

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Pauline Nadege BINAM,

Petitioner,

v.

Case No.: 4:25 cv 00515 CDL AGII

JASON STREEVAL, Warden, Stewart
Detention Center, LADEON FRANCIS, Field
Office Director, Atlanta Field Office, U.S.
Immigration and Customs Enforcement;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security; PAMELA
BONDI, Attorney General of the United
States, *in their official capacities*,¹

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' MOTION TO DISMISS VERIFIED
HABEAS CORPUS PETITION**

INTRODUCTION

This Reply responds to Respondents' Motion to Dismiss ("Resp."), ECF 12. For the reasons expressed here and in Petitioner's Amended Petition and Complaint ("Am Pet."), ECF 7, Petitioner respectfully requests that the Court immediately order her release from custody, or, in the alternative, schedule this matter for a hearing. Respondents assert that Petitioner's claims are,

¹ In footnote 1 of their Motion, Respondents assert that *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) supports dismissing all Respondents except Warden Streeval, the immediate custodian. But *Rumsfeld* did not so hold, *see id.* at 435 n. 8, and many courts including in this district have recognized federal officials with responsibility over detention facilities as proper respondents in habeas claims. *See E.D.Q.C. v. Warden, Stewart Detention Center*, 789 F.Supp.3d 1234, 1242 n. 4 (M.D. Ga. 2025); *Masingene v. Martin*, 424 F.Supp.3d 1298, 1301-02 (S.D. Fla. 2020).

variously, (1) not cognizable in habeas, (2) moot, (3) premature, and (4) barred. Petitioner addresses these arguments, but the fundamental questions in this habeas proceeding before the Court remain straightforward.

First, did ICE officials violate mandatory regulations governing the process for revoking Petitioner's OSUP and re detaining her? Respondents essentially concede that, in all important respects, Petitioner was not given the required process. *See* ECF 12, Scott Decl. ¶¶ 24-26 (decision to re-detain Petitioner made on or before Dec. 22, 2025; ICE officers did not attempt to notify Petitioner that her OSUP was being revoked until Jan. 5, 2026; and ICE's internal request for travel documents was made that same day and prior to ICE's visit with Petitioner); Resp. Ex. F (Notice of Revocation of Release, dated Jan. 5, 2026, listing boilerplate "changed circumstances" as the basis for revocation). Although Petitioner and Respondents provide different accounts of precisely what occurred when ICE officials finally visited Petitioner on January 5, 2026, *see* Ex. A, Pet. Aff. ¶¶ 4-8, even by Respondents' telling there is no way to conclude she was afforded meaningful process as required by mandatory ICE regulations. Her release from detention is therefore the only proper remedy, as courts from around the country continue to recognize.²

² District courts nationwide have ordered habeas petitioners immediately released where the government failed to strictly adhere to the OSUP revocation process, even where there may be a basis for revocation, which Respondents' Motion fails to address whatsoever. *See, e.g.*, *Zhang v. Bondi*, 2026 WL 42778 (S.D.N.Y. Jan. 7, 2026); *Zhang v. Genalo*, __ F.Supp.3d __, 2025 WL 3733542 (E.D.N.Y. Dec. 28, 2025); *Diallo v. Joyce*, 2025 WL 3718477 (S.D.N.Y. Dec. 23, 2025); *Funes v. Francis*, __ F. Supp.3d __, 2025 WL 3263896 (S.D.N.Y. Nov. 24, 2025); *Garcia-Aleman v. Thompson*, 2025 WL 3534806 (W.D.T.X. Nov. 24, 2025); *J.L.R.P. v. Wofford*, 2025 WL 3190589 (E.D. Cal. Nov. 14, 2025); *Cifuentes Rivera v. Arnott*, (W.D. Mo. Oct. 7, 2025); *Grigorian v. Bondi*, 2025 WL 2604573 (S.D. Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, 2025 WL 2553394 (W.D. Ky. Sept. 4, 2025); *Sarail v. Bondi*, __ F.Supp.3d __, 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *see also Morales Sanchez v. Bondi*, __ F.Supp.3d __, 2025 WL 3651899 (C.D. Cal. Dec. 5, 2025) (granting motion enjoining unlawful detention where ICE violated OSUP revocation regulations).

Second, and independently, have Respondents met their burden to demonstrate that Petitioner's continued detention beyond the six-month period is reasonable, per *Zadvydas v. Davis*? Respondents offer no credible evidence that Petitioner's removal is significantly likely in the near future, and further do not explain why ICE would not be able to effectuate Petitioner's removal without detaining her in the interim, despite five years of uneventful compliance with ICE check-ins and her rooted family ties, including a U.S. citizen daughter and lawful permanent resident parents whom she cares for. For this reason, too, the only proper remedy is Petitioner's immediate release from detention.

If the Court finds that there are any material disputes of fact, such as what occurred on Jan. 5, 2026, or whether Petitioner's removal could be effectuated imminently, those are appropriately resolved at a hearing where Respondents may produce responsive officials.

ARGUMENT

I. Petitioner's OSUP claims warrant habeas relief.

a. Petitioners seeking habeas review of detention may assert APA and *Accardi* claims to establish the unlawfulness of their detention.

Respondents allege that the motivation for Petitioner's detention is "enforcement of her final order of removal," and argue that therefore any procedural failures in the government's process for returning her to government custody are merely "collateral to the legality of [her] detention." Resp. at 7-8. But this gravely misunderstands the nature of habeas corpus review generally and Petitioner's claims specifically.

Petitioner's challenge to the process she was afforded upon re-detention strikes at the heart of the liberty interest that habeas corpus is meant to protect. Habeas provides "a means of reviewing the legality of Executive detention"—*i.e.*, whether the government's detention of an individual comports with the Constitution and applicable statutes or regulations. *Rasul v. Bush*,

542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)). A final removal order does not preclude a detained individual from challenging the basis, manner, or length of their detention. *See, e.g., Djadju v. Vega*, 32 F.4th 1102 (11th Cir. 2022) (considering habeas petition by individual with final removal order); *Alvarez v. Holder*, 454 F. App'x 769 (11th Cir. 2011) (same). And OSUP revocation is not some “separate administrative determination,” as Respondents assert. Resp. at 8. Rather, the re-detention of someone previously released on an OSUP necessarily requires that the OSUP be revoked, so Petitioner here directly challenges the process resulting in (and therefore the legality of) her detention. Specifically, Petitioner alleges that ICE violated the Administrative Procedure Act (APA) and *Accardi* doctrine when it failed to comply with binding regulations requiring proper notice upon OSUP revocation and an opportunity to be heard. *See* Am. Pet. at ¶¶ 74-79; 8 CFR § 241.4; *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954) (providing relief in a habeas case where BIA failed to follow controlling regulations requiring it to exercise independent discretion).

Tellingly, Respondents do not address the scores of recent habeas cases granting detainees’ release due to similarly defective OSUP revocations, *see supra* n.2, but instead cite *Villafuerte v. Warden, Stewart Det. Ctr.*, 2018 WL 6626640 (M.D. Ga. Nov. 27, 2018), to assert that Petitioner’s APA and *Accardi* claims are not cognizable in habeas. Resp. at 8. But *Villafuerte* is inapposite. There, a detainee attempted to shoehorn into habeas his challenge to alleged procedural deficiencies in USCIS’s denial of his DACA application, which occurred months after he was taken into ICE custody. *Villafuerte*, 2018 WL 6626640, at *2-3. The procedural defects in that case were thus wholly distinct from the legality of his detention and did not even concern the agency that detained him. *Villafuerte* thus has no bearing on Petitioner’s allegations that

Respondents re-detained her via legally insufficient procedure, in violation of due process and controlling law. *See* Am. Pet. ¶ 8.

b. This Court has jurisdiction to review the legality of the post removal order detention of individuals in ICE custody.

Respondents next assert that Sections 1252(g) and 1252(a)(2)(B)(ii) of the INA bar this Court's review, Resp. 8-13, but ignore the Eleventh Circuit's clear holding in *Djadju v. Vega* that "[a]lthough our jurisdiction to consider challenges under § 2241 to an alien's detention is limited, we have jurisdiction to address a challenge to the legal basis of the detention, including constitutional challenges." 32 F.4th at 1105-06. It is settled law that the INA's jurisdictional provisions do not bar courts from considering habeas challenges to the legality of detention. *See id.*; *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

In *E.D.Q.C. v. Warden, Stewart Det. Ctr.*, 789 F.Supp.3d 1234 (M.D. Ga. 2025), Respondents raised the same § 1252(g) arguments that they now recycle here. *Id.* at 1238; *cf.* Resp. at 9-12. The court squarely rejected these arguments, noting that the petitioner was "not challenging 'his removability, removal order, or removal' but 'his unlawful detention.'" *E.D.Q.C.*, 789 F.Supp.3d at 1240 (internal citations omitted). The court continued that "while § 1252(g) 'bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.'" *Id.* (quoting *Madu v. U.S. Att'y Gen.*, 470 F.3d 1363, 1368 (11th Cir. 2006)); *see also Villa v. Normand*, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025) at *4-5.³

³ *Gupta v. McGahey*, 709 F.3d 1062 (11th Cir. 2013) and *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268 (11th Cir. 2021) do not save Respondents' § 1252(g) argument. These cases predate *Djadju*. 32 F.4th at 1105-06. Additionally, *Gupta* is distinguishable because it involved a *Bivens* claim, not a habeas petition. *Gupta*, 706 F.3d at 1063. And in *Camarena*, the petitioners explicitly attempted to use habeas to prevent the execution of their removal orders, rather than to challenge the legality of their detention as Petitioner does now. *Camarena*, 988 F.3d at 1271.

Respondents quote language out of context from *Kanapuram v. Dir., U.S. Citizenship and Immigr. Servs.*, 131 F.4th 1302 (11th Cir. 2025) to argue that § 1252(a)(2)(B)(ii) bars this Court from reviewing procedural challenges in the detention context. *See* Resp. at 11. But that case did not involve detention at all. Rather, the petitioners there sought to challenge USCIS’s decision to retrogress the priority date for EB 2 visa petitions filed by Indian nationals, and the court concluded that it lacked jurisdiction under § 1252(a)(2)(B)(ii) because another statutory provision granted USCIS broad discretion over the visa application process. *Id.* at 1304, 1307-08. But *Kanapuram* says absolutely nothing about § 1252(a)(2)(B)(ii)’s impact on habeas challenges to detention.⁴

Respondents’ reliance on *Barrios v. Ripa*, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025), *see* Resp. at 13, is similarly misplaced, because *Barrios* clearly held that “the Court does have jurisdiction to adjudicate whether Respondents complied with their own OSUP revocation procedures.” *Id.* at *5; *see also* *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 166 (W.D.N.Y. 2025) (“The government’s argument, however, confuses Ceesay’s right to an order of supervision . . . with his right not to be detained without adequate . . . process”). As for the assertion that § 1252(a)(2)(B)(ii) bars review of detention past the removal period, *see* Resp. at 12, *Barrios* holds the opposite. *See* 2025 WL 2280485, at *5 (“It is undisputed that the Court has jurisdiction to adjudicate ‘statutory and constitutional challenges to post-removal-period detention.’”) (quoting *Zadvydas v. Davis*, 522 U.S. 678, 688 (2001)).

c. Petitioner presents a live, justiciable controversy and is entitled to release.

⁴ On the other hand, *Kanapuram* does provide support for Petitioner’s OSUP arguments. The court reiterated that “[e]ven when a decision is committed to agency discretion, a court may consider allegations that an agency failed to follow its own binding regulations’ because an agency lacks the discretion to decline to follow such regulations.” *Id.* at 1308 (quoting *Kurapati v. U.S. Bureau of Citizenship and Immigr. Servs.*, 775 F.3d 1255, 1262 (11th Cir. 2014)).

Respondents argue that this Court should dismiss Petitioner’s OSUP claims as moot, because “ICE/ERO has afforded her this relief.” Resp. at 13. But the evidence belies that claim. As explained further in the Petition, *see* Am. Pet. ¶¶ 47-48, § 241.4(l) requires that ICE provide notice *at the time of revocation* (not weeks afterward) and a prompt informal interview, and § 241.4(d) requires that ICE give the noncitizen a copy of the notice so that she has a meaningful chance to respond to it. Here, in contrast, ICE/ERO concedes that it did not attempt to show Petitioner any Notice of Revocation document until 15 days *after* transferring her to Stewart. *See* Scott Decl. ¶¶ 22, 24.

The Notice itself contains boilerplate language stating her release was revoked because of “changed circumstances”—that “ICE has determined that [she] can be expeditiously removed from the United States.” Resp. Ex. F (Notice of Revocation of Release dated Jan. 5, 2026). At the same time, Respondents’ declarant concedes that an internal request to obtain travel documents was only made earlier that same day, Scott Decl. ¶ 25, casting doubt on any suggestion that ICE had made the required particularized finding of changed circumstances in Petitioner’s case prior to the decision to revoke and re-detain her on or before December 22, 2025.

Respondents assert that Petitioner was “served” with the Notice on Jan. 5, 2026, *see id.* at ¶ 22 and Resp. Ex. F, but Petitioner adamantly maintains that she was not allowed to fully read the document or retain a copy as required by § 241.4(d), *see* Ex. A, Pet. Aff. at ¶¶ 5-6, 8. Respondents assert that Petitioner did not provide any documents or a written statement on Jan. 5 to respond to the reasons for revocation, *see* Scott Decl. ¶ 26 and Resp. Ex. F, but Petitioner attests that ICE did not give her any opportunity to respond to the reasons for revocation or to

explain why she warranted grace. Pet. Aff. ¶¶ 3, 10; *see also* Resp. Ex. F (blank space on section of Alien Informal Interview document asking about oral statement provided by detainee).⁵

These factual disputes notwithstanding, the circumstances make clear that Respondents did not comply with the regulatory requirements intended to give individuals a *meaningful* opportunity to respond to *previously* provided notification that ICE intended to revoke the OSUP. First, Respondents concede that they only told Petitioner her OSUP was being revoked during the same meeting where they claim the informal interview took place, rendering it ludicrous to expect she would have time to prepare any kind of meaningful response, even if she had been given the opportunity to do so. Second, the Notice “simply mirrored the language” of the statute rather than explaining *which* circumstances had changed, or *why* there was now a significant likelihood of removal—a deficiency that courts across the country have pointed out. *See, e.g., Sarail A. v. Bondi*, __ F.Supp.3d __, 2025 WL 2533673, at *10 (D. Minn. Sept. 3, 2025); *Perez-Escobar v. Moniz*, 792 F.Supp.3d 224, 226 (D. Mass. 2025) (finding conclusory, unspecific language in Notice of Revocation to violate § 241.4(l)(1)). Third, Respondents clearly already decided to revoke Petitioner’s OSUP long before the hurried visit on January 5, 2026, and without first adhering to the regulatory procedures that are designed to give Respondents a legitimate opportunity to persuade officials to take a different course of action.

Prejudice is presumed when agencies fail to adhere to requirements that safeguard procedural due process. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). The prejudice to Petitioner is clear. Had she been given a meaningful opportunity to respond, she could have told the officer about the horrific and well-documented medical abuse she endured the last time she

⁵ *Cf. Zhang*, 2025 WL 3733542, at *14 (finding that space for detainee’s transcribed response left blank on informal interview document “raises more questions than answers” about Respondents’ compliance, especially in light of numerous other procedural deficiencies).

was in detention, and the mental health challenges that followed from that experience and from her status as a crime victim following her prior release. She could have explained her role as a caregiver for her ailing lawful permanent resident parents and her U.S. citizen daughter. And she could have reminded ICE of her perfect attendance at OSUP check-ins for five years. Pet. Aff.

¶ 10. These are all favorable factors, per 8 C.F.R. § 241.4(f), that ICE should weigh *prior* to a final decision to revoke an OSUP and detain. *See Funes v. Francis*, __ F.Supp.3d __, 2025 WL 3263896, at *23 (S.D.N.Y. Nov. 24, 2025) (enumerating similar “substantial arguments available as to why ICE should exercise its discretion” to not re-detain petitioner).

For all these reasons, Respondents’ unlawful deprivation of Petitioner’s liberty presents ongoing cause for grave concern. And as many courts have concluded, including in this Circuit, when ICE revokes an OSUP without providing adequate procedure, in violation of its own regulations and due process, the individual should be released. *See supra* note 2 (collecting cases); Am. Pet. ¶¶ 46, 48, 50, 56, 59. Respondents make no attempt to distinguish or refute the reasoning of these decisions.⁶

Respondents nevertheless assert that the issue is now moot, essentially arguing that the violation of Petitioner’s rights does not matter because they would have detained her either way. *See Resp.* at 13-15. But that argument is deeply offensive to the Constitution’s guarantee of procedural due process. *See Ceesay*, 781 F.Supp.3d at 157. Procedural violations implicating liberty cannot be shrugged off simply because the government feints at some semblance of

⁶ Relatedly, Respondents do not attempt to refute Petitioner’s argument that the July 2019 ERO Delegation Order, *see Resp. Ex. G*, does not delegate the specific authority to revoke OSUPs to Supervisory Detention and Deportation Officers (“SDDOs”). *See Am. Pet.* at ¶¶ 49-51. That is surprising, because courts have found this argument persuasive. *See, e.g., Ceesay*, 781 F.Supp.3d at 161 (“the [2019] delegation order *does not delegate the authority to revoke orders of release.*”); *Sikeo v. Cantu*, 2025 WL 2937064, at *2 (D. Ariz. Sept. 24, 2025) (same).

procedure long after detention occurs. *See Ala. Hosp. Ass'n v. Beasley*, 702 F.2d 955, 958 n.6 (11th Cir. 1983) (noting exception to harmless error doctrine where “agency action implicates basic due process rights”). For these reasons and those further explained in Petitioner’s Amended Petition, the *Accardi* doctrine and due process require Petitioner’s release.

II. Petitioner states a valid claim under *Zadvydas*.

a. Petitioner’s continued detention, without the requisite showing by Respondents, runs afoul of *Zadvydas*.

Respondents’ position that the six-month clock restarted upon Petitioner’s December re-detention, *see* Resp. at 19-20, “has no basis in either the statutes, the regulations, or *Zadvydas* itself.” *Villanueva v. Tate*, __ F.Supp.3d __, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025). Holding otherwise would not prevent the Government from arranging for a noncitizen’s removal, because it can secure any necessary arrangements for an individual’s removal while they remain subject to supervised release. Moreover, if the Government does wish to re-detain an individual beyond the six-month period, it may do so if it shows that imminent removal is reasonably foreseeable, as required by *Zadvydas*.

Courts in this Circuit have granted petitioners’ release where ICE could not justify re-detention in excess of the six-month period. *See, e.g., Beltran v. Ripa*, 2026 WL 21252, at *2-3 (M.D. Fla. Jan. 5, 2026); Am. Pet. at ¶¶ 70-71 (citing additional cases). Though Judge Weigle has reached a different conclusion in the past, Petitioner respectfully urges the Court to reconsider in light of the authorities cited here and the reasons explained in her Amended Petition at ¶¶ 72-73.

The Eleventh Circuit cases Respondents cite to defend their *Zadvydas* argument are inapposite. *Themeus v. U.S. Dept. of Justice*, 643 F. App’x 830, 833 (11th Cir. 2016), held that the removal period for an individual in state custody *at the time that his final order of removal was issued* did not begin until he was released from prison. By contrast, Petitioner was in ICE

custody on the date her removal order became final. Similarly, *Guo Xing Song v US Att’y Gen*, 516 F. App’x 894, 899 (11th Cir. 2013) involved a premature § 2241 petition filed by someone who had never spent more than six months in ICE detention.

b. Respondents fail to demonstrate that removal of Petitioner is significantly likely in the reasonably foreseeable future.

Numerous courts have held that *Zadvydas*’s burden-shifting framework does not apply when a noncitizen has been ordered removed, is released on an OSUP, and is later re-detained. *See, e.g., Nguyen v. Hyde*, 788 F.Supp.3d 144, 146-49 (D. Mass. 2025); *Hall*, 2026 WL 18583, at *6-7. Accordingly, “it is [ICE’s] burden to show a significant likelihood that the alien may be removed.” *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); *Abuelhawa v. Noem*, 2025 WL 2937692, at *8 (S.D. Tex. Oct. 16, 2025) (“[U]pon revocation of release, the Government bears the burden to show a significant likelihood” of removal).

The bare assertion that one sub-unit of ICE asked another sub-unit of ICE to gather a travel document is plainly insufficient to establish Petitioner’s imminent removability. Further, Respondents concede that this request was made fifteen days *after* they re-detained her, *see* Scott Decl. ¶ 25, but courts reject such “post hoc rationalization.” *Hall*, 2026 WL 18583, at *8. The general assertion that ICE is presently removing Cameroonian nationals likewise does not demonstrate that Petitioner herself is likely to soon be removed. *See Nguyen*, 788 F.Supp.3d at 152 (finding government did not meet burden where it asserted ICE was removing Vietnamese citizens but provided “no clear information as to whether or when” individual’s document request was sent to Vietnam); *Liu v. Carter*, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025).

Meskini v. Att’y Gen. of U.S., 2018 WL 1321576, at *2 (M.D. Ga. Mar. 14, 2018) is distinguishable. *See generally* Am. Pet. ¶¶ 72-73. There, the Government provided sworn affidavits attesting to detailed communications between ICE/ERO and the Algerian Consulate

regarding the noncitizen's imminent removal. *Id.* Here, Respondents submit a vague intra-agency request to obtain travel documents and a conclusory statement that Petitioner's case is "under current review by Cameroon for the issuance of a travel document." Resp. Ex. F. But "dozens of federal courts across the country" have found such assertions insufficient. *Hall*, 2026 WL 18583, at *7 (collecting cases); *see, e.g., Nguyen*, 788 F. Supp. 3d at 150, 152 (finding insufficient basis for continued detention where government asserted "changed circumstances" and that petitioner's "case is under current review" by his native country). The Court should reach the same conclusion here and find that regardless of where the burden lies, Respondents cannot demonstrate a significant likelihood of Petitioner's removal in the reasonably foreseeable future, and her continued detention is accordingly unlawful.

CONCLUSION

For these reasons, Petitioner respectfully requests that the Court order her released.

Respectfully submitted this 29th day of January, 2026.

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