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,	:	
	:	
Respondent.	:	

REPLY IN SUPPORT OF MOTION TO DISMISS

Petitioner's petition for a writ of habeas corpus ("Petition") may be distilled down to three central assertions: (1) under *Zadvydas v. Davis*, 533 U.S. 678 (2001), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") lacks authority to detain Petitioner because there is no significant likelihood of removal in the reasonably foreseeable future, (2) ICE/ERO should not have exercised its discretion to revoke his OSUP, and (3) ICE/ERO failed to provide notice and an informal interview following his OSUP revocation. On November 17, 2025, Respondent moved to dismiss on multiple jurisdictional bases, as well as on the merits. Mot. to Dismiss 5-27, ECF No. 27. On December 3, 2025, Petitioner filed a Response to the Motion to Dismiss (ECF No. 32) and a Brief in Support (ECF No. 32-1), which collectively encompass 40 pages. The Petition should be dismissed on the grounds stated in the Motion to Dismiss.

I. Petitioner fails to state a claim under *Zadvydas*.

Petitioner first claims ICE/ERO lacks a statutory authority for detention because there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas* to warrant post-final order of removal detention under 8 U.S.C. § 1231(a). Pet. ¶¶ 70-78, 109-17; *see* Mot. to Dismiss 5-6. But Petitioner fails to state a claim under *Zadvydas* for two separate reasons, and §

1231(a)(6) therefore authorizes his detention.

First, Petitioner's *Zadvydas* claim is premature. "[I]n order to state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months[.]" *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Here, Petitioner filed the Petition just four days after he re-entered ICE/ERO custody for the first time in over 25 years. Knowles Decl. ¶¶ 13-14, ECF No. 27-1. Accordingly, he fails to state a claim under *Zadvydas*, and that claim should be dismissed. *Akinwale*, 287 F.3d at 1052; *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).

Petitioner responds the Petition is not premature because his present period of detention should be cumulated with prior period of pre-OSUP detention. Br. in Supp. 3-7, ECF No. 32-1. He claims courts have rejected the argument that the *Zadvydas* period commences at the time of the most recent re-detention. *Id.* at 3-4. As an initial matter, most of the cases Petitioner cites concern the 90-day statutory removal period under 8 U.S.C. § 1231(a)(1)—not the *Zadvydas* six-month presumptively reasonable detention period under § 1231(a)(6), which is at issue here. *See, e.g., Diaz-Ortega v. Lund*, No. 1:19-cv-670, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019). But Respondent has not argued that the statutory 90-day removal period requiring mandatory detention restarts upon re-detention. Rather, the *Zadvydas* six-month presumptively reasonable detention period begins upon re-detention. As to that issue, this Court has repeatedly held that in order to state a claim under *Zadvydas*, Petitioner must show six months of post-final order of detention following the most recent entry into custody. *O.K. v. Warden, Stewart Det. Ctr.*, No. 4:25-cv-257-CDL-CHW, 2025 WL 2970541, at *3 (M.D. Ga. Oct. 17, 2025); *J.A.S. v. Warden, Stewart Det. Ctr.*, No. 4:25-cv-244-CDL-CHW, Order & R. 4-8 (M.D. Ga. Oct. 14, 2025), ECF No. 8; *M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136-CDL-MSH, R. & R. 3-7 (M.D. Ga. Oct. 19, 2023), ECF No. 12.

As explained in the Motion to Dismiss, there are good reasons for this ruling. Mot. to Dismiss

8-9. Namely, 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 v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018). In light of this proper focus, cumulating multiple periods of detention "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." *M.K.*, No. 4:23-cv-136-CDL-MSH, R. & R. 6-7. The Court should abide by its prior reasoning and find that Petitioner cannot state a claim for relief under *Zadvydas* because the Petition is premature.

Second, Petitioner fails to show that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner has the burden to provide "*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) (internal quotations omitted) (emphasis added). In an attempt to meet his burden, Petitioner argues that "the mere existence of an MOU or a government official's assertion of cooperation is not sufficient to establish a significant likelihood of removal[.]" Br. in Supp. 9. According to Petitioner, ICE/ERO must show "concrete, individualized evidence of progress in the Petitioner's case." *Id.* This argument, however, ignores that such progress *has* been made. Namely, ICE/ERO is removing non-citizens to Vietnam, preparing a travel document request for submission to Vietnam, and merely awaiting translation of documents necessary for that request. Knowles Decl. ¶¶ 5, 16.

In effect, Petitioner would have the Court interpret the *Zadvydas* "significant likelihood of removal" standard "to essentially require [ICE/ERO] to finalize [Petitioner's] removal by having travel documents and possibly having the plane on the tarmac, gassed up and ready to go." *Nguyen v. Noem*, -- F. Supp. 3d --, 2025 WL 2737803, at *8 (N.D. Tex. Aug. 10, 2025). That is not the salient standard. Rather, as this Court has found in other cases, there is a significant likelihood of

removal in the reasonably foreseeable future where (1) the non-citizen's country of citizenship is issuing travel documents, (2) ICE/ERO is pursuing a travel document from that country, and (3) the country is open for travel and accepting non-citizens for removal. *See, e.g., S.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-159-CDL-MSH, 2023 WL 2534098, at *3 (M.D. Ga. Jan. 30, 2023), *recommendation adopted*, 2023 WL 2527869 (M.D. Ga. Mar. 15, 2023); *Kamara v. Holder*, No. 4:13-cv-97-CDL, 2013 WL 5718743, at *3 (M.D. Ga. Oct. 18, 2013). As explained in the Motion to Dismiss, other courts have found the same. *See* Mot. to Dismiss 12.

But the evidence here is even stronger. Petitioner claims that records from other cases show ICE/ERO has removed few Vietnamese nationals pursuant to the MOU between 2020 and 2023. Br. in Supp. 10-11; Resp. to Mot. to Dismiss Ex. 1, ECF No. 32-2. Of course, this undermines Petitioner's argument that the MOU did not alter his removability since he acknowledges that Vietnamese nationals in his position have been removed. But more importantly, the "focus [for *Zadvydas*] is on *today*[.]" *Meskini*, 2018 WL 1321576, at *3 (emphasis in original). And today, the evidence shows that in fiscal year 2025 alone, ICE/ERO removed 569 Vietnamese nationals, and this includes those who entered the United States prior to July 12, 1995 pursuant to the 2020 MOU. Knowles Decl. ¶ 5. In fact, since February 2025, Vietnam has issued a travel document for removal in response to *every* travel document request submitted by ICE/ERO. *Id.* Faced with similar evidence, two courts have recently denied *Zadvydas* claims with facts identical to those here. *Nguyen*, 2025 WL 2737803, at *2, 9; *Duong v. Tate*, No. H-24-4119, 2025 WL 933947, at *3-4 (S.D. Tex. Mar. 27, 2025). This Court should similarly deny Petitioner's claim here.

II. The Court lacks jurisdiction to judicially review ICE/ERO's decision to revoke Petitioner's OSUP.

Petitioner raises multiple claims challenging the decision to revoke his OSUP—as opposed to the procedures—arguing that ICE/ERO failed to adequately consider the relevant evidence. Pet.

¶¶ 84, 93, 96-108. But two provisions of 8 U.S.C. § 1252 deprive the Court of subject matter jurisdiction over these claims: § 1252(g) and § 1252(a)(2)(B)(ii). *See* Mot. to Dismiss 15-21.

First, § 1252(g) bars jurisdiction over "any cause or claim . . . arising from the decision or action by [ICE/ERO] to . . . execute removal orders[.]" ICE/ERO has the discretion to continue the detention of a non-citizen in order to effectuate removal. 8 U.S.C. § 1231(a)(6). The Eleventh Circuit has recognized that claims challenging ICE/ERO's decision to secure a non-citizen during the removal process is barred by § 1252(g). *See Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). And in discussing the scope of § 1252(g), the Supreme Court has found that it applies to "[e]fforts to challenge the refusal to exercise [favorable] discretion on behalf of specific aliens[.]" *Reno v. AADC*, 525 U.S. 471, 485 (1999). At their core, Petitioner's relevant claims challenge ICE/ERO's failure to exercise its discretion to continue his release under an OSUP. Section 1252(g) deprives the Court of jurisdiction over those claims.

Petitioner responds that § 1252(g) does not apply because he seeks review of the OSUP revocation procedures. Resp. to Mot. to Dismiss 17-18. But Respondent repeatedly made clear in the Motion to Dismiss that the § 1252(g) jurisdictional argument is limited to Petitioner's claims challenging ICE/ERO's discretionary *decision* to revoke his OSUP—not his claims regarding the revocation procedures.[1] Mot. to Dismiss 16, n.3, n.4. Another court in the Eleventh Circuit recently made this same distinction and found that § 1252(g) applies to identical claims challenging ICE/ERO's *decision* to revoke an OSUP. *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025) ("The Court finds that § 1252(g) deprives it of subject-matter jurisdiction over Respondents' decision to revoke the OSUP, but not their purported failure to comply with their own procedures in doing so."). This Court should reach the same conclusion.

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[1] Rather, as explained below, Petitioner's challenges to the procedures are moot and lack merit.

Second, § 1252(a)(2)(B)(ii) deprives the Court of jurisdiction to judicially review any "decision or action . . . which is specified under this subchapter to be in the discretion of" ICE/ERO. Here, § 1231(a)(6) provides that non-citizens subject to final orders of removal "*may* be detained beyond the removal period[.]" (emphasis added). Because § 1231(a)(6) vests ICE/ERO with the discretion to continue Petitioner's detention by revoking his OSUP, § 1252(a)(2)(B)(ii) deprives the Court of jurisdiction over Petitioner's challenges to that decision. And to the extent Petitioner challenges ICE/ERO's consideration of the evidence in reaching the decision to exercise its discretion re-detain him, § 1252(a)(2)(B)(ii) similarly bars those claims because the statute applies "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).

Petitioner asserts that the decision to detain under § 1231(a)(6) is not discretionary because inclusion of the term "may" in that subsection "is insufficient on its own" to vest ICE/ERO with discretion. Resp. to Mot. to Dismiss 14. But the Supreme Court has recognized precisely the opposite: "that the word 'may' *clearly connotes discretion*." *Biden v. Texas*, 597 U.S. 785, 802 (2022) (emphasis added) (internal quotations and citations omitted), and that § 1231(a)(6) specifically "gives the Federal Government *discretionary authority*" to detain non-citizens post-final order of removal, *Garland v. Aleman Gonzalez*, 596 U.S. 543, 546 (2022) (emphasis added) (internal quotations and citation omitted). Because ICE/ERO has the statutory discretion to continue a non-citizen's post-final order of removal detention, the Court lacks subject matter jurisdiction to judicially review its exercise of that discretion under 8 U.S.C. § 1252(a)(2)(B)(ii).

III. Petitioner's claims regarding the OSUP revocation procedures are moot.

Petitioner's primary claims are that ICE/ERO failed to comply with the OSUP revocation procedures by failing to provide him notice of the reasons for the revocation or an informal

interview. Pet. ¶¶ 82-83, 85, 92-94, 120-21. But ICE/ERO provided Petitioner notice and an interview on October 27, 2025—just six days after he arrived at Stewart Detention Center. Knowles Decl. ¶¶ 14-15; Knowles Decl. Ex. L, ECF No. 27-13; Knowles Decl. Ex. M, ECF No. 27-14; *see* Mot. to Dismiss 21-23. Petitioner's claims that his OSUP revocation is improper in the absence of these procedures are now moot because they "no longer present[] 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). "[D]ismissal is required because mootness is jurisdictional." *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001).

Despite acknowledging that he has received both written notice of the reasons for his OSUP revocation and an informal interview regarding the revocation, Petitioner argues his claims are not moot because he "remains detained[.]" Resp. to Mot. to Dismiss 19. But this argument concerns only a potential remedy—not whether there is a live case or controversy. Petitioner also asserts his claims are not moot because the notice and interview provided do not comport with the regulations. *Id.* at 20. As explained below, however, Petitioner has already received all that is required by the regulations. Thus, his claims are moot and must be dismissed.

IV. Petitioner's OSUP revocation complied with the applicable regulations.

Even if the Court ignores the jurisdictional and mootness bars, Petitioner's claims should be dismissed because ICE/ERO complied with 8 C.F.R. § 241.4(l)(1) [2] in revoking his OSUP.

[2] Despite specifically relying on 8 C.F.R. § 241.4(l) in the Petition, Pet. ¶¶ 54, 56-57, 94, 107, Petitioner now appears to assert that 8 C.F.R. § 241.13(i) applies to his OSUP revocation, requiring ICE/ERO to find changed circumstances to support a revocation, Br. in Supp. of Resp. 1, 7-9, 13; Resp. to Mot. to Dismiss 7-9. But 8 C.F.R. § 241.13 applies only where a non-citizen was released on an OSUP based on a specific finding that there was no significant likelihood of removal in the reasonably foreseeable future at the time. 8 C.F.R. § 241.13(a). In turn, that finding is made only by the ICE Headquarters Post-Order Detention Unit ("HQPDU") following extensive review and findings. *See* 8 C.F.R § 241.13(b), (d), (e), (g). Section 241.13 does not apply here because Petitioner's OSUPs did not include *any* of those reviews or findings. *See* Knowles Decl. Ex. I, ECF No. 27-10; Knowles Decl. Ex. J, ECF No. 27-11. Rather, as the regulation specifies, 8 C.F.R. § 241.4 continues to govern in the absence of these specific findings. 8 C.F.R. § 241.13(b) (discussing the relationship between 8 C.F.R. §§ 241.13 and 241.4). Put simply, 8 C.F.R. § 241.13 does not apply. But even if it did, ICE/ERO still found "changed circumstances" in revoking Petitioner's OSUP. *See* Knowles Decl. Ex. L. And the promulgation of the 2020 MOU and resulting removals of Vietnamese non-citizens similarly situated to

First, Petitioner's OSUP was properly revoked by a Supervisory Detention and Deportation Officer ("SDDO") who had been delegated that authority by the Executive Associate Commissioner ("EAC") through ERO Delegation Order 0001.1. *See* Knowles Decl. Ex. L; Knowles Decl. Ex. N; Mot. to Dismiss 24-25. In response, Petitioner first claims that the regulation's assignment of revocation authority to the EAC "is both exclusive and exhaustive." Br. in Supp. 15. However, 8 C.F.R. § 241.4(c)(4) *expressly* permits the delegation of the authority to revoke an OSUP to "any person or persons . . . designated in writing by the Executive Associate Commissioner[.]"

Petitioner next argues that a prior delegation order preempts ERO Delegation Order 0001.1. Br. in Supp. of Resp. 16-17. Specifically, he references DHS Delegation Order 7030.2 from 2002, claiming that order delegated OSUP revocation authority only to the ICE "Assistant Secretary."[3] *Id.*; *see* Resp. to Mot. to Dismiss Ex. 2, ECF No. 32-3 This argument misses the mark for two reasons. As an initial matter, 8 C.F.R. § 241.4(l)(2) itself specifically vests the authority with the EAC—not the Assistant Secretary—and she has delegated that authority to, *inter alia*, SDDOs. *See* Knowles Decl. Ex. N. Moreover, Petitioner conveniently ignores that the position of "Assistant Secretary" has not existed since 2015. Pursuant to provisions of the Trade Facilitation and Trade Enforcement Act of 2015, the EAC replaced that prior position, as made clear by ICE Directive 1052.2. *See* Ex. A. To the extent Petitioner argues his OSUP was not revoked by the proper authority, that claim lacks merit.

Second, ICE/ERO relied on an appropriate basis to revoke Petitioner's OSUP. ICE/ERO revoked Petitioner's OSUP because he "can be expeditiously removed from the United States."

Petitioner clearly constitute changed circumstances since Petitioner's release on an OSUP. *See Nguyen*, 2025 WL 2737803, at *7-10 (finding that the 2020 MOU and continued removal flights to Vietnam constitute changed circumstances sufficient to revoke an OSUP pursuant to 8 C.F.R. § 241.13(i)).

[3] This argument that the EAC could not delegate OSUP revocation authority because she never had it in the first place is plainly irreconcilable with Petitioner's earlier argument that only the EAC has "exclusive and exhaustive" authority to revoke OSUPs. Br. in Supp. 15. Petitioner cannot have it both ways.

Knowles Decl. Ex. L. Petitioner claims this does not satisfy the regulation because ICE/ERO "must state individualized, case-specific reasons" for the revocation. Br. in Supp. of Resp. 18. But the regulation does not provide *any* support for this argument requiring more extensive detail. It requires only that Petitioner "be notified of the reasons for revocation." 8 C.F.R. § 241.4(l)(1). The regulation then enumerates four reasons to revoke an OSUP. *See* 8 C.F.R. § 241.4(l)(2)(i)-(iv). Here, Petitioner's Notice of Revocation of Release specifically relies on one of those four reasons—that "[i]t is appropriate to enforce [his] removal order." 8 C.F.R. § 241.4(l)(2)(iii).

The plain text of the regulation simply does not require—as Petitioner would have the Court hold—that ICE/ERO detail all of the evidence supporting its decision. *See Nguyen*, 2025 WL 2737803, at *7-8. In fact, in the immigration context, Congress promulgated § 1252(a)(2)(B)(ii) precisely to "protect[] 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) (citation omitted). But even if the Court *could* judicially review ICE/ERO's finding, the evidence discussed above shows that it *is* appropriate to enforce Petitioner's removal order. Specifically, the 2020 MOU permits ICE/ERO to remove Vietnamese nationals—like Petitioner—who entered the United States prior to July 12, 1995, Knowles Decl. Ex. A, and ICE/ERO is currently removing non-citizens to Vietnam on monthly flights pursuant to the MOU, *id.* ¶ 5.

Third, Petitioner received written notice and an informal interview following his return to custody. Both occurred on October 27, 2025—six days after Petitioner arrived at Stewart Detention Center. Knowles Decl. Ex. L; Knowles Decl. Ex. M. Because ICE/ERO provided both procedures, "promptly after [Petitioner's] return to [ICE/ERO] custody," 8 C.F.R. § 241.4(l)(1), the revocation complied with the applicable regulation. Petitioner disputes this, claiming that the officer who conducted the interview lacked authority to do so. Br. in Supp. of Resp. 18. This is unsupported by 8 C.F.R. § 241.4(l)—on which Petitioner bases his claims—because the regulation does not limit

the officials who may conduct interviews in any way. Petitioner also claims that he was entitled to the presence of counsel during the interview. *Id.* at 18-19. But again, the regulation serving as the basis of his claims does not require this.[4] Thus, Petitioner's OSUP revocation complied with all regulatory requirements, and his claims lack merit.

V. Release is not the appropriate remedy.

Finally, even if the Court finds some error with the procedures ICE/ERO employed in revoking Petitioner's OSUP—which it should not—release is not the appropriate remedy. As another Court has recognized, "[u]nder the plain language of the [OSUP] regulation, notice and an informal interview are not prerequisites to detention." *Nguyen*, 2025 WL 2737803, at *6. "The regulation contemplates that these procedures will occur after detention because notice is to happen upon revocation and the initial informal interview occurs after the alien's return to ICE Custody." *Id.* (internal quotations, alterations, and citations omitted). Thus, even if Petitioner established that ICE/ERO did not comply with the strict dictates of the OSUP revocation procedures—which he cannot—that non-compliance does not somehow invalidate his detention. This is particularly true because § 1231(a)(6), as interpreted by *Zadvydas*, authorizes Petitioner's detention because there is a significant likelihood of his removal in the reasonably foreseeable future. None of Petitioner's claims regarding the OSUP revocation procedures invalidate this statutory basis for detention.

CONCLUSION

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

[4] Petitioner admits that "the Sixth Amendment right to counsel does not apply in civil immigration proceedings[.]" Br. in Supp. 19. He claims his counsel must be present under the Fifth Amendment, yet he cites no authority supporting this proposition in this context. *Id.* Nevertheless, the Supreme Court has made clear that the Fifth Amendment Due Process Clause does not protect a "benefit . . . if government officials may grant or deny it in their discretion." *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756 (2005); *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 462-63 (1989); *see also Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). As relevant here, ICE/ERO has discretion to continue detention generally. 8 U.S.C. § 1231(a)(6). And the revocation of an OSUP specifically is committed to ICE/ERO's "exercise of discretion." 8 C.F.R. § 241.4(l)(2).

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

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