

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

OMID KAMALI,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-416-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, <sup>1</sup>	:	
	:	
Respondent.	:	

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MOTION TO DISMISS

On November 26, 2025, Petitioner filed an application for a writ of habeas corpus (“the Petition”). ECF No. 1.<sup>2</sup> The Petition argues that Petitioner’s rights were violated by the revocation of his Order of Supervision because Immigration and Customs Enforcement (“ICE”) violated its own regulations by failing to serve him with notice of the revocation and an interview. *Id.* at 2-6. Petitioner seeks release from custody on that basis. *Id.* On December 1, 2025, the Court ordered Respondent to file a comprehensive

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<sup>1</sup> Petitioner names the 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.

<sup>2</sup> This is Petitioner’s second Petition for Writ of Habeas Corpus filed in 2025. *See Kamali v. Warden, Stewart Det. Ctr.*, No. 4:25-cv-257-CDL-CHW (M.D. Ga. Aug. 12, 2025). That Petition was dismissed as premature on December 1, 2025. *See id.* at ECF Nos. 14 (order and recommendation) and 16 (order adopting recommendation).

response within twenty-one days from the date of filing. ECF No. 3. Respondent now files this comprehensive response and requests that the Petition be denied.

### BACKGROUND

Petitioner is a native and citizen of Iran. Declaration of Deportation Officer Kent Ray (“Ray Decl.”) ¶ 4 & Exs. A, B, and C. On February 9, 2017, Petitioner adjusted his status to that of a lawful permanent resident (“LPR”). *Id.* ¶ 5 & Exs. B and C.

On February 10, 2020, Petitioner was convicted in the Superior Court of Jasper County, Georgia for the offenses of: Criminal Attempt to Commit a Felony, Computer Pornography, and Sexual Exploitation of Children. *Id.* ¶ 6 & Exs. B, C, and D. Petitioner was sentenced to a total of 15 years in prison. *Id.* On March 31, 2020, Immigration and Customs Enforcement (“ICE”)/Enforcement and Removal Operations (“ERO”) issued Petitioner a Notice to Appear charging him with removability under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (“INA”) (8 U.S.C. § 1227(a)(2)(A)(iii)) for having, at any time after admission, been convicted of an aggravated felony as defined in section 101(a)(43)(I) of the INA (8 U.S.C. § 1101(a)(43)(I)) in that he was convicted of an offense described in Title 18 of the United States Code, Section 2251, 2251A, or 2252 (relating to child pornography) and as defined in section 101(a)(43)(U) of the INA (8 U.S.C. § 1101(a)(43)(U)) in that he was convicted of an attempt or conspiracy to commit an offense described in section 101(a)(43)(A) of the INA (8 U.S.C. § 1101(a)(43)(A)) (relating to “murder, rape, or sexual abuse of a minor”). *Id.* ¶ 7 & Ex. B.

Petitioner first entered ICE/ERO custody on or about May 22, 2020. *Id.* ¶ 8. On June 30, 2020, Petitioner appeared before an Immigration Judge (“IJ”). *Id.* ¶ 9. The IJ found

Petitioner removable from the United States under section 237(a)(2)(A)(iii) of the INA (8 U.S.C. § 1227(a)(2)(A)(iii)) and ordered his removal to Iran. *Id.* ¶ 9 & Ex. C. Petitioner and the Department of Homeland Security waived appeal, making Petitioner's removal order final as of June 30, 2020. *Id.* ¶ 9; 8 C.F.R. § 1241.1(b). Petitioner was released from ICE/ERO custody on an order of supervision on May 25, 2021. *Id.* ¶ 10.

On July 2, 2025, ICE/ERO took Petitioner into custody. *Id.* ¶ 11 & Ex. A. On December 18, 2025, ICE/ERO served Petitioner with a Notice of Revocation of Release signed by the acting Assistant Field Office Director. *Id.* ¶ 12. On the same date, ICE/ERO conducted an initial informal interview with Petitioner to afford him an opportunity to respond to the reasons for revocation of his supervision. *Id.* & Exs. F, G.

Petitioner is currently detained at Stewart Detention Center under the authority of INA § 241(a) (8 U.S.C. § 1231(a)). *Id.* ¶ 11 & Ex. A. Since January 1, 2025, ICE has removed at least seventy-five Iranian citizens to Iran. *Id.* ¶ 13. More recently, on December 7, 2025, a charter flight removed Iranian nationals to Iran. *Id.* During a recent meeting with the Director of the Interests Section of the Islamic Republic of Iran, the Iranian Interests Section represented, and it was confirmed, that travel documents would be issued for individuals with Iranian identity documents and interviews would be conducted for those without proper identification. *Id.* ¶ 14. On December 18, 2025, ICE/ERO forwarded the completed travel document request for Petitioner to the Interests Section of the Islamic Republic of Iran. *Id.* ¶ 15. Based on the foregoing, there is a significant likelihood of Petitioner's removal to Iran in the reasonably foreseeable future. *Id.* ¶ 16.

## 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. at 689; 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

The Petition seeks judicial review of Petitioner’s OSUP revocation under the *Accardi* doctrine and the Due Process Clause of the Fifth Amendment. Pet. 2-6. He explicitly disclaims any challenge to “the decision to execute his removal, the decision to detain him, the Government’s authority to deport or detain him.” Pet 5. This claim should be dismissed because (1) it is not cognizable in this habeas proceeding, (2) it is moot, and (3) it otherwise lacks merit. To the extent Petitioner also seeks release pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002), the Petition should be denied because there is a significant likelihood of his removal to Iran in the reasonably foreseeable future.

### **I. Petitioner’s OSUP claim should be dismissed.**

The Petition should be dismissed for three reasons. First, the non-*Zadvydas* claim is not cognizable in this habeas proceeding because it raises a purely civil claim seeking judicial review of a process collateral to Petitioner’s detention. Second, Petitioner’s claim

regarding the OSUP procedures is moot. And third, Petitioner's OSUP revocation claims do not entitle him to release.

**A. Petitioner's challenge to his OSUP revocation is not cognizable in habeas.**

The Petition seeks judicial review of Petitioner's OSUP revocation through the due process Clause of the Fifth Amendment and *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Pet. at 2-6. This claim should be dismissed because it is 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, Petitioner does not assert that ICE/ERO lacks sufficient authority for his present detention; rather, Petitioner raises a claim challenging the procedures ICE/ERO employed in revoking his OSUP. Pet. 3-5. 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 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 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" that is not properly within the purview of habeas corpus. *Id.* at \*2 (internal 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 an *Accardi* claim challenging an issue collateral to the statutory authority for his detention onto the Petition.

**B. Petitioner's claim seeking notice and an informal interview is moot.**

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. Pet. 2-6. Specifically, Petitioner asserts that ICE/ERO failed to provide notice of the reasons for revoking his OSUP and failed to afford him an interview to contest his OSUP revocation. *Id.* To the extent Petitioner claims he is entitled to notice and an interview, the Court should dismiss this claim as moot because ICE/ERO has afforded him this relief. *See* Ray Decl. ¶ 12 & Exs. F, G.

"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, Petitioner argues that his OSUP revocation violates due process because ICE/ERO did not provide him with the processes allegedly due to him before re-detaining him and revoking his OSUP. Pet. 5. Petitioner’s OSUP was revoked pursuant to 8 C.F.R. § 241.4 That regulation provides, in relevant part, that “[u]pon 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.” 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 December 18, 2025, ICE/ERO served Petitioner with a Notice of Revocation of Release signed by the acting Assistant Field Office Director. Ray Decl. ¶ 12 & Exs. F, G. The Notice states the reason for Petitioner’s OSUP revocation: “You failed to provide ICE with copies of written requests to Embassies or Consulates requesting issuance of a travel document.” *Id.* & Ex. F. 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. *Id.* & Ex. G.

Because ICE/ERO has provided Petitioner notice and an informal interview in accordance with 8 C.F.R. § 241.4, Petitioner's claims 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 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).

**C. Petitioner's OSUP revocation claim does not entitle him to release.**

To the extent the Court rejects the above bases for dismissal and finds that ICE/ERO has not complied with the applicable regulations and that this violates Petitioner's rights, the only appropriate remedy is an order for compliance with the regulations—not release from custody, and therefore the claims lack merit in this habeas action. ICE/ERO has the discretion to detain Petitioner pursuant to 8 U.S.C. § 1231(a)(6) because there is a significant likelihood of removal in the reasonably foreseeable future. Given that Petitioner's due process claim challenges only compliance with the OSUP revocation regulations—not the statutory authority for detention under § 1231(a)(6)—the only appropriate remedy would be an order for compliance with those regulations. *See*

*Flores–Powell v. Chadbourne*, 677 F. Supp. 2d 455, 476 (D. Mass. 2010) (“Rather, the remedy should be tailored to the injury suffered ... and should not unnecessarily infringe on competing interests”) (*quoting United States v. Gordon*, 156 F.3d 376, 381 (2d Cir. 1998)); *see also United States v. Caceres*, 440 U.S. 741, 760 (1979) (forcing agency compliance with their own regulations when the regulations afford individual rights and protections); *Bonitto v. Bureau of Immigr. & Customs Enft*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) (“This Court must insist on DH’s compliance with the post-order custody regulations if [petitioner’s] detention is to remain constitutional”). Such a remedy is tailored to the injury suffered and does not infringe upon the Government’s competing interest in detaining Petitioner for the purpose of effectuating his removal. *Id.* Release, on the other hand, as Petitioner requests, would greatly infringe on the Government’s interest in effectuating Petitioner’s removal. Because release is not the appropriate remedy, it follows that habeas is not the appropriate vehicle, and therefore the claim is without merit within this habeas action. Further, as Petitioner has already received the only appropriate remedy, the claim should be dismissed.

**II. In the alternative, Petitioner fails to show that he is entitled to release under *Zadvydas*.**

To the extent Petitioner also claims that he is entitled to relief under *Zadvydas*, this claim also fails. In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit 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*, 309 F. App’x at 346 (quoting *Akinwale*, 287 F.3d at 1051-52).

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. But even assuming he did offer evidence sufficient to shift the burden to Respondent to show a likelihood of removal, Respondent meets his burden. Since January 1, 2025, ICE has removed at least seventy-five Iranian citizens to Iran. Ray Decl. ¶ 13. More recently, on December 7, 2025, a charter flight removed Iranian nationals to Iran. *Id.* During a recent meeting with the Director of the Interests Section of the Islamic Republic of Iran, the Iranian Interests Section represented, and it was confirmed, that travel documents would be issued for individuals with Iranian identity documents and interviews would be conducted for those without proper identification. *Id.* ¶ 14. On December 18, 2025, ICE/ERO forwarded the completed travel document request for Petitioner to the Interests Section of the Islamic Republic of Iran. *Id.* ¶ 15. Accordingly, there is a significant likelihood of removal in the reasonably foreseeable future and the Petition should be denied.

## CONCLUSION

For the foregoing reasons, Respondent requests that the Petition be dismissed.

Respectfully submitted this 22nd day of December, 2025.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

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Respectfully submitted this 22nd day of December, 2025.

By: s/W. Taylor McNeill  
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