UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-62626-AHS

SAMUEL RODRIGUEZ,
Petitioner,

v.

GEO GROUP, *et al.*,
Respondents.
_____/

AMENDED RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] by and through the undersigned Assistant United States Attorney respectfully submit the following amended response in opposition to Petitioner Samuel Rodriguez's Petition for Writ of Habeas Corpus (Petition) (ECF No. 1). In that Petition, Petitioner raises a single claim, namely that Respondents violated Petitioner's Fifth Amendment right to Due Process when Immigration and Customs Enforcement (ICE) "detained him despite [Petitioner] never having any prior arrest[s]" and despite Petitioner being "eligible for [Temporary Protective Status] and Adjustment of Status based on [Petitioner's] marriage to his [Lawful Permanent Resident] Cuban spouse. . ." (*id.* at 6-7). This Court should dismiss the Petition because this Court lacks jurisdiction or, in the alternative, deny the Petition on the merits because Petitioner is being lawfully detained.

[1] Because Petitioner is currently detained at the Broward Transitional Center, the only proper respondent is Carlos Nunez, the Acting Assistant Field Office Director, in his official capacity. *See Buriv v. Warden et al.*, Case No. 25-CV-60459-RKA (ECF No. 22 at 3) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)).

BACKGROUND

I. Petitioner's Entry into the United States and Deportation Proceedings

Petitioner, Samuel Rodriguez Rivera ("Petitioner"), is a native and citizen of El Salvador who entered the United States without inspection at unknown date and time (*see* ECF No. 1-1; ECF No. 1 at 1). Petitioner stated that he was initially encountered by United States Border Patrol on or about October 24, 1996, and that he was immediately returned to Mexico (*see* ECF No. 1-1). Petitioner claimed that he re-entered on October 31, 1996, by crossing the Mexican border near Douglas, Arizona (*see id.*). Petitioner was ultimately encountered by immigration officials while changing planes at the Detroit Metro Airport (*see id.*). Border Patrol then determined that the Petitioner was amenable to deportation pursuant to former Section 241(a)(1)(B) (*see id.*; *see also* ECF No. 1-2; ECF No. 1-3). That same date, Petitioner was released by immigration officials on a $2,500 bond (*see* ECF No. 1-4).

On December 18, 1996, Petitioner was placed in deportation proceedings by way of an updated Order to Show Cause before Executive Office for Immigration Review ("EOIR") and charged with removability under Section 241(a)(1)(B) of the Immigration and Nationality Act, as amended, in that Petitioner entered the United States without inspection (*see* ECF No. 1-4). On May 21, 1997, Petitioner was scheduled to appear at his individual hearing before the EOIR Miami Immigration Court (*see* ECF No. 1-5). Petitioner, however, failed to appear before the immigration judge and was ordered removed to El Salvador (*see id.*).

B. Petitioner's Applications and Arrest

On October 2, 2018, United States Citizenship and Immigration Services (USCIS) approved Petitioner's Form I-131, Application for Travel Document Advance Parole (Inside US) (*see* ECF No. 1-7). On February 27, 2019, the Petitioner traveled to El Salvador, and, on March 2,

2019, he was paroled into the United States (*see id.*). On August 5, 2020, Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, requesting adjustment of status under the Cuban Adjustment Act as the spouse of a native or citizen of Cuba; however, that application was administratively closed on August 22, 2024 (*see* ECF No. 1-8). On February 19, 2025, the Petitioner filed a Form I-290B, asking that USCIS reopen the administratively closed Form I-485 (*see* ECF No. 1-7). To date, this motion is pending (*see id.*).

On September 9, 2025, Petitioner was encountered by Florida Highway Patrol and Monroe County Sheriff's Office in Key Largo Florida after committing a traffic violation (*see* ECF No. 1-9). Because it was determined that Petitioner was illegally present in the country with no documents that would allow him to enter, pass through, or remain in the United States, Petitioner was detained and transferred into the custody of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) (*see id.*; ECF No. 1-10; *see also* ECF No. 1-11; ECF No. 1-12; ECF No. 1-13; ECF No. 1 at 2). On September 27, 2025, Petitioner was transferred to the Broward Transitional Center (BTC) in Pompano Beach, Florida (*see* ECF No. 1-13).

On September 25, 2025, Petitioner filed a motion to reopen with the EOIR Miami Immigration Court (*see* ECF No. 1-7). That motion has been granted (Attachment 1). Petitioner remains detained at BTC, under section 235(b)(2) of the INA.

ARGUMENT

I. This Court Lacks Jurisdiction to Hear the Petition.

A party filing a complaint in federal court must demonstrate that it possesses Article III standing to raise its claims and that this Court has subject matter jurisdiction over those claims. S*ee Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The party asserting federal-court jurisdiction has the burden of proving that such jurisdiction exists. *Nuveen Mun. Trust ex rel. Nuveen High Yield Mun. Bond Fund v. WithumSmith Brown, P.C.*, 692 F.3d 283, 293 (3d Cir.

2012). The presumption is that a federal court lacks jurisdiction without affirmative evidence that it exists, and a district court may "weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Id.* In this case, Petitioner is unable to meet that burden because Congress removed this Court's jurisdiction.

A. 8 U.S.C. § 1252(g) Bars Review of Petitioner's Claims.

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] *to commence proceedings*, adjudicate cases, *or execute removal orders against any alien.*" 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security's decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly "aris[es] from" the decision to commence removal proceedings against an alien. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) ("The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]") (emphasis added); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F.

Supp. 2d 1061 (N.D. Ill. 2007) ("[Plaintiff's] detention necessarily *arises from* the decision to initiate removal proceedings against him.") (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) ("The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. ... Thus, an alien's detention throughout this process *arises from* the [Secretary]'s decision to commence proceedings[]" and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999) ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'").

As such, judicial review of the Petitioner's claim is barred by § 1252(g).

B. 8 U.S.C. § 1252(b)(9) Bars Review of Petitioner's Claims.

Moreover, this Court lacks jurisdiction to hear Petitioner's claim because jurisdiction only arises in the Court of Appeals. Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. AADC*, 525 U.S. at 483. Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*,

627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the decision and action to detain him (ECF No. 1 at 2 ("Although the Petitioner does not have any arrests or criminal history anywhere in the world, ICE detained him at the beginning of September 2025...")) and is thus an "action taken . . . to remove [him] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that

"§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, the Petitioner *does* challenge the government's decision to detain him in the first place. *See, e.g.*, ECF No. 1 at 2 ("Although the Petitioner does not have any arrests or criminal history anywhere in the world, ICE detained him at the beginning of September 2025…". Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS's decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner's claims for lack of jurisdiction under § 1252(b)(9). The Petitioner must present his claims before the appropriate court of appeals because he challenges the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

II. Petitioner Failed to Exhaust His Administrative Remedies.

This Court can dismiss on the alternative grounds that Petitioner failed to exhaust his administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Here, Petitioner has not availed himself of the administrative remedies available to him. Specifically, Petitioner could have filed a motion for custody review before an Immigration Judge now that his Motion to Reopen has been granted (Attachment 1). He has not done so.

III. Petitioner's Due Process Claims Lack Merit.

If this Court disagrees and finds that it has jurisdiction over the Petition, this Court should deny the Petition because there has been no violation of Petitioner's Due Process rights. In this case, Petitioner is an applicant for admission seeking admission to the United States and is being lawfully detained, pursuant to section 235(b)(2) of the INA. Specifically, any alien, who like Petitioner entered the United States without inspection and is present in the United States, is an applicant for admission, *see* INA §235(a)(1). As an applicant for admission seeking admission to the United States in removal proceedings, Petitioner is subject to mandatory detention, pursuant to INA § 235(b)(2)(A).[2]

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[2] Petitioner has not raised a claim under *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (*see* ECF No. 3 (noting how Petitioner failed to cite applicable caselaw)). To the extent that the Petition's Due Process claim could be construed as being based on a fear of prolonged detention (*see* ECF No. 1 at 2 (making a single reference to "prolonged detention")), that claim lacks merit.

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), a case involving *post order* detention, 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. 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 is no longer subject to post order detention and has only been detained since September 9, 2025 (*see* ECF No. 1-9), meaning he failed to establish the first prong under *Akinwale*. *See, e.g. O.D. v. Warden, Stewart Detention Ctr.*, 2021 WL 5413968, at *4-5 (M.D. Ga. Jan. 14, 2021) (Report and Recommendation), *adopted by* 2021 WL 5413966 (M.D. Ga. Apr. 1, 2021) (denying habeas relief to petitioner who had been detained for nineteen months); *Sigal v. Searls*, 2018 WL 5831326 at *5, 9 (W.D.N.Y. Nov. 7, 2018) (denying habeas relief to petitioner detained for seventeen months after "tak[ing] into account all of the factual circumstances"); *see also Hylton v. Shanahan*, No., 2015 WL 3604328, at *6 (S.D.N.Y. June 9, 2015) (detention without

For this reason, any Due Process claim based on prolonged detention lacks merit.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be dismissed for lack of jurisdiction or, in the alternative, denied on the merits.

Respectfully submitted,

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bail for roughly two years did not violate due process); *Luna-Aponte v. Holder*, 143 F. Supp. 2d 189, 197 (W.D.N.Y. 2010) (three years).