See* Exhibit B (ICE's recent submission to Pakistan requesting travel documents). As Exhibit B shows, ICE is now in possession of Petitioner's Pakistani birth certificate and has requested the issuance of a current Pakistani passport. Exhibit B at 6-9. A national identity card has been requested on his behalf. *Id.* at 11. And ICE has formally requested travel documents from the Consul General. *Id.* at 1. ICE Respondents thus aver that Petitioner's detention during the pendency of this process—where ICE seeks current and valid travel documents—is indeed reasonable.

IV. Ali's Medical Condition Does Not Give Rise to a Fifth Amendment Cause of Action and Release Would Not be an Appropriate Remedy

Petitioner next asserts that his ongoing detention violates the Fifth Amendment of the U.S. Constitution because ICE has failed to provide adequate medical supervision or to release him from confinement. Petition, pp. 5-6. As he puts it, ongoing detention amounts to punishment where a detainee with serious medical concerns is confined in conditions that may exacerbate his condition. Conceding that the facility indeed transferred him to a medical facility based on his need for care before ultimately resuming custody once his condition improved, Petitioner characterizes ICE's actions as a "failure to provide adequate cardiac monitoring" and maintains that his ongoing detention poses a continuing risk to his safety. *Id.* at 5.

The Fifth Amendment to the United States Constitution prohibits the deprivation of a person's liberty without due process of law—freedom from imprisonment is at the heart of the liberties the Fifth Amendment is designed to

protect. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Still, the Supreme Court has repeatedly recognized that detention during the pendency of deportation proceedings is a “constitutionally valid aspect of the deportation process.” *See Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Under the Fifth Amendment Due Process Clause, “a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). For conditions of confinement to constitute “punishment,” a petitioner must show either “an expressed intent to punish on the part of detention facility officials,” or an implied intent to punish through a condition or restriction that a “is not reasonably related to a legitimate goal—if it is arbitrary or purposeless[.]” *Id.* at 538-39. “Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to ‘punishment.’” *Id.* at 539.

Petitioner fails to show that his detention is not proportionately related to the government’s non-punitive responsibilities and administrative purposes. While civil detainees retain greater liberty protections than individuals convicted of crimes, *see, e.g., Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982), continued immigration detention pending a removal determination cannot be described as punitive or excessive in relation to the legitimate government purpose of protecting the public and ensuring attendance at removal proceedings. *See, e.g., Demore*, 538 U.S. at 523 (“[T]his Court has recognized detention during deportation proceedings as a

constitutionally valid aspect of the deportation process.”). “[I]t is a fallacy to think that Respondents do not have a legitimate government purpose in “preventing detained aliens from absconding and ensuring that they appear for removal.” *Matos v. Lopez Vega*, No. 20-CIV-60784-RAR, 2020 WL 2298775, at *10 (S.D. Fla. May 6, 2020). Petitioner’s ongoing medical condition—for which he concedes he has received care for—does not change this analysis or weaken Respondents’ legitimate interest in his detention during the pendency of removal proceedings.

Even were there a cognizable Fifth Amendment conditions-of-confinement claim, “release from imprisonment is not an available remedy for a conditions-of-confinement claim.” *Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015 (per curiam)). Indeed, 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, or to require correction of any condition causing cruel and unusual punishment.” *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). This district has further refused to permit any exception for civil detainees in ICE custody. As stated in *St. Louis v. Martin*, “[R]elease under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner’s confinement.” No. 220CV349FTM60NPM, 2020 WL 3490179, at *7 (M.D. Fla.

June 26, 2020). Because Eleventh Circuit precedent precludes the Court from ordering release from custody, the petition should be denied.

CONCLUSION

The court should deny this petition. This Court is barred from considering his claims under two separate provisions of the INA. Furthermore, Petitioner—detained for the purpose of executing a final order of removal—is being properly detained. All relief should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 2, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system. In addition, undersigned counsel will ensure that a copy of this document is sent via mail to the below-listed addresses:

Shair Ali

A# [REDACTED] 397 Florida Soft Side South (Alligator Alcatraz)



and

Vanessa Ponce



Dated: February 2, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney