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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ADRIAN GONZALEZ YANES,

Petitioner,

v.

DEPARTMENT OF HOMELAND SECURITY,

Respondent.

No. 5:25-cv-02647-ODW-JC

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS [ECF NO. 1] AND OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER [ECF NO. 8]

[Filed concurrently with Declaration of Henry J. Cervantes]

Honorable Jacqueline Chooljian
United States Magistrate Judge

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I. INTRODUCTION

Petitioner Adrian Gonzalez Yanes filed his Petition for Writ of Habeas Corpus (Dkt. 1, "Petition") under 28 U.S.C. § 2241 requesting immediate release from immigration detention at the Adelanto Immigration Processing Center. In addition, Petitioner also filed a Motion for an "Emergency" Temporary Restraining Order (Dkt. 8, "TRO Motion"), which seeks the same relief as the Petition. Both the Petition and the TRO Motion should be denied.

Notably, on September 24, 2025, Petitioner, represented by counsel, had a custody redetermination hearing before an Immigration Judge who found that Petitioner poses a high flight risk and no amount of bond would be appropriate. Petitioner, who was represented by counsel, did not appeal the decision.

Respondent respectfully request that the Court deny the Petition and the TRO Motion because: (1) the Petition fails to allege any specific factual basis for habeas relief, violating the habeas pleading standard; (2) Petitioner's detention by Immigration and Customs Enforcement ("ICE") to effectuate a final removal order is authorized by statute; (3) this Court lacks jurisdiction over the Petition to the extent it seeks to review ICE's decision to remove Petitioner; and (4) the Department of Homeland Security ("DHS") is not the proper defendant in a habeas action.

II. STATEMENT OF FACTS

Petitioner is a native and citizen of Cuba who entered the United States without inspection at or near Brownsville, TX, on or about July 22, 2019. Declaration of Henry J. Cervantes ¶ 4.

Petitioner was placed into removal proceedings with the issuance of a Notice to Appear (NTA) on July 23, 2019, and charged with inadmissibility under INA §212(a)(7)(A)(i)(I). *Id.* at ¶ 5.

On March 13, 2020, Petitioner was removed after an Immigration Judge entered an order of removal. *Id.* at ¶ 6; Ex. 1. The Petitioner did not appeal his removal order, and it became a final order on April 14, 2020. Cervantes Decl. ¶ 7.

The Petitioner returned to the United States and entered without inspection on an unknown date at an unknown place. *Id.* at ¶ 8. On February 3, 2025, ICE officers took the Petitioner into custody for the purpose of reinstating his removal order pursuant to authority in section 241(a)(5) of the Immigration and Nationality Act (INA) and 8 C.F.R. § 241.8. *Id.* at ¶ 9.

On June 20, 2025, the Petitioner was found to not have a reasonable fear of harm in Cuba. *Id.* at ¶ 10. The Petitioner requested a review of the decision by the Immigration Judge. *Id.* On July 10, 2025, the Immigration Judge overturned the negative credible fear determination, and the Petitioner was placed into Withholding Only proceedings. *Id.* at ¶ 11.

On or around September 12, 2025, Petitioner, through counsel, requested a bond custody redetermination hearing pursuant to the Ninth Circuit decision in *Aleman-Gonzalez*. *Id.* at ¶ 12; Ex. 2. On September 24, the Immigration Judge conducted the custody redetermination hearing. Cervantes Decl. ¶ 13. The Immigration Judge found that the agency had met its burden to prove by clear and convincing evidence that the Petitioner poses such a high flight risk that no amount of bond would be appropriate. *Id.* at ¶ 13; Ex. 3.The Petitioner did not appeal this decision. Cervantes Decl. ¶ 13.

A merits hearing on Petitioner's applications for withholding relief is scheduled for November 21, 2025. *Id.* at ¶ 14.

III. THE PETITION SHOULD BE DENIED

A. The Petition Fails To Plead Any Factual Basis For Granting Relief

Federal habeas petitioners are subject to a higher pleading standard than Fed. R. Civ. P. Rule 8 and must make specific factual allegations. *See* Rules Governing Section 2254 Cases, Rule 2(c)(1)-(2) (federal habeas petitions must "specify all the grounds for relief," and "state the facts supporting each ground"); *see also Mayle v. Felix*, 545 U.S. 644, 655 (2005) (Fed. R. Civ. P. 8(a) requires only "fair notice" whereas Habeas Rule 2(c) is "more demanding" and that federal habeas petitions are "expected to state facts that point to a real possibility of constitutional error") (citations omitted); *Jones v.*

Gomez, 66 F.3d 199, 204-05 (9th Cir. 1995) (conclusory allegations unsupported by a statement of specific facts do not warrant habeas relief); *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (allegations that are vague, conclusory, or unsupported by a statement of specific facts, are insufficient to warrant relief and subject to summary dismissal).

Here, the Petition is conclusory and vague, and unsupported by a statement of specific facts. The Petition is a form pleading on which the Petitioner's name, address, and date of detention have been handwritten, but with nothing more added particular to the Petitioner. The Petition comes nowhere near to meeting the basic pleading requirements for federal habeas petitions, and it is insufficient to justify relief.

The Petition purports to bring a Fourth Amendment claim, but only describes legal concepts and makes no factual assertions other than a broad statement that "Petitioner was Illegally Detained" by the government. Petition at 6. Although the Fourth Amendment prohibits "unreasonable searches and seizures" by the government, not all warrantless stops, arrests, or seizures automatically equate to a violation of Fourth Amendment rights. *See generally Terry v. Ohio*, 392 U.S. 1 (1968). The federal statutory scheme further instructs under what circumstances an arrest of a noncitizen during the removal process is appropriate. *Arizona v. United States*, 567 U.S. 387, 407 (2012). Here, there are no specific factual allegations explaining why the arrest or detention is unlawful or how any of the other statutes are implicated. Hence, the Petition does not sufficiently allege "a real possibility of constitutional error." *Mayle*, 545 U.S. at 655. The Petition pleads no facts showing that ICE lacked the authority necessary to arrest Petitioner or that he was not properly subject to immigration detention independent of the circumstances of his arrest. Accordingly, the Petition does not plead sufficient facts to form the basis for a cognizable Fourth Amendment claim.

The Petition lists three additional legal "grounds" for release. Petition at 6. But there are no factual allegations to determine even generally what claims Petitioner is alleging. He cites to statutes and case law but nowhere provides any factual context to

determine what if any bearing the legal authorities have on Petitioner's detention. Therefore, the Petition should be dismissed.

B. Petitioner Is Lawfully Detained Pending The Resolution Of His Removal Proceedings

Petitioner cannot state a claim for habeas relief based on his detention pending the resolution of his current removal proceedings.

8 U.S.C. § 1226(a) authorizes Petitioner's detention "pending a decision on whether [he] is to be removed from the United States" on the current charge of removability. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008). As the Supreme Court has recognized, "detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). "Detention during [removal] proceedings gives immigration officials time to determine an [noncitizen]'s status without running the risk of the [noncitizen]'s either absconding or engaging in criminal activity before a final decision can be made." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018).

Petitioner's current removal proceedings are ongoing and progressing, with an individual hearing on the merits of Petitioner's application for withholding of removal scheduled for November 21, 2025. Cervantes Decl. ¶ 14; *see Soto v. Sessions*, 2018 WL 3619727, at *3 (N.D. Cal. July 30, 2018) (concluding "no specter of indefinite detention" where noncitizen is detained pursuant to 8 U.S.C. § 1226(a) pending a decision on her removal, and noncitizen's removal proceedings are proceeding). His current detention comports with due process. *See Prieto-Romero*, 534 F.3d at 1065 (finding no constitutional violation in detention of more than three years under § 1226(a)). While Petitioner may prefer to defend himself in the current removal proceedings out of ICE custody, Petitioner cannot establish a claim for habeas relief based on his detention pending the resolution of his current removal proceedings.

C. Petitioner's Continued Detention Following A Bond Custody Determination Hearing Does Not State A Claim For A Due Process Violation

During the period that Petitioner has been detained, he was provided with a bond hearing before an Immigration Judge, at the request of his counsel. Cervantes Decl. ¶¶ 12-13, Ex. 2, 3. At the hearing, in which Petitioner was represented by counsel, the IJ properly denied Petitioner's bond request after finding that Petitioner was a flight risk. Ex. 3.

Detention during removal proceedings has been upheld against procedural and substantive due process challenges, even in cases where no individualized bond hearings were provided. *See Demore*, 538 U.S. at 528, 531 ("when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal."); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings.").

In contrast, Petitioner was afforded a bond hearing and did not appeal the decision. Accordingly, Petitioner has failed to demonstrate any violation of due process that would warrant his release.

D. Petitioner Is Not Entitled To *Zadvydas* Relief

The Petition appears to assert that Petitioner should be released pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). Dkt. 1 at Page ID #5. *Zadvydas* involved detainee petitioners who were subject to final orders of removal, but were being detained past the term of the 90-day removal period, because the attempts to remove them by the United States had failed. The Supreme Court held that the post-removal-period detention statute, 8 U.S.C. § 1231 (a)(6), does not authorize indefinite detention, and that continued detention was no longer statutorily authorized once removal is no longer reasonably foreseeable. *Zadvydas*, 533 U.S. at 699.

As discussed above, the Petition is devoid of factual allegations supporting a *Zadvydas* claim, other than stating that Petitioner was detained in February 2025. That is grounds for dismissal under than Fed. R. Civ. P. Rule 8. Nevertheless, Petitioner's detention does not present a *Zadvydas* issue. Petitioner is still in the process of challenging his removal order through a "withholding only" proceeding, and therefore, is not, and was never at risk of being, "stuck in a 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were." *Prieto- Romero*, 534 F.3d at 1063; *see also Jennings*, 583 U.S. at 298 (narrowly construing *Zadvydas* as interpreting post-removal period detention pursuant to 8 U.S.C. § 1231(a)(6) and declining to extend *Zadvydas*'s reasoning interpreting constitutional limitation to pre-final removal order detention pursuant to 8 U.S.C. § 1225(b)). The Ninth Circuit has rejected claims for relief pursuant to *Zadvydas* brought by aliens whose removal orders were still pending judicial review on this basis. *See id.* at 1067. Like the petitioners in *Prieto-Romero*, there is no evidence that Petitioner could not be removed because Cuba would not accept him, or because other federal laws barred his removal, if the petitioner is granted withholding of removal to Cuba. *See Cau v. Lynch*, 2016 WL 1358656, at *5 (C.D. Cal. Feb. 16, 2016) (finding *Zadvydas* inapplicable to alien whose removal proceedings were pending appeal, and would have a definite termination point).

Consequently, Petitioner is not entitled to any relief pursuant to *Zadvydas*.

E. DHS Should Be Dismissed As An Improper Respondent

Pursuant to the federal habeas statute, 28 U.S.C. § 2242, which applies to § 2241 petitions, "there is generally only one proper respondent to a given prisoner's habeas petition [, and it is] … 'the person' with the ability to produce the prisoner's body before the habeas court." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004); *see* 28 U.S.C. § 2242 (requiring a federal habeas petitioner to provide "the name of the person who has custody over him"). When a habeas petitioner challenges his present physical confinement, "the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote

supervisory official." *Padilla*, 542 U.S. at 435.

Here, the Petition improperly names the Department of Homeland Security as a Respondent. Because DHS is the only Respondent, this is grounds for dismissing the entire Petition.

IV. THE TRO MOTION SHOULD BE DENIED

On November 5, 2025, the Court docketed a "Motion for Emergency Temporary Restraining Order" that had been mailed by Petitioner to the Court. Dkt. 8. Like the Petition, the TRO Motion is a form brief with case law citations but virtually no discussion of any factual allegations or how they are tied to the case law. The TRO Motion seeks the same relief as the Petition, immediate release. Like the Petition, the Motion should be denied for the reasons discussed above. In addition, the Motion should be denied for the following reasons:

A TRO is "an extraordinary and drastic remedy ... that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (emphasis in original). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, Petitioner has submitted no evidence in support of the TRO Motion, and clearly has not met his burden. Furthermore, Petitioner has not made a "clear showing" of any of the *Winter* factors.

Petitioner also failed to establish that there is an "emergency" justifying *ex parte* relief. To obtain "emergency" relief in this District, Petitioner "must show why [she] should be allowed to go to the head of the line in front of all other litigants and receive special treatment." *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). Petitioner has not made any showing justifying "emergency" injunctive relief under *Mission Power*.

In the Motion, Petitioner appears to advance a claim for the first time regarding the agency's failure to follow its own regulations. Motion at Page ID #38-39. Even assuming this new claim is properly before the Court on a TRO Motion, which it is not, there are no factual allegations to determine even generally what regulations Petitioner is alleging Respondents have failed to follow. The Petition cites to case law but nowhere provides any factual context.

V. CONCLUSION

Respondent respectfully requests that the Court deny the habeas petition and dismiss the action. Respondent does not believe that an evidentiary hearing is required. In addition, Petitioner's TRO Motion should be denied.

Dated: November 6, 2025

Respectfully submitted,

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Certificate of Compliance

The undersigned, counsel of record for the Respondent, certifies that this brief contains 2,431 words, which complies with the word limit of L.R. 11-6.1.

Under L.R. 16-12(c)., this case is exempt from the L.R. 7-3 meet and confer requirements.

Dated: November 6, 2025

/s/ Paul (Bart) Green
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