UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-cv-22914-RAR

EDMOND GRIGORIAN,
Petitioner,

v.

U.S. ATTORNEY GENERAL, et al.,
Respondents.
_____/

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

Petitioner respectfully files this Reply to Respondents' Response, showing cause as to why the instant Petition for Habeas Corpus (ECF No. 1) should be granted and why the Respondents 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 revocation of Mr. Grigorian's supervised release arises "from [a] decision or action by the Attorney General to . . . execute [a] removal order[]" and therefore strips this Court of jurisdiction. [ECF No. 18 at 5–6]. This is not a new argument but the same jurisdictional objection this Court has already resolved.

Respondents persist in mischaracterizing Mr. Grigorian's claim as a challenge to his removal order when the record has been unambiguous from the start that he does not contest the finality of that order, nor does he dispute Respondents' theoretical ability to remove him to a third country if they could identify one that would accept him and where he would be free from

persecution or torture. His challenge is, and always has been, to the present decision to detain him. This is a matter entirely distinct from the 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) ("[H]abeas petitions are the appropriate forum to challenge post-removal-period detention."). The Supreme Court expressly distinguished questions of detention from the decision to execute a 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 belongs in habeas. *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025). Respondents' repeated attempts to reframe this case into one it is not is meritless.

II. THE REVOCATION OF MR. GRIGORIAN'S ORDER OF SUPERVISION WAS NOT IN COMPLIANCE WITH REGULATION, AS SUPPORTED BY THE RESPONDENTS' 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, revocation 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 revocation of release in either section applies to Mr. Grigorian. He did not violate any conditions of release and no changed circumstances exist

to support a determination that there is a significant likelihood that he may be removed in the reasonably foreseeable future.

On June 23, 2025, Mr. Grigorian reported to ICE in compliance with the order of supervision ("OSUP") he has maintained since his release to a halfway house on February 20, 2013, and after completion of the halfway house on August 24, 2014. On his regularly scheduled yearly reporting day of June 23, 2025, he was not "encountered" by ICE Fugitive Operations; rather, he reported to Miramar, Florida, on his own. He was never a fugitive and always reported as required. The Notice of Revocation of Release, however, states as reason for the revocation of OSUP the "most recent BIA decision in [Petitioner's] case." This reason is preposterous because the BIA (Board of Immigration Appeals) issued its decision on October 21, 2011, when Mr. Grigorian was still serving his sentence in BOP custody. The BIA rendered its decision over a year **before** his release from BOP custody. An appellate ruling issued before his release on an order of supervision cannot factually or legally be a violation of his order of supervision. Surely ICE knew and considered this appellate decision when they made the determination of release on OSUP because they chose to lift the detainer knowing the immigration procedures were final. They would not have lifted the detainer and issued release on conditions of OSUP if the process had not been exhausted. This "recent" BIA decision of 2011 cannot constitute a violation whatsoever. Moreover, it is constitutionally offensive for ICE to use an appellate decision that demonstrated Mr. Grigorian availing himself of his due process right to appeal a legal issue as a negative factor against his stellar record of OSUP compliance. It can only be interpreted as a ruse to detain him, because it is surely not a legitimate reason to revoke his OSUP. Mr. Grigorian never violated any condition of OSUP; therefore, 8 CFR §241.13(i)(1) and 8 CFR §241.4(l)(2) (ii) do not apply.

Respondents' claim that ICE lawfully revoked Mr. Grigorian's supervised release is not based in fact or supported by the evidence the Respondents themselves presented. First, there are statutory rules that must be followed in order to properly revoke an order of supervision including proper notification for the reason of revocation 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 Mr. Grigorian's order of supervision and did not comply with the statutory requirements for revocation.

Second, the controlling regulation does not support a reason to revoke Mr. Grigorian's order of supervision. When Mr. Grigorian won relief from removal forbidding his return to his home country of Iran, DHS did not appeal. *See* **Exhibits A and B.** When he finished his sentence and was eligible to enter a half-way house, ICE lifted the immigration detainer and pursuant to 8 CFR §241.4 made the determination that he posed no danger to the public or risk of flight. There was no reason to continue to detain Mr. Grigorian 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 Mr. Grigorian on an order of supervision. This proved to be a wise decision because Mr. Grigorian has complied with all OSUP requirements without fail. *See* **Exhibit C.**

Neither regulation provisions apply to Mr. Grigorian and revoking his release on OSUP is not justified. First, 8 CFR § 241.13(i) provides only two reasons to revoke release: 1) a violation of conditions of release which cannot be supported as explained above and 2) revocation for removal

on account of changed circumstances there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. As discussed below, the government's own reports show that no such changed circumstances or significant likelihood of removal exists.

To be thorough and as stated above until a SLRRFF exists, 8 CFR § 241.4(l)(2) does not apply; however, it's four (4) reasons to revoke release also do not apply. Specifically, ICE may only revoke an order of supervision 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 § 241.4(*l*)(3) or 8 CFR § 241.13(i). The rules must be followed in order to properly revoke an order of supervision including proper notification for the reason of revocation as well as an initial interview promptly after return to Service custody. 8 CFR § 241.13(i)(3).

The Notice of Revocation of Release lists the date of service as June 18, 2025, which did not occur because Mr. Grigorian reported on June 23, 2025. The Notice states the Mr. Grigorian was personally served with the Notice of Revocation of Release at ICE/ERO Miramar Sub-Office on June 18, 2025, at 13:00. *See* ECF No. 18.3 page 2. It is uncontested that Respondents did not contact Mr. Grigorian before his scheduled Order of Supervision appointment on June 23, 2025, when they subsequently detained him. *See* **Exhibit C** for Mr. Grigorian's Form I-220B listing his supervision appointment dates that he has been reporting to consistently and without fail since he was put on the order of supervision. Further, Mr. Grigorian never had an informal interview "promptly after [his] return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 CFR § 241.13(i)(3). If an interview is to be

held, Petitioner is entitled to have the undersigned counsel present to provide evidence that he has never violated his order of supervision, and that there is no significant likelihood that he 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 lack of a violation of conditions of release on Mr. Grigorian's part, Respondents fail to meet their burden of proof that Mr. Grigorian's detention is appropriate to enforce his 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.), Order, filed August 2, 2025 (not precedent) (These regulations clearly indicate, upon revocation 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 Iran, Mr. Grigorian's deferral of removal has not been terminated, and no third country of removal where Mr. Grigorian is not likely to be tortured 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 Mr. Grigorian, as required to enforce the order of removal. *See* [ECF 16, 15, 17, 19 and 20], stating "[t]here is no change in Petitioner's immigration status. ERO continues to pursue removal to a third country other than Iran. There are no current

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[1] *See Phong Phan v. Moises Becerra,* No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 6 (E.D. Cal. July 16, 2025) (requiring petitioner's immediate release where he had been consistently complying with his order of supervision, the reason for revocation of the order was for an arrest that occurred prior to implementation of an order of supervision, and the government failed to meet its burden of proof that there was a significant likelihood of removal in the reasonably foreseeable future.)

actions or attempts to move Petitioner out of the jurisdiction of this Court. There are no current planned actions which would otherwise affect Petitioner's ability to remain in the United States." The Respondents have not presented the Court with an identified third country that is willing to accept Mr. Grigorian, 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 reasonably foreseeable future.

It is clear the Respondents have no method of effectuating Mr. Grigorian's removal order, so it is impossible for his detention to serve the purpose of enforcement. It is a gross mischaracterization by the Respondents to justify Mr. Grigorian'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. Mr. Grigorian is afraid of torture and persecution in any third country; however, to hold him to speculate as to where one day the government may be able to send him is an unconstitutional deprivation of liberty that has caused him the loss of his 11 year longstanding job where he pays his taxes to the US government, his savings, his ability to care for his extremely ill mother as her only living relative and caregiver, etc. Mr. Grigorian has a fear of persecution and fear in any country that is not the United States of America; however, the constitutional safeguards allowing him to apply for protection before the Immigration Court can only be triggered once a third country is identified. He is entitled to present his case in front of an immigration judge if Respondents are able to identify a third country of removal. Holding him until the government finds a country to accept him means there is no significant likelihood of removal in the reasonably foreseeable future. His 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 him to a third country. Surely the court cannot allow ICE to continue to detain him for violating any condition of release or for any conduct on Mr. Grigorian's part.

III. MR. GRIGORIAN'S DETENTION IS UNLAWFUL AS IT IS BEYOND THE STATUTORY REMOVAL PERIOD, AND HIS REMOVAL IS NOT REASONABLY FORSEEABLE 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 U.S.C. § 1231(a)(1)(A) and begins on the latest of three possible dates: (1) the date the order of removal becomes administratively final; (2) the date the noncitizen is released from detention or criminal custody; or (3) if the individual is subject to a judicial stay of removal, the date the stay is lifted. During this 90-day period, DHS may detain the noncitizen and make reasonable efforts to carry out the removal order. 8 U.S.C. § 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 *Zavydas* 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 the events enumerated in8 U.S.C. § 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 the six-month presumption outlined in

Zavydas, that the Respondents rely on, is **not** applicable after a revocation of an order of supervision 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 20, 2025) (finding Zadvydas 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 WL 1678501 (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).

The Respondents have made absolutely no showing that Mr. Grigorian's removal is reasonably foreseeable, or that it is even possible. The Respondents' assertion that Mr. Grigorian has not demonstrated a lack of significant likelihood of removal in the reasonably foreseeable future is particularly troubling, given their repeated admissions that no third country has been identified to effectuate his removal. **As noted above, it is not the Petitioner's burden to prove that his removal is not likely in the reasonably foreseeable future. It is the Respondents' 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, his removal is not reasonably foreseeable, and his 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 Respondents' claim that Mr. Grigorian's removal is reasonably foreseeable, as they have neither identified a third country

willing to accept him nor provided any transparency regarding their efforts to do so and the likelihood that their efforts will prove successful.

IV. MR. GRIGORIAN'S DETENTION CONSTITUTES A TANGIBLE DUE PROCESS VIOLATION.

The Respondents' detention of Mr. Grigorian constitutes a clear, non-speculative violation of Mr. Grigorian's due process, as it results in the unlawful deprivation of Mr. Grigorian's life and liberty. Mr. Grigorian's detention without following the appropriate statutory requirements was a violation of his due process rights. Further, Mr. Grigorian's 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 his removal reasonably foreseeable.

The harm to Mr. Grigorian is tangible. He has lost his job that he held for fifteen (15) years due to his detention. His ill and elderly United States Citizen mother who suffers from significant health issues rendering her almost unable to walk has been left with no caregiver. The damaging effects of the Petitioner's detention are real and significant. Yet no government purpose justifies his expensive detention.

The Respondents' position—that they may revoke an Order of Supervision after the 90-day removal period for an individual granted protection under CAT, without first identifying a third country willing to accept removal—effectively grants them unchecked authority to seize Mr. Grigorian, 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 supervision are entitled.

Furthermore, Respondents disclose to this Court that it is ICE's Policy if they receive diplomatic assurances that Mr. Grigorian will not be tortured or persecuted in a third country that

is willing to accept him, then he will be removed without the need for further procedures. *See* [ECF No. 18 at 10]; Department of Homeland Security, Policy Memorandum, *Guidance Regarding Third Country Removals* (Mar. 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. *See* **Exhibit D**. Such financial arrangements raise serious concerns about the reliability of diplomatic assurances and further call into question 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 Mr. Grigorian 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. When and if identified, Mr. Grigorian will pursue his right to appear before an immigration judge as provided in 8 U.S.C. § 1231(b).[2]

Conclusion

To be clear, Petitioner is not before this Court contesting the Respondents' right to identify a third country of removal, nor is he contesting their right to remove him to a third country after the proper procedures are followed and it is determined that he will be free from persecution and torture. He 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 Mr. Grigorian is free from the fear of torture or persecution) was identified for Mr. Grigorian's removal and his removal could realistically be

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[2] In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security assumed that "[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)]." 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pt. 241) (supplementary information). Furthermore, the Departments contemplated that, in cases where DHS sought removal to a country that was not designated in removal proceedings, namely, "removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)]," DHS would join motions to reopen "[i]n appropriate circumstances" to allow the noncitizen to apply for protection. *Id.*

carried out. The regulations clearly show that upon revocation 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 he 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 supervision, 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 Phong Phan v. Moises Becerra,* No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at 6 (E.D. Cal. July 16, 2025) (requiring petitioner's immediate release where he had been consistently complying with his order of supervision, the reason for revocation of the order was for an arrest that occurred prior to implementation of an order of supervision, and the government failed to meet its burden of proof that there was a significant likelihood of removal in the reasonably foreseeable future); *Liu v. Carter,* No. 25-3036-JWL, Memorandum and Order, at *3 (D. Kan. June 17, 2025) (ordering release of the petitioner pursuant to habeas corpus petition because revocation 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.), Order, filed August 2, 2025 (ordering the release of petitioner over the objections of the government as it failed to meet its burden of proof that it complied with the statutory requirements for a revocation of the order of supervision and that removal was significantly likely in the reasonably foreseeable future).

For the foregoing reasons, this Honorable Court should:

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

B. Immediately order the release of the Petitioner from Respondents' custody on a reinstated order of supervision;

C. Order the Respondents' to not re-detain the Petitioner until and unless they can meet their burden in demonstrating his removal becomes likely in the reasonably foreseeable future; and

D. Provide the Petitioner and undersigned counsel with sufficient notice no shorter than 30 days of a third country of removal once it has been identified and an opportunity to be heard to present a case of fear of persecution or torture if one exists.

Respectfully submitted this 14th day of August, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record.

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