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

ANDRES DOMINGUEZ-MARTINEZ,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

_____/

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Petitioner by and through the undersigned counsel hereby files this Reply to the Respondents' Response to the Court's Order to Show Cause. [D.E. 5] 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 granted and states in support thereof as follows:

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INTRODUCTION

Respondents first claim that the petitioner's proceedings are withholding-only proceedings which will be reaching completion in a foreseeable timeline and that removal will soon after be effectuated. [D.E. 5, page 1] This claim is a bit presumptive and conclusory as to predicting the end result of deportation.[1] Moreover, the respondents forget include that the petitioner has an Eleventh Circuit case pending. This Petition for Review in the Eleventh regards whether the administrative order under which he is currently in withholding-only proceedings is legally sufficient. If the petitioner prevails in the Eleventh Circuit, his withholding-only proceedings will be moot requiring the respondents to issue a notice to appear (NTA) to place him in full proceedings. Being placed in full proceedings would allow eligibility for a full range of immigration relief applications, many of which he already has pending. Thus, he is most likely to appeal any decision on his current proceedings and consolidate that appeal with his pending appeal in the Eleventh Circuit.

In their introduction, the respondents also claim that this Honorable Court lacks jurisdiction under 8 U.S.C. § 1252(g) because the respondents claim that the petitioner is under an administrative order of removal. However, Section 1252 does not strip this Court of constitutional powers of prolonged detention, i.e. of pure detention claims. Section 1252 merely precludes this District Court of jurisdiction over challenges to the removal order's execution or its merits, not pure detention claims. Nor would the petitioner ask for a decision on the merits or the execution of the order, that would be superfluous as those questions are already pending in the Eleventh Circuit, as is the proper venue. The petitioner's pending Eleventh Circuit appeal challenges the

[1] The presumption is that he would not exercise his right to appeal the current proceedings which is his right and is reasonable seeing as the petitioner's last entry was legal and entitles him to full proceedings and his position is that he is not convicted of an aggravated felony.

aggravated felony classification. That appeal, joined with any other appeals that the petitioner may file means that there is no foreseeable time of removal. The petitioner's prolonged detention (almost 2 years) without review violates due process under the Fifth Amendment of the Constitution. According to *Zadvydas v. Davis*, the federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases. See § 2241(c)(3) (authorizing any person to claim in federal court that he or she is being held "in custody in violation of the Constitution or laws ... of the United States"). *Zadvydas v. Davis,* 533 U.S. 678, 687, 121 S. Ct. 2491, 2497, 150 L. Ed. 2d 653 (2001)

Thus, this Honorable Court retains jurisdiction under Section 1252 (g)'s limits.

I. PETITIONER'S OBJECTIONS TO THE FACTUAL PROCEDURE AS SET FORTH BY THE RESPONDENTS

The respondents have completely glossed over their role in the delayed proceedings and prolonged detention of the petitioner. The petitioner was not at fault for his prolonged detention because he was seeking justice and trying to correct the respondents' procedural and legal errors.

First, the respondents issued a Final Order of Removal (FARO) on March 12, 2024 [D.E. 5, Exh. K] against the petitioner for re-instatement of removal under 8 U.S.C.§1231(a)(5). And then he was referred to the immigration court for withholding-only proceedings after passing a reasonable fear interview.

From August 2024 to November 2024, the petitioner had requested three continuances on his case, however, it is important to remember that the first entire immigration proceeding was based upon the FARO for re-instatement of removal which was not a legal FARO as will be shown below in Part II, Section A. [D.E. 5, page 5].

From November 2024 to December 2024, the immigration court itself was the cause of the delay for lack of dates available for the merits hearing. *Id.* January 2025 to March 2025 was a

continuance requested by the petitioner for new counsel and to file relief. *Id.* Then March 2025 through May 2025 was used for briefing and discussions on whether the immigration court would hear a certain application for relief from the petitioner. *Id.* Again, these proceedings were based upon an unlawful FARO.

In May 2025, the issue of the legality of the FARO was first raised and in June 2025, the respondents assured the immigration court that since the FARO was not legal they would issue a Notice to Appear (NTA) and properly place the petitioner in full removal proceedings. However, the respondents instead issued a new FARO on June 4, 2025, under 8 U.S.C.§ 8 U.S.C.§ 1228 as an alien convicted of an aggravated felony. The petitioner has timely filed a Petition for Review (PFR) in the Eleventh Circuit appealing the second FARO because of new case law that came into effect in 2023 that rebuts the aggravated felony finding of the FARO.

Yet even after the new Faro, the respondents resumed the same proceedings and the petitioner's position was that it is a procedural error to pursue the same proceedings for a void FARO and that the proper course was to terminate proceedings on the void FARO and to issue a new referral. This was finally accomplished when the immigration court terminated the case with the withdrawal of the relief application on September 25, 2025. *Id.* at 5. The respondents took another entire month before referring the petitioner again to the immigration court on October 30, 2025. *Id* at 7.

Thus, even though the petitioner has played some part in the delay in proceedings, most of that delay was during the first proceeding which was legally void under a legally void FARO. It was not until October 30, 2025, that the respondents actually brought legally sufficient and procedurally correct proceedings.

II. PETITIONER'S REPLY TO THE RESPONDENTS' ARGUMENTS

A. Petitioner's Detention under 8 U.S.C. § 1231 is NOT Lawful During the Pendency of Withholding-Only Proceedings NOR because of the FARO Issued under 8 U.S.C. 1228(b) due to Petitioner's Aggravated Felony Conviction because his detention is prolonged and removability is not foreseeable in the near future

Even argumento, the respondents' insistence that detention under §1231(a)(6) remains lawful because they foresee an end to the petitioner's proceeding is extremely conclusory due to the petitioner's right to appeal the proceeding[2] with the automatic stay that results from a Board of Immigration Appeals (BIA) pending decision.

Moreover, the length of prolonged detention that the petitioner has already suffered can be directly attributed to the respondents' negligence. The performance of the respondents thus so far does not lend confidence to a quick resolution of the petitioner's case in the immigration court going forward.

First, the March 2024 order purporting to reinstate a prior removal order under 241(a)(5) was void from day one because the petitioner's legal entry on an advance parole document precludes reinstatement-the respondents approved his travel and invited him back into the United States on February 20, 2023 [D.E. 5, page 4]. See *Matter of W-C-B-*, 24 I&N Dec. 118 (BIA 2007)(Pursuant to 241(a)(5) of the Act, 'If the Attorney General finds that an alien has reentered the United States *illegally*… the prior order of removal is reinstated from its original date)(emphasis added). Thus, they held the petitioner under an unlawful order from February 20, 2023, when they allowed him to legally enter the country on a parole until June 4, 2025, when they decided to swap in a new order. With this repapering with the June 4, 2025, order, the respondents are admitting the March 2024 order's invalidity and they cannot retroactively justify pre-June detention under § 1231(a)(6). The respondents admitted as much when they yanked that order in June 2025 and swapped in a new aggravated felony order under INA 238(b). dated June 4, 2025 [D.E. 5, page 6]. The respondents held him for

[2] The petitioner is most likely going to appeal no matter what the outcome-because a grant is still a FARO and the petitioner objected to the withholding-only proceedings because he has other immigration relief pending. The petitioner's position is that his most recent entry was legal and to remove him, the respondents must issue a Notice to Appear and place him in full proceedings.

approximately four-and-a-half months on this void charge before issuing the swapped-in order on June 4, 2025. See [D.E. 5, Document 5-12]. According to the petitioner's calculations based solely on the respondents' response, the petitioner's continuances created about a 14-week delay, the government's foibles caused another 12-week delay and the immigration court's uncertainty about the legality of the government's actions caused another 21-week delay. See above Section I. See Also[D.E. 5, Factual and Procedural History].

Due to the respondents' procedural errors that caused the petitioner to be detained for almost five months on a void charge, the respondents substantially violated the petitioner's due process rights. Moreover, this brings up the question of the respondents' ability to conclude proceedings in a timely manner and deport the petitioner in the foreseeable future. The respondents claim that they can bring this matter to a foreseeable end, however their mistakes in the record suggest otherwise.

With the reinstatement void, the June 4 FARO provides the sole (tenuous) basis for §1231 detention. Yet *Zadvydas v. Davis,* 533 U.S. 678, 701 (2001) presumptively limits post-final order detention to six months absent "reasonably foreseeable" removal and that presumptive period for the petitioner for the second FARO ends December 1, 2025. The petitioner's next master calendar hearing (which is not even the merits hearing yet) is currently scheduled for December 8, 2025. This hearing is when the petitioner has to refile his case and set it for a final hearing in the subsequent months, most likely after the holidays. The petitioner will also have a right to appeal the immigration court decision which comes with an automatic stay for thirty days following the immigration court decision and the entire pendency of the appeal with the BIA. Then he may pursue another PFR to the Eleventh Circuit.

However, while the respondents mention that the petitioner cited *Riley v. Bondi*, they failed to mention that *Riley v. Bondi* suggests that respondents inform the Circuit Court to hold a PFR for the FARO in abeyance until the withholding proceedings are finished so that the Circuit Court could expeditiously decide both issues at once if a second PFR is filed regarding the withholding decision.

Moreover, when this new FARO hits the six-month mark on December 1, 2025, even if the petitioner's withholding-only proceedings come to an end at the immigration court, he still cannot be removed. If he loses his withholding of removal, he still continues to have access to both a Board of Immigration Appeals (BIA) and a petition for review in the Eleventh Circuit if he loses at the BIA. BIA appeals for detained cases take at least three to seven months[3], however with more detained cases than usual possibly another year. There will be an automatic stay of removal for thirty days during the appeal deadline and then if he appeals there will be an automatic stay while the appeal is pending. 8 C.F.R.§1003.6 (a).

Thus, despite the respondents' unjustified detention of the petitioner for almost five months and another five months under the new FARO, his removal is not even on the horizon of the foreseeable future.

B. 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

The respondents are incorrect when they claim that the petitioner's prolonged detention is lawful because he has an aggravated felony conviction and it does not matter under which statute is the removal order, as there are many cases where habeas petitions under 28 U.S.C. § 2241 have succeeded in challenging prolonged detention under 8 U.S.C. § 1231(a)(6) for noncitizens with dangerous or aggravated felony convictions, particularly where removal was not reasonably foreseeable after the presumptive six-month period under *Zadvydas v. Davis,* 533 U.S. 678 (2001). These granted cases emphasize that even for criminal aliens (including aggravated felons), indefinite detention raises serious constitutional concerns if the respondents cannot show a significant likelihood of removal in the foreseeable future.

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[3] This estimate is very generous to the respondents as the backlog has significantly increased in both immigration courts and the BIA

For example, in *Benitez v. Wallis,* 393 F.3d 1135 (Eleventh Cir. 2004), the Northern District of Florida originally denied the Petition for Habeas Corpus for danger to the community and the Eleventh Circuit affirmed, after certiori was granted by the Supreme Court, the case was remanded back to the Eleventh, and the Court found held that inadmissible Cuban national who had repeatedly violated laws of the United States, and who had been ordered removed, could no longer be detained beyond statutory 90-day removal period when it was clear that he could not be removed in the foreseeable future.

Accordingly, the *Sopo* case is on point for the petitioner, in that although the petitioner in *Sopo* did not have a FARO based on an aggravated felony, he had been ordered removed because was convicted of an aggravated felony. *Sopo v. U.S. Att'y Gen.,* 825 F.3d 1199, 1204 (11th Cir. 2016). The Eleventh Circuit reversed the district court's dismissal and remanded with instructions to grant habeas relief (release or bond hearing). Detention exceeded *Zadvydas*'s six months, and DHS failed to rebut non-foreseeability of removal. Even for "criminal aliens" under § 1231(a)(6) (aggravated felony), prolonged detention without foreseeable removal violates due process.

Finally, the respondents' strongest argument is that there is a foreseeable removal date because they know that the petitioner's Fifth Amendment right to his liberty interest that was violated by his prolonged detention has completely outweighed the respondents' interest in continued detention and they cannot rebut the presumption that his removal proceedings have no foreseeable conclusion.

III. CONCLUSION

After a 6–month period, since the petitioner has provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government *must* respond with evidence sufficient to rebut that showing. *Zadvydas, supra,* at 701. (emphasis added). The respondents have not met their burden because they have not addressed the fact that the petitioner's case far exceeds the six-month mark, nor that petitioner may exercise his rights to appeal any immigration court decision (and that appeal will come with an automatic stay). Most egregiously, the

petitioner's prolonged detention is mostly the fault of the respondents who illegally held him on an unlawful charge for months. *Zadvydas f*ound that as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. *Id.* The petitioner can show that the respondents held him for over four months on a voided FARO and now another six months on the contested FARO. This shrinks the time that he has to show as "reasonably foreseeable" possibly to almost nothing and he still has months of immigration proceedings ahead of him. This Honorable Court should grant the petitioner's petition.

Respectfully submitted this November 20, 2025,

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CERTIFICATE OF SERVICE

I, Bonnie Smerdon, certify that on November 20, 2025, I electronically filed the above PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE with the Clerk of the Court of the Southern District of Florida using the CM-ECF system and copies of the foregoing document will be served on all counsel of record via transmission of a Notice of Filing generated by the CM/ECF system.

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