IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ZU PING CHEN Reg NO. [redacted]	)	
Petitioners,	)	
v.	)	Civil Action No.: 3:25cv-00970
MELISSA B. HARPER Field Director New Orleans Field Office, *et al*	)	
Respondents.	)	

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Comes now the Respondents, by and through Kevin P. Davidson, Acting United States Attorney for the Middle District of Alabama, and hereby submit this response to the Court's order to show cause why a preliminary injunction should not issue. Petitioner Zu Ping Chen is a noncitizen of the United States who is subject to a final order of removal. Petitioner is not detained by ICE. He is subject to an order of supervision ("OSUP"). Doc. 1 ¶ 1. Petitioner speculates (1) that his OSUP will be revoked and (2) that the revocation will be done incorrectly.

This request is premature. Petitioner's claims are not ripe because they challenge agency action before a final agency decision has been made. Even if the decision had been made, the Court lacks jurisdiction to review ICE's discretionary decision to revoke an OSUP. At best, the Court may review whether ICE followed

the proper procedures to revoke but it may not do that before revocation has occurred.

Further, because the Petitioner's OSUP has not been revoked, he cannot show a likelihood of success on the merits. Not all forms of revocation require written notice and an opportunity to be heard by a neutral decision maker. Thus, Petitioner cannot show at this time which procedures ICE must follow or that ICE failed to follow those procedures.

For the reasons discussed below, Respondents respectfully submit that there is no basis for issuance of a preliminary injunction. If ICE later revokes Petitioner's OSUP, the Petitioner may then raise any lawful challenge he may have.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a Chinese national who entered the country in August 1999. Doc. 1 ¶ 12. He has been subject to a removal order since 2003. *Id.* He is subject to an Order of Supervision. *Id.* ¶ 1. That OSUP has not been revoked.

LEGAL FRAMEWORK FOR POST-ORDER OF REMOVAL DETENTION, RELEASE, AND REVOCATION OF RELEASE

I. Statutory Framework

A removable noncitizen may be detained during removal proceedings and after receiving an order of removal that becomes final. *See* 8 U.S.C. §§ 1225, 1226, 1231. Once subject to a final removal order, the authority for his detention shifts to § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528–29 (2021).

Section 1231 establishes a 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following: (i) the date the order of

removal becomes administratively final, (ii) if the removal order is judicially reviewed and if a court orders a stay of removal, the date of the court's final order, or (iii) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

Under 8 U.S.C. § 1231, the Attorney General is required to detain noncitizens subject to such removal orders throughout the 90-day removal period. 8 U.S.C. § 1231(a)(1)–(2). Subsequently, a noncitizen ordered removed and determined by the Attorney General to be a "risk to the community or unlikely to comply with the order of removal, may be detained beyond the [90-day] removal period." 8 U.S.C. §§ 1231(a)(2), (6); 8 C.F.R. §§ 241.4(a)(1), (4).

In *Zadvydas v. Davis*, the Supreme Court interpreted 8 U.S.C. § 1231(a)(6) to limit a noncitizen's detention beyond the removal period to the period "reasonably necessary to bring about the alien's removal from the U.S." 533 U.S. 678, 689 (2001). The Court held that a period of six months from the date the removal order becomes final is presumptively reasonable. *Id.* at 701. But the Supreme Court cautioned that the "presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* at 695. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." Id.

II. **Regulatory Framework**

The Code of Federal Regulations sets forth specific provisions regarding the release and revocation of release of a noncitizen with a final order of removal.

Specifically, 8 C.F.R. § 241.4 is entitled "Continued detention of inadmissible, criminal, and other aliens [beyond the removal period" and relates to the release (and the revocation of release) of such noncitizens. Generally, regulations grant authority to designated officials with ICE (formerly the Immigration and Naturalization Service) to grant release or parole to a noncitizen, and the agency may continue a noncitizen's custody pursuant to applicable regulations. 8 C.F.R. § 241.4(a).

Revocation of release is governed by 8 C.F.R. §§ 241.4(*l*) and 241.13. Under Section 241.4(*l*), revocation can occur under two sets of circumstances: the noncitizen violates the conditions of release, § 241.4(*l*)(l), or ICE determines in its discretion to revoke release, § 241.4(*l*)(2). If release is revoked due to a violation of conditions under § 241.4(*l*)(1), "[u]pon revocation, the alien will be notified of the reasons for revocation," and "will be afforded an initial informal interview promptly after" his return to 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).

The regulation providing for revocation of release in the discretion of ICE has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody.3 8 C.F.R. § 241.4(*l*)(2). The ICE official must find one of the following: (1) the purpose of the release has been served; (2) the noncitizen violated a condition of release; (3) revocation is appropriate to enforce a removal order or to commence removal proceedings; or (4) the conduct of the

noncitizen, or any other circumstance, indicates release would no longer be appropriate. 8 C.F.R. §§ 241.4(*l*)(2)(i–iv).

8 C.F.R. § 241.13 sets out "special review procedures for those aliens who are subject to a final order of removal and are detained under the custody review procedures at § 241.4 after the expiration of the removal period" and who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Pursuant to that regulation, DHS will release a noncitizen who has made such a showing, subject to appropriate conditions of release. 8 C.F.R. § 241.13(g)(1). Similar to the regulations described above, § 241.13 provides for the revocation of release in instances where conditions of release have been violated or if, "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13.

The regulation also sets forth the revocation procedures applicable in those circumstances:

> Revocation procedures. Upon revocation, the alien will be notified of the reasons for revocation of his or her release. [ICE] will conduct an initial informal interview promptly after his or her return to [ICE] 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.

8 C.F.R. § 241.13(i)(3).

ARGUMENT

This Court should deny Plaintiff's motion for a preliminary injunction. "A preliminary injunction is a powerful exercise of judicial authority" that should not be lightly granted. *Ne. Florida Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, Florida*, 896 F.2d 1283, 1284 (11th Cir. 1990). To obtain the extraordinary relief he seeks here, Petitioner must "plainly establish": (1) "substantial likelihood" of success on the merits; (2) denial will result in irreparable harm; (3) granting the injunction will not result in irreparable harm to the defendants; and (4) granting the injunction is in the public interest. *Id.* The last two factors merge when the government is the opposing party.

The first two factors are the most critical. *See, e.g., id.* at 1285 ("A showing of irreparable harm is 'the sine qua non of injunctive relief') (citation omitted); *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1226 (11th Cir. 2005) ("Controlling precedent is clear that injunctive relief may not be granted unless the [movant] establishes the substantial likelihood of success criterion.").

As explained below, these factors weigh against Petitioner, and his request for a preliminary injunction should be denied.

I. Petitioner Cannot Demonstrate a Likelihood of Success on the Merits.

A. Petitioner Has Not Established This Court's Jurisdiction

"As the familiar maxim goes, federal courts are 'courts of limited jurisdiction.' After all, [courts] 'possess only that power authorized by Constitution and statute.' For that reason, [a court] 'cannot extend [its] hand to seize topics Congress has put

beyond [its] reach.'" *Camarena v. Dir., Immigration & Customs Enforcement*, 988 F.3d 1268, 1271 (11th Cir. 2021) (citations omitted). Here, Petitioner is not likely to succeed on the merits of his claims because jurisdiction is lacking for two independent reasons – lack of ripeness and the jurisdiction stripping impact of 8 U.S.C. § 1252.

i. Petitioner's Claims Are Not Ripe

This Court's jurisdiction is limited by Article III of the United States Constitution "to cases and controversies of sufficient concreteness to evince a ripeness for review," and "[e]ven when the constitutional minimum has been met . . . prudential considerations may still counsel judicial restraint." *Victoria Media Group, LLC v. City of Roswell, Georgia*, No. 23-13610, 2024 WL 3493947, at *1 (11th Cir. July 22, 2024). The ripeness doctrine serves the important functions of "protect[ing] federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes," and protecting "agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Id.* at *2 (internal citations and quotes omitted).

To determine whether a matter is ripe, courts consider "(1) the fitness of the issues for judicial decision, and (2) the hardship to the parties of withholding court consideration." Id. The court also must consider "whether the parties raise an issue that [can be decided] without further factual development[.]" *Id.* "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as

anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300 (1998). Importantly, without final agency action – and an explanation of the reasons underlying that action – an issue is not ripe for review. *See, e.g., id; Meza v. U.S. Attorney Gen.*, 693 F.3d 1350, 1357 (11th Cir. 2012) (holding in habeas case that claims based on assumptions about actions the agency may take were not ripe); *LabMD, Inc. v. F.T.C.*, No. 1:14-cv-00810, 2014 WL 1908716, at **4, 6 (N.D. Ga. May 12, 2014) (concluding that without final agency decision neither APA nor constitutional claims ripe for review).

Here, all of Petitioner's claims are rooted in his speculation about actions he assumes ICE will take and the reasons he hypothesizes ICE will take them. Because ICE has not revoked Petitioner's OSUP and has not detained him, the Court lacks the essential facts needed to analyze and rule on his claims, including the reason for revocation, the regulations which would apply, and the process which ICE would provide to Petitioner in the event that at some unknown future time ICE does revoke Petitioner's OSUP and detain him. Consequently, none of Petitioner's claims are ripe. There will be no hardship to Petitioner if the Court withholds consideration now. If these "contingent future events" do occur in a manner that gives rise to colorable claims over which this Court has jurisdiction, Petitioner may seek judicial relief at that point – not before.

Thus, because Petitioners have failed to assert a ripe claim, this alone establishes that Petitioner cannot prevail on the merits of any claim he has alleged.

ii. <u>This Court's Jurisdiction is Limited By 8 U.S.C. § 1252</u>

This Court lacks jurisdiction to review to review Respondent's decision to revoke the OSUP. *See Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025). In *Camarena*, the Eleventh Circuit explained that 8 U.S.C. § 1252(g) "bars federal courts from hearing 'any claim' by an alien 'arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.'" *Camarena*, 988 F.3d at 1272; see also *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *Johnson v. Acting United States Attorney Gen.*, 847 Fed. App'x 801, 801 (11th Cir. 2021). To determine whether a claim is barred under § 1252(g), the Court must focus on the challenged action. *Camarena*, 988 F.3d at 1272.

In this case, to the extent Petitioner seeks to enjoin the revocation of his OSUP and his subsequent removal. While the Respondents have not revoked Petitioner's OSUP, even if they had, these "claims fall squarely within § 1252(g)'s jurisdictional bar." *Id.*; *see, e.g., Espinoza-Sorto*, 2025 WL 3012786 at *5 (explaining that "§ 1252(g) deprives [the Court] of subject-matter jurisdiction over Respondents' decision to revoke Petitioner's OSUP[.]"); *Nguyen v. Noem*, No. 6:25-cv-057-H, 2025 WL 2737803, at *7 (N.D. Tex. Aug. 10, 2025) (explaining that because of § 1252(g), "[t]he Court is thus skeptical that it would have the power to order the respondents to give notice to [the petitioner] and provide him an informal interview and the opportunity to respond and present evidence.").

This bar underscores the claim's lack of ripeness. Because the reason for any hypothetical revocation and detention is not currently known, the Court cannot

determine whether it would have jurisdiction under Section 1252. Further, while there is some authority allowing detainees to challenge the procedural correctness of the revocation decisions, that cannot be done before the OSUP has been revoked.

Additionally, Section 1252(a)(2)(B)(ii) deprives the Court of jurisdiction over challenges to ICE's discretionary decision to revoke an OSUP. See, e.g., *Kanapuram v. Dir., U.S. Citizenship & Immigration Servs.*, 131 F.4th 1302, 1306 (11th Cir. 2025) (discussing the jurisdiction-stripping provisions of 8 U.S.C. § 1252(a)(2)); *Espinoza-Sorto*, 2025 WL 3012786 at *5 (explaining that "because the Attorney General has the discretion to revoke an OSUP," § 1252(a)(2)(B)(ii) "bars review of [that] decision.").

B. Petitioner is Not Likely to Succeed on the Merits of His Due Process Claims

i. There Is No Requirement for Pre-Revocation Notice or Hearing

Even if there were no jurisdictional bar, the Petitioner cannot show a likelihood of success on the merits. Because ICE has not revoked Petitioner's OSUP, it is not clear whether any future revocation would implicate the regulations contained in 8 C.F.R. § 241.4(*l*) or § 241.13(i). Regardless, neither the regulations nor due process require "written notice or an opportunity to be heard before a neutral decision maker prior to revocation," as Petitioner contends. Doc. 5-1 at 6.

The revocation procedures detailed in §§ 241.4(*l*)(1) and 241.13(i)(3) provide for notice of the reasons for revocation to be provided "[u]pon revocation," and for ICE to conduct an "informal interview" "promptly after" the return to custody. See §§ 241.4(l)(1); 241.13(i)(3). Thus, the plain language of the regulations and their use

of the terms "upon" and "after"—neither of which encompass a time before revocation – do not support Petitioner's interpretation. See, e.g., *Nguyen* 2025 WL 2737803 at *6 ("Under the plain language of the regulation, notice and an informal interview are not prerequisites to detention. 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.'"); see also *Miles v. Fulton Bank*, No. 2:08cv202, 2008 WL 11444204, at *3 (E.D. Va. Sept. 30, 2008) ("Dictionary definitions illustrate that the usual, ordinary, and popular meaning of 'upon' is limited to the time immediately or very soon after an event.").

For this reason, multiple district courts both within and outside of the Eleventh Circuit have recognized that pre-revocation notice and opportunity to be heard are not required to comply with the regulatory procedure or to comport with due process. See, e.g., *Espinoza-Sorto*, 2025 WL 3012786 at **3, 6 (holding notice of revocation and informal interview conducted after detention complied with procedures to revoke OSUP under § 241.4(*l*)(1)); *Cedeno-Gonzalez v. Noem*, No. 2:25-cv-00473, 2025 WL 2999583, at *8 (S.D. Ind. Oct. 27, 2025) (rejecting argument that "due process required an opportunity to be heard before" OSUP revoked and explaining that post-deprivation informal interview satisfies due process); *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at **2, 6 (S.D. Fla. Aug. 8, 2025) (recognizing that under § 241.13, notice provided at time of revocation proper); *Nguyen*, 2025 WL 2737803 at **2, 5 (notice of reasons for revocation provided at

time of arrest and informal interview provided process due); *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018) (explaining § 241.13 does not require pre-revocation notice).

For these reasons, assuming no jurisdictional bar, Petitioner is not likely to succeed on the merits of his procedural due process claim.

ii. Petitioner Is Similarly Not Likely to Prevail on His Substantive Due Process Claim, Which Hinges Upon a Faulty Factual Premise

In support of his substantive due process claim, Petitioner alleges that none of the circumstances outlined in 8 C.F.R. § 241.4(l)(2) exist here. Petitioner is not likely to succeed on this claim for at least three reasons.

First, as discussed above, the Court lacks jurisdiction over this claim. Indeed, even in those instances where courts concluded they had jurisdiction over limited claims regarding purely procedural issues related to OSUP revocation, that jurisdiction did not extend to consideration of the underlying reasons for ICE's decision to exercise its broad discretion to revoke an OSUP as Petitioner requests here. *See, e.g., Ceesay*, 781 F. Supp. 3d at 155 (court explained it was not considering a challenge of ICE's substantive decision to revoke petitioner's OSUP); *Espinoza-Sorto*, 2025 WL 3012786 at **5, 6 n.13 (explaining "the Court does not have jurisdiction to consider the propriety of Petitioner's OSUP revocation"); *Barrios*, 2025 WL 2280485 at ** 4, 6 n.16 (explaining the Court lacks jurisdiction to consider Petitioner's "argument that circumstances have not changed in such a way to warrant revocation.").

Second, although ICE has not, in fact, revoked Petitioner's OSUP, he presumes that ICE will do so under § 241.4(*l*)(2). However, as discussed above, there are other provisions under which ICE may revoke an OSUP, including § 241.4(*l*)(1) and § 241.13. There is no basis to conclude that ICE will do so only for the reasons included in § 241.4(*l*)(2).

For each of these reasons, Petitioner is not likely to succeed on the merits of his substantive due process claim.

C. Petitioner's Remaining Claims Are Also Not Viable Because They Are Based Solely Upon Actions Which Have Not Occurred

Petitioner also alleges presumed future violations of the Administrative Procedure Act and Accardi. He speculates that ICE will, at some unknown later time, revoke his OSUP, and, when it does, will do so in a manner that is arbitrary and capricious and inconsistent with regulations. As noted above, it is not yet clear which regulations would apply, let alone whether ICE will comply with those regulations. Moreover, the absence of final agency action is fatal to his APA claim. *Nat'l Parks Conservation Ass'n v. Norton*, 324 F.3d 1229, 1236 (11th Cir. 2003). Additionally, because of the presumption of regularity, Petitioner cannot establish likely success on his speculative claim that any future revocation will not comport with applicable regulations. See, e.g., *United States v. Chem. Found.*, 272 U.S. 1, 14–15 (1926) ("The presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.").

II. Petitioner Cannot Establish the Remaining Factors

Because Petitioner cannot establish likely success on the merits, the Court need not consider any other factors. See, e.g., *Schiavo*, 403 F.3d at 1225. However, those factors are similarly lacking here.

Petitioner has not established that denial of the preliminary injunction will cause him irreparable harm. The injury that Petitioner asserts may result from the potential future revocation of his OSUP and his detention—assuming, without proof, that it would be done in an improper manner—is entirely speculative and too tenuous to support a finding of irreparable injury. *See, e.g., Ne. Florida Chapter of Ass'n of General Contractors of America*, 896 F.2d at 1285 (explaining that injury must be "neither remote nor speculative, but actual and imminent").

Nor has Petitioner established that a preliminary injunction would be in the public interest. The public has a significant interest in the application of immigration laws. And while protection of constitutional rights is always in the public's interest, if, as here, Petitioner has not shown a likelihood of success on his constitutional claims, that public interest would not apply here.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's motion for a preliminary injunction.

Respectfully submitted this 18th day of December, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have filed this case with the CM/ECF system which provided a copy of the same to all counsel of record.

Dated this 18th day of December, 2025.

/s/ Stephen D. Wadsworth
Assistant United States Attorney