

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HIFIS EDGARDO
CABALLERO-MURILLO,

Petitioner,

Case No. 2:26-cv-00045-KCD-DNF

v.

IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondents.

_____ /

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Hifis Edgardo Cabellero-Murillo petitions for writ of habeas corpus arguing that U.S. Customs and Immigration Enforcement unlawfully revoked his order of supervision. Caballero-Murillo's petition should be denied. As an initial matter, this Court lacks jurisdiction over the petition, as Caballero-Murillo's claims fall within the Immigration and Nationality Act's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9).

Furthermore, Caballero-Murillo has been detained for 36 days following his arrest on December 29, 2026. 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). Moreover, regulations provide that ICE may revoke an alien's order of supervision at its discretion; thus,

an alien does not need violate terms of supervision to trigger revocation as Caballero-Murillo suggests. *See* 8 C.F.R. § 241.4(l)(2)(iii). Caballero-Murillo's detention is therefore lawful.

FACTS

Caballero-Murillo is a 49-year-old citizen of Honduras entered the United States at an unknown place and time. (Composite Exhibit, Ex. 1 at 15.) On April 29, 2004, he was convicted of simple battery. *Id.* at 3. On April 10, 2012, he was convicted of driving while intoxicated. *Id.* On August 2, 2022, he was ordered removed to Honduras and contemporaneously received withholding of removal. *Id.* at 16. Caballero-Murillo was most recently detained on December 29, 2025. *Id.* at 16. ICE intends to remove him to South Sudan. *Id.* at 25.

ARGUMENT

I. This Court lacks jurisdiction over Caballero-Murillo'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.”).

Caballero-Murillo was detained to execute the final removal order against him.² He is well within the presumptively reasonable period of detention. This

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).

² Contrary to Caballero-Murillo’s suggestion, see Petition, Doc. ¶ 9, withholding of removal does not preclude removal to a third country. See *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *9 (S.D. Fla. Aug. 8, 2025) (“[I]f an alien is granted withholding-only relief, DHS may not remove the alien to the country designated in the

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 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

removal order. But because withholding of removal is a form of country specific relief nothing prevents DHS from removing the alien to a third country.”) (cleaned up).

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, Caballero-Murillo 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. Caballero-Murillo’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 Caballero-Murillo’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).

Caballero-Murillo filed the present petition well before expiration of six months in detention. He was detained on December 29, 2025, and filed the present petition on January 9, 2026. (Doc. 1.) At that point, Caballero-Murillo had only

been detained for 11 days; to date, he has been in detention for 36 days.

While some nonbinding cases disagree, *see Sardinas v. Noem*, 2:26-cv-00067-SPC-NPM, Doc. 9 at 5 (M.D. Fla. Jan. 29, 2026), 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 violate jurisdiction stripping and impose unnecessary burdens on ICE during a lawful detention.

III. ICE has broad authority to revoke order of supervised release.

For aliens released on supervision, authorities have broad powers to revoke their status. *Id.* § 241.4(l). Title 8 C.F.R. § 241.4(l)(2) provides,

Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

- (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.

Id. § 241.4(l)(2).

Section 241.4(l)(2) does not require notice, explanation, or an interview for the alien to respond. *Compare id.*, with *id.* § 241.4(l)(1); *Tanha v. Warden, Balt. Detention Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *6 n.10 (D. Md. July 22, 2025).

This “regulation permits the Government extraordinarily broad discretion to revoke an OSUP.” *Tran*, 2025 WL 2085020, at *4. In fact,

the regulation does not compel the Government to demonstrate what facts or factors, if any, it considered in deciding to revoke; nor does the regulation (or any other authority of which the court has been made aware) require the Government to demonstrate what, if any, steps it took to effect or secure removal prior to OSUP revocation.

Id.; see also *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *6 (S.D. Fla. July 8, 2025) (noting differences between both subsections).

While some courts disagree, see *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025), those decisions ignore the plain language of § 241.4(l)(2). Courts cannot find ICE violated its own regulations for failing to follow notice and hearing requirements that do not exist. The provisions exclude such demands from § 241.4(l)(2). “When a deliberative body includes particular language in one section of a [regulation] but omits it in another, it is generally presumed that it acts intentionally and purposely in the disparate inclusion or exclusion.” *SEC v. Levin*, 849 F.3d 995, 1004 (11th Cir. 2017) (cleaned up). The Court must read those regulations as they are

written without engrafting notice and hearing provisions where they were not otherwise provided.

Caballero-Murillo's only possible challenge to the lawfulness of detention is based on ICE's technical compliance with § 241.4(l)(2)(iii). But the provision permits revocation based on a discretionary "opinion" that "[i]t is appropriate to enforce a removal order or to commence removal proceedings." *Id.* Having detained Caballero-Murillo for removal, ICE necessarily made that determination. Courts "will not further scrutinize ICE's discretionary decision" in that regard. *Roe v. Oddo*, No. 3:25-CV-128, 2025 WL 1892445, at *8 (W.D. Pa. July 9, 2025); *Yi Mei Zhen v. ICE*, No. 3:25-cv-01507-PAB, 2025 WL 2258586, at *10 (N.D. Ohio Aug. 7, 2025).

ICE has been unable to retrieve Caballero-Murillo's A-file at the time of this response's filing.³ But even if notice and an interview were required and did not occur, nothing would stop ICE from providing those to Caballero-Murillo while detained. *Yi Mei*, 2025 WL 2258586, at *10 n.19 (noting "even if these procedures have not yet been completed, courts have found that such procedures may take place after the detention has occurred").

CONCLUSION

Caballero-Murillo's Petition for Writ of Habeas Corpus should be denied.

///

³ ICE will do so when documents are available.

DATED this 3rd day of February, 2026.

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