IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA CASE NO. 25-cv-22644-DPG

ROBERTO CHAVEZ BARRIOS, Petitioner-Plaintiff,

VS.

GARRETT J. RIPA, in his official capacity
As Director of Miami Field Office, U.S.
Immigration and Customs
Enforcement, et. al.,
Respondents- Defendants.

RESPONDENTS' OPPOSITION TO PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND RETURN AND MEMORANDUM OF LAW

Garrett J. Ripa, Director of Miami Field Office, et. al. ("Respondents"), through the undersigned Assistant United States Attorney, hereby files their Response in opposition to Petitioner's Emergency Motion for Temporary Restraining Order [DE 10] (the "TRO Motion") and Response to this Court's Order, dated June 12, 2025, directing that Respondents "shall make a return certifying the true cause of the [Petitioner's] detention" [DE 17]¹. The Court should dismiss the Petition and deny the TRO Motion.

Petitioner's detention is lawful. Petitioner has been detained for one week, since June 11, 2025, and the Petition is premature under *Zadvydas*. The Court lacks jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) to enjoin Respondents from transferring Petitioner to another district. Petitioner cannot challenge the legality of his removal order or indirectly obstruct removal by asking the

¹ The Court ordered that the Respondents are to "make a return certifying the true cause of the [Petitioner's] detention" within five days after service upon the Civil Division of the United States Attorney's Office for the Southern District of Florida [DE 17]. As of the date of this filing, service has not been made. However, given the Court's Order for Respondents to respond to the Motion for TRO on June 18, 2025, and the hearing scheduled for June 23, 2025, and the fact that the issues overlap, Respondents submit this combined Response to the Motion for TRO and Return and Memorandum of Law.

Court to prevent Respondents from transferring Petitioner to another facility for purposes of executing the removal order under 8 U.S.C. § 1252(g). If Petitioner were to be removed to a third country, Respondents will comply with the requirements set forth in *D.V.D. v. United States Dep't of Homeland Sec.*, Civil Action No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197 (D. Mass. April 18, 2025). Finally, Petitioner cannot meet the high threshold for injunctive relief as descried below.

I. FACTUAL BACKGROUND

The Petitioner, Roberto Chavez Barrios ("Petitioner"), is a native and citizen of Mexico. Petitioner alleges his last entry into the United States was on August 15, 2018. *See* Exhibit 1, Form I-213 dated September 21, 2018.

As outlined below and in the voluminous exhibits filed in conjunction with this Response, Petitioner has an extensive history of illegal entries into the United States after being removed from the United States several times, and an extensive criminal history. Petitioner remains in ICE custody at Krome while ICE pursues Petitioner's removal to a third country pursuant to Section 241(b), 8 U.S.C. § 1231(b), of the Immigration and Nationality Act (INA). Once ICE Enforcement and Removal Operations (ERO) receives approval for removal to a third country, Petitioner will be notified as required by the district court's preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass. Filed March 23, 2025). Since having his Order of Supervision (OSUP) revoked pursuant to 8 C.FR. § 241.4(I)(2), Petitioner has been in custody since June 11, 2025, *i.e.*, seven days as of the date of this filing.

2001 ILLEGAL ENTRY AND SUBSEQUENT CONVICTION UNDER 8 U.S.C. § 1325(a)(3)

Petitioner's first documented illegal entry into the United States occurred on or about July 9, 2001. See Exhibit 2, Form I-213 dated July 9, 2001. When encountered by U.S. Immigration officials, Petitioner falsely claimed to be a United States citizen and presented another individual's United States issued birth certificate. *Id.* At secondary inspection, he admitted his true name is

Roberto Chavez Barrios, born in Mexico, and that he lacked legal documents to allow him entry into the United States. *Id.* Petitioner was turned over for criminal prosecution for attempting to obtain entry into the United States with willfully false or misleading representations under 8 U.S.C. § 1325(a)(3). *See* Exhibit 3, Criminal Records, *United States v. Chavez-Barrios*, Case No. M-01-2099-M (S.D. Tex. 2001). On or about July 10, 2001, Petitioner was found guilty and sentenced to a 90-day suspended sentence and three years of probation. *Id.* Petitioner thereafter departed the United States on an unknown date.

2003 ILLEGAL ENTRY, SUBSEQUENT CONVICTION UNDER 8 U.S.C. § 1325(a)(3), AND EXPEDITED REMOVAL FROM THE UNITED STATES

On or about October 2, 2003, Petitioner applied for admission at the Progreso, Texas port of entry as the passenger in a vehicle attempting to enter the United States. *See* Exhibit 4, Form I-213 dated October 2, 2003. Once again, Petitioner claimed several times to be a United States a citizen and gave the U.S. officials a false name and date of birth. *Id.* Petitioner also falsely stated that he never had any problems with U.S. immigration in the past. *Id.* When confronted with evidence to the contrary, Petitioner admitted his true name and date of birth. *Id.* He brazenly told U.S. officials that even if he were removed, he would continue attempting to enter the United States. *Id.* Petitioner was issued an expedited removal order, pursuant to 8 U.S.C. § 1225. *See* Exhibit 5, Expedited Removal Order dated October 2, 2003. He was also criminally charged with attempting to obtain entry into the United States by willfully false or misleading representations under 8 U.S.C. § 1325(a)(3). *See* Exhibit 3, Criminal Records, *United States v. Chavez-Barrios*, Case No. M-03-4633-M (S.D. Tex. 2003). On October 3, 2003, Petitioner was found guilty and sentenced to 30 days of incarceration. *Id.* On November 3, 2003, Petitioner was removed from the United States. *See* Exhibit 6, Form I-296 Notice to Alien Ordered Removed/Departure Verification.

Petitioner subsequently reentered the United States after his November 2003 removal. On November 4, 2005, Petitioner was convicted of racing on a highway in Hidalgo, Texas. See Exhibit

3, Criminals Records, *State of Texas v. Chavez* Barrios, Case No. CR-04-0988-A (Hidalgo County, TX) (2005). He was sentenced to 30 days incarceration and court costs. *Id*.

2012 CONVICTION FOR FRAUDULENT USE OF IDENTIFYING INFORMATION, REINSTATEMENT OF REMOVAL ORDER, AND REMOVAL FROM THE UNITED STATES

On April 25, 2012, the Petitioner was convicted in Texas for fraudulent use or possession of identifying information. See Exhibit 3, Criminal Record, State of Texas v. Chavez Barrios, Case No. CR-1466-12-F (Hidalgo County, TX) (2012). On or about June 26, 2012, Petitioner was encountered by U.S. Immigration and Customs Enforcement (ICE) officials while in the custody of the Texas Department of Criminal Justice ("TDCJ"). See Exhibit 7, Form I-213 dated August 13, 2012. Petitioner alleged he entered the United States without inspection on or about November 2011 through Eagle Pass, Texas. See Exhibit 7, Form I-213 dated August 13, 2012. On August 27, 2012, DHS reinstated the October 2, 2003, removal order. See Exhibit 8, Form I-871, Notice of Intent/Decision to Reinstate Prior Order dated August 27, 2012. On October 3, 2012, Petitioner was removed from the United States. See Exhibit 9, Form I-205, Warrant of removal/deportation dated October 3, 2012.

2015 CONVICTION FOR UNLAWFUL ENTRY, REINSTATEMENT OF REMOVAL, AND REMOVAL FROM THE UNITED STATES

On or about January 6, 2015, Petitioner was apprehended at or near Mission, Texas, by the U.S. Department of Homeland Security (DHS), Customs and Border Protection (CBP). *See* Exhibit 10, Form I-213 dated January 6, 2015. Petitioner admitted he had entered the United States illegally on or about June 1, 2014. *Id.* On January 6, 2015, CBP reinstated the October 2, 2003, removal order. *See* Exhibit 11, Notice of Intent/Decision to Reinstate Prior Order dated January 6, 2015. Thereafter, Petitioner was criminally charged with knowingly and unlawfully entering the United States at a place other than as designated by immigration officers in violation of 8 U.S.C. § 1325(a)(1). *See* Exhibit 3, Criminal Records, *United States v. Chavez-Barrios*, Case No. 15-po-01071 (S.D. Tex. 2015). On January 9, 2015, Petitioner was found guilty and sentenced to sixty days of incarceration and a special assessment of \$10.00. *Id.* Petitioner was once again

removed from the United States on March 9, 2015. *See* Exhibit 12, Form I-205, Warrant of removal/deportation dated January 6, 2015.

2015 CONVICTION FOR BRINGING INTO THE UNITED STATES AND HARBORING ALIENS, AND MARCH 2016 REMOVAL FROM THE UNITED STATES

On or about September 23, 2015, Petitioner was encountered by CBP in the United States during a multi-agency criminal investigation regarding a smuggled, alien female who was being extorted for additional funds to be taken to her final destination. *See* Exhibit 13, Form I-213, dated September 23, 2015. On September 23, 2015, CBP reinstated the October 2, 2003, removal order. *See* Exhibit 14, Form I-871, Notice of Intent/Decision to Reinstate Prior Order dated September 23, 2015. Petitioner was prosecuted for bringing into the United States and harboring aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). *See* Exhibit 3, Criminal Records, *United States v. Chavez*-Barrios, Case No. 15-cr-01425 (S.D. Tex. 2016) (consolidated with magistrate Case No. 15-mj-01637). On or about April 1, 2016, a judgment was entered against Petitioner. He was sentenced to eight months incarceration. *Id.* On March 29, 2016, Petitioner was removed from the United States. *See* Exhibit 15, Form I-205, Warrant of removal/deportation dated September 25, 2015.

2016 ILLEGAL ENTRY, REINSTATEMENT OF REMOVAL ORDER, AND JULY 2016 REMOVAL FROM THE UNITED STATES

On or about July 7, 2016, Petitioner was encountered by CBP in the United States after having entered illegally from Mexico on July 6, 2016. See Exhibit 16, Form I-213, dated July 7, 2016. On July 7, 2016, CBP reinstated the October 2, 2003, removal order. See Exhibit 17, Form I-871, Notice of Intent/Decision to Reinstate Prior Order dated July 7, 2016. On July 8, 2016, Petitioner was removed from the United States. See Exhibit 18, Form I-205, Warrant of removal/deportation dated July 7, 2016.

2017 REINSTATEMENT ORDER, SUBSEQUENT CONVICTION FOR REENTRY UNDER 8 U.S.C. §§ 1326(a)-(b) AND JULY 2018 REMOVAL FROM THE UNITED STATES

On or about August 31, 2017, Petitioner was encountered by DHS in the United States as a result of a criminal investigation regarding harbored aliens. On August 31, 2017, CBP reinstated the October 2, 2003, removal order. *See* Exhibit 19, Form I-871, Notice of Intent/Decision to Reinstate Prior Order dated August 31, 2017. Petitioner was prosecuted for reentry of a deported alien in violation of 8 U.S.C. §§ 1326(a)-(b). *See* Exhibit 3, Criminal Records, *United States v. Chavez-Barrios*, Case No. 17-cr-01486 (S.D. Tex. 2018) (consolidated with Case No. 17-mj-01575). On February 6, 2018, a judgment was entered against Petitioner. He was sentenced to twelve months and one day of incarceration. *Id.* On July 13, 2018, Petitioner was removed from the United States. *See* Exhibit 20, Form I-205, Warrant of removal/deportation executed July 13, 2018.

2018 REINSTATEMENT OF REMOVAL ORDER, CONVICTION FOR ILLEGAL REENTRY AND SUBSEQUENT REFERRAL TO IMMIGRATION COURT FOR WITHHOLDING OF REMOVAL ONLY

On or about September 20, 2018, Petitioner was again encountered by CBP in the United States after having entered the United States illegally. *See* Exhibit 21, Form I-213, dated September 20, 2018. Petitioner admitted that he entered the United States by rafting across the Rio Grande River about one mile west of Roma, Texas. *Id.* On the same date, CBP reinstated the October 2, 2003, removal order. *See* Exhibit 22, Form I-871, Notice of Intent/Decision to Reinstate Prior Order dated September 20, 2018. On August 20, 2019, Petitioner was found guilty of reentry after a removal order in violation of U.S.C. §§ 1326(a) and (b)(1). *See* Exhibit 3, Criminal Record, *United States v. Chavez-Barrios*, Case No. 18-cr-00831 (S.D. Tex. 2019). Petitioner was sentenced to twenty-seven months incarceration. *Id.* After completing his criminal sentence, on August 21, 2020, Petitioner was taken into the custody of the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). *See* Exhibit 23, Detention History.

On or about August 25, 2020, Petitioner expressed fear of return to Mexico and was provided a reasonable fear interview on August 28, 2020.² On September 1, 2020, Petitioner was served the Forms I-898 and I-863, Record of Negative Reasonable Fear finding and request for Review by Immigration Judge. On September 16, 2020, the immigration judge reversed the asylum officer's negative reasonable fear finding and placed Petitioner in withholding-only proceedings. *See* Exhibit 24, immigration judge order dated September 16, 2020.

On March 1, 2021, the immigration judge held a bond hearing pursuant to Guerrero-Sanchez v. Warden York City Prison, 905 F3d 208, 219-20 (3d Cir. 2018). DHS argued that bond should be denied because Petitioner is a danger to the community and a flight risk. The immigration judge denied bond, finding that Petitioner was a flight risk and a danger to the community. See Exhibit 25, immigration judge's bond order dated March 1, 2021. The immigration judge found Petitioner to be a flight risk due to his disregard of many past removal orders and use of false identification. See Exhibit 26, immigration judge's Bond Memorandum at Page 3. Furthermore, the judge stated, "[b]ased on [Petitioner's] extensive immigration history, it is clear that [Petitioner] has demonstrated that he refuses to comply with orders of removal and has the means to avoid detection within the United States." Id. (emphasis added). The immigration judge also found Petitioner to be a flight risk due to his history of helping others enter the United States illegally for financial gain and his ties with individuals who could help him travel without detection. Id. The Court found Petitioner to be a danger to the community due to his 2015 conviction, based upon his criminal conviction involving threats of extortion and rape

² 8 C.F.R. § 208.31(a) provides a reasonable fear process for any alien whose deportation order has been reinstated under 8 U.S.C. § 1231(a)(5) and expresses fear of returning to the country of removal. The United States Citizenship and Immigration Service (USCIS) has exclusive jurisdiction to make the reasonable fear determination. 8 C.F.R. § 208.31(a). If USCIS finds that the alien has not shown a reasonable fear, the immigration judge has exclusive jurisdiction to review that determination. *Id.* If USCIS or the immigration judge, in review of USCIS' negative finding, determine that the alien has a reasonable fear of returning to the country of removal, the alien is placed in withholding-only proceedings for consideration of the alien's application for withholding of removal under 8 C.F.R. § 1208.16. 8 C.F.R. §§ 208.31(f) - (g)(1). The immigration judge's decision on the application for withholding of removal may be appealed to the Board of Immigration Appeals. 8 C.F.R. § 208.31(g)(2)(ii).

against a smuggled alien in addition to Petitioner's past affiliation with the

See Exhibit 26, immigration judge's Bond Memorandum at Page 4.

On March 8, 2021, the immigration judge granted Petitioner's applications for relief. *See* Exhibit 27, immigration judge's order dated March 8, 2021. On March 24, 2021, DHS appealed the immigration judge's decision to the Board of Immigration Appeals ("BIA").

On March 30, 2021, Petitioner appealed the March 1, 2021, immigration judge's bond order to the BIA. While the appeal was pending before the BIA, on or about June 1, 2021, Petitioner requested a new bond hearing before the immigration judge. On June 14, 2021, the immigration judge denied Petitioner's bond request, finding no material changed circumstance from the last bond decision. *See* Exhibit 28, immigration judge's bond decision dated June 14, 2021. On September 9, 2021, the BIA dismissed Petitioner's bond appeal. *See* Exhibit 29, BIA decision in bond proceedings dated September 9, 2021.

On November 19, 2021, the BIA granted DHS's appeal from the immigration judge's decision concerning Petitioner's application for relief from removal and remanded the case to the immigration judge for a new decision. The BIA was persuaded by DHS' arguments on appeal regarding Petitioner's credibility during the relief proceedings since the immigration judge failed to address inconsistencies in Petitioner's testimony. *See* Exhibit 30, BIA decision dated November 19, 2021. The record was remanded to the immigration judge for further proceedings and reconsideration of Petitioner's application for relief. *Id*.

On April 25, 2022, the immigration judge issued an order granting Petitioner's application for relief. *See* Exhibit 31, immigration judge's decision dated April 25, 2022. On May 18, 2022, DHS appealed the immigration judge's decision to the BIA.

On May 26, 2022, the immigration judge located at the Miami Krome Immigration Court, where Petitioner is detained, denied his bond request, finding he was not entitled to bond while in withholding-only proceedings. *See* Exhibit 32, immigration decision on bond dated May 26, 2022.

On February 1, 2023, the BIA again remanded Petitioner's case, finding that there was insufficient factual findings or analysis to allow for meaningful appellate review regarding the weight of the expert witness; Petitioner's credibility; and meaningful assessment of the Petitioner's application for relief from removal. *See* Exhibit 33, BIA decision dated February 1, 2023.

On March 1, 2023, Petitioner filed a petition for writ of habeas corpus. (*Roberto Chavez Barrios v. ICE Field Office Director, et al.*, Case No. 23-cv-20803 (S.D.Fla. 2023)). On April 21, 2023, Petitioner was released from ERO custody, pursuant to ICE discretion, on an Order of Supervision (OSUP). *See* Exhibit 34, Order of Supervision. As stated in the OSUP, "[a]t any time, you may be taken back into ICE custody should your removal become practicable." The habeas petition was dismissed by voluntary dismissal on April 25, 2023. *See* Case No. 23-cv-20803 at ECF No. 18, Order of Dismissal.

On March 24, 2025, the immigration judge granted Petitioner's application for relief. *See* Exhibit 35, immigration judge's order granting relief dated March 24, 2025. The DHS appealed the decision of the immigration judge on April 23, 2025. *See* Exhibit 36, DHS Appeal to the immigration judge's March 24, 2025, order.

On June 11, 2025, ICE took Petitioner into custody at his OSUP appointment, to affect removal. *See* Exhibit 23, Detention History; Exhibit 37, Form I-213 dated June 11, 2025; and Exhibit 38, Declaration of Supervisory Detention and Deportation Officer Carlos Lozada ¶ 18. As stated in the Form I-213, Petitioner's OSUP was revoked pursuant to 8 C.F.R. 241.4(I)(2). *See* Exhibit 37.

To date, Petitioner remains in ICE custody at the Krome Service Processing Center ("Krome") in Miami, Florida. *See* Exhibit 23, Detention History; Exhibit 38 ¶ 19. DHS's appeal of the immigration judge's CAT grant is currently pending with the BIA.

II. <u>ARGUMENT</u>

In his Petition, the Petitioner asks, *inter alia*, for this Court to enjoin his transfer from this judicial district and enjoin his removal pending adjudication of the Petition, find that the revocation

of Petitioner's OSUP and his re-detention violates his Fifth Amendment right to Due Process and the Administrative Procedures Act, that his re-detention violates Section 504 of the Rehabilitation Act, and issue a writ of habeas corpus to release Petitioner immediately. *See* DE 1 at pg. 26-27. Petitioner's claims lack merit.

A. Petitioner's Detention is Lawful.

First and foremost, Petitioner's detention is lawful. Detention authority under Title 8 is bifurcated. Title 8, Section 1226 governs the detention of an alien during the pendency of administrative removal proceedings. That provision establishes two types of detention authority: (1) discretionary detention pursuant to 8 U.S.C. § 1226(a), and (2) mandatory detention pursuant to 8 U.S.C. § 1226(c). Title 8, Section 1231 governs the detention of an alien subject to a final order of removal from the United States, such as Petitioner.

There is an expedited process for aliens, such as Petitioner, who re-enter the United States without authorization after having already been removed. See id. § 1231(a)(5); see also 8 C.F.R. §§ 241.8(a)-(c), 1241.8(a)-(c). If an alien has reentered the United States illegally after having been removed under an order of removal, "the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, [and] the alien is not eligible and may not apply for any relief under this chapter." 8 U.S.C. § 1231(a)(5). DHS may "at any time" effectuate removal "under the prior order." Id. Section 1231(a)(5) explicitly insulates removal orders from review, while also "generally foreclos[ing] discretionary relief from the terms of the reinstated order." Fernandez-Vargas v. Gonzales, 548 U.S. 30, 35 (2006). However, an alien may "pursu[e] withholding-only relief to prevent DHS from executing [the alien's's] removal to the particular country designated in his reinstated removal order." Johnson v. Guzman Chavez, 594 U.S. 523, 530 (2021); see also 8 U.S.C. § 1231(b)(3)(A).

Withholding-only proceedings begin once an alien subject to a reinstated removal order expresses to DHS a fear of returning to the country of removal. See 8 C.F.R. §§ 208.31(a), 1208.31(a). At that point, DHS refers the alien to an asylum officer for a reasonable-fear

determination. *Id.* §§ 208.31(b), 1208.31(b). If the asylum officer concludes that the alien has a reasonable fear, the officer will refer the matter to an immigration judge for initiation of withholding-only proceedings. *Id.* §§ 208.31(e), 1208.31(e). The immigration judge's final determination on withholding of removal may be appealed to the BIA. *Id.* If an alien is granted withholding-only relief, DHS may not remove the non-citizen to the country designated in the removal order. *Id.* §§ 208.22, 1208.22. In other words, "withholding of removal is a form of 'country specific' relief' and "nothing prevents DHS 'from removing [the] alien to a third country other than the country to which removal has been withheld", and a "grant" of withholding of removal is necessarily accompanied by a removal order. *Guzman Chavez*, 594 U.S. at 531-32 (citations omitted) (alterations in original). Withholding of removal is, thus, not an entitlement to remain in the United States. *See id.* at 536 (distinguishing between asylum, which "permits an alien to remain in the United States," and withholding, which "only bars deporting an alien to a particular country or countries." (citation omitted)).

In *Guzman Chavez*, the Supreme Court held that "§ 1231, not § 1226, governs the detention of aliens subject to reinstated orders of removal." *Id.* at 526. Accordingly, aliens, such as Petitioner, "are not entitled to a bond hearing while they pursue withholding of removal." *Id.* (emphasis added).

The Supreme Court held in *Zadvydas* that an alien subject to a final removal order may be detained for "a period reasonably necessary to secure removal." 533 U.S. at 699. 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, such as Petitioner, "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Here, Petitioner's OSUP was revoked pursuant to 8 C.F.R. § 241.4(1)(2). Petitioner can be removed to a third-party country. Petitioner is being detained because it is necessary to secure his removal. *See* Exhibit 38, ¶ 19.

Moreover, the Petition is premature. Petitioner has only been in confinement for one week, making the six-month *Zadvydas* analysis extremely premature. While Petitioner argues in the Petition that his previous detention ending in 2023 should count towards the total time of detention, courts have held that the six-month *Zadvydas* presumptively reasonable detention period restarts when a Petitioner is released for a lengthy period and then re-detained. *See Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018) (noting "a strong argument exists" the removal period did not begin until the petitioner, who had previously been in ICE custody before serving a prison sentence, was returned to ICE custody). The Court in *Meskini* stated it did "not read *Zadvydas* to be a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past." *Id.* at 3. "Further, it is important to note the Supreme Court in *Zadvydas* recognized six months as a presumptively reasonable detention period to allow the Government to arrange for an alien's removal." *M.K. V. Stewart Detention Center*, Case No. 23-cv-136-CDL-MSH, at ECF No. 12 (M.D. Ga. Oct. 19, 2023) (citing *Zadvydas*, 533 U.S. at 700-01)). Likewise, Respondents should be afforded the opportunity to arrange for Petitioner's removal.

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 of establishing that the evidence shows 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.

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"). Such an alien may seek release from post-removal-order detention from ICE; consistent with the provisions of 8 U.S.C. § 1231, he is not entitled to a bond hearing before an immigration judge. *See id.*; *see also id.* § 1003.19 (authorizing immigration judges to review only custody determinations under 8 U.S.C. § 1226).

Furthermore, the First Circuit has held that aliens in withholding-only proceedings, such as Petitioner, fail to show that there is "no significant likelihood of [his] removal in the reasonably foreseeable future" because once these proceedings end, the alien is either removed to his or her home country or a third country to accept the alien. *G.P. v. Garland*, 103 F. 4th 989, 902-903 (1st Cir. 2024) (affirming the district court's denial of petitioner's habeas to seek release from immigration custody subject to supervision pending resolution of his claim for protection under CAT because the detainee failed to establish no significant likelihood of removal in the reasonably foreseeable future). In doing so, the First Circuit cited to the Fourth Circuit that "withholding-only proceedings [such as Petitioner's] are finite." *Id.* At 903 (emphasis in original). Indeed, "withholding-only relief is country-specific. It relates to where an alien may be removed. It says nothing, however, about the antecedent question whether an alien is to be removed from the United States." *Id.* at 905 (citing *Guzman Chavez*, 594 U.S. at 536) (emphasis in original).

Here, Petitioner cannot carry his burden of showing that removal is not reasonably foreseeable. Moreover, the Supreme Court has held that aliens subject to reinstated removal orders and detained pursuant to 8 U.S.C. § 1231 "are not entitled to a bond hearing." *Guzman Chavez*, 594 U.S. at 526.

The plain text of 8 U.S.C. § 1231(a)(6) authorizes Petitioner's detention past the removal period. 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 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.").

Petitioner fails to proffer any evidence. In fact, he does the opposite and is contradictory with his request for injunctive relief, alleging that, "transfer or removal could be effected within a matter of hours", prompting this Court to issue its Order Staying Removal [DE 16]. The statute provides for post-removal detention in the event an alien cannot be removed within the ninety-day removal period. 8 U.S.C. §§ 1231(a)(3), (6). As the Supreme Court noted, "[i]nterpreting §1231 to apply even if withholding-only proceedings remain pending longer than 90 days thus does not mak[e] it structurally impossible for DHS to satisfy its statutory obligation." *Guzman Chavez*, 594 U.S. at 547 (quotations omitted). Additionally, in applying for withholding-only relief, Petitioner did so as to Mexico only. *See* 8 C.F.R. § 208.31(a), 1208.31(a). DHS may remove Petitioner to a third country authorized by 8 U.S.C. § 1231. *See* §§ 208.16(f), 1208.16(f), 1240.12(d). Thus, Petitioner has not met his *prima facie* burden that his removal is not reasonably foreseeable.

In addressing a claim like Petitioner's, the Sixth Circuit held that the pendency of withholding-only proceedings does not render removal not reasonably foreseeable. In *Martinez v. Larose*, an alien subject to a reinstated removal order argued, like Petitioner, that his ongoing withholding-only proceedings made his removal not reasonably foreseeable. 968 F.3d 555, 565 (6th Cir. 2020). Specifically, the alien asserted that his removal was not reasonably foreseeable because "he ha[d] been in detention for roughly two years"; "his case before the Sixth Circuit . . . was still being held in abeyance"; "the median time for an appeal in the Sixth Circuit [wa]s around seven months"; and "if he prevail[ed], his case w[ould] have to wind back through the immigration courts." *Id.* The Sixth Circuit rejected this argument and, instead, "agree[d] with the district court that [his] removal [wa]s reasonably foreseeable" because he was "not stuck in 'removable-but-unremovable limbo," like the petitioners in *Zadvydas. Id.* If the alien lost, then "nothing should impede the government from removing him to El Salvador," and if he prevailed, he could "argue

at that point that there [wa]s no significant likelihood of removal in the reasonably foreseeable future." *Id*.

In short, Petitioner's detention does not violate 8 U.S.C. § 1231. Petitioner has failed to carry his burden to show that his removal is not reasonably foreseeable. He is, accordingly, not entitled to habeas relief.

B. Petitioner is not Entitled to a Preliminary Injunction.

In order to obtain the extraordinary remedy of a preliminary injunction, a plaintiff must prove: "(1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). Because a preliminary injunction is "an extraordinary and drastic remedy", it should not be granted unless the plaintiff "clearly carries the burden of persuasion as to the four prerequisites." *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985) (citation and internal quotations marks omitted).

1. Petitioner Cannot Show Substantial Likelihood of Success on the Merits.

In his Petitioner requests the Court enjoin Respondents from transferring Petitioner to another district because this "will facilitate [his] ability to work with h[is] attorney[] coordinate the appearance of witnesses, and generally present h[is] habeas claims." *See* DE 10 at pg. 7.

As a threshold matter, two of Petitioner's three attorneys are located outside the district in New York, and there is no indication his ability to work with them has been hampered due to different locations. See DE 1 at pg. 27. Regardless, the Court lacks jurisdiction under § 1252(a)(2)(B)(ii) to enjoin Respondents from transferring Petitioner to another district. § 1252(a)(2)(B) states that "no court shall have jurisdiction to review any action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the

Attorney General" § 1252(a)(2)(B)(ii). Specifically, 8 U.S.C. § 1231(g)(1) falls within the subchapter and states the "Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1). See Van Dinh v. Reno, 197 F.3d 427, 433 (10th Cir. 1999) ("§ 1252(a)(2)(B)(ii) provides that no court has jurisdiction to review any decision or action the Attorney General has discretion to make 'under this subchapter' except for 'the granting of relief under section 1158(a).' 'This subchapter,' which is subchapter II of Chapter 12 of Title 8, covers §§ 1151-1378, including § 1231."). "[T]he place of detention is left to the discretion of the Attorney General." Kapiamba v. Gonzalez, No. 07-CV-335, 2007 WL 3346747, 2007 U.S. Dist. LEXIS 82767, *2-3 (W.D. Mich., Nov. 7, 2008) (citing, Sinclair v. Attorney General of the United States, 198 Fed. Appx. 218, 222 n. 3 (3rd Cir. 2006) (listing cases). See also, Marogi v. Jenifer, 126 F. Supp. 2d 1056, 1066 (E.D. Mich. 2000) ("Congress has placed the responsibility for determining where aliens are to be detained within the sound discretion of the Attorney General").

Furthermore, to the extent Petitioner argues that a transfer would impede his ability to challenge his removal, the Court does not have jurisdiction under § 1252(g) to challenge his removal. Similarly, the Court does not have jurisdiction under § 1252(g) to stay a transfer to another detention center when the transfer is undertaken to facilitate a removal. § 1252(g) explicitly states that "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." § 1252(g). See Camarena v. Director, I.C.E., 988 F.3d 1268, 1274 (11th Cir. 2021) ("the statute's words make that clear. One word in particular stands out: 'any.' 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.").

§ 1252(g) plainly bars direct attacks on the legality of the removal order. Further, § 1252(g)

bars indirect attacks on the execution of the removal order. Here, Petitioner is asking the Court to enjoin Respondents from transferring Petitioner to another facility to indirectly prevent the execution of the removal order, in the event the removal will be executed from a detention center where Petitioner is not located. § 1252(g) bars such indirect attacks because they are nonetheless a challenge to the execution of the removal order. *Cf. Patel v. United States AG*, 971 F.3d 1258, 1272 (11th Cir. 2020) (en banc) (noting that "a party may not dress up a claim with legal or constitutional clothing to invoke our jurisdiction.").

Next, for the reasons outlined above, Petitioner's revocation of OSUP and detention are both lawful. Under the INA, DHS has the authority to grant an OSUP for an alien subject to a final order of removal who has not been removed within the 90-day removal period. 8 U.S.C. § 1231(a)(3). Regulations also allow the government to terminate an order of supervision if the ICE District Director choses to in his discretion. 8 C.F.R. § 241.4(*l*)(2). The district director may:

revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

Id. Petitioner is being detained to effectuate his removal. See Exhibit 38. Furthermore, the Supreme Court has emphasized that "detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process." Demore v. Kim, 538 U.S. 510, 523 (2003) (emphasis added). The Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and, in fact, has held precisely the opposite. See id. at 530; see also Carlson v. Landon, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure.").

Likewise, even if Petitioner was able to show that ICE somehow violated the regulations pertaining to OSUP, the INA precludes claims that "arise from" the decision to execute a removal order, such as the decision to re-detain Petitioner. *Foster v. Townsley*, 243 F.3d 210, 213(5th Cir. 2001). Thus, Petitioner's claims regarding detention incident to removal are also likely to fail where this Court lacks jurisdiction to review them. *Id. at* 213-14 (5th Cir. 2001) (holding that the claim regarding the denial of due process, among others, was "directly connected to the execution of the deportation order" and fell "within the ambit of section 1252(g)" which precluded judicial review); *see also Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013) ("We conclude that Gupta's claim [alleging that three U.S. ICE agents violated his Fourth and Fifth Amendment rights when they arrested and detained him in connection with the initiation of removal proceedings against him] arise from the actions taken to commence removal proceedings against him within the meaning of § 1252(g). We therefore do not reach the question of whether to recognize a *Bivens* action under these circumstances.").

Finally, Plaintiff' cannot show substantial likelihood of success on the merits as to his Section 504 of the Rehabilitation Act claim. Plaintiff claims that he has been diagnosed with "severe PTSD and depression" and "by subjecting [Petitioner] to re-detention rather than making reasonable modifications to its detention policy to accommodate individuals with severe medical issues... Respondents-Defendants deprived him of the benefit of the OSUP program." See DE 1 at ¶ 77. Plaintiff fails to identify the "reasonable modification" but presumably it is release from detention. To the extent this claim is a repackaged version of Petitioner's other claims, it fails for the same reasons outlined above. Furthermore, courts have rejected similar claims because the Rehabilitation Act "does not require fundamental or substantial alterations to programs." See Doe v. Bostock, Case No. 24-cv-0326, 2024 WL 3291033, at *8-9 (W.D. Wash. March 29, 2024) (in habeas action regarding immigration detention in ICE custody, finding that the petitioner did not show a likelihood of success in her Rehabilitation Act claim and therefore denying her request for release) (citing Siskos v. Sec'y Dep't of Corr., 817 F.App'x 760, 765 (11th Cir. 2020) (finding no

merit in Rehabilitation Act claim alleging a denial of reasonable accommodation through the failure to release an inmate to a residential treatment facility because the requested action would 'fundamentally alter the nature' of the correctional department's imprisonment services)); report and recommendation adopted at Doe v. Bostock, 2024 WL 2861675 (June 6, 2024) (affirming that petitioner did not show she was denied benefits "solely by reason of her disability" and finding that a request for release as an "accommodation" is analogous to claiming receiving inadequate treatment while in detention, and also agreeing with finding that release outside of a removal proceeding would constitute a fundamental or substantial alteration to the detention program of ICE).

In short, Petitioner fails to state a claim under the Rehabilitation Act. See Sosa Rodriquez v. Feeley, 507 F.Supp. 34 466, 481-482 (W.D. N.Y. Dec. 15, 2020) (in habeas action, dismissing Rehab Act claim because plaintiff does not allege he was denied medical services, or otherwise discriminated again, because of his disability); Bosworth v. United States, Case No. 14-cv-0498, 2016 WL 4168852, at * 5 (C.D. Cal. Aug. 5, 2016) (finding that the allegation of failure to provide adequate medical treatment is not a viable claim under the Rehab Act and plaintiff fails to state a claim); Turner v. Langford, Case No. 17-cv-03146, 2020 WL 4001621, at *11-12 (C.D. Cal. March 13, 2020) (same) Savor v. United States, 962 F.Supp. 1, 2 (D. D.C. June 26, 2013) (finding that plaintiff failed to state a claim because does not allege that the reason for the action of the agency was "solely" due to the alleged disability, and plaintiff failed to allege he exhausted administrative remedies).

2. Petitioner Cannot Show Irreparable Injury Will be Suffered Unless the Injunction Issues.

Petitioner cannot prove irreparable harm will occur if the injunction enjoining Respondents from transferring Petitioner is not issued. As explained above, even if Petitioner was transferred,

he would still have access to counsel. Further, Petitioner is subject to a final order of removal, and any removal to a third country would be compliant with the requirements articulated in *D.V.D. v. United States Dep't of Homeland Sec.* No. 25-10676 (D. Mass. Filed March 23, 2025).

3. Petitioner Cannot Show Threatened Injury Outweighs Whatever Damages the Proposed Injunction May Cause the Opposing Party.

Third, the threatened injury to Petitioner does not outweigh the damage the injunction will cause Respondents. An injunction precluding Respondents from transferring or removing Petitioner would deprive Respondents of their statutory discretionary ability to transfer Petitioner and statutory ability to execute his removal order. The government's interests in maintaining the existing removal procedures are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976).

4. If Issued, the Injunction Would be Adverse to the Public Interest.

An issuance of an injunction preventing Respondents from transferring Petitioner or executing the removal order would be adverse to the public interest because enforcing federal immigration law furthers the public's interest. *See Garcia v. Martin*, 379 F. Supp. 3d 1301, 1308 (S.D. Fla. 2018) (denying a preliminary injunction requesting a stay of removal because an execution of a removal order "is commensurate with the public's interest in enforcing federal law."). "There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009) (alterations in original); *see Landon v. Plasencia*, 459 U.S. 21, 34 (1982) ("The Government's interest in efficient administration of the immigration laws . . . is weighty."). Detention following entry of a final removal order remedies this risk by

"increasing the chance that, if ordered removed, the alien[] will be successfully removed." *Demore* v. Kim, 538 U.S. 510, 528 (2003).

Finally, and particularly important here, the government has a vital interest in protecting public safety. *See id.* at 518-19. Petitioner is a flight risk by virtue of the fact that he has entered the country illegally at least eleven (11) times, has an extensive criminal record, and brazenly informed officers he would enter the United States illegally again after removal. Petitioner's conduct shows that he is unlikely to comply with future orders unless within ICE custody.

III. CONCLUSION

For the foregoing reasons set forth above, the Court should deny the Petition, deny the Motion for TRO, and dismiss this case.

Dated: June 18, 2025

Respectfully submitted,

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