

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAD ALWAWI,	)	CASE NO.: 3:26-CV-375
	)	
Petitioner,	)	JUDGE JAMES R. KNEPP, II
	)	
v.	)	MAGISTRATE JUDGE
	)	JAMES E. GRIMES JR.
	)	
SECRETARY OF THE U.S. DEPARTMENT	)	<u>RESPONDENT'S OBJECTIONS TO</u>
OF HOMELAND SECURITY, <i>et al.</i> ,	)	<u>MAGISTRATE'S REPORT AND</u>
	)	<u>RECOMMENDATION</u>
Respondents.	)	
	)	

Respondent Kevin Raycraft,¹ pursuant to Federal Rule of Civil Procedure 72(b)(2), respectfully files his objections to the Magistrate's Report and Recommendation ("R&R"), recommending the district court grant the Petition before the Court. Respondent incorporates by reference herein all facts and arguments stated in his Response to Petition, as well as his Supplemental Brief in Support of Response to Petition. ECF No. 7, PageID# 41-50; ECF No. 9, PageID # 103-104. Further, Respondent states his specific objections to the R&R as follows.

¹ Relying on Sixth Circuit precedent, the R&R found that Director Kevin Raycraft is the only proper respondent in this habeas action filed by a non-citizen. (*See* ECF No. 14, PageID # 105, n.1.) Therefore, the Court should adopt this finding and dismiss the United States Attorney General and the Secretary of the Department of Homeland Security from this action. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003).

I. BACKGROUND

A. IMMIGRATION PROCEDURAL HISTORY

Petitioner, a Palestinian citizen, entered the United States in November 2014 as a nonimmigrant tourist for pleasure, with permission to remain in the United States until May 11, 2015. ECF No. 7, PageID # 41. In December 2016, following the expiration of his nonimmigrant visa, Petitioner's former spouse filed Form I-130, Petition for Alien Relative, with the United States Citizenship and Immigration Services ("USCIS") while Petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status with USCIS. *Id.*, PageID #42. Those forms were denied and withdrawn, respectively, in September and October of 2018. *Id.* In February 2021, Petitioner and his new spouse filed another form I-485 and I-130, both of which were denied in April 2022. *Id.* Petitioner appealed the denial, but the appeal was dismissed in December 2023. *Id.*

On July 11, 2025, USCIS issued Form I-862, Notice to Appear ("NTA") to Petitioner. *Id.* The NTA states that Petitioner has remained in the United States beyond the date he was authorized to and that he is charged with being subject to removal pursuant to Section 237(a)(1)(B) of the Immigration and Nationality Act ("INA"). *Id.* Petitioner was ordered to appear before an immigration judge on August 19, 2025, but failed to do so. *Id.* Consequently, the immigration judge ordered that he be removed to Jordan at the August 19 hearing. *Id.* However, Petitioner was not taken into custody until January 6, 2026. *Id.*, PageID # 43.

On September 26, 2025, Petitioner filed a Motion to Reopen with the immigration court that was denied on October 20, 2025. *Id.*, PageID # 42. Petitioner filed form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, appealing the immigration judge's order to the BIA on November 20, 2025. *Id.* That appeal is fully briefed and pending before the Board of Immigration Appeals ("BIA"). *See* ECF No. 7-7, PageID # 80.

II. LAW AND ARGUMENT

A. PETITIONER'S DETENTION IS PROPER BECAUSE HE IS REMOVABLE UNDER SECTION 1227

8 U.S.C. § 1231 governs the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days—this is known as the “removal period.” During the removal period, § 1231(a)(2) commands that ICE “shall detain” the final order alien. If the removal period has expired, some aliens are released subject to supervision pursuant to § 1231(a)(3). Other aliens, however, may be detained beyond the expiration of the removal period pursuant to § 1231(a)(6), including aliens who are “removable under section 1227(a)(1)(C).” 8 U.S.C. § 1231(a)(6).

Even if the Court agrees with the R&R's findings with respect to jurisdiction and administrative exhaustion, the Court should decline to adopt the finding that Petitioner should be released pursuant to 8 U.S.C. § 1231(a)(3). There is no dispute about the facts in this case. Petitioner legally entered the United States on a nonimmigrant visa in 2014, but that visa expired nearly eleven years ago. All of Petitioner's applications to adjust his status have been denied. Petitioner is therefore subject to removal pursuant to 8 U.S.C. § 1227(a)(1)(C)(i) because he is an “alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted.” 8 U.S.C. § 1227(a)(1)(C)(i).²

² As noted in Respondents' Supplemental Brief, Respondents erred in their Response to the Petition by stating that 8 U.S.C. § 1231(a)(6) allows ICE to detain Petitioner because he is subject to removal pursuant 8 U.S.C. § 1227(a)(1)(B) and should have instead stated that 8 U.S.C. § 1231(a)(6) allows ICE to detain Petitioner because he is subject to removal pursuant to 8 U.S.C. § 1227(a)(1)(C)(i). See ECF No. 13, PageID # 103.

The R&R found that Petitioner was not removable under § 1227(a)(1)(C)(i) because he was not charged under that section in the NTA. ECF 14, PageID # 121. It is true that the NTA did not charge Petitioner under § 1227(a)(1)(C)(i); instead, it charged him under § 1227(a)(1)(B). *See* ECF No. 7-2, PageID # 55. However, continued detention under § 1231(a)(6) does not require that Petitioner be *charged* under § 1227(a)(1)(C), only that he be *removable* under that section. And here there is no dispute that Petitioner was admitted as a nonimmigrant but has failed to maintain his nonimmigrant status in which he was admitted. He is therefore removable under § 1227(a)(1)(C) and can be detained pursuant to § 1231(a)(6).

In *Lopez-Elias v. Reno*, the Fifth Circuit had to determine whether the petitioner was removable in order to decide whether it had jurisdiction over his claims. 209 F.3d 788 (5th Cir. 2000). In that case, the Court found that the petitioner was removable because he had been convicted of a crime of violence (the burglary of a vehicle) even though his removal proceedings had been pursued on different grounds. *Id.* at 792-793. The court ultimately held that “[w]hat the INS originally charged is of no consequence; so long as the alien in fact is removable for committing an aggravated felony, this court has not jurisdiction, irrespective of whether the INS originally sought removal for that reason.” *Id.* at 793.

The same reasoning should hold true here. While the R&R acknowledges that “[i]t may be that immigration authorities *could have* charged and proved that Alwawi is removable on that ground,” (ECF No. 14, Page ID #121), there is no factual question at issue here and thus no factual dispute that he could have been charged under § 1227(a)(1)(C)(i). Thus, like the

petitioner in *Lopez-Elias*, Petitioner in this case is removable and is being legally detained pursuant to § 1231(a)(6).³

B. PETITIONER’S CLAIMS SHOULD BE DISMISSED FOR LACK OF SUBJECT-MATTER JURISDICTION

Respondent also objects to the R&R’s determination that this Court has subject-matter jurisdiction to grant the Petition. Petitioner’s claims fundamentally arise from the government’s decision to execute his final removal order. That is the reason for his detention. And Congress has spoken clearly, providing that “no court” has jurisdiction over “any cause or claim” arising from the execution of removal orders, “notwithstanding any other provision of law,” whether “statutory or nonstatutory,” including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). As a result, this Court lacks jurisdiction over Petitioner’s challenge to his detention.

In the exercise of its constitutional power to define federal court jurisdiction, in 1996 Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided in the newly enacted § 1252(g) that:

Except as provided in this section and notwithstanding any other provision of law, 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 Act.

³ As other courts in this district have found, the regulations set forth in 8 C.F.R. § 241.4 regarding custody and detention of aliens still applies to aliens who were not detained during the initial 90-day removal period. *See Zhen v. Doe*, No. 3:25-cv-01507, 2025 WL 2258586, at *7 (N. D. Ohio Aug. 7, 2025). Petitioner has been detained for 84 days and Respondents acknowledge that he is due for a review of his custody determination pursuant to 8 C.F.R. § 241.4(c)(1) as of April 6, 2026.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended § 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas and mandamus actions. See REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, § 1252(g), now provides that:

Except as provided in this section and notwithstanding any other provision of law, (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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.

8 U.S.C. § 1252(g) (emphasis added). Calling § 1252(g) “unambiguous,” the Eleventh Circuit has held that this statute “bars federal courts’ subject-matter jurisdiction over any claim for which the ‘decision or action’ of the Attorney General (usually acting through subordinates) to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim.” *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). Here, Petitioner is being detained in order to execute his removal order.

The R&R points to § 1252’s section heading as a cue that Congress did not intend to limit district court review in this context because Petitioner is not challenging his order of removal. ECF No. 14, PageID# 109. However, subsections §1252(a)(5), (b)(9), and (g) demonstrate Congress’ clear intention to limit this Court’s jurisdiction in matters related to the INA. Subsection (a)(5) provides the courts of appeals exclusive jurisdiction over petitions reviewing an order of removal under the INA. 8 U.S.C. § 1252(a)(5). Subsection (b)(9), limits that review further, stating: “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals and *no other court shall*

have jurisdiction, by habeas or otherwise, to review questions of law or fact. See 8 U.S.C. § 1252(b)(9); AADC, 525 U.S. at 483. Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. Id.

The R&R says that the detention at issue here does not arise from commencement of removal proceedings because he was detained after removal proceedings were concluded. ECF No. 14, PageID # 112-113. The R&R further says that sections (a)(5) and (b)(9) do not apply because Petitioner is not seeking review of his removal order itself. Although the Supreme Court has cautioned against an “expansive interpretation of § 1252(b)(9)” it recognized that section’s jurisdictional bar for claims challenging orders of removal and decisions to detain or seek removal, because respondents in that case were “not challenging the decision to detain them in the first place.” *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018). Here, Petitioner is doing exactly that: challenging the decision to detain him. Contrary to *Jennings*, Petitioner is not merely challenging prolonged detention, he seeks relief from “the decision to detain [him] in the first place.” *See Jennings*, 583 U.S. at 294. Based on *Jennings*, the Court lacks subject-matter jurisdiction over all questions of law and fact arising from the threshold detention decision, because those are discretionary and reviewable only through a petition to the court of appeals. 8 U.S.C. § 1252(b)(9); *see also Munoz Nataren v. Raycraft*, Case No. 4:26-cv-212, 2026 WL 214368 at *2 (N.D. Ohio Jan. 28, 2026) (“Congress specifically divested courts of jurisdiction to review bond determinations and other discretionary determinations pending removal.”) (citing § 1252(a)(2)(B)(ii))).

C. PETITIONER SHOULD BE REQUIRED TO EXHAUST HIS APPEAL OF
THE DENIAL OF HIS MOTION TO REOPEN

The R&R found that there are no remedies to exhaust because there is no administrative appeal from a custody determination under 8 C.F.R. § 241.4(d). ECF No. 14, PageID # 118. The R&R also said that Petitioner's "appeal of the denial of his motion to reopen is pending is a separate question from whether he should be detained pending his removal." *Id.* PageID # 117. As noted above, however, the reason for Petitioner's detention is so that the final removal order can be executed. Petitioner is currently unable to be removed until his appeal of the denial of motion to reopen is resolved before the BIA. *See* 8 C.F.R. §1003.23(b)(v). In other words, Petitioner's actions are preventing the execution of the final removal order. As the Sixth Circuit has observed, exhaustion "protects administrative agency authority, promotes judicial efficiency, and may produce a useful record for judicial review." *Wheeler v. Williams*, No. 20-4037, 2021 WL 6071501, at *3 (6th Cir. Dec. 20, 2021) (internal quotations and citation omitted).

III. CONCLUSION

For the aforementioned reasons stated here, Respondents respectfully object to the Magistrate's R&R and requests the Court deny the Petition and dismiss this action.

Respectfully submitted,

DAVID M. TOEPFER
United States Attorney

By: /s/ Brendan F. Barker
Brendan F. Barker
Assistant United States Attorney
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3795
(216) 522-2404 (facsimile)
Brendan.Barker@usdoj.gov