

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-CV-60480-DIMITROULEAS

JANIER RICO,

Petitioner,

v.

KRISTI NOEM, in their official
Capacity as Secretary of the United States
Department of Homeland Security;

PAMELA BONDI, in their official
Capacity as Attorney General of the
United States;

JUAN AGUDELO, in his official
Capacity as KROME DETENTION
CENTER,

Respondents.

RESPONDENTS' RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents¹, by and through the undersigned Special Assistant United States Attorney, hereby file their response to the Petition for Writ of Habeas Corpus. For the reasons set forth fully herein, Respondents request that the Court deny the Petition.

I. FACTUAL BACKGROUND

¹ Kristi Noem, Pamela Bondi, and Juan Agudelo are not proper defendants and should be dismissed from this action. 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 currently detained at the Krome North Service Processing Center located in Miami, Florida. The only proper Respondent would be the Warden of Krome North Service Processing Center, in their official capacity. Therefore, all Respondents should be dismissed as improper parties.

Petitioner, is a native and citizen of Cuba, who entered the United States on June 14, 1985, and subsequently adjusted status to that of a Lawful Permanent Resident, which was approved retroactive to his date of entry. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien, dated October 27, 2009, at 2.

On February 29, 1992, Petitioner was arrested in Miami-Dade County, Florida and charged with cocaine possession; charges which resulted in a nolle prosequi. *See* Exh. G, Declaration of Deportation Officer Luz Oliden, at ¶ 7. On July 11, 1997, Petitioner was arrested in Miami-Dade County, Florida for driving under the influence. *Id.* at ¶ 8. The disposition of this arrest is unknown. *Id.* On September 9, 2005, Petitioner was arrested in Miami-Dade County, Florida and charged with battery; charges which resulted in a nolle prosequi. *Id.* at ¶ 9.

On December 14, 2007, Petitioner was convicted in the United States District Court, Southern District of Florida, of Manufacture and Possession with Intent to Distribute Marijuana, and sentenced to 26 months imprisonment. *See* Exh. A, Form I-213 at 2. On October 27, 2009, Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) encountered Petitioner at the Reeves County Detention Center located in Pecos, Texas while serving his sentence for the marijuana possession charge, and subsequently took him into ICE custody. *Id.* *See also*, Exh. C, Form I-200, Warrant for Arrest, dated October 27, 2009. On November 18, 2009, ICE ERO issued and served Petitioner a Notice to Appear (NTA), pursuant to section 240 of the Immigration and Nationality Act (INA). *See* Exh. B, Notice to Appear, dated November 18, 2009. 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 involving an offense relating to the illicit trafficking in a controlled substance, including a drug trafficking crime. *Id.* On December 1, 2009, an Immigration Judge entered an order of

removal against Petitioner. *See* Exh. D, Order of the Immigration Judge, dated December 1, 2009. On March 4, 2010, Petitioner was released on an Order of Supervision (OSUP). *See* Exh. E, Form I-220B, Order of Supervision, dated March 4, 2010.

On February 25, 2017, Petitioner was arrested in Miami-Dade County, Florida and charged with cocaine sell/manufacture/deliver/possess with intent; charges which were subsequently dropped. *See* Exh. G, Declaration of DO Oleden, at ¶ 16. On August 10, 2022, Petitioner was arrested in Miami-Dade County, Florida and charged with battery; charges which resulted in a nolle prosequi. *Id.* at ¶ 17. On November 8, 2025, Petitioner was arrested in Miami-Dade County, Florida and charged with domestic battery and robbery strongarm; charges which were dropped. *Id.* at ¶ 18.

On December 6, 2025, ICE ERO encountered Petitioner when he reported for a scheduled supervision appointment in Miramar, Florida. *See* Exh. G, Declaration of DO Oleden, at ¶ 19. During this encounter, Petitioner's OSUP was revoked, an informal interview was conducted, and Petitioner was taken into ICE custody. *See* Exh. F, Notice of Revocation of Release, dated December 6, 2025, *See also*, Exh. G, Declaration of DO Oleden at ¶ 20. On December 6, 2025, Petitioner was transferred to the Florida Soft-Sided Facility-South, located in Ochopee, Florida. *See* Exh. H, Detention History. On January 26, 2026, Petitioner was transferred to Port Isabel Service Processing Center located in Los Fresnos, Texas to effectuate removal to a third country: Mexico. *Id.* On or around January 28, 2026, Mexico declined to accept Petitioner. *See* Exh. G, Declaration of DO Oleden at ¶ 23. On February 1, 2026, Petitioner was transferred to Krome North Service Processing Center, located in Miami, Florida. *See* Exh. H, Detention History. On or around February 17, 2026, Cuba declined to accept Petitioner. *See* Exh. G, Declaration of DO Oleden at ¶ 25. On March 2, 2026, Petitioner was transferred to a

staging facility located in Alexandria, Louisiana to re-attempt effectuating removal in consideration of his criminal history. *Id.* at ¶ 26. Petitioner currently does not have any applications for relief pending with the immigration court or the United States Citizenship and Immigration Services. *See* Exh. G, Declaration of DO Olliden at ¶ 27.

II. ARGUMENT

A. The Court Lacks Jurisdiction to Prevent Execution of Petitioner's Removal Order.

Petitioner seeks an order that bars ICE from executing Petitioner's removal order by requesting his immediate release. *See* Pet. at 4. However, this Court is without 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 USC § 1252(g). Section 1252(g) 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.*

As the Eleventh Circuit explained, "Section 1252(g) bars review over "any" challenge to the execution of a removal order – and makes no exception for those claiming to challenge the government's "authority" to execute their removal orders." *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* (a) did not challenge the order of removal, (b) stayed in the U.S. via an order of supervision for years, and (c) filed habeas petitions once DHS attempted to execute its orders of

removal. Under these circumstances, the Eleventh Circuit found that the court lacked jurisdiction to interfere with the execution of the removal orders pursuant to section 1252(g). *Id.* at 1272-73.

Here, Petitioner does not challenge the validity or existence of the order of removal but instead argues that Petitioner’s continued detention exceeds statutory authority, violates due process, and that he should be granted a bond hearing or immediately released. *See* Pet. at 3-4. Pursuant to Section 1252(g) as explained by *Camarena*, this Court lacks jurisdiction to grant such relief. *See also* *Rivera-Amador v. Rhoden*, 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...”).

Congress stripped district courts of the ability to interfere with ICE’s execution of removal orders. As such, this court must deny any request by Petitioner enjoining his removal or interfering with the execution of the removal order (such as his immediate release) for lack of jurisdiction.

B. Petitioner’s Detention is Lawful Because he is Subject to a Final Order of Removal and his Detention has not Exceeded the Period Held Presumptively Reasonable in *Zadvydas v. Davis*, 533 US 678, 682 (2001)

Petitioner challenges his post final removal order detention. In particular, Petitioner asserts that “ICE has no viable country of removal...there is no significant likelihood of removal

in the reasonably foreseeable future...[and] continued detention serves no legitimate immigration purpose.” See Pet. ¶¶ 19, 21-22.

Section 1231 of Title 8 of the United States Code directs ICE to remove an alien subject to a final order of removal within the 90-day removal period prescribed therein. But in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court recognized that the 90-day removal period was not an absolute deadline for removal: “we doubt that when Congress shortened the removal period to 90 days in 1996, it believed that all reasonably foreseeable removals could be accomplished in that time.” *Zadvydas*, 533 U.S. at 701. The Supreme Court, therefore, constructed a presumptive six-month detention period “for the sake of uniform administration in the federal courts.” *Id.* The *Zadvydas* Court held that ICE may continue to detain an alien for an additional three months, creating a presumptively reasonable detention period of 180 days. *Id.* at 701.

Zadvydas and its progeny set forth a presumptively reasonable detention period of 180 days. See *Zadvydas*, 533 U.S. at 701. After the conclusion of this 180-day removal period, a noncitizen in ICE custody may challenge his or her continued detention via a petition for writ of habeas corpus on those grounds but must also establish that there is no significant likelihood that removal will occur in the reasonably foreseeable future. *Id.* Federal regulations now implement *Zadvydas*’s requirements. See 8 C.F.R. § 241.13 (setting out “special review procedures” when alien “subject to a final order of removal” and detained “after the expiration of the removal period. . . has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future”).

In the instant case, Petitioner was not in post-order custody more than six months at the

time he filed his Petition. Petitioner was detained by ICE on December 6, 2025, and the Petition was filed February 22, 2026, a period less than the presumptively reasonable detention period of 180 days established by *Zadvydas*.

Further, 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. Where an alien cannot meet his burden with evidence 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.

Here, Petitioner has not carried his burden of showing that removal is not reasonably foreseeable. Under *Zadvydas*, Petitioner bears the initial burden to show that removal is not significantly likely in the foreseeable future. *Zadvydas*, 533 U.S. at 701. To do so, Petitioner cannot merely rest on 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.”).

Petitioner has failed to allege sufficient facts, or present evidence to show there is no significant likelihood of his removal. As set forth in the Declaration of Deportation Officer Olliden, ICE has made diligent efforts to effectuate Petitioner’s removal, including attempts to remove Petitioner to Mexico. ICE is presently working to identify an alternative country of removal. *See* Exh. G, Declaration of DO Olliden. Accordingly, Petitioner cannot meet his burden

of showing no significant likelihood of removal in the reasonably foreseeable future or violation of his due process rights.

Petitioner's detention to effectuate his removal is lawful, and under the governing regulations, *Zadvydas* and its progeny, any challenge to the length of Petitioner's detention is premature.

III. CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

/s/ Kimberly Montgomery _____

KIMBERLY MONTGOMERY

Special Assistant U.S. Attorney

Florida Bar No. 99894

99 N.E. 4th Street, Suite 300

Miami, Florida 33132

Telephone: (305) 961-9453

E-mail: Kimberly.Montgomery@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Respondent's Response to the Petition for Writ of Habeas Corpus was served on Petitioner's counsel, as listed on the Petition, through CM/ECF.

/s/ Kimberly Montgomery _____

KIMBERLY MONTGOMERY

Special Assistant U.S. Attorney