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

JUAN CARLOS ANDINO GONZALEZ, *Petitioner-Plaintiff,* **v.** **KRISTI NOEM, *et al.;*** *Respondents-Defendants.*	**Case No. 2:25-CV-1176-SPC-DNF**

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

COMES NOW, the Petitioner, **JUAN CARLOS ANDINO GONZALEZ**, by and through undersigned counsel and hereby submits this Reply to the Respondents' opposition to Mr. Andino'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. The Respondents are properly named.

Respondents conceded that the Petitioner properly named Matthew Mordant as the warden of the facility where the Petitioner is being held. The Respondents also state that the remainder of the individuals named are not proper Respondents. While a prisoner's immediate custodian is normally the only proper respondent in a habeas action, immigration detention is more complicated. *See, e.g., Rumsfeld v. Padilla*, 542 U.S. 426 (2004) The Supreme Court expressly left open the question of the identity of the proper respondent(s) to a petition filed by a noncitizen "detained pending deportation." *Id.* at 435 n.8 (recognizing circuit split on "the question whether the Attorney General is a proper respondent to a habeas petition filed by [a noncitizen] detained pending deportation" and stating "[b]ecause the issue is not before us today, we again decline to resolve it").

ICE controls who is admitted, detained, and released to and from Alligator Alcatraz. The warden of Alligator Alcatraz would be ill-equipped to respond to the merits of the Petitioner's claims and to be the sole defender of the federal government's interests. The Southern District of Florida explained:

> Moreover, when a federal immigrant detainee is housed in a contract facility, the federal official

> charged with overseeing the detainees in that facility is more akin to the "immediate custodian"—the individual with the power to produce the body of the petitioner before the court—than a non-federal warden. *Padilla*, 542 U.S. at 434, 124 S. Ct. 2711. Federal immigration detainees are detained "pursuant to the power and authority of the federal government" and not the warden of the non-federal facility where they are detained. *Saravia* [*v. Sessions*, 280 F. Supp. 3d 1668, 1186 (N.D. Cal. 2017]. A local warden's custody over the detainee is limited "only to the extent provided by the facility's contract with the federal government." *Id.* The local warden cannot release ICE detainees without ICE's express authorization. Rather, "ICE is in complete control of detainees' admission and release," while the IGSA "places the warden in the role of a mere functionary." *Calderon* [*v. Sessions*, 330 F. Supp. 3d 944, 952 (S.D.N.Y. 2018)].

Masingene v. Martin, 424 F. Supp. 3d 1298, 1302 (S.D. Fla. 2020).

The Petitioner named the ICE officials who are charged with making decisions regarding his supervision and detention as respondents to his petition. In doing so, those individuals are named in their official capacities and are also properly named in the petition. The Petitioner asserts he correctly named the ICE Field Office Director, the DHS Secretary, the U.S. Attorney General and the agency involved in the decision to revoke his Order of Supervision.

II. 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.

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

A. **Notice of Revocation is erroneous.**

At the time of the revocation of his Order of Supervision, the Petitioner was not provided with a copy of the Notice of Revocation presented with the Respondents' opposition (Resp. at Exhibit C). Upon review of the Notice included it is apparent the Proof of Service contains "Refused to Sign" where the Petitioner's signature would go. Additionally, on page one of the Notice the date of the administratively final order of removal is incorrectly filled in as November 14, 2025. The Petitioner was ordered removed on January 23, 2001, appeal was waived, and the order was final as of February 22, 2001.

B. 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 intend 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). 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, see Docket Item 8, 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.

C. **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 appear 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 interpretation the government proposes in the Response is contrary to ICE's explicit statement in the Petitioner's November 2025 "Notice of Revocation of Release" provided by the Respondents, that he would "promptly be afforded an informal interview" and "an opportunity to respond to the reasons for the revocation" of release. Docket Item 8-3 at 1. This suggests that the government's stance that no informal interview is required in the Petitioner's situation is a "post hoc rationalization[ ] of past agency action" that should not be given deference. *See Lockheed Martin Corp. v. Morganti*, 412 F.3d 407, 411 (2d Cir. 2005). 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 notice and interview requirement stated in § 241.4(l)(1) applies to revocation under § 241.4(l)(2). The four reasons for revocation stated in § 241.4(l)(2) are inclusive of the single reason stated in § 241.4(l)(1)—violation of conditions of release. Indeed, it would be nonsensical if an alien detained for violation of conditions of release would receive notice and an interview under § 241.4(l)(1) but not § 241.4(l)(2) given that both provisions specify that a violation of conditions of release is a basis for revoking an OSUP. *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla. Sept. 9, 2025)

Second, and even more tellingly, § 241.4(3)—titled "[t]iming of review when release is revoked"—clearly applies to all aliens whose release is revoked regardless of reason, and provides that "[i]f the alien is not released from custody *following the informal interview provided for in paragraph (l)(1)* of

this section, [ICE] shall schedule the review process in the case of an alien whose previous release" has been revoked. *Grigorian* at *7. This provision implies "that 'the informal interview provided for in paragraph (l)(1) of this section' applies to all [detained on revocation of an OSUP] regardless of whether or not release is revoked for a violation." *Id.*

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)).

IV. 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 14, 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).

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 2010, 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 Cuba. The burden thus shifts to the respondents, but they make no attempt at rebuttal. There is no evidence before the Court to suggest removal is more likely now than it was in 2010.

CONCLUSION

WHEREFORE, Petitioner renews his requests that this honorable Court exercise jurisdiction over this matter; declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations and the *Accardi* doctrine and Order Petitioner's

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

Respectfully submitted,

/s/Carolina A. Collado
Attorney for Petitioner
JIMENEZ MAZZITELLI MORDES
9350 S. Dixie Highway, PH 5
Miami, FL 33156
Carolina@jmmlawfirm.com
305-461-3077