UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

ARKADY RUDENKO,

Petitioner-Plaintiff,

v.

KRISTI NOEM, *et al.;*

Respondents-Defendants.

Case No. 2:25-CV-1157-JES-NPM

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

COMES NOW, the Petitioner, **ARKADY RUDENKO**, by and through undersigned counsel and hereby submits this Reply to the Respondents' opposition to Mr. Rukenko's Petition for Writ of Habeas Corpus. The Petitioner would note that the absence of any rebuttal is not a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus.

I. This Honorable Court's review is not barred by INA § 1252(g) or (b)(9).

The Respondents argue two sections of the Immigration and Nationality Act ("INA") strip the Court of jurisdiction over this action. They first point to a provision that bars courts from hearing certain claims. It states:

> Except as provided in this section and notwithstanding any other provisions of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

This jurisdictional bar is narrow. "The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) ("We did not interpret this language to sweep in any claim that technically can be said to 'arise from'

the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves."). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. United States Citizenship and Immigration Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020).

The respondents also raise the INA's "zipper clause," which states:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court should have jurisdiction, by habeas corpus under section 2241 or title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such question of law or fact.

8 U.S.C. § 1252(b)(9).

The zipper clause only applies to claims requesting review of a removal order. *See Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a § 2241 challenge to detention of the petitioner pending deportation).

The Petitioner does not challenge the commencement of a proceeding, the adjudication of a case, or the execution of his removal order. Nor does he ask the Court to review the removal order. Rather, the Petitioner challenges the legality of his detention under a framework devised by the Supreme Court. The INA does not strip the Court of jurisdiction over this action.

II. Petitioner's continued detention is unlawful.

"Once a noncitizen's order of removal becomes administratively final, the Government 'shall' remove the person within 90 days." *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (*quoting* 8 U.S.C. § 1231(a)(1)(A)). The government must detain the noncitizen during the 90-day removal period, which begins when the removal order becomes administratively final. *Id.* Detention may continue after the removal period, but not indefinitely.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." 533 U.S. at 700-01 (2001). If removal is not practically attainable, detention no longer

serves its statutory purpose of "assuring the alien's presence at the moment of removal." *Id.* at 699. The Court found it unlikely Congress "believed that all reasonably foreseeably removals could be accomplished in [90 days]." *Id* at 701. So, "for the sake of uniform administration in the federal courts," it established a "presumptively reasonable period of detention" of six months—the 90-day removal period plus an additional 90 days. *Id.* Courts use a burden-shifting framework to judge the constitutionality of additional post-removal detention:

> 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 the showing.

Id.

The Respondents argue the petition is premature because the Petitioner has not been detained for longer than six months. Their argument assumes the six-month clock started on November 3, 2025, when his current detention began. That assumption is inconsistent with *Zadvydas*. It would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months. As the

Eleventh Circuit recognized, "[t]he Supreme Court's stated rationale for establishing a presumptively reasonable '6-month period' for detention pending removal supports our conclusion that this period commences at the beginning of the removal period." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

The Petitioner was ordered removed on October 3, 2011. Because the six-month period for presumptively reasonable detention has expired, *Zadvydas's* burden-shifting framework applies. The Petitioner has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. In fact, ICE made that determination in 2012, when it released him under an order of supervision. There has been no change and no significant likelihood of removal in the reasonably foreseeable future to either Russia or Ukraine. The burden thus shifts to the respondents. The Respondents stated simply that ICE "believes" it can obtain travel documents. *See* Docket Entry 7 at 16. There is no rebuttal fact indicating it is reasonably foreseeable. There is no evidence before the Court suggesting removal is more likely now than it was in 2012.

III. The revocation of the Petitioner's Order of Supervision was unlawful.

A. Notice of Revocation is signed by the incorrect official.

ICE's regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." 8 C.F.R. §§ 1.2, 241.4(l)(2). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2).

In *Ceesay v. Kurzdorfer*, the district court found that the ICE assistant field office director lacked authority to revoke noncitizen's release. 781 F. Supp. 3d 137 (W.D.N.Y. 2025). On its face, the internal delegation memorandum and the attachment, a list of delegation of signature authority documentation, is not an order. Furthermore, the language of section 241.4 specifically limits the power of anyone who is not the Executive Associate Director to revoke release. For example, it provides that "[a] district director

may also revoke release of a[noncitizen] when"—and only when—"in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). So, before a district director can revoke release, the district director must make certain findings. And even if the term "district director" might include Rivera's current role as an "assistant field office director, which is far from clear, the government has not alleged that Rivera made the requisite findings—explicitly or otherwise—before revoking Ceesay's release. *See* Docket Entry 7-2. The Notice of Revocation provided is signed by Zoelle Rivera, the Assistant Field Office Director at Miramar, FL. There is no delegation order clearly giving Rivera the authority to revoke release, and even if there were, there is no caselaw supporting the validity of such a delegation order. The government has not argued that Rivera had that authority because an assistant field office director is the equivalent of a district director, and even if it had, there is no evidence that Rivera made the findings that a district director is required to make before revoking the Petitioner's release. As a result, this Court cannot conclude that Rivera had the authority to revoke release and should find that

the Petitioner's release was not lawfully revoked and hold that he is entitled to release on that basis alone.

B. **The revocation was unlawful.**

ICE failed to provide Petitioner with a meaningful opportunity to contest the revocation of his OSUP through an informal interview. This violates both ICE's own regulations and the Due Process Clause of the Fifth Amendment.

Upon revocation of an OSUP under § 241.4(l), an alien must be "notified of the reasons for revocation." 8 C.F.R. § 241.4(l)(1). "[A]fter his or her return to [ICE] custody" the alien must be "afforded an initial informal interview promptly to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* "If the alien is not released from custody following the informal interview," ICE must then commence "[t]he normal review process ...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." *Id.* § 241.4(l)(3). The notice and informal interview requirement appears in § 241.4(1)(1), but not § 241.1(l)(2). However, courts have

"interpreted section 241.4(l) as requiring an informal interview upon the revocation of release regardless of the reason for the revocation" – meaning that the notice and informal interview requirement stated in § 241.4(1)(1) applies to revocation under § 241.4(1)(2). *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at 6–7 (S.D. Fla. Sept. 9, 2025) (*citing Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025))

As an initial matter, the evidence offered to show that the Petitioner has been afforded the prompt informal interview as dictated by the regulations is a document that recounts the Petitioner's statement during a December 20, 2025, conversation. That statement was made after the Petitioner had been in custody for 47 days, and only after the instant petition was filed. *See* Docket Entry 7-4. There was no prompt informal interview. There is no indication that the Petitioner was made aware of the reasons for revocation, or that he was then provided an opportunity to respond to them. There is no part of the statement that addresses the alleged change in circumstances as identified by the Respondents or the Respondents' claim that there is no impediment to seeking a travel document now that they have clarified the Petitioner's birthname. There is no part of that statement that

highlights to this honorable Court that the Petitioner was provided a meaningful opportunity to address the reasons for the revocation, in contravention of ICE's explicit statement in the Petitioner's November 2025 "Notice of Revocation of Release," that he would "promptly be afforded an informal interview" and "an opportunity to respond to the reasons for the revocation" of release. Docket Item 7-2 at 9. The Notice states plainly that he will promptly be afforded an informal interview and provided with the opportunity to respond to the reasons for revocation and provide evidence to demonstrate that his removal is unlikely. There has not been any compliance with that detailed process. The process afforded here fails to comply with ICE's own regulations or comport with traditional notions of due process.

The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172, (2021) ("At one level, today's dispute may seem semantic, focused on a single word, a small one at that. But words are how the law constrains power."). The Fifth Amendment to the U.S. Constitution provides that "[n]o person shall

be...deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. "Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. In its most elemental formulation, "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, (1965)).

CONCLUSION

WHEREFORE, Petitioner renews his requests that this Court

a. Exercise jurisdiction over this matter;

b. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations and the *Accardi* doctrine;

d. Order Petitioner's immediate release;

e. Award Petitioner costs and reasonable attorneys' fees; and

f. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

/s/Carolina A. Collado
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