UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-20081-CIV-BECERRA

OUSSAMA ABDEL MOUNAIM MALI,
Petitioner,
v.
KRISTI NOEM, Secretary of Homeland Security, et al.,
Respondents.
_____/

Respondents, Kristi Noem, Secretary of Homeland Security, et al., pursuant to the Court's Order to Show Cause (ECF No. 5) files this response to Petitioner, Oussama Abdel Mounaim Mali's Petitione for Writ of Habeas Corpus (ECF No. 1).

INTRODUCTION

Petitioner, Oussama Abdel Mounaim Mali, is an Algerian national who entered the United States in June of 2015 on a B-2 visitor visa. Petition at ¶¶ 8, 18. Petitioner admits that he overstayed his visa and, following removal proceedings, granted permission to voluntarily depart the country in lieu of being deported . The immigration court, however, entered a removal order in the alternative, should Petitioner fail to depart. Petition at ¶ 19. Petitioner did not depart the United States. *Id.* Consequently, Petitioner's removal order became administratively final. See 8 C.F.R. § 1241.1(f) (providing that an order of removal becomes administratively final "upon overstay of the voluntary departure period").

Petitioner was detained by local law enforcement in October of 2025 and subsequently transferred to the custody of U.S. Immigration and Customs Enforcement (ICE). Petition at ¶ 21. Petitioner argues that he is detained "without a valid, clear, and identifiable legal basis." Petition at ¶ 36. Petitioner contends that his former attorney filed a Motion to Reopen his removal proceedings on his behalf in November of 2025, and that the Motion was granted but later

summarily reversed. Petition at ¶ ¶ 29-30. Petitioner also alleges that he has "been subjected to abusive conditions of confinement, including coercive practices, institutional retaliation, and discriminatory treatment based on [his] national origin." Petition at ¶ 3.

Petitioner seeks a temporary restraining order and permanent injunctive relief "to prevent any transfer or removal while [his] Petition for Habeas Corpus and the pending matters related to the reopening of his case remain under judicial consideration." Petition at ¶ 5. Alternatively, Petitioner seeks release from custody or placement under less restrictive conditions including release on bond. Petition at ¶ 6.

As explained below, Petitioner is subject to a final order of removal and he is not entitled to the relief he seeks in this action. And insofar as Petitioner challenges the conditions of his confine,emt, such a claim is not cognizable in a habeas proceeding under 28 U.S.C. § 2241.

PETITIONER'S IMMIGRATION PROCEEDINGS

The following is a summary of the record of Petitioner's immigration proceedings, as reflected in the referenced exhibits. Petitioner is a native and citizen of Algeria. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated October 10, 2025. On June 21, 2015, Petitioner was admitted into the United States as a Temporary Visitor for Pleasure (B-2). *Id.* He was authorized to remain in the United States until December 20, 2015. *Id.* Petitioner remained in the United States beyond his authorized period of stay. *Id.*

On January 24, 2017, Petitioner was encountered by Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) and taken into custody. *Id.* On January 25, 2017, the Department of Homeland Security (DHS) issued him a Notice to Appear (NTA), charging as removable from the United States pursuant to INA § 237(a)(1)(B) as amended, as a nonimmigrant who has remained in the United States for a time longer than permitted. *See*

Exh. B, NTA dated January 25, 2017. On February 09, 2017, an immigration judge sustained the charge of removal. *See* Exh. C, Declaration of Deportation Officer Delgado. On the same day, an immigration judge granted Petitioner's request for release on bond. *See* Exh. D, Immigration Judge order granting release on bond. On February 14, 2017, the Petitioner posted bond and was released from ICE custody. *See* Exh. C, Declaration of Deportation Officer Delgado.

On July 27, 2017, an immigration judge granted Petitioner's request for voluntary departure. *See* Exh. E, Immigration Judge order granting voluntary departure. Petitioner failed to depart the United States within the allotted time. *See* Exh. C, Declaration of Deportation Officer Delgado. Therefore, the voluntary departure order was automatically withdrawn, and the alternative order of removal from the United States took effect. *See* Exh. E, Immigration Judge order granting voluntary departure.

On October 10, 2025, Petitioner was encountered by ICE ERO following an arrest for driving with an expired license. *See* Exh. A, Form I-213 dated October 10, 2025. He was taken into ICE ERO custody to effectuate removal. *Id.* Since entering ICE ERO custody, Petitioner has refused to cooperate with ICE ERO in obtaining his travel document, thereby prolonging his detention. *See* Exh. C, Declaration of Deportation Officer Delgado.

On November 03, 2025, Petitioner filed a motion to reopen his removal proceedings and request for a stay of removal in connection with the motion to reopen. *Id.* On November 04, 2025, an immigration judge granted the stay of removal pending a decision on the motion to reopen removal proceedings. *See* Exh. F, Immigration Judge order granting stay of removal. On December 11, 2025, the immigration court denied Petitioner's motion to reopen removal proceedings. *See* Exh. G, Immigration Judge order denying motion to reopen. On December 16, 2025, Petitioner

filed an appeal of the immigration judge's decision denying his motion to reopen to the Board of Immigration Appeals. *See* Exh. H, Filing receipt for appeal. This appeal remains pending. *Id.*

In the interim, on December 03, 2025, Petitioner filed a bond redetermination request with the immigration court. *See* Exh. C, Declaration of Deportation Officer Delgado. On December 08, 2025, the immigration court issued a Notice of Hearing (NOH), scheduling a custody hearing on December 10, 2025. *See* Exh. I, NOH for hearing on December 10, 2025. On December 10, 2025, Petitioner had a custody hearing before the immigration court, and the immigration court denied bond because she found the Petitioner failed to demonstrate eligibility for bond under INA § 236(a) and because he is a flight risk. *See* Exh. J, Immigration Judge order denying bond dated December 10, 2025.

On December 31, 2025, Petitioner filed a second bond redetermination request. *See* Exh. C, Declaration of Deportation Officer Delgado. On January 09, 2025, the immigration court denied bond holding that Petitioner is a flight risk, subject to a final order of removal, and his motion to reopen has been denied. *See* Exh. K, Immigration Judge order denying bond.

Petitioner remains in ICE custody at Krome North Service Processing Center (Krome) in Miami, FL. *See* Exh. L, Detention History.

ARGUMENT

I. Petitioner's Detention is Lawful Because he is Subject to a Final Order of Removal and his Detention has not Exceeded the Period Held Presumptively Reasonable in *Zadvydas v. Davis*, 533 US 678, 682 (2001)

When an individual granted voluntary departure in lieu of deportation overstays the date by which he was supposed to depart the United States, the removal order automatically goes into effect and becomes administratively final. *See* 8 C.F.R. § 1241.1(f). *See also Diouf v. Mukasey*, 542 F.3d 1222, 1229 (9th Cir. 2008). Under Section 241 of the Immigration and Nationality Act (8

U.S.C. § 1231), "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231 (a)(1)(A). That period is called the "removal period" and the Attorney General is required to detain the alien during that time. 8 U.S.C. § 1231(a)(2)(A). The removal period is "extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C).

Under 8 U.S.C. § 1231(a)(6), an alien like Petitioner, who was ordered removed and who is inadmissible under 8 U.S.C. § 1182, may be detained beyond the removal period for a period reasonably necessary to remove the alien, but the statute "does not permit indefinite detention." *Zadvydas v. Davis*, 533 US 678, 682 (2001). To help guide lower court determinations, and to limit the occasions when courts will need to make them, the Supreme Court in *Zadvydas* held that six months of post-removal-order detention is presumptively reasonable. *Id.* at 700–01. Even in cases where detention is longer than the presumptively reasonable period, the Supreme Court held that "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." *Id.* at 701.

Thus, to establish a valid claim for unlawful indefinite detention under *Zadvydas*, a detained alien must show (1) "postremoval order detention in excess of six months" and (2) "a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Petitioner here has not made such a showing.

As of this writing, Petitioner has been detained in ICE's custody fewer than [90 days] – a

period far shorter than the 180-day period held presumptively reasonable under *Zadvydas*. Accordingly, Petitioner's challenge to his detention is premature. *See Gonzalez v. Barr*, Case N0. 20-10130-CV-KING, 2020 WL 7294570 (S.D.Fla. Dec. 10, 2020) (King, J.) ("the 180 days in post-order custody must have expired before an individual can challenge custody under 8 U.S.C. § 1231"); *Salpagarova v. Immigration and Naturalization Service*, Case No. 20-61739-CVSINGHAL, 2020 WL 13550204 (S.D.Fla. Oct. 20, 2020) (Sighal, J.) ("Petitioner is not entitled to relief because she has not been detained for more than six months after being subject to a final order of removal"); Louis v. U.S. Atty. Gen'l, Case No. 2:20-cv-135-FtM-38NPM, 2020 WL 1049169 (M.D. Fla. Mar. 4, 2020) ("when he filed the Petition, Petitioner had been in custody only 92 days, much less than the 180-day presumptive reasonable period. The Court dismisses the Petition without prejudice as premature").

II. Petitioner's Motion to Reopen his Removal Proceedings Was Denied

Petitioner claims that his removal proceedings were reopened in November of 2025 but later reversed without due process. That is incorrect.[1] On November 03, 2025, Petitioner filed a motion to reopen his removal proceedings and request for a stay of removal in connection with the motion to reopen. *See* Exh. C, Declaration of Deportation Officer Delgado. On November 04, 2025, an immigration judge granted a stay of removal pending a decision on the motion to reopen removal proceedings. *See* Exh. F, Immigration Judge order granting stay of removal. On December

[1] In support of his allegation that his motion to reopen was granted, Petitioner attaches as Exhibit C to his Petition a screenshot of the EOIR Courts and Appeal System (ECAS) website demonstrating that he was scheduled for a hearing before the immigration court on December 10, 2025. However, as the screenshot reflects, Petitioner was scheduled for a custody hearing on that date, not a master calendar hearing. In fact, on December 10, 2025, the immigration judge denied bond at the custody hearing. Nothing in the screenshot supports Petitioner's contention that the immigration court granted his motion to reopen.

11, 2025, however, the immigration court denied Petitioner's motion to reopen the removal proceedings. *See* Exh. G, Immigration Judge order denying motion to reopen. Petitioner remained, at all times material to his Petition, subject to a final order of removal.

III. Petitioner's Claims Concerning the Conditions of his Confinement Are Not Cognizable in Habeas Corpus Proceedings

Petitioner's Emergency Petition for Writ of Habeas Corpus (ECF No. 1) challenges not only the fact of his confinement, but also the conditions under which he is confined. Petitioner alleges that "custodial officers have conditioned the exercise of basic rights on the signing of documents intended to facilitate [his] deportation, a practice that flagrantly violates the constitutional principles of voluntariness, legality, and due process of law, and constitutes institutional coercion incompatible with the legal framework of the United States." Petition at ¶ 4. Such a claim is not cognizable in a habeas proceeding under 28 U.S.C. § 2241.

Claims challenging the fact or duration of a sentence fall within the "core" of habeas corpus, while claims challenging the conditions of confinement fall outside of habeas corpus law. *Nelson v. Campbell*, 541 U.S. 637, 644 (2004). Habeas relief is meant to restore liberty to those individuals whom the Government lacked the authority to imprison or detain in the first instance. *See Boumediene v. Bush*, 553 U.S. 723, 779, 128 S.Ct. 2229, 171 L.Ed.2d 41 (2008) ("the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law" (citation omitted)). Insofar as Petitioners claim do not challenge ICE's authority to detain him, but instead the conditions under which he is confined, the Court lacks jurisdiction to grant relief. A petition for writ of habeas corpus is not the appropriate mechanism for contesting a prisoner's conditions of confinement. *See Vaz v. Skinner*, 634 F. App'x 778, 780 (11th Cir. 2015); *Matos v. Lopez Vega*,

614 F.Supp.3d 1158, 1168 (S.D. Fla. 2020); and *A.S.M. v. Donahue*, No. 20-cv-62, 2020 WL 1847158, at *1 (M.D. Ga. Apr. 10, 2020).

IV. Petitioner is Not Entitled to a Temporary Restraining Order.

To obtain a temporary restraining order, a party must demonstrate "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the nonmovant; and (4) that the entry of the relief would serve the public interest." *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005) (per curiam) (citations omitted). As explained above, Petitioner is unlikely to succeed on the merits of his habeas petition. Petitioner is lawfully detained pending his removal and his continued detention is lawful under *Zadvydas*. And Petitioner's claim concerning the conditions of his confinement are not properly before the Court in a habeas proceeding under 28 U.S.C. § 2241. If the Court were to grant the relief Petitioner seeks, it would frustrate the government's legitimate effort to remove Petitioner as required by 8 U.S.C. § 1231. As such, the entry of such relief would not serve the public interest. Accordingly, Petitioner is not entitled to a temporary restraining order.

CONCLUSION

For the reasons provided above, Respondents respectfully submit that the Emergency Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted.

JASON REDING QUINONES
UNITED STATES ATTORNEY

By: */s/ Carlos Raurell*
Assistant U.S. Attorney
Florida Bar No. 529893
United States Attorney's Office

Southern District of Florida
99 NE 4th Street, Florida 33132
Telephone: (305) 961-9243
E-mail: carlos.raurell@usdoj.gov
Counsel for Respondents