

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case 1:25-cv-25666

SHAHER TAYSIR BARGHOUTHI)
)
Petitioner,)
)
v.)
)
Assistant Field Office DIRECTOR, <i>et al.</i> ,)
)
Respondents.)
)

**REPLY TO RESPONDENTS' RETURN TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, by and through undersigned counsel, provides this Reply to the Respondents' Return to Petition for Writ of Habeas Corpus, filed on February 10, 2025. D.E. 7.

I. The Court has Subject Matter Jurisdiction

In their Return, Respondents allege 8 U.S.C § 1252(b)(9) strips the Court of habeas jurisdiction because Petitioner's first basis for habeas relief is due to his citizenship status. D.E. 7 at 4. While section 1252(b) establishes a procedure for individuals challenging a final removal order based on an assertion of U.S. citizenship, the statute does not prohibit consideration of citizenship issues in habeas proceedings that may also be at issue in removal proceedings. *See Boulos v. Dir., United States DHS ICE Ero Mia. Field Office*, No. 25-cv-23792-BLOOM/Elfenbein, 2025 U.S. Dist. LEXIS 273115, at *12 (S.D. Fla. Dec. 1, 2025).

Section 1252's jurisdiction stripping provisions apply to claims arising out of three specific actions: (1) the commencement of removal proceedings; (2) the adjudication of cases; and (3) the execution of final removal orders. *Barrios v. Ripa*, No. 1:25-CV-22644, at *4 (S.D. Fla. Aug. 8,

2025) (quoting *Reno v. Am-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). As noted in *Flores-Torres v. Mukasey*, “section 1252(b) by its terms, however, applies only to citizenship claims raised in connection with ‘review of an order of removal.’” 548 F.3d 708, 711 (9th Cir. 2008) (emphasis added). Accordingly, where a habeas petition based on citizenship does not challenge a final order of removal, but instead, wrongful detention, habeas relief is available.

Respondents also allege that the Court lacks jurisdiction in this matter pursuant to 8 U.S.C. § 1252(g). D.E. 7 at 7. However, the Supreme Court has held that 28 U.S.C. § 2241 confers jurisdiction to challenge detention that is without statutory authority, as well as constitutional challenges to post-removal-period detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88, (2001); *see also Roe v. Oddo*, No. 3:25-CV-128, 2025 U.S. Dist. LEXIS 130489, at *4 (W.D. Pa. July 9, 2025) (holding that 8 U.S.C. § 1252(g) did not strip the court of jurisdiction since it was “examining the contest of Petitioner’s detention” and not “reviewing Petitioner’s removal order”). The Supreme Court has explained that “the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484, (1973). Here, because Petitioner is contesting his detention and his due process rights, the Court has jurisdiction to entertain his claim in habeas proceedings.

II. Respondents’ Have Not Established Removal is Reasonably Foreseeable

Respondents also ask the Court to dismiss Petitioner’s Petition for failure to state a claim. Specifically, Respondents allege that Petitioner has not shown removal is not significantly likely in the reasonably foreseeable future. D.E. 7 at 10.

Respondents rely on *Zadvydas*, *Akinwale*, and *Gozo*, all which dealt with the initial detainment of an alien awaiting removal. Unlike the petitioners in those cases, Petitioner was previously ordered removed while detained, released on supervised release after his 90-day

removal period had expired, was on supervised release for many years, and was re-detained last year.

In late 2001, the regulations were revised to implement administrative review procedures for aliens detained beyond the removal period, including those who are re-detained upon revocation of their supervised release. *See Meighan v. Chertoff*, No. CIV.A. H-08-1222, 2008 U.S. Dist. LEXIS 36945, at *2 (S.D. Tex. May 6, 2008) (citing *Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56977 (Nov. 14, 2001) (codified at 8 C.F.R. § 241.13)).

Under these regulations, the Department of Homeland Security (“DHS” or “the Service”) may revoke an alien’s supervised release and return to custody any alien (1) if the alien violates any of the conditions of release or (2) if there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. Here, as noted in the Notice of Revocation of Release, DHS revoked Petitioner’s supervised release on October 14, 2025, pursuant to 8 C.F.R. § 241.13. Specifically, DHS “determined that there is a significant likelihood of removal in the reasonably foreseeable future in [Petitioner’s] case.” D.E 7, Exhibit K. It is important to note that DHS did not comply with their own regulations. They issued Petitioner’s revocation five months after Petitioner was taken into custody.

DHS may revoke an alien’s release and returns 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 C.F.R. § 241.13(i)(2) (emphasis added). Furthermore, section 241.4(b)(4) entitled “*Service determination under 8 C.F.R. 241.13*” 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 county, the alien shall again be subject to the custody review procedures under this section.” 8 C.F.R. § 241.4(b)(4) (emphasis added).

Per the regulations, upon revocation of supervised release, it is DHS’ burden to show a significant likelihood that the alien may be removed. Other Courts have indicated the same upon revocation of release. *See e.g., Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899, at *8-9 (E.D. Tex. Aug. 2, 2025); *Nguyen v. Hyde*, No. 25-cv-11470, 788 F. Supp. 3d 144, 2025 U.S. Dist. LEXIS 117495 (D. Mass. June 20, 2025) (finding *Zadvyd* 6-month presumption not applicable where alien is “re-detained” after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 U.S. Dist. LEXIS 113198 (D. N.J. 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). Imposing the burden of proof on the alien after he is re-detained would lead to an unjust result and serious due process implications.

Respondents have not established a significant likelihood that removal will occur in the reasonably foreseeable future. Respondents merely rely on the declaration of Deportation Officer Josil that seven months ago, on July 9, 2025, a request for a travel document from Palestine to effectuate Petitioner’s removal to Israel was submitted. D.E. 7, Exhibit F. That request for the travel document remains pending. It is unclear with whom in Palestine was the request placed. Also, it is unclear why the request for a travel document was placed with Palestine if Petitioner is a native and citizen of Jordan. Most importantly, “[s]ome possibility of an eventual removal is not the same as a significant likelihood that removal will occur in the reasonably foreseeable future.” *Diaz v. Parra*, No. 25-22624-CV-WILLIAMS, 2026 U.S. Dist. LEXIS 13816, at *9 (S.D.

Fla. Jan. 25, 2026) (citing *Sanchez v. Noem*, No. 5:25-CV-00104, 2025 U.S. Dist. LEXIS 269065, at *10 (S.D. Tex. Nov. 14, 2025) (internal quotations omitted); *see also Escalante*, 2025 U.S. Dist. LEXIS 148899, at *4 (“Thus far, Respondents have only made conclusory statements that they are taking steps to remove Petitioner to Mexico or perhaps Canada. ‘A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future.’” (citation omitted)). Accordingly, the Court should find that Respondents have failed to meet their burden of establishing the likelihood of removal in the foreseeable future and find that Petitioner’s detention is unreasonably prolonged.

III. Petitioner is a U.S. Citizen

Lastly, Respondents argue Petition has failed to establish he is a U.S. citizen. D.E. 7 at 12. Respondents’ argument focuses on the issue of the legal custody of Petitioner when his father naturalized in 1985. Respondents quote to *Matter of M-*, 3 I&N Dec. 850 (B9A 1950) for the definition of “legal custody” in immigration matters. D.E. 7 at 14 (“If there was a judicial determination or judicial or statutory grant of custody, then the parent to whom custody was granted had legal custody for former INA 321 purposes.”¹). However, *Matter of M-* concerned the automatic acquisition of citizenship by a child born abroad of alien parents upon admission for permanent residence under section 314 (c) of the Nationality Act of 1940, which was not the law that applies in Petitioner’s case. There is no statute or case law defining legal custody for purposes of former 8 U.S.C. § 1432 or limiting legal custody to a judicial decree without consideration of the actual circumstances of a case. Accordingly, this Court should consider that Petitioner’s father had actual legal and physical custody of Petitioner, including making decisions regarding Petitioner’s education and health, despite the divorce decree.

¹ *Matter of M-* does not have the quoted language.

CLAIM FOR RELIEF

For these reasons, this Court should order Petitioner's immediate release.

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