UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

TRUC BA TRINH A# [redacted] Petitioner, vs. GEORGE STERLING, *Field Office Director of* ICE *Atlanta Field Office*, and TODD LYONS, *Acting Director of Immigration and Customs Enforcement*, and KRISTI NOEM, *Secretary of Homeland Security*, and PAMELA BONDI, *U.S. Attorney General* Respondents.	)	CASE NO.: 4:25-CV-373-CDL-CHW

PETITIONER'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Petitioner, Truc Ba Trinh, hereby opposes Respondents' Motion to Dismiss, (Dkt. No. 27). The central issues before the Court are whether Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO)'s (1) unlawful revocation of Petitioner's Order of Supervision (OSUP), and (2) subsequent unlawful detention violate the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act (INA), the Administrative Procedure Act (APA), and the *Accardi* doctrine including ICE's own regulations and procedures. The answer to both questions is yes. The government's actions are ultra vires, arbitrary and capricious, and contrary to law (and their own regulations), and fail to satisfy the minimum requirements of due process and statutory authority.

I. INTRODUCTION

The government, in its motion to dismiss, misguidedly contends that Petitioner's claims regarding his detention are premature because he has not been re-detained post-final order of removal for more than six months and that there is a significant likelihood of removal in the reasonably foreseeable future. ECF 27. The government further asserts that Petitioner's claim concerning the improper revocation of his OSUP is not cognizable, moot, or lacks merit. *Id.*

This response is submitted in opposition to Respondent's motion to dismiss and in support of Petitioner's request for immediate injunctive and habeas relief. This habeas Petition is not a *Zadvydas* type claim as Respondents try to mischaracterize. Petitioner seeks restoration to the status quo ante—immediate release from detention and reinstatement of his OSUP—on the grounds that his continued detention is unlawful, unsupported by statutory or regulatory authority, and in violation of his constitutional rights. The arguments herein demonstrate that the government's actions are not only procedurally and substantively deficient but also result in irreparable harm to Petitioner and his family, warranting prompt judicial intervention.

The Supreme Court in *Zadvydas* held that post-removal-period detention under 8 U.S.C. § 1231(a)(6) is implicitly limited to a period reasonably necessary to effectuate an alien's removal and does not permit indefinite detention. The Court recognized a presumptively reasonable period of detention of six months, after which, if the alien provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must rebut that showing with sufficient evidence. This six-month period is not a rigid deadline for release, but rather the point at which the burden shifts to the government to justify continued detention. For over two decades, he was released under an Order of Supervision (OSUP), during which time he was fully compliant with all terms, including regular check-ins with ICE. This extensive history of post-removal confinement, albeit largely under

supervision, is precisely the type of "prior post-removal confinement" that *Zadvydas* instructs courts to consider when evaluating the "reasonably foreseeable future." To ignore this 25-year period and reset the clock based solely on the current one-month physical detention would undermine the constitutional concerns *Zadvydas* sought to address regarding indefinite detention. The government's argument that prior periods of detention cannot be cumulated is overly simplistic and fails to account for the reality of Petitioner's prolonged status as a removable alien who has not been removed for decades.

While Petitioner's current physical detention is approximately one month, his status as an alien subject to a final order of removal who has not been removed has persisted for over 25 years. This prolonged inability to effectuate removal, despite continuous efforts by the government over two decades, provides "good reason to believe" that there is no significant likelihood of removal in the reasonably foreseeable future. The government's reliance on a 2020 MOU and recent removals, while relevant, must be weighed against this extensive history. A general MOU and unspecified "recent removals" do not automatically negate a 25-year pattern of non-removal, especially when the government has not provided specific, concrete evidence demonstrating a *significant likelihood* of Petitioner's *individual* removal in the immediate future. The government's assertion of "ongoing efforts" to secure travel documents is vague and has been a constant for decades without resulting in removal.

Given the extraordinary length of time Petitioner has been under a final order of removal, the "reasonably foreseeable future" for his removal has significantly shrunk. The government cannot simply re-detain an individual after decades of supervised release and claim prematurity when the underlying issue is the long-standing inability to remove. Petitioner's claim is not premature; rather, it is a direct challenge to the legality of his detention in light of an exceptionally prolonged period of non-removal, which triggers the government's burden to

demonstrate a significant likelihood of removal. Therefore, Respondents' argument that Petitioner's *Zadvydas* claim is premature or fails to state a claim is unavailing, and this ground does not warrant dismissal.

Notwithstanding of a 1999 removal order, Petitioner has been under an OSUP since 2000, because his removal to Vietnam was not possible under the governing U.S.-Vietnam repatriation agreement. Recent changes in ICE practice have resulted in the abrupt and arbitrary revocation of OSUPs for similarly situated individuals—often without notice, individualized findings, or an opportunity to be heard—in direct violation of federal regulations and due process. Because ICE revoked his OSUP unlawfully by detaining him without notice during a routine check-in without any violations on Petitioner's part and without changed circumstances, the OSUP was improperly revoked by an unauthorized official and without a proper hearing, and his detention violates due process, agency regulations, ICE policies and the *Accardi* doctrine, the Court should grant him a writ of habeas corpus ordering: (1) that he be immediately released from the Respondent's custody; or (2) that he be immediately released pursuant to the terms and conditions of his OSUP and that his OSUP be fully restored to its prior conditions.

II. BACKGROUND AND PROCEDURAL HISTORY

Petitioner is a 52-year-old Vietnamese national, who has been living in the U.S. since 1992, having originally come to the U.S. with his family as refugees who later became Lawful Permanent Residents. For the past several years, he has resided in Clarkston, Georgia, with his long-time U.S. citizen partner and their two young U.S. citizen children, ages 12 and 7. Petitioner also has an adult 28-year-old child from a prior relationship.

Over 25 years ago, on July 7, 1999, an immigration judge (IJ) ordered Petitioner removed to Vietnam and the BIA affirmed the removal order, rendering it final on December 13, 1999. *See*

8 C.F.R. § 1241.1(a). The government detained Petitioner post-final order of removal between December 13, 1999, and July 10, 2000. However, because the government was unable to effectuate his removal to Vietnam under the governing U.S.-Vietnam repatriation agreement, ICE-ERO released Petitioner from custody pursuant to an OSUP on July 10, 2000. ECF 27-10. ICE later issued Petitioner a second OSUP on June 14, 2001. ECF 27-11.

Since then, Mr. Trinh has been living his life with his partner and their two young children and complying with all conditions of his OSUP since 2000. However, ICE abruptly, arbitrary and unlawfully revoked his OSUP without notice, any individualized findings, or an opportunity to be heard—in direct violation of federal regulations and due process. On October 17, 2025, ICE suddenly and inexplicably detained Petitioner, during a routine check-in appointment, as he was complying with his OSUP. Recent changes in ICE practice have resulted in the abrupt and arbitrary revocation of OSUPs for similarly situated individuals—often without notice, individualized findings, or an opportunity to be heard—in direct violation of federal regulations and due process.

The Atlanta ICE Field Office took Petitioner into custody without notice or an opportunity to be heard prior to ICE revoking his OSUP, on the decision of an individual without authority to do so, without required legal findings, and in violation of agency rules, as well as in violation of a treaty between the U.S. and Vietnam. (Doc. 1 ¶¶ 2, 3, 23).

On October 21, 2025, counsel for Petitioner filed his petition for writ of habeas corpus and supporting documents in the U.S. District Court for the Northern District of Georgia. ECF No. 1. ICE then transferred Petitioner to Stewart Detention Center in Lumpkin, Georgia on October 21, 2025. On October 22, 2025, Petitioner filed a Motion for Temporary Restraining Order (TRO). ECF No. 4. On November 10, 2025, the case was transferred to this Court. ECF No. 19. On November 17, 2025, Respondents filed a motion to dismiss (ECF No. 27) and a response in opposition to the habeas petition and motion for a TRO (ECF No. 28).

III. REGULATORY AUTHORITY TO REVOKE AN OSUP

ICE's authority to revoke an OSUP is strictly circumscribed by federal regulations—primarily 8 C.F.R. §§ 241.4 and 241.13—which require individualized findings, specific notice, and a meaningful opportunity to respond before any deprivation of liberty or change in removal status. These requirements are not discretionary; they are binding legal obligations reinforced by the *Accardi* doctrine, which mandates that agencies must follow their own rules and procedures. Failure to do so renders agency action invalid. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (*Accardi*); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017).

The following sections detail the exclusive regulatory grounds and mandatory procedures for OSUP revocation.

A. Violation of Conditions of Release Under 8 C.F.R. § 241.4(l)(1)[1]

ICE may revoke an OSUP if it alleges a violation of the conditions of release, but even then, the regulation requires that the noncitizen be notified of the specific reasons for revocation and be afforded an initial informal interview promptly after return to custody to respond. This is a mandatory procedural safeguard, not a matter of agency discretion. Here, Petitioner has maintained perfect compliance with all OSUP conditions for over two decades, so this ground is inapplicable.

B. Discretionary Revocation by Authorized Official Under 8 C.F.R § 241.4(l)(2)[2]

[1] 8 C.F.R. § 214.4(l)(1) states that: Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such alien who violates the conditions of an order of supervision is subject to the penalties described in section 243(b) of the Act. Upon revocation, 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.

[2] 8 C.F.R. § 241.4(1)(2) states that:
The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and

Alternatively, revocation may occur if the Executive Associate Commissioner or District Director determines, based on individualized findings, that (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 commence removal proceedings; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

C. Review Process Under 8 C.F.R. § 241.4(l)(3)[3]

If the noncitizen is not released from custody following the informal interview, the HQPDU Director shall schedule the review process in the case of an alien whose previous release or parole from immigration custody pursuant to a decision of either the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner under the procedures in this section has been or is subject to being revoked.

---

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.

[3] 8 C.F.R. § 241.4(1)(3) states that:
Timing of review when release is revoked. If the alien is not released from custody following the informal interview provided for in paragraph (l)(1) of this section, the HQPDU Director shall schedule the review process in the case of an alien whose previous release or parole from immigration custody pursuant to a decision of either the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner under the procedures in this section has been or is subject to being revoked. The normal review process will commence with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked. That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release. Thereafter, custody reviews will be conducted annually under the provisions of paragraphs (i), (j), and (k) of this section.

D. Changed Circumstances, Individualized Determination, Mandatory Notice and Opportunity to Respond under 8 C.F.R. § 241.13(i)(2) and (3)[4]

8 C.F.R. § 241.13, titled "Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future," governs revocation of release for noncitizens, like Petitioner, who were previously released because their removal was not reasonably foreseeable. The regulation mandates that ICE may revoke release only "if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future" (SLURFF). 8 C.F.R. § 241.13(i)(2). This is a substantive, evidence-based prerequisite—not a formality. The regulation requires an individualized determination, supported by concrete evidence, before revocation may proceed. Courts have repeatedly held that boilerplate or conclusory statements do not satisfy this standard; ICE must demonstrate, with specific facts, that removal is now likely when it was not before.

Further, upon making such a determination, ICE must (1) notify the noncitizen of the specific reasons for revocation, and (2) conduct an initial informal interview promptly after return to custody, affording the noncitizen an opportunity to respond to the stated reasons. The noncitizen must be permitted to submit evidence showing that removal is not significantly likely or that no violation occurred. The custody review must evaluate all contested facts and determine whether

---

[4] 8 C.F.R. § 241.13(i)(2) states that:
The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. Thereafter, if the alien is not released from custody following the informal interview provided for in paragraph (h)(3) of this section, the provisions of § 241.4 shall govern the alien's continued detention pending removal.

Section § 241.13(i)(3) states that: Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct 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. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

revocation is warranted. 8 C.F.R. § 241.13(i)(3). Recent district court decisions listed in the attached brief in support of this Response have strictly enforced these requirements.

E. Constitutional Due Process Requires a Pre-Deprivation Hearing.

Beyond regulatory mandates mentioned above, the Fifth Amendment's Due Process Clause imposes fundamental requirements on government actions that deprive individuals of liberty. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. Due process requirements mandate a pre-deprivation hearing prior to the revocation of an OSUP under the framework established by the Supreme Court in *Mathews v. Eldridge*. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty." *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976)). The "fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* The essence of due process is notice and an opportunity to respond. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Baldwin v. Hale*, 68 U.S. 223, 233 (1863) ("Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence.").

To determine what procedures are constitutionally sufficient to protect a liberty interest, the Court applies the three-part test established in *Mathews v. Eldridge*. The *Mathews* test balances three factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest,

including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. 424 U.S. at 335.

In the context of deprivation of liberty—such as revocation of supervised release or detention—courts applying *Mathews* have consistently held that the risk of erroneous deprivation is high, and that the private interest in freedom from physical restraint is of the highest order. Further, the risk of erroneous deprivation is greatest when the government acts without process, and that only through notice and a hearing can the reliability of the government's justification be tested. The *Mathews* Court recognized that the "right to be heard before being condemned to suffer grievous loss ... is a principle basic to our society." *Id.*, 333. The Court emphasized that the timing and nature of the hearing must be "appropriate to the nature of the case," but that, in most circumstances, due process requires that the hearing occur before the deprivation, not after. *Id.*; *see Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (explaining the purpose of a pre-detention hearing and noting that "if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid."); *see also Balouch v. Bondi*, NO. 9:25-CV-216-MJT, 2025 WL 2871914 (E.D. Tex., Oct 9, 2025) (habeas granted because procedures were not followed and government could not prove there is a significant likelihood of removal in the reasonably foreseeable future).

Thus, unless there are truly exigent circumstances, due process generally requires a pre-deprivation hearing: notice of the reasons for the proposed deprivation, and a meaningful opportunity to contest those reasons before a neutral decisionmaker, before the government acts to deprive the individual of liberty. *Mathews,* 424 U.S. at 333–35. This principle is directly applicable to the revocation of supervised release or detention in the immigration context, as recognized in both the case law and the regulatory framework governing such actions.

In Petitioner's case, no pre-deprivation hearing occurred. Moreover, as discussed above, there has been no determination by the appropriate district director that Petitioner has a "significant likelihood that the alien may be removed in the reasonably foreseeable future," which is another prerequisite for lawful revocation. Thus, ICE's actions violate both its own regulations and the constitutional right to due process.

Further, by releasing Petitioner on an OSUP approximately 25 years ago there was an "implied promise" that Petitioner's liberty would not be revoked unless he failed to live up to the conditions of his release. This principle is reinforced by Supreme Court precedent, that reliance interests created by government action cannot be disregarded arbitrarily or capriciously, and that any change in policy must be accompanied by a reasoned explanation and consideration of those interests. *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025) ("Individuals conditionally released from detention have a protected interest in their 'continued liberty.'") *citing Young v. Harper*, 520 U.S. 143, 147, 149, 152–53 (1997) (holding that a pre-parolee released to "reduce prison overcrowding" enjoy a protected liberty interest); *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020) (addressing the issue of reliance interests in the context of the rescission of the Deferred Action for Childhood Arrivals (DACA) program);[5] *see also Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL 1443250, at *3 (N.D. Cal. May 6, 2022) citing *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) ("A liberty interest

[5] In the case of DACA, recipients had made significant life decisions based on the program, such as enrolling in educational programs, starting careers, and purchasing homes. The Court held that DHS's failure to consider these reliance interests was arbitrary and capricious, violating the APA. The agency was required to provide a reasoned explanation for its decision, which included assessing the impact on those who had relied on the program. The decision underscored that the rescission of DACA was not merely a matter of agency discretion but was subject to judicial review. The Court rejected the argument that DACA was an unreviewable non-enforcement policy, affirming that a rescission of even a discretionary decision by an executive branch agency is subject to judicial review under these circumstances. The rescission of Petitioner's liberty, even if discretionary, is subject to judicial review and must comply with the APA and constitutional due process.

may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or it may arise from an expectation or interest created by state laws or policies.").

This profound reliance interest, cultivated over a quarter-century, is not merely an abstract equitable concern; it is a core component of the due process analysis under *Mathews v. Eldridge*. The first *Mathews* factor requires the Court to weigh "the private interest that will be affected by the official action." 424 U.S. 319, 335 (1976). Here, that interest is not just freedom from detention, but freedom from the arbitrary revocation of a liberty that the government itself granted and consistently reaffirmed for 25 years. Petitioner's reliance on this long-standing release to build a family, maintain employment, and care for his elderly father dramatically magnifies the weight of this private interest. When such significant, justifiable reliance interests are at stake, the need for robust pre-deprivation procedural safeguards becomes paramount, as the potential for "grievous loss" is at its apex.

Here, Petitioner relied on that protected liberty interest and promise from 25 years ago when he was released, and continued to live his life in the U.S., committed to a U.S. citizen life partner with whom he had two U.S. citizen children, and built himself a productive and meaningful life. None of the Declarations provided by Respondents claim that he failed to abide by the OSUP terms, only that ICE now wants to execute the removal order. But that is not a valid reason to revoke an OSUP, even if ICE now wants to do so. *See* 8 C.F.R. 241.4(l)(2). Thus, the only adequate remedy is restoration of the status quo ante and Mr. Trinh's immediate release.

IV. NO JURISDICTIONAL BARS TO THE COURT'S REVIEW

Respondents' assertion that this Court lacks subject matter jurisdiction is incorrect. Federal courts retain jurisdiction under 28 U.S.C. § 2241 to hear statutory and constitutional challenges to post-removal-period detention. This jurisdiction is broad enough to encompass challenges to

the *legality* of detention itself, not merely the underlying removal order. The jurisdictional limitations in 8 U.S.C. § 1252(g) and § 1252(a)(2)(B)(ii) do not strip this Court of its authority to review the unlawful revocation of Petitioner's OSUP and his subsequent detention. Petitioner's claims are not a challenge to the decision to execute a removal order, but rather a collateral challenge to the legality of his detention and the unconstitutional procedures and regulatory violations used to effect it. Specifically, challenges to the *manner* in which ICE executes a removal order or to procedural irregularities in detention decisions are cognizable in habeas. *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 152, 155 (W.D. N.Y. 2025). Petitioner's claims are not collateral attacks on the validity of his 1999 removal order. Instead, they directly challenge the *legality of his current detention* by asserting that ICE failed to follow its own mandatory regulations and due process requirements when revoking his OSUP and re-detaining him. These claims fall squarely within the core of habeas review, which examines the lawfulness of custody. The procedural irregularities alleged, such as the lack of proper authorization for revocation or the failure to provide a meaningful interview, directly impact whether Petitioner's detention is "pursuant to statutory authority."

A. 8 U.S.C. § 1252(a)(2)(B)(ii) Does Not Bar This Court's Review

Respondents' jurisdictional argument under 8 U.S.C. § 1252(a)(2)(B)(ii) is an attempt to invoke a narrow exception to the strong presumption in favor of judicial review, akin to the APA's exception for actions "committed to agency discretion by law." However, the government bears a heavy burden to show that Congress intended to preclude review, a burden it cannot meet here. The Supreme Court has held that for a decision to be unreviewable under § 1252(a)(2)(B)(ii), the statute must contain explicit language specifying that the authority is discretionary. The mere use of permissive language like "may" in 8 U.S.C. § 1231(a)(6) is insufficient to strip the Court of jurisdiction, especially when a fundamental constitutional liberty interest is at stake. As the

Supreme Court has consistently held, the "right to be heard before being condemned to suffer grievous loss of any kind... is a principle basic to our society," and any procedures must be tailored to provide a meaningful opportunity to be heard.

Furthermore, Respondents' reliance on 8 U.S.C. § 1252(a)(2)(B)(ii) is misplaced. This provision only bars review of decisions where the statute "specifies" that the authority is discretionary. The Supreme Court and circuit courts have clarified that "specified" requires an explicit grant of discretion, not merely an implied or contemplated one. The use of permissive language like "may" in a statute, such as in 8 U.S.C. § 1231(a)(6), is insufficient on its own to meet this high standard.

As the Second Circuit has held, given the "strong presumption in favor of judicial review of administrative action," *INS v. St. Cyr*, 533 U.S. 289, 298 (2001), "we hold that, when a statute authorizes the Attorney General to make a determination, but lacks additional language specifically rendering that determination to be within his discretion (*e.g.*, "in the discretion of the Attorney General," "to the satisfaction of the Attorney General," etc.), the decision is not one that is "specified . . . to be in the discretion of the Attorney General" for purposes of § 1252(a)(2)(B)(ii). *Nethagani v. Mukasey*, 532 F.3d 150, 154–55 (2d Cir. 2008). Because 8 U.S.C. § 1231(a)(6) lacks such explicit language, the decision to detain Petitioner is not an unreviewable discretionary act. Instead, it is a decision subject to judicial review for compliance with constitutional due process and statutory and regulatory requirements, including whether the action was arbitrary and capricious under the Administrative Procedure Act.

Respondents' reliance on 8 U.S.C. § 1231(g)(1) to argue that the *location* of detention is an unreviewable discretionary act is similarly unavailing. This argument conflates the secondary issue of *where* a noncitizen is detained with the primary, threshold question of *whether* the

detention itself is lawful. Before any discretion regarding the place of detention can be exercised, the underlying decision to detain must have a valid legal basis, a question which remains fully subject to this Court's review. Furthermore, even if the government's argument were focused on the transfer itself, it would fail. As the Second Circuit recently held in *Ozturk v. Hyde*, No. 25-1019, 2025 WL 1318154 (2d Cir. May 7, 2025), the authority to arrange for "appropriate places of detention" under § 1231(g)(1) is not an unreviewable discretionary decision. Applying the standard from *Nethagani v. Mukasey*, 532 F.3d 150 (2d Cir. 2008), the court in *Ozturk* explained that § 1231(g) lacks the explicit language—such as "in the discretion of the Attorney General"—necessary to strip courts of jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii). In fact, the statute uses the obligatory "shall arrange," which is the opposite of a grant of discretion. Therefore, the government's discretion regarding the location of detention is neither absolute nor a bar to this Court's jurisdiction over the lawfulness of the detention itself.

The Eleventh Circuit has repeatedly held that 8 U.S.C. § 1252(a)(2)(B)(ii) does not bar judicial review of agency compliance with mandatory procedures, and that challenges to the manner in which ICE executes removal orders—distinct from challenges to the discretionary decision to remove—are justiciable. *See Kurapati v. U.S. Bureau of Citizenship and Immig. Services*, 775 F.3d 1255, 1262 (11th Cir. 2014); *Gonzalez v. Reno*, 212 F.3d 1338, 1349 (11th Cir. 2000); *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025). Further, the Court's jurisdiction is not ousted by the mere assertion of agency discretion or the pendency of travel document requests. *See ISA Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369 at *6-7 (W.D. Wash. Nov. 17, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398-TMC, 2025 WL 2419288 at *27-28 (W.D. Wash. Aug. 21, 2025).

B. Review of Procedural and Regulatory Compliance Is Not Barred by § 1252(g)

The government argues that 8 U.S.C. § 1252(g) or related provisions strip the Court of jurisdiction. This is incorrect. Section 1252(g) is narrowly construed to bar review only of three discrete actions: the Attorney General's decision to **commence** proceedings, **adjudicate** cases, or **execute** removal orders. It does not preclude review of claims challenging the **legality of detention**, the manner in which detention is imposed, or **compliance with statutory and regulatory requirements**. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482–83 (1999); *Jennings v. Rodriguez*, 583 U.S. 244, 294 (2018) ("We did not interpret this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General.").

Section 1252 is "Congress's comprehensive scheme for judicial review of removal orders." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1256–57 (11th Cir. 2020). 8 U.S.C. § 1252(g) "strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful discretion** to in only three distinct actions: (1) commence removal proceedings, (2) adjudicate those cases, and (3) execute orders of removal." *Abrego Garcia v. Noem*, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025) (emphasis added). "1252(g) is not to be construed broadly as a 'zipper' clause applying to the full universe of deportation-related claims, but instead as applying narrowly to only the three 'discrete' governmental actions enumerated in that subsection." *Wallace v. Sec'y, U.S. Dep't of Homeland Sec.*, 616 F. App'x 958, 960 (11th Cir. 2015) (citing *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 472-73 (1999). "And although many other decisions or actions may be part of the deportation process, only claims that arise from one of the covered actions are excluded from [a court's] review...." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (internal quotations omitted).

The statute's opening phrase—"Except as provided in this section"—is critical. It means that the jurisdictional bar is not absolute; rather, it is subject to the exceptions and carve-outs that are expressly set forth elsewhere in § 1252. The enumeration of 28 U.S.C. § 2241, as well as other habeas and mandamus provisions, is intended to clarify that, except as otherwise provided in § 1252, these statutes do not independently confer jurisdiction over claims that fall within the specific actions listed: the Attorney General's decisions to commence proceedings, adjudicate cases, or execute removal orders.

Petitioner's habeas claims do not challenge the decisions to commence removal proceedings, adjudicate his case, or execute a removal order. Instead, he challenges the legality and constitutionality of his detention based on an unlawfully revoked OSUP and the government's failure to establish SLURFF and or provide individualized consideration as to whether to detain him; these matters are distinct from the enumerated actions in § 1252(g). Such claims are reviewable. *See Canal A Media Holding*, LLC, 964 F.3d at 1257–58 (claim was not barred by § 1252(g) where action did not fall into one of three categories as "[w]hen asking if a claim is barred by § 1252(g), courts must focus on the action being challenged."); *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *6 (D. Minn. Aug. 15, 2025) (petitioner's due process challenge was not barred by § 1252(g) as it did not "challenge the actions of commencing proceedings, adjudicating cases, or executing removal orders."); *Vazquez v. Feeley*, No. 25-cv-01542, 2025 WL 2676082, at *8 (D. Nev. Sept. 17, 2025) (challenges the lawfulness of detention during the pendency of removal proceedings, it is not a challenge to one of the 'three discrete events along the road to deportation' to which § 1252(g) applies); *Leal-Hernandez v. Noem*, No. 25-cv-02428, 2025 WL 2430025, at *5 (D. Md. Aug. 24, 2025) (same); *Sanchez v. LaRose*, No. 25-cv-2396, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) ("Petitioner seeks only review

of the legality of her detention, which does not require judicial intervention into the Attorney General's decisions to commence proceedings, adjudicate cases, and execute removal orders....Adopting [the government's] interpretation of 8 U.S.C. § 1252(g)...would eliminate judicial review of immigration detainee's claims of unlawful detention[.]").

Federal courts retain jurisdiction to review whether the agency complied with its own OSUP revocation procedures, even where statutory frameworks grant agency discretion. See *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025) (distinguishing between challenges to the *discretion* to execute a removal order and challenges to the *manner of execution*; the latter are reviewable). However, challenges to the *manner* in which ICE executes a removal order or to procedural irregularities in detention decisions are distinct from "actions to execute removal orders" and are not barred. Ceesay v. Kurzdorfer, 152, 155. The claims here do not seek to challenge the underlying removal order, but rather the **lawfulness of the current detention and the process by which the OSUP was revoked** in Petitioner's case and *procedures* ICE deployed to revoke it and redetain him.[6]

C. § 1252(b)(9) Likewise Does Not Bar Review

[6] Even where statutory bars may restrict this Court's review of lawful discretionary agency actions, the Court retains jurisdiction to review unlawful agency conduct. The Supreme Court has long recognized a strong presumption in favor of judicial review of administrative action, absent clear and convincing evidence that Congress intended to preclude such review. In *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667 (1986), the Court affirmed that Congress rarely intends to insulate agency actions from judicial scrutiny, especially where those actions exceed statutory authority. Likewise, in *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94 (1902), the Court held that agency actions taken beyond statutory mandates are subject to judicial review and cannot escape oversight. Further, *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), makes clear that statutory bars on judicial review of individual immigration determinations do not preclude jurisdiction over broader constitutional or collateral challenges to unlawful agency practices and policies. *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.") Thus, statutory limitations do not shield agency actions that are ultra vires, arbitrary, or unconstitutional from judicial review, and the judiciary retains its essential role in checking unlawful executive conduct.

Similarly, Section 1252(b)(9) does not deprives the Court of jurisdiction where Petitioner challenges the unlawful nature of his OSUP revocation and resulting detention. In *Jennings v. Rodriguez*, the Supreme Court rejected an "expansive interpretation of § 1252(b)(9)," explaining that even if "[t]he 'questions of law and fact' ...could be said to 'aris[e] from' actions taken to remove the aliens in the sense that the aliens' injuries would never have occurred if they had not been placed in detention," this "expansive interpretation of § 1252(b)(9) would lead to staggering results." *Jennings v. Rodriguez*, 583 U.S. 281, 292-294 (2018).

Accordingly, this Court's jurisdiction encompasses review of ICE's compliance with regulatory and constitutional requirements for both detention and removal and supports the full scope of injunctive relief sought here.

V. MOOTNESS IS UNFOUNDED

Respondents argue that Petitioner's claims seeking relief related to his OSUP revocation are moot because he has already received notice and an informal interview, as required by regulation. This argument fails because the core relief sought by Petitioner—release from unlawful detention—has not been granted, and the adequacy of the procedures followed remains a live controversy.

A claim becomes moot only if it no longer presents a live controversy for which the court can provide meaningful relief. In the context of habeas corpus, the primary relief sought is release from unlawful custody. Since Petitioner remains detained at Stewart Detention Center, the fundamental controversy regarding the legality of his detention is far from moot. The mere provision of *some* notice or an *informal* interview does not automatically render moot claims challenging the *sufficiency*, *timeliness*, or *legality* of those procedures, especially when the ultimate outcome (continued detention) is still in dispute.

The government's assertion that Petitioner "has already received notice and an informal interview" is a factual claim that Petitioner disputes in terms of its legal adequacy. The court must determine whether the procedures afforded were sufficient to satisfy regulatory and constitutional due process requirements, particularly given the significant liberty interest at stake. Until Petitioner is released or the court determines that his detention is lawful following constitutionally and statutorily compliant procedures, his claims are not moot. Therefore, Respondents' argument that Petitioner's claims are moot is without merit, and this ground does not warrant dismissal.

Respondents assert, in the alternative, that even if the Court reaches the merits, ICE/ERO fully complied with all applicable regulations: the OSUP was revoked by an authorized officer, for a valid reason (changed circumstances allowing removal), and Petitioner was provided notice and an interview. This assertion is a factual and legal dispute that cannot be resolved on a motion to dismiss and, moreover, Petitioner contends that ICE's actions fell short of the strict requirements imposed by the *Accardi* doctrine and due process.

VI. CONCLUSION

For all the reasons stated above and in the accompanying Brief in Support, the government's motion to dismiss should be denied. The OSUP revocation and Petitioner's ongoing detention were executed in violation of explicit regulatory assignments of authority, ICE's own internal policies, and fundamental principles of due process. The agency's actions were arbitrary, capricious, and unsupported by any individualized findings or changed circumstances. These procedural and substantive violations require judicial intervention to restore Mr. Trinh to his prior OSUP release status under the same conditions of release and remedy the ongoing deprivation of his rights and unlawful detention and enjoin Respondents from re-detaining Petitioner absent full compliance with statutory and regulatory due process protections.

Respectfully Submitted,

This 3rd day of December, 2025.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2025, this PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS was served, via electronic delivery to Respondents' counsel via CM/ECF system which will forward copies to Counsel of Record.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com