IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-cv-61862-DAMIAN/VALLE

VENTURA ARROYO BORJA,
Petitioner,

vs.

DIRECTOR, U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Respondents.
_____/

RESPONDENTS' RESPONSE TO THE COURT'S ORDER GRANTING MOTION FOR ORDER TO SHOW CAUSE

Respondents[1], by and through the undersigned Assistant United States Attorney, and pursuant to this Court's Order Granting Motion for Order to Show Cause and Directing Respondents to Respond [D.E. 7] (the "Order to Show Cause"), hereby file this Response and state as follows:

I. INTRODUCTION

Petitioner's detention is lawful. She is being detained to affect a reinstated Removal Order after she has entered the country illegally from Mexico multiple times. Furthermore, Petitioner has a criminal history. Respondents have detention authority under 8 U.S.C. § 1231. 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. Petitioner's *Zadvydas* claim fails because Respondents may detain aliens

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 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." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Broward Transitional Center, which is an ICE detention facility in Pompano Beach, Florida. Her immediate custodian is Juan F. Gonzalez, Assistant Field Office Director. The proper Respondent in the instant case is Mr. Gonzalez in his official capacity.

pending withholding-only proceedings as it is reasonably foreseeable that a termination point *(i.e.*, removal) will occur after the conclusion of the withholding-only proceedings. 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 her Order of Supervision. This Petition must be dismissed and the case closed.

II. FACTUAL BACKGROUND

The Petitioner, Ventura Arroyo-Borja (Petitioner), is a native and citizen of Mexico. *See* Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien, dated August 1, 2000 ("2000 I-213"). She was first encountered by immigration officials in the United States on July 30, 2000, after claiming to be a United States citizen and presenting a United States birth certificate in the name of another. *See* Exhibit A, 2000 I-213. She was granted Voluntary Return and was returned to Mexico on July 31, 2000. *See* Exhibit A, 2000 I-213.

The following day, August 1, 2000, Petitioner applied for admission to the United States from Mexico, this time presenting a Form I-586, non-resident Border Crossing Card, in the name of another individual for the purpose of gaining entry into the United States. *See* Exhibit A, 2000 I-213. Petitioner was arrested by immigration officials and processed for expedited removal under section 235(b)(1) of the Immigration and Nationality Act. *See* Exhibit A, 2000 I-213; *see also* Hab. Pet., Document 1-2 (Form I-860, Notice and Order of Expedited Removal). She was removed from the United States on the same day. *See* Hab. Pet., Document 1-2 (Notice to Alien Ordered Removed/Departure Verified).

On August 3, 2000, Petitioner was again encountered by immigration officials in the United States. *See* Exhibit B, Form I-213, Record of Deportable/Inadmissible Alien, dated July 29, 2024

("2024 I-213"). She was again granted a voluntary departure[2] and returned to Mexico on August 3, 2000. *See* Exhibit B, 2024 I-213.

Petitioner again illegally re-entered the United States on an unknown date thereafter. *See* Exhibit B, 2024 I-213. On June 3, 2016, Petitioner was convicted of Third Degree Grand Theft in the State of Florida and sentenced to one year of probation. *See* Exhibit C, Grand Theft conviction records. On September 14, 2023, she was convicted of Second Degree Petit Theft in the State of Florida. *See* Exhibit D, Petit Theft conviction records.

On or about February 23, 2024, Immigration and Customs Enforcement (ICE) encountered Petitioner following the above criminal arrests. *See* Exhibit B, 2024 I-213. ICE reinstated Petitioner's prior removal order, placed her in the Alternatives to Detention Program, issued a plan of action for removal, and released her on her own recognizance via an Order of Supervision. *See* Exhibit B, 2024 I-213; *see also* Hab. Pet., Document 1-3 (Form I-871, Notice of Intent / Decision to Reinstate Prior Order); Hab. Pet., Document 1-4 (Form I-286, Notice of Custody Determination); Hab. Pet., Document 1-5 (Order of Supervision).

On or about July 29, 2024, ICE issued a Notice of Revocation of Release to revoke Petitioner's Order of Supervision and took her into ICE custody pursuant to the final order of removal. *See* Exhibit E, 2024 Notice of Revocation of Release[3] ("2024 Revocation Notice"); *see*

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[2] The term used in the 2024 I-213 is "voluntary departure." *See* Exhibit B, 2024 I-213. This appears to refer to voluntary return, which is a discretionary tool used by the agency, and not a reference to the voluntary departure available under INA § 240B.

[3] The certificate of service on the 2024 Revocation Notice states that it was served upon Petitioner at Delray ISAP on July 29, 2024, at "1139" [*sic*]. However, the certificate of service does not contain Petitioner's signature confirming such service. *See* Exhibit E, 2024 Revocation Notice. As such, on October 31, 2025, ERO issued and served a new Notice of Revocation of Release upon Petitioner. *See* Exhibit F, 2025 Notice of Revocation of Release dated October 31, 2025 ("2025 Revocation Notice").

also Hab. Pet., Document 1-2 (Notice and Order of Expedited Removal); *see also* Exhibit G, I-200, Warrant for Arrest of Alien.

On or about August 9, 2024, United States Citizenship and Immigration Services (USCIS) determined that Petitioner established a reasonable fear of persecution or torture and referred the case to an Immigration Judge. *See* Hab. Pet., Document 1-7 (Form I-863, U.S. Department of Homeland Security Notice of Referral to Immigration Judge). On December 6, 2024, ERO served Petitioner with a Decision to Continue Detention, citing that Petitioner has not demonstrated that she will not pose a danger to the community, to the safety of other persons, or to property, and that she will not pose a significant risk of flight pending removal from the United States. *See* Exhibit P- Decision to Continue Detention served December 6, 2024.

On January 7, 2025, the Immigration Judge issued a written decision reinstating Petitioner's order of removal, ordering her removed to Mexico, and granting her application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act. *See* Exhibit H, Decisions and Orders of the Immigration Judge, dated January 7, 2025. The U.S. Department of Homeland Security (DHS) appealed the Immigration Judge's decision to the Board of Immigration Appeals (Board), and on June 6, 2025, the Board remanded the record for further proceedings and for the entry of a new decision. *See* Exhibit I, Board decision.

On August 19, 2025, the Immigration Judge issued another written decision reinstating Petitioner's order of removal, ordering her removed to Mexico, and granting Petitioner's application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act. *See* Exhibit J, Decisions and Orders of the Immigration Judge, dated August 19, 2025. The DHS has appealed this decision; the appeal is pending before the Board. *See* Exhibit K, Automated Case Information.

On October 2, 2025, ERO served upon Petitioner a Decision to Continue Detention advising Petitioner that ICE had reviewed her custody status and determined that she would not be released from custody. *See* Exhibit L, Decision to Continue Detention, served October 2, 2025. As noted above, on October 31, 2025, ERO issued and served the 2025 Revocation Notice upon Petitioner. *See* Exhibit F, 2025 Revocation Notice. On the same date, ERO conducted an informal interview with Petitioner. *See* Exhibit M, Declaration of Deportation Officer. On November 4, 2025, ICE served upon Petitioner a Decision to Continue Detention advising Petitioner that ICE had reviewed her custody status and determined that she would not be released from custody. *See* Exhibit N, Decision to Continue Detention, served November 4, 2025.

Petitioner is presently detained at the Broward Transitional Center in Pompano Beach, Florida. *See* Exhibit O, EARM Detention History. She is detained under 8 U.S.C. § 1231. Petitioner has filed a verified habeas petition and complaint for declaratory and injunctive relief in the District Court for the Southern District of Florida, challenging ICE custody.

III. ARGUMENT

In her Petition, the Petitioner asks, *inter alia*, for this Court declare that Respondents violated Petitioner's Fifth Amendment Constitutional rights, declare that Respondents violated the APA, and order Petitioner released from custody. *See* DE 1 at ¶ 3. Petitioner's claims lack merit.

A. Petitioner's Detention is Lawful.

First and foremost, Petitioner's detention is lawful. Petitioner was ordered removed pursuant to a reinstated removal order after Petitioner has entered the United States illegally multiple times. She has a criminal history. Therefore, Respondents have detention authority under 8 U.S.C. § 1231. 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. Additionally, as determined by the Supreme Court in *Guzman Chavez*, Petitioner may be detained pending the outcome of her withholding-only proceedings. *Johnson v. Guzman Chavez*, 594 U.S. 523, 546 (2021) (finding that detention is

not foreclosed in pending withholding-only proceedings and stating "[E]ven assuming respondents are correct that withholding-only proceedings are not usually completed in 90 days, it does not follow that § 1231 is inapplicable to aliens who initiate them. In addition to setting out a 90-day removal period, § 1231 expressly authorizes DHS to release under supervision or continue the detention of aliens if removal cannot be effectuated within the 90 days. See §§ 1231(a)(3), (6). There is no reason why DHS cannot detain aliens in withholding-only proceedings under those same post-removal-period provisions. As explained above, DHS routinely holds aliens under these provisions when geopolitical or practical problems prevent it from removing an alien within the 90-day period.").

Furthermore, Petitioner's contention that her continued detention violates 8 U.S.C. § 1231 under *Zadvydas* fails. 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." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). 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.*

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 her 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 her 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's continued detention while the appeal regarding her application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act is pending before the Board is lawful. Petitioner's *Zadvydas* claim that her "removal is not reasonably foreseeable" due to the pending appeal of the withholding of removal fails. *See Rodriguez v. Meade*, Case No. 20-cv-24382-BLOOM/Otazo-Reyes, 2021 WL 671333, at *4-5 (S.D. Fla. Feb. 22, 2021) (analyzing and rejecting similar argument). Automatic release after the *Zadvydas* six-month period expires is a "mistaken notion." *Id.* at *4. As analyzed by the Honorable Judge Bloom in the *Rodriguez* decision:

> "certain removable aliens may be detained beyond the ordinary ninety-day removal period. *See* § 1231(a)(6); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051 (11th Cir. 2002). For example, the Attorney General may detain an individual "who has been determined ... to be a risk to the community or unlikely to comply with the order of removal" beyond the initial statutory period. § 1231(a)(6). Moreover, nothing in the Supreme Court's opinion in *Zadvydas* suggested that a non-citizen would be entitled to release simply because the post-removal period has expired. 'To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.' *See Zadvydas*, 533 U.S. at 701. 'Stated differently, a detainee is not entitled to release merely because a definite date of removal is unknown. The continued detention of aliens beyond the removal period is permissible so long as removal is reasonably foreseeable.' *Guilarte v. Barr*, No. 4:20-cv-401-WS-MAF, 2020 WL 8084169, at *4 (N.D. Fla. Dec. 3, 2020), report and recommendation adopted, No. 4:20-cv-401-WS/MAF, 2021 WL 75763 (N.D. Fla. Jan. 8, 2021)."

Id. at *5. Judge Bloom then concluded that the petitioner's claim that "his withholding-only proceedings negate any contention that removal is likely to occur in the foreseeable future… lacks merit because it rests entirely upon a hypothetical, favorable resolution of his withholding-only proceedings, which is still in question at this juncture." *Id.* In reaching this conclusion, Judge Bloom found that the detention "is not potentially permanent or indefinite", and instead found that, "[i]t is reasonably foreseeable that a termination point (i.e., removal) will occur after the conclusion of Petitioner's withholding-only proceeding." *Id.* (citing *Davis v. Rhoden*, No. 19-cv-20082, 2019 WL 2290654, at *8 (S.D. Fla. Feb. 26, 2019), report and recommendation adopted,

No. 19-20082-CIV, 2019 WL 2289624 (S.D. Fla. May 29, 2019)). Thus, "Petitioner has not met his burden of establishing that no significant likelihood of removal will occur in the foreseeable future." *Id.* (citing *Akinwale*, 287 F.3d at 1051-52).

The same is true here. As outlined above, Petitioner is being detained to execute her removal order to Mexico pending the pending appeal regarding her withholding-only proceedings. Petitioner has entered the country illegally multiple times, at one point through subterfuge by purporting to be a United States citizen, and has a criminal history, and so ICE made the decision to continue her detention. Petitioner's removal will occur after the conclusion of her withholding-only proceedings, and therefore her detention is "not potentially permanent or indefinite" as found by Judge Bloom in the *Rodriguez* case. Thus, Petitioner's continued detention is lawful. *See, e.g., Guzman Chavez*, 594 U.S. at 546 (2021) (finding that detention is not foreclosed in pending withholding-only proceedings).

B. The Court Lacks Jurisdiction to Review the Revocation of Petitioner's Order of Supervision.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted). "A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises." *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999). Several provisions of the INA restrict the Court's jurisdiction to adjudicate certain decisions made by the Attorney General regarding removal. Section 1252—titled "Judicial review of orders of removal"—provides in pertinent part:

> (a)(2)(B) Denials of discretionary relief
>
> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security . . . .
>
> (g) Exclusive jurisdiction

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision . . . 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.

8 U.S.C. § 1252(a)(2)(B)(ii), (g) (emphasis added). Thus, 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 revoke Petitioner's Order of Supervision for violating her conditions of release and to execute Petitioner's removal order. This is precisely the relief Petitioner requests- that the Court release Petitioner from custody to prevent her removal. 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 review Respondents' decision to revoke the Order of Supervision as part of the decision to execute her removal order.

Respondents followed their regulatory procedures regarding the revocation of Petitioner's Order of Supervision. On or about July 29, 2024, ICE issued a Notice of Revocation of Release to revoke Petitioner's Order of Supervision and took her into ICE custody pursuant to the final order of removal. *See* Exhibit E. The certificate of service on the 2024 Revocation Notice states that it was served upon Petitioner at Delray ISAP on July 29, 2024, at "1139" [sic]. However, the certificate of service does not contain Petitioner's signature confirming such service. *See* Exhibit E. As such, on October 31, 2025, ERO issued and served a new Notice of Revocation of Release upon Petitioner. *See* Exhibit F. Petitioner has also received an informal interview consistent with Respondent's regulatory procedures. *See* Exhibit M. Any alleged due process violation relating to the Order of Supervision revocation was procedural, not substantive, and has been cured. The remedy is not release from detention.

Even if Petitioner was able to show that ICE somehow violated the regulations pertaining to the Order of Supervision, 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 her Order of Supervision because it was revoked as part of the decision 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 and multiple illegal re-entries into the United States.

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 a reinstated removal order because Petitioner has entered the country illegally multiple times, and she has a criminal history. The Court must dismiss the Petition and close this case.

Dated: November 7, 2025

Respectfully submitted,

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