UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-22487-DPG

JOSE GUERRA CASTRO,

Petitioner,

v.

CHARLES PARRA, Field Office Director, et al.,

Respondents.
_____/

RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS[1]

Charles Parra, Field Office Director, et al. (Respondents), through the undersigned counsel, maintains that Jose Guerra-Castro's (Petitioner) Petition for Writ of Habeas Corpus and Request for Emergency Injunctive Relief (Petition) (ECF No. 1) and accompanying Pre-hearing Memorandum of Law in Support of Petition for Writ of Habeas Corpus should be denied because (1) it is premature under *Zadvydas v. Davis*, 533 U.S. 678 (2001) because Petitioner has not shown post-removal order detention in excess of six months; (2) the Court lacks jurisdiction to review Respondents' determination to revoke his order of supervision (OSUP) under 8 U.S.C. § 1252(a)(2)(B)(ii) and 8 U.S.C. § 1252(g); (3) the OSUP was properly revoked; and (4) a transfer of Petitioner to another immigration detention facility would not violate his right to counsel

[1] On June 13, 2025, Respondents filed "Respondents' Opposition to Petition for Writ of Habeas Corpus and Injunctive Relief and Pre-Hearing Memorandum of Law in Support of Petition for Writ Of Habeas Corpus" wherein Respondents addressed the merits of Petitioner's habeas petition and request for temporary injunctive relief (ECF No. 17). Herein, Respondents will file another return addressing the merits of the same habeas petition, but not the request for temporary injunctive relief because that was denied by the Court (ECF No. 23), in addition to counsel's argument made during the prior status conference that the OSUP was improperly revoked.

because the Attorney General has discretion of where to detain an alien under 8 U.S.C. § 1231(g)(1).

I. BACKGROUND

Petitioner is a native and citizen of Cuba. *See* (ECF No. 3 at ¶ 5)

On April 17, 2014, Petitioner was ordered removed by an Immigration Judge. *See* Exhibit A, Notice of Revocation of Release, at 1.

On May 29, 2025, Petitioner's order of supervision was revoked under 8 C.F.R § 241.4 and 8 C.F.R § 241.13. (*Id.*).

The revocation states his OSUP was revoked due to "changed circumstances" because his "case is under review by Cuba for issuance of a travel document." (*Id.*). Furthermore it informs Petitioner that he "will promptly be afforded an informal interview" where he will "be given an opportunity to respond to the reasons for the revocation." (*Id.*). At the informal interview, he "may submit any evidence or information" "in support of your release." (*Id.*). If he is released after the informal interview, he will "receive notification of a new review, which will occur within approximately three months of the date of this notice." (*Id.*).

On May 29, 2025, Petitioner was provided with an informal interview according to the standard revocation practices by Respondent. *See* Exhibit B, Declaration Deportation Officer Garcia Ortega, at ¶ 10.

On June 17, 2025, and August 22, 2025, ICE ERO in Miami, Florida nominated Petitioner for the next available charter flight to Cuba. *See* Exhibit C, Declaration Deportation Officer Carballo, at ¶ 7.

At this time, ICE ERO is pursuing Petitioner's removal to Mexico.[2] (*Id.* at ¶ 8).

On August 27, 2025, Petitioner was served with Notice of Removal to a Third Country, which he refused to sign. (*Id.* at ¶ 9); *See* Exhibit D, Notice of Removal to a Third Country.

II. ARGUMENT

A. Petitioner's habeas petition should be dismissed as premature.

Petitioner claims that his detention is unconstitutional because "the removal period has passed" yet "removal is not imminent." *See* (ECF No. 14 at 3).

However, the removal period has not passed because he has been detained for fewer than 180 days. Thus, the habeas petition should be dismissed as premature.

§ 1231(a)(1)(A) directs Immigration and Customs Enforcement to remove an alien subject to a final order of removal within the 90-day removal period. § 1231(a)(1)(A) ("Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

The removal period beings on the latest of the following:

(i) The date the order of removal becomes administratively final.

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2 Petitioner claims he is entitled to specific notice procedures if he were removed to a third country, as required by the injunction in *D.V.D. v. U.S. Department of Homeland Security*, 25-cv-10676 (D. Mass. April 18, 2025). *See* (ECF No. 3 at ¶ 19). However, the Supreme Court stayed the *D.V.D.* injunction on June 23, 2025. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025) ("The April 18, 2025, preliminary injunction of the United States District Court for the District of Massachusetts, case No. 25-cv-10676, is stayed pending the disposition of the appeal in the United States Court of Appeals for the First Circuit and disposition of a petition for a writ of certiorari, if such writ is timely sought."). Respondents provided Petitioner with notice that they were pursuing removal to a third country, Mexico, consistent with their procedures. *See* Exhibit E, Guidance Regarding Third Country Removals. Respondents may remove aliens to a third country under 8 U.S.C. §§ 1231(b)(1)(C)(iv), (2)(E)(vii) if removal to their country of origin, nationality, birth, residence, among other enumerated requirements, is "impracticable, inadvisable, or impossible." §§ 1231(b)(1)(C)(iv), (2)(E)(vii).

> (ii) If the removal order is judicially reviewed and if a court orders a stay of removal of the alien, the date of the court's final order.
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

§ 1231(a)(1)(B).

Nonethless, "federal law authorizes aliens…to be detained beyond the ordinary 90-day removal period.". *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051 (11th Cir. 2002) (citing 8 U.S.C. § 1231(a)(6)). Such extended detention period is found in § 1231(a)(6), which states:

> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be *detained* beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

§ 1231(a)(6) (emphasis added).

In *Zadvydas*, the Supreme concluded that six months is a presumptively reasonable period to detain a removable alien awaiting deportation. *Id.* (stating "for the sake of uniform administration in the federal courts, we recognize that [six-month] period."). *Zadvydas v. Davis*, 533 U.S. 678, 701(2001).

Additionally, in *Akinwale*, the Eleventh Circuit clarified that to "state a claim under *Zadvydas* the alien not only must show post-removal order *detention* in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Akinwale*, 287 F.3d at 1052. (emphasis added).

If a petitioner has been detained fewer than six months, then the § 2241 petition should be dismissed as premature. *See Phadael v. Ripa*, No. 24-CV-22227-RKA, 2024 U.S. Dist. LEXIS 109481, 2024 WL 3088350, at *3 (S.D. Fla. June 21, 2024) (Because the petitioner "filed his Petition . . . comfortably within *both* the six-month period of presumptive reasonableness under *Zadvydas and* the ninety-day mandatory detention period set by § 1231(a)(1), . . . his §

2241 petition must be dismissed as premature.") (emphasis in original); *Allotey v. Mia. Field Off. Dir., Immigr*, 24-cv-24765-DPG, 2024 WL 5375519, 2024 LEXIS 239135, *5 (Dec. 10, 2014) (denying habeas petition as premature under *Zadvydas* when petitioner had only been detained for eighteen days prior to filing the habeas petition).

Here, as the Court noted in its Order, the Petition should be dismissed as premature because Petitioner has not shown post-removal order detention in excess of six months under *Zadvydas*. *See* (ECF No. 23 at 6) (denying request for temporary restraining order because petition was premature since Petitioner had not been detained for more than six months).

Petitioner has been detained since May 29, 2025. On May 30, 2025, the day after he was detained, Petitioner filed his habeas petition. *See* (ECF No. 1). Thus, as of date of the filing of his habeas petition, he had been detained for a total of one day.[3] *See Singh v. Donelan*, 2015 U.S. Dist. LEXIS 59734, at *6 (D. Mass. Mar. 4, 2007) (citing *Akinwale*, 287 F.3d at 1052) ("federal courts generally hold that the six-month post-removal period 'must have expired at the time [the detainee's] 2241 petition was filed in order to state a claim under *Zadvydas*'").

Accordingly, the Petition should be dismissed as premature.

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[3] As of the date of the filing of this Return, on August 27, 2025, Petitioner has been detained for an approximately 90 days. Thus, even if the length of detention post filing of the habeas petition was factored when considering if a habeas petition is premature, the petition would still be premature because Petitioner has been detained for 85 days, which is fewer than 180 days.

Petitioner was also detained from March 27, 2014, to May 9, 2014, for a total of 44 days. However, detention time under *Zadvydas* is not cumulative. *See Barrios v. Ripa*, No. 25-cv-22644-GAYLES, 2025 U.S. Dist. LEXIS 153228, at *21 ("if the Court counted detentions in the aggregate, any subsequent period of detention, even one day, would raise constitutional concerns. And adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General—effectuating removals. *See* § 1252(g)."); *Thai v. Hyde*, No. 25-11499-NMG, 2025 U.S. Dist. LEXIS 111179, 2025 WL 1655489, at *3 (D. Mass. 2025) (finding a petitioner's previous ICE detention did not count towards the detention period).

B. Respondents properly revoked Petitioner's OSUP.

Next, Petitioner alleges that "there has been a violation of the order of supervision," and that "Respondents are in violation of all aspects of their own review process." (ECF No. 14 at 4). To the extent that Petitioner is seeking review of Respondents' decision to revoke the OSUP, the Court lacks jurisdiction under § 1252(a)(2)(B)(ii) and § 1252(g).

§ 1252(g) explicitly states that "no court shall have 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 chapter." (emphasis added). § 1252(g). *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("the statute's words make that clear. One word in particular stands out: 'any.' Section 1252(g) bars review over 'any' challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders.").

In a similar case, this Court in *Barrios v. Ripa*, found that "the decision to revoke Petitioner's OSUP, for the stated purpose of executing his removal order, clearly falls under the purview of § 1252(g)." *Barrios v. Ripa*, Case No. 25-cv-22644-GAYLES, 2025 WL 365006, 2025 U.S. Dist. LEXIS 153228, at *11 (S.D. Fla. Aug. 8, 2025).

Moreover, the Court also lacks jurisdiction under § 1252(a)(2)(B)(ii) to review Respondents' discretionary decision to revoke the OSUP. § 1252(a)(2)(B) states that "no court shall have jurisdiction to review any action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General" § 1252(a)(2)(B)(ii). The decision is revoke an OSUP is a discretionary one by Respondents. *See* 8 C.F.R. § 241.4(l)(2) ("The Executive Associate Commissioner shall have

authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section."). Further, this Court also found in *Barrios*, that "because the Attorney General has the discretion to revoke an OSUP § 1252(a)(2)(B)(ii) also bars review." *Barrios,* 2025 U.S. Dist. LEXIS 153228, at *11.

This Court has found it has jurisdiction to review whether Respondents complied with their own revocation procedures. *Id.* Here, Respondents properly revoked Petitioner's OSUP.

Respondents may grant an OSUP for an alien subject to a final order of removal who has not been removed within the 90-day removal period. 8 U.S.C. § 1231(a)(3). Regulations also allow the government to terminate an order of supervision under 8 C.F.R. § 241.4(l)(2).

§ 241.4(l)(2) states:

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. Petitioner is being detained to effectuate his removal. *See* Exhibit A, Notice of Revocation of Release. He was provided an informal interview on May 29, 2025, the day his OSUP was revoked.

C. Petitioner's transfer to another detention facility would not violate his right to counsel.

Next, Petitioner argues he "may be moved to another facility without notice" "in violation of his Sixth Amendment Right to Counsel." (ECF No. 3 at ¶ 23).

This claim should be denied. First, as noted by the Court, "the determination of where to detain an alien to facilitate removal falls squarely within the discretion of the Attorney General" under 8 U.S.C. § 1231(g)(1), which states "[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." (*Id.* at 4).

Notably, as to the request that the Court enjoin Respondents from transferring Petitioner, the Court found it did not have subject matter jurisdiction to do so explaining:

> [T]he Court lacks subject matter jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) and 8 U.S.C. § 1252(g). Section 1252(a)(2)(B) states:
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> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review— . . . (ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.
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> 8 U.S.C. § 1252(a)(2)(B). Section 1231(g)(1), which falls under the same subchapter, states: "[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1).
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> Courts have interpreted these statutes to mean that a district court lacks jurisdiction to enjoin the government from transferring immigration detainees to other districts, as those decisions fall within the discretion of the Attorney General. *See, e.g., Calla-Collado v. Att'y Gen. of the U.S.,* 663 F.3d 680, 685 (3d Cir. 2011) (stating that Congress vested DHS and as a "part of DHS, ICE" "with [the] authority to enforce the nation's immigration laws[,]" and "the authority to determine the location of detention of an alien in deportation proceedings . . . and therefore, to transfer aliens from one detention center to another").
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> (ECF No. 23 at 3).

Second, as the Court noted in its Order, "an alien does not have the right to be detained in a facility that gives him preferred access to counsel." (*Id.* at 4) (citing *Calla-Collado v. Att'y Gen. of the U.S.,* 663 F.3d 680, 685 (3d Cir. 2011).

Thus, any transfer of Petitioner to another detention center would not violate his right to counsel.

Accordingly, for the reasons explained herein, the Petition should be denied.

Respectfully submitted,

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