UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-22941-CIV-LEIBOWITZ

GREGORY WELCH,

Petitioner,

v.

UNITED STATES ATTORNEY GENERAL,

Respondent.
_____/

RESPONDENT'S RETURN AND MEMORANDUM OF LAW

Respondent,[1] by and through the undersigned Assistant United States Attorney, hereby responds to the Court's Order to Show Cause [D.E. 7]. As set forth fully below, the Court should deny the Habeas Petition [D.E. 1] ("Petition"). Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c) due to his criminal record as a habitual felony offender.

PROCEDURAL HISTORY

Petitioner is a native and citizen of Jamaica, who was admitted to the United States at New York, New York on September 20, 1984, as a lawful permanent resident. *See* Ex. A, Notice to Appear (NTA) dated December 12, 2024; Ex. B, Form I-213, Record of Deportable Alien dated December 12, 2024 (Form I-213).

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfield v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. As Petitioner is currently detained at Krome Service Processing Center ("Krome"), a detention facility in Miami, Florida, his immediate custodian is Assistant Field Office Director (AFOD) Charles Parra. Accordingly, the proper Respondent in the instant case is AFOD Parra, in his official capacity, and all other Respondents should be dismissed.

On August 27, 1996, Petitioner was convicted in Broward County, Florida for the offenses of attempted strong-arm robbery, in violation of Florida Statute § 777.04(1); carrying a concealed firearm, in violation of Florida Statute § 790.01(2); and resisting without violence, in violation of Florida Statute § 843.02, for which a sentence of incarceration of 135 days was imposed with credit for time served. *See* Composite Ex. C, Criminal Records (*State of Florida v. Gregory Welch*, Case No. 96-1575CF10B (Broward County, Florida 1996)).

On August 27, 1996, Petitioner was convicted in Broward County, Florida for the offense of strong-arm robbery in violation of Florida Statute § 812.13(1), for which he was sentenced to 19 months in prison with a credit for time served of 135 days to run concurrently with Case No. 96-1575CF10B. *See* Composite Ex. C, Criminal Records (*State of Florida v. Gregory Welch*, Case No. 96-5680CF (Broward County, Florida 1996)).

On February 8, 2002, Petitioner was convicted in Broward County, Florida for the offense of cocaine possession, in violation of Florida Statute § 893.13, for which a sentence of probation for two years was imposed. *See* Composite Ex. C, Criminal Record (*State of Florida v. Gregory Welch*, Case No. 01-16710CF10 (Broward County, Florida 2002)).

On September 26, 2005, Petitioner was convicted in Broward County, Florida for the offense of felony battery, in violation of Florida Statute § 784.041, for which a sentence of 364 days of incarceration was imposed. *See* Composite Ex. C, Criminal Record (*State of Florida v. Gregory Welch*, Case No. 03-17694CF (Broward County, Florida 2005)).

On June 4, 2007, Petitioner was convicted in Broward County, Florida for the offense of possession of cocaine, in violation of Florida State Statute § 893.13, for which a sentence of 18 months of probation was imposed. *See* Composite Ex. C, Criminal Record (*State of Florida v. Gregory Welch*, Case No. 06-18169CF10 (Broward County, Florida 2007)).

On September 17, 2010, Petitioner was convicted in the U.S. District Court, Southern District of Florida for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1), for which he was sentenced to a term of imprisonment of 180 months in the U.S. Bureau of Prisons. *See* Composite Ex. C, Criminal Records (*United States v. Gregory Welch*, Case No. 0:09-60212-CR-MARRA-1 (S.D. Fla 2009)).

Petitioner applied for naturalization with U.S. Citizenship and Immigration Services (USCIS) on two occasions. Petitioner applied for naturalization on June 28, 2019. *See* Ex. D, Notice of Decision (USCIS Case No. IOE09069263338). USCIS denied the application on May 28, 2020. *Id.* On September 8, 2020, Petitioner once again applied for naturalization with USCIS. *See* Ex. E, Notice of Decision (USCIS Case No. IOE0909722451). USCIS denied Petitioner's application on December 27, 2021. *Id.*

On December 12, 2024, Petitioner was taken into the custody of the U.S. Immigration and Customs Enforcement (ERO) and placed into removal proceedings upon service and filing of an NTA. *See* Ex. A, NTA; Ex. F, Detention History; Ex. G, Form I-200, Warrant of Arrest; and Ex. H, Form I-286, Notice of Custody Determination (Form I-286). The NTA charged Petitioner with removability pursuant to Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, as amended, as an alien who has been convicted of a crime constituting an aggravated felony, as defined in INA § 101(a)(43)(E), relating to firearms or explosives; Section INA § 237(a)(2)(A)(iii) as an alien who has been convicted of a crime constituting an aggravated felony, as defined in INA § 101(a)(43)(F), as an alien who has been convicted of a crime of violence for which the term of imprisonment is at least one year; Section 237(a)(2)(B)(i) as an alien who has been convicted of violating any law or regulation of a State, the United States, or a foreign country relating to a

controlled substance; and Section 237(a)(2)(C) as an alien who at any time after admission has been convicted under any law relating to a firearm offense. *See* Ex. A, NTA.

On March 10, 2025, Petitioner, through counsel, admitted the allegations contained in the NTA. *See* Ex. I, Written Decision and Order of the Immigration Judge (IJ Order) at page 2. The immigration judge sustained the aggravated felony and firearm charges under INA §§ 237(a)(2)(A)(iii) and 237(a)(2)(C). *Id.* The immigration judge declined to sustain the INA § 237(a)(2)(B)(i) (controlled substance violation) charge because DHS had not alleged the conviction in the allegations contained in the NTA. *Id.*

On July 15, 2025, the immigration judge issued a written decision and ordered Petitioner removed to Jamaica. *See* Ex. I, IJ Order. Petitioner reserved appeal, which is due to the Board of Immigration Appeals (BIA) on or before August 14, 2025. To date, Petitioner has not filed a notice of appeal with the BIA.

On July 1, 2025, Petitioner filed this habeas petition, challenging his continued detention pursuant to Section 236(c) of the Immigration and Nationality Act. To date, Petitioner remains in ERO custody at the Krome North Processing Center (Krome).

ARGUMENT

A. Petitioner is Subject to Mandatory Detention Under § 1226(c) and Is Not Entitled to Release.

Petitioner is detained pursuant to 8 U.S.C. § 1226(c). Section 1226(c) states that, "[t]he Attorney General *shall take into custody* any alien who" is inadmissible or deportable based on specified grounds. *See* 8 U.S.C. § 1226(c)(1) (emphasis added). The statute prohibits the release of noncitizens whom the Attorney General has taken into custody, except that the Attorney General may make exceptions for certain witness-protection purposes, which are inapplicable in this case. *See* 8 U.S.C. § 1226(c)(2) (stating that "[t]he Attorney General may release an alien described in

paragraph (1) *only* if the Attorney General decides" that release is "necessary" for witness protection) (emphasis added)).

The Supreme Court has definitively and consistently affirmed the constitutionality of detention pending removal, including detention under § 1226(c). *See, e.g., Demore v. Kim*, 538 U.S. 510, 523 (2003) (listing cases). Confronted with a "near-total inability to remove deportable criminal aliens" and statistics showing a recidivism rate for criminal noncitizens approaching 80 percent, *see Demore*, 538 U.S. at 518-19, Congress enacted § 1226(c). Section 1226(c) makes clear that "aliens detained under [§ 1226(c)] are not entitled to be released under any circumstances other than those expressly recognized by the statute." *Jennings v. Rodriguez*, ___U.S.___, 138 S.Ct. 830, 846, 200 L.Ed.2d 122 (2018).

In *Demore*, the Supreme Court affirmed the constitutionality of mandatory detention pending removal. In doing so, the Court distinguished the case in two key respects from its earlier decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), where the Court applied the cannon of constitutional avoidance to read into the post-order detention statute an implicit temporal limitation. First, the Court emphasized that for the noncitizens challenging their detention in *Zadvydas*, removal was "no longer practically attainable" and therefore detention "did not serve its purported immigration purpose." *Demore*, 538 U.S. at 527. Conversely, mandatory detention pending removal proceedings "serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings." *Id.* at 528. Second, the Court emphasized that the post-order detention in *Zadvydas* was "indefinite" and "potentially permanent" while pre-order detention has an "obvious termination point" – the conclusion of removal proceedings. *Id.* at 528-29. The considerations that justified the imposition of a temporal limit on immigration

detention in *Zadvydas* were absent in *Demore*, and the Court declined to impose additional, constitutional limits on the operation of § 1226(c).

Indeed, in *Demore*, the Supreme Court affirmed the mandatory detention pending removal proceedings of a lawful permanent resident for longer than six months, when he had conceded the charges against him but was seeking relief from removal. There, the detained noncitizen had already "spen[t] six months" in immigration custody before the Supreme Court upheld the constitutionality of his mandatory detention. *Demore*, 538 U.S. at 531. As a result of the Court's reversal of the decision affirming his release, he was to be returned to custody until removal proceedings were completed, which would take additional time. He had not yet had his removal hearing (because he asked for a continuance), and he could still appeal to the Board of Immigration Appeals if the Immigration Judge ordered him removed. *Demore*, 538 U.S. at 530-31. Thus, *Demore* itself "implicitly foreclose[s]" the notion that the Constitution mandates a bond hearing near the six-month mark under section 1226(c). *See Reid v. Donelan*, 819 F.3d 486, 497 (1st Cir. 2016).

Demore resolves the issue here. Petitioner does not contest that his detention authority is under § 1226(c) based on his criminal history. Petitioner's detention continues to "serve its purported immigration purpose" – ensuring his appearance at his removal proceedings and protecting the community from noncitizens who have committed crimes that Congress concluded warranted mandatory detention. *Demore*, 538 U.S. at 527. The prospect of a removal order,[2] and the government's interest in enforcing that order, remain significant throughout the immigration

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[2] The Respondent notes that there currently is a Removal Order, however, such order is not final until after August 14, 2025, as Petitioner reserved his right to appeal the order to the BIA. *See* 8 C.F.R.§ 1003.39 (immigration judge's decision becomes final upon waiver of appeal or upon expiration of time to appeal).

proceedings. The risk that a noncitizen with a criminal history will commit further crimes or otherwise present a danger to the community if released, presumably remains constant until removal proceedings are completed and does not lessen at any arbitrary fixed point in time. Similarly, the risk that a noncitizen with a criminal history, if released, will fail to appear from removal proceedings does not dissipate after a certain amount of time has passed. In fact, the government's interest in keeping the noncitizen detained (and the noncitizen's incentive to abscond) will typically increase over time as removal proceedings progress toward their completion, as a noncitizen with a criminal history on the cusp of removal has a greater incentive to abscond than one who is at the beginning of his proceedings. *See Matter of Andrade*, 19 I. & N. Dec. 488, 490 (BIA 1987). In other words, Petitioner's detention under § 1226(c) does not cease to be justified simply because time has passed. Further, his pre-removal-order detention is not potentially indefinite, as it will terminate once his removal proceedings conclude. Thus, *Demore* compels this Court to conclude that Petitioner's detention is constitutional.

Further, section 1226(c) also does not cease to be justified when an alien with a criminal history as a habitual felony offender makes choices during the proceedings that necessarily add time to the resolution of his case – and therefore to the detention that Congress found to be a necessary aspect of those proceedings. For example, in *Demore*, the alien's "removal hearing was scheduled to occur" after five months, but the Court noted, "[he] requested and received a continuance to obtain documents relevant to his withholding application." *Demore*, 538 U.S. at 531 n.15. The Supreme Court regarded the additional detention time added by the alien's continuance as fully justified. The Court further noted that, if a criminal alien decided to appeal to the Board, that added time to the duration of removal proceedings – and thus to the accompanying detention under section 1226(c). *See id.* at 529. But the Supreme Court similarly treated the added

detention time reasonably consumed in disposing of the appeal as fully justified. The Court stated, "'the legal system… is replete with situations requiring the making of difficult judgments as to which course to follow,' and, even in the criminal context, there is no constitutional prohibition against requiring parties to make such choices." *Id.* at 530 n.14 (quoting *McGautha v. California*, 402 U.S. 183, 213 (1971)); *see Chaffin v. Stynchcombe*, 412 U.S. 17, 30-31 (1973).

Justice Kennedy's concurrence in *Demore* reflects a similar understanding. In his view, a lawful permanent resident, "could be entitled" to a bond hearing "if the continued detention became unreasonable or unjustified." *Id.*, 538 U.S. at 532. But he viewed the constitutionality of continuing detention without a bond hearing as depending on why the detention was continuing: if there were an "unreasonable delay *by the [Immigration and Naturalization Service (INS)]* in pursuing and completing deportation proceedings," he explained, it "could become necessary" to ask whether "the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to *incarcerate for other reasons*." *Id.* at 532-22 (emphasis added). Justice Kennedy could not draw such an inference, however, "from the circumstances of" *Demore* itself. *Id.*, 538 U.S. at 533. The clear implication is that the reasonable continuation of removal proceedings occasioned by an alien's choices – including seeking continuances, relief from removal, or appellate review – does not undermine the constitutionality of detention. So long as the added time is reasonably needed to adjudicate the case (not to prolong pointlessly or to punish), the ongoing detention continues to be constitutionally justified by the interest in "protect[ing] against risk of flight or dangerousness." *Id.* at 532-33.

Here, Petitioner's removal proceedings have not yet concluded. As discussed above, Petitioner reserved his right to appeal the Immigration Judge's Order of Removal, and has until August 14, 2025, to submit said appeal. Any further delay in the conclusion of Petitioner's removal

proceedings is attributable to Petitioner. If he chooses to exercise his right to appeal the Removal Order, he will be the one prolonging removal proceedings, not the government. As such, Petitioner's detention of seven months does not constitute a due process violation and Petitioner is not entitled to release.

B. The Court Lacks Power to Grant Injunctive Relief in the Absence of Subject Matter Jurisdiction.

In addition to requesting release from detention, Petitioner seemingly attempts to challenge the validity of his removal order as well as requesting this Court grant his request of U.S. Citizenship. Neither of these claims are valid in this Court, through a Habeas Petition.

1. The Suspension Clause does not Apply to requests for injunctive relief.

Petitioner's request for injunctive relief here is not subject to the Suspension Clause. Caselaw makes explicitly clear that "the Suspension Clause is not implicated where [a] [p]etitioner is seeking injunctive relief." *Bumu v. Barr*, 2020 U.S. Dist. LEXIS 205380, *6 (W.D.N.Y. Nov. 3, 2020). The Supreme Court recently reaffirmed this principle in *Department of Homeland Security v. Thuraissigiam* when it held that the Suspension Clause does not apply when a non-core habeas petition seeks relief beyond "simple release." 140 S. Ct. 1959 (2020). In *Thuraissigiam*, the respondent was seeking relief beyond the simple release contemplated by the common-law habeas writ. *Id*. Respondent in that case was seeking vacatur of his removal order and an order directing the agency to provide him with a new opportunity to apply for asylum and other relief from removal. *Id*. However, the Supreme Court held "habeas is at its core a remedy for unlawful executive detention" and that what this individual wanted was not "simple release" but an opportunity to remain lawfully in the United States. *Id*. (quoting *Munaf v. Geren*, 553 U.S. 674 (2008)). The court went on to note that "[c]laims so far outside the 'core' of habeas may not be pursued through habeas." *Id*. (internal citations omitted).

At least two courts of appeals have subsequently followed *Thuraissigiam* and found the Suspension Clause inapplicable where petitioner sought something other that "simple release." *See Gicharu v. Carr*. No. 19-1864, 2020 U.S. App. LEXIS 39536, at *5 (1st Cir. Dec. 16, 2020) ("the Suspension Clause is not implicated where, as here, the relief sought by the habeas petitioner is the opportunity to remail lawfully in the United States rather than the more traditional remedy of simple release from unlawful executive detention."); *Huerta-Jimenez v. Wolf*, No. 19-55420, 2020 U.S. App. LEXIS 38237, at *1 (9th Cir. Dec. 8, 2020) (holding petitioner's Suspension Clause argument failed under *Thuraissigiam* where "petitioner does not want simple release but, ultimately, the opportunity to remain lawfully in the United States" because such relief fell "outside the scope of the writ.").[3]

Here, Petitioner is clearly seeking something beyond "simple release." He is seeking to remain in this Country and be granted U.S. citizenship. *See* [D.E. 1 at p. 7]. This is squarely within the examples that the Supreme Court laid out in the *Thuraissigiam* decision, a request beyond simple release, to remain in the United States. The Supreme Court has clearly established that the Suspension Clause does not apply to such claims.

2. 8 U.S.C. § 1252(a)(5)

On May 11, 2005, then President Bush signed into law the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Tsunami Relief Act of 2005. Division B was the REAL ID Act of 2005, Pub.L. 109-13, Div. B, 119 Stat. 231 (2005) ("REAL

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[3] *See also Tazu v. AG United States*, 975 F.3d 292, 299-300 (3d Cir. 2020) (while not citing Suspension Clause, citing *Thuraissigiam* in finding that the only remedy habeas could offer petitioner was "the relief he hopes to avoid – release into the cabin of a plane bound for [the country in petitioner's removal order]").

ID"). Section 106 of REAL ID amended section 242 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1252, which pertains to judicial review of orders of removal.

Specifically, REAL ID § 106(a)(1)(B) amended 8 U.S.C. § 1252(a) to add a new subsection (5), which states:

> EXCLUSIVE MEANS OF REVIEW – Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with the appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of the Act, except as provided in subsection (e). For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

Congress also provided that habeas petitions filed under 28 U.S.C. § 2241, challenging a final order of removal, deportation, or exclusion, that were pending in a district court on the date of enactment, should be transferred to the Court of Appeals for the circuit in which the petition for review could have properly been filed. REAL ID § 106(c).

In *Balogun v. U.S. Attorney General*, 425 F.3d 1356 (11th Cir. 2005), the Eleventh Circuit reviewed the legislative history of the REAL ID Act, and noted that Congress viewed the Supreme Court's decision in *INS v. St. Cyr.*, 533 U.S. 289 (2001), as giving criminal aliens "more judicial review than non-criminals." 425F.3d at 1360, *citing* 151 Cong.Rec. H2813. An alien who had not committed crimes only had one opportunity to appeal a final removal order, at the courts of appeals, while a criminal alien could file a petition for review to the courts of appeals and then a petition for writ of habeas corpus under 28 U.S.C. § 2241. The Eleventh Circuit also noted that

"Congress found that this double-layered review for criminal aliens prolonged and complicated the removal process." *Id.*

The Eleventh Circuit then summarized the jurisdictional impact of the REAL ID Act:

> Section 106(a)(1)(A)(iii) of the REAL ID Act replaces the two levels of review with one. A criminal alien must now petition the court of appeals for review of all claimed legal errors relating to the BIA's final order of removal. The Act accomplished this by restoring the court of appeals' jurisdiction to review all legal errors in a removal order for criminal aliens. Habeas review became unnecessary. The provisions of 28 U.S.C. § 2241 no longer play any role in immigration cases.

Id. at 1360.

Petitioner relied upon 28 U.S.C. § 2241, the Suspension Clause (Art. 1 § 9, cl. 2) as the jurisdictional basis of his claim. 28 U.S.C. § 2241 does not grant subject matter jurisdiction because 8 U.S.C. § 1252(a)(5) specifically forecloses habeas actions under 28 U.S.C. § 2241 as a vehicle for obtaining judicial review of a removal order, which is essentially what Petitioner seeks to do in this case:

> Notwithstanding any other provision of law (statutory or nonstatutory) including section 2241 of Title 28, or any other habeas corpus provision, and section 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) of this section.

3. Section 1252(b)(9)

Title 8, United States Code, § 1252(b)(9) provides:

> 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 shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28,

> or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

In *Ivantchouk v. U.S. Attorney General*, 417 F.App'x 918 (11th Cir. 2011), the Eleventh Circuit surveyed the REAL ID Act amendments to section 1252, the addition of section (a)(5), and amendment of section 1252(a)(9), and observed, "the REAL ID Act expanded appellate courts' jurisdiction to consider constitutional and legal questions in a petition for review of the immigration proceedings, and it rendered a petition for review the alien's exclusive means for review of the removal order." *Id.* at 921. As in the case of § 1252(a)(5), the REAL ID Act's amendment to § 1252(b)(9) categorically excludes 28 U.S.C. § 2241, 28 U.S.C. § 1361, and 28 U.S.C. § 1651 as a basis for a district court to review an alien's order of removal.

4. Section 1252(g)

A third provision, 8 U.S.C. § 1252(g), also divests this Court of jurisdiction to review Petitioner's order of removal. Section 1252(g) provides as follows:

> (g) Exclusive jurisdiction
>
> > Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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.

In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), the Supreme Court observed § 1252(g) applies to "three discrete actions that the Attorney General may take: her 'decision or action' to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Id.* at 482 (emphasis in original). As to its purpose, the Court found that § 1252(g) "performs the function of categorically excluding from non-final order judicial review...certain

specified decision and actions of the INS." *Id.* at 483. In other words, Petitioner can only obtain judicial review of his removal order through a petition for review filed with the Court of Appeals with jurisdiction over the state in which their removal proceedings were conducted.

CONCLUSION

For the reasons stated above, the Petition should be denied.

Respectfully submitted,

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