UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:25-CV-62173-JEM

VENTURA ARROYO BORJA
Petitioner

v.

JUAN F. GONZALEZ Assistant, Field Office Director
Warden, GEO, Broward Transitional Center
GARRETT RIPA, District Director Department of Homeland Security
KRISTI NOEM, Secretary of the Department of Homeland Security

Respondents
_____/

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Petitioner respectfully files this reply to Respondent's Response, showing cause as to why the instant Petition for Habeas Corpus should be granted and why the Respondent's fail to meet their burden.

I. JURISDICTION

In a Footnote---buried under a heading----Respondents recycle an argument on subject matter jurisdiction that this court has already rejected. Respondents now insist that the "further-developed record" somehow changes the outcome, claiming that the detention of Ms. Arroyo-Borja's arises "from [a] decision or action by the Attorney General to… execute [a] removal order" and therefore strips this Court of jurisdiction. This is not a new argument but the same jurisdictional objection this Court has already resolved. See *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025) ("Officials must comply with the requirements of applicable regulations…Because they failed to do here, Petitioner may demonstrate entitlement to a writ of habeas corpus…§ 2241 confers jurisdiction upon the federal courts to hear challenges

to the lawfulness of immigration detention... Accordingly this court has jurisdiction to hear "Petitioner's claim that her detention ins unlawful under 28 U.S.C. § 2241").

Respondents persist in mischaracterizing Ms. Arroyo-Borja's claim as a challenge to her removal order when the record has been unambiguous from the start that she does not contest the finality of that order, nor does she dispute Respondents' theoretical ability to remove her to a third country if they could identify one that would accept him and where she would be free from persecution or torture. Her challenge is, and always has been, to present decision to detain her. This is a matter entirely distinct from substance or validity of the removal order itself.

To reiterate, all post-order detention is, by definition, tangentially "related" to the execution of a removal order, yet courts have consistently recognized habeas petitions as the proper vehicle for challenging the constitutionality of that detention, *Zadvydas v. Davis,* 533 U.S. 678, 688 (2001) ("Habeas petitions are the appropriate forum to challenge post-removal-period detention".) The Supreme Court expressly distinguished questions of detention from decision to execute removal order *Id.* at 689. The Eleventh Circuit has done the same. *Madu v. United States AG,* 470 F.3d 1362, 1368 (11th Cir. 2006). And most recently, the Court reaffirmed that the constitutionality of immigration detention squarely belong in habeas. *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025). Respondent's repeated attempts to reframe this case into one it is not is meritless.

II. THE DETENTION OF MS. ARROYO-BORJA'S WAS NOT IN COMPLIANCE WITH REGULATION, AS SUPPORTED BY THE RESPONDENT'S OWN EVIDENCE.

8 CFR § 241.4(a)(4) specifically states:

> The custody review procedures in this section do not apply after the Service has made a determination, pursuant to the procedures provided in 8 CFR § 241.13, that there is no significant likelihood that an alien under a final order of removal can be removed in the reasonably foreseeable future. However, if the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to the country to which the alien was ordered removed or to a third country, that alien shall again be subject to the custody review procedures under this section. 8 CFR § 241.4(a)(4).

Therefore, detention of release is controlled by 8 CFR § 241.13(i) and not 8 CFR § 241.4(l)(2)(i)-(iv). Nonetheless, no reason to justify detention of release in either section applies to Ms. Arroyo-Borja. She did not violate any condition of her withholding of removal and no changed circumstances exist to support a determination that there is a significant likelihood that she may be removed in the reasonably foreseeable future.

On July 29, 2024, Ms. Arroyo-Borja was detained by ICE. Now a second appeal proceedings requested by ICE is pending without a decision by the Board of Appeal. She has maintained since her release to a halfway house, and she was not "encountered" by ICE Fugitive Operations; rather she was never a fugitive and always reported as required.

Respondent's claim that ICE detention of Ms. Arroyo-Borja's is not based in fact or supported by the evidence the Respondents themselves presented. Fist, there are statutory rules that must be followed in order to properly continue with her detention including proper notification for the reason of detention as well as an initial interview promptly after return to Service custody 8 CFR § 241.13(i)(3). The Respondents created an unfounded reason to revoke Ms. Arroyo-Borja's order of withholding of removal and did not comply with the statutory requirements for her detention.

Second, the controlling regulation does not support a reason to revoke Ms. Arroyo-Borja's order of withholding and did not comply with the statutory requirements for detention. When Ms. Arroyo-Borja won relief from removal forbidding her return to her home country of Mexico, DHS only appealed, only the petitioner did not filed an appeal brief. There was no reason to continue to detain Ms. Arroyo-Borja beyond the removal period in accordance with 8 CFR § 241.4. Alternatively, or in conjunction with this determination to release, the government determined that there was no significant likelihood of removal in the reasonably foreseeable future ("SLRRFF"). Once this "SLRRFF" determination was made, the custody review procedures of 8 CFR § 241.4 would not apply. 8 CFR § 241.4(a)(4). Nonetheless, both regulatory sections and considerations compelled ICE to lift the immigration detainer and release Ms. Arroyo-Borja.

Specifically, ICE may only continue with her detention where: "(i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be

appropriate, 8 CFR § 241.4(l)(2). None of the four (4) reasons apply and ICE did not comply with 8 CFR § 241.13(i) or 8 CFR § 241.4(l)(3). (See BIA's response to renewed request to background check – Exhibit A). The rules must be followed in order to properly continue with her detention including proper notification for the reason of detention as well as an initial interview promptly after return to Service custody. 8 CFR § 241.13(i)(3).

The Notice of Detention of Release did not list a date of service; which did not occur because Ms. Arroyo-Borja was detained without notice on July 29, 2024. It is uncontested that Respondent did not contact Ms. Arroyo-Borja before her detention as requested by her former lawyer (See Doc # 1 – Exhibit B). Further Ms. Arroyo-Borja never had an informal interview "promptly after [her] return to Service custody to afford the alien an opportunity to respond to the reasons for detention stated in the notification" 8 CFR § 241.13(i)(3). If an interview is to be held, Petitioner is entitled to have her or her counsel present to provide evidence that she has never violated her order of withholding , and that there is no significant likelihood that she will be removed in the reasonably foreseeable future, as required by the statute. [1] ICE cannot justify detention in order to effectuate removal if there is no removal to effectuate.

Aside from the deficiencies of the Notice and the Lack of a condition of release on Ms. Arroyo-Borja's part, Respondents fail to meet their burden of proof that Ms. Arroyo-Borja's detention is appropriate to enforce her order of removal. Under the Statute, "the Service may revoke an alien's [supervised] release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future" " 8 CFR § 241.13; See Hernandez Escalante v. Noem, No. 9:25-CV-00182-MJT (E.D. Tex. August 2, 2025)(non-precedent) (These regulations clearly indicate, upon detention of supervised release, it is the Service's burden to show a significant likelihood that the alien may be removed). To date, the Service cannot make a determination that there is a significant likelihood of removal as there have been no change country conditions in Mexico, Ms. Arroyo-Borja's deferral of removal has not been terminated, and no third country of removal where Ms. Arroyo-Borja is not likely to be tortured

[1] See *Phong Phan v. Moises Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 6 (E.D. Cal. July 15, 2025) (requiring petitioner's immediate release where the reason for detention order was for an arrest, and the government failed to meet its burden of proof that there was a likelihood of removal in the reasonably foreseeable future).

has been identified. In fact, Respondents have acknowledged numerous times on record to this Honorable Court that they have not identified a third country which will accept Ms. Arroyo-Borja, as required to enforce the order of removal. The Respondent have not presented the Court with an identified third country that is willing to accept Ms. Arroyo-Borja, the steps they are taking to secure a third country of removal, or any transparency as to why they believe removal is significantly likely in the reasonable foreseeable future.

It is clear the Respondents have no method of effectuating Ms. Arroyo-Borja's removal order, so it is impossible for this detention to serve the purpose of enforcement. It is a gross mischaracterization by the Respondent to justify Ms. Arroyo-Borja's detention as appropriate for enforcing the removal order when they have not even identified a country of removal. The government should not be allowed to detain individuals under the guise of enforcing a removal order that cannot be effectuated. Ms. Arroyo-Borja is afraid of torture and persecution in any third country; however, to hold her to speculate as to where one day the government may be able to send her is an unconstitutional deprivation of liberty that has caused her the loss of her family in this country, where she pays her taxes to the US government, her savings, her ability to care of her extremely ill son as her only relative and caregiver, etc. Ms. Arroyo-Borja has a fear of persecution and fear in any country that is not the United States of America; however, the constitutional safeguard allowing her to apply for protection before the Immigration Court can only be triggered once a third country is identified. She is entitled to present her case in front of an immigration judge if Respondents are able to identify a third country of removal. Holding her until the government finds a country to accept her means there is no significant likelihood of removal in the reasonably foreseeable future. Her detention is unconstitutional and in violation of regulation. The government has not met its burden to show the court that the purpose of release has been served, that detention is appropriate to enforce a removal order, or that changed circumstances exist to believe they can removal her to a third country. Surely the court cannot allow ICE to continue to detain her for violating any condition of release or for any conduct on Ms. Arroyo-Borja's part.

III. MS. ARROYO-BORJA'S DETENTION IS UNLAWFUL AS IT IS BEYOND THE STATUTORY REMOVAL PERIOD, AND HER REMOVAL IS NOT REASONABLY FORESEEABLE IN THE FUTURE.

The Respondents again conflate the removal period and over-extend the 6-month presumption in *Zadvydas v. Davis*, 533 U.S. 678 (2001). The "removal period" is the initial 90-day window during which the Department of Homeland Security (DHS) must execute a final order of removal. This period is defined in 8 CFR § 1231(a)(1)(A) and begins on the latest of three possible dates: (2) the date the noncitizen is released from detention or criminal custody. During this 90-day period, DHS may detain the noncitizen and make reasonable effort to carry out the removal order 8 CFR § 1231(a)(2). This period has expired.

If DHS is unable to remove the individual within the removal period, continued detention may be authorized **only if** there is a "significant likelihood of removal in the reasonably foreseeable future" *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court in *Zadvydas* interpreted U.S.C. 1231(a)(6) to authorize detention only for a period reasonably necessary to effectuate removal. The Court set a presumptive limit of six months for post-removal-period detention to begin not whenever the Respondents choose, but after events enumerated in 8 CFR § 1231(a)(1)(A). After that point, the burden shifts to the Respondents to prove that removal is likely in the reasonably foreseeable future. Recent cases support that six-month presumption outlined in *Zadvydas,* that the respondents rely on, is **not** applicable after a detention of an order of withholding where the government has failed to meet their burden demonstrating that removal is now likely in the reasonably foreseeable future. See *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 13, 2025) (finding 6-month presumption **had long lapsed** while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future).

The Respondents have made absolutely no showing that Ms. Arroyo-Borja's removal is reasonably foreseeable, or that it is even possible. The Respondent's assertion that Ms. Arroyo-Borja has not demonstrated a lack of significant likelihood of removal in the reasonably foreseeable future is particularly troubling, given their repeated admission that no third country has been identified to effectuate her removal. **As noted above, it is not the Petitioner's burden to prove that her removal is not likely in the reasonably foreseeable future. It is the Respondent's burden.** The government's weekly reports to the Court do not help reach their

burden and without more, admit that they have not identified a third country of removal and show no proof one appearing in the foreseeable future. Petitioner again strongly emphasizes that without a third country of removal identified, her removal is not reasonably foreseeable, and her detention is not lawful. *Zadvydas v. Davis*, 533 U.S. 678 (2001) (Once removal is no longer reasonably foreseeable, continued detention is not authorized by statute). This Court should reject Respondent's claim that Ms. Arroyo-Borja's removal is reasonably foreseeable, as they have neither identified a third country willing to accept her nor provided any transparency regarding their efforts to do so and the likelihood that their efforts will prove successful.

IV. MS. ARROYO-BORJA'S DETENTION CONSTITUTES A TANGIBLE DUE PROCESS VIOLATION.

The Respondent's detention of Ms. Arroyo-Borja, constitute a clear, non-speculative violation of Ms. Arroyo-Borja's due process, as it results in the unlawful deprivation of Ms. Arroyo-Borja's life and liberty. Ms. Arroyo-Borja's detention without following the appropriate statutory requirements was a violation of her due process rights. Further, Ms. Arroyo-Borja' detention falls well beyond the 90-day removal period, despite the government's repeated acknowledgment that no third country of removal has been identified, making her removal reasonably foreseeable.

The harm to Ms. Arroyo-Borja is tangible. She has lost her family due to her detention. Her ill and U.S. legal resident son, who suffer from significant health issues, at will, the demanding effects of the Petitioner's detention are real and significant. Yet no government purpose justifies her expensive detention.

The respondent's position---that they may continue with her detention after 90-day removal period for an individual granted protection under withholding of removal, without first identifying a third country willing to accept removal---effectively grants them unchecked authority to seize Ms. Arroyo-Borja, or any similarly situated individual, at will, based solely on a future intention to search for a removal destination. Such an approach not only disregards the statutory and constitutional limits imposed by *Zadvydas* but also undermines the stability and due process protections to which individuals under withholding of removal are entitled.

Furthermore, Respondents disclose to this court that it is ICE's policy if they receive diplomatic assurances that Ms. Arroyo-Borja will not be tortured or persecuted in a third country

that is willing to accept to her, then she will be removed without the need for further procedures. See Department of Homeland Security, Policy Memorandum, Guidance Regarding Third Country Removals (March, 30, 2025). However, where the United States is currently offering six-figure payments to third countries in exchange for accepting deportees, any assurances provided by those countries are inherently compromised and cannot be regarded as unbiased or credible. Such financial arrangements raise serious concerns about the reliability of diplomatic assurances and further call into questions the legitimacy of any claim that removal is appropriate or safe under the Convention Against Torture. This Court must protect due process and order the Respondents to afford Ms. Arroyo-Borja notice of a third country of removal and opportunity to be heard, even in light of diplomatic assurances from a country being paid by the United States.

Petitioner is being held in detention in violation of the law. She is entitled to immediate release. She has exhausted all available administrative remedies and there are no further administrative remedies available to her. However ICE failed to comply with the required procedures, thereby violating the Petitioner's due process rights. In the light of the decision rendered in Grigorian v. Bondi, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025); her detention in unlawful because her detention violates the regulations set forth in 8 C.F.R. § 241.4(I) and § 241.13(i). Which the petitioner is in custody "in violation of the Constitution and laws or treaties of the United States" *Id.* § 22419(C)(3). She has exhausted all available administrative remedies.

Petitioner has exhausted her administrative remedies as required, since that "the fact that the Board of Immigration Appeals reviews immigration judges' discretionary decisions de novo does not fulfill the agency's duty under 8 C.F.R. 1208.16(e) to reconsider the discretionary asylum denial if an applicant is subsequently granted withholding of removal. Here, the agency did not fulfill this duty" Thamotar v. United States AG, 1 F.4th 958 (11th Cir. 2021). "The applicant was entitled to a new hearing before a new Immigration Judge (IJ)… As such, the court granted the petition for review, vacated the order of removal, and remanded for the BIA to consider whether petitioner was entitled to a new hearing before a different IJ because the initial IJ's conduct-both during and following the hearing-failed to satisfy the high standard expected of IJs under Matter of Y-S-L-C-." Acevedo v. Garland, 44 F.4th 241 (4th Cir. 2022). These patterns significantly exceed the procedural barriers in comparable applicants, once a Petitioner has established statutory eligibility for a grant of withholding of removal, where she merits such relief as a matter of discretion. INA 240(c)(4) on a humanitarian basis. This Certificate is issued

in support of relief under constitutional Due Process, Equal protection, and access to justice doctrine. This Court should find that ICE's failure to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. §. 103.3 violated Petitioner's due process rights, due to ICE Failure to follow its own procedural regulations which constitute a due process violation. ICE's failure to provide Petitioner with a timely conduct an informal interview after taking her into custody is a grave violation of Petitioner's due Process rights in that they deprived her both of meaningful notice and an opportunity to be heard.

Conclusion

To be clear, Petitioner is not before this Court contesting the Respondent's right to identify a third country of removal, nor is she contesting their right remove her to a third country after the proper procedures are followed and it is determined that she will be free from persecution and torture. She is merely asking to be placed back on supervised release pending possible removal pursuant to the immigration regulations regarding supervised release. This is a very different situation than if a suitable third country (one where Ms. Arroyo-Borja is free from the fear of torture or persecution) was identified for Ms. Arroyo-Borja's removal and her removal could realistically be carried out. The regulations clearly show that upon detention of a supervised release, it is the Service's burden to show a significant likelihood that the alien may be removed. 8 CFR § 241.4(b)(4) (emphasis added) (states that, after supervised release under Section 241.13 "if the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future… to a third country, the alien shall again be subject to the custody review procedures under this section"). Imposing the burden of proof on the alien each time she is re-detained would lead to an unjust result and serious due process implications. The Respondents have failed to prove they made the required regulatory efforts of revoking an order of withholding of removal, and they have given no evidence to show a significant likelihood of removal within the reasonably foreseeable future.

Other recent decisions support this conclusion. Similarly situated individuals throughout the country have recently faced the same constitutional violations and injustices perpetuated by the Respondents against the law, and Courts have ordered the release of those individuals pursuant to habeas corpus petitions. See *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9,

2025) ("Officials must comply with the requirements of applicable regulations…Because they failed to do here, Petitioner may demonstrate entitlement to a writ of habeas corpus …where the government failed to meet its burden of proof that there was a significant likelihood of removal in the reasonably foreseeable future."); *Phong Phan v. Moises Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 6 (E.D. Cal. July 15, 2025); Liu v. Carter, No. 25-3036-JWL, Memorandum and Order, at *3 (D. Kan. June 17, 2025 (ordering release of detention where was not effectuated per the statute for failure to provide a prompt interview and there were no changed circumstances leading officials to believe that petitioner would be removed in the foreseeable future). Hernandez Escalante v. Noem, No. 9:25-CV-00182-MJT (E.D. Tex. August 2, 2025) (ordering the release of petitioner over objections of the government as it failed to meet its burden of proof that it complied with the statutory requirements for a detention of the order of withholding and that removal was significantly likely in the reasonably foreseeable future).

Here, the petitioner is a class-member protected by the injunction issued under Bautista v. Santacruz, 2025 U.S. District LEXIS 233085, Case: 5:25-cv-01873-SSS-BFM, 2025 LX 533872 (S.D. Cal. November 20, 2025) (Petitioners sought an order to prohibit Respondents from relocating Petitioners outside this District pending final resolution of this litigation, the court granted the application…the court ordered Respondents to provide Petitioners with an individualized bond hearing or release Petitioners from detention… The court granted Petitioner's Motion for Partial Summary judgment, declaring the DHS policy unlawful"). Which this court should court order Respondents to provide Petitioners with an individualized bond hearing or release Petitioners from detention

For the foregoing reasons, this Honorable Court should:

A. Grand the Petitioner's Petition for Writ of Habeas Corpus.

B. Immediately order the release of the Petitioner from Respondent's custody on a reinstated order of withholding;

C. Order the Respondent's to not re-detain the Petitioner until and unless they can meet their burden in demonstrating her removal become likely in the reasonably foreseeable future; and

D. Grant any other and further relief this Court may deem appropriate.

OATH

UNDER PENALTIES OF PERJURY, I, Ventura Arroyo Borja, declare that I have read the foregoing document, and I Understand its content; this document is filed in good faith and is timely filed, I understand its content in English, has potential merit, and that facts contained in the documents are true and correct.

Date: December 5, 2025

Ventura Arroyo Borja
Pro se Petitioner
A#: [redacted]
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073

CERTIFIWITHHOLDING OF REMOVALE OF SERVICE

I HEREBY CERTIFY, that a true and correct original of the foregoing document has been furnished by U.S. Mail-postage prepaid to The Clerk of the District Court Southern District of Florida, to, Immigration and Custom Enforcement. Department of Homeland Security, Chief Counsel, Deputy Chief Counsel, Assistant Chief Counsel, Office of the principal Legal Advisor at Broward Transitional Center.3900 N. Powerline Road, Pompano Beach, Fl 33073, to the U.S. Dpt. of Justice, 950 Pennsylvania Av. NW. Office of the Attorney General, Room 5114, Washington DC. 20530-0001, and all the lawyer on record via e-filing court system, on this day December 5, 2025.

Respectfully Submitted:

Ventura Arroyo Borja
Pro se Petitioner
A#: [redacted]
Broward Transitional Center
3900 N. Powerline Rd.
Pompano Beach Fl. 33073