UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-cv-20317-LEIBOWITZ

ORLANDO NICOLAS LOPEZ-MARRERO,

Petitioner

v.

PAM BONDI, *et al.*,

Respondents.

_____/

RESPONDENTS' RESPONSE TO PETITION AND RESPONSE TO ORDER TO SHOW CAUSE [D.E. 3]

Pam Bondi, in her official capacity as Attorney General of the United States[1], *et. al.* ("Respondents"), through the undersigned Assistant United States Attorney, hereby file their Response in opposition to the Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order and Preliminary Injunction [D.E. 1] and the Court's Order to Show Cause [D.E. 3]. The Court should dismiss the Petition and close this case.

I. INTRODUCTION

Petitioner's detention is lawful. Respondents have detention authority under 8 U.S.C. §1231. Petitioner is being detained to affect a final exclusion and deportation order, as Petitioner is an alien convicted of conspiracy to traffic in cocaine (over 400 grams) and an alien not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. Next, for purposes of a

1 A writ of habeas corpus must "be directed to the person having custody of the person detained." *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. As Petitioner is currently detained at Krome North Service Processing Center ("Krome"), a detention facility in Miami, Florida, the immediate custodian in charge of Krome is Assistant Field Director ("AFOD") Charles Parra. Accordingly, the only proper respondent in this case is AFOD Parra, in his official capacity.

prolonged detention claim, the Petition is premature under *Zadvydas* as the Petitioner has been detained since January 12, 2026, significantly less than the 6-month *Zadvydas* presumption. Finally, this Court lacks jurisdiction to adjudicate any claim arising from Respondents' decision to execute Petitioner's removal order because 8 U.S.C. § 1252(g) plainly bars direct and indirect attacks on the execution of a removal order. This includes Petitioner's claims surrounding the revocation of his Order of Supervised Release ("OSUP"). This Petition must be dismissed and the case closed.

II. FACTUAL BACKGROUND

Petitioner, Orlando Nicolas Lopez-Marrero, is a native and citizen of Cuba. *See* Hab. Pet., Document 1-2, p. 2. On May 27, 1980, Petitioner arrived at the United States. *See* Hab. Pet., Document 1-2, p. 2. He was subsequently paroled pursuant to section 212(d)(5) of the Immigration and Nationality Act (Act). *See* Hab. Pet., Document 1-2, p. 2. On March 22, 1989, Petitioner was convicted in Dade County, Florida of conspiracy to traffic in cocaine (over 400 grams) and sentenced to serve fifteen years in state prison and pay a fine of $250,000.00, plus a $12,500.00 surcharge. Exh. A, Judgment and Sentence; *see also* Hab. Pet., Document 1-2, p. 3.

On or about July 6, 1989, Petitioner was placed in exclusion proceedings before an Immigration Judge and charged under former sections 212(a)(23) and (20) of the Act as an alien convicted of conspiracy to traffic in cocaine and as an alien not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act. Exh. B, I-122; *see* Hab. Pet., Document 1-2, p. 3. On January 13, 1992, the Immigration Judge ordered Petitioner excluded and deported as charged. *See* Hab. Pet., Document 1-2, p. 6. Petitioner appealed the Immigration judge's decision, and on June 2, 1992, the Board of Immigration Appeals dismissed his appeal. *See* Hab. Pet., Document 1-2, p. 4. As such, Petitioner's exclusion order became administratively final. *See* 8 C.F.R. § 1241.1(a) (order of

removal made by immigration judge at conclusion of proceedings under INA § 240 becomes final upon BIA's dismissal of appeal); *see also* 8 C.F.R. § 243.1 (1991) (order of deportation becomes final upon BIA dismissal of appeal).

On or about June 29, 2011, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), placed Petitioner on an Order of Supervision (OSUP). *See* Hab. Pet., Document 1-2, pp. 7-10. On January 12, 2026, ICE ERO revoked Petitioner's OSUP to enforce the deportation order and took him into ICE custody. Exh. C, Notice of Revocation of Release; Exh. D, Detention History; Exh. E, Declaration at ¶ 13. Petitioner was afforded an informal interview to give him an opportunity to respond to the reasons for the OSUP revocation. Exh. C, Notice of Revocation of Release' Exh. E, Declaration at ¶ 14. Petitioner is presently detained at the Krome North Service Processing Center in Miami, Florida. Exh. D, Detention History; Exh. E at ¶ 15.

III. ARGUMENT

In his Petition, the Petitioner asks, *inter alia*, for this Court to enjoin his removal pending adjudication of the Petition, and order Petitioner's immediate release. *See* DE 1 at VII, Prayer for Relief. Petitioner's claims lack merit.

As a threshold matter, 8 U.S.C. § 1252(g) plainly bars direct and indirect attacks on the execution of a removal order, and bars the Court from hearing any claim arising from Respondents' decision to execute Petitioner's removal order. This is precisely the relief Petitioner requests- that the Court enjoin Petitioner's removal and order his immediate release. *See* DE 1 at VII, Prayer for Relief. Such direct attacks are barred under § 1252(g). *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."). Accordingly, the Court lacks jurisdiction under § 1252(g) to stay the execution of Petitioner's removal order.

A. Petitioner's Detention is Lawful.

First and foremost, Petitioner's detention is lawful. He is being detained to affect a final exclusion and deportation order, as Petitioner is an alien convicted of conspiracy to traffic in cocaine (over 400 grams) and an alien not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. Therefore, Respondents have detention authority under 8 U.S.C. § 1231. As Petitioner is detained under the authority of 8 U.S.C. § 1231 and not 8 U.S.C. § 1226, Petitioner is not entitled to a bond hearing.

Further, Petitioner's detention is not prolonged. 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. However, "[t]his 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.* Here, Petitioner's OSUP was revoked pursuant to 8 C.F.R. § 241.4(l)(2). Petitioner is being detained pursuant to 8 C.F.R. § 241.4(l)(2) because the Field Officer Director (FOD) of the Enforcement Removal Operations (ERO) Miami Field Office has determined in their discretion that revocation of Petitioner's release is in the public interest, and revocation is appropriate to enforce Petitioner's removal order. *See* Exhibit C.

Moreover, the Petition is premature. Petitioner has only been detained since January 12, 2026, and he filed the Petition on January 16, 2026. The six-month period must have expired as of the date the § 2241 petition was filed in order to state a claim under *Zadvydas*. Petitioner was only in confinement for approximately four (4) days when he filed the Petition, making the six-month *Zadvydas* analysis extremely premature.

Furthermore, 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 his burden of establishing that the evidence shows 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); *Akinwale*, 287 F.3d at 1052.

Here, even assuming *arguendo*, that his *Zadvydas* claim was not premature, Petitioner cannot meet his burden of establishing that there is not a substantial likelihood of removal in the reasonably foreseeable future. On the contrary, Petitioner presents no actual proof or evidence to meet this burden, only conclusory allegations. In fact, his request that the Court issue a temporary restraining order preventing his removal from this jurisdiction contradicts any claim that there is no substantial likelihood of removal in the foreseeable future.

In short, in addition to the Petition being premature under *Zadvydas*, Petitioner has failed to carry his burden to show that his removal is not reasonably foreseeable. He is, accordingly, not entitled to habeas relief and the Petition must be dismissed.

B. Respondents properly revoked Petitioner's OSUP.

Petitioner alleges that his OSUP was wrongfully revoked because "ICE lacked the authority to abruptly reverse its past findings when no country was identified for Mr. Lopez's removal and there was no indication that removal was reasonably foreseeable" and "ICE failed to follow the statutory and regulatory procedures required for revocation." *See* D.E. 1 at ¶ 10.

First, "the decision to revoke Petitioner's OSUP, for the stated purpose of executing his removal order, clearly falls under the purview of § 1252(g)." *See Barrios v. Ripa*, Case No. 25-cv-22644-GAYLES, 2025 WL 2280485, at *11 (S.D. Fla. Aug. 8, 2025). § 1252(g) explicitly states that "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." (emphasis added). § 1252(g). *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("the statute's words make that clear. One word in particular stands out: 'any.' Section 1252(g) bars review over 'any' challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders.").

Second, the Court also lacks jurisdiction under § 1252(a)(2)(B)(ii) to review Respondents' discretionary decision to revoke the OSUP. § 1252(a)(2)(B) states that "no court shall have jurisdiction to review any action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General." § 1252(a)(2)(B)(ii). The decision to revoke an OSUP is a discretionary one by Respondents. *See* 8 C.F.R. § 241.4(l)(2) ("The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section."). The court also found in *Barrios*, that "because the Attorney General has the discretion to revoke an OSUP, § 1252(a)(2)(B)(ii) also bars review." *Barrios,* 2025 WL 2280485, at *11. The Supreme Court has emphasized that "detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (emphasis added). The Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and, in fact, has

held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure.").

Next, Petitioner alleges that ICE failed to comply with the requirements to provide Petitioner with (1) notice explaining the specific reasons for revocation, and (2) a prompt informal interview affording him the opportunity to respond to the reasons for revocation as stated in the notification. *See* DE 1 at ¶ 12. However, the documents show otherwise. On January 12, 2026, ICE ERO revoked Petitioner's OSUP to enforce the deportation order and took him into ICE custody. *See* Exh. C, Notice of Revocation of Release; Exh. D, Detention History. Petitioner was afforded an informal interview to give him an opportunity to respond to the reasons for the OSUP revocation. *See* Exh. C, Notice of Revocation of Release; Exh. D, Declaration. Respondents followed their regulatory procedures. Even if Petitioner was able to show that ICE somehow violated the regulations pertaining to OSUP, which he has not, any procedural errors are harmless and the remedy is not release from detention, especially in light of Petitioner's criminal history.

In sum, the Court lacks jurisdiction over Petitioner's claim regarding the revocation of his OSUP because it was revoked to effectuate a removal order, and this claim should be dismissed.

IV. CONCLUSION

Petitioner's detention is lawful. This Court lacks jurisdiction to interfere with Respondents' statutory duty to effectuate a removal order, which here, is a final exclusion and deportation order, as Petitioner is an alien convicted of conspiracy to traffic in cocaine (over 400 grams) and an alien not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. The Court must dismiss the Petition and close this case.

Dated: February 18, 2026.

Respectfully submitted,

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