UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANTONIO ELPIDIO GOMEZ-ALCINA,

Petitioner,

CASE No.: 2:25-cv-01164-KCD-DNF

v.

KRISTI NOEM, PAMELA BONDI,
TODD M. LYONS, GARRET RIPA,
MATTHEW MORDANT,

Respondents.

PETITIONER'S REPLY TO RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully submits this Reply in further support of his Petition for Writ of Habeas Corpus. In their Response, Respondents rely on the assertion that Petitioner was detained to execute his removal, but do not address the failure to comply with the mandatory procedures governing revocation of an Order of Supervision ("OSUP"). This Reply addresses the legal and factual deficiencies in Respondents' arguments, clarifies the governing statutory and regulatory framework, and demonstrates that ICE failed to lawfully revoke Petitioner's supervision because the revocation was signed by an unauthorized official.

TABLE OF CONTENTS

I. THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 2241

Petitioner challenges unlawful detention following ICE's procedurally defective revocation of an OSUP, not the validity, timing, or execution of his removal order. Because this action concerns re-detention arising from ICE's failure to comply with the mandatory requirements of 8 C.F.R. § 241.4(l), neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction or bars habeas review under 28 U.S.C. § 2241.

Section 1252(g) is "narrow" and applies only to the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not seek to restrain or delay removal. Challenges to custody arising after release on supervision fall outside that limited scope. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). The Eleventh Circuit likewise focuses on the action being challenged and distinguishes habeas claims seeking release from unlawful custody from efforts to halt removal. *Camarena v. Director, ICE*, 988 F.3d 1268, 1272 (11th Cir. 2021); *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257–58 (11th Cir. 2020).

Section 1252(b)(9) likewise poses no bar. It is a channeling provision applicable only to claims seeking review of a removal order or the process by which removability is determined, not collateral challenges to unlawful detention. *Jennings*, 583 U.S. at 293–94; *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19

(2020); *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020). The Supreme Court has expressly warned that reading § 1252(b)(9) to detention challenges would produce "staggering results" and has confirmed that habeas remains available for post-order detention claims. *Jennings*, 583 U.S. at 293; *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). Consistent with that guidance, the Eleventh Circuit holds that § 1252(b)(9) does not apply to claims independent of or collateral to removal proceedings, including challenges to unlawful detention. *Canal A Media Holding*, 964 F.3d at 1257; *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006). District courts have likewise rejected attempts to invoke § 1252(g) to bar habeas review of detention arising from OSUP revocation.[1]

II. RESPONDENTS MISCHARACTERIZE PETITIONER'S DETENTION AND MISAPPLY POST-REMOVAL AUTHORITY

Petitioner's detention is not post-removal-period custody under 8 U.S.C. § 1231(a). Petitioner was released on an OSUP after expiration of the statutory removal period in 2013 and lived in the community for more than a decade before ICE revoked his supervision and re-detained him on December 5, 2025. *See,* 8 U.S.C. §§§ 1231(a)(1)(B), (a)(1)(C), (a)(3). Petitioner challenges ICE's legal authority to re-detain him following defective revocation of an OSUP, not whether

[1] *See, e.g., Grigorian v. U.S. Att'y Gen.*, No. 25-cv-22914-RAR, ECF No. 27 (S.D. Fla. Sept. 9, 2025); *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, ECF No. 36 (W.D.N.Y. May 2, 2025); *Salgar v. Noem*, No. 4:25-CV-04797, ECF No. 11 (S.D. Tex. Nov. 14, 2025); *Zhang v. Genalo*, No. 25-CV-06781 (NRM), ECF No. 40 (E.D.N.Y. Dec. 28, 2025).

his detention has become unreasonable due to the passage of time; accordingly, *Zadvydas'* six-month presumption does not apply.

Once ICE released Petitioner on supervision, any subsequent detention was governed exclusively by the regulatory framework for revocation of supervision set forth in 8 C.F.R. § 241.4(l), not by § 1231's general post-order detention provisions. ICE's December 2025 re-detention did not restart the removal period.

The six-month presumption in *Zadvydas v. David* applies to challenges of continuous post-order detention that has become unreasonable because removal is not reasonably foreseeable and does not bar habeas review in this case. *Zadvydas*, 533 U.S. at 689; *Akinwale v. Ashcroft*, 287 F.3d 1050, 1054 (11th Cir. 2002) (six-month period begins at start of removal period). *Akinwale*, *Guo Xing Song v. U.S. Attorney General*, *Gozo v. Napolitano*, and the district court decisions in *Jiang* and *Noel* stand only for that limited proposition.

III. ICE DID NOT COMPLY WITH 8 C.F.R. § 241.4(L)(2), AND ITS REVOCATION OF PETITIONER'S OSUP WAS UNLAWFUL

On December 23, 2025, ICE served Petitioner with a "Notice of Revocation of Release" ("Notice"). *See,* Notice [ECF No. 8-1] at 3. The Notice asserts that revocation is "appropriate to enforce your removal order" and represented that Petitioner would be promptly afforded an informal interview and an opportunity to respond. The Notice also erroneously states that Petitioner's removal order became administratively final on December 8, 2025, despite the BIA having dismissed his

appeal on September 23, 1988. *See,* 8 C.F.R. § 1241.1(a); Exhibit A, EOIR Automated Case Information.

Critically, the Notice was not signed by either the Executive Associate Director or the Field Office Director. Although the signature block references the Acting Field Office Director, Kelei B. Walker, the Notice itself was signed by Supervisory Detention and Deportation Officer ("SDDO") Mario Karakey. *See* Notice [ECF No. 8-1] at 3.

Under 8 C.F.R. § 241.4(l)(2), revocation authority is expressly limited to the Executive Associate Commissioner, or when referral is impracticable, to a district director. The regulation does not authorize revocation by an SDDO, nor does it permit informal delegation. Where a regulation specifies who may act, authority cannot be assumed or implied. See *N.L.R.B. v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017). Revocation is permitted only where the authorized official determines that one of four enumerated circumstances exists, and the regulation further requires notice and a prompt informal interview affording the noncitizen an opportunity to respond. *See,* 8 C.F.R. § 241.4(l)(1)-(2).

Respondents contend that § 241.4(l)(2) imposes no procedural obligations and affords ICE "extraordinarily broad discretion to revoke an OSUP". *Tanha v. Warden, Balt. Detention Facility,* No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *6 n. 10 (D. Md. July 22, 2025). That position is inconsistent with the text, structure, and judicial

construction of §241.4(l), and cannot be reconciled with ICE's own Notice, which expressly promised an interview and opportunity to respond. *See,* Notice [ECF No. 8-1] at 3.

A. The OSUP was Revoked by an Official Who Lacked Authority

Section 241.4(l)(2) is explicit as to who may revoke supervision. Because SDDO Karakey is neither the Executive Associate Commissioner nor a district director within the meaning of the regulation, he lacked authority to revoke Petitioner's OSUP. Courts have rejected precisely this type of unauthorized revocation, holding that § 241.4(l)(2) limits revocation authority to the official expressly named in the regulation. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161-62 (W.D.N.Y. 2025) (quoting 8 C.F.R. § 241.4.(l)(2)); *See also, Zhi Ming Zhang v. Genalo*, No. 25-CV-06781, at *20-21 (NRM) (E.D.N.Y. Dec. 28, 2025).

Because Petitioner's OSUP was revoked by an official who lacked statutory and regulatory authority to do so, the revocation was ultra vires and void. Petitioner's detention rests entirely on that invalid revocation and is therefore unlawful.

B. ICE Failed to Provide Procedural Protections Under § 241.4(l)

As a threshold matter, because the OSUP was revoked by an official who lacked statutory and regulatory authority, the revocation was a legal nullity and independently warrants habeas relief. See Section III.A, *supra*. In any event, ICE

also failed to comply with the mandatory procedural requirements of 8 C.F.R. § 241.4(l).

Courts have consistently held that § 241.4(l)(1)-(2) establishes a unified procedural framework governing all revocations of supervision, requiring notice and a prompt informal interview affording an opportunity to respond, regardless of which subsection supplies the substantive basis for revocation. *See, Grigorian v. Bondi,* No. 25-CV-22914-RAR, 2025 WL 1895479, at *6, *12 (S.D. Fla. July 8, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025); *Zhu v. Genalo*, 2025 WL 2452352, at *6 (S.D.N.Y. Aug. 26, 2025); *see also Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Sotomayor, J., statement respecting disposition).

ICE's own Notice expressly promised Petitioner an informal interview and an opportunity to respond yet provided neither. See Notice [ECF No. 8-1] at 3. ICE conducted no interview, afforded no meaningful opportunity to be heard, and considered no evidence bearing on whether removal was realistically foreseeable. Having made these representations, ICE was bound to follow them. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Romano-Murphy v. Comm'r*, 816 F.3d 707, 720 (11th Cir. 2016) (noting that "executive agencies must comply with the procedural requirements imposed by statute," and "must respect their own procedural rules and regulations").

ICE's failure to follow its own regulations violated Petitioner's procedural due process rights. Courts confronting similar violations have consistently ordered release. *Bonitto v. ICE*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *9 (S.D.N.Y. Aug. 26, 2025); *Ceesay*, 781 F. Supp. 3d at 166; *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017).

Finally, the record contains no evidence that Petitioner's removal is realistically foreseeable. ICE identified no receiving country, travel documents, or imminent removal plans confirming that the revocation was arbitrary, unsupported, and unlawful.

IV. THIS ACTION IS A HABEAS CLAIM SEEKING RELEASE FROM CUSTODY

Although the Petition includes APA-based counts, Petitioner seeks only habeas relief—release from unlawful custody under 28 U.S.C. § 2241—and does not seek vacatur, declaratory relief, or injunctive relief under 5 U.S.C. § 706. The APA counts supply the standards of review demonstrating that the agency action producing Petitioner's detention was ultra vires and unlawful, which courts routinely consider in habeas proceedings. See 5 U.S.C. § 703. The cases Respondents cite involved freestanding civil claims for non-custodial relief and are inapposite. See, e.g., *Ndudzi v. Castro*, 2020 WL 3317107, at *2; *King v. Carlton*, 2021 U.S. Dist. LEXIS 83778, at *4.

Dated: January 5, 2026

Respectfully submitted,

/s/ Veronica Semino
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 5th, 2026, I electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of this filing to all counsel of record.

/s/ Veronica Semino