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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

JHONGER ANDREW CAICEDO GARCIA,

Petitioner,

v.

KRISTI NOEM, Secretary, Department of Homeland Security, et al.,

Respondents.

No. 2:25-cv-09255-SRM-MAA

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

[Declaration of Miguel Russi filed concurrently herewith]

Honorable Maria A. Audero
United States Magistrate Judge

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner Jhonger Andrew Caicedo Garcia filed his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 requesting immediate release from immigration detention. The Petition argues that he should be released because federal officers detained and arrested him without a warrant and without probable cause or reasonable suspicion. Respondents respectfully request that the Court deny the Petition because: (1) the Petition amounts to a challenge to Immigration and Customs Enforcement's ("ICE") execution of his final order of removal; (2) Petitioner's detention to carry out his removal order is authorized by statute; and (3) the Petition's barebones allegations are entirely conclusory.

II. STATEMENT OF FACTS

Petitioner is a native and citizen of Colombia. Declaration of Miguel Russi ("Russi Decl.") ¶ 3. On or about May 25, 2024, United States Border Patrol encountered Petitioner near Jacumba, California. *Id.* ¶ 4. Petitioner admitted that he had unlawfully entered the United States and was served with a Notice to Appear in immigration court for March 21, 2025. *Id.* ¶ 4 & Ex. A. Petitioner was not taken into custody and was released at that time. *Id.* ¶ 4.

Petitioner appeared in immigration court on March 21, 2025, and requested additional time to find an attorney. *Id.* ¶ 5. The immigration court continued his hearing until June 25, 2025. *Id.* On June 25, Petitioner failed to appear for his hearing and an immigration judge entered a final order of removal, ordering Petitioner removed to Colombia *in absentia*. *Id.* ¶ 6 & Ex. B.

On September 26, 2025, ICE Enforcement and Removal Operations ("ERO") encountered Petitioner while they were executing a targeted removal enforcement operation. *Id.* ¶ 7. Petitioner was taken into custody for removal pursuant to his final order of removal and was taken to the Adelanto ICE detention facility. *Id.* On September 29, 2025, ERO obtained valid travel documents for Petitioner, consisting of his Colombian passport. *Id.* ¶ 8. Petitioner is currently being held in Adams County Correctional Center in Louisiana in preparation for his imminent removal to Colombia, consistent with his final order of removal. *Id.* ¶ 9.

III. ARGUMENT

A. Petitioner's requested relief amounts to an improper challenge to the execution of his final order of removal.

A federal court generally may not rule on the merits of a case without first determining that it has jurisdiction. *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430–31 (2007). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). In general, a district court may exercise jurisdiction over a § 2241 habeas petition when the petitioner is in custody and alleges that the custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c); *Maleng v. Cook*, 490 U.S. 488, 490 (1989). However, that jurisdiction is constrained in immigration contexts by two specific statutes. First, 8 U.S.C. § 1252(g) provides 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 chapter.

"When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions[:] . . . [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

Second, under § 1252(b)(9), "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 federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *American-Arab*, 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*; *accord* 8 U.S.C. § 1252(a)(5) (petition for review with the Court of Appeals is "the sole and exclusive means for judicial review of an order of removal . . . except as provided in subsection (e) [concerning aliens not admitted to the United States]")

"Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id*. at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"). Here, Petitioner appears to challenge the government's decision and action to detain and arrest him, which arises from DHS's decision to execute a removal order, and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95.

Even assuming the Court does not view Petitioner's initial arrest as strictly within the jurisdiction-stripping provisions of § 1252(g), Petitioner's requested remedy is his immediate release. Petition ¶ 4. But Petitioner has already been through removal proceedings and has a final order of removal. Russi Decl. ¶ 6 & Ex. B. ICE ERO is currently detaining him specifically to carry out his removal, which is expected imminently. *Id.* ¶ 9. Thus, an order requiring his release, in this context, would effectively constitute a direct challenge to execution of that final removal order. Accordingly, in this context, the Court lacks jurisdiction to grant the requested remedy.

B. The Government is authorized to arrest and detain non-citizens to carry out removal orders.

Petitioner's detention is authorized under is 8 U.S.C. § 1231(a)(2), which provides that "[d]uring the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2). Under 8 U.S.C. § 1231(a)(1)(A), the government generally has 90 days to facilitate the alien's removal. *Thai v. Ashcroft*, 366 F.3d 790, 793 (9th Cir. 2004) (citation omitted); *see also* 8 U.S.C. § 1231(a)(1)(A). Where removal cannot be accomplished within the 90-day removal period, continued detention is authorized by 8 U.S.C. § 1231(a)(6) ("An alien ordered removed … 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…").

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that 8 U.S.C. § 1231(a)(6) contained an implicit "reasonable time" limitation. *Zadvydas*, 533 U.S. at 682. The Court concluded that, for the sake of uniform administration in the federal courts, six months was a presumptively reasonable period of detention pending removal. *Id.* at 701. The Court elaborated:

> After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing ... This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, 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.

Zadvydas, 533 U.S. at 701.

Thus, even when an alien is detained for longer than six months, the alien is not automatically entitled to habeas relief. He still has the burden to show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*; *see also Clark v. Suarez-Martinez*, 543 U.S. 371, 377–78 (2005). The Ninth Circuit has held that meeting this burden requires the alien to show that he "is unremovable because the destination country will not accept him or his removal is barred by our own laws." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). Only if the alien can make this showing does the burden shift to Respondents to provide rebuttal evidence. *Zadvydas*, 533 U.S. at 701.

Petitioner has a final order of removal and has not moved to appeal or reopen the immigration judge's decision. *See* Russi Decl. Ex. B & ¶ 9. Accordingly, Petitioner's detention is authorized by the INA.

C. Petitioner's conclusory allegations do not plead a habeas claim.

Federal habeas petitioners are subject to a higher pleading standard than Federal Rule of Civil Procedure 8 and must make specific factual allegations. *See* Rules Governing Section 2254 Cases, Rule 2(c)(1)-(2) (federal habeas petitions must "specify all the grounds for relief," and "state the facts supporting each ground"); *see also Mayle v. Felix*, 545 U.S. 644, 655 (2005) (Fed. R. Civ. P. 8(a) requires only "fair notice" whereas Habeas Rule 2(c) is "more demanding" and that federal habeas petitions are "expected to state facts that point to a real possibility of constitutional error") (citations omitted); *Jones v. Gomez*, 66 F.3d 199, 204–05 (9th Cir. 1995) (conclusory allegations unsupported by a statement of specific facts do not warrant habeas relief); *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (allegations that are vague, conclusory, or unsupported by a statement of specific facts, are insufficient to warrant relief and subject to summary dismissal).

While the Petition alleges that Petitioner was walking home when he was approached by federal officers, Petition ¶ 14, the allegations concerning the basis for his arrest are entirely conclusory. The Petition asserts without explanation that there was no reasonable suspicion, probable cause, or consideration of Petitioner being a flight risk. *Id.* ¶¶ 18, 19, 21. These legal conclusions do not meet the pleading standard for a habeas petition.

IV. CONCLUSION

For the foregoing reasons, Respondents request that the Court deny the Petition.

Dated: October 15, 2025

Respectfully submitted,

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