UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-25280-CV-WILLIAMS

ANDRES DOMINGUEZ-MARTINEZ

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.
_____/

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE [DE 4]

Respondents by and through the undersigned Assistant United States Attorney hereby file this Response to the Court's Order to Show Cause as to why Petitioner, Andres Dominguez-Martinez's ("Petitioner") Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief [DE 1] ("Petition") should be denied and states in support thereof as follows:

I. INTRODUCTION

Petitioner is currently confined at the Krome North Service Processing Center in Miami, Florida ("Krome") and seeks a writ of habeas corpus or in the alternative an order requiring a bond hearing [DE 1, p. 29-30]. Petitioner claims his detention is presumptively unreasonable as he has been detained for almost two years and there is "no end in sight." [DE 1, ¶ 96]. However, Petitioner is presently in withholding-only proceedings, and it is reasonably foreseeable that a termination point (i.e. removal) will be effectuated upon resolution of same. During the course of such withholding-only proceedings, Petitioner is not entitled to a bond hearing because § 1231, not 8 U.S.C.S. § 1226 (discretionary detention) governs his detention as explained in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). Lastly, this Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(g), INA § 242(g) to the extent that Petitioner challenges the Final Administrative Review Order (FARO) issued. *See* generally, DE 1. Accordingly, the Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Petitioner, Andres Rafael Dominguez-Martinez (Petitioner), is a native and citizen of the Dominican Republic who first entered the United States on or about November 5, 2002, on a visitor visa. *See* Ex. A, Record of Deportable Alien (Form I-213), dated June 17, 2011 ("2011 I-213).[1] Petitioner admitted to overstaying the term of his authorized stay. *See* Ex. A, 2011 I-213.

On March 31, 2011, Petitioner was convicted in the Superior Court for the County of Westchester in the State of New York for Criminal Possession of a Controlled Substance in the Third Degree, in violation of section 220.16 of the New York Penal Laws. *See* [DE 1-8]. Specifically, Petitioner pleaded guilty to Count 1 of the Superior Court Information, which charged that he ". . . on or about March 26, 2010, knowingly and unlawfully did possess a narcotic drug, to wit: cocaine, with intent to sell the same."*Id*. He was sentenced to a term of two years of incarceration and two years of post-release supervision. *Id.*

Removal Proceedings and Removal Order

On April 19, 2011, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) encountered Petitioner at the Downstate Correctional Facility, a New York State Department of Corrections Facility. *See* Ex. A, 2011 I-213. On December 9, 2011, Petitioner was taken into ICE ERO custody. *See* Ex. C, Record of Deportable Alien (Form I-213), dated March 12, 2024 ("2024 I-213"). On or about June 17, 2011, ICE ERO issued a Notice to Appear ("NTA") with the Executive Office for Immigration Review (EOIR), charging Petitioner as removable pursuant to INA

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[1] On January 10, 2010, a Form I-130, Petition for Alien Relative was filed on behalf of Petitioner with United States Citizenship and Immigration Services ("USCIS"). *See* Ex. B, Declaration, ¶ 6. On May 27, 2010, USCIS approved the Petition. *Id.* at ¶ 7. On July 18, 2011, USCIS revoked the Petition. *Id.* On August 22, 2011, Petitioner filed a Form I-485, Application to Register Permanent Residence Status. USCIS denied it on February 1, 2012. *Id.* at ¶ 8. Petitioner filed documentation that he has an approved Form I-130, Petitioner for Alien Relative. *See* DE 1-10. However, Petitioner has neither established that he is eligible for adjustment of status nor that he is otherwise eligible for other relief in light of his criminal history. *Id.* at ¶ 9.

§ 237(a)(1)(B), as an alien who, after admission as a nonimmigrant, remained in the United States for a time longer than permitted, in violation of the Immigration and Nationality Act ("INA") or other law of the United States; INA § 237(a)(2)(B)(i), as an alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in 21 U.S.C. § 802)), other than a single offense involving possession for one's own use of thirty grams or less of marijuana; and INA § 237(a)(2)(A)(iii), as an alien who, after admission, was convicted of an aggravated felony, as defined in INA § 101(a)(43)(B), an offense relating to the illicit trafficking in a controlled substance (as defined in 21 U.S.C.§ 802), including a drug trafficking crime (as defined in 18 U.S.C. § 924(c)). *See* Ex. D, NTA.

On January 30, 2012, an Immigration Judge ordered Petitioner removed to the Dominican Republic. *See* Ex. E, Order of the Immigration Judge, dated Jan. 30, 2012. Petitioner appealed to the Board of Immigration Appeals (Board), and, on May 22, 2012, the Board dismissed the appeal. *See* Ex. F, Board Decision, dated May 22, 2012. On November 1, 2012, ICE ERO removed Petitioner to the Dominican Republic. *See* Ex. G, Warrant of Removal/Deportation (Form I-205), dated October 29, 2012.

Illegal Reentry and Reinstatement of Removal

On February 24, 2020, Petitioner was encountered by Customs and Border Protection (CBP) after he illegally entered the United States. *See* Ex. B, Declaration, ¶ 13. On that same date CBP reinstated Petitioner's prior order of removal, dated May 22, 2012. *Id.*

On March 4, 2020, a grand jury indicted Petitioner for illegally re-entering the United States subsequent to an aggravated felony conviction, in violation of 8 U.S.C. § 1326(b)(2). *See* Ex. H, Indictment, *United States vs. Andres Dominguez Martinez*, Case No. 20-115. Petitioner was released from the United States Marshals' (USM) custody on March 13, 2020. *See* Ex. I, Removal to the District

of Puerto Rico, Ex. A, Arrest Warrant, *United States vs. Andres Dominguez Martinez*, Case No. 20-115. On or about May 11, 2020, the United States District Court for the District of Puerto Rico issued a warrant for Petitioner's arrest, for violating a court order setting forth conditions of supervised release, in violation of 18 U.S.C. § 3148. *See* Ex. I, Removal to the District of Puerto Rico.

Thereafter, Petitioner departed the United States. *See* Ex. B, Declaration, ¶ 15. On February 20, 2023, CBP encountered Petitioner at the John F. Kennedy International Airport in Queens, New York, pursuant to the Arrest Warrant. *See* Ex. I, Removal to the District of Puerto Rico. Petitioner was paroled into the United States and turned over to the custody of the USM. *See* Ex. B, Declaration, ¶ 15.

On February 7, 2024, Petitioner was convicted for Re-entry Subsequent to an Aggravated Felony Conviction, in violation of 8 U.S.C. § 1326(b)(2). *See* Ex. J, Judgment in a Criminal Case, *United States v. Andres Dominguez Martinez*, Case No. 20-115. He was sentenced to 15 months imprisonment. *Id.*

Reinstatement of Removal and First Withholding-Only Proceedings

On March 12, 2024, upon completion of his federal sentence, ICE ERO encountered Petitioner at the Puerto Rico Department of Corrections. *See* Ex. C, 2024 I-213. On the same date, ICE ERO reinstated the prior order of removal, dated May 22, 2012, and took Petitioner into immigration custody. *Id.*; Ex. K, Notice of Intent/Decision to Reinstate Prior Order, dated March 12, 2024; Ex. L, Detention History Ex. B, Declaration, ¶ 17.

ICE ERO referred Petitioner to USCIS for an interview, and USCIS issued a Notice of Referral to Immigration Judge. *See* Ex. M, Notice of Referral to Immigration Judge (Form I-863), dated August 21, 2024 ("2024 I-863"). On August 21, 2024, the matter was referred to an Immigration Judge for withholding-only proceedings in accordance with 8 C.F.R. § 208.31(e). *Id.*

Petitioner requested a custody redetermination from the Immigration Judge, and on April 4, 2024, the Immigration Judge denied the request, finding the court lacked jurisdiction because Petitioner was subject to a final order of removal. *See* Ex. N, Order of the Immigration Judge, dated April 4, 2024.

At an initial master calendar hearing on August 29, 2024, Petitioner requested a continuance to seek release from ICE ERO. *See* Ex. B, Declaration, ¶ 20. At a subsequent master calendar hearing on October 2, 2024, Petitioner requested a continuance for preparation time, to investigate a pending application Petitioner filed with USCIS. *Id.* At a master calendar hearing on October 23, 2024, Petitioner again requested a continuance to pursue an application with USCIS, over DHS's objection. *Id.* At a master calendar hearing on November 12, 2024, the immigration judge granted another continuance because it lacked available merit hearing dates. *Id.* On December 18, 2024, the matter was rescheduled to a hearing on January 31, 2025.[2] *See* Ex. O, Notice of Hearing, dated December 18, 2024.

At an individual hearing on January 31, 2025, Petitioner, through counsel, again requested a continuance because he recently retained new counsel. *See* Ex. B, Declaration, ¶ 20. At an individual hearing on March 3, 2025, Petitioner, through counsel, filed applications for relief from removal, including a Form I-192, Waiver of Inadmissibility, and the Immigration Judge granted a continuance to permit Petitioner to brief whether the court had jurisdiction to adjudicate the Form I-192. *See* Ex. B, Declaration, ¶ 20; *see also* [DE 1-10]. At a subsequent master calendar hearing on March 25, 2025, Petitioner, through counsel, indicated he was still researching whether the court had jurisdiction to consider the Form I-192. *See* Ex. B, Declaration, ¶ 20. The Immigration Judge found it lacked authority and scheduled the matter for a hearing on Petitioner's application for relief. *Id.*

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[2] Upon information and belief, the matter was reset due to an issue with service of the notice. *See* Ex. B, Declaration, ¶ 20.

At a merits hearing on May 8, 2025, the Immigration Judge granted another continuance for the parties to review whether Petitioner's May 22, 2012, removal order was properly subject to reinstatement. *See* Ex. B, Declaration, ¶ 21. At a master calendaring hearing on June 10, 2025, the court granted a continuance to permit ICE ERO to serve Petitioner a Notice of Intent to Issue a Final Administrative Removal Order (Notice of Intent) and to allow Petitioner an opportunity to review. *Id.*

At a master calendar hearing on July 15, 2025, the Immigration Judge granted a continuance for Petitioner's counsel to confirm Petitioner received the Final Administrative Removal Order (FARO). *See* Ex. B, Declaration, ¶ 22. At a merits hearing on September 25, 2025, the Immigration Judge entered an order confirming that Petitioner withdrew his application(s) for relief, and that both parties waived the right to appeal the decision. *See* Ex. P, Order of the Immigration Judge, dated September 25, 2025; *see also* Ex. B, Declaration, ¶ 22.

Final Administrative Removal Order

On June 4, 2025, ICE ERO issued a Form I-851, Notice of Intent to Issue a Final Administrative Removal Order, premised on Petitioner's removability based on INA § 238(b) relating to his aggravated felony conviction, as defined under INA 237(a)(2)(A)(iii) and INA 101(a)(43)(B), to wit: the conviction for Criminal Possession of a Controlled Substance. *See* Ex. Q, Final Administrative Removal Order (Form I-851A), dated June 4, 2025. Petitioner requested withholding or deferral of removal to the Dominican Republic. *Id.*

On or about June 20, 2025, ICE ERO granted Petitioner's request for an extension of time, to June 30, 2025, to review documents and contest removability. *See* Ex. B, Declaration, ¶ 24. ICE ERO reviewed Petitioner's claims, and on or about July 1, 2025, determined that Petitioner did not rebut the charges on the FARO. *Id.* ICE ERO served Petitioner with the FARO on July 17, 2025. *Id.*

Second Withholding-Only Proceedings

On October 30, 2025, ERO again referred Petitioner to the Immigration Judge via a Form I-863, Notice of Referral to Immigration Judge after USCIS determined that Petitioner expressed a reasonable fear of persecution or torture. *See* [DE 1-3]. A hearing is scheduled before the Immigration Judge on December 8, 2025. *See* Ex. B, Declaration, ¶ 25.

Petitioner is presently detained at the Krome North Service Processing Center in Miami, Florida. *See* Ex. L, Detention History. Upon the conclusion of the Petitioner's withholding-only proceedings, and assuming that any appeal is resolved in favor of DHS, ICE ERO intends to effectuate Petitioner's removal to the Dominican Republic, his native country and country of citizenship. *See* Ex. B, Declaration, ¶ 26. Inasmuch as there is no issue regarding Petitioner's citizenship and he has been removed to the Dominican Republic previously, ERO believes that there will be no impediment to his removal. *Id.*

III. ARGUMENT

A. Petitioner's Detention under 8 U.S.C. § 1231 is Lawful not only During the Pendency of Withholding-Only Proceedings but also because of the FARO Issued under 8 U.S.C. 1228(b) due to Petitioner's Aggravated Felony Conviction.

As explained by the Supreme Court in *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021), an alien may be detained pending the outcome of withholding-only proceedings. The Court further stated that "[e]ven assuming respondents are correct that withholding-only proceedings are not usually completed in 90 days, it does not follow that § 1231 is inapplicable to aliens who initiate them. In addition to setting out a 90-day removal period, § 1231 expressly authorizes DHS to release under supervision or continue the detention of aliens if removal cannot be effectuated within the 90 days. *See* §§ 1231(a)(3),(6). There is no reason why DHS cannot detain aliens in withholding-only proceedings under those same post-removal-period provisions."

Petitioner's argument that the reasonableness of his continued detention should be analyzed

under the factors set forth in *Sopo v. United States Att'y Gen.*, 825 F. 3d 1199 (11th Cir. 2016) is misplaced. [DE 1, ¶ 63-74]. *Sopo* which was vacated by the Eleventh Circuit has been applied to determine the lawfulness of an alien's prolonged detention under 8 U.S.C. § 1226(c)(concerning detention of criminal aliens). However, Petitioner is subject to a final order of removal under 8 U.S.C. § 1228(b)(concerning expedited removal of aliens convicted of committing aggravated felonies). The Supreme Court held in *Zadvydas* that an alien subject to a final removal order may be detained for "a period reasonably necessary to secure removal." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Such detention is "presumptively reasonable" for six months. *Id.* at 701. "This 6–month presumption . . . does not mean that every alien not removed must be released after six months." *Id.* Rather, an alien, such as Petitioner, "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit held that in order 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." 287 F.3d at 1052. To do so, Petitioner cannot merely rest on his own conclusory assertions—actual proof or evidence is needed. *Akinwale*, 287 F.3d at 1052 ("[T]o state a claim under *Zadvydas* the alien . . . must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."). Where an alien cannot meet the burden of establishing evidence that there is not a substantial likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g., Oladokun v. U.S. Atty. Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012).

Here, there is a significant likelihood of removal in the reasonably foreseeable future based

upon the resolution of Petitioner's withholding-only proceedings and Petition for Review before the Eleventh Circuit[3] in which he challenges the FARO pursuant to *Riley v. Bondi*. Outside of these current proceedings, the Petitioner has requested numerous continuances, which has contributed to delays as well. *See* Ex. B, Declaration, ¶¶ 20-24. Nonetheless, simply because there have been delays and removal is a date in the future, this does not mean Petitioner is entitled to release. As analyzed by the Honorable Judge Bloom in the *Rodriguez* decision:

> "certain removable aliens may be detained beyond the ordinary ninety-day removal period. *See* § 1231(a)(6); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051 (11th Cir. 2002). For example, the Attorney General may detain an individual "who has been determined ... to be a risk to the community or unlikely to comply with the order of removal" beyond the initial statutory period. § 1231(a)(6). Moreover, nothing in the Supreme Court's opinion in *Zadvydas* suggested that a non-citizen would be entitled to release simply because the post-removal period has expired. 'To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.' *See Zadvydas*, 533 U.S. at 701. 'Stated differently, a detainee is not entitled to release merely because a definite date of removal is unknown. The continued detention of aliens beyond the removal period is permissible so long as removal is reasonably foreseeable.' *Guilarte v. Barr*, No. 4:20-cv-401-WS-MAF, 2020 WL 8084169, at *4 (N.D. Fla. Dec. 3, 2020), report and recommendation adopted, No. 4:20-cv-401-WS/MAF, 2021 WL 75763 (N.D. Fla. Jan. 8, 2021)."

See Rodriguez v. Meade, Case No. 20-cv-24382-BLOOM/Otazo-Reyes, 2021 WL 671333, at *4-5 (S.D. Fla. Feb. 22, 2021). Therefore, it is a reasonably foreseeable that a termination point (i.e., removal) will occur after the conclusion of Petitioner's withholding-only proceeding. *Id.* (citing *Davis v. Rhoden*, No. 19-cv-20082, 2019 WL 2290654, at *8 (S.D. Fla. Feb. 26, 2019), report and recommendation adopted, No. 19-20082-CIV, 2019 WL 2289624 (S.D. Fla. May 29, 2019)). Moreover, "Petitioner has not met his burden of establishing that no significant likelihood of removal will occur in the foreseeable future." *Id.* (citing *Akinwale*, 287 F.3d at 1051-52).

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[3] There is no associated stay that has been issued.

B. The Court Lacks Jurisdiction to Review any Challenge that Petitioner Raises with respect to the FARO issued.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted). "A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises." *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999). Several provisions of the INA restrict the Court's jurisdiction to adjudicate certain decisions made by the Attorney General regarding removal. Section 1252—titled "Judicial review of orders of removal"—provides in pertinent part:

> (a)(2)(B) Denials of discretionary relief
>
> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . 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 . . .
>
> (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, or any other habeas corpus provision . . . 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.

8 U.S.C. § 1252(a)(2)(B)(ii), (g) (emphasis added). Thus, 8 U.S.C. § 1252(g) plainly bars direct and indirect attacks on the execution of a removal order. *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("Section 1252(g) bars review over 'any' challenge to the execution of a removal order."). In turn, to the extent that Petitioner attempts to challenge the FARO, such attacks may not be considered by this Court.

IV. CONCLUSION

Based upon the foregoing, Petitioner is lawfully detained, and he has failed to establish that there is no reasonable expectation of his removal once his withholding-only proceedings and Petition for Review before the Eleventh Circuit are resolved. Accordingly, the Petition must be denied.

Dated: November 17, 2025

Respectfully submitted,

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