IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 0:25-cv-61862-DAMIAN/VALLE

VENTURA **ARROYO BORJA,**

Petitioner,

v.

DIRECTOR, U.S. DHS ICE ERO Miami Field Office, *et al.*,

Respondents.
_____/

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO THE COURT'S ORDER GRANTING MOTION FOR ORDER TO SHOW CAUSE (ECF No. [9])

The Petitioner, Ventura Arroyo Borja, by and through undersigned counsel, hereby files the instant Reply to Respondent's Response to the Court's Order Granting Motion for Order to Show Cause (ECF No. [9]) ("Response"), and respectfully states as follows:

I. INTRODUCTION

In their Response, Respondents did not appear to contest Ms. Arroyo Borja's claim of a liberty interest and that the "prolonged mandatory detention has violated the Due Process Clause of the Fifth Amendment under the [Supreme Court's] framework [in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)]." *See* Petition for a Writ of Habeas Corpus ("Petition"), ECF No. [1] at ¶¶42-53, 84-93; Response at ECF No. [9] (no reference to *Mathews* or "liberty"); *see also McGinnis v. Ingram Equipment Co., Inc.*, 918 F.2d 1491, 1493 (11th Cir. 1990) ("[a] party normally waives its right to argue issues not raised in its initial brief"). Rather, Respondents provided factual background in the Response before arguing that: (A) "Petitioner's contention that

her continued detention violates 8 U.S.C. § 1231 under [*Zadvydas v. Davis*, 533 U.S. 678 (2001)] fails" because she has not established "no significant likelihood of removal in the reasonably foreseeable future"; and (B) provisions within the Immigration and Nationality Act ("INA") at 8 U.S.C. §§ 1252(a)(2)(B) and (g) strip the Court of jurisdiction to review the claim of regulatory violations. *See* Response, ECF No. [9] at **2-5 (factual background), **5-8 (argument that detention is lawful), and **8-10 (jurisdictional argument). Each argument is unavailing. *See infra*.

II. LEGAL ARGUMENT

A. Ms. Arroyo Borja has established that her prolonged detention under 8 U.S.C. § 1231 and *Zadvydas* violates her Due Process rights *and* her detention without an individualized bond hearing also violates the Fifth Amendment's Due Process clause.

Respondents explained that to establish that prolonged detention violates 8 U.S.C. § 1231 and *Zadvydas*, the Eleventh Circuit has held that detainees "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." *See* Response, ECF No. [9], at *6 (citing *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002)); *see also Zadvydas*, 533 U.S. at 689-90, 701 (because "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem," the Government must "limit [...] an alien's post-removal detention period to a period reasonably necessary to bring about that alien's removal from the United States," and six months is a presumptively reasonable period to detain a removable alien). In support of the position that Ms. Arroyo Borja has failed to establish no significant likelihood of removal, Respondents cited to Judge Bloom's decision in *Rodriguez v. Meade* as a case that analyzed and rejected an argument similar to Petitioner's argument that there is no significant likelihood of removal. *See* Response, ECF No. [9], at **7-8 (citing to *Rodriguez v.*

Meade, Case No. 20-cv-24382-BLOOM/Otazo-Reyes, 2021 WL 671333, at **4-5 (S.D. Fla. Feb. 22, 2021)).

Judge Bloom ultimately found that the petitioner in *Rodriguez* "argue[d] that his withholding-only proceedings negate any contention that removal is likely to occur in the foreseeable future" but this argument "lack[ed] merit because it rests entirely upon a hypothetical, favorable resolution of his withholding-only proceedings, which is still in question at this juncture." *Id.*, 2021 WL 671333, at *5. The *Rodriguez* case presented procedural facts that distinguish it from the instant matter, however, as the petitioner in *Rodriguez* had not yet had a merits hearing before an Immigration Judge ("IJ") regarding his withholding application when Magistrate Judge Otazo-Reyes issued the Report and Recommendation on an Expedited Motion for Temporary Restraining Order. *See Rodriguez v. Meade*, Case No. 20-24382-CIV-BLOOM/OTAZO-REYES, 2021 WL 862250, at *4 (S.D. Fla. Jan. 31, 2021). In the instant matter, however, the IJ has twice granted withholding of removal and the government has filed appeals prolonging the detention. *See* Response, ECF No. [9], at *4 (Respondents' provision of withholding-only procedural history before the Immigration Judge and BIA in the instant matter). Ms. Arroyo Borja cited to the withholding-only proceedings and *prima facie* eligibility for U-nonimmigrant status deferred action when alleging that the prolonged mandatory detention violated 8 U.S.C. § 1231(a)(6) under *Zadvydas*. *See* Petition, ECF No. [1], at ¶ 94.

In *Lambert v. Garland*, Judge Altman explained as follows regarding another situation where the detainee is responsible for "unreasonably extended" time in custody:

> Courts in this Circuit have consistently held that, when a habeas petitioner "is responsible for thwarting his removal, he cannot show that there is no reasonable likelihood that he will not be removed in the reasonably foreseeable future if he cooperates with DHS[.]" *Vaz v. Skinner*, 634 F. App'x 778, 782 (11th Cir. 2015); *see also, e.g., Oladokun v. U.S. Att'y Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012) ("Oladokun's non-cooperation is the only barrier to his removal. The Department

> could have removed Oladokun to Nigeria, but for his misconduct at the airport."); *Vandi v. Ripa*, 2022 WL 2709109, at *2 (S.D. Fla. June 3, 2022) (Ruiz, J.) ("Petitioner's own actions – accusing an ICE officer of misconduct while boarding his flight back to Sierra Leone – have caused the delay in his repatriation; therefore, Petitioner has failed to show that the Government itself is incapable of effectuating his removal from the United States.").

Lambert v. Garland, Case No. 22-23976-CIV-ALTMAN, 2023 WL 2016841, at *3 (S.D. Fla. Feb. 15, 2023); *see also M.P. v. Joyce*, No. 1:22-cv-06123, 2023 WL 5521155, at *4 (W.D. La. Aug. 10, 2023) ("[D]etention is neither indefinite nor potentially permanent where the delay in removal is directly attributable to the litigation activity of the alien" where petitioner filed appeal to Board of Immigration Appeals ("BIA") after IJ denied withholding). Again, Ms. Arroyo Borja is not responsible for her unreasonably extended time in custody in the instant matter. *See* Response, ECF No. [9], at *4 (Respondents' provision of withholding-only procedural history before IJ and BIA in the instant matter).

The decision in *Quezada-Martinez v. Moniz* presents an unreasonable detention claim that aligns more closely to the instant claim that there is no significant likelihood of removal. *See id.*, 722 F.Supp.3d 7, 9 (D. Mass. 2024) (noting that "the BIA issued an opinion reversing the IJ's decision" denying withholding of removal and remanded the case, and the DHS subsequently filed a "Motion to Reconsider the BIA's determination"). Although both the petitioner and the government delayed the proceedings through the appeal process, the Court noted that the petitioner had been detained for "a little over eleven months" and that "the reasonableness of continuing [the petitioner's] custody turns on whether he has made a showing that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 11. The Court further found as follows:

> This Court finds that Mr. Quezada-Martinez has made such a showing. Significantly, four months after Mr. Quezada-Martinez made his appeal, the BIA reversed the IJ's determination that Mr. Quezada-Martinez did not suffer past persecution. The BIA also requested the IJ further consider Mr. Quezada Martinez's application for protection under the CAT. The BIA initially remanded Mr.

> Quezada-Martinez's case to the IJ; however, the Government filed a Motion to Reconsider pertaining to part of the remand decision. Both parties agreed Mr. Quezada-Martinez's case is expected to be remanded to the IJ for further proceedings regardless of the outcome of the BIA appeal. If Mr. Quezada-Martinez's application is denied a second time, he may once again appeal the decision to the BIA. Given these facts, Mr. Quezada-Martinez has made a showing that there is no significant likelihood he will be removed in the reasonably foreseeable future. All the while, Mr. Quezada-Martinez remains detained at the Plymouth County Correctional Facility. *See Zadvydas*, 533 U.S. at 690 (detention under § 1231(a)(6) is "civil, not criminal" and is assumed to be "nonpunitive in purpose and effect").
>
> The Government argues Mr. Quezada-Martinez's eleven-month detention cannot be unreasonable under *Zadvydas*, as ICE has successfully removed Mr. Quezada-Martinez to Mexico on three prior occasions and will do so again once his asylum application is denied. Therefore, the Government claims, Mr. Quezada-Martinez's removal remains reasonably foreseeable because his detention is not indefinite or potentially permanent.
>
> The Government's argument is unpersuasive. The facts in Mr. Quezada-Martinez's case have changed meaningfully since the Government filed its opposition. The Government cites a Sixth Circuit case to support its claim that a non-citizen's detention "remained constitutional while his withholding-only proceedings progressed … because if he' does not prevail in his pending actions before this court and the BIA, nothing should impede the government from removing him.'" (quoting *Martinez v. Larose*, 968 F.3d 555, 565 (6th Cir. 2020)). However, in light of the BIA's decision to remand Mr. Quezada-Martinez's case, the Government can no longer rely on the Sixth Circuit's reasoning in *Larose* to justify his continued detention. Mr. Quezada-Martinez's removal does not hinge only on a single pending action before the BIA, but rather on the outcome of several lengthy remand and appeal proceedings as laid out above. Indeed, the Sixth Circuit state explicitly in *Larose* that, "[i]f [the petitioner] *does* prevail before this court or the BIA, he may … argue at that point that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* (emphasis added). Thus, the bare fact that the Government may be able to secure Mr. Quezada-Martinez's removal at some remote point in the future is insufficient, without more, to rebut the showing that there is no significant likelihood of removal in the reasonably foreseeable future.

Quezada-Martinez, 722 F.Supp.3d at 11-12 (cleaned up and internal citations to record omitted).

Likewise, in the instant matter, where the IJ has twice granted Ms. Arroyo Borja withholding of removal, Respondents are unable to meet their burden of rebutting a showing that there is no significant likelihood of removal in the reasonably foreseeable future. *See* Response, ECF No. [9],

at *4 (Respondents' provision of withholding-only procedural history before the IJ and BIA in the instant matter, noting that Respondents have appealed the IJ's decisions).

Even assuming *arguendo* that Respondents are correct that Ms. Arroyo Borja has not established that her removal is not reasonably foreseeable and her immediate release is appropriate under *Zadvydas* or that they have met their burden of rebutting such a showing, she nonetheless has shown that her continued detention without an individualized bond hearing violates the Fifth Amendment's due process clause. *See* Petition, ECF No. [1], at ¶¶87-93. In other cases involving withholding-only proceedings and prolonged detention claims, courts finding that the petitioner failed to establish a violation of § 1231(a)(6) under *Zadvydas* have nonetheless found that prolonged detention without an individualized bond hearing violates the Fifth Amendment's due process guarantee. *See Juarez v. Choate*, Case No. 1:24-cv-00419-CNS, 2024 WL 1012912, at *5-8 (D. Colo. March 8, 2024); *Ramirez v. Bondi*, Case No. 25-cv-1002-RMR, 2025 WL 1294919, at *5-8 (D. Colo May 5, 2025) (appeal filed July 8, 2025, by *Munoz Ramirez v. Bondi*, 10th Cir.); *see also Trejo v. Warden of ERO El Paso East Montana*, --- F.Supp.3d ----, Case No. EP-25-CV-401-KC, 2025 WL 29992187, at **6-11 (W.D. Tex. Oct. 24, 2025) (finding that petitioner who was re-detained following grant of CAT protection and OSUP grant established that he "is entitled to additional procedural protections by virtue of the liberty interest he obtained through his release" and ordering either a bond hearing before an IJ or release from custody under reasonable supervision conditions). Accordingly, Ms. Arroyo Borja has established "[i]n addition, or in the alternative, […] that her prolonged detention without an individualized bond hearing violates the Fifth Amendment's procedural due process guarantee." *Juarez*, 2024 WL 1012912, at *5.

Additionally, "[i]f the respondent is detained," bond hearing regulations require applications for IJ review of bond determinations "to the Immigration Court having jurisdiction over the place of detention." 8 C.F.R. § 1003.19(c)(1). The INA "provides no guidance as to how

IJs make discretionary bond determinations" and "[§] 1226(a) is silent as to whether the Government or the noncitizen bears the burden of proof." *J.G. v. Warden, Irwin County Detention Center*, 501 F.Supp.3d 1331, 1334 (M.D. Ga. 2020). "To fill this gap, the BIA adopted 8 C.F.R. § 236.1(c)(8)'s standard for release." *Id.* (citing *Matter of Adeniji*, 22 I&N Dec. 1102, 1113 (BIA 1999)). "The regulation, promulgated by the [legacy] Immigration and Naturalization Service ("INS"), allows '[a]ny officer authorized to issue a warrant of arrest' to release the noncitizen provided that he 'must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding.'" *Id.* (citing 8 C.F.R. § 236.1(c)(8)). "The noncitizen carries the burden to prove that he is not a flight risk nor a danger to the community, and the standard of proof is 'to the satisfaction of the officer' executing the arrest warrant." *Id.*

Notably, "[t]he regulation only applies to officials issuing arrest warrants for immigration violations." *J.G.*, 501 F.Supp.3d at 1335. "As written, this regulation does not apply to IJs determining release at bond hearings." *Id.* (citing *Matter of Adeniji*, 22 I&N Dec. at 1112). "Nevertheless, the BIA concluded that 8 C.F.R. § 236.1(c)(8) provided the appropriate standard 'for ordinary bond determinations' under 8 U.S.C. § 1226(a)." *Id.* (citing *Matter of Adeniji*, 22 I&N Dec. at 1113).

Two of the Circuit Courts of Appeals have found that the government must bear the burden of establishing that a detainee is a flight risk or will be a danger to the community. *See J.G.* 501 F.Supp.3d at 1335. (citing *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) and *Velasco Lopez v. Decker*, 978 F.3d 842, 853-56 (2d Cir. 2020)); *but see Borbot v. Warden Hudson Cty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018) (stating it "perceive[d] no problem" with noncitizens bearing the burden of proof under 8 U.S.C. § 1226(a)); *Miranda v. Garland*, 34 F.4th 338, 366 (4th Cir. 2022) (agreeing with *Borbot*). In *J.G.*, the District Court joined "the Ninth and Second

Circuits as well as 'the overwhelming majority of district courts' that hold the Government must bear the burden of proof to justify a noncitizen's detention pending removal proceedings." *Id.* (citations omitted). The Court further found that the Government must bear this burden by meeting the clear and convincing evidence standard. *Id.* at 1341-42. Accordingly, this Court should require Respondents to carry their burden in any bond hearing by clear and convincing evidence. *See id.*

B. The Court Retains Jurisdiction to Review Regulatory and Constitutional Due Process Violations.

In their Response, Respondents argued that this Court lacks jurisdiction to review "any claim arising from Respondents' decision to revoke Petitioner's Order of Supervision [("OSUP")] for violating her conditions of release and to execute Petitioner's removal order." *See* Response, ECF No. [9], at **8-9 (citing 8 U.S.C. §§ 1252(a)(2)(B)(ii) and (g). As Judge Gayles noted in a recent decision, "[h]owever, the Court does have jurisdiction to adjudicate whether Respondents complied with their own OSUP revocation procedures." *Barrios v. Ripa*, Case No. 1:25-cv-22644-GAYLES, 2025 WL 2280485, at *5 (S.D. Fla. Aug. 8, 2025); *see also Kurapati v. U.S. Bureau of Citizenship and Imig. Services*, 775 F.3d 1255, 1262 (11th Cir. 2014) (finding that § 1252(a)(2)(B)(ii) did not prevent Court from assessing whether Government followed its own procedures when it revoked visa petition). This Court has jurisdiction to hear Ms. Arroyo Borja's claim because she does not seek to review the reinstated removal order or removability, but rather seeks review of the lawfulness of detention. *See Trejo*, 2025 WL 2992187, at *3 ("Here, Trejo challenges his re-detention after he was granted DCAT and released pursuant to an [OSUP] nearly six and a half years ago" and "does not seek to challenge his reinstated final order of removal or his removability to a country other than El Salvador"). Thus, the Court maintains jurisdiction to review Ms. Arroyo Borja's claims.

Moreover, Respondents' have claimed that their recent actions following Ms. Arroyo Borja's filing of her Petition, where Respondents sought to comply with their regulatory due process requirements, have "cured" "[a]ny alleged due process violation relating to the [OSUP] revocation." Response, ECF No. [9], at *9. This still violates the Respondents' regulations, however, which provide that "[t]he alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1). This illustrates that the re-detention process under Respondents' current regulations and policies has resulted in "an erroneous deprivation" of Ms. Arroyo Borja's liberty interest and that the second *Mathews* factor weighs sharply in her favor. *See Mathews*, 424 U.S. at 335.

III. CONCLUSION

Accordingly, Ms. Arroyo Borja respectfully requests that this Honorable Court issue a Writ of Habeas Corpus requiring that Respondents release her from custody. Alternatively, she requests that this Honorable Court issue an order requiring Respondents to conduct a bond hearing where the Respondents bear the burden of establishing her continued detention by clear and convincing evidence.

Lastly, in their Response, Respondents disclosed in a footnote that a DHS ICE ERO Assistant Miami Field Office Director, in his official capacity, is Ms. Arroyo Borja's current immediate custodian. *See* Response, ECF No.[9] at *1, n.1. A writ of habeas corpus must "be directed to the person having custody of the person detained," 28 U.S.C. § 2243, which, in cases involving present physical confinement, means the "immediate custodian, not a supervisory official who exercises legal control." *See Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). For that reason, Respondents assert, and Petitioner agrees, that the proper Respondent in this case is the

Assistant Field Office Director in his official capacity. *See, e.g.*, *Masingene v. Martin*, 424 F. Supp. 3d 1298, 1302–03 (S.D. Fla. 2020) ("[T]he Court finds that the proper respondent to the Petition is Jim Martin, the Director of the Miami Field Office for ICE."). Accordingly, Petitioner respectfully requests that the Court substitute the Assistant Director as Respondent. *See, e.g.*, *Mayorga v. Meade*, No. 24-CV-22131, 2024 WL 4298815, at *3 (S.D. Fla. Sept. 26, 2024) (substituting as Respondent the Assistant Field Director of facility where petitioner was detained because denial of a habeas petition for failure to name proper respondent would give an unreasonably narrow reading to habeas corpus statute).

Respectfully submitted this 13th day of November, 2025,

By: **/s/ Andrew W. Clopman**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Court Clerk and to the best of my knowledge a true and correct copy of the foregoing, along with a Notice of Electronic Filing, will be served through the Court's ECF system to all counsel of record this 13th day of November, 2025.

Respectfully submitted,

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