

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO: 25-CV-22914-RUIZ

EDMUND GRIGORIAN,

Petitioner,

v.

U. S. ATTORNEY GENERAL, et al.,

Respondents.

DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the Court's Order Denying Petitioner's Motion for Temporary Restraining Order (ECF No. 13), Respondents, Pamela Bondi, United States Attorney General, *et al.*, hereby show cause why Petitioner Edmund Grigorian's Petition for Habeas Corpus (ECF No. 1) should not be granted.

INTRODUCTION AND BACKGROUND

Petitioner Edmund Grigorian is a national of Iran. *See* Petition at ¶ 18. In 1982, Grigorian and his family were granted asylum in the United States. *Id.* at ¶ 19. In 2002, Grigorian adjusted his status to that of lawful permanent resident. *Id.* at ¶ 20. In 2007, however, Grigorian was convicted on six counts of mail and wire fraud in connection with a scheme to defraud consumers of DVD vending machines. *See* Judgment in a Criminal Case, ECF No. 325 in *United States v. Edmund Grigorian*, Case No. [REDACTED] Grigorian was

sentenced to nine years in prison followed by three years of supervised release, and ordered to pay \$3,113,799.00 in restitution. *Id.*¹

On October 27, 2009, U.S. Immigration and Customs Enforcement (“ICE”) encountered Grigorian at Moshannon Valley Correctional Facility (“MVCF”) in Phillipsburg, Pennsylvania and issued an immigration detainer.² *See* Declaration of Deportation Officer Jean Josil (“Josil Decl.”), attached hereto as Exhibit A, at ¶ 11. On December 10, 2009, ICE served Grigorian with a Notice to Appear charging him with removability pursuant to Sections 237(a)(2)(A)(i) and (iii) of the Immigration and Nationality Act (“INA”) (codified at 8 U.S.C. § 1227(a)), for being convicted of a crime of moral turpitude within five years of admission for which a sentence of more than one year may be imposed; an aggravated felony involving fraud over \$10,000; an aggravated felony involving theft resulting in at least one year of incarceration; and an aggravated felony involving conspiracy to commit theft and/or fraud. *Id.* at ¶ 12. *See also* Exhibit B to Plaintiff’s Petition (ECF No. 1-1).

On July 18, 2011, following a merits hearing while detained at MVCF, an Immigration Judge denied Grigorian’s request for a waiver of removal and ordered Grigorian removed. Nelson Decl. at ¶ 13. Although he was ordered removed to Iran, the presiding Immigration Judge deferred Petitioner’s removal to that country under Article 3 of the Convention Against

¹ Although Plaintiff made minimum payments while incarcerated and on supervised release, he has made no voluntary payments toward restitution since 2018 and the restitution debt to Plaintiff’s victims, including interest, is now greater than \$6 million.

² A detainer is a request from ICE that asks a federal, state or local law enforcement agency — including jails, prisons or other confinement facilities — to notify the agency as early as possible before they release a removable alien, and to hold the alien for up to 48 hours beyond the time they would ordinarily release them so DHS has time to assume custody in accordance with federal immigration law. *See* <https://www.ice.gov/immigration-detainers> (visited July 29, 2025).

Torture (“CAT”), based upon a finding that Plaintiff would more likely than not be tortured “if returned to Iran.” *See* Josil Decl. at ¶ 13; Petition Ex. B. (ECF No. 1-1 at 29). The removal order became final when the Board of Immigration Appeals (“Board”) dismissed Grigorian’s appeal on October 21, 2011. Josil Decl. at ¶ 14.³

On February 20, 2013, ICE issued Grigorian an order of supervision (“OSUP”) and canceled the detainer so that Grigorian could transfer to a halfway house upon his release from confinement. *Id.* at ¶ 15. Grigorian thereafter remained out of custody, but subject to a final order of removal.

On June 23, 2025, ICE Fugitive Operations encountered Grigorian at the ICE Miramar office in Miramar, Florida,. *Id.* at ¶ 16. ICE revoked Grigorian’s OSUP pursuant to his final order for the purpose of effecting his removal and placed him into custody at the Krome North Service Processing Center. *Id.* at ¶ 17. On the same day, ICE issued Grigorian a Notice of Revocation of Release. *See* Exhibit C hereto. The Notice informed Mr. Grigorian that the decision to keep him in custody was based “on a review of [his] file and/or [his] personal interview.” *Id.* The Notice specifically referenced the “[m]ost recent BIA decision in [Petitioner’s] case,” in which the Board, on October 21, 2011, dismissed Grigorian’s appeal of the Immigration Judge’s denial of a waiver of removability under § 212(h) of the INA and made Grigorian subject to a final removal of order . *Id.*

The Notice of Revocation of Release advised Grigorian that he would “promptly be afforded an informal interview” at which he would be given an opportunity to respond to the reasons for the revocation. *Id.* The Notice further advised Grigorian that if he were not released

³ A copy of the BIA’s Order is attached hereto as Exhibit B. The BIA’s dismissal of Plaintiff’s appeal made the Immigration Judge’s Order of Removal final. *See* 8 CFR § 1241.1(a).

after the informal interview, he would receive notification of a new review, which would occur “within approximately three months of the date of this notice.” *Id.*

ICE Enforcement and Removal Operations is currently pursuing Grigorian’s removal to a third country, other than Iran. Josil Decl. at ¶ 18.

Grigorian filed his Petition in this action on June 27, 2025. *See* Petition (ECF No. 1). He presents three grounds for relief. First, Grigorian argues that his detention violates both ICE’s own regulations and the Due Process Clause of the Fifth Amendment. *See* Pet. ¶¶ 31–34. Second, because the Removal Order does not allow Grigorian to be deported to Iran and does not specify a third country to which he can be deported, Grigorian argues any steps taken to execute his Removal Order will violate his due process rights if he is not provided notice and the opportunity to be heard to contest his removal to such third country. *Id.* ¶ 37. Third, Grigorian argues that he must be released from detention under the Supreme Court’s decision in *Zadvydas v. Davis*, which allows aliens held in post-removal-period detention for longer than 180 days to challenge their detention in a § 2241 habeas proceeding where there is no significant likelihood of removal in the reasonably foreseeable future. *See* 533 U.S. 678, 700–01 (2001).

Grigorian also sought a temporary restraining order requiring his immediate release from ICE’s custody, prohibiting his removal from this District, and requiring the government to provide him with notice and a hearing where he can confront and oppose removal to any alternative third country that agrees to accept him. *See* Petition (ECF No. 1). The Court denied Grigorian’s motion for a TRO, finding that he had not established a likelihood of success on the merits. *See* ECF No. 13. Specifically, the Court found that Grigorian failed to demonstrate that ICE lacked the authority to revoke his release or that it failed to comply with the applicable regulations. *Id.* at 9-11. The Court rejected as speculative Grigorian’s argument that any steps

taken to remove him to a third country would violate his due process rights. *Id.* at 11-13. And the Court found that Grigorian had failed to state a claim under *Zadvydas* because he has not been detained for more than six months. *Id.* at 13-15.

The Court should deny Grigorian's Petition for Habeas Corpus on the same grounds. First, the regulation governing the detention of criminal aliens does not limit ICE's authority to revoke supervised release to instances where the alien has violated the conditions of release. *See* 8 CFR § 241.4(l)(2). The agency can revoke release when "it is appropriate to enforce a removal order." *Id.* ICE had the authority to revoke Grigorian's release and complied with all requirements of the regulation when it exercised that authority. Second, Grigorian has not been, and will not be, denied due process in connection with his removal to a third country. His arguments to that effect are speculative and unfounded. And third, Grigorian's argument that his detention is unlawful under *Zadvydas* is still premature, as he has been in ICE custody far less than 180 days.

Grigorian's Habeas Petition seeks an order requiring his immediate release from ICE custody, prohibiting his removal from this District, and requiring the government to provide him with notice and a hearing where he can confront and oppose removal to any alternative third country that agrees to accept him. As explained below, Grigorian is not entitled to an order requiring his release or preventing his removal.

ARGUMENT

I. ICE lawfully revoked Grigorian's supervised release.⁴

⁴ As a preliminary matter, the Court has found, on the basis of the record as it currently stands, that it has subject matter jurisdiction to review the lawfulness of the revocation of Grigorian's release notwithstanding 8 U.S.C. § 1252(g), which provides that "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

Grigorian argues that his detention violates 8 CFR § 241.4(l)(2) because he has not violated the terms of his supervision. As the Court has already observed, however, the regulation does not limit ICE's authority to revoke an alien's supervised release to instances where the person has violated the conditions of release. Under 8 CFR § 241.4(l)(2), ICE has discretion to revoke an alien's release when, in the opinion of the revoking official:

- (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)(emphasis added).

Attorney General to commence proceedings, adjudicate cases, or execute removal orders." ECF No. 13 at 8. The Court reasoned that

Grigorian does not challenge the decision to execute his removal, the decision to detain him, the methods by which he was detained, or the Government's authority to deport or detain him. Rather the "basis of [his] claim" is that ICE did not "comply with the statutory requirements required to revoke an Order of Supervision outlined in 8 C.F.R. § 241.4(l)(2)." Pet. ¶ 5. And Grigorian maintains that he "is not challenging the validity of the final order of removal, but rather the legality of detention." *Id.* at 5. Accordingly, the Petition does not appear to challenge any decision or action to detain Grigorian in furtherance of the execution of his Removal Order—instead, it constitutes a challenge to the "underlying legal bases" of those decisions or actions.¹ *Madu* [*v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006)] (citations omitted). Reading § 1252(g) as foreclosing judicial review of such claims risks running afoul of the Supreme Court's admonition that § 1252(g) is not "a general jurisdictional limitation" on "all claims arising from deportation proceedings." [*Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999)].

ECF No. 13 at 8. Respondents respectfully submit that the further-developed record demonstrates that the revocation of Grigorian's supervised release arises "from [a] decision or action by the Attorney General to . . . execute [a] removal order[]" and judicial review is, therefore, barred by 8 U.S.C. § 1252(g).

Here, ICE revoked Grigorian's release to enforce the final removal order against him. *See* Josil Decl. at ¶ 17. As required by the regulation, ICE "notified [Grigorian] of the reasons for revocation of his [] release" and is providing him "an initial informal interview" at which he will have "an opportunity to respond to the reasons for revocation stated in the notification." *See* 8 CFR § 241.4(l)(3) and Exhibit C hereto. ICE's Notice explains to Grigorian that, if he is not released from custody following the informal interview, ICE will schedule a review process which will ordinarily be expected to occur within approximately three months after release is revoked. *Id.* Pursuant to the regulation, "[t]hat custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." 8 CFR § 241.4(l)(3).

Thus, ICE's revocation of Grigorian's supervised release was lawful, undertaken for a purpose permitted by 8 CFR § 241.4(l)(2), and in accordance with the requirements of the regulation.

II. Grigorian's continued detention pending removal is lawful.

Grigorian's argument that his detention is unlawful because he cannot be deported to Iran and the government has not identified a third country to which he *could* be deported also fails. Under INA section 241 (codified at 8 U.S.C. § 1231), "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231 (a)(1)(A). That 90-day period is called the "removal period." During the removal period, the Attorney General is required to detain the alien. 8 U.S.C. § 1231(a)(2)(A). "An alien ordered removed who is inadmissible under section 1182 of this title. . . may be detained beyond the removal period" or released subject to supervision. 8 U.S.C. § 1231(a)(6).

In *Zadvydas*, the Supreme Court held that § 1231(a)(6) only authorizes detention for a period reasonably necessary to remove the alien, and “does not permit indefinite detention.” *Zadvydas*, 533 U.S. at 682 (“[W]e construe the statute to contain an implicit ‘reasonable time’ limitation”). To help guide lower court determinations, and to limit the occasions when courts will need to make them, the Court held that six months of post-removal-order detention is presumptively reasonable. *Id.* at 700–01. Even in cases where detention is longer than the presumptively reasonable period, the Supreme Court held that “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.” *Id.* at 701.

Thus, to state a valid claim under *Zadvydas*, a detained alien must show (1) “post-removal order detention in excess of six months” and (2) “a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Grigorian has not made such a showing.

As of this filing, Grigorian has been detained in ICE’s custody for approximately 38 days – a period far shorter than the 180-day period held presumptively reasonable under *Zadvydas*. Accordingly, Grigorian’s challenge to his detention is premature. *See Gonzalez v. Barr*, Case NO. 20-10130-CV-KING, 2020 WL 7294570 (S.D.Fla. Dec. 10, 2020) (King, J.) (“the 180 days in post-order custody must have expired before an individual can challenge custody under 8 U.S.C. § 1231”); *Salpagarova v. Immigration and Naturalization Service*, Case No. 20-61739-CV-SINGHAL, 2020 WL 13550204 (S.D.Fla. Oct. 20, 2020) (Sighal, J.) (“Petitioner is not entitled to relief because she has not been detained for more than six months after being subject to a final order of removal”); *Louis v. U.S. Atty. Gen’l*, Case No. 2:20-cv-135-FtM-38NPM, 2020 WL 1049169 (M.D. Fla. Mar. 4, 2020) (“when he filed the Petition, Petitioner had been in custody

only 92 days, much less than the 180-day presumptive reasonable period. The Court dismisses the Petition without prejudice as premature”).

III. Grigorian’s due process claim remains speculative.

Grigorian argues that because his Removal Order does not allow him to be deported to Iran and does not specify a third country to which he *can* be deported, any steps taken to execute his Removal Order violate his due process rights unless he is provided notice and the opportunity to be heard to contest his removal to a third country. Petition (ECF No. 1) at ¶ 37. Grigorian thus asks the Court to “[o]rder the government to provide [him] with notice and a hearing where he can confront and oppose removal to any alternative third country that agrees to accept him, if one is identified.” *Id.* at 15. The Court has correctly observed that Grigorian’s argument is entirely speculative. *See* Order Denying TRO, ECF No. 13 at 12.

ICE is currently pursuing Grigorian’s removal to a country other than Iran. *See* Josil Decl. at ¶ 18. ICE has not yet designated a third country to which Grigorian may be removed. Therefore, Grigorian is arguing that “he has been deprived of due process by a decision that has not yet been made in a proceeding that has not yet happened.” Order Denying TRO (ECF No. 13) at 12. Grigorian has thus failed to allege a case or controversy as required for the Court to exercise its authority under Article III of the Constitution. *Id.* (citing *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000) and *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). In essence, Grigorian’s suit seeks to prevent “a possible future injury,” but his allegations do not suffice for Article III standing because he has failed to establish that such injury is imminent. *Id.* at 12-13.

The Court here has ordered Respondents to “immediately provide the Court with notice if there is any change in Petitioner’s immigration status; any action or planned action regarding

whether Petitioner may be deported to a third country other than Iran; any action or attempt to move Petitioner outside the jurisdiction of this Court; or any other action or planned action that would otherwise affect Petitioner's ability to remain in the United States or the Court's ability to retain jurisdiction over this action." Order Denying TRO, ECF No. 13 at 16.

At the time of Respondents' Response to Grigorian's Motion for a Temporary Restraining Order and the hearing thereon, in accordance with the injunction issued in *D.V.D. v. United States Department of Homeland Security*, Case No. 25-10676-BEM, 2025 WL 1142968 (D. Mass. April 18, 2025) ("*DVD*"), ICE procedures specified that when a third country was designated for the purpose of removal of an alien subject to a final order of removal, the alien would be provided notice and an opportunity to challenge the removal on the basis that he has a fear of persecution or torture in such third country. As of July 3, 2025 (after the Court's hearing on Grigorian's TRO Motion), pursuant to the Supreme Court's ruling on the government's application for a stay of the District Court's injunction in *DVD* (*see Department of Homeland Security v. D.V.D.* 145 S.Ct. 2153 (June 23, 2025)), ICE follows the Department of Homeland Security's "Guidance Regarding Third Country Removals." A copy of DHS's memorandum providing the Guidance is attached hereto as Exhibit D.

DHS' Guidance explains the procedures to be followed in cases of aliens subject to final orders of removal. It provides that, before an alien's removal to a country that had not previously been designated as the country of removal, DHS must determine whether that country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured. If the United States has received such assurances, and if the U.S. Department of State ("DOS") finds those assurances to be credible, the alien may be removed without the need for further procedures. *Id.* at 1-2.

If the United States has not received those assurances, or if the DOS does not find them to be credible, DHS will provide the alien with notice of the third country and an opportunity to assert a fear of return to that third country. If an alien asserts a fear of return to that third country, U.S. Citizenship and Immigration Services (“USCIS”) will screen the alien for eligibility for protection under 8 U.S.C. § 1231(b)(3) and the CAT for the country of removal. *Id.* at 2. Then, “USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.” *Id.* “If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the Immigration Court, USCIS will refer the matter to the Immigration Court in the first instance.” *Id.* “In cases where the alien was previously in proceedings before the Immigration Court,” The ICE Office of the Principal Legal Advisor “may file a motion to reopen with the Immigration Court or Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under [8 U.S.C. § 1231(b)(3)] and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.” *Id.*

The Guidance ensures that, in the event that a third country that has not provided satisfactory assurances that a removed alien will not be persecuted or tortured is designated as the country to which the alien will be removed, the alien will receive notice of the country of removal and a meaningful opportunity to challenge that country designation. In addition, the guidance clarifies that “DHS will follow existing procedures” for aliens who have an “ongoing proceeding in which to raise a claim under INA § 241(b)(3) or the Convention Against Torture.” Ex. D at 1 n.2. The guidance provides the process described above in a manner consistent with Congress’s intent to channel all claims related to removal through the administrative process,

while preserving DHS's discretion over matters related to the removal process and the implementation of the CAT and satisfying any due process concerns. *See* 8 U.S.C. §§ 1231(h), 1252(a)(4), (a)(5), (b)(9).

CONCLUSION

For the foregoing reasons, Plaintiff's Petition should be denied.

Respectfully submitted,

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