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

MUSSA BABBA EMMANUEL,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-486-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On December 18, 2025, Petitioner filed an application for a writ of habeas corpus (the "Petition"). ECF No. 1. On December 22, 2025, Petitioner filed an amended petition. ECF No. 3. On December 23, 2025, Respondent was directed to file a comprehensive response within twenty-one days. ECF No. 4. Respondent now files this motion and shows the Court that the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Liberia. Declaration of Deportation Officer Marilyn Guerra ("Guerra Decl.") Ex. A. On October 13, 1995, Petitioner was encountered by U.S. Border Patrol at Hidalgo, Texas, and charged with violating section 241(a)(1)(B) of the Immigration and Nationality Act (INA) then in effect (now codified at 8 U.S.C. § 1182(a)(6)(A)(i)) for having entered the United States without inspection. *Id.* ¶ 3 & Ex. A. On October 20, 1995, Petitioner was released from the legacy Immigration and Naturalization Service (INS) custody on an Order of Release on his own Recognizance. *Id.* ¶ 4 & Ex. B. On December 4, 1995, Petitioner failed to appear and an Immigration Judge in Harlingen, Texas ordered him deported from the United States

to Liberia, *in absentia*. *Id.* ¶ 5 & Ex. C. On July 8, 1996, INS sent Petitioner a letter requesting he report for removal to Liberia but he failed to report until he was encountered on December 10, 2001. *Id.* ¶ 6.

On February 15, 2001, Petitioner was convicted in Douglas County, Georgia Superior Court of the following offenses: Financial Transaction Card Theft (2 counts); Forgery in the First Degree (4 counts); Financial Transaction Card Theft; Giving a False Name, and Forgery in the Second Degree. Guerra Decl. ¶ 7 & Ex. D. Petitioner was sentenced to six years for counts 1-5, three years for counts 6-7, 12 months for count 8, and 5 years for count 9, all to be served concurrently. *Id.* On September 19, 2001, Petitioner was convicted in the State Court of Douglas County, Georgia of the following offenses: Deposit Account Fraud, Giving False Name to a Law Enforcement Officer (2 counts), No Proof of Insurance, Driving Without a License, and Failure to Maintain Lane. *Id.* ¶ 8 & Ex. E. He was sentenced to twelve months of probation on each count, to be served concurrently. *Id.* On November 13, 2001, Petitioner was convicted in the State Court of Douglas County, Georgia of the offense of Battery: Family Violence A and sentenced to 12 months confinement, to be served on probation. *Id.* ¶ 9 & Ex. F.

On December 10, 2001, Petitioner entered legacy INS custody. Guerra Decl. ¶ 10. On January 23, 2002, a travel document request was submitted to the Embassy of Liberia in Washington, D.C.. *Id.* ¶ 11. Then, on January 25, 2002, a request for a travel document was submitted to the Embassy of Ghana in Washington, D.C. *Id.* On April 3, 2002, the legacy INS District Director for the Atlanta District issued a Continued Detention Letter. *Id.* ¶ 12 & Ex. G. On April 30, 2002, the Headquarters Post-Order Detention Unit (HQPDU) issued a Continued Detention Letter stating that due to Petitioner's failure to provide evidence of his nationality the travel document requests pending with Liberia and Ghana were delayed. *Id.* ¶ 13 & Ex. H.

On or about July 18, 2002, the Embassy of Liberia refused to issue a travel document, finding Petitioner was not Liberian, but instead believed to be a citizen of Ghana. Guerra Decl. ¶ 14. On or about July 30, 2002, the Embassy of Ghana interviewed Petitioner and concluded that he was not a citizen of Ghana, but rather of Liberia. *Id.* ¶ 15. On October 9, 2002, Petitioner filed a Petition for a Writ of Habeus Corpus with the U.S. District Court for the Eastern District of Louisiana. *Id.* ¶ 16. On January 8, 2003, the Petition was transferred to the U.S. District Court for the Northern District of Georgia. *Id.*

On November 12, 2002, the Consulate General of Australia in Atlanta, Georgia sent a letter to Petitioner denying him entry to Australia upon departure from the United States. *Id.* ¶ 17. On or about December 13, 2002, the Consulate General of Panama returned the executed Form I-241, Request for Acceptance of Alien, denying Petitioner entry into Panama upon departure from the United States. *Id.* ¶ 18. On December 4, 2002, legacy INS sent an I-241 to the Embassy of Japan in Washington, D.C. but there is no record in the file of a response from the Embassy of Japan. Guerra Decl. ¶ 19. On December 19, 2002, the HQPDU issued a decision to continue detention of Petitioner, citing Petitioner's failure to contact his family to request assistance in obtaining identity verification from his country, as well as his unwillingness to do so. *Id.* ¶ 20 & Ex. I. On March 17, 2004, Petitioner was released from ICE custody on an Order of Supervision. *Id.* ¶ 21 & Ex. J.

On June 2, 2016, Petitioner was advised to make at least two written contacts with the Liberian Embassy per month to obtain travel documents. *Id.* ¶ 22. On November 14, 2018, Petitioner was advised to contact the Liberian Embassy and to keep pursuing issuance of a travel document. *Id.* ¶ 23.

On June 16, 2025, Petitioner was detained while reporting to ICE/ERO in Atlanta, Georgia. Guerra Decl. ¶ 24. On the same day, Petitioner was interviewed by the Liberian Embassy, but his

identity and citizenship could not be verified. *Id.* ¶ 25. On December 3, 2025, ICE/ERO sent a request for a travel document to the Liberian Embassy. *Id.* ¶ 26. On December 15, 2025, the Embassy of Liberia concluded that Petitioner is not a citizen of Liberia and did not issue a travel document. *Id.* ¶ 27.

On January 1, 2026, the Embassy of Ghana conducted a nationality verification interview of Petitioner. Guerra Decl. ¶ 28. Petitioner was uncooperative and refused to answer questions. *Id.* ICE/ERO issued a Notice of Failure to Comply and will serve it on the Petitioner. *Id.* ¶ 28 & Ex. K. On January 13, 2026, ICE/ERO revoked Petitioner's OSUP. *Id.* ¶ 29 & Ex. L. The revocation erroneously states that Petitioner's case is currently being reviewed by Liberia. *Id.* In fact, Petitioner's case is currently being reviewed by Ghana for the issuance of a travel document. *Id.* Petitioner remains detained at Stewart Detention Center pursuant to 8 U.S.C. § 1231(a). *Id.* ¶ 30.

LEGAL STANDARDS

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. 678, 689 (2001); 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).

ARGUMENT

In his Amended Petition, Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001) and the Due Process Claus of the Fifth Amendment. ECF No. 3 at 10-11. In addition, Petitioner argues that ICE/ERO violated his procedural due process rights by failing to follow its own regulations in "re-detaining Petitioner without cause and/or appropriate reason under 8 CFR § 241.4(l)(2). *Id.* at 11. Petitioner seeks immediate release from detention and a number of injunctions enjoining Respondents from re-detaining Petitioner absent various

circumstances. Petitioner's claims should be dismissed. First, Petitioner has failed to comply with removal efforts, and therefore his *Zadvydas* claim is premature. Even if the Court were to find that his failure to comply has not tolled the *Zadvydas* presumptively reasonable detention period, Petitioner's failure to comply is the reason for his continued detention and his *Zadvydas* claim should be denied. Second, Petitioner's claim regarding his OSUP revocation should be denied because the Court lacks subject matter jurisdiction to review ICE/ERO's discretionary decision to re-detain Petitioner.

I. Petitioner's *Zadvydas* claim fails because he has failed to comply with removal efforts.

As explained above, an alien "shall" be detained during the removal period. 8 U.S.C. § 1231(a)(2). The removal period ordinarily lasts 90 days. 8 U.S.C. § 1231(a)(1)(A). But the removal period "shall be extended beyond a period of 90 days[,] and the alien may remain in detention[,] . . . if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure." 8 U.S.C. § 1231(a)(1)(C); 8 C.F.R. §§ 241.4(g)(i)(ii), (g)(5); *see also Johnson v. Guzman Chavez*, -- U.S. --, 141 S. Ct. 2271, 2281 (2021) ("[T]he removal period may be extended if the alien fails to make a timely application for travel documents or acts to prevent his removal." (citation omitted)).

"The risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien is the cause of his own detention." *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019) (internal quotations and citation omitted). Accordingly, a non-citizen is not entitled to relief under *Zadvydas* where the removal period has been extended pursuant to 8 U.S.C. § 1231(a)(1)(C) based on a non-citizen's failure to comply with efforts. *Id.* ("[I]f the removal period was extended by operation of § 1231(a)(1)(C), then ICE can continue to detain [a non-citizen] because the keys to [the non-citizen's] freedom are in his

pocket and he could likely effectuate his removal by providing the information requested, so he cannot convincingly argue that there is no significant likelihood of removal." (internal quotations, alterations, and citation omitted)).

This extension of the removal period pursuant to 8 U.S.C. § 1231(a)(1)(C) based on a non-citizen's failure to comply with efforts to remove him also tolls the *Zadvydas* six-month period of presumptively reasonable post-final order of removal detention. *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013) ("The [*Zadvydas*] six-month period is tolled, however, if the alien acts to prevent his removal." (citation omitted)). The removal period remains extended—and the *Zadvydas* six-month period tolled—"until the [non-citizen] demonstrates to [ICE/ERO] that he or she has complied with the statutory obligations" under 8 U.S.C. § 1231(a)(1)(C). 8 C.F.R. § 241.4(g)(1)(ii).

Because "[t]his six-month period . . . must have expired at the time [a non-citizen's] § 2241 petition was filed in order to state a claim under *Zadvydas*," *Akinwale*, 287 F.3d at 1052, courts in the Eleventh Circuit have routinely dismissed non-citizens' *Zadvydas* claims where their removal periods were extended based on their failure to comply with removal efforts. *See, e.g., Davis v. Rhoden*, No. 19-20082-CV, 2019 WL 2290654, at *4-5 (S.D. Fla. Feb. 26, 2019), *recommendation adopted*, 2019 WL 2289624 (S.D. Fla. May 29, 2019); *Linton v. Holder*, No. 10-20145-Civ, 2010 WL 4810842, at *4-6 (S.D. Fla. Oct. 4, 2010); *Hall v. Mukasey*, No. CV-08-RDP-RRA-1136-M, 2009 WL 5627646, at *5-7 (N.D. Ala. Jan. 2, 2009); *Flemming v. Laughlin*, No. 4:08-cv-20-CDL, 2008 WL 4811177, at *3 (M.D. Ga. Oct. 27, 2008); *Saho v. Streiff*, No. 06-00525, 2008 WL 2622823, at *3-5 (S.D. Ala. June 26, 2008). The Court should similarly dismiss the Petition here.

Even assuming Petitioner's failure to comply with efforts to remove him does not toll the *Zadvydas* six-month period, Petitioner is still not entitled to relief under *Zadvydas*. In *Zadvydas*,

the Court was faced with a unique constitutional problem—detention in the pursuit of removal where removal was no longer possible. 533 U.S. at 699-701. The Court determined that when removal is no longer likely, detention does not serve the government's legitimate interest in maintaining custody of individuals to ensure their removal. *Id.* The test adopted by the Court reflects these concerns and is designed to provide recourse to immigration detainees for potentially permanent detention. *See id.* But that test is not properly applied in situations in which the petitioner is responsible for delaying his removal and prolonging his detention. Indeed, in *Zadvydas* itself, the Court recognized that detention during the removal period is mandatory. *Id.* at 683.

The Eleventh Circuit has recognized this distinction and routinely upheld the dismissal of *Zadvydas* claims where a non-citizen refused to sign his travel documents or otherwise acted to prevent his removal. For example, in *Vaz v. Skinner*, 634 F. App'x 778 (11th Cir. 2015), the petitioner refused to cooperate in his removal to Brazil. The Eleventh Circuit found that "the district court did not err in determining that Petitioner's three-year detention while awaiting removal was not unreasonable[]" because "Petitioner's own acts and failure to make timely application in good faith for travel documents [] prevented his removal." *Vaz*, 634 F. App'x at 782. The Court then distinguished the petitioners in *Zadvydas*:

> Unlike the petitioners in *Zadvydas,* who could not be removed because all potential receiving countries either refused to accept the alien or there was no repatriation treaty, Brazil has not refused to accept Petitioner. *See Zadvydas,* 533 U.S. at 684, 686. In fact, the Consulate has indicated that it cannot issue Petitioner a travel document unless he voluntarily signs for it. It follows that the Consulate would issue Petitioner a travel document if he signed for it and expressed his willingness to return to Brazil. And, if Petitioner were issued a travel document, he would be released from detention and removed.

Id.

Because it was the petitioner who was "responsible for thwarting removal," the Eleventh Circuit explained that he could "[]not show that there is no reasonable likelihood that he [would] not be removed in the reasonably foreseeable future if he cooperate[d] with DHS[.]" *Id.* Thus, the court concluded that "the district court did not err in determining that Petitioner's continued detention was not unreasonable." *Id.*; *see also Linares v. Dep't of Homeland Sec.*, 598 F. App'x 885, 887 (11th Cir. 2015) (explaining that petitioner's "acts to prevent [his] removal . . . extended the removal period beyond the 90 days following the finalization of his removal order"); *Oladokun v. U.S. Attorney Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012) (affirming denial of habeas petition where petitioner "thwarted his removal").

So too here. Petitioner has been uncooperative with efforts to determine his country of citizenship. Going back to 2002, it has been debated whether Petitioner is a citizen of Liberia or Ghana, and both countries have rejected travel documents based on their determination that Petitioner is a citizen of the other country. *See* Guerra Decl. ¶¶ 14-15. At that time, the Headquarters Post-Final Order Detention Unit made the determination to continue Petitioner's detention because it found that his failure to contact his family to request assistance in obtaining identity verification from his country, and his unwillingness to do so, was impeding removal efforts. *Id.* ¶ 20 & Ex. I. More recently, on January 1, 2026, Petitioner was uncooperative and refused to answer questions when interviewed by the Embassy of Ghana for nationality verification. *Id.* ¶ 28 & Ex. K. For this, Petitioner was issued a Notice of Failure to Comply. As the Eleventh Circuit has found, a petitioner cannot make out a *Zadvydas* claim where they are "responsible for thwarting removal," by their own actions. *Vaz*, 634 F. App'x at 782. Petitioner's *Zadvydas* claim should be dismissed as premature, or denied outright.

II. Petitioner's OSUP revocation claim is without merit.

In Count 2, Petitioner argues that ICE/ERO failed to comply with its own regulations in connection with the revocation of his Order of Supervision ("OSUP"). Am. Pet. 11. Petitioner raises this claim as a procedural due process violation. *Id.* Count 2 should be dismissed for three reasons. ***First***, the Court lacks subject matter jurisdiction over Petitioner's claim to the extent he seek judicial review of ICE/ERO's decision to continue Petitioner's post-final order of removal detention by revoking his OSUP or ICE/ERO's internal consideration of evidence in reaching that decision. ***Second***, Petitioner's claim regarding the OSUP revocation procedures otherwise lack merit because ICE/ERO has complied with the applicable regulations in revoking Petitioner's OSUP.

A. The Court lacks jurisdiction to judicially review ICE/ERO's discretionary decision to continue Petitioner's detention by revoking his OSUP.

To the extent Petitioner seeks judicial review of ICE/ERO's decision to revoke his OSUP, his claim should be dismissed for lack of subject matter jurisdiction because it seeks judicial review of an action to execute a removal order under 8 U.S.C. § 1252(g). Further, under 8 U.S.C. § 1252(a)(2)(B)(ii), the Court lacks subject matter jurisdiction to judicially review ICE/ERO's discretionary decision to re-detain Petitioner.

1. The Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(g).

Petitioner challenges ICE/ERO's discretionary decision to revoke his OSUP and re-detain him. Because ICE/ERO revoked Petitioner's OSUP in order to execute his removal order, 8 U.S.C. § 1252(g) deprives the Court of subject matter jurisdiction over these claims.

"Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citation omitted). "The limits

upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978).

The Court lacks jurisdiction over Petitioner's claim under 8 U.S.C. § 1252(g) because it seeks judicial review of an action to execute a removal order. 8 U.S.C. § 1252(g) is a jurisdiction-stripping provision in the INA, which provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . 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). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 482 (1999) (emphasis in original).

ICE/ERO's decision to detain a non-citizen subject to a final order of removal is an action taken to "execute removal order" within the meaning of the section 1252(g) jurisdictional bar.[1] In the context of pre-final order of removal detention, the Eleventh Circuit has held that "securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings" within the purview of section 1252(g). *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *accord. Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien

[1] Again, Respondent's jurisdictional argument as to 8 U.S.C. § 1252(g) is appropriately limited in scope. 8 U.S.C. § 1252(g) bars only Petitioner's claims seeking review of ICE/ERO's *decision* to re-detain him pursuant to 8 U.S.C. § 1231(a)(6) because it constitutes a "decision or action . . . to . . . execute removal orders." 8 U.S.C. § 1252(g); *AADC*, 525 U.S. at 482.

arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order." (emphasis in original)). This Court has reached the same conclusion. *Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) ("Plaintiff's claims that she was falsely arrested when she was transferred into ICE custody . . . 'challenge[] the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.'" (quoting *Gupta*, 709 F.3d at 1065 (alterations in original))).

Here, ICE/ERO's detention of Petitioner upon revocation of his OSUP was an action taken to execute his removal order because ICE/ERO revoked his OSUP specifically because he "can be expeditiously removed from the United States pursuant to the outstanding order of removal against" him, and his "case is under current review by [Ghana] for the issuance of a travel document." Guerra Decl. Ex. L.[2] Other courts have adopted this view and held that section 1252(g) bars claims arising from ICE/ERO's decision to detain a non-citizen pending execution of a final order of removal. *See Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025); *Westley v. Harper*, No. CV 25-229, 2025 WL 592788, at *5-6 (E.D. La. Feb. 24, 2025); *Kareva v. United States*, 9 F. Supp. 838, 844 (S.D. Ohio 2014); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067-68 (N.D. Ill. 2007). This Court should reach the same conclusion and dismiss that portion of Cout 2 for lack of subject matter jurisdiction.

2. The Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii).

Under 8 U.S.C. § 1231(a)(6), ICE/ERO has the discretion to detain Petitioner beyond the ninety-day removal period. Because ICE/ERO is vested with this discretion by statute, 8 U.S.C. §

[2] As noted in the Declaration of DO Guerra, the Revocation inadvertently states that Liberia is reviewing Petitioner's case instead of Ghana. Guerra Decl. ¶ 29.

1252(a)(2)(B)(ii) deprives the Court of subject matter jurisdiction over Petitioner's claims challenging ICE/ERO's discretionary decision to continue his detention by revoking his OSUP.

In the immigration context, 8 U.S.C. § 1252(a)(2)(B)(ii)—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA")—limits federal courts' jurisdiction to review discretionary determinations made by ICE/ERO as follows:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

"[*M*]*any* provisions of IIRIRA are aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation. *AADC*, 525 U.S. at 486 (emphasis in original) (citations omitted). In promulgating section 1252(a)(2)(B)(ii) specifically, "Congress barred court review of discretionary decisions only when Congress itself set out [ICE/ERO's] discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010). The Eleventh Circuit recently made clear that section 1252(a)(2)(B)(ii) bars not only "not only the ultimate decision to approve or deny [a discretionary form of relief], but also *actions taken in the course of the decision-making process*[.]" *Kanapuram v. Dir., U.S. Citizenship & Immigr. Servs.*, 131 F.4th 1302, 1307 (11th Cir. 2025) (emphasis added).

Here, Petitioner was ordered removed *in abstentia* on December 4, 1995. Guerra Decl. ¶ 5 & Ex. C. Although he was previously released upon an OSUP, under 8 U.S.C. § 1231(a)(6), ICE/ERO retains the discretion to detain non-citizens subject to final orders of removal beyond the 90-day removal period. That subsection provides, in relevant part, that "[a]n alien ordered removed who is . . . removable under [8 U.S.C. §] 1227(a)(2) . . . *may* be detained beyond the removal period[.]" 8 U.S.C. § 1231(a)(6) (emphasis added). The Supreme Court "has repeatedly

observed that the word 'may' clearly connotes discretion." *Biden v. Texas*, 597 U.S. 785, 802 (2022) (internal quotations and citations omitted). And the Court has specifically recognized that 8 U.S.C. § 1231(a)(6) "gives the Federal Government discretionary authority in specified circumstances to detain aliens who have been ordered removed from the United States." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 546 (2022) (internal quotations and citation omitted). Thus, by statute—specifically, 8 U.S.C. § 1231(a)(6)—Congress has vested ICE/ERO with the discretionary authority to continue Petitioner's detention beyond the removal period.

Petitioner's claim could be read to challenge ICE/ERO's decision to continue his detention beyond the removal period under 8 U.S.C. § 1231(a)(6) by revoking his OSUP. Am. Pet. 11. But any challenge to that discretionary decision is barred by 8 U.S.C. § 1252(a)(2)(B)(ii) because that statute also applies to "actions taken in the course of [ICE/ERO's discretionary] decision-making process." *Kanapuram*, 131 F.4th at 1307.

In the immigration habeas context, this Court has held that 8 U.S.C. § 1252(a)(2)(B)(ii) deprives it of jurisdiction over APA and *Accardi* claims seeking judicial review of ICE/ERO's discretionary decision to deny release from custody. *A.M.Y. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-cv-61-CDL-MSH, Order & R. 39-40 (M.D. Ga. Oct. 13, 2020), ECF No. 47 (denying APA and *Accardi* claims seeking judicial review of the denial of parole under 8 U.S.C. § 1182(d)(5)(A) for lack of subject matter jurisdiction), *recommendation adopted*, Order (M.D. Ga. Nov. 4, 2020), ECF No. 49. And faced with similar claims challenging the decision to revoke an OSUP, another court in the Eleventh Circuit recently held that 8 U.S.C. § 1252(a)(2)(B)(ii) deprives district courts of jurisdiction to review ICE/ERO's decision to re-detain a non-citizen subject to a final order of removal by revoking an OSUP. *Barrios*, 2025 WL 2280485, at *4 ("[B]ecause the Attorney General has the discretion to revoke an OSUP, § 1252(a)(2)(B)(ii) also bars review."). This Court

should reach this same conclusion and dismiss the Petition, to the extent it brings these challenges, for lack of subject matter jurisdiction.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition. In the alternative, the Petition should be denied.

Respectfully submitted, this 13th day of January, 2026.

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