

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-60333-CV-MIDDLEBROOKS

ALEXEY SAMOKHIN,

Petitioner,

vs.

WARDEN, BROWARD TRANSITIONAL
CENTER, *et al*,

Respondents.

**RESPONDENTS' RESPONSE TO EMERGENCY MOTION FOR A TEMPORARY
RESTRANING ORDER (TRO) AND/OR PRELIMINARY INJUNCTIVE RELIEF**

Respondents, by and through the undersigned Assistant United States Attorney, and in response to the Court's Order directing Respondents to file a response to the Petitioner's Emergency Motion for a Temporary Restraining Order (TRO) and/or Preliminary Injunctive Relief [DE 8] (the "Emergency Motion") and directing Respondents to, "pay[] particular attention to arguments made by Petitioner that no bond hearing has been granted and he has been unlawfully detained in immigration custody since August 2, 2021" [DE 9], submit that the Emergency Motion should be denied and state as follows:

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

As a threshold matter, Petitioner has **not** been in immigration custody since August 2, 2021¹, and in fact was not even in the United States at that time. As outlined in Respondents'

¹ The Court's Order references page 3 as the source for the fact that Petitioner has been in immigration custody since August 2, 2021. However, it appears this date comes from the *Singh* Order regarding a different petitioner from the United States District Court for the Eastern District of California, dated September 8, 2023, where the petitioner in that case had been in immigration custody since August 2, 2021. Petitioner attached this Order as an exhibit to the

Response to the Order to Show Case filed February 26, 2025 [DE 7], Petitioner is a native and citizen of Russia, who was admitted to the United States at Miami, Florida on or about **April 14, 2022**, as a B2 visitor for pleasure, with authorized stay in the United States until **October 13, 2022**. *See* DE 7-1. On **June 9, 2024**, Petitioner was arrested in Naples, Collier County, Florida for Driving Under the Influence of Alcohol in violation of Florida Statutes § 316.193. *See* DE 7-2. On **June 9, 2024**, the United States Department of Homeland Security issued a Warrant for Arrest of Alien, ordering the arrest of Petitioner and for him to be taken into custody for removal proceedings under the Immigration and Nationality Act. *See* DE 7-3. On **June 10, 2024**, Petitioner was encountered by U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), at the Collier County Jail located in Naples, Florida. *See* DE 7-1. Petitioner was placed in removal proceedings upon service and filing of a Notice to Appear (NTA) dated **June 10, 2024**. *See* DE 7-4. The NTA charged Petitioner with removability pursuant to § 237(a)(1)(B) of the Immigration and Nationality of Act, as amended, in that after admission as a nonimmigrant under § 101(a)(15) of the Act, Petitioner remained in the United States for a time longer than permitted, in violation of the Act or any other law of the United States. *See* DE 7-1 & 7-4. Petitioner was taken into ICE ERO custody, pursuant to a Warrant of Arrest. *See* DE 7-3.

On **November 1, 2024**, the immigration judge denied the Petitioner's application for relief and ordered Petitioner removed to Russia. *See* DE 7-5. On **November 14, 2024**, Petitioner, through counsel, filed a motion with the immigration court, requesting the issuance of a final removal order, indicating Petitioner would not be appealing the immigration judge's removal order. *See* DE 7-6. On **November 14, 2024**, the immigration judge issued an amended order,

Emergency Motion. *See* DE 8-1. Nowhere in the twenty-two pages of the Emergency Motion filed by Petitioner does he state that he has been in immigration custody since August 2, 2021.

reflecting that Petitioner waived appeal. *See* DE 7-7. Petitioner's removal order is administratively final. *See* 8 C.F.R. § 1241.1 (removal order becomes administratively final upon waiver of right to appeal). Petitioner remains in ICE custody, pending his removal from the United States. *See* DE 7-8 & 7-9.

On **February 20, 2025**, Petitioner filed this habeas petition [DE 1], challenging his continued detention pursuant to Section 241 of the Immigration and Nationality Act, 8 U.S.C. § 1231, arguing that his detention is prolonged and unlikely to occur in the reasonably foreseeable future. However, as argued in Respondent's Response to the Order to Show Cause, dated February 26, 2025, Petitioner's habeas petition is premature, and he has failed to meet his burden of proving that there is no significant likelihood of his removal in the reasonably foreseeable future, where his travel is scheduled to occur within the next 30 days. *See* DE 7-9 at ¶ 10 (stating Petitioner is scheduled to be removed from the United States to Russia within the next 30 days). The undersigned has since learned that Petitioner is scheduled to be removed from the United States to Russia, pursuant to his final order of removal dated November 14, 2024, imminently but not before the close of business on March 11, 2025.

For the reasons set forth below, the Emergency Motion should be denied.

MEMORANDUM OF LAW

In the Emergency Motion, Petitioner contends that he is subject to detention based upon the issuance of a detainer. However, Petitioner is subject to detention because he is subject to an administratively final order of removal and is scheduled for removal. *See* DE 7-7. Furthermore, Petitioner was subject to a warrant when taken into immigration custody during his pre-removal order detention. *See* DE 7-3.

Petitioner has not met his burden under *Zadvydas* to establish that there is no significant likelihood of removal in the reasonably foreseeable future. To the contrary, in the Emergency Motion, Petitioner concedes that he has been advised that he is scheduled for removal from the United States. To the extent that Petitioner challenges his underlying removal order, the court lacks jurisdiction to review it under the REAL ID Act because jurisdiction to review removal orders vests with the court of appeals. *See* INA § 242(b)(2), 8 U.S.C. § 1252(b)(2). Similarly, to the extent Petitioner seeks to enjoin his removal, he must seek a stay of removal with the court of appeals. *See* INA §§ 242(b), 242(f), 8 U.S.C. 1252(b), (f). Here, where the district court lacks jurisdiction to review the removal order, it also lacks jurisdiction to enjoin removal. *See Hernandez v. Immigration Custom Enforcement*, Case No. 20-cv-14071-ROSENBERG, 2020 WL 13551018 (S.D. Fla. May 15, 2020) (finding that the district court lacks jurisdiction to enjoin the removal proceedings as the decision whether to initiate an immigration proceeding rests with the Attorney General, citing 8 U.S.C. §§ 1158, 1229, 1231); *Hossain v. Field Office Director*, Case No. 19-cv-21084-ALTONAGA, 2019 WL 11505674 (S.D. Fla. March 22, 2019) (denying petitioner's emergency motion seeking to enjoin petitioner's removal for lack of subject matter jurisdiction). Furthermore, the court lacks jurisdiction to "hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, *or execute removal orders* against any alien under this Act." *See* INA § 242(g), 8 U.S.C. § 1252(g).

Additionally, Petitioner is not entitled to a bond hearing. Petitioner has not been in immigration custody since August 2, 2021, but was initially detained by ICE on June 9, 2024. Pursuant to a request by his counsel, Petitioner filed a motion with the court, requesting that the court waive his right to appeal the immigration judge's decision to the Board of Immigration

Appeals. On November 14, 2024, the immigration judge's decision became administratively final. *See* 8 C.F.R. § 1241.1 (removal order becomes administratively final upon waiver of right to appeal). On the same date, detention authority reverted from the pre-order removal statute under INA § 236(a), 8 U.S.C. § 1226(a) to the post-order custody statute under INA § 241, 8 U.S.C. § 1231.

In *Johnson v. Arteaga-Martinez*, 142 S.Ct. 1827 (2022), the Supreme Court held that INA § 241(a)(6), 8 U.S.C. § 1231(a)(6) does not require bond hearings, stating:

After the entry of a final order of removal against a noncitizen, the Government generally must secure the noncitizen's removal during a 90-day removal period, during which the Government “shall” detain the noncitizen. 8 U.S.C. §§ 1231(a)(1), (2). Beyond the removal period, § 1231(a)(6) defines four categories of noncitizens who “may be detained ... and, if released, shall be subject to [certain] terms of supervision.” There is no plausible construction of the text of § 1231(a)(6) that requires the Government to provide bond hearings with the procedures mandated by the Third Circuit. The statute says nothing about bond hearings before immigration judges or burdens of proof, nor does it provide any other indication that such procedures are required. Faithfully applying precedent, the Court cannot discern the bond hearing procedures required below from § 1231(a)(6)'s text. §

Arteaga-Martinez, at 1831-1833. Further, the Supreme Court determined in *Arteaga-Martinez* that while the pre-order provisions of § 1226(a) require an initial bond hearing, § 1231(a)(6) contains no such reference, the statute does not require them, and any constitutional concerns regarding prolonged detention are properly addressed under the *Zadvydas* standards:

Arteaga-Martinez argues that § 1231(a)(6)'s references to flight risk, dangerousness, and terms of supervision, support the relief ordered below. Similarly, respondents in the companion case, *see Garland v. Gonzalez*, 594 U. S. —, 142 S.Ct. 2057, — L.Ed.2d — analogize the text of § 1231(a)(6) to that of 8 U.S.C. § 1226(a), noting that noncitizens detained under § 1226(a) have long received bond hearings at the outset of detention. Assuming without deciding that an express statutory reference to “bond” (as in § 1226(a)) might be read to require an initial bond hearing, § 1231(a)(6) contains no such reference, and § 1231(a)(6)'s oblique reference to terms of supervision does not suffice. The parties agree that the Government possesses discretion to provide bond hearings under § 1231(a)(6) or otherwise, but this Court cannot say the statute requires

them. Finally, Arteaga-Martinez argues that *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653, which identified ambiguity in § 1231(a)(6)'s permissive language, supports a view that § 1231(a)(6) implicitly incorporates the specific bond hearing requirements and procedures imposed by the Court of Appeals. In *Zadvydas*, this Court construed § 1231(a)(6) "in light of the Constitution's demands" and determined that § 1231(a)(6) "does not permit indefinite detention" but instead "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S. at 689, 121 S.Ct. 2491. The bond hearing requirements articulated by the Third Circuit, however, reach substantially beyond the limitation on detention authority *Zadvydas* recognized. *Zadvydas* does not require, and *Jennings v. Rodriguez*, 583 U. S. —, 138 S.Ct. 830, 200 L.Ed.2d 122, does not permit, the Third Circuit's application of the canon of constitutional avoidance.

Arteaga-Martinez at 1833-1834.

Here, Petitioner is not eligible for a bond because he is subject to the provisions of INA § 241, 8 U.S.C. § 1231. The *Zadvydas* court recognized the government interest in detaining aliens pursuant to a final order of removal for a period reasonably necessary to remove them from the United States and determined that six months is presumptively reasonable. Here, Petitioner is unable to meet his burden of establishing that there is no likelihood of his removal in the reasonably foreseeable future. To the contrary, he now seeks injunctive relief, for which he is ineligible, to prevent his scheduled removal from the United States. Furthermore, he has not been held in post-removal immigration custody for longer than six months, as he has been in post-removal immigration custody since November 14, 2024. *See, e.g., Demore v. Kim*, 538 U.S. 510, 527-528 (2003) (explaining the difference between these pre-removal order detention and post-removal detention); *Akinwale v. Ashcroft*, 287 F.3d 1050, at f.n. 3 (11th Cir. 2002) (collecting cases for the proposition that the six-month period "commences at the beginning of the removal period", *i.e.*, after the removal order is issued and final).

Finally, although not addressed by Petitioner in the Emergency Motion, Respondents will distinguish the situation here from the situation in the *Singh* Order that Petitioner attached as an

exhibit to the Emergency Motion. *See* DE 8-1. The petitioner in *Singh* was in immigration custody for approximately 25 months, from August 2, 2021, until September 2023, while the appeal of his final order of removal was before the Ninth Circuit Court of Appeals. *See* DE 8-1 at pg. 10; 12. The *Singh* court found that this “judicial review by the Ninth Circuit will be sufficiently lengthy” and granted his request for a bond hearing, after analyzing all relevant factors. *See* DE 8-1 at pg. 12. Here, as outlined above, Petitioner has been in immigration detention post-removal order for less than 180 days, and he is scheduled to be removed from the United States to Russia imminently. The *Singh* Order is inapposite to the Emergency Motion.

CONCLUSION

Given the above, and for the reasons argued in Respondents’ Response to the Order to Show Cause dated January 26, 2025 [DE 7], the Emergency Motion should be denied. The Court lacks jurisdiction to review Petitioner’s final order of removal, lacks jurisdiction to review decisions to commence proceedings, adjudicate cases, or execute removal orders, and lacks jurisdiction to enjoin removal. Additionally, as reflected in the exhibits to the Response to Order to Show Case [DE 7], the ICE officer did arrest Petitioner pursuant to a warrant. Petitioner is not entitled to a bond hearing. Furthermore, Petitioner is required to exhaust any claim of ineffective assistance of counsel by way of a motion to reopen his case before the immigration court. This Court again lacks jurisdiction to review this claim. Petitioner’s habeas petition is premature as he has been in post-removal detention for less than 180 days, and he has failed to meet his burden of proving that there is no significant likelihood of his removal in the reasonably foreseeable future, as his removal from the United States to Russia is imminent but not to occur prior to the close of business on March 11, 2025.

Therefore, Petitioner’s Emergency Motion should be denied and this case dismissed.

Dated: March 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 7, 2025, I electronically filed the foregoing document on CM/ECF, giving notice to all those registered to receive the same. I also certify that the foregoing document is being served on the pro se party identified on the below Service List in the manner specified.

/s/ Mary Beth Ricke
Mary Beth Ricke
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