UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ARELY WESTLEY a/k/a WILSON AMILCAR VELASQUEZ-CABALLERO	*	CIVIL ACTION
	*	NO. 25-229 "M" (4)
V.	*	JUDGE BARRY W. ASHE
MELLISSA B. HARPER, ET AL	*	MAGISTRATE KAREN W. ROBY

* * *

RESPONDENTS' SUPPLEMENTAL BRIEFING PURSUANT TO THE COURT'S FEBRUARY 12, 2025 ORDER

Pursuant to this Court's February 12, 2025 order (Dkt. No. 27), Respondents hereby submit their supplemental briefing and evidence. For the reasons set forth in Respondents' written Response to Petitioner's Motion for Temporary Restraining Order (Preliminary Injunction) (ECF No. 20), oral argument at the February 12, 2025 preliminary injunction hearing, and supplemental filing below, the Court should vacate the temporary restraining order entered on February 1, 2025 (Dkt. No. 7) and deny any and all relief requested.

PRELIMINARY STATEMENT

This case commenced when Petitioner Wilson Amilcar Velasquez-Caballero—also known as Arely Westley—("Petitioner" or "Westley") filed a petition seeking a writ of habeas corpus and an emergency temporary restraining order/preliminary injunction on February 1, 2025. ECF Nos. 1, 2. An emergency hearing was held on February 1, 2025, at which time this Court granted Petitioner a temporary restraining order prohibiting Respondents ("ICE") from attempting to remove Petitioner from the Eastern District of Louisiana and a briefing timeline was established. Dkt. No. 7.

Once the TRO issued, and because ICE did not have a detention facility within the district rated for detention exceeding 48 hours, ICE was compelled to release Petitioner on an order of supervision ("OSUP"). ECF 20, Exh. A, ¶ 18. Thereafter, the parties requested a short extension of the briefing schedule and preliminary injunction hearing, which the Court granted. ECF Nos. 13, 15. At the

conclusion of the February 12, 2025 preliminary injunction hearing, the Court directed the parties to supplement the record with additional briefing and evidence as needed. Dkt. No. 27.

ARGUMENT

I. The ICE Officials That Revoked Petitioner's OSUP For the Purpose of Reinstating Her Final Order of Removal Were Acting Within the Authority Properly Delegated to Them.

Petitioner argues that ICE has failed to provide evidence as to the identity of the official who revoked release, suggesting that ICE acted without authority to do so. ECF 24 at 13. But the evidence indeed supports a finding that ICE followed 8 C.F.R. § 241.4(*l*) to a tee.

Only certain officials may revoke an order of supervision under 8 C.F.R. § 241.4(*l*)(2): the "Executive Associate Commissioner" ("EAC") or the "District Director." Neither title is in existence today as these were positions under the legacy Immigration & Naturalization Service ("INS"). While the regulations do not specify which official under the current DHS/ICE structure replace the EAC or District Director, 8 C.F.R. § 1.2 is instructive as it defines "commissioner" as "the Commissioner of the Immigration and Naturalization Service prior to March 1, 2003" and "district director" in relevant part as:

> "...on or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive re-delegation, the terms mean, to the extent that authority has been delegated to such official: ... director, field operations; district director for interior enforcement; district director for services; **field office director**; service center director; or special agent in charge. The terms also mean such other official, including an official in an acting capacity, within U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the function or authority above for a particular geographic district, region, or area."
>
> 8 C.F.R. § 1.2 (emphasis added).

Accordingly, though the titles explicitly listed in the regulation are no longer in existence today, the roles and responsibilities initially entrusted to INS were delegated amongst the officials in ICE, Customs and Border Protection, and United States Citizenship and Immigration Services. Here, 8 C.F.R. § 241.4(*l*)'s District Director duties were delegated to various positions within ICE including the position of Field Office Director ("FOD"). Further, the FOD for New Orleans, Mellissa Harper, has—pursuant to The Homeland Security Act of 2002, the INA, the regulations, and various ICE and DHS directives—

been given the authority to further delegate specific tasks and Ms. Harper has indeed done so. Exh. D. As applicable here, FOD Harper has delegated several operational responsibilities. The authority to make custody determinations under 8 C.F.R. § 241.4 has been delegated to the Deputy Field Office Director ("DFOD"). Exh. D, Section II (u). The authority to issue a warrant of removal pursuant to 8 C.F.R. § 241.2(a) has been delegated to either an SDO or the SDDO. Exh. D, Section II (s). In Petitioner's case, the DFOD approved the revocation of the OSUP. Exh. C, ¶ 13. And the warrant of removal was issued by an SDDO on behalf of the AFOD. ECF 20, Exh. B at 2. Thus, ICE was following the proper procedures to revoke Petitioner's OSUP before the Court issued the TRO and halted the process.

Petitioner's argument that ICE failed to fulfill any of the threshold requirements for the revocation of her OSUP is equally unavailing. ECF 24 at 13. The regulation clearly demonstrates that release may be revoked when one of the four enumerated criteria are met "in the opinion of the revoking official." 8 C.F.R. § 241.4(*l*)(2). Petitioner's assertion that release can only be revoked when either (1) "revocation is in the public interest" or (2) "circumstances do not reasonably permit referral of the case to the [EAC]," glosses over the fact that enforcing lawfully issued removal orders is within the public interest. Moreover, that interpretation would lead to absurd results. In fact, such a strict reading of the regulation would strip ICE of its discretionary authority to offer supervised release into the community where appropriate and would likely result in greater rates of prolonged detention if such orders would be difficult to revoke.

II. ICE Intended to Remove Petitioner in July 2024, But Ultimately Released Petitioner on OSUP for Medical Reasons at Her Own Request.

When ICE came into contact with Petitioner in July 2024, the intent was to reinstate the 2010 order of removal and facilitate her speedy removal to Honduras. Exh. C, ¶¶ 3–4. However, ICE was made aware that Petitioner had recently undergone surgery. Exh. C, ¶ 4. An attorney for Petitioner requested her release on recognizance and represented to ICE via email that Petitioner had undergone gender affirmation surgery and required daily post-surgical therapies which could not be completed in ICE custody. Exh. C ¶ 5; Exh. E. ICE was unable to release Petitioner on her own recognizance, but in reliance

on counsel's assertions, and in consideration of the recency of surgery and the need for ongoing treatment, decided to release Petitioner on an order of supervision. Exh. C ¶¶ 6–7. ICE routinely reviews open supervision cases, and on routine review of Petitioner's case earlier this year, ICE determined that that release should be revoked and it was appropriate to again reinstate Petitioner's removal order. Exh. C ¶¶ 8–13.

Petitioner's assertion that "Respondents' claim that Arely was released on an OSUP 'for medical reasons' is odd, because Arely neither requested such an accommodation, nor was seen by a medical professional who might have made such a recommendation" (ECF 24 at 14)—bolstered by Petitioner's declaration signed under penalties of perjury stating that she was never told she was being released for medical reasons (ECF 24, Dec. at ¶ 9)—is both perplexing and patently false.

III. Petitioner's Fourth Amendment Claim Fails for Lack of Jurisdiction Under 8 U.S.C. § 1252(g) and Does Not Run Afoul of *Jennings*.

This Court lacks jurisdiction to review ICE's decision to lawfully detain Westley under 8 U.S.C. § 1252(g). The decision does not run afoul of *Jennings v. Rodriguez*, 583 U.S. 281 (2018), because ICE's actions were not broad-sweeping, did not impose an overly expansive interpretation of 8 U.S.C. § 1252(g)'s jurisdiction-stripping provisions, and the legal questions before the Court are unambiguous and directly relate to ICE's detention incident to execution of a removal order.

Petitioner states in the reply that "Justice Alito's opinion in *Jennings* cautions courts to reject an 'expansive interpretation of § 1252(g) [that] would lead to staggering results . . . that no sensible person could have intended.'" ECF 24 at 6–7. But Petitioner has misquoted Justice Alito. This statement had nothing to do with 8 U.S.C. § 1252(g), but rather was Justice Alito's discussion of the neighboring provision 8 U.S.C. § 1252(b)(9), a statute inapplicable here.[1] *Jennings*, 583 U.S. at 293. Notwithstanding Petitioner's misstatement, ICE's actions in this case do not run afoul of *Jennings*. In considering

[1] Under § 1252(b)(9): "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter [including §§ 1225 and 1226] shall be available only in judicial review of a final order under this section."

jurisdiction, *Jennings* cautioned against a literal approach to "arising from" analysis that would lead to nonsensical results. *Jennings*, 583 U.S. at 293–94. In discussing 8 U.S.C. § 1252(b)(9), *Jennings* provided a series of situations where "but for" the alien's detention, the action would not have taken place, but where stripping a court of jurisdiction would present nonsensical results. *Id.* at 293 (describing hypothetical situations where (1) a detained alien wished to assert a claim under *Bivens* based on allegedly inhumane confinement conditions, (2) a detained alien wished to bring a state-law claim for assault against a guard or fellow detainee, and (3) a detained alien was injured while being transported to a detention facility, and then sought to sue the driver or owner of the truck). But the jurisdiction-stripping result here is distinct from the hypotheticals discussed in *Jennings* and does not demand an absurd conclusion. In other words, though there are circumstances where a court would indeed retain jurisdiction in a detention incident to removal situation, this case simply does not present such circumstances. In fact, *Jennings* indeed supports the very premise Respondents assert: that the jurisdictional limitations imposed by 8 U.S.C. § 1252(g) are limited in nature. *Jennings*, 583 U.S. at 294 ("We did not interpret this language [in § 1252(g)] to sweep in any claim that can technically be said to "arise from" the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.").

Analyzing this case under a *Jennings* framework requires this Court to determine first what the legal question is and second, whether it arose from the decision to effectuate a final order of removal. *Jennings*, 583 U.S. at 293. But even determining the legal question is an enigma in this case, because Petitioner's claims for relief continue to evolve at every turn. First, Petitioner sought relief in the form of a request for a stay of removal improperly characterized as a habeas petition (ECF Nos. 1, 2), then as a traditional "bring the body" habeas petition and a request for a declaration of Respondents' wrongdoing (ECF No. 24). Petitioner has alleged that ICE imminently planned to remove her from the United States thus emergency relief was warranted (ECF. Nos. 1, 2), then backpedaled to argue that ICE had no intent to remove her and instead planned to detain her indefinitely (ECF No. 24). Petitioner's evolving theory of the case has made determining the legal issue challenging. Despite the constantly moving target, however,

the underlying facts have remained the same. Here, Petitioner has been subject to a final order of removal since 2010. ECF 20, Exh. A, ¶ 2; Exh. B, 32. She was encountered by ICE in July 2024 following her arrest by local law enforcement at which time ICE detained her for the sole purpose of removing her from the United States pursuant to that final order. ECF 20, Exh. A, ¶ 12; Exh. B, 43–44; Exh. C, ¶¶ 3–4. She was released on an OSUP, with the requirement to check in for the purpose of removal. Exh. C, ¶ 7. And when she did report for one of these check-ins, ICE sought to revoke the OSUP and remove her to Honduras. Exh. C, ¶¶ 8–9.

Her detention pursuant to 8 C.F.R. § 241.4(*l*)(iii) and 8 U.S.C. § 1231 was lawful. This lawsuit commenced in an effort to halt her removal from the United States. *See* ECF No. 1, Prayer for Relief, (b). Respondents ask this Court merely to reach a logical, lawful conclusion: 8 U.S.C § 1252(g) precludes jurisdiction here because Petitioner's lawful detention was in furtherance of ICE's discretionary decision to enforce a final order of removal. Accordingly, this Court lacks jurisdiction to hear this claim.

CONCLUSION

For the foregoing reasons, as well as the reasons put forth in Respondents' previous written and oral submissions, the Court should deny Petitioner any form of relief to include preliminary injunctive relief, discovery, or declaratory relief. Further, the Court should vacate the temporary restraining order entered on February 1, 2025.

Dated this 19th day of February 2025.

Respectfully submitted,

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