UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

BYRON HALLESLEVENZ,

Petitioner,

v.

KRISTI NOEM, *et al.;*

Respondents.

Case No. 1:25-cv-26073-RKA

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

COMES NOW, the Petitioner, **BYRON HALLESLEVENZ**, by and through undersigned counsel and hereby submits this Reply to the Respondents' opposition to Mr. Halleslevenz 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 has jurisdiction.

Pursuant to 28 U.S.C. § 2241(c)(3), a person held in custody can petition for a writ of habeas corpus where the person alleges that he or she "is in custody in violation of the Constitution or laws or treaties of the United States." This section confers jurisdiction upon the federal courts to hear cases challenging the lawfulness of immigration-related detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

The Respondents also argue that section 8 U.S.C. § 1252(g) of the Immigration and Nationality Act ("INA") strip the Court of jurisdiction over this action. 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 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 shall remove the noncitizen during the 90-day removal period. The removal period begins on the latest of the following:

> **(i)**The date the order of removal becomes administratively final.
> **(ii)** If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
> **(iii)** If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

Detention may continue after the removal period, but not indefinitely. In *Zadvydas* 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.

In a footnote, the Respondents argue the petition is premature because the Petitioner has not been detained for longer than six months and that the 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. *See* DE 9 at 11, n4.

Their argument assumes the six-month clock started on November 16, 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 September 28, 2009. He was granted Withholding of Removal and subsequently released from immigration related custody on May 31, 2024, and placed on an Order of Supervision. 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 2024, 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. The burden thus shifts to the Respondents. The Respondents make no statement and provide no evidence that ICE has obtained, or even attempted to obtain, travel documents, only a Notice that "ICE intends" to remove the Petitioner to Mexico. *See* Docket Entry 7-1, Composite Exhibit at 4. 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 2024.

Additionally, the Respondents' assertion that they "intend" to remove the Petitioner to Mexico falls short of the Immigration and Nationality Act ("INA") requirements and due process. The INA sets out a multi-tiered process for determining the country of removal.

If the Government has a removal order but no country to which an IJ has authorized removal—for instance, if the IJ granted withholding of removal to the country designated in the order—it can remove the noncitizen to a third country, meaning any country not designated on the removal order. *D.V.D. v. U.S. Dep't of Homeland Sec.*, CV 25-10676-BEM, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). In doing so, the Government must follow the same multi-tiered process for selecting a country of removal that applied in the removal proceedings. 8 U.S.C. § 1231(b)(2). And in all cases, the INA prohibits removal to countries in which a noncitizen would face persecution:

> Notwithstanding paragraphs [b](1) and [b](2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1231(b)(3)(A).

Similarly, under the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), which codified CAT protections, a noncitizen may not be removed to any country where they would be tortured. *See* 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16–18, 1208.16–18. Put differently, third country removals are subject to the same mandatory protections that exist in removal proceedings.

In the instant case, the Respondents produced a Notice of Removal simply identifying Mexico as a country of removal on December 8, 2025. *See* DE 9-12. There is no indication that removal to Mexico was likely, or that Mexico would accept the Respondent, or importantly, if the Respondent was afforded his due process right and protections under the statute. The Respondent remains in detention, almost 60 days after the Notice of Removal was dated, and well beyond the presumptively reasonable removal period has expired. He has shown evidence of a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future and the Respondents have not rebutted this showing.

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

A. The revocation violates ICE's regulations and the Fifth Amendment.

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. The Respondents included a declaration by a Deportation officer who indicated only that an informal interview was conducted. There is no indication of who conducted the interview and when, or what the interview consisted of. *See* DE 9 -7. The Notice provided to the Petitioner when he was detained 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. *See* DE 1-2, pp 8-9. There has not been any compliance with that detailed 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)).

The evidence offered to show that the Petitioner has been given an interview is insufficient. 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 declaration from the officer who gave him the Notice of Revocation. The process afforded here fails to comply with ICE's own regulations or comport with traditional notions of due process.

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 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, like the one in the instant case, 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. *See* Docket Entry 9--5. Furthermore, the language of section 241.4 specifically limits the power of anyone who is not the Executive Associate Director to revoke release. 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 the delegation by memorandum to 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 the Petitioner's release. *See* Docket Entry 7-1 at 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.

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,

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