IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

VLADIMIR KIM,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-262-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
Respondent.	:	

RESPONDENT'S SURREPLY

On August 15, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. On September 9, 2025, Respondent filed his Response to the Petition ("Response"). ECF No. 5. On September 17, 2025, Petitioner filed a Reply to the Response. ECF No. 6. The following day, Respondent filed a Motion for Leave to File Surreply pursuant to Middle District of Georgia Local Rule 7.3.1(C). ECF No. 7. Also on September 18, 2025, the Court granted Respondent's Motion. ECF No. 8. This is Respondent's Surreply.

In his Reply, Petitioner focuses on a factual contention put forth in Respondent's Response and uses that dispute of fact to argue that his Petition should be granted. Reply 1-2. As detailed below, this line of argument is legally irrelevant to the issue presented in the Petition and should be ignored as a red herring for four reasons. First, Respondent offers the Declaration of Supervisory Deportation and Detention Officer Selwyn Bunbury, attached hereto as Exhibit A ("Bunbury Decl."), to correct a mistaken assumption put forth in the Response and further supplement the record to explain the factual inconsistency between Respondent's and Petitioner's evidence. Second, to the extent Petitioner raised a claim arising from, or contending that he should be released from custody due to, any legal defect in the basis for his re-detention, the Court lacks subject matter jurisdiction over such a claim. Petitioner's re-detention was an exercise of the Department of Homeland Security's ("DHS") discretion in how it is to effectuate a final order of removal, and therefore the Court lacks jurisdiction over any challenge to it. *See* 8 U.S.C. § 1252(g). Third, such a claim is not cognizable in habeas because it does not challenge the legality of Petitioner's ongoing detention. Fourth, as detailed in the Response to the Petition, Petitioner is not entitled to release under *Zadvydas v. Davis*, 478 U.S. 633 (2001), because his Petition was filed prior to the expiration of the presumptively reasonable period in which to effectuate removal as described in *Zadvydas* and *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002).

I. Factual Correction

In the Response, Respondent attached the Declaration of Deportation Officer Marilyn Guerra. ECF No. 4-1. In that Declaration, DO Guerra stated that, "In February 2023, Petitioner was enrolled in [Compliance Assistance Reporting Terminal 'CART'] with a reporting frequency of once a year. However, on February 20, 2024, Petitioner failed to report." *Id.* ¶ 10. Based on the information available to DO Guerra, this statement was accurate. However, following the filing of the Response, it was brought to DHS's attention that Petitioner was in possession of a document "consistent with what aliens receive when they report to [Immigration and Customs Enforcement ('ICE')] using a CART kiosk." Declaration of Acting Supervisory Deportation and Detention Officer (ASDDO) Selwyn Bunbury ("Bunbury Decl.") ¶ 4, attached hereto as Exhibit A. To this date, "ICE databases do not contain a record of Petitioner reporting on February 20, 2024." *Id.* ¶ 5.

Compounding the factual dispute, DO Guerra also stated that "[o]n February 25, 2025, Petitioner reported and was arrested by [Enforcement and Removal Operations ('ERO')] because he failed to report the previous year." ECF No. 4-1 at ¶ 11. This statement is inaccurate in that it purports to limit the bases upon which Petitioner's release was revoked and he was re-detained on

February 25, 2025. As clarified by ASDDO Bunbury, "Petitioner was detained and his Order of Supervision [('OSUP')] was revoked for the purpose of enforcing Petitioner's final order of removal pursuant to ICE's authority under Immigration and Nationality Act ('INA') § 241 [8 U.S.C. § 1231] and 8 C.F.R. § 241.4(l)(2)." Bunbury Decl. ¶ 6.

The relevant statute and implementing regulations cited by ASDDO Bunbury entrusts to the discretion of DHS how to effectuate the execution of removal orders, including detention, supervision, and re-detention of non-citizens subject to a final order of removal. Section 1231(a)(3) directs the Attorney General to promulgate regulations governing the supervision of those non-citizens who are not removed during the statutory removal period. Title 8 Code of Federal Regulations Section 241.4 is one of those regulations promulgated to address these circumstances. That regulation states in subsection (l)(2):

> ***Determination by the Service.*** The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion 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 C.F.R. § 241.4(l)(2). Thus, whether Petitioner reported as directed in February 2024 or not, DHS was authorized to revoke his release for any of the reasons stated above. *Id.* This being the case, there is no need to burden the Court with an evidentiary hearing to resolve this factual dispute because it does not impact the underlying issue of the legality of Petitioner's re-detention. Further,

as discussed below, any claim that the circumstances of Petitioner's re-detention were violative of his rights is outside the jurisdiction of the Court and not cognizable in this habeas proceeding, and is irrelevant to the question of whether Petitioner has met his burden under *Zadvydas* and *Akinwale*.

II. Subject Matter Jurisdiction

As discussed above, Petitioner's Petition and Reply center around the idea that the revocation of Petitioner's OSUP was in violation of Petitioner's due process rights. *See* Pet. 12-20 (arguing that Petitioner was entitled to a hearing prior to his re-detention); *see also* Reply 1-2 (suggesting that Respondent's "entire justification for the need to detain Petitioner fails.") To the extent the Court construes this as an independent claim for habeas relief, it fails because the Court is without subject matter jurisdiction to consider it pursuant to 8 U.S.C. § 1252(g) and, alternatively, ICE/ERO has the discretion to revoke an OSUP.[1]

First, the Court lacks jurisdiction over Petitioner's claim under 8 U.S.C. § 1252(g) because it seeks judicial review of an action to execute a removal order.[2] Section 1252(g) is a jurisdiction-stripping provision in the INA, which provides that,

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . 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 Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

[1] Further, if this is not an independent ground for relief, it is an entirely extraneous argument to the real question before the Court. There is ample precedent affirming the Government's authority to detain non-citizens in furtherance of execution of a removal order. *Zadvydas*, 533 U.S. at 689; 8 U.S.C. § 1231(a)(6). The Supreme Court clearly explained in *Zadvydas* that the only due process consideration in this circumstance is whether detention has become prolonged. *Id.* The Eleventh Circuit in *Akinwale* detailed the legal standard for determining when detention is unconstitutionally prolonged. 287 F.3d at 1052.

[2] It is Respondent's position that section 1252(g) bars only any claim by Petitioner challenging ICE/ERO's *decision to detain him at all* rather than allow him to remain on an OSUP. As discussed above and below, Petitioner's challenge to whether his *continued detention* complies with 8 U.S.C. § 1231(a)(6) is governed by *Zadvydas*, and Respondent does not contend that section 1252(g) bars that challenge.

8 U.S.C. § 1252(g). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

ICE/ERO's decision to detain a non-citizen subject to a final order of removal is an action taken to "execute [a] removal order[]" within the meaning of the section 1252(g) jurisdictional bar. In the context of pre-final order of removal detention, the Eleventh Circuit has held that "securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings" within the purview of section 1252(g). *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This Court has reached the same conclusion. *Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) ("Plaintiff's claims that she was falsely arrested when she was transferred into ICE custody . . . 'challenge[] the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.'" (quoting *Gupta*, 709 F.3d at 1065 (alterations in original))).

Here, ICE/ERO's detention of Petitioner upon revocation of his OSUP was an action taken to execute his removal order. Other courts have adopted this view and held that section 1252(g) bars any challenge to ICE/ERO's decision to detain a non-citizen pending execution of a final order of removal. *See Kareva v. United States*, 9 F. Supp. 838, 844 (S.D. Ohio 2014) ("The Court finds that Section 1252(g) does apply in this case because Plaintiff's claim for false arrest and imprisonment arises from "the decision or action by the Attorney General to . . . execute removal orders." (quoting 8 U.S.C. § 1252(g)); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067-68 (N.D.

Ill. 2007) (holding that section 1252(g) barred plaintiff's claim arising from his arrest pursuant to his final order of removal). The Court should therefore dismiss Plaintiff's challenge to ICE/ERO's decision to detain him for lack of subject matter jurisdiction.

Second, even assuming the Court finds it retains jurisdiction over Petitioner's claim—which it should not—the claim lacks merit because ICE/ERO retains the discretion to revoke an OSUP. Under 8 U.S.C. § 1231(a)(6), where a non-citizen was ordered removed based on *inter alia*, a conviction of an aggravated felony under 8 U.S.C. § 1227(a)(2), ICE/ERO has the discretion to detain the non-citizen beyond the 90-day removal period or release the non-citizen under an OSUP. *See also* 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4(a). Beyond this inherent discretion, even if a non-citizen is released under an OSUP, ICE/ERO is permitted to revoke the OSUP in its discretion in two ways. First, ICE/ERO may revoke an OSUP if the non-citizen violates the conditions of release. 8 C.F.R. § 241.4(l)(1), (l)(2)(ii). Second, as detailed above, ICE/ERO has the discretion to revoke an OSUP even if the non-citizen does not violate the conditions of release. 8 C.F.R. § 241.4(l)(2).

Here, ICE/ERO released Petitioner under an OSUP on July 29, 2009. Guerra Decl. ¶ 9. However, on February 25, 2025, ICE/ERO exercised its discretion to re-detain Petitioner. *Id.* ¶ 11. Petitioner protests that he did not violate the conditions of his OSUP while released. Reply 1-2. But as explained above, ICE/ERO has the inherent discretion to detain him beyond the 90-day removal period because he was ordered removed under 8 U.S.C. § 1227(a)(2) based on his conviction of an aggravated felony. 8 U.S.C. § 1231(a)(6). And ICE/ERO also has the discretion to continue detention despite his earlier release under an OSUP even if he did not violate the conditions of his release. 8 C.F.R. § 241.4(l)(2). Another district court in the Eleventh Circuit just recently reached this same conclusion. *Grigorian v. Bondi*, No. 25-cv-22914-RAR, 2025 WL

1895479, at *6 (S.D. Fla. July 8, 2025) ("It is therefore not the case that ICE may revoke an order of supervision only if an alien violates conditions of release or if the conditions supporting release no longer exist."). Indeed, ICE/ERO specifically decided to re-detain Petitioner for enforcement of his final order of removal. Bunbury Decl. ¶ 6; *see also* 8 C.F.R. § 241.4(l)(2)(iii). Thus, ICE/ERO validly exercised its discretion to detain Petitioner despite his prior release under an OSUP.

III. Claim Not Cognizable in Habeas

Despite attempts to intermingle the issues, Petitioner's arguments regarding the legality of his re-detention challenge the nature of his arrest—not his ongoing detention. At most, this claim would amount to a *Bivens* claim against the officials who arrested Petitioner. *See Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971); *see also Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1205-1213 (11th Cir. 2016). Petitioner, however, may not raise habeas claims and a *Bivens* claim in the same action. *See Corbin v. Dep't of Veteran Affairs*, No. 2:15-cv-1174, 2015 WL 10384134, at *2 (N.D. Ala. Dec. 11, 2015). "Although the scope of the writ of habeas corpus has been extended beyond that which the most literal reading of the statute might require, the Court has never considered it a generally available federal remedy for every violation of federal rights." *Lehman v. Lycoming Cty. Children's Servs. Agency*, 458 U.S. 502, 510, (1982). "[W]hatever the expanded scope of our jurisdiction may be, the remedy that habeas corpus provides remains tied to some form of relief from the petitioner's custody." *Arnaiz v. Federal Satellite Low*, 594 F.3d 1326, 1329 (11th Cir. 2010) (per curiam). Given that Petitioner's arguments about his re-detention go to the legality of his re-detention and revocation of his OSUP and not the legality of his ongoing detention, the claim is not cognizable in habeas and should be denied.

IV. Petitioner is Not Entitled to Relief Under *Zadvydas*

With all of the above in mind, the appropriate framework for review of Petitioner's Petition is detailed in *Zadvydas* and its progeny. As detailed in Respondent's Response, the Eleventh Circuit in *Akinwale* elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating 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. Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52).

Petitioner has not shown that he was detained more than the presumptively reasonable six-month period that the Eleventh Circuit has set as the benchmark prior to the filing of his Petition. Thus, he cannot make out a claim under *Zadvydas*, and his Petition should be denied. The circumstances surrounding a petitioner's detention are not a part of the *Zadvydas*/*Akinwale* framework, and therefore any dispute about the legality of that detention is irrelevant to the underlying question presented by the Petition.

CONCLUSION

For the reasons stated in Respondent's Response and herein, Respondent respectfully requests the Court deny Petitioner's Petition for Writ of Habeas Corpus.

Respectfully submitted, this 22nd day of September, 2025.

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

V.K., Petitioner, v. Warden, STEWART DETENTION CENTER, *et al.*, Respondents.	))))))))))	Case No. 4:25-cv-262-CDL-AGH 28 U.S.C. § 2241

DECLARATION OF
ACTING SUPERVISORY DEPORTATION AND DETENTION OFFICER
SELWYN BUNBURY

Pursuant to 28 U.S.C. § 1746, I, Selwyn Bunbury, do hereby declare:

1. I am employed by U.S. Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), and currently serve as an acting Supervisory Deportation and Detention Officer at the Atlanta Field Office.

2. I provide this declaration based on my personal knowledge, belief, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, employees of DHS contract facilities, and information portals maintained and relied upon by DHS in the regular course of business.

3. Vladimir Kim ("Petitioner"), whose alien registration number is [redacted] is subject to a final order of removal to Uzbekistan.

4. I have reviewed a receipt contained in Petitioner's habeas petition, marked as Exhibit G, that notates on February 20, 2024, Petitioner reported to Compliance Assistance Reporting Terminal ("CART"). This document is consistent with what aliens receive when they report to ICE using a CART kiosk.

5. ICE databases do not contain a record of Petitioner reporting on February 20, 2024.

6. On February 25, 2025, Petitioner was detained and his Order of Supervision was revoked

for the purpose of enforcing Petitioner's final order of removal pursuant to ICE's authority under Immigration and Nationality Act ("INA") § 241 and 8 C.F.R. § 241.4(l)(2).

Pursuant to Title 28, U.S. Code Section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, this 19th day of September, 2025.

SELWYN W BUNBURY Digitally signed by SELWYN W BUNBURY
Date: 2025.09.20 06:14:04 -04'00'

Selwyn Bunbury, (a)SDDO
Department of Homeland Security
Immigration and Customs Enforcement