

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MARVIN OBANDO)

Petitioner)

v.)

Case No.)

FIELD OFFICE DIRECTOR, Miami Field Office, ICE)

Enforcement and Removal Operations; TODD LYONS,)

Acting Director, U.S. Immigration and Customs)

Enforcement; KRISTI NOEM, Secretary, U.S.)

Department of Homeland Security,)

Respondents)

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

AND EMERGENCY RELIEF

INTRODUCTION

1. Petitioner, Marvin Obando, a native and citizen of Nicaragua, challenges his detention in the custody of Respondents as unconstitutional and an unjustified deprivation of his physical liberty, and seeks immediate relief from this Court.

2. Petitioner originally entered the United States without inspection sometime between 1985 and 1986, when he was approximately two to three years old. His parents filed an asylum application in which Petitioner was included as a derivative applicant. That application was denied by the immigration court in 1991, and an Order to Show Cause was issued commencing deportation proceedings against him. Those proceedings concluded with a grant of voluntary departure on August 8, 1994, permitting departure by August 8, 1995. Petitioner did not depart by that date, and the voluntary departure order automatically converted into a deportation order on August 9, 1995. See Exhibit A, Notice to Reinstate Order. Petitioner and his immediate family, including his parents, subsequently filed applications for adjustment of status under Section 202 of the Nicaragua and Central America Relief Act (“NACARA”), Public Law 105-100, with the former Immigration and Naturalization Service (“INS”). Neither INS nor U.S. Citizenship and Immigration Services (“USCIS”) has ever adjudicated that application. See Exhibits B and C.

3. Between 1997 and 2013, Petitioner was arrested on several occasions, including for traffic-related offenses and other more serious charges. As a result, in March or April 2009, Petitioner was taken into ICE custody and removed to Nicaragua on May 9, 2009. See Exhibit B. At that time, Petitioner had a felony conviction for robbery and grand theft in the State of Florida, along with other arrest and conviction records. See Exhibits B and C.

4. Petitioner returned to the United States in late June 2009 after suffering persecution in Nicaragua. He re-entered without inspection and was not apprehended by immigration authorities at the time of his return. He remained outside the United States for approximately forty-five days. See Exhibit D, Reasonable Fear Interview.

5. In July 2013, Petitioner was arrested and taken into ICE custody, at which time the prior order of deportation was reinstated pursuant to INA § 241(a)(5). See Exhibit A. Petitioner requested a reasonable fear interview based on the persecution he suffered in Nicaragua. On August 19, 2013, an asylum officer determined that Petitioner had a reasonable fear of return, and on September 12, 2013, he was placed into withholding-only proceedings before an Immigration Judge. See Exhibits B and D.

6. On July 30, 2013, Petitioner's felony convictions for attempted armed robbery and grand theft were vacated by the criminal court in Miami-Dade County. As a result, Petitioner is no longer inadmissible under INA § 212(a)(2). See Exhibit F.

7. In May 2014, after having been in custody for several months, Petitioner was released on an order of supervision. See Exhibits E (Order of Supervision) and G (Detainee Request Form). Since his release by Immigration and Customs Enforcement (ICE), Petitioner has remained on an order of supervision (Form I-220B), continues to lawfully reside and work in the United States, and plays an integral role in the lives of his United States citizen children and spouse.

8. Petitioner has been reporting to ICE annually since May 2014 and has complied with all requirements of his order of supervision. Exhibit E.

9. By statute and regulation, ICE has the authority to re-detain a noncitizen previously ordered removed only in limited circumstances, including where the individual

violates a condition of release or where the individual's conduct demonstrates that continued release is no longer appropriate. See 8 U.S.C. § 1231; 8 C.F.R. § 241.4(i)(1)–(2). That authority, however, is constrained by the Due Process Clause, which protects the liberty interest of individuals previously released from immigration custody. Under the particular facts of Petitioner's case, due process requires notice and an opportunity to be heard before any re-arrest, at which Petitioner must be afforded the opportunity to contest the basis for re-detention.

10. Here, Respondents created a reasonable expectation that Petitioner would be permitted to live and work in the United States without being subject to arbitrary arrest and removal. The order of supervision provided to him by ICE enables him to continue lawfully residing and working in the United States. This reasonable expectation creates constitutionally protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that “DACA involve[s] issuing benefits” to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) (“[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.”) (internal quotations omitted).

11. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Petitioner was previously released on an order of supervision twelve years ago, after which he began to build his life.

12. Under these circumstances, ICE may not re-detain Petitioner unless and until it establishes, before a neutral decisionmaker, that (1) there has been a material change in circumstances demonstrating that Petitioner poses a flight risk or danger to the community, and (2) that Petitioner's removal is reasonably foreseeable. Absent such a showing, continued detention violates due process.

13. Petitioner's withholding-only proceedings remain pending before the immigration court, with an individual merits hearing currently scheduled for 2027 in Miami, Florida. See Exhibit H, EOIR Automated Case Information printout.

14. Petitioner also has a pending application for relief under NACARA § 202. See Exhibit C. In denying a stay of removal in April 2009, ICE expressly acknowledged that Petitioner's NACARA application—Receipt Number MIA9920880269, filed on April 26, 1999—had not been adjudicated and remained pending before USCIS. *Id.*

15. While on an order of supervision, Petitioner has completed biometrics within the past three years, and the regulations require that USCIS schedule him for an interview on his adjustment application. See 8 C.F.R. § 1245.13(i). NACARA § 202 provides mandatory relief upon eligibility, and at the time of the 2009 denial, Petitioner's criminal convictions had not yet been vacated. Those convictions have since been vacated. See Exhibit F.

16. Even if USCIS were to deny Petitioner's NACARA § 202 application, the governing regulations require that the application be referred to the immigration court for adjudication. See 8 C.F.R. § 1245.13(m)(1)(iii), (n). Those same regulations mandate a stay of removal for Nicaraguan nationals with final orders while a NACARA § 202 application remains pending. See 8 C.F.R. § 1245.13(d)(5)(i). Because Petitioner's eligibility for permanent

residence remains pending as a matter of law, his removal is legally barred—not merely delayed—and therefore not reasonably foreseeable.

17. Accordingly, for the foregoing reasons, Petitioner seeks a writ of habeas corpus requiring that he may be released.

JURISDICTION

18. The Petitioner is in the physical custody of Respondents. The Petitioner is detained at the Krome South Processing Center in Miami, Florida, located within this judicial district. Exhibit I, ICE Detainee Locator Printout.

19. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

20. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

21. This Court is not deprived of jurisdiction by 8 U.S.C. § 1252, INA § 242. See e.g., *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (finding that INA § 242 does not bar a claim challenging agency authority that does not implicate discretion). Generally, a narrower construction of jurisdiction-stripping provision is favored over the broader one, as reflected by the “familiar principle of statutory construction: the presumption favoring judicial review of administrative action.” *Kucana v. Holder*, 558 U.S. 233, 251, 130 S. Ct. 827, 839 (2010). Absent “clear and convincing evidence” of congressional intent specifically to eliminate review of certain administrative actions, the above-cited principles of statutory construction support a narrow reading of the jurisdiction-stripping language of 8 U.S.C. § 1252(a)(2)(B)(ii). *Id.*, at 251-252. See also, *Geneme v. Holder*, 935 F.Supp.2d 184, 192 (D.D.C. 2013) (discussing *Kucana*’s

citation to a presumption favoring judicial review of administrative action when the statute does not specify discretion.)

22. 8 U.S.C. § 1252(a)(5), INA § 242(a)(5), provides that a petition for review filed with an appropriate court of appeals is the sole and exclusive means for judicial review of an order of removal. This action does not seek review of a removal order. Rather, it challenges the lawfulness of Petitioner’s detention and the restraints imposed on his liberty. Accordingly, § 1252(a)(5) does not bar this Court’s jurisdiction.

VENUE

23. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of Florida, the judicial district in which Petitioner currently is detained.

24. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

25. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

26. Habeas corpus is “perhaps the most important writ known to constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and

receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

27. Petitioner is a citizen of Nicaragua who has been in immigration detention since December 30, 2025. After being arrested at the ICE Facility in Miramar, Florida, Petitioner was transferred to the Krome South Processing Center in Miami, Florida, where he remains detained by ICE Processing Center. Exhibit I.

28. Respondent Warden of the Krome ICE Processing Center has immediate physical custody of Petitioner. The Warden is named in their official capacity.

29. Respondent Field Office Director of the Miami Field Office of ICE’s Enforcement and Removal Operations division. As such, Field Officer Director is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. Field Office Director is named in their official capacity.

30. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

31. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

LEGAL FRAMEWORK

32. 8 U.S.C. § 1231 is the statute governing detention following a final order of removal (“post-order detention”). 8 U.S.C. § 1231 authorizes the detention of individuals following a final order of removal only under specifically delineated circumstances. First, 8 U.S.C. § 1231(a)(2) requires the detention of individuals during a 90-day statutory “removal period” during which time the government must secure the individual’s removal. *See* 8 U.S.C. § 1231(a)(1)(A).

33. The removal period begins on the latest of a list of three occurrences: (i) the date the administrative order becomes final, (ii) if the removal order is judicially reviewed and if the court orders a stay of the removal of the noncitizen, the date of the court’s final order or (iii) if the noncitizen is detained or confined (except under an immigration process), the date the noncitizen is released from detention or confinement. *See* 8 U.S.C. § 1231(a)(1)(B).

34. Similarly, the plain language of the statute contemplates three distinct instances when the removal period can be restarted. The Courts have recognized that one of the “triggering events” under 8 U.S.C. § 1231(a)(1)(B), *if it reoccurs*, can restart the removal period. *See Nay v. Napolitano*, 2013 U.S. Dist. Lexis 68607 *10 (“The only sensible reading of [§ 1231(a)(1)(3)] is that [ICE] is required to effectuate the removal within 90 days of certain events, but will have 90 days if another one of the designated events occurs at a later date.” and “removal period begins anew upon the happening of any of the events described in § 1231(a)(1)(B)”).

35. If the government fails to remove the individual during the 90-day removal period, 8 U.S.C. § 1231(a)(6) provides that the government may detain an individual or release her under terms of supervision under paragraph 3 of the subsection. *See* 8 U.S.C. § 1231(a)(6). (“An alien ordered removed who is [1] inadmissible . . . , [2] removable [as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or

foreign policy,] or [3] who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision in paragraph (3).”).

36. Paragraph (3) provides that an individual who is not removed “shall be subject to supervision” under specific terms, including requirements that he or she appear periodically before an immigration officer, obey any written restrictions, and other conditions. 8 U.S.C. § 1231(a)(3). *See also* 8 C.F.R. § 241.5 (providing specific conditions for release—involving but not limited to reporting requirements and travel document acquisition requirements—should an order of supervision be issued).

37. Furthermore, 8 U.S.C. § 1231(a)(7) provides that work authorization can be issued when the removal of an individual is impossible because of travel document-related issues or “otherwise impracticable or contrary to the public interest.” *See also* 8 C.F.R. § 274a.12(c)(18).

38. Release on an order of supervision is authorized by statute. *See* 8 U.S.C. § 1231(a)(3). An order of supervision may be revoked if an individual violates the terms of the order of supervision, on account of changed circumstances, or if there is now a significant likelihood that the individual may be removed in the reasonably foreseeable future. 8 C.F.R. 241.13(h)(4)(i)(2).

39. Notwithstanding the basis for revocation, the regulations also mandate certain procedures upon which revocation may occur. Specifically, the regulations state, “The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.

The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.” 8 C.F.R. 241.13(h)(4)(i)(3). Courts have recognized that failure to provide the required notice and informal interview prior to or promptly following revocation of an order of supervision violates DHS’s own regulations and renders continued detention unlawful. Where the government cannot demonstrate that it afforded the required process, continued custody exceeds statutory authority and warrants habeas relief.

40. The Supreme Court has made clear that release from custody is appropriate when continued detention is not authorized by statute, regardless of whether removal is reasonably foreseeable. Specifically, the Court explained that “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” In such circumstances, “the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances,” and the individual “may no doubt be returned to custody upon a violation of those conditions.” Conversely, where removal *is* reasonably foreseeable, “the habeas court should consider the risk of the alien’s committing further crimes as a factor potentially justifying confinement within that reasonable removal period.” *Zadvydas v. Davis*, 533 U.S. 678, 699–700 (2001).

41. Courts in this District have rejected speculative or generalized assertions of future removal as insufficient to justify continued detention under § 1231. *Zadvydas v. Davis*, 533 U.S. at 699–701 (2001); *Diaz v. Parra*, No. 25-cv-22624, 2026 WL 14054, at *7–10 (S.D. Fla. Jan. 25, 2026). Where the government cannot show a significant likelihood of removal in the

reasonably foreseeable future, continued detention is unauthorized under *Zadvydas*, even if DHS asserts that removal might occur at some indeterminate point. Here, Petitioner's removal is not merely speculative—it is legally barred by statute and regulation while his NACARA § 202 application remains pending. 8 C.F.R. § 1245.13(d)(5)(i); 8 C.F.R. § 1245.13(m)(1)(iii), (n).

STATEMENT OF FACTS REGARDING CURRENT DETENTION

42. In August 1995, the Petitioner's order of removal became final as noted above. The Petitioner was deported from the United States on May 9, 2009. The Petitioner re-entered the United States in Mid-June 2009 and was not apprehended by immigration authorities. The Petitioner was again apprehended by ICE in July 2013, and his previous order of deportation was reinstated. Exhibit A. From July 2013 until about May 2014, the Petitioner was detained by ICE. In May 2014, Petitioner was placed on an order of supervision. Exhibit E.

43. For more than twelve years, Petitioner has successfully complied with all requirements of his order of supervision, including attending annual check-in appointments with ICE and complying with all reporting and supervision conditions.

44. On December 30, 2025, Petitioner appeared for a scheduled ICE check-in at the Miramar Sub-Office and was taken into custody by ICE.

45. ICE detained Petitioner without prior notice and without providing any opportunity to be heard. Officers did not question Petitioner, did not provide any written notice of revocation, and offered no explanation for the decision to revoke his order of supervision and re-detain him.

46. To date, no interview or any other administrative process has been provided to Petitioner at any time regarding his continued custody. Petitioner has no information regarding the basis for his detention or any notice about any revocation of his order of supervision.

47. Respondents failed to follow the mandatory procedural requirements governing revocation of an order of supervision and continue to hold Petitioner in custody in direct violation of the applicable regulations.

48. Petitioner has a pending application for adjustment of Status under the NACARA Section 202 as a Nicaraguan National that was filed in April 1999 and has never been adjudicated. Exhibit C. NACARA 202 mandates that his application be adjudicated and that he be provided with an interview on that application. If eligible, Public Law 105-100, Section 202, requires that his application be approved. Additionally, NACARA Section 202 automatically waives most Sections of inadmissibility under Section 1182(a)(9) and other Sections of Section 1182(a) of the INA. See Public Law 105-100, Section 202(1)(B) and *8 C.F.R. 1245.12(a)(3)* and *8 C.F.R. 1245.13(c)*. Given the vacatur of his conviction in July 2013, the Petitioner is not inadmissible under Section 212(a)(2) of the INA. See Exhibit F.

49. To date, USCIS has not provided an interview for the Petitioner's NACARA adjustment of status application as required by *8 C.F.R. 1245.13(i)*, and they have not adjudicated the application that has been pending for more than 25 years.

50. Notwithstanding the existence of a reinstated order of deportation, Petitioner remains statutorily eligible for permanent residence under NACARA § 202, which mandates adjudication of his application and provides for a stay of removal while the application remains pending. *Id.*

51. As a result of the Petitioner's pending application for benefits under Public Law 105-100, his deportation/ removal from the United States is not reasonably foreseeable and as a result, is presumptively unreasonable. *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001).

Removal is legally barred by operation of statute and regulation, rendering continued detention per se unreasonable under Zadvydas.

CLAIMS FOR RELIEF

COUNT I

Procedural Due Process- Re-Arrest and Re-Incarceration U.S. Const. amend. V

52. The Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

53. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

54. Petitioner has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See Morrissey*, 408 U.S. at 487-488.

COUNT II

Substantive Due Process—Re Arrest and Re-Incarceration

U.S. Const. amend. V

55. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

56. The Due Process Clause of the Fifth Amendment forbids the government from depriving individuals of their right to be free from unjustified deprivation of liberty. U.S. Const. amend. V.

57. Petitioner has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two

constitutional bases for civil detention: to mitigate against risk of flight or to protect the community from danger.

58. Since his release in 2014, Petitioner has had no encounters with law enforcement and has fully complied with all conditions imposed by ICE. He has therefore demonstrated that he is neither a flight risk nor a danger to the community, and his re-arrest violated his constitutional right to be free from unjustified deprivation of liberty.

59. For these reasons, his re-arrest without first being provided a hearing violated the Constitution.

COUNT III

Violation of INA and Regulations

60. Respondents presumed basis for re-detaining Petitioner is 8 U.S.C. § 1231, the statute governing detention following a final order of removal. However, under the terms of this statute and the governing regulations, Petitioner's detention is unlawful.

61. 8 U.S.C. § 1231 authorizes the detention of individuals following a final order of removal only under specifically delineated circumstances. First, 8 U.S.C. § 1231(a)(2) requires the detention of individuals during a 90-day statutory "removal period" during which the government must secure the individual's removal. *See* 8 U.S.C. § 1231(a)(1)(A).

62. Petitioner's removal period began on the date his removal order became final. Petitioner's order of removal became final on August 8, 1995, and the order was reinstated in June 2013. Since more than 12 years have passed, the removal period has long lapsed.

63. Since the reinstatement of Petitioner's removal order in 2013, none of the statutory events that would re-trigger a new removal period under 8 U.S.C. § 1231(a)(1)(B) has occurred. Petitioner has not departed the United States, has not been released from non-

immigration criminal custody, and no judicial stay of removal has been lifted. Accordingly, the removal period has long since expired.

64. For these reasons, Petitioner is being detained in violation of the plain language of the statute since the removal period has long lapsed and no re-triggering event has occurred. Thus, his continued detention is unlawful.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Enjoin Respondents from transferring the Petitioner outside the Southern District of Florida pending the resolution of this case;
- c. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately;
- d. Declare that Respondent's revocation of Petitioner's order of supervision was unlawful without a constitutionally adequate, individualized hearing and in violation of the statute and regulations;
- e. Declare that Petitioner's continued detention, without cause or justification, is improper as punitive;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 6th day of February 2026.

/s/ Themistoklis E. Aliferis

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner, because I am Petitioner's attorney. I have discussed with the Petitioner the facts described in this petition. Based on those discussions, I hereby verify that the factual statements in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed this 6th day of February 2026.

/s/Themistoklis Aliferis
Themistoklis Aliferis

Attorney for Petitioner