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

TRUC BA TRINH,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-373-CDL-CHW**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On October 21, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition") in the U.S. District Court for the Northern District of Georgia. ECF No. 1. On October 22, 2025, he filed a Motion for Temporary Restraining Order ("TRO"). ECF No. 4. Both filings challenge Petitioner's detention following revocation of his order of supervision ("OSUP"). On November 10, 2025, the case was transferred to this Court. ECF No. 19. On November 12, 2025, the Court ordered Respondent to respond to the Petition and the Motion for TRO within three (3) days. ECF No. 23. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Vietnam who has most recently been detained post-final order of removal pursuant to 8 U.S.C. § 1231(a) since October 17, 2025. Knowles Decl. ¶¶ 6, 14, 17. On November 16, 1992, Petitioner was admitted into the United States as a refugee. *Id.*

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[1] Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in his Petition. "[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.

¶ 6 & Ex. B. On January 10, 1995, Petitioner was convicted of unlawful taking of a vehicle without consent in the Municipal Court of San Diego County, California and sentenced to 270 days imprisonment. *Id.* ¶ 7 & Ex. C. On November 4, 1997, Petitioner was convicted of being under the influence of methamphetamine in the Municipal Court of San Diego County. *Id.* ¶ 8 & Ex. D. On October 26, 1998, Petitioner was convicted of second-degree burglary in the Superior Court of San Diego County and sentenced to 365 days imprisonment. *Id.* ¶ 9 & Ex. E.

On March 26, 1999, Petitioner entered Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") custody for the first time. *Id.* ¶ 10. On the same day, he was served with a Notice to Appear ("NTA") charging him with removability pursuant to 8 U.S.C. § 1227(a)(2)(B)(i) based on his conviction of a controlled substance offense. Knowles Decl. ¶ 10 & Ex. F. On July 7, 1999, an immigration judge ("IJ") ordered Petitioner removed to Vietnam. *Id.* ¶ 11 & Ex. G. Petitioner appealed the removal order to the Board of Immigration Appeals ("BIA"). *Id.* ¶ 11. On December 13, 1999, the BIA affirmed the removal order and dismissed the appeal. *Id.* ¶ 12 & Ex. H. Petitioner's removal order became final on that date. *See* 8 C.F.R. § 1241.1(a). On July 10, 2000, Petitioner was released from custody pursuant to an OSUP and was later issued a second OSUP on June 14, 2021. Knowles Decl. ¶ 13 & Exs. I, J. Petitioner was not granted deferral of removal. *Id.* ¶ 13.

On October 17, 2025, Petitioner re-entered ICE/ERO custody. *Id.* ¶ 14 & Ex. K. On October 21, 2025, he was transferred to Stewart Detention Center. *Id.* ¶ 14. On October 27, 2025, ICE/ERO served Petitioner with a Notice of Revocation of Release. *Id.* ¶ 15 & Ex. L. The Notice states that the OSUP was revoked based on "changed circumstances," namely "that [Petitioner] can be expeditiously removed to the United States." Knowles Decl. Ex. L. The Notice also states that Petitioner (1) "will promptly be afforded an informal interview at which [he] will be given an

opportunity to respond to the reasons for revocation," and (2) "may submit any evidence or information [she] wish[es] to be reviewed in support of [her] release. *Id.* On October 27, 2025, ICE/ERO conducted the informal interview regarding Petitioner's OSUP revocation. Knowles Decl. ¶ 15 & Ex. M. Petitioner refused to cooperate during the interview or provide a statement. *Id.* ¶ 15 & Ex. M.

There is a significant likelihood of Petitioner's removal to Vietnam in the reasonably foreseeable future. *Id.* ¶ 18. On November 21, 2020, the Department of Homeland Security ("DHS") and the Ministry of Public Security of the Socialist Republic of Vietnam entered into a Memorandum of Understanding ("MOU") that provides for the removal of Vietnam citizens who entered the United States prior to July 12, 1995. *Id.* ¶ 4 & Ex. A. As of September 11, 2025, in fiscal year 2025, ICE/ERO had removed 569 Vietnamese citizens to Vietnam. *Id.* ¶ 5. These removals include Vietnamese citizens who entered the United States prior to July 12, 1995. *Id.* Since February 2025, Vietnam has issued a travel document for removal in response to every travel document request submitted by ICE/ERO. Knowles Decl. ¶ 5. On average, ICE/ERO conducts two charter removal flights to Vietnam each month. *Id.*

On or about October 28, 2025, ICE/ERO prepared a travel document request for Petitioner to submit to the Vietnamese government. *Id.* ¶ 16. However, Vietnam requires that certain documents submitted with the request be translated into Vietnamese. *Id.* On the same day, ICE/ERO submitted those documents for translation. *Id.*

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 broadly be divided into two 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. ¶¶ 70-78, 109-17. 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.* ¶¶ 79-108, 118-22. 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. ¶¶ 70-78. He relies on "the civil-detention framework set out in *Zadvydas* and its progeny." *Id.* ¶ 72. 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.* ¶¶ 109-14. And in Count Six, Petitioner argues his detention is *ultra vires* because ICE/ERO lacks a statutory basis. *Id.* ¶¶ 115-17. Thus, all three claims focus on

[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.

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 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 July 7, 1999. Knowles Decl. ¶ 11 & Ex. G. Because he appealed, his removal order became final upon dismissal of the appeal on December 13, 1999. *Id.* ¶¶ 11-12 & Ex. H; 8 C.F.R. § 1241.1(a). Petitioner was released pursuant to an OSUP

on July 10, 2000. Knowles Decl. ¶ 13 & Exs. I, J. On October 17, 2025, he re-entered ICE/ERO custody for the first time in over 25 years. *Id.* ¶ 14 & Ex. K. He filed the Petition on October 21, 2025—just four days later. ECF No. 1. Therefore, at the time the Petition was filed, Petitioner had not been detained beyond the *Zadvydas* presumptively reasonable six-month period since he re-entered ICE/ERO custody. Accordingly, he fails to state a claim under *Zadvydas*, and the Petition should be dismissed as premature. *See Akinwale*, 287 F.3d at 1052; *Themeus*, 643 F. App'x at 833; *Guo Xing Song*, 516 F. App'x at 899.

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); *Elienist 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 because Petitioner cannot show that the *Zadvydas* six-month presumptively reasonable detention period had "expired *at the time [Petitioner's] § 2241 petition was filed*[.]" *Akinwale*, 287 F.3d at 1052 (emphasis added).

Petitioner may attempt to argue that his previous period of post-final order of removal detention—between December 13, 1999 and July 10, 2000—should be added to the current period

of detention in determining whether he satisfies the timing element of his *Zadyvdas* claim. 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) (denying *Zadvydas* claim where the non-citizen had multiple periods of post-final order of removal detention that collectively amounted to more than six months). 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.

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, R. & R. 2 (M.D. Ga. Oct. 19, 2023), ECF No. 12. ICE/ERO re-detained him approximately 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 most recently 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.* This Court recently applied this same rule. *See J.A.S. v. Warden, Stewart Detention Center*, No. 4:25-cv-244-CDL-CHW, Order & R. 4-8 (M.D. Ga. Oct. 14, 2025), ECF No. 8 (dismissing a Cuban habeas petitioner's *Zadvydas* claim as premature where he had been detained post-final order of removal less for less than six months following re-arrest after a period of release).

The circumstances of this case demonstrate why prior periods of detention should not be cumulated in assessing whether a *Zadvydas* claim is premature. As this Court has recognized, in evaluating a *Zadvydas* claim, "the proper perspective is *today.* Not whether someone may subjectively believe that Petitioner's rights have been violated in the past[.]" *Meskini*, 2018 WL 1321576, at *4. "The question is, as of *this moment* and given the current circumstances, whether Petitioner is likely to be removed in the reasonably foreseeable future or whether he is not." *Id.* "Things do change. To ignore that change would be as judicially irresponsible as ignoring the events leading up to it." *Meskini*, 2018 WL 1321576, at *3. Here, the removability of Vietnamese nationals changed fundamentally after Petitioner's release from custody in 2000. Specifically, the United States and Vietnam recently agreed to resume removals of Vietnamese nationals in a similar position to Petitioner, and ICE/ERO has successfully executed removals in accordance with that change. Knowles Decl. ¶¶ 4-5 & Ex. A.

Although Petitioner was previously detained post-final order of removal between December 13, 1999 and July 10, 2000, he filed the Petition just four days after he was re-detained on October 17, 2025. 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. Similarly, Counts Five and Six should be dismissed because Petitioner's detention is authorized by 8 U.S.C. § 1231(a)(6).

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: that a 2008 bilateral agreement between the United States and Vietnam ("2008 Agreement") blanketly prohibits removals of Vietnamese nationals who entered the United States before July 12, 1995. Pet. ¶¶ 4, 42, 76; *see* Pet. Ex. 2, ECF No. 1-3. While the 2008 agreement provides as much, it does not provide the full picture. Critically, in 2020, the United States and Vietnam signed a Memorandum of Understanding ("MOU") that "establish[es] procedures on the prompt and orderly acceptance of Vietnamese citizens who have been ordered removed . . . and who arrived in the United States *before July 12, 1995*[.]" Knowles Decl. Ex. A. This MOU specifically permits removals of certain Vietnamese nationals who, like Petitioner, entered the country before the date listed in the 2008 Agreement. Knowles Decl. ¶4 & Ex. A. As other courts have recognized, the 2020 MOU constitutes a fundamental change for Vietnamese nationals detained post-final order of removal and denied their *Zadvydas* claims accordingly. *See, e.g., Nguyen v. Noem*, -- F. Supp. 3d --, 2025 WL 2737803, at *2, 9 (N.D. Tex. Aug. 10, 2025); *Duong v. Tate*, No. H-24-4119, 2025 WL 933947, at *3-4 (S.D. Tex. Mar. 27, 2025). Petitioner provides no argument for why he cannot be removed in accordance with the MOU, and he fails to meet his *Zadvydas* burden accordingly.

Beyond his contentions regarding the 2008 Agreement that fail to account for the 2020 MOU, Petitioner is left with the mere conclusory assertion that he is unlikely to be removed in the

near future. But as courts in the Eleventh Circuit—including this Court—have recognized, such conclusory assertions are 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-CDL-MSH, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018), *recommendation adopted*, 2018 WL 5290094 (M.D. Ga. Feb. 8, 2018). 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*.

Even if Petitioner had presented evidence sufficient to shift the burden to Respondent—which he has not—Respondent meets his burden. Although the 2008 Agreement previously prohibited removals of Vietnamese nationals who entered the United States before July 12, 1995, the 2020 MOU now permits their removals. Knowles Decl. ¶ 4 & Ex. A. In fiscal year 2025 alone, ICE/ERO has successfully removed 569 Vietnamese citizens, and this includes those who—like Petitioner—entered the United States before July 12, 1995. Knowles Decl. ¶ 5. On average, ICE/ERO conducts two charter removal flights to Vietnam each month. *Id.* In fact, since February 2025, Vietnam has issued a travel document in response to every request submitted by ICE/ERO. *Id.* As to Petitioner specifically, on October 28, 2025, ICE/ERO prepared a travel document request to submit to the Vietnam government and is awaiting necessary translation of some documents included with that request. *Id.* ¶ 16.

In evaluating the present likelihood of removal, courts "must take appropriate account of the greater immigration-related expertise of the Executive Branch" and "listen with care [to] the

Government's foreign policy judgments[.]" *Zadvydas*, 533 U.S. at 700. This is particularly true "for example, [when] the status of repatriation negotiations[] are at issue[.]" *Id.* In that case, courts must "grant the Government appropriate leeway when its judgments rest upon foreign policy expertise." *Id.*; *see also Meskini*, 2018 WL 1321576, at *3-4. ICE/ERO's removal of Vietnamese citizens pursuant to the 2020 MOU is a clear illustration of these principles. For these reasons, two district courts have recently denied *Zadvydas* claims in the same circumstances. *See Nguyen*, 2025 WL 2737803, at *2, 9; *Duong*, 2025 WL 933947, at *3-4.

At most, ICE/ERO is simply awaiting final submission of a travel document request for Petitioner and a decision from the Vietnam government. 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 under that section. 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 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. ¶¶ 79-85. 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.* ¶¶ 86-95, 118-22. 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.* ¶¶ 96-108. Relatedly, Counts Two and Three include similar assertions that ICE/ERO's revocation decision lacked adequate evidence. *Id.* ¶¶ 84, 93.

These claims should be dismissed for four reasons. ***First***, the non-due process claims are not cognizable in this habeas proceeding because they raise purely civil claims seeking 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 decision to continue Petitioner's post-final order of removal detention by revoking his OSUP or ICE/ERO's internal consideration of evidence in reaching that decision. ***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 regarding the OSUP revocation procedures 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." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). "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 authority for his present detention; rather, they raise only APA claims challenging the procedures ICE/ERO employed in revoking Petitioner's OSUP. Pet. ¶¶ 86-108, 118-22. 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). Petitioner does not dispute that he is subject to a final order of removal nor that the final order of removal is the "cause of detention." *Pierre*, 525 F.2d at 935-36. The procedures used to revoke of Petitioner's OSUP are collateral to the legality of Petitioner's detention pursuant to 8 U.S.C. § 1231(a)(6). Accordingly, Petitioner's claims seeking review of that separate administrative determination and the procedures underlying that collateral determination are not cognizable in habeas. *Id.*

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 continue Petitioner's detention by revoking his OSUP.

In Count Four, Petitioner seeks judicial review of ICE/ERO's decision to revoke his OSUP, arguing the decision was arbitrary and capricious within the meaning of the APA. Pet. ¶¶ 96-108. Specifically, Petitioner claims ICE/ERO lacked sufficient evidence to revoke his OSUP, *id.* ¶ 100,

and failed to sufficiently consider other evidence, aspects of the issue, or alternatives in making its decision, *id.* ¶¶ 101-06. 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.* ¶¶ 84, 93.

Whereas Petitioner primarily challenges the *procedures* utilized in revoking his OSUP, these three claims instead challenge ICE/ERO's *decision* to revoke his OSUP itself, as well as ICE/ERO's internal consideration of the issue in making that decision. These claims challenging that decision and the agency's internal 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]

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).

[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 that claim.

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.* ("*AADC*"), 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.[4] 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

[4] Again, Respondent's jurisdictional argument as to 8 U.S.C. § 1252(g) is appropriately limited in scope. 8 U.S.C. § 1252(g) bars only Petitioner's claims seeking review of ICE/ERO's *decision* to re-detain him pursuant to 8 U.S.C. § 1231(a)(6) because it constitutes a "decision or action . . . to . . . execute removal orders." 8 U.S.C. § 1252(g); *AADC*, 525 U.S. at 482. Petitioner asserts that this jurisdictional bar does not apply because he challenges only his "ongoing civil detention[.]" Pet. ¶ 16. But while his *Zadvydas* claim in Count One contests the lawfulness of his present detention, as pled, Counts Two, Three, and Four all challenge the decision to take him into custody under 8 U.S.C. § 1231(a)(6) *at all*. 8 U.S.C. § 1252(g) bars those claims.

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).

Under 8 U.S.C. § 1231(a)(6), ICE/ERO has the discretion to detain Petitioner's beyond the ninety-day removal period. Because ICE/ERO is vested with this discretion by statute, 8 U.S.C. § 1252(a)(2)(B)(ii) 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)(B)(i) based on his conviction of a controlled substance offense. Knowles Decl. ¶¶ 10-11 & Ex. G. Although he was previously released upon an OSUP, under 8 U.S.C. § 1231(a)(6), ICE/ERO retains 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). Thus, by statute—specifically, 8 U.S.C. § 1231(a)(6)—Congress has vested ICE/ERO with the discretionary authority to continue Petitioner's detention beyond the removal period.

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. ¶¶ 101-07. 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.* ¶¶ 84, 93. 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.

In the immigration habeas context, this Court has held that 8 U.S.C. § 1252(a)(2)(B)(ii) deprives it of jurisdiction over APA and *Accardi* claims seeking judicial review of ICE/ERO's discretionary decision to deny release from custody. *A.M.Y. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-cv-61-CDL-MSH, Order & R. 39-40 (M.D. Ga. Oct. 13, 2020), ECF No. 47 (denying APA and *Accardi* claims seeking judicial review of the denial of parole under 8 U.S.C. § 1182(d)(5)(A) for lack of subject matter jurisdiction), *recommendation adopted*, Order (M.D. Ga. Nov. 4, 2020), ECF No. 49. And faced with similar claims challenging the decision to revoke an OSUP, 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. ¶¶ 79-95. Specifically, Petitioner asserts (1) the ICE/ERO officer who revoked his OSUP lacked authority to do so, *id.* ¶¶ 82, 90-91; (2) ICE/ERO failed to provide notice of the reasons for revoking his OSUP, *id.* ¶¶ 82-83, 85, 92-94; and (3) ICE/ERO failed to afford him an interview to contest his OSUP revocation, *id.* ¶ 82-83, 85, 94. In Count Seven, Petitioner raises an identical claim under *Accardi*. *Id.* ¶¶ 120-21. To the extent Petitioner claims he is entitled to notice and an interview, the Court should dismiss all three 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. ¶ 82; *see also id.* ¶ 83 (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.* ¶¶ 92-94, 118-19. 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.* ¶ 57 ("OSUP regulations and the processes and procedures to revoke them can be found under 8 C.F.R. § 241.4."); ¶¶ 54, 56, 94, 107 (citing 8 C.F.R. § 241.4(l)). 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 [ICE/ERO] 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 after his return to custody. On October 27, 2025, ICE/ERO served Petitioner with a Notice of Revocation of Release

signed by a Supervisory Detention and Deportation Officer ("SDDO"). Knowles Decl. ¶ 15 & Ex. L. The Notice states the reason for Petitioner's OSUP 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[.]" Knowles Decl. Ex. L. On the same day, after service of the Notice, ICE/ERO conducted an informal interview with Petitioner to afford him the opportunity to respond to those reasons. Knowles Decl. ¶ 15 & Ex. M. The record from the informal interview documents that Petitioner refused to cooperate during the interview or provide a statement. *Id.* ¶ 15 & Ex. M.

Because ICE/ERO has provided Petitioner notice and an informal interview in accordance with 8 C.F.R. § 241.4(l)(1), 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." *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. 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 merit because ICE/ERO complied with applicable regulations. Specifically, Petitioner's OSUP was revoked by an official with appropriate authority, ICE/ERO had a valid basis to revoke Petitioner's OSUP, and ICE/ERO provided Petitioner notice and an interview after his return to

custody.

1. ICE/ERO acted within its delegated authority.

In Counts Two, Three, 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. ¶ 91; *see also id.* ¶¶ 82, 120. 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. ¶¶ 38, 55, 91, 107; *see* 8 C.F.R. § 241.4(c); *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 SDDOs through a July 15, 2019 Order. *See* Ex. N, 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 SDDOs 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 SDDO. Knowles Decl. Ex. L. 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. ¶ 91; *see also id.* ¶¶ 38, 55, 107;

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, Three, and Five, Petitioner claims that ICE/ERO did not provide a valid basis to revoke his OSUP. Pet. ¶¶ 84, 90, 93, 112-13. However, as Petitioner acknowledges, applicable regulations provide multiple discretionary bases for revocation of an OSUP.[5] *See* Pet. ¶ 54; *id.* ¶ 57 ("OSUP regulations and the processes and procedures to revoke them can be found under 8 C.F.R. § 241.4."). 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;
>
> . . .
>
> (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).

Here, Petitioner's October 27, 2025 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

[5] 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.

expeditiously removed from the United States pursuant to his outstanding order of removal[.]" Knowles Decl. Ex. L. 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.

3. ICE/ERO provided Petitioner with notice and an informal interview after his return to custody.

Finally, as Respondent explained above in setting forth its mootness argument, ICE/ERO has provided Petitioner written notice explaining the reasons for his OSUP revocation and an informal interview regarding the revocation. In doing so, Respondent has complied with the applicable regulation.

In support of his claims, Petitioner relies on 8 C.F.R. § 241.4(l), which governs "Revocation of release." Pet. ¶ 57 ("OSUP regulations and the processes and procedures to revoke them can be found under 8 C.F.R. § 241.4."); *see also id.* ¶¶ 54, 56, 94, 107 (citing 8 C.F.R. § 241.4(l)). As discussed above, the regulation provides that to revoke an OSUP, "[t]he alien will be notified of the reasons for revocation of his or her release" and "will be afforded an initial informal interview . . . to afford the alien an opportunity to respond to the reasons for revocation[.]" 8 C.F.R. § 241.1(l)(1). As to timing, the regulation specifies that this must occur "*promptly after [the alien's] return to [ICE/ERO] custody*[.]"[6] *Id.* (emphasis added). Here, Petitioner re-entered

[6] In portions of Count Two, Petitioner references "notice and an opportunity to respond *prior to* revoking an" OSUP. Pet. ¶¶ 82-83 (emphasis added). Yet, those same portions of the Petition premise the due process claim on ICE/ERO's purported failure to comply with existing regulations regarding OSUP revocations. *Id.* ("Regulations specify . . . the procedures that must be followed when [revoking OSUPs], including giving notice and an opportunity to be heard. Respondents violated those laws here . . . ."). As noted above, by its plain language, 8 C.F.R. § 241.4(l)(1) requires notice and an informal interview only promptly *after*

ICE/ERO custody on October 17, 2025. Knowles Decl. ¶ 14 & Ex. K. He was transferred to Stewart Detention Center on October 21, 2025. *Id.* ¶ 14. On October 27, 2025—just six days later—ICE/ERO provided him both notice of the reasons for his OSUP revocation and an informal interview to respond to those reasons. *Id.* ¶ 15 & Exs. L, M.

Thus, ICE/ERO's revocation of Petitioner's OSUP complied with all applicable regulations: the decision was signed by an SDDO with appropriately delegated authority; the revocation was based on the valid ground of enforcing a final order of removal; and Petitioner was provided the appropriate notice and interview. For these reasons, even if the Court ignores the jurisdictional and mootness grounds above, Petitioner's claims challenging his OSUP revocation lack merit and should be dismissed.

CONCLUSION

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

Respectfully submitted, this 17th day of November, 2025.

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[a non-citizen's] return to ICE/ERO custody[.]" (emphasis added). Thus, Petitioner's claim to advance notice and interview is not even supported by the regulation on which he bases his claim.