

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.*

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**RESPONDENTS' MOTION TO DISMISS**

Garrett J. Ripa, Director of Miami Field Office, *et. al.* ("Respondents"), through the undersigned Assistant United States Attorney, hereby file this Motion to Dismiss the Petitioner for Writ of Habeas Corpus and Complaint (the "Petition") under Federal Rule of Civil Procedure 12(b)(1) for mootness and 12(b)(6) for failure to state a claim, and state as follows:

**I. PROCEDURAL HISTORY<sup>1</sup>**

1. On June 11, 2025, Roberto Chavez Barrios ("Petitioner") filed his Petition after he was detained by United States Immigration and Customs Enforcement ("ICE") on that same day, June 11, 2025. [DE 1, ¶ 3].

2. In the Petition, Petitioner requests, *inter alia*, that this Court: (1) assume jurisdiction over this matter; (2) enjoin Petitioner's transfer outside the Southern District of Florida; (3) enjoin Petitioner's removal from the United States (4) issue an Order to Show Cause ordering Respondents to show cause why the Petition should not be granted within three days; (5) declare

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<sup>1</sup> As the Court is aware, this case has an extensive procedural history and Respondents provide a summary of the pertinent filings to this Motion to Dismiss.

that the revocation of Petitioner's Order of Supervised Release ("OSUP") and detention of Petitioner violates the Fifth Amendment, the Administrative Procedures Act, federal regulations, and the Rehabilitation Act; (6) immediately release Petitioner from immigration custody; and (7) award him fees and costs. [DE 1, pg. 26-27, at "prayer for relief"].

3. On June 11, 2025, Petitioner also filed his Emergency Motion for Temporary Retaining Order (the "Motion for TRO"). [DE 10].

4. In the Motion for TRO, Petitioner sought the same relief requested in his Petition, *i.e.*, that the Court enjoin Petitioner from being transferred out of the Southern District of Florida and enjoin him from being removed from the United States pending the adjudication of the Petition, and presented the same reasons as outlined in the Petition as justifying this relief, *i.e.*, that Respondents violated the Fifth Amendment, the Administrative Procedures Act, federal regulations, and the Rehabilitation Act. *See generally*, DE 10. Petitioner also argued his "prolonged detention" violates *Zadvydas*, as he has been in detention for more than thirty months in total when counting his previous detention ending in 2023, and there is no significant likelihood of his removal because of his CAT deferral. *See* DE 10 at pg. 15-17.

5. On June 12, 2025, this Court issued its Order Staying Removal [DE 16]. In the Order Staying Removal, the Court, *inter alia*,: (1) stayed Petitioner's removal until Respondents responded to the Motion for TRO and the Court holds a hearing; (2) ordered Respondents to file a response to the Motion for TRO on or before June 18, 2025; (3) enjoined Petitioner's transfer from the Southern District of Florida; (4) enjoined Petitioner's removal until the Court issues a ruling on the Motion for TRO; and (5) scheduled a hearing for June 23, 2025.

6. On June 12, 2025, the Court issued another Order, granting Petitioner's Motion for Order to Show Cause and ordering Respondents to "make a return certifying the true cause of the

[Petitioner's] detention" within five days of service, and Petitioner may file a traverse within five days [DE 17].

7. On June 18, 2025, Respondents filed their Opposition to Petitioner's Emergency Motion for Temporary Restraining Order and Return and Memorandum of Law (the "Opposition and Return") [DE 21]. In their Opposition and Return, Respondents indicated that, although they still had not been served with the Petition, in the interest of economy, because the issues overlapped, and because the hearing was scheduled for June 23, 2025, the filing was a combined Response to the Motion for TRO and Return and Memorandum of Law. Respondents also submitted thirty-eight (38) exhibits in support of the Opposition and Return [DE 20].

8. On June 20, 2025, at Petitioner's request, the Court then postponed the hearing to June 30, 2025, and provided an extension for Petitioner to file a reply and traverse to Respondent's Opposition until June 25, 2025 [DE 25].

9. On June 25, 2025, Petitioner filed his Reply in Support of Motion for Temporary Restraining Order and Traverse in Support of Verified Petition for Writ of Habeas Corpus/Complaint (the "Reply and Traverse") [DE 29]. Petitioner also requested and received an extension of the page limit for the Reply and Traverse, which Respondents did not oppose [DE 27].

10. The Court held the hearing on the Motion for TRO on June 30, 2025, which lasted one hour and fifteen minutes [DE 35].

11. On August 8, 2025, after several extensions of the Order Staying Removal, the Court issued its Order denying the Motion for TRO [DE 52].

12. In the Order denying the Motion for TRO, the Court found that "[i]t is undisputed that Petitioner illegally entered the United States and is the subject of a removal order." DE 52 at

pg. 5. The Court then found that it lacks jurisdiction over Respondents' decision to revoke the OSUP and lacks jurisdiction over the Respondents' determination of where to detain Petitioner. DE 52 at pg. 12. While the Court found that it has jurisdiction over whether Respondents complied with their own OSUP revocation procedures, the Court found that Petitioner did not establish a likelihood of success on the merits that would mandate his release from detention. DE 52 at pg. 12-16. Next, the Court found that Petitioner's *Zadvydas* claim is premature as he has been detained since June 11, 2025, and the Court declined to count previous detentions in the aggregate. DE 52 at pg. 16. Furthermore, the Court found that Petitioner is incorrect and that 8 C.F.R. § 1003.6 does not stay his removal while DHS's BIA Appeal is pending because that appeal only concerns Petitioner's removal to the country of Mexico, stating this issue has "no bearing on Petitioner's removal to a country other than Mexico, and the plain language of the regulation does not necessitate that Petitioner remains in the United States." DE 52 at pg. 17-18. Finally, the Court found that the Rehabilitation Act does not require Respondents to effect substantial modifications of standards to accommodate a handicapped person, and Petitioner's "release is not a viable accommodation in his case." DE 52 at pg. 17.

13. On August 20, 2025, this Court held a status conference and then issued its Order staying and administratively closing the case pending a status update from the parties, thereby scheduling another telephonic status conference for September 10, 2025 [DE 57, 58].

14. For the reasons stated below, this case should be dismissed for mootness and failure to state a claim under Rules 12(b)(1) and 12(b)(6).

## II. MEMORANDUM OF LAW<sup>2</sup>

### *The Petition Should Be Dismissed because There Is No Longer a Live Controversy.*

A district court must dismiss an action if the court lacks jurisdiction over the subject matter of the suit. *See* Fed. R. Civ. P. 12(b)(1), 12(h)(3). A claim is properly dismissed “when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Crown Media, LLC v. Gwinnett County, GA*, 380 F.3d 1317, 1324 (11th Cir. 2004) (internal citation and quotation omitted); *Bathazi v. U.S. Dep’t of Homeland Sec.*, 667 F. Supp.2d 1375, 1378 (S.D. Fla. 2009) (quoting *Fla. Ass’n of Rehab. Facilities, Inc. v. Fla. Dep’t of Health and Rehab. Servs.*, 225 F.3d 1208, 1216–17 (11th Cir. 2000)) (“A case is moot ‘when it no longer presents a live controversy.’”). A Rule 12(b)(1) motion may be either facial, where the inquiry is confined to the allegations in the complaint, or factual, where the court is permitted to look beyond the complaint to extrinsic evidence. *See McElmurray v. Consol. Gov’t of Augusta-Richmond Cnty.*, 501 F.3d 1244, 1251 (11th Cir. 2007); *see also MAO-MSO Recovery II, LLC v. Boehringer Ingelheim Pharm., Inc.*, No. 1:17-CV-21996-UU, 2017 WL 4682335, at \*3 (S.D. Fla. Oct. 10, 2017) (quoting the standard from *McElmurray*, 501 F.3d at 1251).

Here, Defendant presents a factual attack to subject-matter jurisdiction based on the Court’s Order Denying the Motion for TRO, issued on August 8, 2025. Although jurisdiction is usually determined at filing, after-arising events can affect jurisdiction. *See Bathazi*, 667 F. Supp. 2d at 1378 (S.D. Fla. 2009) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401–02 (1975)) (“An ‘actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.’”);

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<sup>2</sup> To the extent not explicitly stated in the Memorandum of Law for this Motion to Dismiss, Respondents hereby incorporate by reference their arguments contained in Respondents’ Opposition to Petitioner’s Emergency Motion for Temporary Restraining Order and Return and Memorandum of Law [DE 21].

*Yacht Club on the Intracoastal Condo. Ass'n, Inc. v. Lexington Ins. Co.*, 509 Fed. App'x 919, 922 (11th Cir. 2013) (citing *Blanchette v. Connecticut Gen. Ins. Corps.*, 419 U.S. 102 (1974)) (unpublished).

Additionally, the “law of the case” doctrine dictates that Petitioner will not be granted any relief sought in the Petition as already determined by the Court. “The law of the case doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Klay v. All Defendants*, 389 F.3d 1191, 1197 (11th Cir. 2004). *See also, Torrent and Ramis, M.D., P.A. v. Neighborhood Health Partnership, Inc.*, Case No. 05-cv-21668, 2005 WL 6358852, at \*2 (S.D. Fla. Sept. 2, 2005); *Centennial Bank v. ServisFirst Bank Inc.*, Case No. 16-cv-88, 2022 WL 10219893, at \*28 (M.D. Fla. Oct. 10, 2022) (adopting its previous ruling as law of the case *sua sponte*)).

The Court denied Petitioner’s requested relief of release from detention, and found that it lacks jurisdiction over other requests Petitioner made in his Petition. *See generally* DE 52. The relief Plaintiff requested is now moot. The case-or-controversy requirement of Article III, Section 2 of the United States Constitution subsists through all stages of federal judicial proceedings. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998), (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477–478 (1990) and citing *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)). As the Supreme Court explained in *Lewis*, “[t]o invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.” *Lewis*, 494 U.S. at 477 (citing *Allen v. Wright*, 468 U.S. 737, 750–751 (1984); *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 471–473 (1982)).

Mootness deprives a court of the power to act when there is nothing to remedy. *See Spencer*, 523 U.S. at 18 (“mootness, however it may have come about, simply deprives us of our power to act; there is nothing for us to remedy, even if we were disposed to do so”). As noted above, the Eleventh Circuit has explained, “[p]ut another way, ‘a case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.’” *Soliman v. United States ex rel. INS*, 296 F.3d 1237, 1242 (11th Cir. 2002) (quoting *Fla. Ass’n of Rehab. Facilities, Inc. v. Fla. Dep’t of Health and Rehab. Servs.*, 225 F.3d 1208, 1216–17 (11th Cir. 2000) (quoting *Ethredge v. Hail*, 996 F.2d 1173, 1175 (11th Cir.1993)). Therefore, “[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.” *Id.* (quoting *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001) (emphasis added).

In the instant case, Petitioner challenged his immigration detention, requested that the Court immediately order his release from detention, and enjoin other functions of Respondents in effectuating a removal order, including enjoining a transfer out of the Southern District of Florida and enjoining his removal. However, the Court declined to do so in the Order denying the Motion for TRO. DE 52. Therefore, as the Court did not provide Petitioner with the relief he requested, this case is now moot and must be dismissed under Rule 12(b)(1).

***Petitioner fails to state a claim over the length of his detention.***

Furthermore, while the Court found that it generally has jurisdiction over length of detention claims, it found that Petitioner’s length of detention claim under *Zadvydas* is premature. *See* DE 52 at pg. 16-17. Specifically, the Court found that Petitioner has been detained since June 11, 2025, the same day he filed the Petition, and this is “significantly less than the ‘presumptively reasonable’ 6-month period set by the Supreme Court.” *See* DE 52 at pg. 16. The Court rejected

Petitioner's argument that his detention should be counted in the aggregate based upon his prior detentions. *Id.* Therefore, because Petitioner's *Zadvydas* claim is premature, Petitioner fails to state a claim under Rule 12(b)(6) and his habeas Petition must be dismissed. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1051 (11th Cir. 2002) (holding that district court properly dismissed habeas petition as premature because petitioner "had not been held for a prolonged period of time *as of the date he filed this petition*"); *Allotey v. Miami Field Office Director*, Case No. 24-cv-24765-GAYLES, 2024 WL 5375519 (S.D. Fla. Dec. 10, 2024) (dismissing petition as premature under *Zadvydas* and noting that "[t]he six-month period [ ] must have expired at the time [Petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*") (citing *Akinwale*, 287 F.3d at 1051-52)).

Because this Petition is premature, the Court should dismiss it just as it did in *Allotey*, stating "the instant Petition must be summarily dismissed as premature under *Zadvydas*." *Allotey*, 2024 WL 5375519 at \*2 (citing *Phadael v. Ripa*, Case No. 24-CV-22227-RKA, 2024 WL 3088350, at \*3 (S.D. Fla. June 21, 2024) (Because the petitioner "filed his Petition ... comfortably within *both* the six-month period of presumptive reasonableness under *Zadvydas* and the ninety-day mandatory detention period set by § 1231(a)(1), ... his § 2241 petition must be dismissed as premature")); *Thelemaque v. Barr*, Case No. 20- CV-20467-CMA, 2020 WL 13551877, at \*2 (S.D. Fla. Mar. 4, 2020) ("A habeas petition should [ ] be dismissed if it relies upon *Zadvydas* and it is filed before the six-month 'presumptively reasonable period' has elapsed.")).

Finally, Petitioner's Rehabilitation Act claim is simply a repackaged version of Petitioner's other claims seeking release from detention and therefore must be dismissed for the same reasons outlined above and in the Court's Order denying the Motion for TRO. As the Court previously determined, "the Rehabilitation Act does 'not require an institution... to effect substantial

modifications of standards to accommodate a handicapped person.’ *Pritchard v. Fla. High Sch. Athletic Ass’n, Inc.*, 371 F. Supp. 3d 1081, 1086 (M.D. Fla. 2019) (internal quotation omitted). ‘Accommodations are not reasonable if they impose . . . administrative burdens, or if they require a fundamental alteration [to] the nature of [the] program.’ *Id.* at 1087 (internal quotation omitted). Releasing Petitioner from ICE custody would be both an administrative burden and a fundamental alteration to how Respondents effectuate removals (i.e. detention before removal). *See Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of . . . deportation procedure.”).” *See* DE 52 at pg. 17. Additionally, the Court found that “Petitioner is a flight risk and, as a result, release is not a viable accommodation in his case.” *See* DE 52 at pg. 17.

In short, Petitioner failed to state a claim under the Rehabilitation Act. *See Sosa Rodriguez v. Feeley*, 507 F.Supp. 3d 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).

### **CONCLUSION**

In its Order denying the Motion for TRO, the Court denied Petitioner all relief requested in his Petition. As such, there is no longer a live controversy, and this case is moot. Furthermore,

as previously determined by the Court, the length of detention claim pursuant to *Zadvydas* is premature and must be dismissed. Therefore, Respondents respectfully request that the Court dismiss the Petition and close this case.

Dated: September 2, 2025

Respectfully submitted,

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