UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

EDMUND GRIGORIAN,

A# 023-612-302

Plaintiff / Petitioner,

Case No.: 25-cv-22914-RAR

v.

PAMELA BONDI, United States Attorney General;
et.al.

PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiff, Edmund Grigorian, respectfully submits this reply to the Response filed by Defendants, Pamela Bondi, United States Attorney General, et al., in opposition to Plaintiff's Emergency Motion for Immediate Temporary Restraining Order.

I. This Court Retains Jurisdiction to Review ICE's Custody Revocation

Respondents attempt to argue that 8 U.S.C. § 1252(g) bars judicial review of ICE's decision to revoke Plaintiff's supervised release. To make this argument, Respondents rely on *Westley v. Harper*, No. 2:25-cv-00229 (E.D. La. Feb. 24, 2025). However, *Westley* is not binding on this Court. Indeed, this Court remains free to adopt the well-reasoned view, as other courts have, that *Westley* overextends the scope of § 1252(g) and conflicts with longstanding Supreme Court precedent. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 583 U.S. 131 (2018); see also *Ceesay v. Kurzdorfer*, No. 1:25-cv-267, 2025 WL 1284720, at *15 n.15 (W.D.N.Y. May 2, 2025)[1].

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[1] The court in *Ceesay v. Kurzdorfer* put it well – "This case raises the question of whether a noncitizen subject to a final order of removal and released on an order of supervision is entitled to due process when the government decides

Respondents further claim that 8 U.S.C. § 1252(g) bars this Court from reviewing Petitioner's detention as it stems from an attempt to effectuate the order of removal. This mischaracterizes Petitioner's current detention and his challenge to the decision to detain him. All detention under or in connection with a final order of removal is always related to the execution or the effectuation of an order of removal, and courts routinely hear these habeas petitions. *See Id.* at 8. The Supreme Court in *Zavydas* makes explicitly clear that habeas petitions are the appropriate forum to challenge post removal period detention. *Zadvydas v. Davis,* 533 U.S. 678, 688 (2001).

Eight U.S.C. § 1252(g) does not strip this court of its jurisdiction to review the decision to detain the Petitioner. The Court's jurisdiction is fundamental and viable, notwithstanding 8 U.S.C. § 1252(g), a section of the Immigration and Nationality Act ("INA") the Government routinely invokes in most immigration-related federal cases. The federal courts, including the Supreme Court and the Eleventh Circuit Court of Appeals, have made clear that the district courts' habeas jurisdiction over unlawful custody survives certain legislative changes to the immigration statutes.

Petitioner is not herein contesting the substance of his removal order, but his present-day unlawful arrest and detention. 8 U.S.C. § 1252(g) states in pertinent part that no court shall have jurisdiction to hear a cause or claim by or on behalf of an alien arising from a decision or action by the Attorney General to: commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act. The law envisions review of immigration court cases and removal decisions by an immigration judge to be heard (following review by the Board of Immigration Appeals) through the Courts of Appeal. 8 U.S.C. § 1252(a)(5); § 1252(b)(9). However, these

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– in its discretion – to revoke that release. The Court answers that question simply and forcefully: Yes." Ceesay v. Kurzdorfer, No. 1:25-cv-267, 2025 WL 1284720 (W.D.N.Y. May 2, 2025)

provisions do not deprive the district courts of habeas jurisdiction over statutory and constitutional claims addressing detention.[2]

Because questions of detention are distinct from the substance of a removal order, this Court has jurisdiction to consider a post-removal order habeas petition. *Zadvydas v. Davis*, 533 U.S. at 689. The decision to detain is distinct from the decision to execute a removal order. *Madu v. United States AG*, 470 F.3d at 1368. The constitutionality of immigration detention in any given case falls squarely within the context of a habeas corpus claim. *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025).

Furthermore, *Westley* is clearly distinguishable from the instant case. In *Westley*, the petitioner's removal was substantially likely in the reasonably foreseeable future, as the reinstatement of her prior order of removal was legally sound in light of her multiple arrests, repeated violations of her order of supervision, and the absence of any protection under the Convention Against Torture against removal to her designated country. *Westley v. Harper*, No. 2:25-cv-00229 (E.D. La. Feb. 24, 2025). Here, Mr. Grigorian's removal is <u>not remotely foreseeable or achievable</u>. He is an individual protected from removal to Iran under the Convention Against Torture, and no third country has been identified.

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[2] *Zadvydas v. Davis,* 533 U.S. 678, 688 (2001) (under § 2241(c)(3) habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention); *Reno v. American-Arab Anti-Discrimination Committee,* 525 U.S. 471, 482 (1999) (The provision applies only to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders."); *Jennings v. Rodriguez,* 138 S. Ct. 830, 841 (2018) (reaffirming Court's decision in *Reno v. American-Arab ADC* that scope relates only to those three actions); *Madu v. United States AG*, 470 F.3d 1362, 1366 (11th Cir. 2006) (court retains habeas jurisdiction to adjudicate claim regarding existence of lawful removal order); *Bunthoeun Kong v. United States AG*, 62 F.4th 608,614 (3d Cir. 2023) (8 USC § 1252(b)(9)'s phrase is not 'infinitely elastic' and does not encompass claims collateral to the removal order, such as unlawful detention).

Respondents also argue that the Petitioner's request for relief is premature as he has only been in detention for 10 days. The factual inaccuracy of that contention is discussed below, however a court's jurisdiction to review challenges to detention cannot turn on whether or not ICE officials have an *intention* to find a third country of removal. The lack of an identified third country and Petitioner's assured security and safety in that country, makes Petitioner's current detention indefinite. *See Ceesay v. Kurzdorfer*, No. 1:25-cv-267, 2025 WL 1284720, at *15 n.15 (W.D.N.Y. May 2, 2025).

II. Revocation Was Pretextual and Unjustified Under 8 C.F.R. § 241.4

While the regulation allows ICE to revoke supervised release to "enforce a removal order," that discretion is not unlimited. Courts have recognized that pretextual detention—especially where no removal is foreseeable—is subject to review. Here, Plaintiff's circumstances have not changed since his Order of Supervision was issued. He has not violated any terms, nor has ICE identified a viable country of removal. The order of supervision (OSUP) occurred upon his release. The BIA decision occurred before the OSUP determination to release years later, when he finished his sentence with BOP; therefore, it does not constitute a truthful reason to support his detention now.

The sudden invocation of removal enforcement after more than a decade, without new facts or allegations, and in the absence of removal prospects, reflects a punitive and arbitrary deprivation of liberty. Moreover, according to 8 U.S.C. §1231(a)(B), the removal period begins the date the order of removal became final which was July 18, 2011when the immigration judge granted CAT; or October 21, 2011 when the BIA addressed a legal issue not relating to CAT which would be the date of the immigration court's final order after judicial review; or lastly, when the alien is released after serving his time – which would have been in 2013 or 2014 when Mr. Grigorian finished

serving his time with the BOP. The government cannot legally or factually state that Mr. Grigorian falls within the removal period now.

Notably, on October 25, 2011, the Office of the Chief Counsel for U.S. Immigration and Customs Enforcement (ICE) filed its notice with the immigration court, confirming that Mr. Grigorian successfully completed the background and security investigation required under 8 C.F.R. § 1003.47(h) and that there was no impediment to the issuance of an order granting deferral of removal under the Convention Against Torture (CAT). *See* Exhibit G. The letter further confirms that the Department of Homeland Security would not appeal the Immigration Judge's decision granting CAT protection. The post-order instructions and corresponding Certificate of Service were included as part of this document, and Mr. Grigorian complied with it immediately upon his release from custody. The stated reason to revoke release on an Order of Supervision does not comply with 8 CFR §241.4 and defies accuracy by calling a BIA order of October 21, 2011, "most recent." Importantly, this BIA order was issued before Mr. Grigorian was released from BOP custody when he finished his sentence in 2013 or 2014. After the decision not to appeal the CAT grant, ICE/ERO lifted the immigration order and placed Mr. Grigorian on an order of supervision that he has never violated. *See* Exhibit H.

III. Zadvydas Applies and Plaintiff's Detention Is Constitutionally Unsustainable

Defendants argue that Plaintiff's detention is "premature" under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he has been detained fewer than 180 days. However, *Zadvydas* does not require a rigid 180-day wait when the record clearly shows removal is not reasonably foreseeable. Here, the government admits Plaintiff cannot be removed to Iran due to a Convention Against Torture (CAT) deferral and fails to identify any viable third country.

Moreover, Plaintiff's removal order is over a decade old, and ICE has had ample opportunity to arrange removal. There is no good-faith plan to effectuate removal, making this a *Zadvydas* case of "indefinite detention in disguise." See *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that § 1231(a)(6) does not permit potentially endless detention of inadmissible aliens either).

IV. A Temporary Restraining Order Is Necessary to Prevent Irreparable Harm

Continued detention of a non-removable individual without adequate process constitutes an ongoing due process violation. Plaintiff faces irreparable harm to his physical and psychological well-being, family unity, and dignity. The government offers only vague assurances that a review will take place "within approximately three months" — despite having no removal destination and no change in material circumstances.

Immediate injunctive relief is warranted to preserve Plaintiff's liberty interest while the Court considers his habeas petition.

V. CONCLUSION

For the reasons stated above and in the original motion, Plaintiff respectfully requests that the Court issue a Temporary Restraining Order requiring Mr. Grigorian's immediate release from ICE custody and enjoining Defendants from removing him from the Southern District of Florida pending further proceedings.

Respectfully submitted,

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Dated: July 3, 2025

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2025, I electronically filed the foregoing Supplement to Petition for Writ of Habeas Corpus and accompanying exhibits with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record. A courtesy copy was emailed to opposing counsel Carlos Javier Raurell at carlos.raurell@usdoj.gov

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