

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

JUAN CARLOS MARADIAGA,

Petitioner,

v.

JAIL WARDEN PINELLAS, ICE
DETENTION FACILITY, ET AL.,

Respondents.

Case No. 8:25-cv-3443-SDM-AEP

**RESPONSE TO PETITIONER'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

Respondents, by and through the undersigned counsel, hereby respond to Petitioner Juan Carlos Maradiaga's ("Petitioner") emergency motion for a temporary restraining order (ECF No. 2, "TRO Mtn."). For the reasons discussed below, the Court should deny Petitioner's motion.

INTRODUCTION

This case is about Immigration and Customs Enforcement's ("ICE") detention authority. Petitioner asserts that he has been impermissibly detained under the criteria set forth in 8 U.S.C. § 1225(b)(2), Section 235 of the Immigration and Nationality Act ("INA"), a provision he argues is applicable to aliens seeking admission into the United States. TRO Mtn. at ¶ 13; *see also* Habeas Petition (ECF No. 1, "Hab. Pet.") at ¶¶ 14-15. Petitioner contends that his detention should instead be governed by 8 U.S.C.

§ 1226. TRO Mtn. at ¶ 13; Hab. Pet. at ¶ 16. What Petitioner has not addressed, however, is detention authority under 8 U.S.C. § 1231, the statutory framework governing confinement of aliens who—like Petitioner—have previously been removed. *See* Petitioner’s TRO Exhibit A (ECF No. 2-1) at 2. Through his habeas petition and motion for temporary restraining order Petitioner seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing that he simply is not entitled to.

STATUTORY AND REGULATORY FRAMEWORK

Congress developed a streamlined process for once more removing aliens who have previously been removed from the United States pursuant to a final order of removal. If the Department of Homeland Security (“DHS”) “finds that an alien has reentered the United States illegally after having been removed . . . under an order of removal, the prior order of removal is reinstated from its original date.” 8 U.S.C. § 1231(a)(5). DHS may “at any time” effect removal “under the prior order.” *Id.* The reinstated order “is not subject to being reopened or reviewed” and the alien “is not eligible and may not apply for any relief”¹ from the reinstated order of removal. *Id.*

Though an alien subject to reinstatement of removal is not eligible for any relief, the INA and regulations provide an avenue through which an alien subject to a final

¹ 8 U.S.C. § 1231(a)(5) is generally interpreted to foreclose discretionary forms of immigration relief, however as discussed in greater detail *infra*, does not preclude an alien from seeking withholding of removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 530, 141 S. Ct. 2271, 2282, 210 L. Ed. 2d 656 (2021). Thus, though withholding of removal is commonly referred to as “relief” it is distinct from the broader range of potential immigration benefits available to aliens who are not subject to a final order of removal already. *Id.*

order of removal—but who fears that return to his designated country of removal will threaten his life or freedom based on certain specific, enumerated grounds—may seek a separate order from the immigration court instructing that his removal to that country be withheld or deferred. 8 C.F.R. § 1208.31. The process is straightforward: if an alien is being processed for reinstatement of a final order of removal and expresses a fear of return to his home country, he will be referred to an asylum officer for a determination as to whether his fear of torture is reasonable and credible. 8 C.F.R. § 1208.31(e). If the asylum officer determines that the alien has a reasonable fear, he will be referred to the Executive Office for Immigration Review (“EOIR”) where he can seek an order that he not be removed—or that his removal be deferred—with regard to a specific country. 8 C.F.R. § 1208.31(e), (g)(2). In other words, an alien granted withholding of removal is still subject to a final order of removal—it simply cannot be effected at that time to that particular country. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.31(g)(2)(i); *see also* *Guzman Chavez*, 594 U.S. at 531-32 (an alien granted withholding of removal may not be removed to the country designated in the removal order unless the order of withholding is terminated, but due to the country-specific nature of a withholding order nothing prevents removal to a third country).

While DHS “shall” detain an alien during the 90-day removal period following entry of a final order of removal, the INA gives DHS the authority to grant an order of supervision to the alien if he has not been removed once that period elapses. 8 U.S.C. § 1231(a)(2)(A); 8 U.S.C. § 1231(a)(3). The regulations explain that an alien released after the removal period “shall be released pursuant to an order of

supervision.” 8 C.F.R. § 241.5(a). This order of supervision comes with conditions. *Id.* Regulations also permit the government to revoke the order of supervision. 8 C.F.R. § 241.4(d). Among the reasons for which supervision may be revoked are violation of the conditions of release—in which the alien must be notified of those reasons and given the opportunity to respond—and at DHS’s discretion when: “(i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(d)(1)-(2).

FACTS AND PROCEDURAL HISTORY

Petitioner is a citizen of Honduras. ECF No. 2-1 at 3. The date and location of his first entry is unknown but government records reflect that Petitioner was issued a final order of removal on December 1, 2004. *Id.* at 2. On January 20, 2005, Petitioner was removed from the United States pursuant to that order. *Id.* He then reentered the United States without authorization once more, purportedly in 2005, where he remained without detection until 2012. TRO Mtn. at ¶ 3; ECF No. 2-1 at 4. In 2012, Petitioner was encountered by immigration officials at which time he was advised that the government intended to reinstate his prior order of removal. ECF No. 2-1 at 2. However, Petitioner expressed a fear of return to Honduras. *Id.* at 3-5. Accordingly, an asylum officer conducted a reasonable fear review and determined that Petitioner had a reasonable fear of return to Honduras. *Id.* Because of this development, the government did not remove Petitioner under his reinstated 2004 order, rather referred

him to EOIR for withholding proceedings pursuant to Section 241 of the Immigration and Nationality Act (“INA”), proceedings which remain ongoing. ECF No. 2-1 at 1; TRO Mtn. at ¶ 9. When ICE referred Petitioner to EOIR in 2012 for withholding proceedings, it also released him under an order of supervision. ECF No. 2-2.

At a December 15, 2025 supervision check-in with ICE, Petitioner was detained. TRO Mtn. at ¶ 7; Form I-830, attached as Exhibit A. The following day the instant suit commenced with the filing of a petition for writ of habeas corpus and a motion seeking a temporary restraining order. *See* ECF Nos. 1, 2. The government was not properly served. *See* ECF No. 1 at 8; ECF No. 2 at 10 (reflecting service on the U.S. Attorney’s Office for the Middle District of Florida at the incorrect address). However, Respondents were advised of this matter from the Court via email given the shortened timeframe for response to the TRO motion. ECF No. 5. On December 17, 2025, the Court ordered Respondents to respond to Petitioner’s TRO motion by noon on December 18, 2025. *Id.* Respondents response to the habeas petition is due on January 5, 2026. *Id.*

LEGAL STANDARD

Preliminary injunctive relief—whether through a temporary restraining order or a preliminary injunction—is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The standard for obtaining either form relief is the same. *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034-35 (11th Cir. 2001) (per curiam); *Windsor v. United States*, 379 F.

App'x 912, 916-17 (11th Cir. 2010) (per curiam). A movant seeking a preliminary injunction or a TRO must show: (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998) (citations omitted); *see also Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995) (per curiam). “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). Importantly, the party seeking injunctive relief bears the burden of persuasion as to each of the required elements. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000); *Bongiovanni v. Austin*, No. 3:22-cv-237-MMH-MCR, 2022 WL 1642158, at *5 (M.D. Fla. May 24, 2022).

Finally, Local Rule 6.01(a), Middle District of Florida, requires that a motion for a temporary restraining order set forth specific facts demonstrating entitlement to relief, describe precisely the conduct and persons sought to be enjoined, explain precisely the amount and form of required security, and be accompanied by a supporting legal memorandum and proposed order. Local Rule 6.01(a).

ARGUMENT

I. Petitioner Cannot Establish a Likelihood of Success on the Merits of His Claim.

As an initial matter, a temporary restraining order is a drastic remedy and as

discussed *supra*, Petitioner bears the burden of persuading the Court that injunctive relief is appropriate. *See Armstrong*, 520 U.S. at 972. Here, Petitioner has failed to engage in any analysis whatsoever into his purported likelihood of success on the merits, instead merely stating that his detention is unlawful, then listing a series of out-of-circuit cases he purports support that purely conclusory statement. TRO Mtn. ¶¶ 13-20. On the motion as filed, Petitioner has not met his burden of persuasion and the TRO should be denied.

That fatal flaw aside, Petitioner is unlikely to succeed on the merits of his claims for two additional reasons. First, the Court is barred from considering Petitioner's claims under two separate jurisdiction-stripping sections of the INA. Second, Petitioner's detention is indeed lawful. Petitioner is being detained under 8 U.S.C. § 1231, applicable to aliens subject to reinstatement of a final order of removal, and his claims that ICE has detained him pursuant to 8 U.S.C. § 1225 when he should be detained under 8 U.S.C. § 1226 are incorrect.

A. 8 U.S.C. § 1252(g) Precludes Review of Petitioner's Claims

There is no jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (“*AADC*”) (cleaned up). These activities “represent the

initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

This bar is subject to limitations and must be applied “to just those three specific actions” listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, “courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). Here, Petitioner is subject to a final order of removal that DHS intends to reinstate,² ECF No. 2-1 at 2, and he challenges DHS’s detention for the purpose of reinstating that order. This matter thus falls squarely within the specific actions *Jennings* contemplated, namely the discrete action of executing a removal order, and this Court lacks jurisdiction to hear Petitioner’s claims.

B. The Jurisdictional Bar at 8 U.S.C. § 1252(b)(9)

The Court also lacks jurisdiction on separate grounds. The INA precludes the Court’s review of “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” except when brought pursuant to judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause” and applies where a petitioner seeks “review of an order of removal [or] the decision to seek removal.” *Canal A*, 964 F.3d at; *DHS v. Regents of*

² That Petitioner remains in withholding proceedings does not invalidate his removal order, nor would even a grant of withholding of removal invalidate that order. *Guzman Chavez*, 594 U.S. at 536 (“If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States. The removal order is not vacated or otherwise set aside. It remains in full force, and DHS retains the authority to remove the alien to any other country authorized by the statute.”) (emphasis in original). In other words, notwithstanding the outcome of Petitioner’s withholding proceedings—whatever it may be—he is still subject to a final order of removal that the government intends to reinstate and the only question withholding proceedings will resolve is whether his removal can be effectuated to Honduras.

Univ. of Cal., 591 U.S. 1, 19 (2020) (cleaned up). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—the subsection that provides the single, proper path for judicial review of removal orders—courts have concluded that petitioners must funnel all aspects of challenges to removal proceedings through the avenue set forth in Section 1252(a)(5), which takes place after a final order of removal has issued. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); see also *Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”). The zipper clause’s restrictions are broad, but not without limitation. See, e.g., *Canal A*, 964 F.3d at 1257. However, a claim that arises from actions or proceedings brought to remove an alien clearly falls within its parameters. See *Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings).

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). See *Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, notwithstanding Petitioner’s creative framing of the issues as that of which detention authority to apply, he does indeed challenge the government’s decision to detain him the first place. See, e.g., TRO Mtn.

at ¶ 13. The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

C. Petitioner’s Detention is Lawful

Should the Court determine that it retains jurisdiction over Petitioner’s habeas claims, he still cannot establish a likelihood of success on the merits because his detention is lawful. Petitioner is subject to a reinstated order of removal. ECF No. 2-1 at 2. Pursuant to 8 U.S.C. § 1231(a)(5), Petitioner’s “prior order of removal is reinstated from its original date . . . and [Petitioner] shall be removed under the prior order at any time after reentry.” Following Petitioner’s 2005 removal from the United States, he illegally reentered the country once more. ECF No. 2-1. When ICE proceeded with reinstatement of the prior order, a new removal period commenced for the purpose of executing his removal for a second time.³ Petitioner was detained at that time before ultimately being permitted to remain in the United States on an order of supervision, as authorized by 8 U.S.C. § 1231(a)(3), while withholding proceedings remained pending. Petitioner’s 90-day removal period

³ It would make little sense to interpret the removal period strictly to begin only once the original order of removal becomes final. The purpose of the removal period is to allow the government a reasonable amount of time to make travel and documentation arrangements necessary to remove an individual, and without restarting that 90-day clock, the government would potentially be left with a much shorter period of time in which to complete this necessary work. *See Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008) (applying this rationale in the case of documented obstruction).

pursuant to the reinstatement order elapsed in 2012 when he was detained for reinstatement for 118 days. *See* ECF No. 2-1 at 4 (stating Petitioner was detained on July 18, 2012); ECF No. 2-2 at 3 (stating Petitioner was released from detention on November 13, 2012). Notwithstanding the passage of 90 days, the government is permitted to detain Petitioner again outside of the removal period, a period known as the post-removal period. *See* 8 C.F.R. § 241.4(d)(2). And there is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play that considers the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale*, 287 F.3d at 1051-52; *Guo Xing Song v. U.S. Attorney General*, 516 F. App’x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009). Thus, the six-month presumptively reasonable period

must have elapsed before a habeas petition is filed. *See e.g., Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011). Here, Petitioner was detained for 118 days in 2012. *See* ECF No. 2-1 at 4; ECF No. 2-2 at 3. He has been detained most recently for only two days, bringing his total number of days in detention to 120. Accordingly, ICE remains within the six-month presumptively reasonable period and Petitioner's habeas action is premature.⁴

Petitioner has speculated incorrectly as to the authority under which ICE has detained him. Though he asserts he has been subjected to mandatory detention under 8 U.S.C. § 1225(b)(2), *see* TRO Mot. at ¶ 13, he has in fact been detained under the authority set forth at 8 U.S.C. § 1231 because he is being processed for reinstatement of a prior removal order. ECF No. 2-1. Petitioner's detention is therefore lawful. Furthermore, the regulations make clear that ICE may revoke Petitioner's order of supervision at their discretion, so he need not violate the terms to trigger revocation as he seemingly suggests. *See* 8 C.F.R. § 241.4(d); *see also* TRO Mot. at ¶ 7. And though Petitioner's 90-day removal period has elapsed, his cumulative period of detention remains under the presumptively reasonable six-month period contemplated by *Zadvydas*. Because Petitioner has been detained

⁴ Furthermore, Petitioner's withholding proceeding should soon be placed on the detained docket with a much shorter hearing date than that available on the non-detained docket. *See* Exhibit A (notifying EOIR of Petitioner's now detained status). With his placement on this docket it is foreseeable that the withholding proceedings that have stretched on for a staggering 13 years will be resolved expeditiously.

under the correct statutory scheme, ICE was within its authority to revoke his order of supervision, and because he has not been detained for an unreasonable period of time, Petitioner's habeas filing is premature and he is unlikely to succeed on the merits.

II. Petitioner Has Not Demonstrated Irreparable Harm.

Petitioner draws the sweeping conclusion that his “unlawful physical detention absent statutory authority constitutes irreparable harm as a matter of law.” TRO Mtn. at ¶¶ 22. In support, he refers to “federal judges ordering release of immigration detainees on habeas corpus where detention lacked lawful justification” without providing any case name or citation. This is hardly sufficient information for Petitioner to demonstrate irreparable harm. Petitioner has not cited to a single authority to support his contention and again, he bears the burden of persuasion here. *See Siegel, 234 F.3d at 1176; Bongiovanni, 2022 WL 1642158, at *5.* Even were “unlawful physical detention” irreparable harm as a matter of law, Petitioner has still not demonstrated irreparable harm because his detention is not unlawful. *See supra* Section I.C.

To the extent Petitioner suggests that detention impairs his access to counsel or hampers meaningful review, TRO Mtn. at ¶ 23, again Petitioner has failed to meet his burden of persuasion where he has offered no discernible factual or legal support for this conclusion. Importantly, Petitioner is indeed represented by counsel at this time notwithstanding his detention. Petitioner has not met his burden to establish irreparable harm and the instant motion should be denied.

III. The Balance of Equities and Public Interest Favor Respondents

Petitioner's argument as to the third and fourth TRO factors is that there is public interest in compliance with statute and the United States Constitution. TRO Mtn. at ¶ 25. Here, the balance of equities and public interest weigh decisively against Petitioner's request for injunctive relief where he continues to disregard U.S. immigration laws. Petitioner has entered the United States on at least two occasions without lawful authority to do so. ECF No. 2-1 at 2, 4. He was removed from the United States but disregarded that order and unlawfully reentered within weeks of his removal. *See* ECF No. 2-1 at 2 (reflecting removal on January 20, 2005) and ECF No. 2-1 at 4 (reflecting reentry on March 1, 2005). He has remained in the United States under a final, non-reviewable order of removal for over 20 years. Granting Petitioner's request—particularly his request for release—would result in the extension of “ongoing violation of U.S. law” through delay and fragmentation of the enforcement of immigration law. *AADC*, 525 U.S. at 491. Congress, however, specifically amended the INA with precisely such concerns in mind. *Id.* at 487 (“[8 U.S.C. § 1252(g)] is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings.”). The public has a strong interest in enforcement of these laws, and “[t]he contention that a violation must be allowed to continue because it is improperly selected is not powerfully appealing.” *Id.* As the Supreme Court observed in *Nken*, “[t]here is always public interest in the prompt execution of removal orders[.]” *Nken v. Holder*, 556 U.S. 418, 436 (2009) (internal quotation omitted). Because Petitioner has not met his burden and because the balance of equities and public interest favor the government, Petitioner's motion for injunctive relief should be

denied.

CONCLUSION

The court should deny Petitioner's motion for a temporary restraining order. In lieu of facts and legal analysis, Petitioner has relied on broad, sweeping statements hardly sufficient to meet his burden. Furthermore, his likelihood of success on the merits is poor, as two separate jurisdictional bars foreclose judicial review and Petitioner's detention is indeed lawful.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 18, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: December 18, 2025

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney