UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 26-20715-CIV-ALTMAN

PAVEL LEIVA,

Petitioner,

v.

WARDEN, KROME NORTH SERVICE PROCESSING CENTER, *et al.*,

Respondents.
_____/

**CONSOLIDATED RESPONSE TO ORDER TO SHOW CAUSE WHY PETITION FOR WRIT OF HABEAS CORUPS SHOULD NOT BE GRANTED AND PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER**

Respondents[1] through the undersigned Assistant United States Attorney, respectfully submit this Response to the Court's Order (ECF No. 5) to show cause why Petitioner Pavel Leiva's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 1) ("Petitioner" and the "Petition") should not be granted and to Petitioner's Motion for a Temporary Restraining Order (ECF No. 10). For the reasons set for below, this Court should dismiss the petition for lack of jurisdiction, or in the alternative, deny the Petition on its merits. The Court should also deny Petitioner's Motion for a restraining order.

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[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 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." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is detained at Krome North Service Processing Center. Petition at ¶ 1. Therefore, the proper respondent is Charles Parra, in his official capacity as the Assistant Field Office Director in charge of the Krome Service Processing Center. Any other named Respondent be dismissed as an improper party

## INTRODUCTION

Petitioner is subject to a final order of removal that was entered on October 20, 2021. Petition at ¶ 7. Petitioner was not removed at that time and was released from custody pursuant to an Order of Supervision (OSUP). Petition at ¶ 1. On December 30, 2025, ICE revoked Petitioner's OSUP and took him into custody for the purpose of executing his removal. *Id.* at ¶ 2.

Petitioner raises five claims. First, Petitioner argues that Respondents "failed to meet their burden of showing that there is a substantial likelihood that Petitioner's removal is imminent" and their decision to revoke his supervised release and re-detain him was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and therefore a violation of the Petitioner's Substantive Due Process Rights." Petition at ¶¶ 25, 29.

Second, Petitioner argues that Respondents violated his Constitutional due process rights by revoking his supervised release because there were no material changes in circumstances justifying re-detention and he received no notice, hearing, or reasons from ICE to justify his re-detention. *Id.* at ¶ 35.

Third, Petitioner argues that, by re-detaining him without a determination that removal had become significantly likely in the reasonably foreseeable future, ICE has exceeded the detention authority provided in 8 U.S.C. § 1231(a)(6). Id. at ¶ 37 (citing *Zadvydas v. Davis*, 533 U.S. 678, 690–99 (2001).

Fourth, Petitioner argues that "ICE violated its own procedures and regulations by re-detaining Petitioner without the required notice and individualized consideration before revoking his OSUP." *Id.* at ¶ ¶ 41, 42 (citing 8 C.F.R. § 241.4(l)(1) & (2)(ii-iii)).

Fifth, Petitioner challenges ICE's revocation of his supervised release under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), as arbitrary and capricious. *Id.* at ¶¶ 51-53.

On February 18, 2026, Petitioner filed a Motion for a Temporary Restraining Order compelling Respondents to release him from custody immediately and prohibiting Respondents from removing him from the United States or out of the Southern District of Florida during the pendency of these proceedings. *See* ECF No. 10.

As demonstrated below, the Court lacks jurisdiction over Petitioner's claims and, regardless, Petitioner has failed to establish that he is unlawfully detained. Petitioner has also failed to establish his entitlement to a temporary restraining order.

**FACTUAL AND PROCEDURAL HISTORY**

Petitioner Pavel Leiva is a native and citizen of Cuba, who was paroled into the United States on August 7, 2002. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, dated September 13, 2021. On or about September 25, 2004, Petitioner adjusted status to that of a Lawful Permanent Resident. *See* Exh. A.

On April 10, 2015, Petitioner was convicted in Illinois of Conspiracy to Commit Access Device Fraud and Possessing Counterfeit Access Device and sentenced to 60 months imprisonment for the first count and 82 months imprisonment for the second count, to run concurrently. *See* Exh. A. Petitioner was also sentenced to 2 years supervised release to run concurrently. *See* Exh. A. On July 23, 2020, Allenwood, Pennsylvania Enforcement and Removal Operations (ERO) encountered Petitioner after he was paroled by the Federal Bureau of Prisons at Moshannon Valley Correctional Center. *See* Exh. A. *See also,* Exh. K, Declaration of Deportation Officer Ricardo Herrero. On this same date, ERO placed a detainer on Petitioner. See Exh. K.

On September 10, 2021, immigration officers encountered Petitioner at the Cedar Hill Correctional Facility in Texas, where Petitioner was serving a sentence for criminal violations. *See* Exh. A. On September 13, 2021, Immigration and Customs Enforcement (ICE) ERO issued and subsequently served Petitioner with a Notice to Appear (NTA), pursuant to section 240 of the Immigration and Nationality Act (INA). *See* Exh. B, Notice to Appear, dated September 13, 2021. The NTA charged Petitioner with removability under section 237(a)(2)(A)(iii) of the INA, in that after admission, Petitioner was convicted of an aggravated felony that involved fraud or deceit in which the loss to the victim(s) exceeded $10,000; or in which the revenue loss to the Government exceeded $10,000. *See* Exh. B. On October 20, 2021, an Immigration Judge entered an order of removal against Petitioner. *See* Exh. D, Order of the Immigration Judge, dated October 20, 2021. On October 29, 2021, Petitioner was taken into ICE custody. *See* Exh. K, Declaration of DO Herrero. *See also*, Exh. C, Form I-200, Warrant for Arrest, dated September 13, 2021, Exh. N, Detention History and Exh. E, Form I-205, Warrant of Removal/Deportation, dated October 25, 2021. On November 5, 2021, Petitioner was released on an Order of Supervision (OSUP) as it was determined that it was unlikely ERO would be able to effectuate his removal to Cuba. *See* Exh. F, Form I-220B, Order of Supervision, dated November 5, 2021. *See also*, Exh. N.

On December 30, 2025, ERO encountered Petitioner when he reported for a supervision appointment in Miramar, Florida. *See* Exh. G, Form I-213, Record of Deportable/Inadmissible Alien, dated December 30, 2025. During this encounter, Petitioner's OSUP was revoked, an informal interview was conducted, and he was taken into ICE custody. *See* Exh. H, Form I-200, Warrant for Arrest, dated December 30, 2025. *See also*, Exh. I, Form I-205, Warrant of Removal/Deportation, dated December 30, 2025, Exh. J, Notice of Revocation of Release, dated December 30, 2025, and Exh. K, Declaration of DO Herrero.

On December 31, 2025, Petitioner was transferred to Krome North Service Processing Center located in Miami, Florida, where he remains detained. *See* Exh. N. ICE ERO is in the process of effectuating Petitioner's removal to Mexico. *See* Exh. L, Notice of Removal, dated January 8, 2026. *See also*, Exh. M, Form I-205, Warrant of Removal/Deportation, dated January 9, 2026 and Exh. K, Declaration of DO Herrero. Petitioner does not have any applications for relief pending with the immigration court or USCIS at this time. *See* Exh. K. On January 8, 2026, ERO served Petitioner with a Notice of Removal to Mexico. *See* Exh. O.

## ARGUMENT

### I. This Court Lacks Jurisdiction Over Petitioner's Claims.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted); *see also Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999) ("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."). For these reasons, before this Court can proceed, it must determine whether it has jurisdiction over this action. *See Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1323 (11th Cir. 2012) ("Prior to making an adjudication on the merits, we must assure ourselves that we have jurisdiction to hear the case before us.").

#### A. Congress Stripped this Court of Jurisdiction to Prevent the Execution of Removal Orders.

Petitioner is, in essence, asking this Court to prevent ICE from executing his removal order by ordering his immediate release. *See* Petition at 13 ("Petitioner prays that this Court . . . [i]ssue a writ of habeas corpus requiring that within one day, Respondents release Petitioner"). This Court, however, lacks jurisdiction to grant such relief.

Federal law prohibits a district court from interfering with the government's decision or action to execute orders of removal. 8 U.S.C. § 1252(g). Section 1252(g) specifically states that "no court shall have jurisdiction to hear any cause or claim by … any alien arising from the decision or action by [ICE] to … execute removal orders against any alien.' 8 USC § 1252(g). This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." *Id.*

The Eleventh Circuit has explained that "[s]ection 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." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021) (holding that where there is challenge to the validity of a removal order, district courts lack jurisdiction to hear any "cause or claim brought by an alien arising from the government's decision to execute a removal order"). The petitioners in *Camarena* were in a virtually identical situation to that in which Petitioner finds himself: (a) they were not challenging the validity of their orders of removal, (b) they remained in the United States via an order of supervision, and (c) they filed habeas petitions after DHS attempted to execute orders of removals. Under these circumstances, the Eleventh Circuit found that the district court lacked jurisdiction to grant relief because Section 1252(g) strips courts of jurisdiction to prevent the execution of removal orders. *Id.* at 1272-73.

Here, like the petitioners in *Camarena*, Petitioner does not challenge the validity or existence of the order of removal. Instead, he argues that his re-detention was unlawful, and he requests immediate release from detention. Section 1252(g), as interpreted by the Eleventh Circuit in *Camarena*, deprives this Court of jurisdiction to grant such relief. *See also Rivera-Amador v. Rhoden*, Case No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *3 (M.D. Fla.

Dec. 19. 2025) (holding that Section 1252(g) "divests the Court of jurisdiction" from enjoining respondents from detaining and deporting petitioner subject to a removal order); *Mapoy v. Carroll*, 185 F.3d 224, 230 (4th Cir. 1999) (holding that district court lacked jurisdiction to hear a challenge to execution of order of deportation pursuant to § 1252(g)); *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *3 (S.D. Fla. Aug. 8, 2025) ("The Court finds that § 1252(g) deprives it of subject-matter jurisdiction over Respondent's decision to revoke the OSUP...").

In summary, Congress divested this Court of jurisdiction to prevent the execution of removal orders and the Petition here should be dismissed for lack of jurisdiction.

**B. Neither the Habeas Statute Nor the APA Provides Jurisdiction Over Petitioner's OSUP Claims.**

Petitioner's claims challenge the revocation of his supervised release invoke this Court's jurisdiction pursuant to 28 U.S.C. § 2241, a statute that, by its plain language, permits courts to rule on claims related to an "applicant's commitment or detention." 28 U.S.C. § 2241. The clear language of the statute and "the common-law history of the writ" showed that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Alawieh v. Tweedie*, Case No. 25-10614-LTS, 2025 WL 3171170, at *3 (D. Mass. 2025), *appeal docketed*, No. 25-2238 (1st Cir. Dec. 31, 2025) (quoting *Preiser v. Rodriguez*, 411 U.S. 475 (1973)) (citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). If a "petitioner seeks relief that 'falls outside the scope of the writ as it was understood when the Constitution was adopted,' [those] claims are beyond the reach of a federal court's habeas jurisdiction." *Id.* (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020)). Thus, to prevail, Petitioner must show that the alleged violations that he claims, based on the factual predicate that he alleges,

fall within the reach of this Court's ability to grant habeas relief. *See, generally, Mayers v. U.S. Dept. of I.N.S.,* 175 F.3d 1289, 1300 (11th Cir. 1999) (describing how in *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 265, 268, (1954), the Supreme Court explained that the "crucial question is whether the alleged conduct . . . deprived petitioner of any of the rights guaranteed [to] him by the statute or by the regulation issued pursuant thereto."). In other words, it is not enough for a habeas petitioner to allege some violation of law by the respondent that it is incidental to Petitioner's detention, the violation must be one which renders the detention itself unlawful.

In this case, Petitioner cannot do so. As a district court recently observed, "[w]hile some procedural violations may, in some circumstances, rise to the level of a due process violation," not all alleged violations "rise to the level of a due process violation and/or would independently entitle [a petitioner] to a grant of habeas relief in the form of release from detention." *Van v. Oddo*, Case No. 3:25-CV-00322, 2025 WL 3492736, at *4 (W.D. Pa., Dec. 5, 2025) (finding no habeas relief for alleged failures to provide notice for reasons of revocation and lack of "informal review"). This is particularly true in this case where Petitioner alleges technical violations that can easily be cured. Specifically, Petitioner claims that Respondent failed to give Petitioner the reasons for the revocation of his release and an opportunity to respond, as required by 8 C.F.R. §§ 241.4 and 241.13. Petition at ¶ ¶ 2, 35, 42, and 46. These claims could be readily resolved, meaning the alleged violation does not rise to a level of a constitutional claim. *See, e.g., Van v. Oddo*, 2025 WL 3492736 at *4 (finding no violation). For these reasons, Petitioner's reliance on technical violations do not relate to

Petitioner's "commitment or detention" and do not rise to a Constitutional or statutory violation warranting habeas relief. *Id.*[2]

Petitioner also challenges the revocation of the OSUP under the Administrative Procedures Act (see Petition at ¶¶ 50-53), but the Act does not confer jurisdiction over Petitioner's claim arising from the execution of his final order of removal. *See, e.g., Westley v. Harper*, No. 25-229, 2025 WL 592788 at *6 (E.D.La. Feb. 24, 2025) (concluding that APA did not confer jurisdiction over habeas petitioner's challenge to ICE's revocation of OSUP for the purpose of effecting removal); *Berhane v. Prendis*, No. 3:04-CV-2145-N, 2004 WL 2348226, at *3 (N.D. Tex. Oct. 18, 2004) (explaining that no general jurisdiction provisions, including the APA, federal question, the Declaratory Judgment Act, the All Writs Act, the mandamus provision, the suspension clause, or common law gives a federal district court jurisdiction over a petitioner's claims arising from the execution of a final order of removal), *adopted*, 2004 WL 2624260 (N.D. Tex. Nov. 12, 2004). Accordingly, the Court should dismiss the Petition for lack of subject matter jurisdiction.

## II. On the Merits, the Revocation of Petitioner's OSUP Comports with Applicable Regulations and the Constitution.

If this Court finds that it has jurisdiction to review the revocation of the OSUP, it should nonetheless deny the Petition on the merits because Petitioner's claim that his detention is lawful. Petitioner is subject to a final order of removal and is lawfully detained

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[2] Some opinions from this District have found that this Court has jurisdiction, rejecting arguments related only to the jurisdiction-stripping provision in 8 U.S.C. § 1252. *See, e.g., Espinoza-Sorto v. Aguedlo et al.*, Case No. 25-CV-23201-DLG (DE 26); *Grigorian v. Bondi*, Case No. 25-CV-22914-RAR, 2025 WL 1895479, at *3 (S.D. Fla., July 8, 2025).

accordingly, pursuant to 8 U.S.C. § 1231(a)(6). His allegations that his removal is not reasonably foreseeable lacks merit.

Petitioner argues that his detention is unlawful because respondents did not follow the procedures set forth in 8 C.F.R. §§ 241.4 and 241.13. Petition at ¶ ¶ 2, 35, 42, and 46. This claim lacks merit because DHS complied with the statutory and regulatory requirements in revoking Petitioner's order of supervision.

Although the applicable statute, 8 U.S.C. § 1231(a)(3), is silent as to revocation procedures for an individual released pursuant to an Order of Supervision, regulations at 8 C.F.R. §§ 241.4, 241.13, describing the mechanisms for revocation of release for individuals with final orders of removal. The specific regulatory provisions concerning revocation of release are contained at 8 C.F.R. § 241.4(l) and 241.13(i) and provide significant discretion to ICE to revoke release. *See Leybinsky v. U.S. Immigr. & Customs Enf't,* 553 F. App'x 108, 110 (2d Cir. 2014) (noting the "broad discretionary authority the regulation grants ICE" to revoke release); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (explaining that while the revocation regulation "provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion ...."). For example, the regulations authorize revocation when the alien violates any of the conditions of release or "on account of changed circumstances, the [Agency] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(1), (2).

The regulations require that, when ICE revokes release of an individual, pursuant to 8 C.F.R. § 241.13(i)(3), ICE must conduct an "informal interview" to advise the individual of the basis for revocation and must also serve the individual with a written notice of revocation.

*Id.* If ICE determines revocation remains appropriate after conducting the informal interview, then the alien may submit a request for review of his detention six months after ICE's last denial of release. 8 C.F.R. § 241.13(j). The regulations further provide that "[t]he alien may be continued in detention for an additional six months in order to effect the alien's removal, if possible, and to effect the conditions under which the alien had been released." *Id.* at § *24*1.13(i)(2).

ICE complied with the applicable regulations when it revoked Petitioner's Order of Supervision for the purpose of effecting his removal. As explained in the attached declaration, on December 30, 2025, ICE revoked Petitioner's supervised release when he reported for a supervision appointment in Miramar, Florida. At that time, ICE conducted an informal interview as required by the regulations and took Petitioner into custody. ICE ERO is in the process of effectuating Petitioner's removal to Mexico and served with a Notice of Removal to Mexico on January 8, 2026. *See* Exhibit O, Declaration.

The regulations provide a "short and straight path for immigrants whom the government is ready and able to remove." *Alam v. Nielsen*, 312 F. Supp. 3d 574, 582 (S.D. Tex. 2018). As such, ICE has ample authority per its regulation to revoke release. *See Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *5 (S.D. Fla. Sept. 9, 2025) (holding that § 241.4(l) provides government has "extraordinarily broad discretion to revoke an OSUP" under similar circumstances); *Barrios*, 2025 WL 2280485, at *4 (noting the broad discretion afforded to revoke an OSUP when effectuating an order of removal and that such a decision is not subject to judicial review under §1252(g)).

Because Petitioner cannot establish that ICE acted arbitrarily in revoking his OSUP, his argument fails, and this Court should deny the Petition. *See, e.g.*, *Perez v. Berg*, No. 24-cv-

3251 (PAM/SGE), 2025 WL 566884, at *7 (D. Minn. Jan. 6, 2025), *report and recommendation adopted,* No. 24-cv-3251 (PAM/ECW), 2025 WL 566321 (D. Minn. Feb. 20, 2025) (finding no due process violation "[a]bsent an indication that ICE failed to comply with its regulatory obligations in some more specific way"); *Doe*, 2018 WL 4696748, at *7 (dismissing habeas claim where "there was no regulatory violation" in connection with custody reviews).

**III. Petitioner's Continued Detention Does Not Violate his Constitutional Rights**

Petitioner is subject to a final order of removal and is being lawfully detained, pursuant to 8 U.S.C. § 1231(a)(6). His allegation that his removal is not reasonably foreseeable lacks merit. Again, as noted in the attached Declaration, ICE is in the process of effectuating Petitioner's removal to Mexico.

Section 241 of the Immigration and Nationality Act (8 U.S.C. § 1231) states, "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 must detain the alien during the "removal period". 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).

In *Zadvydas v. Davis*, the Supreme Court held that an alien subject to a final removal order may be detained beyond § 1231's 90-day removal period for an additional period "reasonably necessary to secure removal." 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.*

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, a 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 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.

This Court should deny Petitioner's Constitutional challenge because he has not alleged detention beyond the six months found presumptively reasonable under *Zadvydas* or provided evidence to believe there is no significant likelihood of his removal. *Callender v. Shanahan*, 281 F. Supp. 3d 428, 434 (S.D.N.Y. 2017) (describing how *Zadvydas* "places an initial burden on the detainee" to establish that the "no significant likelihood" standard has been met). The Petition failed to include nonspeculative assertions that his removal is not reasonably foreseeable, meaning Petitioner has not met his burden. *Callender*, 281 F. Supp. 3d

at 434–35 (holding that petitioner must present more than "mere assertions that removal is unforeseeable").[3]

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

A request for a temporary restraining order is governed by the same standard applicable to a request for a preliminary injunction. *Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir.1995). "A preliminary injunction is an extraordinary and drastic remedy not to be granted until the movant clearly carries the burden of persuasion as to the four prerequisites." *Northeastern Fla. Chapter v. Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir.1990). In order to obtain a preliminary injunction, a movant must demonstrate "(1) a substantial likelihood that he will ultimately prevail on the merits; (2) that he will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest." *Zardui–Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir.1985); *Gold Coast Publications, Inc. v. Corrigan*, 42 F.3d 1336, 1343 (11th Cir.1994).

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[3] Petitioner also complains about the conditions in which he is detained. *See*, e.g., Petition at ¶ 4. Such issues are not actionable in a 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 Petitioner's claims 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).

The question of whether a plaintiff has a substantial likelihood of success on the merits is "generally the most important" factor in the analysis. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1232 (11th Cir. 2005). For the reasons presented above in response to the Court's Order to Show Cause why Petitioner's habeas petition should not be granted, Respondents respectfully submit that Petitioner has failed to carry his burden of demonstrating a substantial likelihood that he will ultimately prevail on the merits.

Nor has Petitioner carried his burden as to irreparable harm. Petitioner's claim that he is unlawfully detained in violation of the Constitution can be remedied by the Court's ruling on his Petition for a Writ of Habeas Corpus. And Petitioner has provided no proof that his health would suffer irreparably should his detention continue while the Court rules upon his Petition. For the same reason, Petitioner has failed to establish that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party. At the same time, the proposed injunction would interfere with the United States' legitimate interest in the enforcement of its immigration laws by preventing the execution of a final order of removal. In that regard, the proposed TRO would be adverse to the public interest, as the public has an interest in the removal of aliens subject to final orders of removal.

## CONCLUSION

For all the foregoing reasons, the Petition should be dismissed or denied.

Respectfully submitted,

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