IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-cv-23584-LEIBOWITZ

RICARDO HERRERA-MANINO
Petitioner,

vs.

GARRETT J. RIPA, *et. al.*,
Respondents.
_____/

RESPONDENTS' RESPONSE TO PETITION AND RESPONSE TO MOTION FOR ISSUANCE OF ORDER TO SHOW CAUSE

Garrett J. Ripa, Director of Miami Field Office[1], *et. al.* ("Respondents"), through the undersigned Assistant United States Attorney, hereby file their Response in opposition to the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [DE 1] and to the Motion for Issuance of Order to Show Cause [DE 13] as directed by the Court's Order [DE 14]. The Court should dismiss the Petition and close this case.

I. INTRODUCTION

Petitioner's detention is lawful. He is being detained to affect a Final Administrative Removal Order (FARO) pursuant to 8 U.S.C. § 1228(b) due to his convictions for aggravated felonies including carjacking. As detailed in the Superseding Indictment, Petitioner, along with his co-conspirators, took the victim's motor vehicle by force, violence, and intimidation, which resulted in the victim's death. Next, for purposes of a prolonged detention claim, the Petition is

1 A writ of habeas corpus must "be directed to the person having custody of the person detained." *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. As Petitioner is currently detained at Krome North Service Processing Center ("Krome"), a detention facility in Miami, Florida, the immediate custodian in charge of Krome is Assistant Field Director ("AFOD") Charles Parra. Accordingly, the only proper respondent in this case is AFOD Parra, in his official capacity.

premature under *Zadvydas* as the Petitioner has been detained since July 3, 2025, significantly less than the 6-month *Zadvydas* presumption. Furthermore, Petitioner contradicts himself in his pleadings. First, in the Petition, he argues that he is "stateless" and cannot be removed, and thus "his immediate removal is not practical" [DE 1 at ¶ 22]. But then, in the Motion for Issuance of Order to Show Cause, Petitioner states that he will be removed to Argentina on September 10, 2025, and requested that the Court stay his removal [DE 13 at ¶ 8]. Additionally, this Court lacks jurisdiction to adjudicate any claim arising from Respondents' decision to execute Petitioner's removal order because 8 U.S.C. § 1252(g) plainly bars direct and indirect attacks on the execution of a removal order. This includes Petitioner's claims surrounding the revocation of his Order of Supervised Release ("OSUP"). This Petition must be dismissed and the case closed.

II. FACTUAL BACKGROUND

The Petitioner, Ricardo Herrera-Manino ("Petitioner"), was born in Mendoza, Argentina. *See* Exhibit 1, Form I-213, Record of Deportable/Inadmissible Alien (Form I-213) dated March 22, 2023. Petitioner was admitted as a B-2 nonimmigrant visitor visa, using a passport issued to him from Argentina, on October 27, 1975. *Id.* Petitioner remained in the United States beyond the six months authorized by law. *Id.*

On September 23, 2010, Petitioner was convicted in the U.S. District Court for the District of Puerto Rico for: (1) impersonating an officer or employee of the U.S. in violation of 18 U.S.C. § 912 and 2; (2) interfering with commerce by threat or violence in violation of 18 U.S.C. § 1951 and 2; and (3) misuse of a social security number in violation of 42 U.S.C. § 408(a)(7)(B), *United States v. Ricardo Herrera aka Rick M. Herrera-Maino*, Case No. 3:08-CR-213-2 (CCC) (D.P.R. 2010). *See* Composite Exhibit 2, Criminal Records. Petitioner was sentenced to incarceration in the custody of the U.S. Bureau of Prisons ("BOP") for twenty-four months on each count to be served concurrently. *Id.*

On December 5, 2012, Petitioner was convicted in the U.S. District Court for the District of Puerto Rico for carjacking, aiding and abetting, in violation of 18 U.S.C. § 2119(3) and 2, *United States v. Ricardo Herrera*, Case No. 09-CR-228-04 (FAB) (D.P.R. 2012). *See* Composite Exh. 2, Criminal Records. As outlined in the Superseding Indictment, on April 22, 2008, Petitioner, along with his co-conspirators, took the victim's motor vehicle by force, violence, and intimidation, which resulted in the victim's death. *Id.* Petitioner was sentenced to incarceration in the custody of the BOP for 181 months to be served concurrently with Case No. 08-213-02(CCC). *Id.*

On April 1, 2021, the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), encountered Petitioner while he was incarcerated by the BOP at the Federal Correctional Institute in Minersville, PA. *See* Exhibit 1, Form I-213 dated March 22, 2023. ERO determined that Petitioner was removable from the United States pursuant to INA § 237(a)(2)(A)(iii) and issued an immigration detainer as Petitioner's projected release date was April 13, 2023. *Id.* On March 30, 2023, ICE ERO served Petitioner with the Notice of Intent to Issue a Final Administrative Removal Order (FARO) pursuant to INA § 238(b) of the INA. *See* Exh. 3, Form I-851, Notice of Intent to Issue FARO. Therein, Petitioner indicated that he contested his removal and requested withholding or deferral of removal to Argentina. *Id.* On April 10, 2023, Petitioner was ordered removed by ICE pursuant to INA § 238(b). *See* Exh. 4, Form I-851A, Final Administrative Removal Order (FARO) dated April 10, 2023.

On April 18, 2023, Petitioner was transferred from BOP custody to the custody of ICE ERO. *See* Exh. 5, Detention History; Exh. 6, Declaration of Deportation Officer Eric Porrata ¶ 10; Exh. 7, Form I-205, Warrant of Removal/Deportation, signed April 24, 2023. The FARO was served on Petitioner on April 18, 2023. *Id.* ERO referred Petitioner's request for a reasonable fear interview to the U.S. Citizenship and Immigration Service's (USCIS) Asylum Pre-Screening

Officer (APSO) for a reasonable fear process on April 18, 2023.[2] *See* Exh. 6, DO Declaration ¶ 10. On April 24, 2023, Petitioner withdrew his reasonable fear request. *See* Exh. 8, Withdrawal Letter.

On January 5, 2024, ICE ERO released Petitioner on an Order of Supervision (OSUP) because his deportation or removal did not occur within the time period permitted by law. *See* Exh. 5, Detention History; Exh. 6, Declaration of DO Porrata Rodriguez at ¶ 12. Pursuant to the OSUP, Petitioner was instructed to appear at the ICE ERO office in San Juan, Puerto Rico. *See* Exh. 6, Declaration of DO Porrata Rodriguez at ¶ 12. On February 24, 2024, Petitioner appeared for his OSUP appointment as instructed. *See* Exh. 6, Declaration of DO Porrata Rodriguez at ¶ 13. On July 3, 2024, Petitioner once again appeared at the ICE ERO office in San Juan, Puerto Rico. ICE ERO reissued OSUP paperwork to Petitioner and he was instructed to report to ICE ERO in San Juan, Puerto Rico on July 3, 3025. *See* Exh. 9, Form I-220B, OSUP dated July 3, 2024.

On July 3, 2025, Petitioner was taken into ICE ERO custody at his OSUP appointment. *See* Exh. 5, Detention History; Exh. 6, Declaration of DO Porrata Rodriguez at ¶ 14. On that date, ICE ERO mistakenly issued Petitioner a Form I-286, Notice of Custody Determination, wherein Petitioner indicated he wanted a review by an immigration judge. *See* Exh. 10, Form I-286, Notice of Custody Determination dated July 3, 2025. On September 8, 2025, ICE ERO cancelled the Form

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[2] 8 C.F.R. § 208.31(a) provides a reasonable fear process for any noncitizen 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 noncitizen has not proven 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 noncitizen has reasonable fear of returning to the country of removal, the noncitizen is placed in withholding-only proceedings for consideration of the noncitizens 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).

I-286 because Petitioner is subject to a final removal order and the form does not apply. *See* Exh. 13, Cancellation of Notice of Custody Determination; Exh. 6, Declaration of DO Porrata Rodriguez at ¶ 14. *See Riley v. Bondi*, 606 U.S. ---, 145 S.Ct. 2190, 2198 (2025) (holding the FARO issued by DHS is the final determination on the question of removal).

On August 29, 2025, ICE ERO served Petitioner with a Notice of Revocation Release signed by a deportation officer. *See* Exh. 11, Notice of Revocation Release dated August 29, 2025; Exh. 6, Declaration of DO Porrata Rodriguez at ¶ 15. On September 5, 2025, ICE ERO served Petitioner a Notice of Revocation of Release, signed by a Supervisory Detention and Deportation Officer, advising that ICE revoked his OSUP pursuant to 8 C.F.R. § 241.13 to affect his removal from the United States. *See* Exh. 12, Notice of Revocation of Release dated September 5, 2025.

ICE and the Embassy of Argentina have maintained ongoing communications in an effort to affect Petitioner's removal. *See* Exh. 14, Declaration of Detention and Deportation Officer Kevin J. Brown, Jr. ¶ 8. On August 14, 2025, ICE inquired with consular staff about the Petitioner being reviewed for removal via the Electronic Nationality Verification (ENV) program due to consulate officials in Miami denying travel document issuance due to no record of the Petitioner in the registry. *See* Exh. 14, Declaration of Detention and Deportation Officer Kevin J. Brown, Jr. ¶ 12. On August 15, 2025, staff from the Consular Section of the Embassy acknowledged receipt of documentation, which included nonimmigrant entry records, Immigration and Naturalization Service Application for Status as Permanent Resident records, copies of passports and birth certificate records from ICE pertaining to Petitioner. *See* Exh. 14, Declaration of Detention and Deportation Officer Kevin J. Brown, Jr. ¶ 13. No official from the Argentine government has expressly stated that they are questioning the Petitioner's citizenship while he remains in ICE custody. *See* Exh. 14, Declaration of Detention and Deportation Officer Kevin J. Brown, Jr. ¶ 14.

ICE predicts that if not for the stay of removal order, the Petitioner would have been removed imminently. *See* Exh. 14, Declaration of Detention and Deportation Officer Kevin J. Brown, Jr. ¶ 15.

To date, Petitioner remains in ICE custody at Krome in Miami, Florida pending his removal from the United States. *See* Exhibit 6, Detention History; Exh. 14, Declaration of Detention and Deportation Officer Kevin J. Brown, Jr. ¶ 16.

III. ARGUMENT

In his Petition, the Petitioner asks, *inter alia*, for this Court to enjoin his removal pending adjudication of the Petition, declare that his detention violates the INA, regulations, and the Due Process Clause of the Fifth Amendment, and order Petitioner's immediate release. *See* DE 1 at ¶ 28. Petitioner's claims lack merit.

As a threshold matter, 8 U.S.C. § 1252(g) plainly bars direct and indirect attacks on the execution of a removal order, and bars the Court from hearing any claim arising from Respondents' decision to execute Petitioner's removal order. This is precisely the relief Petitioner requests- that the Court enjoin Petitioner's removal to Argentina or any third country and order his immediate release. DE 1 at ¶ 28. Such direct attacks are barred under § 1252(g). *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("Section 1252(g) bars review over 'any' challenge to the execution of a removal order."). Accordingly, the Court lacks jurisdiction under § 1252(g) to stay the execution of Petitioner's removal order.

A. Petitioner's Detention is Lawful.

First and foremost, Petitioner's detention is lawful. Petitioner was ordered removed pursuant to 8 U.S.C. § 1228(b), which is the statute governing expedited removal of aliens convicted of aggravated felonies. Therefore, Respondents have detention authority under 8 U.S.C. § 1231. As the Supreme Court determined in *Riley*, the FARO issued by DHS is the final determination on the question of removal. *Riley*, 145 S.Ct. at 2198. As Petitioner is detained under

the authority of 8 U.S.C. § 1231 and not 8 U.S.C. § 1226, Petitioner is not entitled to a bond hearing.

Further, Petitioner's detention is not prolonged. 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. § 241.13. Petitioner is being detained pursuant to 8 C.F.R. § 241.13 to affect his removal from the United States. *See* Exhibit 7, ¶ 17.

Moreover, the Petition is premature. Petitioner has only been detained since July 3, 2025, and he filed the Petition on August 11, 2025. The six-month period must have expired as of the date the § 2241 petition was filed in order to state a claim under *Zadvydas*. Petitioner was only in confinement for approximately five (5) weeks when he filed the Petition, making the six-month *Zadvydas* analysis extremely premature.

To the extent Petitioner argues that his previous detention ending in 2024 should count toward the total time of detention for this analysis, 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 this case. Judge Gayles recently determined the same in a similar habeas proceeding. *See Barrios v. Ripa*, Case No. 25-cv-22644-GAYLES, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025) (rejecting the argument to count petitioner's detention in the aggregate based on prior detentions, stating "any subsequent period of detention, even one day, would raise constitutional concerns" and "adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General- effectuating removals" citing to 8 U.S.C. § 1252(g)). Therefore, the Court should dismiss the Petition as premature.

Furthermore, 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. 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."). 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.

Here, Petitioner cannot meet his burden of establishing that there is not a substantial likelihood of removal in the reasonably foreseeable future. On the contrary, by Petitioner's own assertion in his Motion for Issuance of Order to Show Cause [DE 13 at ¶ 8], his removal to Argentina is imminent. Furthermore, as outlined in Exhibit 14, Respondents are actively working with Argentinian officials to effectuate Petitioner's removal to Argentina. *See generally*, Exh. 14.

In short, in addition to the Petition being premature under *Zadvydas*, Petitioner has failed to carry his burden to show that his removal is not reasonably foreseeable. He is, accordingly, not entitled to habeas relief and the Petition must be dismissed.

B. Respondents properly revoked Petitioner's OSUP.

Petitioner alleges that his OSUP was wrongfully revoked because he was "in full and complete compliance with his Order of Supervision", and Respondents "further provided an invalid and inapplicable Notice of Custody Determination in violation of its procedures and the statute." [DE 1 at ¶ 26].

First, "the decision to revoke Petitioner's OSUP, for the stated purpose of executing his removal order, clearly falls under the purview of § 1252(g)." *Barrios*, 2025 WL 2280485, at *11. § 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." (emphasis added). § 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.").

Second, the Court also lacks jurisdiction under § 1252(a)(2)(B)(ii) to review Respondents' discretionary decision to revoke the OSUP. § 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). The decision to revoke an OSUP is a discretionary one by Respondents. *See* 8 C.F.R. § 241.4(l)(2) ("The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke

release and return to Service custody an alien previously approved for release under the procedures in this section."). The court also found in *Barrios*, that "because the Attorney General has the discretion to revoke an OSUP, § 1252(a)(2)(B)(ii) also bars review." *Barrios,* 2025 WL 2280485, at *11.

Third, to the extent Petitioner argues that his OSUP can only be revoked if he violated his conditions of release, he is incorrect. § 241.13(i) allows Respondents to terminate an order of supervision upon a finding of a change in circumstances to affect removal. 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.").

Respondents followed their regulatory procedures and have been actively attempting to remove Petitioner since he was detained consistent with § 241.13. Though Petitioner was mistakenly provided with a Form I-286, Notice of Custody Determination, this Form was cancelled and Petitioner was served with a Notice of Revocation Release, dated August 29, 2025, and a second Notice of Revocation of Release on September 5, 2025, consistent with Respondents' regulatory procedures.

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 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.").

The Court lacks jurisdiction over Petitioner's claim regarding the revocation of his OSUP because it was revoked to effectuate a removal order. And assuming, *arguendo*, there were any procedural errors, they are harmless, and the remedy is not release from detention, especially in light of Petitioner's criminal history of aggravated felonies.

III. CONCLUSION

Petitioner's detention is lawful. This Court lacks jurisdiction to interfere with Respondents' statutory duty to effectuate a removal order, which here, is an administrative removal order because Petitioner was convicted of aggravated felonies. The Court must dismiss the Petition and close this case.

Dated: September 8, 2025

Respectfully submitted,

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