UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MANUEL YAX ZAPETA,

Petitioner,

v. Case No. 2:25-cv-697-JLB-KCD

TODD LYONS, Director, United States Immigration and Customs Enforcement ("ICE"), et al. (official capacity),

Respondents.
_____/

Response in Opposition to Emergency Motion for Order Directing Return

The Federal Defendants (together, ICE) oppose the Petitioner Manuel Yax Zapeta's Emergency Motion for Order Directing Return (Doc. 25). Specifically, the Court lacks jurisdiction.

Given the tight deadlines and matters at stake, this case has been emotional for all involved—most of all for Zapeta and his family. ICE is not here to argue whether Zapeta should or shouldn't have been removed; those decisions were unreviewable matters of Executive branch discretion.

The question is whether the detention was lawful. The answer is yes. Zapeta's resulting removal was lawful too. That ends any lingering issues in this case. Even if it did not, the Court otherwise lacks jurisdiction to grant the relief requested.

Background

The relevant facts fall into four buckets: the facts (A) before Zapeta's detention;

(B) detention itself; (C) removal; and (D) documentation.

A. Before Detention

ICE did not detain Zapeta "without cause or reason." (Doc. 4 at 5). Whether Zapeta is a nice, hardworking man is not disputed; but also undisputed is that he entered the United States unlawfully. (Ex. 1 at 1); 8 U.S.C. § 1325(a) (creating misdemeanor for illegal entry). This made him inadmissible. 8 U.S.C. § 1182(a)(6)(A)(i).

An immigration judge ("IJ") ordered Zapeta removed. (Doc. 4-3). The Board of Immigration Appeals ("BIA") affirmed. (Doc. 4-4). Since that order of removal became final in 1998, Zapeta was removable. In fact, the Government had a statutory command to do so. 8 U.S.C. § 1231(a)(1)(A) (stating the DOJ "shall remove the alien"). For over twenty years, Zapeta neither voluntarily left the country—as the IJ and BIA expressly ordered him to do—nor remedied his immigration status.

In March 2020, ICE issued a warrant of arrest (I-200) because it believed Zapeta was removable. (Ex. 1 at 2). That same day, it issued an order of supervision ("OSUP"), which released Zapeta subject to certain conditions. (*Id.* at 2-3; Doc. 4-5). One condition was appearing when requested for removal. (Doc. 4-5 at 1). An OSUP does not prevent later removal. 8 C.F.R. § 241.4(l) (explaining revocation of OSUPs).

B. Detention

On July 23, ICE issued a warrant of removal/deportation (I-205) ("Warrant"). (Doc. 24-1 at 1). The parties agree that is the day when Zapeta reported to an ERO office and ICE arrested him. (Doc. 4 at 5; Ex. 1 at 3). The Warrant authorized ICE to

"take [Zapeta] into custody and remove from the United States." (Doc. 24-1 at 1).

Various immigration officials have the power to issue warrants of removal. 8 C.F.R. § 241.2(a). Among that list is a "field office director"—who signed Zapeta's Warrant. *Id.*; (Doc. 24-1 at 1). And a separate list of officials has the power to execute warrants by arresting aliens. 8 C.F.R. §§ 241.2(b); 287.5(e)(3). Among that list are "Deportation officers." *Id.* § 287.5(e)(3)(iv).

The Warrant authorized Zapeta's detention, and the removal was underway after. 8 U.S.C. § 1231(a)(6) ("An alien ordered removed who is inadmissible under section 1182 . . . may be detained beyond the removal period."); (g)(1) (DOJ "shall arrange for appropriate places of detention for aliens detained pending removal.").

The arresting deportation officer ("DO") notified Zapeta that his OSUP was being revoked and he would be detained pending removal. (Ex. 2 at 3). An official with delegated authority made the decision to revoke based on 8 C.F.R. § 241.4(l)(2) because Zapeta did not have any OSUP violations. (*Id.*); *see also* (Ex. 3 (authority delegation)). Such revocation is permitted when the revoking official's discretionary opinion is that it is appropriate to enforce a removal order. (Ex. 2 at 3).

The DO served Zapeta with the appropriate documents. (*Id.*). The current practice at ERO in Miami is to provide a Notice of Revocation of Release Form. (*Id.*). An example is attached. (Ex. 4). To the best of the DO's knowledge, Zapeta would have been served with that form of Notice specific to his revocation. (Ex. 2 at 3).

On July 24, ICE transferred Zapeta to "Alligator Alcatraz." (Ex. 1 at 3). On August 6, Zapeta filed his Habeas Petition. (Doc. 1). On August 7, ICE transferred

Zapeta to Alexandria Staging Facility in Louisiana. (Ex. 1 at 3). After this transfer, Zapeta filed an Amended Habeas Petition, (Doc. 4 at 2), and Emergency Motion for Temporary Restraining Order ("TRO"), (Doc. 5 at 2). On August 8, Zapeta refiled his Emergency Motion for TRO. (Doc. 12). The same day, ICE responded to the Amended Habeas Petition and TRO Motion. (Doc. 13).

C. Removal

On August 9, ICE transferred Zapeta to Jackson Parish Correctional Center in Louisiana for staging and removal. (Ex. 1 at 3). On August 12, ICE transferred Zapeta back to Alexandria—where he boarded an ICE charter flight for removal. (Id.). It is likely Zapeta's current Guatemalan passport served as a travel document. (Ex. 5 at 3).

According to the flight manifest, Zapeta's plane departed Alexandria on August 12 at around 10:20 a.m. (Eastern Standard Time).[1] (Ex. 1 at 3). At 12:13 p.m., counsel received notice of removal through the Warrant. (Doc. 24 at 1). Counsel conferred by phone with ICE and opposing counsel—then provided a Warrant copy at 12:47 p.m.

Zapeta's plane landed at La Aurora International Airport in Guatemala City around 12:53 p.m.[2] (Ex. 1 at 3). ICE filed notice at 1:09 p.m. (Doc. 24). Shortly after landing in Guatemala, Zapeta was released from ICE custody. (Ex. 1 at 3). The plane left La Aurora at about 3:24 p.m. to return to the United States. (*Id.*).

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[1] There has been confusion regarding time zones. All times are in Eastern Standard Time.

[2] Zapeta and ICE now roughly agree to the same landing time. (Doc. 25 at 13).

D. Documentation

To be sure, ICE is still awaiting records that would assist the Court's review of the events above. ICE now has an electronic copy of Zapeta's A-file in hand. Yet after diligent search and inquiry, all records not otherwise filed are in the process of transfer for inclusion in Zapeta's A-file. His A-file is located at the National Records Center ("NRC"). So, currently, there is not access to those documents getting transferred.

ICE's policy on A-file creation, maintenance, organization, and disclosure is helpful here. (Ex. 6).

The A-file is a tightly controlled, comprehensive file shared among DHS and governed by federal law. (*Id.* at 2-4). These files are kept secured and not removed from DHS "offices unless absolutely necessary." (*Id.* at 3). To place documents into an A-file, ICE submits them to the NRC. (*Id.* at 4-5). Many records in an A-file are (or were) physical papers. Such records must be physically transported to the NRC.

Based on Zapeta's bag and baggage designation and short turnaround, records related to his detention and removal would have been sent with him to Louisiana. From there, they would be going to the NRC for inclusion in Zapeta's A-file. These documents are likely alongside those from many other aliens in the process of transmission to the NRC. Until processed, ICE is unable to provide them to the Court.

There is a work around ICE investigated. Specifically, ICE can create a temporary A-file ("T-file") when the original A-file is unavailable. (Ex. 6 at 2). After a diligent search of its records tracking system, *see* (*id.*), there was no T-file created for Zapeta. So the documents will be those included in A-file once processed.

As it relates to inaccessible records, ICE more than shares everyone's frustration. At this point, ICE has done everything it can to collect records. It will provide the Court with all records that may assist immediately when available.

Analysis

As explained below, it is clear the Court lacks jurisdiction over this matter.

A. Removal Order Lawful

In a case like this, the analysis must start with what matters most: ICE had the authority to detain and remove Zapeta. He never challenged the validity of the final removal order itself because that attack was facially outside the Court's jurisdiction. 8 U.S.C. § 1252(a)(5), (b)(9), (g). This case was about whether notice of revoking the OSUP was sufficient in an understandable effort to stop removal temporarily.

The removal order was final in 1998. Shortly after, the Government had a duty to remove Zapeta. 8 U.S.C. § 1231(a)(1)(A). It never did so and eventually put him on an OSUP—as ICE was required to do. *Id.* § 1231(a)(3). To be clear, however, none of this vitiated the validity of the removal order. Nor did Zapeta get some sort of immunity from removal or heightened due process rights:

> Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies.

8 U.S.C. § 1231(h).

When ICE eventually decided to remove Zapeta, it did so in compliance with the relevant regulation by revoking the OSUP. (Doc. 2 at 3); 8 C.F.R. § 241.4(l)(2). It arrested him under the Warrant to "take [Zapeta] into custody and remove from the

United States." (Doc. 24 at 1). There were no issues involving third-country removals since his home country accepted him. 8 U.S.C. § 1231(b)(1)(C). Likewise, there were no pending petitions related to asylum or protection from torture upon return. *Id.* § 1231(b)(3). In short, nothing prevented removal based on the facts.

Zapeta contends filing this action and a motion for TRO essentially operated as an automatic stay on removal proceedings. But that is not the law. His contention is particularly misplaced where (as here) multiple independent branches of Government are working on related matters at the same time. Plus, a DHS regulation explains filing of a case will not delay executing a warrant of removal:

> ***Judicial stays.*** The filing of (or intention to file) a petition or action in a Federal court seeking review of the issuance or execution of an order of removal shall not delay execution of the Warrant of Removal except upon an affirmative order of the court.

8 C.F.R. § 241.3(c). Absent a legal impediment to removal, ICE exercised its discretion and proceeded with it.

With that clear, the analysis continues.

B. Mootness

It is important to recall what this case is about—a habeas petition for unlawful detention. The writ "shall not extend to a prisoner unless . . . He is in custody." 28 U.S.C. § 2241(c)(1). A prisoner meets the custody requirement if he is detained when the habeas petition gets filed. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). Habeas petitions, like other matters before a federal court, can become moot. *Id.*

The Court can look at mootness through two lenses here though. First, the case

was moot from the outset (which is a jurisdictional decision implicating the underlying merits). Second, the case was moot upon Zapeta's removal (which is divorced from the underlying merits). Under either approach, the Court lacks jurisdiction.

1. Merits

Federal courts have limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). And they must establish it at early.

Here, however, the case was moot all along; we just didn't know it until ICE tracked down the specific DO. (Ex. 2). As detailed earlier, ICE did not violate the OSUP or regulations since notice and a hearing were not required. (Doc. 13 at 10-14). But that was a legal dispute over dense regulatory provisions. Now, ICE offers confirmation that notice occurred (at a minimum). (Ex. 2). Providing that mooted the dispute regardless of any legal argument on what process applied.

Mootness is jurisdictional. Yet in this regard, a jurisdictional question is arguably "intertwined" with the parties' dispute on the merits. *See, e.g.*, *Roberts v. ICE*, No. 09-21217-CIV-JORDAN, 2009 WL 10699452, at*1-2 (S.D. Fla. May 12, 2009) (holding INA question in habeas case intertwined with merits). While several ICE and DOJ employees worked tirelessly to provide the Court with information and documentation sooner, they couldn't do so. But none of that prevents the Court from rendering a decision now since it needs to decide how to adjudicate the action.

On the unique facts of this case, the Court may (if it chooses) address the merits dispute on the requisite notice in resolving a jurisdictional question—i.e., whether the notice provided by ICE rendered the Habeas Petition moot. We now know Zapeta

was provided notice of his revocation and the basis. Even more recent cases confirm this satisfied any notice requirements. *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025) ("First, it does not appear that Petitioner was entitled notice or an informal interview under § 241.4."); *Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *10-11 (D. Md. Aug. 11, 2025). Even if an interview could be implied under § 241.4(l)(2), ICE will not conduct a custody review under these procedures when [ICE] notifies the alien that it is ready to execute an order of removal." 8 C.F.R. § 241.4(g)(4). Plus, it is still possible we receive evidence that informal interviews occurred nonetheless.

Yet the Court need not address that issue if it is not inclined since there is another mootness defect.

2. Removal

Of course, Article 3 doesn't allow advisory opinions. U.S. Const. art III, § 2. A case is moot when a development "makes it impossible for the court to grant any effectual relief whatever to a prevailing party." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (cleaned up). Under such circumstances, federal courts lose any jurisdiction and must dismiss. *E.g.*, *Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001).

"As a general rule, a habeas petition presents a live case or controversy only when a petitioner is in custody." *Salmeron-Salmeron v. Spivey*, 926 F.3d 1283, 1289 (11th Cir. 2019). Following removal, a habeas petition challenging unlawful detention is moot when relief sought is release from detention. *E.g.*, *Soliman v. INS*, 296 F.3d

1237, 1243 (11th Cir. 2002); *Djadju v. Vega*, 32 F.4th 1102, 1106-07 (11th Cir. 2022); *Mehmood v. U.S. Att'y General*, 808 Fed. Appx. 911, 913-14 (11th Cir. 2020).

To be sure, there is an exception to mootness in the immigration context for removed aliens with a pending challenge to their final removal orders. *Salmeron-Salmeron*, 926 F.3d at 1290. Yet Zapeta concedes (as he must) that he "is not herein contesting the substance of his removal order, but his present-day unlawful arrest, detention, and transfer." (Doc. 12 at 8). Since Zapeta "only challenged his detention, and not his final order of removal," the "habeas claim is moot" following his removal. *Salmeron-Salmeron*, 926 F.3d at 1290.

As it relates to detention—which forms the basis of this action—there is no relief for the Court to grant. Zapeta is not in detention or custody. Any ongoing issues Zapeta may allege would relate to the removal itself, not detention. *See Ferry v. Gonzales*, 457 F.3d 1117, 1132 (10th Cir. 2006). To the extent that he challenges removal, however, the Court is without jurisdiction (as explained below).

For either reason, this case is moot. Apart from those issues, the Court lacks jurisdiction to review and grant the relief now sought.

C. Jurisdiction Stripping

The jurisdiction stripping arguments previously lodged earlier apply with greater force here. (Doc. 13 at 4-7).

At this point, there is no doubt Zapeta attacks a "decision or action" to "execute removal orders." 8 U.S.C. § 1252(g). Likewise, it concerns "questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the

United States." 8 U.S.C. § 1252(b)(9).

Zapeta challenges how ICE executed removal. These matters are far beyond the Court's jurisdiction. 8 U.S.C. §§ 1252(b)(9), (g); *see also Camarena v. ICE*, 988 F.3d 1268, 1273-74 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order."); *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, the provision bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal.").

So as it relates to the removal itself, jurisdiction has been stripped over any ongoing claims related to those actions and decisions.

Congress's choice to withhold jurisdiction is highly relevant here as a "decision" to "execute removal orders" is a quintessential Executive function. 8 U.S.C. § 1252(g). Removal was not a single decision impacting only Zapeta. His plane was full of other aliens who (like Zapeta) were removable yet presumably wanted to stay in the United States too. Each removal flight involves complex coordination between the Executive branch and foreign nations. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) (observing "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations"). "Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Id.* at 589; *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) ("For more than a century, this Court has recognized that the

admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." (cleaned up)).

In no uncertain terms, the Judiciary and Executive are coequal branches of Government. *E.g.*, *United States v. Gillock*, 445 U.S. 360, 369 (1980). Occasionally though, two branches get "set on a collision course." *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 389 (2004). Such "constitutional confrontation" must "be avoided whenever possible." *Id.* (citation omitted).

Well-publicized conflict occurred in other cases. *J.G.G. v. Trump* ("*J.G.G. I*"), 778 F. Supp. 3d 24, 30-31 (D.D.C. 2025). Here, however, there was no collision. Zapeta was removable and ICE executed that removal before any possible conflict between the Judicial and Executive branch could have arisen. A lawyer on this case would have done things very different; but he wields no Executive power over the decision to remove. Nor does the Court.

The Legislative branch (and Constitution) decided to grant the Executive with significant discretion over immigration matters—particularly in the context of removal. While the Judicial branch has the power to interpret that law and review Executive conduct, jurisdiction does not extend to a "decision or action" to "execute removal orders" or "action taken . . . to remove an alien from the United States." 8 U.S.C. §§ 1252(b)(9), (g).

Zapeta contends the Court has jurisdiction flowing from its power to preserve jurisdiction, remedy violations, and enforce Orders. (Doc. 25 at 2). But therein lies the

problem. Jurisdiction evaporated once Zapeta's removal was executed. There is no judgment the Court would be enforcing. *Peacock v. Thomas*, 516 U.S. 349, 356 (1996).

The Court no doubt has broad inherent powers to "issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a); *see also Califano v. Yamasaki*, 442 U.S. 682, 705 (1979). But the All Writs Act does not itself create jurisdiction. *Clinton v. Goldsmith*, 526 U.S. 529, 534-35, (1999) (The "terms of the Act confine the power of the [court] to issuing process in aid of its existing statutory jurisdiction; the Act does not enlarge that jurisdiction." (cleaned up)). So a writ may issue "in aid of jurisdiction this court already has or will have as a result of issuing the writ." *In re Nat'l Nurses United*, 47 F.4th 746, 752 (D.C. Cir. 2022).

Since Zapeta challenges matters outside Article 3, there is no jurisdiction.

There is one final reason the Court must deny the Motion.

D. Improper Relief

Zapeta seeks remedies that the Court cannot grant. Again, this is a habeas case seeking release from detention that no longer exists. The Court cannot award release. Nor is there an independent theory seeking available relief like an APA claim.

What's more, this Motion seeks relief of which ICE does not know if any court ever granted. Namely, he seeks to undo a valid, executed removal order via habeas.

Under the INA, an alien ordered removed "who has left the United States, shall be considered to have been . . . removed in pursuance of law." 8 U.S.C. § 1101(g). This remains true "irrespective of . . . the place to which he departed." *Id.*

"A removal order is executed once an alien has left the United States." *Nicusor-*

Remus v. Sessions, 902 F.3d 895, 899 (9th Cir. 2018). "The plain statutory text clearly envisions that any departure is sufficient to execute a removal order, regardless of how long the alien remains outside the United States or to where the alien departs." *Id.*

J.G.G. 1 disagreed in a somewhat different posture. 778 F. Supp. 3d at 43-44. All the same, that decision was overturned—with a concurrence specifically rejecting *J.G.G. 1*'s interpretive error on removal. *J.G.G. v. Trump* ("*J.G.G. 2*"), No. 25-5124, 2025 WL 2264614, at *7-8 (D.C. Cir. Aug. 8, 2025) (Katsas, J., concurring). Judge Katsas detailed why the INA "supports an understanding of *removal* to mean the physical expulsion of an alien from the United States—regardless of any admission or detention decision by the country on the receiving end." *Id.* at *8.

Regulations buttress this reading. ICE can remove to proper countries (i.e., those described in 8 U.S.C. § 1231(b)) "without regard to the nature or existence of a government." 8 C.F.R. § 241.15(a). Likewise, ICE has "discretion to determine the effect, if any, of acceptance or lack thereof, when an acceptance by a country is required, and what constitutes sufficient acceptance." *Id.* § 241.15(b).

Most important, the Eleventh Circuit weighed in. *Romero v. DHS*, 20 F.4th 1374 (11th Cir. 2021). It held § 1101(g) functions with two sequential parts and makes removal effective once someone ordered removed leaves the United States. *Id.* at 1384

So a removal is executed once ICE takes a removable alien out of country regardless of what happens at the destination or what process that country demands.

By the time Zapeta's wheels touched down in Guatemala City, his removal was executed. Regardless of what the Guatemalan Government did to process his return,

it is impossible to say Zapeta had not "left the United States" once he was on the tarmac at La Aurora. 8 U.S.C. § 1101(g). Through operation of law, his removal was executed by 12:53 p.m. (Ex. 1 at 3). At that point, Zapeta was a Guatemalan citizen in, and subject to, the jurisdiction of his home country.

Any amount of time ICE spent on the ground would be irrelevant because Zapeta was no longer "in custody" for the purpose of § 2241. Many courts recognize that a habeas petitioner's "custody" ends when removal is accomplished. *Veltmann-Barragan v. Holder*, 717 F.3d 1086, 1088 (9th Cir. 2013) (Petitioner "ceased to be 'in custody' once her removal to Mexico was accomplished."); *Merlan v. Holder*, 667 F.3d 538, 539 (5th Cir. 2011); *Miranda v. Reno*, 238 F.3d 1156, 1158 (9th Cir. 2001).

Even if there were some period after 1:09 p.m. that Zapeta could have been liberally construed as "in custody"—which is entirely speculative—there was no realistic way to cancel an already executed removal order at the airport or for the United States to somehow take Zapeta into detention within a foreign border.

What Zapeta now seeks is far outside the relief sought in the Habeas Petition. Likewise, it has nothing to do with the nature of habeas to determine if detention is lawful. Zapeta specifically asks for the Government to take affirmative actions to grant him status and reentry into the United States after the execution of removal.

It's necessary to clarify the practical outcome of this unprecedented relief. Zapeta asks the Court to issue a habeas writ to order him back into foreign detention to fly him back to America to permit him to challenge whether he should be in detention to get an Order releasing him from detention. All the while, Zapeta is still

removable and received notice of revocation. So if he were released in the United States, he would presumably be immediately detained and removed again.

Zapeta contends: "Such return orders are well-established in both statutory and equitable contexts." (Doc. 25 at 2). Yet he does not point to any case awarding this sort of relief. ICE too is unaware of any authority suggesting it appropriate.

To his credit, Zapeta has great counsel who identified a host of cases. But that law applies to different circumstances. Specifically, these cases all involved violations of a court order or some type of challenge to the final removal order itself. Neither occurred here. For completeness, ICE tackles these cases seriatim.

AARP v. Trump concerned aliens detained and subject to removal under the Alien Enemies Act ("AEA") as alleged foreign terrorists. 145 S. Ct. 1364 (2025). The underlying legal question was "*whether* these Venezuelan detainees may be lawfully removed under the [AEA] *before* they are in fact removed." *Id.* at 1370 (Kavanaugh, J., concurring). Zapeta was removed under the regular INA removal powers, not the AEA. He cannot challenge whether ICE could lawfully remove him under the final order. Even so, the relief granted in *AARP* was a TRO—not ordering removed aliens returned. Since those aliens were not yet removed, mootness did not apply.

Madrigal v. Holder addressed whether it was appropriate for the BIA to withdraw a pending appeal on the merits of a removal order when the alien was removed during the appeal. 572 F.3d 239 (6th Cir. 2009). That too is completely unlike this situation where the final removal order is unchallenged. Again, the relief was not reentry to the United States but remand for the BIA to consider the merits.

Noem v. Abrego Garcia handled an alien who was removed to El Salvador despite his final order withholding removal to that country. 145 S. Ct. 1017, 1018 (2025). Put different, the removal violated the removal order. So the Court ordered ICE to "facilitate" release from foreign custody and ensure the case was handled appropriately. *Id. Abrego Garcia* did not order ICE to "effectuate" alien's return as the undefined word was "unclear, and may exceed the District Court's authority." *Id.*

Arce v. United States concerned removal after alien filed an emergency motion to stay removal. 899 F.3d 796, 799 (9th Cir. 2018). Crucially, *Arce* was in the Ninth Circuit, which has a standing order mandating the filing of such motions automatically imposes a stay. *Id.*; Ninth Circuit General Order 6.4(c)1. Neither the Federal Rules nor Middle District impose automatic injunctions in that manner. What's more, the alien in *Arce* was removed two days after the IJ denied his asylum petition, which was still capable of appeal to the BIA.

Nunez-Vasquez v. Barr addressed removal during alien's appeal of a BIA decision on whether he was removable. 965 F.3d 272, 277-78 (4th Cir. 2020). It held the crimes at issue did not render the alien removable. *Id.* at 277, 283, 286. So the court ordered ICE to facilitate return for further proceedings—which is ICE's express policy under those circumstances. *Id.* at 286. Zapeta has not challenged the removal order. ICE's policy to facilitate return for certain aliens, therefore, has no application here.

Like *Nunez-Vasquez*, ICE was ordered to comply with its policy to facilitate return of an alien in *Orabi v. U.S. Att'y General* after the alien successfully challenged

his final order of removal. 738 F.3d 535, 543, 538, 543 (3d Cir. 2014). The same was true in another case cited. *Umba v. Garland*, No. 19-9513, 2021 WL 3414104, at *10 n.2 (10th Cir. Aug. 5, 2021) (reversing decision on asylum petition).

Samirah v. Holder was a convoluted immigration case involving mandamus to adjust an alien's status upon revocation of advance parole. 627 F.3d 652, 654 (7th Cir. 2010). The alien was required to be present in the United States to pursue adjustment, and a federal regulation required the Government to allow entry for him to do so. *Id.* *Samirah* clarified it did not order the Government to "admit" the alien; rather, it ordered compliance with a regulation requiring reentry to adjust status. *Id.* at 665.

As for a paragraph listing cases on ICE facilitating return of aliens, only two of those cases appear to have decisions to review. (Doc. 25 at 5-6). Nor are the filings without decisions available, so ICE does not know what happened in those cases or what was even at issue. It cannot respond in that regard. The two cases in that string cite available for review though show Zapeta is off base.

In *Previl v. DHS*, No. 1:13-cv-23230-COOKE/TORRES (Doc. 1 at 2-3) (S.D. Fla.), plaintiff was a lawful permanent resident who had been removed. As with the cases discussed above, the BIA vacated a IJ order and review of removal proceedings was ongoing. Zapeta wasn't similarly situated.

In *Alcaraz v. Napolitano*, No. 3:11-cv-03716-MMC (Doc. 13 at 1-3) (N.D. Cal.), plaintiff also challenged the validity of her removal order. So ICE paroled her for continued removal proceedings. Notably, *Alcaraz* was dismissed for lack of subject-matter jurisdiction because it was a challenge to the removal order barred by § 1252(g).

None of these cases carry the day. It is telling that Zapeta only finds cases regarding facilitated return in the context of challenges to the merits of a final removal order. For one, ICE has an express policy agreeing to return aliens who successfully lodge such attacks. For another, removal proceedings generally require the alien's presence (or at least video). 8 U.S.C. § 1229a(b)(2)(A). And for a third, the mootness doctrine contains an exception for immigration habeas cases where a removed petitioner challenges the removal order itself. *Salmeron-Salmeron*, 926 F.3d at 1290.

The Court is not asked to undo the status quo that existed before ICE filed notice of removal. (Doc. 24). Removal was executed and complete before then. Zapeta is asking for truly extraordinary relief. He seeks readmission to the United States following an executed removal, then a TRO to prevent future removal, then an order to return Zapeta to South Florida, then to release him, then (maybe) order some sort of permanent injunction against removal until his I-130 petition gets adjudicated in a few years. Apart from the obvious questions of whether any of that is within Article 3's judicial power, ICE is unaware of any Judge awarding such relief. Weeks ago in very similar circumstances—albeit for a petitioner much further along with an approved I-130—there was no jurisdiction. *Lin v. Borgen*, No. 25-CV-05618 (MMG), 2025 WL 2158874 (S.D.N.Y. July 30, 2025).

To be clear, Zapeta has possible remedies if he believes his removal was unlawful. For instance, Federal Tort Claims Act ("FTCA") claims for unlawful ICE removal have been recognized. *Lyttle v. United States*, 867 F. Supp. 2d 1256, 1297-1301 (M.D. Ga. 2012). Or he could potentially seek to challenge his final removal order out

of time. *See Riley v. Bondi*, 145 S. Ct. 2190, 2203 (2025) (holding § 1252(b)(1) deadline is a nonjurisdictional, waivable claim-processing rule). Ultimately, that would be the avenue to receive the relief Zapeta seeks, i.e., vacating the final removal order. Finally, Zapeta has a pending I-130, which may eventually provide a route to legal status.

The relief sought in this action, however, cannot be granted.

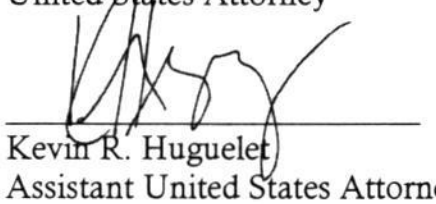
Conclusion

This case is a hard pill to swallow. Nobody with anything to do with the litigation side of the matter feels good how this transpired. Yet that cannot supply the Court with jurisdiction. Without the power to continue, the Court must deny all pending Motions, deny the Habeas Petition, and dismiss this action.

Date: August 15, 2025

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney



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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MANUEL YAX ZAPETA,

Petitioner,

v. Case No. 2:25-cv-697-JLB-KCD

KEVIN GUTHRIE, et al.,

Respondents.
_____/

Declaration of Deportation Officer Josfer Moinelo

I, Josfer Moinelo, declare under penalty of perjury as follows:

1. I am a Deportation Officer with the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) at the Miami Field Office, Orlando Sub-Office, located in Orlando, Florida. In this capacity, I have access to DHS's official records, including the immigration file of Mr. Manuel Yax Zapeta, A [redacted]
2. I have examined records relating to Mr. Yax Zapeta, including, but not limited to his immigration file. Based on a review of those records, I state, on information and belief, that the information set forth in this Declaration is true and correct.
3. Mr. Yax Zapeta is a native and citizen of Guatemala who entered the United States without authorization at or near Brownsville, Texas, on or about January 12, 1995.

4. On February 8, 1996, Mr. Yax Zapeta filed a Form I-589, Application for Asylum and for Withholding of Deportation (Form I-589) with the U.S. Department of Justice, Immigration and Naturalization Service (INS).
5. On April 17, 1996, INS referred Mr. Yax Zapeta's Form I-589 to the immigration judge and issued a Form I-221, Order to Show Cause, charging Mr. Yax Zapeta with deportation under former Section 241(a)(1)(B) of the Immigration and Nationality Act (INA).
6. On April 22, 1997, the immigration judge denied Mr. Yax Zapeta's request for asylum and withholding of deportation but granted his request for voluntary departure under former INA § 244(e)(1) with an alternative order of deportation to Guatemala. Mr. Yax Zapeta was granted until May 22, 1997, to voluntarily depart the United States.
7. On May 19, 1997, Mr. Yax Zapeta filed a Form EOIR-26, Notice of Appeal to the Board of Immigration Appeals (BIA), which was subsequently dismissed on July 13, 1998.
8. The BIA permitted Mr. Yax Zapeta to voluntarily depart the United States within 30 days; however, he failed to depart. As a result, Mr. Yax Zapeta's order became a final deportation order.
9. On March 15, 2020, ICE issued a Form I-200, Warrant for Arrest of Alien because probable cause existed to believe that Mr. Yax Zapeta was removable from the United States. Shortly thereafter, and on the same date, ICE issued a Form I-220B, Order of Supervision permitting Mr. Yax Zapeta to be at large under several

conditions. One of those conditions specifically notified Mr. Yax Zapeta "[t]hat [he] appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal."

10. On July 23, 2025, ICE detained Mr. Yax Zapeta when he reported in-person to the ERO Miramar Sub-Office, located in Miramar, Florida.

11. On July 24, 2025, ICE transferred Mr. Yax Zapeta to the Florida Soft-Sided Facility (*i.e.*, "Alligator Alcatraz"), located in Ochopee, Florida.

12. On August 7, 2025, ICE transferred Mr. Yax Zapeta to the Alexandria Staging Facility, located in Alexandria, Louisiana.

13. On August 9, 2025, ICE transferred Mr. Yax Zapeta to the Jackson Parish Correctional Center, located in Jonesboro, Louisiana for staging and removal.

14. On August 12, 2025, Mr. Yax Zapeta was transferred to the Alexandria Staging Facility where he boarded an ICE charter flight. According to the ICE Flight Manifest, the chartered flight departed the Alexandria Staging Facility at approximately 10:20 a.m. (EST).

15. According to the ICE Flight Manifest, the chartered flight arrived at the La Aurora International Airport, located in Guatemala City, Guatemala at approximately 12:53 p.m. (EST). Shortly thereafter, Mr. Yax Zapeta was released from ICE custody.

16. According to the ICE Flight Manifest, the chartered flight departed the La Aurora International Airport at approximately 3:24 p.m. (EST) en route to the United States.

17. Mr. Yax Zapeta's removal from the United States on August 12, 2025, is further verified by the Form I-205, Warrant of Removal/Deportation.

Declaration in Lieu of Jurat
(28 U.S.C. § 1746)

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13 day of August 2025.

JOSFER MOINELO

Digitally signed by JOSFER MOINELO
Date: 2025.08.13 19:16:46 -04'00'

Josfer Moinelo
Deportation Officer
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MANUEL YAX ZAPETA,

Petitioner,

v. Case No. 2:25-cv-697-JLB-KCD

KEVIN GUTHRIE, et al.,

Respondents.
_____/

Declaration of Deportation Officer Addiel Castillo

I, Addiel Castillo, declare under penalty of perjury as follows:

1. I am a Deportation Officer with the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) at the Miami Field Office, Miramar Sub-Office, located in Miramar, Florida. In this capacity, I have access to DHS's official records, including the immigration file of Mr. Manuel Yax Zapeta, A[redacted].
2. I have examined records relating to Mr. Yax Zapeta, including, but not limited to his immigration file. Based on a review of those records, I state, on information and belief, that the information set forth in this Declaration is true and correct.
3. Mr. Yax Zapeta is a native and citizen of Guatemala who entered the United States without authorization at or near Brownsville, Texas, on or about January 12, 1995.

4. On February 8, 1996, Mr. Yax Zapeta filed a Form I-589, Application for Asylum and for Withholding of Deportation (Form I-589) with the U.S. Department of Justice, Immigration and Naturalization Service (INS).
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8. The BIA permitted Mr. Yax Zapeta to voluntarily depart the United States within 30 days; however, he failed to depart. As a result, Mr. Yax Zapeta's order of deportation became final.
9. On March 15, 2020, ICE issued a Form I-200, Warrant for Arrest of Alien because probable cause existed to believe that Mr. Yax Zapeta was removable from the United States. Shortly thereafter, and on the same date, ICE issued a Form I-220B, Order of Supervision permitting Mr. Yax Zapeta to be at large under several

conditions. One of those conditions specifically notified Mr. Yax Zapeta "[t]hat [he] appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal."

10. On July 23, 2025, ICE detained Mr. Yax Zapeta when he reported in-person to the ERO Miramar Sub-Office, located in Miramar, Florida.

11. As the arresting Deportation Officer, I advised Mr. Yax Zapeta that, due to the Final Order of Removal, his Order of Supervision was being revoked, and he would be brought into custody and would be eventually removed from the United States. An official with delegated authority made the decision to revoke the Order of Supervision. As Mr. Yax Zapeta did not have violations of conditions, the revocation of his release was under 8 C.F.R. § 241.4(l)(2). This provision allows revocation when, in the discretionary opinion of the revoking official, it is appropriate to enforce a removal order.

12. When writing the case of Mr. Yax Zapeta, his processing disposition was as a Bag and Baggage, and he was served all the appropriate documents for his case. Currently, it is ERO's practice at my office to provide a Notice of Revocation of Release Form, similar to Exhibit 1. To the best of my knowledge, Mr. Yax Zapeta would have been served with a document like this specific to his revocation.

Declaration in Lieu of Jurat
(28 U.S.C. § 1746)

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of August 2025.

ADDIEL CASTILLO
Digitally signed by ADDIEL CASTILLO
Date: 2025.08.15 16:38:53 -04'00'

Addiel Castillo
Deportation Officer
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security