

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

ALEKSANDR S. FILONENKO,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-307-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, ¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On September 26, 2025, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. Petitioner raises seven claims challenging his detention following revocation of his order of supervision (“OSUP”). Pet. ¶¶ 64-114, ECF No. 1. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Russia who has most recently been detained post-final order of removal pursuant to 8 U.S.C. § 1231(a)(6) since August 16, 2025. Andrade Decl. ¶¶ 4-5.

On or about October 16, 1995, Petitioner was admitted into the United States as an immigrant. *Id.* ¶ 4 & Exs. A, B. On or about April 14, 2000, Petitioner was convicted of entering an automobile and possession of tools for commission of a crime in the Superior Court of Gwinnett

¹ In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in his Petition. Pet. ¶¶ 17-21. “[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

County, Georgia. *Id.* ¶ 6 & Ex. C. He was sentenced to two years probation. *Id.* ¶ 6 & Ex. C. On or about August 7, 2000, Petitioner was convicted of driving with a suspended or revoked license in Gwinnett County, Georgia. *Id.* ¶ 7 & Ex. C. He was sentenced to two days in jail and a fine. *Id.* ¶ 7 & Ex. C. On or about October 4, 2004, Petitioner was convicted of multiple offenses in the Superior Court of Jasper County, Georgia, including (1) fleeing or attempting to elude an officer, (2) driving without insurance, (3) reckless driving, and (4) driving while license revoked. Andrade Decl. ¶ 8 & Ex. D. He was sentenced to five years in jail. *Id.* ¶ 8 & Ex. D.

On January 26, 2006, Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) encountered Petitioner at Smith State Prison in Glennville, Georgia. *Id.* ¶ 9 & Ex. C. On February 2, 2006, ICE/ERO issued Petitioner a Notice to Appear (“NTA”) charging him with removability pursuant to Immigration and Nationality Act (“INA”) § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), based on his conviction of an aggravated felony, specifically a crime of violence as defined in INA § 101(a)(43)(F), 8 U.S.C. § 1101(a)(43)(F). *Id.* ¶ 10 & Ex. E.

On February 15, 2006, Petitioner entered ICE/ERO custody for the first time. *Id.* ¶ 11. On May 30, 2006, an immigration judge (“IJ”) ordered Petitioner removed. *Id.* ¶ 12 & Ex. F. Petitioner waived appeal, so his removal order became final on the same day. Andrade Decl. ¶ 12 & Ex. F; *see also* 8 C.F.R. § 1241.1(b). On October 10, 2006, Petitioner was released from ICE/ERO custody on an OSUP. Andrade Decl. ¶ 13 & Ex. G.

On or about August 7, 2025, Petitioner was required to begin wearing a global positioning system (“GPS”) monitor. *Id.* ¶ 14. On August 16, 2025, ICE/ERO determined Petitioner’s location using the GPS monitor and encountered him at his home. *Id.* ¶ 15 & Ex. A. On the same day, Petitioner re-entered ICE/ERO custody for enforcement of his final order of removal. *Id.* ¶ 16. On

October 15, 2025, ICE/ERO served Petitioner with a Notice of Revocation of Release. *Id.* ¶ 17 & Ex. H. This first Notice cited the incorrect basis for Petitioner’s OSUP revocation and was not signed by the ICE/ERO Assistant Field Office Director (“AFOD”). *Id.* ¶ 17 & Ex. H. On October 17, 2025, ICE/ERO served Petitioner with a corrected Notice of Revocation of Release signed by the AFOD. Andrade Decl. ¶ 18 & Ex. I. On October 22, 2025, ICE/ERO conducted an informal interview with Petitioner to afford him an opportunity to respond to the Notice of Revocation of Release. *Id.* ¶ 19 & Ex. J.

Russia is currently issuing travel documents for Russian nationals, including those born under the former United Soviet Socialist Republic (“USSR”) who have registered for Russian citizenship. Harrison Decl. ¶ 4. An in-person interview is required for issuance of a travel document. *Id.* During the interview, the non-citizen must voluntarily consent to the issuance of a travel document. *Id.* Petitioner’s file contains Russian identity documents issued under the USSR. *Id.* ¶ 5. ICE/ERO is currently in the process of requesting a travel document from Russia. Andrade Decl. ¶ 20; Harrison Decl. ¶ 6. On October 2, 2025, ICE Headquarters (“HQ”), Removal and International Operations (“RIO”) reviewed an initial travel document request for Petitioner submitted by ICE/ERO. Andrade Decl. ¶ 20; Harrison Decl. ¶ 6. HQ-RIO will submit the travel document request to Russia upon receipt of the final draft. Harrison Decl. ¶ 6. ICE/ERO is currently removing non-citizens to Russia. Andrade Decl. ¶ 21; Harrison Decl. ¶ 7. In fiscal year 2024, ICE/ERO conducted 464 removals to Russia. Harrison Decl. ¶ 7.

LEGAL FRAMEWORK

Since Petitioner is detained post-final order of removal, his detention is governed by 8 U.S.C. § 1231. Congress provided in § 1231(a)(1) that ICE/ERO shall remove an alien within ninety (90) days of the latest of: (1) the date the order of removal becomes administratively final;

(2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. § 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the "removal period," detention is mandatory. *See id.* at § 1231(a)(2).

If ICE/ERO does not remove an alien within ninety days, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); 8 U.S.C. § 1231(a)(6) (providing that an alien who is subject to mandatory detention, inadmissible, or who has been determined to be a risk to the community or a flight risk, "may be detained beyond the removal period"). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. 533 U.S. at 700. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701 (emphasis added); *see also* 8 C.F.R. § 241.13. Where there is no significant likelihood of removal in the reasonably foreseeable future, the alien should be released from confinement. *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further 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) (internal quotations omitted).

ARGUMENT

Petitioner enumerates seven claims for relief. Although the precise contours of the claims are unclear, they may be divided into two broad categories.² The first category—Counts One, Five, and Six—consists of claims that ICE/ERO lacks a statutory authority for Petitioner’s post-final order of removal detention. Pet. ¶¶ 64-72, 101-09. These claims should be dismissed. 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—authorizes Petitioner’s detention because (1) any challenge to his detention is premature because he has not been detained post-final order of removal for more than six months since he re-entered ICE/ERO custody, and (2) there is a significant likelihood of removal in the reasonably foreseeable future.

The second category—Counts Two, Three, Four, and Seven—consists of claims seeking judicial review of Petitioner’s OSUP revocation. *Id.* ¶¶ 73-100, 110-14. These claims should be dismissed because (1) they are not cognizable in this habeas proceeding, (2) the Court lacks subject matter jurisdiction over the claims, (3) the claims are moot, and (4) the claims otherwise lack merit.

I. Counts One, Five, and Six: Petitioner fails to state a claim pursuant to *Zadvydas*.

Petitioner’s first category of claims concerns the statutory authority for his detention. In Count One, Petitioner claims his detention violates due process. Pet. ¶¶ 64-72. He relies on “the civil-detention framework set out in *Zadvydas* and its progeny.” *Id.* ¶ 67. Relatedly, in Count Five, Petitioner asserts his detention violates the APA because it exceeds ICE/ERO’s statutory authority under 8 U.S.C. § 1231(a)(6). *Id.* ¶¶ 101-06. And in Count Six, Petitioner argues his detention is

² Given the Petition’s attempt to include multiple claims for relief within each Count, Respondent respectfully requests the opportunity to file supplemental briefing in the event the Court construes Petitioner’s claims differently.

ultra vires because ICE/ERO lacks a statutory basis. *Id.* ¶¶ 107-09. Thus, all of these claims focus on whether ICE/ERO has a statutory authority to detain Petitioner post-final order of removal.

The Court should dismiss these claims because 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—authorizes Petitioner’s detention. Specifically, Petitioner fails to state a claim for relief under *Zadvydas* in Count One because (1) his claim is premature, and (2) in the alternative, there is a significant likelihood of removal in the reasonably foreseeable future. Because ICE/ERO has a valid statutory detention authority, Counts Five and Six should also be dismissed.

A. Petitioner fails to state a claim because his *Zadvydas* claim is premature.

The Court should dismiss the Petition to the extent Petitioner challenges his post-final order of removal detention because Petitioner has not been detained post-final order of removal for more than six months since he last entered ICE/ERO custody. Accordingly, he cannot state a claim for relief under *Zadvydas* because his detention is presumptively reasonable, and 8 U.S.C. § 1231(a)(6) therefore continues to authorize his detention.

In *Zadvydas*, the Supreme Court held that six months of post-final order of removal detention under 8 U.S.C. § 1231(a)(6) is “a presumptively reasonable period of detention” from a due process standpoint. 533 U.S. at 701. Because six months of post-final order of removal detention is presumptively reasonable, the Eleventh Circuit has held that “in order to state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months[.]” *Akinwale*, 287 F.3d at 1052. More specifically, the Eleventh Circuit has made clear that the “six-month period thus must have expired at the time [Petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*.” *Id.*; see also *Themeus v. U.S. Dep’t of Justice*, 643 F. App’x 830, 833 (11th Cir. 2016); *Guo Xing Song v. U.S. Att’y Gen.*, 516 F. App’x 894, 899 (11th Cir. 2013).

Here, Petitioner was ordered removed on May 30, 2006. Andrade Decl. ¶ 12 & Ex. F. His removal order became final the same day because he waived appeal. *Id.* ¶ 12 & Ex. F; 8 C.F.R. § 1241.1(b). Petitioner was released pursuant to an OSUP on October 10, 2006. Andrade Decl. ¶ 13 & Ex. G. On August 16, 2025, he re-entered ICE/ERO custody for the first time in nearly 19 years. *Id.* ¶ 16. He filed the Petition on September 26, 2025—just over one month later. ECF No. 1. Petitioner, therefore, had not been detained beyond the presumptively reasonable six-month period under *Zadvydas* at the time he filed his Petition.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens’ habeas applications raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *L.A.A.C. v. Bondi*, No. 4:25-cv-199-CDL-ALS, 2025 WL 2490291, at *2 (M.D. Ga. June 26, 2025), *recommendation adopted*, 2025 WL 2484015 (M.D. Ga. Aug. 28, 2025); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Garcon v. Warden, Irwin Cty. Det. Ctr.*, No. 7:16-CV-158-WLS-MSH, 2017 WL 9250368, at *2 (M.D. Ga. Aug. 30, 2017), *recommendation adopted*, 2018 WL 2056562 (M.D. Ga. Feb. 27, 2018); *Eliehist v. Mickelson*, No. 15-61701-Civ, 2015 WL 5316484, at *3 (S.D. Fla. Aug. 18, 2015), *recommendation adopted*, 2015 WL 5308882 (S.D. Fla. Sept. 11, 2015); *Maraj v. Dep’t of Homeland Sec.*, No. CA 06-0580-CG-C, 2007 WL 748657, at *3 (S.D. Ala. Mar. 7, 2007); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1363-65 (N.D. Ga. 2002). The Court should similarly dismiss the Petition here.

Petitioner may attempt to argue that his previous period of post-final order of removal detention—between February 15, 2006 and October 10, 2006—should be added to the current period of detention in calculating whether he has been detained beyond the six-month presumptively reasonable period. If made, this argument should be rejected.

As this Court has recognized, *Zadvydas* is not “a permanent ‘Get Out of Jail Free Card’ that may be redeemed at any time just because an alien was detained too long in the past.” *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018). Rather, the “focus [for *Zadvydas*] is on *today*[.]” *Id.* (emphasis in original). For this reason, the Court has held that the *Zadvydas* six-month presumptively reasonable detention period re-commences when a non-citizen is re-detained after previously spending time in ICE/ERO custody.

For example, in *M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136 (M.D. Ga. Oct. 19, 2023), a non-citizen was detained post-final order of removal for approximately seven months before his release under an order of supervision. *M.K.*, No. 4:23-cv-136, Order 2 (M.D. Ga. Oct. 19, 2023), ECF No. 12. ICE/ERO re-detained him eleven years later, and the non-citizen sought habeas relief under *Zadvydas* approximately two months after his re-detention. *Id.* The Court held that the *Zadvydas* six-month period re-commenced when the non-citizen was re-detained by ICE/ERO. *Id.* at 3-7. In reaching this conclusion, the Court reasoned that the *Zadvydas* six-month period was intended “to allow the Government to arrange for an alien’s removal.” *Id.* at 6 (citing *Zadvydas*, 533 U.S. at 700-01). If a non-citizen’s prior periods of post-final order of removal detention were cumulated with his present period of detention, this “would effectively eviscerate § 1231(a)’s purpose of allowing the Government time to arrange for an alien’s removal, including contacting foreign consulates and obtaining necessary travel documents.” *Id.* at 6-7. Because the non-citizen’s most recent period of post-final order of removal detention had not exceeded six months, the Court dismissed his petition as premature. *Id.*

Here, although Petitioner was previously detained post-final order of removal between February 15, 2006, and October 10, 2006, he has been in ICE/ERO custody for just two months since he was re-detained on August 16, 2025. *See* Andrade Decl. ¶ 16. Just like in *M.K.*, his

Zadvydas claim is, therefore, premature because he cannot show more than six months of post-final order of removal detention. Accordingly, Count One should be dismissed as premature, and Counts Five and Six should be dismissed because Petitioner's detention is authorized by statute.

B. In the alternative, there is a significant likelihood of removal in the reasonably foreseeable future.

Even if the Court ignores that Petitioner's challenge to his post-final order of removal detention is premature on its face—which it should not—the Petition should still be dismissed because Petitioner fails to show that he is entitled to release under *Zadvydas*. Specifically, he fails to meet his evidentiary burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. Further, even if the burden is shifted, Respondent meets his burden.

Petitioner advances one central claim in an attempt to meet his *Zadvydas* burden: his repeated conclusory assertion that ICE/ERO will be unable to procure a travel document or remove him because he is “stateless” since he was born in the former USSR. Pet. ¶¶ 2, 13, 26, 37, 70, 78, 87. Petitioner cites no evidence whatsoever in support of this assertion, and the mere conclusory statement that he is unlikely to be removed in the near future is insufficient to state a claim under *Zadvydas*. See *Novikov v. Gartland*, No. 5:17-cv-164, 2018 WL 4100694, at *2 (S.D. Ga. Aug. 28, 2018), *recommendation adopted*, 2018 WL 4688733 (S.D. Ga. Sept. 28, 2018); *Gueye v. Sessions*, No. 17-62232-Civ, 2018 WL 11447946, at *4 (S.D. Fla. Jan. 24, 2018); *Rosales-Rubio v. Att’y Gen. of United States*, No. 4:17-cv-83-MSH-CDL, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018), *recommendation adopted*, 2018 WL 5290094 (M.D. Ga. Feb. 8, 2018). Further, Petitioner's assertion is disproven by the evidence of record, as Russia is presently issuing travel documents for non-citizens born in the former USSR, Harrison Decl. ¶ 4, and ICE/ERO is in possession of Petitioner's Russian identity documents issued under the former USSR, *id.* ¶ 5.

Beyond this conclusory and legally insufficient assertion, Petitioner relies only on the mere passage of time without removal, noting simply that ICE/ERO has not yet removed him. Pet. ¶¶ 78. As other courts have recognized, a non-citizen cannot meet his burden under *Zadvydas* on this basis. *See Ortiz v. Barr*, No. 20-CV-22449, 2021 WL 6280186, at *5 (S.D. Fla. Feb. 1, 2021) (“[T]he mere existence of a delay of Petitioner’s deportation is not enough for Petitioner to meet his burden.” (citations omitted)), *recommendation adopted*, 2022 WL 44632 (S.D. Fla. Jan. 5, 2022); *Ming Hui Lu v. Lynch*, No. 1:15-cv-1100, 2016 WL 375053, at *7 (E.D. Va. Jan. 29, 2016) (“[A] mere delay does not trigger the inference that an alien will not be removed in the foreseeable future.” (internal quotations and citations omitted)); *Newell v. Holder*, 983 F. Supp. 241, 248 (W.D.N.Y. 2013) (“[T]he habeas petitioner’s assertion as to the unforeseeability of removal, supported only by the mere passage of time [is] insufficient to meet the petitioner’s initial burden” (collecting cases)). Rather, Petitioner must provide “*evidence* of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Gozo*, 309 F. App’x at 346 (internal quotations omitted) (emphasis added). Because Petitioner provides none, he cannot meet his burden under *Zadvydas*, and the Petition should be denied.

Even if Petitioner had presented evidence sufficient to shift the burden to Respondent—which he has not—Respondent meets his burden. Contrary to Petitioner’s unsubstantiated speculations, Russia is currently issuing travel documents for Russian nationals born in the former USSR. Harrison Decl. ¶ 4. As to Petitioner, ICE/ERO is in possession of his Russian identity documents issued by the former USSR. *Id.* ¶ 5. ICE/ERO and HQ-RIO are presently preparing a travel document request for Petitioner for submission to Russia. Andrade Decl. ¶ 20; Harrison Decl. ¶ 6. Thereafter, Russia requires an interview for issuance of a travel document. Harrison Decl. ¶ 4. ICE/ERO will be able to execute Petitioner’s removal to Russia upon receipt of the travel

document because ICE/ERO is presently removing non-citizens to Russia. Andrade Decl. ¶ 21; Harrison Decl. ¶ 7. Indeed, in fiscal year 2024 alone, ICE/ERO conducted 464 removals to Russia. Harrison Decl. ¶ 7.

District courts in the Eleventh Circuit have held that the mere delay in the procurement of a travel document is insufficient to warrant relief under *Zadvydas*. See *Novikov*, 2018 WL 4100694, at *2 (denying non-citizen’s *Zadvydas* claim where the non-citizen did “not explain how the past lack of progress in the issuance of his travel documents means that [his country of nationality] will not produce the documents in the foreseeable future”); *Linton v. Holder*, No. 10-20145-Civ-Lenard, 2010 WL 4810842, at *4 (S.D. Fla. Oct. 4, 2010) (“[A] delay in issuance of travel documents does not, without more, establish that a petitioner’s removal will not occur in the reasonably foreseeable future, even where the detention extends beyond the presumptive 180 day (6 month) presumptively reasonable period.” (citations omitted)); accord. *Alhousseini v. Whitaker*, No. 1:18-cv-848, 2019 WL 1439905, at *3 (S.D. Ohio Apr. 1, 2019), *recommendation adopted*, 2020 WL 728273 (S.D. Ohio Feb. 13, 2020) (collecting cases). The Court should reach the same conclusion here and find that Petitioner’s current detention does not exceed the limitations set forth by *Zadvydas*.

Petitioner’s continued detention pursuant to 8 U.S.C. § 1231(a)(6) satisfies due process because his detention is presumptively reasonable and because there is a significant likelihood of removal within the reasonably foreseeable future. Accordingly, Petitioner’s due process claim in Count One should be dismissed. Because 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—authorizes Petitioner’s current detention, Count Five should be dismissed because the detention does not exceed ICE/ERO’s statutory authority. Similarly, Count Six should be dismissed because Petitioner’s detention complies with 8 U.S.C. § 1231(a)(6) and is therefore not *ultra vires*.

II. Counts Two, Three, Four, and Seven: The Court lacks subject matter jurisdiction over Petitioner’s claims seeking judicial review of his OSUP revocation, and the claims otherwise lack merit.

As explained above, Petitioner’s remaining claims seek judicial review of Petitioner’s OSUP revocation. Count Two claims that Petitioner’s OSUP revocation violates due process because he did not receive a notice and interview as required by applicable regulations. Pet. ¶¶ 73-79. Counts Three and Seven raise claims under the Administrative Procedure Act (“APA”) and *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), primarily arguing that ICE/ERO failed to comply with regulations in revoking Petitioner’s OSUP. *Id.* ¶¶ 80-89, 110-14. Count Four seeks judicial review of ICE/ERO’s decision to revoke Petitioner’s OSUP, claiming it was arbitrary and capricious under the APA. *Id.* ¶¶ 90-100.

These claims should be dismissed for four reasons. *First*, the claims are not cognizable in this habeas proceeding because they seek judicial review of a process collateral to Petitioner’s detention. *Second*, the Court lacks subject matter jurisdiction over Petitioner’s claims seeking judicial review of ICE/ERO’s revocation of his OSUP. *Third*, Petitioner’s claims that he has not received notice and an informal interview related to his OSUP revocation are moot. *Fourth*, Petitioner’s claims otherwise lack merit because ICE/ERO has complied with the applicable regulations in revoking Petitioner’s OSUP.

A. Petitioner’s challenges to his OSUP revocation are not cognizable in habeas.

Counts Three, Four, and Seven of the Petition all seek judicial review of Petitioner’s OSUP revocation through the APA and *Accardi*. Pet. ¶¶ 80-100, 110-14. All three claims should be dismissed because they are not cognizable in this habeas proceeding.

The scope of the Court’s habeas jurisdiction is limited to reviewing the legality of detention and cannot be used as a mechanism to review collateral issues. “[T]he scope of habeas has been

tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Thuraissigiam*, 591 U.S. at 125 n.20. “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008). “[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody[.]” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “Simply stated, habeas is not available to review questions unrelated to the cause of detention. Its sole function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose.” *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). Habeas “cannot be utilized as a base for the review of a refusal to grant collateral administrative relief or as a springboard to adjudicate matters foreign to the question of the legality of custody.” *Id.* at 936.

Here, Counts Three, Four, and Seven do not assert that ICE/ERO lacks sufficient basis to detain him; rather, they raise only APA claims challenging the procedures ICE/ERO employed in revoking Petitioner’s OSUP. Pet. ¶¶ 80-100, 110-14. But the procedures utilized in revoking Petitioner’s OSUP are collateral to the cause of Petitioner’s detention: enforcement of his final order of removal. *See* 8 U.S.C. § 1231(a)(6).

Moreover, Petitioner has filed a habeas petition—not a civil complaint—and his APA claim is not cognizable in habeas. This Court addressed this issue in *Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). There a non-citizen filed a habeas petition challenging his continued detention. *Villafuerte*, 2018 WL 6626640, at *1. The non-citizen also raised an APA claim concerning the denial of his application for immigration status. *Id.* at *1-2. The Court held that Petitioner’s APA claim was “not cognizable” for two reasons. First, the non-citizen sought a form of “collateral administrative relief” which is not

properly within the purview of habeas corpus. *Id.* at *2 (quotations and citations omitted). Second, it was “inappropriate” to permit the non-citizen to raise a civil claim because the non-citizen filed a habeas petition with a far lower filing fee. *Id.* The Court should reach the same conclusion here and decline to allow Petitioner to bootstrap APA and *Accardi* claims challenging an issue collateral to the statutory authority for his detention onto the Petition.

B. The Court lacks jurisdiction to judicially review ICE/ERO’s discretionary decision to revoke Petitioner’s OSUP.

In Count Four, Petitioner seeks judicial review of ICE/ERO’s decision to revoke his OSUP, arguing it constitutes arbitrary and capricious agency action within the meaning of the APA. Pet. ¶¶ 90-100. Specifically, Petitioner claims ICE/ERO lacked sufficient evidence to revoke his OSUP, *id.* ¶ 94, and failed to consider other evidence or alternatives, *id.* ¶¶ 95-99. Counts Two and Three similarly challenge ICE/ERO’s decision to revoke Petitioner’s OSUP based—at least in part—on assertions that the evidence does not support the decision. *Id.* ¶¶ 78, 87.

Whereas Petitioner primarily concern the procedures utilized in revoking his OSUP, these three claims instead challenge ICE/ERO’s *decision* to revoke his OSUP itself. These claims challenging that decision and its underlying reasoning should be dismissed for lack of subject matter jurisdiction because they seek judicial review of an action to execute a removal order under 8 U.S.C. § 1252(g). Further, under 8 U.S.C. § 1252(a)(2)(B)(ii), the Court lacks subject matter jurisdiction to judicially review ICE/ERO’s discretionary decision to re-detain Petitioner.³

³ Respondent contends that sections 1252(g) and 1252(a)(2)(B)(ii) bar only Petitioner’s claims challenging ICE/ERO’s *decision to detain him at all* rather than continue his release under and OSUP. As discussed above, 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 the Court lacks jurisdiction over this claim.

1. The Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(g).

Counts Two, Three, and Four all challenge ICE/ERO's discretionary decision to revoke Petitioner's OSUP and re-detain him. Because ICE/ERO revoked Petitioner's OSUP in order to execute his removal order, 8 U.S.C. § 1252(g) deprives the Court of subject matter jurisdiction over these claims.

"Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citation omitted). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978).

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. 8 U.S.C. § 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.

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 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); *accord. Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order." (emphasis in original)). 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 because ICE/ERO revoked his OSUP specifically because he "can be expeditiously removed from the United States pursuant to his outstanding order of removal[.]" Andrade Decl. Ex. I. Other courts have adopted this view and held that section 1252(g) bars claims arising from ICE/ERO's decision to detain a non-citizen pending execution of a final order of removal. *See Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025); *Westley v. Harper*, No. CV 25-229, 2025 WL 592788, at *5-6 (E.D. La. Feb. 24, 2025); *Kareva v. United States*, 9 F. Supp. 838, 844 (S.D. Ohio 2014); *Khorrami v. Rolince*, 493 F. Supp.

2d 1061, 1067-68 (N.D. Ill. 2007). This Court should reach the same conclusion and dismiss Counts Two, Three, and Four for lack of subject matter jurisdiction.

2. The Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii).

By statute, ICE/ERO has the discretion to continue Petitioner’s detention because he is subject to a final order of removal. 8 U.S.C. § 1252(a)(2)(B)(ii) therefore deprives the Court of subject matter jurisdiction over Petitioner’s claims challenging ICE/ERO’s discretionary decision to continue his detention by revoking his OSUP.

In the immigration context, 8 U.S.C. § 1252(a)(2)(B)(ii)—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”)—limits federal courts’ jurisdiction to review discretionary determinations made by ICE/ERO as follows:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

“[M]any provisions of IIRIRA are aimed at protecting the Executive’s discretion from the courts—indeed, that can fairly be said to be the theme of the legislation. *AADC*, 525 U.S. at 486 (emphasis in original) (citations omitted). In promulgating section 1252(a)(2)(B)(ii) specifically, “Congress barred court review of discretionary decisions only when Congress itself set out [ICE/ERO’s] discretionary authority in the statute.” *Kucana v. Holder*, 558 U.S. 233, 247 (2010). The Eleventh Circuit recently made clear that section 1252(a)(2)(B)(ii) bars not only “not only the ultimate decision to approve or deny [a discretionary form of relief], but also *actions taken in the course of the decision-making process*[.]” *Kanapuram v. Dir., U.S. Citizenship & Immigr. Servs.*, 131 F.4th 1302, 1307 (11th Cir. 2025) (emphasis added).

Here, Petitioner was ordered removed pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) based on his conviction of an aggravated felony. Andrade Decl. ¶¶ 10, 12 & Exs. E, F. Although he was previously released upon an OSUP, 8 U.S.C. § 1231(a)(6) affords ICE/ERO the discretion to detain non-citizens subject to final orders of removal beyond the 90-day removal period. That subsection provides, in relevant part, that “[a]n alien ordered removed who is . . . removable under [8 U.S.C. §] 1227(a)(2) . . . *may* be detained beyond the removal period[.]” 8 U.S.C. § 1231(a)(6) (emphasis added). The Supreme Court “has repeatedly observed that the word ‘may’ clearly connotes discretion.” *Biden v. Texas*, 597 U.S. 785, 802 (2022) (internal quotations and citations omitted). And the Court has specifically recognized that 8 U.S.C. § 1231(a)(6) “gives the Federal Government discretionary authority in specified circumstances to detain aliens who have been ordered removed from the United States.” *Garland v. Aleman Gonzalez*, 596 U.S. 543, 546 (2022) (internal quotations and citation omitted).

Petitioner’s claim in Count Four directly challenges ICE/ERO’s decision to continue his detention beyond the removal period under 8 U.S.C. § 1231(a)(6) by revoking his OSUP. Pet. ¶¶ 94-100. Any challenge to that discretionary decision is barred by 8 U.S.C. § 1252(a)(2)(B)(ii). Similarly, in Counts Two and Three, Petitioner challenges weighing of the circumstances and evidence in reaching the decision to re-detain him. *Id.* ¶¶ 78, 87. Those claims are similarly barred by 8 U.S.C. § 1252(a)(2)(B)(ii) because that statute also applies to “actions taken in the course of [ICE/ERO’s discretionary] decision-making process.” *Kanapuram*, 131 F.4th at 1307. Faced with similar claims, another court in the Eleventh Circuit recently held that 8 U.S.C. § 1252(a)(2)(B)(ii) deprives district courts of jurisdiction to review ICE/ERO’s decision to re-detain a non-citizen subject to a final order of removal by revoking an OSUP. *Barrios*, 2025 WL 2280485, at *4 (“[B]ecause the Attorney General has the discretion to revoke an OSUP, § 1252(a)(2)(B)(ii) also

bars review.”). This Court should reach this same conclusion and dismiss Counts Four—as well as the portions of Counts Two and Three discussed above—for lack of subject matter jurisdiction.

C. Petitioner’s claims seeking notice and an informal interview are moot.

In Counts Two and Three, Petitioner asserts that ICE/ERO failed to comply with applicable regulations in revoking his OSUP and that these failures amount to violations of due process and the APA. Pet. ¶¶ 73-89. Specifically, Petitioner asserts (1) the ICE/ERO officer who revoked his OSUP lacked authority to do so, *id.* ¶¶ 76, 84-85; (2) ICE/ERO failed to provide notice of the reasons for revoking his OSUP, *id.* ¶¶ 76-77, 79, 86-88; and (3) ICE/ERO failed to afford him an interview to contest his OSUP revocation, *id.* ¶ 76-77, 79, 88. In Count Seven, Petitioner raises an identical claim under *Accardi*. *Id.* ¶¶ 112-13. To the extent Petitioner claims he is entitled to notice and an interview, the Court should dismiss both claims as moot because ICE/ERO has afforded him this relief.

“Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of ‘Cases’ and ‘Controversies.’” *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir. 2001) (quoting U.S. CONST. art. III, § 2). “The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy.” *Id.* (internal quotations and citation omitted).

“A cause of action becomes moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) (internal quotations and citation omitted). “In considering mootness, [courts] look at the events at the present time, not at the time the complaint was filed[.]” *Id.* (citation omitted). “If the injury ceases, or is rendered unamenable to judicial relief, then the case becomes moot and thereby incapable of further Article III adjudication.” *Checker Cab Operators, Inc. v. Miami-Dade Cnty.*,

899 F.3d 908, 915 (11th Cir. 2018). Put another way, “[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.” *Al Najjar*, 273 F.3d at 1336 (citation omitted). “Indeed, dismissal is required because mootness is jurisdictional.” *Id.* (citation omitted).

Here, in Count Two, Petitioner argues that his OSUP revocation violates due process because ICE/ERO did not comply with “[r]egulations [that] specify . . . the procedures that must be followed when [revoking an OSUP], including giving notice and an opportunity to be heard.” Pet. ¶ 76; *see also id.* ¶ 77 (asserting ICE/ERO did not comply with the same regulations). And in Counts Three and Seven, Petitioner similarly asserts that the same purported failures to comply with the regulations constitute APA and *Accardi* violations. *Id.* ¶¶ 86-88, 112-13. More specifically, Petitioner relies on 8 C.F.R. § 241.4(l)(1), asserting that ICE/ERO failed to “give [him] notice of the reasons for revocation and a prompt interview to respond.” *Id.* ¶ 55 (citing 8 C.F.R. § 241.4(l)(1)); *see also id.* ¶¶ 86-88, 112. That regulation provides, in relevant part, that “[u]pon revocation [of an OSUP], the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1).

Petitioner’s claims are now moot because ICE/ERO has provided Petitioner written notice of the reasons for his OSUP revocation and an informal interview to respond. On October 17, 2025, ICE/ERO served Petitioner with a corrected Notice of Revocation of Release signed by the AFOD.⁴ Andrade Decl. ¶ 18 & Ex. I. That Notice states the reasons for Petitioner’s OSUP

⁴ As explained above, on October 15, 2025, ICE/ERO mistakenly served Petitioner with an unsigned Notice of Revocation of Release that listed the incorrect basis for revocation. Andrade Decl. ¶ 17 & Ex. H.

revocation: “changed circumstances in [his] case,” specifically a finding that he “can be expeditiously removed from the United States pursuant to his outstanding order of removal[.]” Andrade Decl. Ex. I. On October 22, 2025—after service of the Notice—ICE/ERO conducted an informal interview with Petitioner to afford him the opportunity to respond to those reasons. Andrade Decl. ¶ 19 & Ex. J. The record from the informal interview documents Petitioner’s oral response to the reasons for the revocation and notes that Petitioner provided neither a written statement nor documents. Andrade Decl. Ex. J.

Because ICE/ERO has provided Petitioner notice and an informal interview in accordance with 8 C.F.R. § 241.4(l)(2), Petitioner’s claim in Count Two that his OSUP revocation violates due process in the absence of these procedures “no longer presents a live controversy with respect to which the court can give meaningful relief.”⁵ *Djadju*, 32 F.4th at 1106 (internal quotations and citation omitted). Any purported injury resulting from the OSUP revocation in the absence of these procedures has ceased. *See Checker Cab Operators*, 899 F.3d at 915. Similarly, Petitioner’s APA and *Accardi* claims in Counts Three and Seven are also moot because ICE/ERO has complied with the OSUP revocation procedures upon which Petitioner bases those claims. *See* Pet. ¶¶ 86-88, 112-13. Because these claims are now moot, “dismissal is required because mootness is jurisdictional.” *Id.* (citation omitted).

D. Petitioner’s OSUP revocation complied with applicable regulations.

In the alternative, to the extent the Court finds it retains jurisdiction and that Petitioner’s claims are not moot—which it should not—Petitioner’s challenges to his OSUP revocation lack

⁵ In portions of Count Two, Petitioner references “notice and an opportunity to respond *prior to* revoking an” OSUP. Pet. ¶¶ 76-77 (emphasis added). Yet, Petitioner’s due process claim in Count Two is premised on ICE/ERO’s purported failure to comply with existing regulations regarding OSUP revocations. *Id.* ¶ 76 (“Regulations specify . . . the procedures that must be followed when [revoking OSUPs], including giving notice and an opportunity to be heard.”). As noted above, 8 C.F.R. § 241.4(l)(1) requires notice and an informal interview only *after* revocation of an OSUP.

merit because ICE/ERO complied with applicable regulations. Specifically, Petitioner's OSUP was revoked by an official with appropriate authority, and ICE/ERO had a valid basis to revoke Petitioner's OSUP.

1. ICE/ERO acted within its delegated authority.

In Counts Two, Three, Five, and Seven, Petitioner asserts that ICE/ERO violated regulations regarding OSUP revocations because his OSUP "was not revoked by the ICE Executive Associate Director." Pet. ¶ 85; *see also id.* ¶¶ 76, 105, 112. These claims lacks merit because Petitioner's OSUP was revoked by an ICE/ERO officer to whom the Executive Associate Director delegated that authority.

Petitioner admits that the ICE Executive Associate Director may delegate the authority to revoke an OSUP to different officers. Pet. ¶¶ 54, 85; *see also Barrios*, 2025 WL 2280485, at *7 (discussing delegation of the authority to revoke OSUPs). The ICE Executive Associate Director has delegated the authority to revoke OSUPs to AFODs through a July 15, 2019 Order. *See* Ex. K, ERO Delegation Order. That Order delegates listed authorities to "administer and enforce provisions relating to the immigration enforcement and removal functions of ICE." *Id.* The final bullet-pointed delegation affords AFODs enforcement authority under 8 U.S.C. § 1231 and 8 C.F.R. Part 241 "relating to warrants of removal, reinstatement of removal, self-removal, and release of aliens from detention." *Id.* Authority under 8 U.S.C. § 1231(a)(6) includes the discretion to detain non-citizens subject to final orders of removal beyond the 90-day removal period. And authority under 8 C.F.R. § 241.4(l)(2) includes "the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release[.]"

Here, Petitioner's OSUP revocation was signed by an ICE/ERO AFOD of the Atlanta Field Office. Andrade Decl. ¶ 18 & Ex. I. Based on Petitioner's own framing of his claims challenging

the authority of the official who revoked his OSUP, those claims lack merit because his OSUP was revoked by an “officer [who] had been delegated authority to revoke an” OSUP. Pet. ¶ 85; *see also Barrios*, 2025 WL 2280485, at *7. Counts Two, Three, Five, and Seven should be dismissed to the extent they raise such challenges.

2. ICE/ERO had a valid basis to revoke Petitioner’s OSUP.

In Counts Two and Three, Petitioner claims that ICE/ERO did not provide a valid basis to revoke his OSUP. Pet. ¶¶ 78, 84, 87. However, as Petitioner acknowledges, applicable regulations provide multiple discretionary bases for revocation of an OSUP.⁶ *See* Pet. ¶ 53. 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, ICE/ERO has the discretion to revoke an OSUP even if the non-citizen does not violate the conditions of release:

A district director [of ICE/ERO] 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).

⁶ Petitioner also states that 8 U.S.C. § 1231(a)(6) permits detention—through OSUP revocation—only upon a finding that the non-citizen is a danger to the community or a risk of flight. Pet. ¶¶ 104-106. This ignores that (1) by its text, 8 U.S.C. § 1231(a)(6) authorizes detention of non-citizens—like Petitioner—who are inadmissible under 8 U.S.C. § 1227(a)(2), and (2) the Supreme Court has held that 8 U.S.C. § 1231(a)(6) authorizes detention where there is a significant likelihood of removal in the reasonably foreseeable future, *Zadvydas*, 533 U.S. at 701.

Here, Petitioner's October 17, 2025 corrected Notice of Revocation of Release states that his OSUP was revoked due to "changed circumstances in [his] case," specifically a finding that he "can be expeditiously removed from the United States pursuant to his outstanding order of removal[.]" Andrade Decl. Ex. I. This is a valid basis for OSUP revocation. 8 C.F.R. § 241.4(l)(2)(iii); *see also* Pet. ¶ 54 (citing the same). And as explained above, there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future. *See supra* I.B. Accordingly, to the extent Petitioner claims that ICE/ERO has not provided a valid basis for OSUP revocation, those claims lack merit and should be dismissed.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted, this 23rd day of October, 2025.

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