

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-26073-ALTMAN

BYRON RAFAEL HALLESLEVENZ-FERNANDEZ,

Movant,

v.

KRISTI NOEM, *et al.*

Respondents,

RESPONSE MEMORANDUM OF FACT AND LAW

Respondents,¹ through the undersigned Assistant United States Attorney, consistent with this Court's Order (ECF No. 4), respectfully submit this Response Memorandum of Fact and Law. This Court should dismiss Petitioner Byron Halleslevenz-Fernandez's Verified Petition for Writ of Habeas Corpus (ECF. No. 1) ("Petitioner" and the "Petition") because the relief sought falls beyond this Court's habeas jurisdiction and because Congress stripped this Court of jurisdiction. Alternatively, this Court should deny the Petition because it lacks merit and there has been no Constitutional violation of Petitioner's rights.²

FACTUAL BACKGROUND

Petitioner is a native and citizen of Nicaragua. *See* Exh. D, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated November 16, 2025; Exh. A, Form I-213


¹ Because Petitioner is presently detained at Florida Soft-Sided Facility, the proper respondent is the warden of that facility. *See* 28 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 438 (2004). This Court should dismiss the Complaint as to the remaining Respondents.

² Although Petitioner is not being detained in the Southern District of Florida, transfer of the Petition to the Middle District of Florida is not mandated by law because the Southern District of Florida was the Petitioner's immediate custodian at the time of the Petition's filing. *See Rumsfeld*, 542 U.S. at 438.

dated August 10, 2009. *See also* ECF No. 1 at 6. At an unknown place, time, and date, Petitioner entered the United States without inspection. *See id.* On August 8, 2009, Petitioner was arrested for stalking in St. Lucie County, Florida, a crime for which he was later convicted and sentenced. *See* Exh. B, Criminal Records for Case No.: 2009MM002552.

Two days after Petitioner's arrest, on August 10, 2009, Petitioner was encountered by Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) in St. Lucie County Jail. *See* Exh. A. ICE ERO issued Petitioner a Notice to Appear (NTA), charging Petitioner with inadmissibility in violation of INA § 212(a)(6)(A)(i), as amended, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, and § 212(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. *See* Exh. N, NTA. Petitioner did not file any applications for relief before an Immigration Judge, *see*, Exh. G, Declaration of Deportation Officer, and on September 28, 2009, an Immigration Judge ordered Petitioner removed to Nicaragua. *See* Exh. J, Immigration Judge Order ordering removal dated September 28, 2009. Petitioner did not file an appeal of that decision. *See* Exh. G, Declaration of Deportation Officer.

On or about October 21, 2009, Petitioner was physically removed from the United States. *Id.* Following his physical removal, Petitioner illegally reentered the United States at an unknown date, time, or place. *See* Exh. D, Form I-213 dated November 16, 2025; *see*

generally, 8 U.S.C. § 1326(a) (making it a crime for any alien who has been removed to enter the United States without prior authorization). He was again arrested and was again convicted, this time for driving under the influence and operating a motor vehicle without a license. See Exh. C, Criminal Records for Case No.  While detained at the Martin County Jail in Stuart Florida, Petitioner was encountered by ICE ERO on December 4, 2023. Petitioner remained in ICE custody from December 14, 2023, to May 31, 2024. See Exh. F, Detention History.

On December 05, 2023, ICE ERO reinstated the prior removal order. See Form I-871, Notice of Intent/Decision to Reinstate Prior Order. On December 20, 2023, Petitioner claimed fear of return to Nicaragua. See Exh. G, Declaration of Deportation Officer. After an interview on January 05, 2024, during which Petitioner claimed fear of returning to his home country, see Exh. I, Notice of Referral to Immigration Judge, an asylum officer concluded that Petitioner had a reasonable fear of persecution or torture, referred his case to an immigration judge, and placed Petitioner into withholding-only proceedings before an immigration judge. *Id.*

On March 19, 2024, Petitioner filed his application for withholding of removal with the immigration court. See Exh. G, Declaration of Deportation Officer. On May 31, 2024, the immigration judge granted Petitioner's application for withholding of removal from Nicaragua. See Exh. K, Immigration Judge Order granting withholding of removal. The Immigration Judge's order prohibited the removal of Petitioner to Nicaragua, but Petitioner remained subject to a removal order from the United States, issued on September 28, 2009. See *Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021); Exh. J, Immigration Judge Order ordering removal dated September 28, 2009.

On May 31, 2024, ICE ERO released Petitioner on an Order of Supervision. *See*, Exh. G, Declaration of Deportation Officer. On November 16, 2025, Petitioner reported to ERO for his scheduled OSUP check-in appointment and was taken into custody. *See* Exh. D, Form I-213 dated November 16, 2025. On the same date and after Petitioner was taken into custody, ICE ERO served Petitioner with a Notice of Revocation, indicating the revocation was done to effectuate the removal. *See* Exh. M, Notice of Revocation of Release. The Notice of Revocation was signed by an Assistant Field Office Director in Miami, Florida. Finally, on that same day and after Petitioner was served the Notice of Revocation, ICE ERO conducted an informal interview of Petitioner pursuant to 8 CFR § 241.4(I)(1). *See*, Exh. G, Declaration of Deportation Officer.

On December 08, 2025, ICE ERO issued Petitioner a Notice of Removal to Third Country, informing Petitioner that ICE intends to remove him to Mexico. *See* Exh. L, Notice of Removal. Petitioner is presently detained at the Florida Soft-Sided Facility while waiting for his removal to be effectuated.

PROCEDURAL BACKGROUND

On December 23, 2025, Petitioner filed the instant Petition asking this Court to declare that his detention violates the United States Constitution, the Immigration and Nationality Act (“INA”) and its related regulations (ECF No. 1 at *passim*). As the factual predicates for the claims in his Petitioner, Petitioner alleges (1) Respondents revoked Petitioner’s order of supervision (“OSUP”) without any evidence that Petitioner violated any of the conditions of release; (2) Respondents failed to give Petitioner proper notice and an opportunity to contest the revocation through an informal interview; and (3) the official who signed the release revocation lacked the authority to do so. (*Id.*) Based on these factual allegations, Petitioner

alleges that Respondents (1) violated Petitioner's Substantive Due Process rights which originate from the Fifth Amendment to the United States Constitution (*id.* at 16), (2) violated Petitioner's Procedural Due Process rights which originate from the Fifth Amendment to the United States Constitution (*id.* at 17-19), (3) violated applicable statutes and regulations related to the revocation of OSUPs (*id.* at 19-21), and (4) violated agency regulations, which (according to Petitioner) affords him the right to challenge the agency's decision under the Supreme Court's ruling in *United States ex. Rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), (ECF No. 1 at 21-23).

ARGUMENT

This Court should dismiss the Petition both claims because the relief sought falls beyond this Court's habeas jurisdiction and because Congress stripped this Court of jurisdiction. Alternatively, this Court should deny the Petition because the factual allegations lack merit.

I. This Court Lacks Jurisdiction.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted); *see also Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999) ("A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises."). For these reasons, before this Court can proceed, it must determine whether it has jurisdiction over this action. *See Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1323 (11th Cir. 2012) ("Prior to making an adjudication on the merits, we must assure ourselves that we have jurisdiction to hear the case before us.").

A. *Title 28, United States Code, Section 2241 Does Not Create Jurisdiction.*

In this case, Petitioner invokes this Court's jurisdiction *only* pursuant to 28 U.S.C. § 2241, a statute that, by its plain language, permits courts to rule on claims related to an "applicant's commitment or detention." 28 U.S.C. § 2241. The clear language of the statute and "the common-law history of the writ" showed that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Alawieh v. Tweedie*, Case No. 25-10614-LTS, 2025 WL 3171170, at *3 (D. Mass. 2025), *appeal docketed*, No. 25-2238 (1st Cir. Dec. 31, 2025) (quoting *Preiser v. Rodriguez*, 411 U.S. 475 (1973)) (citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). If a "petitioner seeks relief that 'falls outside the scope of the writ as it was understood when the Constitution was adopted,' [those] claims are beyond the reach of a federal court's habeas jurisdiction." *Id.* (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020)). Thus, to prevail, Petitioner must show that the alleged violations that he claims, based on the factual predicate that he alleges, fall within the reach of this Court's ability to grant habeas relief. *See, generally, Mayers v. U.S. Dept. of I.N.S.*, 175 F.3d 1289, 1300 (11th Cir. 1999) (describing how in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265, 268, (1954), the Supreme Court explained that the "crucial question is whether the alleged conduct . . . deprived petitioner of any of the rights guaranteed [to] him by the statute or by the regulation issued pursuant thereto.").

In this case, Petitioner cannot do so. As a district court recently observed, "While some procedural violations may, in some circumstances, rise to the level of a due process violation," not all alleged violation "rise to the level of a due process violation and/or would independently entitle [a petitioner] to a grant of habeas relief in the form of release from

detention.” *Van v. Oddo*, Case No. 3:25-CV-00322, 2025 WL 3492736, at *4 (W.D. Pa., Dec. 5, 2025) (finding no habeas relief for alleged failures to provide notice for reasons of revocation and lack of “informal review”). This is particularly true in this case where Petitioner alleges technical violations that can easily be cured. Petitioner alleges that the official who signed the release revocation lacked the authority to do so. If this Court were to agree, and a different person then signs the release revocation, Petitioner would nonetheless remain in custody. Alternatively, consider Petitioner’s claim that Respondents failed to give Petitioner proper notice and an opportunity to contest the revocation. That claim, too, could be readily resolved,³ meaning the alleged violation does not rise to a level of a constitutional claim. *See, e.g., Van v. Oddo*, 2025 WL 3492736 at *4 (finding no violation). For these reasons, Petitioner’s reliance on technical violations of internal policies do not relate to Petitioner’s “commitment or detention” and do not rise to a Constitutional or statutory violation warranting habeas relief. *Id.*

For this reason, this Court lacks jurisdiction.

B. Title 8, United States Code, Section 1252(g) Strips This Court of Jurisdiction.

If this Court disagrees, it should nonetheless find that it lacks jurisdiction because Congress stripped this Court of jurisdiction to hear challenges to the execution of removal orders. *See* 8 U.S.C. § 1252(g). Title 8, United States Code, Section 1252(g) states that United States District Courts lack jurisdiction over “any cause or claim by or on behalf of any alien

³ Of note, Petitioner does not even try to allege what facts he would have raised at such an interview. To the contrary, as discussed *supra*, Petitioner has two criminal convictions and illegally reentered the United States (in itself a crime, *see* 8 U.S.C. § 1326(a) (making it a crime for any alien who has been removed to enter the United States without prior authorization)), demonstrating that Petitioner would be unable to establish relief if provided an opportunity to contest his detention, meaning his claims do not fall within the core of this Court’s habeas relief.

arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.” 8 U.S.C. § 1252(g). Interpreting that statute, the United States Court of Appeals for the Eleventh Circuit held that 8 U.S.C. § 1252(g) strips district courts of jurisdiction over habeas claims arising from the execution of removal orders, *Camarena v. Dir., Immigration & Customs Enforcement*, 988 F.3d 1268, 1272 (11th Cir. 2021), such as this case, *see* Exh. H, Form I-871, Notice of Intent/Decision to Reinstate Prior Order. Re-detaining an alien for purposes of removal (as occurred in this case) constitutes an enforcement mechanism of a removal order. *See Tazu v. Att’y Gen. United States*, 975 F.3d 292, 298-99 (3d Cir. 2020) (“Re-detaining [the alien] was simply the enforcement mechanism the Attorney General picked to execute his removal. So § 1252(g) funnels review away from the District Court and this Court.”).

For this additional reason, this Court lacks jurisdiction to review ICE’s decision to revoke Petitioner’s supervised release. *See Westley v. Harper*, No. 25-229, 2025 WL 592788 (E.D. La Feb. 24, 2025) (dismissing habeas petition that challenged detention following the agency’s allegedly unlawful revocation of the OSUP for lack of subject matter jurisdiction).

II. The Petition Lacks Merit because the Revocation of Petitioner’s OSUP and His Continued Detention are Both Lawful.

If this Court finds that it has jurisdiction over the claims in the Petition, the Court should deny the Petition because the revocation of Petitioner’s OSUP was lawful, undertaken for a purpose permitted by 8 C.F.R. § 241.4(1)(2), and in accordance with the requirements of the regulation.

Title 8, United States Code, Section 1231(a)(5) provides that, if an alien, such as Petitioner, reentered the United States illegally after having been removed under an order of removal, “the prior order of removal is reinstated from its original date and is not subject to

being reopened or reviewed, [and] the alien is not eligible and may not apply for any relief under this chapter.” 8 U.S.C. § 1231(a)(5). The statute further provides that the Department of Homeland Security (“DHS”) may “at any time” effectuate removal “under the prior order.” *Id.* However, an alien may “pursu[e] withholding-only relief to prevent DHS from executing [the alien’s] removal order to the particular country designated in his removal order.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021); *see also* 8 U.S.C. § 1231(b)(3)(A). If the alien is granted withholding-only relief, DHS may not remove the alien to the country designated in the removal order. *Id.* §§ 208.22, 1208.22. In other words, “withholding of removal is a form of ‘country specific’ relief” and “nothing prevents DHS ‘from removing [the] alien to a third country other than the country to which removal has been withheld’”. *Guzman Chavez*, 594 U.S. at 531-32. Withholding of removal is, thus, not an entitlement to remain in the United States. *See id.* at 536 (distinguishing between asylum, which “permits an alien to remain in the United States,” and withholding, which “only bars deporting an alien to a particular country or countries.”

Under the INA, ICE has the authority to grant an OSUP for an alien subject to a final order of removal who has not been removed within the 90-day removal period. 8 U.S.C. § 1231(a)(3). Regulations also allow the government to terminate an order of supervision. Specifically, 8 C.F.R. § 241.4(l)(2) permits revocation “in the exercise of discretion when, in the opinion of the revoking I.2, official”:

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) *It is appropriate to enforce a removal order* or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

8 CFR §241.4(l)(2). (emphasis added).

The officials with the power to revoke release include field office directors and any other official “delegated the function or authority ... for a particular geographic district, region, or area.” *See* 8 C.F.R. § 1.2, 241.4(l)(2). Upon revocation of an OSUP, 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.*

Here, Petitioner argues that the revocation of his release is unlawful because he did not violate the conditions of release. *See* ECF No. 1 at 16. His argument ignores the alternative bases for revocation set forth in 8 C.F.R. § 241.4(l)(2). The record shows that ICE revoked his release to enforce the removal order, not because of a violation of a condition of release. *See* Exh. M, Notice of Revocation of Release. As shown in the Notice of Removal to Third Country, ICE seeks to remove Petitioner to Mexico. *See*, Exh. L, Notice of Removal. Therefore, Petitioner failed to show that ICE lacked a basis to revoke his OSUP.

Petitioner further argues that the assistant field office director who signed his release revocation lacked the authority to do so. *See* ECF No. 1 at 19-20. This argument also falls flat because the field office director delegated his authority under 8 C.F.R. 241 to the assistant field office director. *See* Exh. E, Delegation of Signature Authority. The delegation order specifically delegates to assistant field office directors the authority to revoke orders of release. *Id.*

Lastly, Petitioner argues that ICE failed to provide him with an informal interview. *See* ECF No. at 22. Contrary to Petitioner’s assertion, ICE notified Petitioner of the reasons for the revocation of his release and provided him an initial informal interview at which he

had an opportunity to respond to the reasons for revocation stated in the notification. *See* Exh. G, Declaration of Deportation Officer.

For this reason, Petitioner cannot meet his burden of establishing the facts necessary to show a constitutional violation, and the Petition fails on the merits. *See Blankenship v. Hall*, 542 F.3d 1253, 1270 (11th Cir.2008) (describing how the burden of proof is on the habeas petitioner “to establish his right to habeas relief” and how a petitioner “must prove all facts necessary to show a constitutional violation.”).⁴

CONCLUSION

For all these reasons, this Court lacks jurisdiction to grant relief and the Court should dismiss the Petition. Alternatively, this Court should deny the Petition because Petitioner has not met his burden of establishing the facts necessary to establish a Constitutional violation.

Respectfully submitted,

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⁴ The Complaint cites *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001), (ECF No. 1 at 10-11), but there has been no *Zadvydas* violation because Petitioner been detained for less than six months. Moreover, Petitioner has not even attempted to establish “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale v. Ashcroft*, 287 F.3d 1050-1052 (11th Cir. 2002).