

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 26-20906-CIV-SINGHAL

ORLANDO HERNANDEZ,

Petitioner,

v.

KROME NORTH SERVICE  
PROCESSING CENTER,

Respondent.

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**RESPONSE TO ORDER TO SHOW CAUSE AND PETITION FOR A  
WRIT OF HABEAS CORUPS UNDER 28 U.S.C. § 2241**

Respondent<sup>1</sup> through the undersigned Assistant United States Attorney, respectfully submits this Response to this Court's Order (ECF No. 5) to show cause why Petitioner Orlando Hernandez's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 1) ("Petitioner" and the "Petition") should not be granted. 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.

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<sup>1</sup> A writ of habeas corpus must "be directed to the *person* having custody of the person detained." 28 USC § 2243 (emphasis added). 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.

## INTRODUCTION

Petitioner is subject to a final order of removal and has been in detention pending removal since October 28, 2025. Petition at ¶ 13.

Petitioner raises four grounds in support of his claim that he unlawfully detained. claims. First, Petitioner argues that his removal is not reasonably foreseeable and his detention, therefore, violates his Constitutional due process rights. Second, Petitioner argues that his detention is not related to its statutory purpose, and thus also violates his Constitutional rights. Third, Petitioner argues that his detention serves no legitimate purpose. And fourth, Petitioner complains that his detention puts him at risk of irreparable harm due to his health conditions.

As demonstrated below, the Court lacks jurisdiction over Petitioner's claims and, regardless, Petitioner has failed to establish that he is unlawfully detained.

## FACTUAL BACKGROUND

The petitioner, Orlando Hernandez (Petitioner ), is a native and citizen of Cuba, who entered the United States at Miami, Florida on May 27, 1968, as a Parolee. *See* Exh. A, Form I-213, Record of Deportable Alien (Form I-213), dated October 29, 2025. Petitioner adjusted status to that of a lawful permanent resident (LPR) on February 24, 1972. *See* Exh. A, Form I-213, dated May 23, 1997.

### *Petitioner's Criminal History*

Petitioner has extensive criminal history in the United States. *See* Exh. B, Declaration. On January 10, 1973, Petitioner was arrested by the Chicago Police Department for Aggravated Assault, Unlawful Use of Weapon, Failure to Register Firearm, and Failure to Carry Registration. *See* Exh. C, Form I-213, dated October 29, 2025. The Unlawful Use of Weapon charge resulted

in a fine, while the remaining charges were dismissed. *See* Exh. C, Form I-213, dated October 29, 2025. On May 5, 1973, Petitioner was arrested by the Chicago Police Department for Armed Robbery. *See* Exh. C, Form I-213, dated October 29, 2025. No disposition is provided in the record. *See* Exh. B, Declaration. On May 11, 1973, Petitioner was arrested by the Chicago Police Department for Unlawful Use of Weapon. *See* Exh. C, Form I-213, dated October 29, 2025. No disposition is provided in the record. *See* Exh. B, Declaration. On March 11, 1975, Petitioner was arrested by the Chicago Police Department for Murder. *See* Exh. C, Form I-213, dated October 29, 2025. No disposition is provided in the record. *See* Exh. B, Declaration. On March 12, 1975, Petitioner was arrested by the Miami-Dade County Sheriff's Office for Homicide - Willful Kill and Robbery. *See* Exh. C, Form I-213, dated October 29, 2025. On October 11, 1996, Petitioner was convicted of both charges and sentenced to 99 years confinement for Homicide and 99 years confinement for Robbery. *See* Exh. C, Form I-213, dated October 29, 2025.

On March 26, 1975, Petitioner was supervised by Northwest Florida Reception Center for First Degree Murder - Premeditated or Attempted. *See* Exh. C, Form I-213, dated October 29, 2025. Release date is listed as April 14, 2020. *See* Exh. C, Form I-213, dated October 29, 2025. On October 26, 1981, Petitioner was arrested by the Union County Sheriff's Office for Possession of Controlled Substance (Cocaine). *See* Exh. C, Form I-213, dated October 29, 2025. Petitioner was convicted on April 29, 1982, and sentenced to three years confinement. *See* Exh. C, Form I-213, dated October 29, 2025. On April 29, 1982, Petitioner was supervised by Northwest Florida Reception Center for Cocaine Possession, to run consecutive to prior case. *See* Exh. C, Form I-213, dated October 29, 2025. No release date is provided. *See* Exh. B, Declaration.

On June 2, 1982, Petitioner was arrested by FCC Terre Haute for First Degree Murder and Robbery. *See* Exh. C, Form I-213, dated October 29, 2025. The record indicates a life sentence transferred from Florida State Prison, with no further disposition details provided. *See* Exh. C, Form I-213, dated October 29, 2025. On October 20, 1983, Petitioner was arrested by U.S. Marshals Indianapolis for Conspiracy with Intent to Distribute Heroin. *See* Exh. C, Form I-213, dated October 29, 2025. This charge resulted in a five-year sentence concurrent with any sentence served. *See* Exh. C, Form I-213, dated October 29, 2025. On January 5, 1984, Petitioner was arrested by FCC Terre Haute for Conspiracy to Possess with Intent to Distribute Heroin, Cocaine, and Marijuana. *See* Exh. C, Form I-213, dated October 29, 2025. This charge resulted in a five-year sentence concurrent with the state sentence on March 29, 1984. *See* Exh. C, Form I-213, dated October 29, 2025.

#### ***Petitioner's 1997 Removal Proceedings***

On May 27, 1997, the U.S. Department of Justice Immigration and Naturalization Service, filed the Notice to Appear (NTA) with EOIR Immigration Court. *See* Exh. D, Notice to Appear, dated May 27, 1997. Petitioner was charged with inadmissibility under INA §§ 237(1)(2)(A)(i), 237(1)(2)(A)(iii), 237(1)(2)(B)(i). *See* Exh. D, Notice to Appear, dated May 27, 1997. On January 7, 1998, an Immigration Judge denied all relief and ordered Petitioner removed from the United States to Cuba. *See* Exh. E, Immigration Judge Order, dated January 7, 1998. Petitioner appealed to the Board of Immigration Appeals (BIA) and on September 11, 1998, the appeal was dismissed. *See* Exh. F, BIA Decision, dated September 11, 1998.

On September 27, 2024, Petitioner was issued an Order of Supervision. *See* Exh. B, Declaration; *see also* Exh. G, Detention History.

***Petitioner's 2025 ICE Detention***

On October 29, 2025, ICE ERO encountered Petitioner at the Lee County probation office in Fort Myers, Florida. *See* Exh. C, Form I-213, dated October 29, 2025. On that same day, United States Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) took Petitioner into custody pursuant to his final removal order from January 7, 1998. *See* Exh. C, Form I-213, dated October 29, 2025; *see also* Exh. H, Form I-286, Notice of Custody Determination, dated October 29, 2025; *see also* Exh. G, Detention History.

On that same day, Petitioner was issued a Form I-294, Warning for Alien Ordered Removed or Deported, advising him that upon his removal, he would be required to apply for permission from the Secretary of Homeland Security prior to his travel to the return to the United States. *See* Exh. I, Form I-294, Warning to Alien Ordered Removed or Deported, dated October 29, 2025. He was also served Form I-205, Warrant of Removal/Deportation. *See* Exh. B, Declaration.

On December 12, 2025, ICE ERO conducted an informal interview, notifying Petitioner that his order of supervision was being revoked to affect his removal. *See* Exh. B, Declaration. Petitioner was also served with a Notice of Removal to Mexico, which advised him that DHS was pursuing his removal to a Third Country. *See* Exh. J, Notice of Removal, dated December 12, 2025. Petitioner did not provide any evidence or ask any questions at the informal interview. *See* Exh. B, Declaration. On December 13, 2025, ICE ERO revoked Petitioner's Order of Supervision and served him the Notice of Revocation of Release. *See* Exh. K, Notice of Revocation of Release, dated December 13, 2025.

On December 16, 2025, DHS was notified that Cuba declined to accept Petitioner for repatriation. *See* Exh. B, Declaration. On January 13, 2026, Petitioner's case was referred to ERO's travel unit, to stage Petitioner at an ERO location along the border for removal. *See* Exh. B, Declaration. On January 16, 2026, DHS was notified that Mexico declined to accept Petitioner for third country removal due to mobility impairment. *See* Exh. B, Declaration. On January 19, 2026, DHS transferred Petitioner to Krome North Service Processing Center. *See* Exh. B, Declaration. On February 20, 2026, ICE ERO served the Petitioner the Form I-229, Instruction Sheet to begin the Post Order Custody Review. *See* Exh. B, Declaration. His removal was not completed and ERO is in the process of coordinating Petitioner's removal to Mexico in considerations of his age, health, and criminal history. *See* Exh. B, Declaration.

Petitioner is currently detained at Krome North Service Processing Center, pursuant to the final removal order. *See* Exh. G, Detention History.

## 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 7. This Court, however, lacks jurisdiction to grant such relief.

Federal law precludes 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 Enft.*, 988 F.3d 1268, 1273 (11th Cir. 2021) (holding that where there is no 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 virtually identical situation 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 the 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, meaning it should dismiss the Petition for lack of jurisdiction.

## **II. On the Merits, the Revocation of Petitioner’s Order of Supervision Comports with Applicable Regulations and the Constitution.**

If this Court finds that it has jurisdiction to review Petitioner’s detention following the revocation of his supervised release, it should nonetheless deny the Petition because Petitioner’s claim that his detention violates his Constitutional rights lacks merit. To the contrary, Petitioner – who is subject to a final order of removal – is being lawfully detained, pursuant to 8 U.S.C. § 1231(a)(6), and his allegation that his removal is not reasonably foreseeable lacks merit.

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, ICE has issued Post-Order Custody Regulations (“POCR”) (*see* 8 C.F.R. §§ 241.4, 241.13) describing the mechanisms for custody reviews, release from ICE custody, and 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 Enft*, 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).

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 § 241.13(i)(2). ICE complied with these requirements in Petitioner’s case.

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 he should be released because his removal is not reasonably foreseeable lacks merit. 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).

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 “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*. Petitioner has only been in detention since October 29, 2025. Nor has Petitioner provided evidence that 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 any 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”).

**IV. Petitioner Cannot Challenge the Conditions of Confinement in this Proceeding**

As for Petitioner’s complaint that his detention puts him at risk of irreparable harm due to his health conditions, it is well established that a § 2241 petition is not the vehicle for challenging conditions of confinement. *Vaz v. Skinner*, 634 Fed. Appx. 778, 781 (11th Cir. 2015). And, in any event, even if Petitioner established a constitutional violation, he would not be entitled to the relief he seeks because release from custody is not an available remedy for a conditions-of-confinement claim. *Id.* (internal citations omitted). Accordingly, Petitioner’s claim that the conditions of his confinement threaten his health should not be entertained by the Court.

**CONCLUSION**

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

Respectfully submitted,

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