UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-24543-CIV-RUIZ

RAFAEL CENDAN,

Petitioner,

v.

KRISTI NOEM, Secretary of
Department of Homeland Security,
CHARLES PARRA, Field Director at Krome,
JOSE SIERRA, Field Manager,
MR. RIVAS, Deportation Officer for Cubans,

Respondents.
_____/

RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS

Respondents,[1] by and through the undersigned Assistant United States Attorney, maintain that Rafael Cendan's ("Petitioner") Petition for Writ of Habeas Corpus ("Petition") should be dismissed under *Zadvydas v. Davis,* 533 U.S. 678, 701 (2001) as premature because he has not accrued post-removal order detention in excess of six months. Further, Petitioner does not seem to be requesting release from detention, and therefore Habeas relief is inapplicable.

[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 detained at Krome Detention Center ("Krome") at the time of filing the Petition, a detention facility in Miami-Dade County, Florida, his immediate custodian would be Assistant Field Office Director (AFOD) Charles Parra—referred by Petitioner as Field Director. Accordingly, the proper Respondent in the instant case is AFOD Parra, in his official capacity, and all other Respondents should be dismissed.

FACTUAL BACKGROUND

Rafael Cendan Morejon (Petitioner), is a native and citizen of Cuba. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, dated November 27, 2024. On or about February 1, 1962, the legacy Immigration and Naturalization Service (INS) admitted Petitioner as a Lawful Permanent Resident (LPR/O1M) at Miami, Florida. *See* Exh. A, Form I-213. On September 9, 2015, Petitioner was convicted in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, for Armed Robbery with a Firearm/Deadly Weapon, Fleeing or Attempting to Elude a Police Officer, and two counts of Battery on a Law Enforcement Office, and Resisting an Officer with Violence. *See* Exh. A, Form I-213; *see also* Exh. E, Form I-200, Warrant for Arrest of Alien and Conviction Records for Case F15000265.

On December 30, 2024, Enforcement and Removal Operations (ERO) Miami Criminal Apprehension Program (CAP) encountered Petitioner at the Florida Department of Corrections, Everglades Correctional Institution, in Miami, arrested Petitioner, and transferred him to the Krome Service Processing Center in Miami, Florida. *See* Exh. C, Supervisory Detention and Deportation Officer Jahmal Ervin's Declaration (SDDO Ervin's Declaration); *see also* Exh. D, Form I-286, Notice of Custody Determination; *see also* Exh. E, Form I-200.

On December 30, 2024, ERO Miami CAP served a Notice to Appear (NTA), Form I-862, on Petitioner charging removability pursuant to Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA), for having been convicted at any time after admission of an aggravated felony as defined in Section 101(a)(43)(F) of the INA, a crime of violence (as defined in section 16 of Title 18, United States Code, but not including a purely political offense) for which the term of imprisonment ordered is at least one year. *See* Exh. B, Form I-862, Notice to Appear (NTA);

see also Exh. C, SDDO Ervin's Declaration. On January 6, 2025, ERO filed the NTA with the Immigration Court. *See* Exh. C, SDDO Ervin's Declaration.

On January 16, 2025, and February 6, 2025, the Immigration Judge continued the case for Petitioner to get an attorney. *See* Exh. C, SDDO Ervin's Declaration. On March 10, 2025, during a master calendar hearing at the Krome Immigration Court, the Petitioner, through his attorney, requested attorney preparation time and the Immigration Judge continued the case. *See* Exh. C, SDDO Ervin's Declaration. On April 7, 2025, during a master calendar hearing at the Krome Immigration Court, the Petitioner, through his attorney, requested additional time to complete an application for relief, and the Immigration Judge continued the case once again. *See* Exh. C, SDDO Ervin's Declaration. On May 6, 2025, the Petitioner, through counsel, admitted all allegations and conceded the charge of removability on the NTA. *See* Exh. C, SDDO Ervin's Declaration. On the same date, the Immigration Judge sustained the charge of removability and scheduled the case for a hearing on the merits of Petitioner's application for relief. *See* Exh. C, SDDO Ervin's Declaration.

On August 29, 2025, the Immigration Judge ordered Petitioner removed to Cuba, but granted Petitioner deferral of removal under Article 3 of the United Nations Convention Against Torture (CAT). *See* 8 C.F.R. § 1208.16(c)(4); *see also* Exh. F, Order of the Immigration Judge, dated August 29, 2025, and Exh. C, SDDO Ervin's Declaration. Both parties waived appeal. *See* Exh. F. On September 1, 2025, ERO Miami served Petitioner with a Notice of Removal to Mexico, which Petitioner refused to sign. *See* Exh. G, Notice of Removal to a Third Country. On or around September 8, 2025, ERO transferred Petitioner to the Otay Mesa Detention Center for removal. *See* Exh. C, SDDO Ervin's Declaration. Mexico did not accept the Petitioner, and he was transported back to Krome. *See* Exh. C, SDDO Ervin's Declaration. . On October 3, 2025, ERO

transferred Petitioner to the Florence Staging Facility for removal. *See* Exh. H, EARM Detention History, and Exh. C, SDDO Ervin's Declaration. Mexico did not accept the Petitioner. *See* Exh. C, SDDO Ervin's Declaration.

Inasmuch as Petitioner has only been detained pursuant to a final order of removal since August 29, 2025, ERO continues to pursue Petitioner's removal to alternate third countries at this time. *See* Exh. C, SDDO Ervin's Declaration. Petitioner is currently detained at Port Isabel Service Processing Center awaiting his transfer to Krome, scheduled for October 24, 2025. *See* Exh. H, EARM Detention History, and Exh. C, SDDO Ervin's Declaration.

ARGUMENT

Petitioner seemingly claims that he has been unable to file a I-246 to request a stay of removal. *See* D.E. 1. Nowhere in Petitioner's Petition does he request release, rather, he specifically requests to continue his detention at Krome. [D.E. 1 at p. 7, ¶ 15]. However, since he filed a claim under Habeas, the Respondents will address why such claim would fail even if properly presented.

I. THE HABEAS PETITION IS 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 begins on the latest of the following:

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

Nonetheless, "federal law authorizes aliens…to be detained beyond the ordinary 90-day removal period" in § 1231(a)(1)(B). *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).

The Petitioner is an alien who is removable under § 1227(a)(2)(A)(iii) as an aggravated felon and who has been ordered removed; as such, Petitioner is subject to § 1231(a)(6). 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.

If a petitioner has been detained fewer than six months, then the § 2241 habeas 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, at *5 (Dec. 10, 2014) (denying habeas petition has premature under *Zadvydas* when petitioner had only been detained for eighteen days prior to filing the habeas petition).

Here, the Petition should be dismissed as premature because Petitioner has not shown post-order detention in excess of six months under *Zadvydas*. Petitioner was ordered removed on August 29, 2025, less than two months ago. He clearly cannot show post-order detention in excess of six months. Accordingly, the Petition should be denied.

II. THE PETITION REQUESTS MORE THAN SIMPLE RELEASE

As mentioned above, the Petitioner's Petition seemingly does not request release from detention, but rather a stay of deportation. However, such claim is not valid in this Court, through a Habeas Petition.

Petitioner seeks a stay of removal to allow for resolution of a civil rights case against State officers for injuries sustained during his arrest and subsequent conviction for armed robbery, for which he received a lengthy prison sentence. [D.E. 1 at p. 6]. However, courts have recognized that there is no due process right to remain in the United States pending resolution of a civil matter. *See Bolanos v. Kiley*, 509 F.2d 1023 (2d. Cir. 1975) (no Constitutional right to remain in the United States pending resolution of *Bivens action).*

Further, Petitioner alleges he has been subject to "gross negligence" in transfer for removal. [D.E. 1 at p. 6]. But a habeas petition under § 2241 petition is not the appropriate vehicle for raising such legal challenge, which targets the conditions of Petitioner's confinement—not the "fact or

duration of that confinement," *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (citing *Nelson v. Campbell*, 541 U.S. 637, 644 (2004)), or "the validity of" or "lawfulness of" his confinement, *Hutcherson v. Riley*, 468 F.3d 750, 754 (11th Cir. 2006); see also *Vaz*, 634 F. App'x at 781; *Nichols v. Riley*, 141 F. App'x 868, 868–69 (11th Cir. 2005). *See also Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990).

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 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 than "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 remain 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.").[2]

Here, Petitioner is clearly seeking something beyond "simple release." He is seeking a stay of his removal order as well as claiming negligence related to his confinement. *See* [D.E. 1 at p. 7]. This is a request beyond simple release, and beyond what the Supreme Court laid out in the *Thuraissigiam* decision, and is not proper under Habeas. The Supreme Court has clearly established that the Suspension Clause does not apply to such claims, and thus, the Petition should be denied.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that Petitioner's Petition be denied.

Respectfully submitted,

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[2] *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]").

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