

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

XAO THAO,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-CV-00057-CDL-ALS
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On January 8, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. On January 21, 2026, the Court ordered Respondent to respond to the Petition within twenty-one (21) days. ECF No. 4. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native of Thailand and a citizen of Laos who is mandatorily detained post-final order pursuant to 8 U.S.C. § 1231. Scott Decl. ¶¶ 3, 8.

Petitioner was admitted to the United States as a refugee on or about March 27, 1986. Scott Decl. ¶ 3. Petitioner adjusted status on April 6, 1988 under Immigration and Nationality Act (“INA”) § 209(a). *Id.* On May 27, 2005, Petitioner was convicted in the Court of General Sessions of York County, South Carolina, of breach of trust with fraudulent intent in violation of S.C. Code

¹ In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in her Petition. “[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

§ 16-13-230. *Id.* ¶ 4 & Ex. A. She was sentenced to five years of imprisonment. *Id.* On February 10, 2010, Petitioner was convicted in the U.S. District Court for the Southern District of Georgia of possession of unauthorized access devices in violation of 18 U.S.C. § 1029(a)(3) and aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1). *Id.* ¶ 5 & Ex. B. She was sentenced to sixty-one months of imprisonment. *Id.*

On April 10, 2013, Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) encountered Petitioner at the Bureau of Prison’s Federal Correctional Institution in Tallahassee, Florida. *Id.* ¶ 6. ICE/ERO issued her a Notice to Appear (“NTA”) charging her with removal pursuant to INA § 237(a)(1)(A). *Id.* & Ex. C. On May 3, 2013, the Department of Homeland Security filed Additional Charges of Inadmissibility/Deportability (“Form: I-261”) removing the original charge and charging Petitioner as removable pursuant to INA §§ 237(a)(2)(A)(iii) and 237 (a)(2)(A)(ii). *Id.* ¶ 7 & Ex. D.

On June 20, 2013, Petitioner was ordered removed by an immigration judge (“IJ”) from the United States to Thailand or, in the alternative, to Laos. Scott Decl. ¶ 8 & Ex. E. On June 27, 2013, Petitioner completed a Laos travel document request. *Id.* ¶ 9. On July 3, 2013, ICE/ERO sent a travel document request to the Thai consulate. *Id.* ¶ 10. On August 7, 2013, the travel document request for Thailand was denied. *Id.* & Ex. F. On September 18, 2013, after 90 days of detention, Petitioner was released on an order of supervision (“OSUP”). *Id.* ¶ 11 & Ex. G.

On December 10, 2025, Petitioner was arrested and entered ICE/ERO custody and is currently detain at the Stewart Detention Center in Lumpkin, Georgia. Scott Decl. ¶ 12. On January 7, 2026, ICE/ERO submitted a new travel document request to Laos. *Id.* ¶ 13. On February 2, 2026, ICE/ERO received a travel document for Petitioner. *Id.* & Ex. H. On February 11, 2026, ICE/ERO revoked Petitioner’s release pursuant to 8 C.F.R. § 241.4(l) for failing to report. *Id.* ¶ 14

& Ex. I. ICE/ERO is currently coordinating Petitioner's removal from the United States to Laos. *Id.* ¶ 15. Petitioner currently has a significant likelihood of removal in the reasonably foreseeable future to Laos. *Id.* Petitioner's removal should take place no later than April 30, 2026. *Id.* & Ex. I.

LEGAL FRAMEWORK

Because Petitioner is detained post-final order of removal, her 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. at 689; 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) (internal quotations omitted).

ARGUMENT

Petitioner enumerates three claims for relief. Count One and Count Three raise claims seeking judicial review of Petitioner’s OSUP revocation. Pet. ¶¶ 8-9. These claims should be dismissed because (1) they are not cognizable in this habeas proceeding, (2) the Court lacks subject matter jurisdiction over the claims, (3) the claims are moot, and (4) the claims otherwise lack merit. Count Two argues that Petitioner’s continued detention violates the INA and the Supreme Court’s interpretation thereof in *Zadvydas*. Pet. ¶ 9. This claim should also be dismissed. Section 1231(a)(6)—as interpreted by *Zadvydas*—authorizes Petitioner’s detention because (1) any challenge to her detention is premature because she has not been detained post-final order of removal for more than six months since she re-entered ICE/ERO custody, and (2) there is a significant likelihood of removal in the reasonably foreseeable future.

I. Petitioner’s OSUP claims should be dismissed.

As explained above, most of Petitioner’s claims seek judicial review of Petitioner’s OSUP revocation. Pet. ¶¶ 8-10. Petitioner asserts violations of the regulation set forth in § C.F.R.

§ 241.4(1) and § 241.13(i), primarily arguing that ICE/ERO failed to comply with regulations in revoking Petitioner's OSUP. *Id.* Petitioner also claims that her OSUP revocation violates due process because she did not receive a notice and interview as required by applicable regulations. Pet. ¶ 9.

These claims should be dismissed for four reasons. *First*, these claims are not cognizable in this habeas proceeding because they raise purely civil claims seeking judicial review of a process collateral to Petitioner's detention. *Second*, the Court lacks subject matter jurisdiction over Petitioner's claims seeking judicial review of ICE/ERO's decision to continue Petitioner's post-final order of removal detention by revoking her OSUP or ICE/ERO's internal consideration of evidence in reaching that decision. *Third*, Petitioner's claims regarding the OSUP procedures are moot. *Fourth*, Petitioner's OSUP revocation claims do not entitle her to release.

A. Petitioner's challenges to her OSUP revocation are not cognizable in habeas.

Petitioner seeks judicial review of her OSUP revocation. Pet. ¶ 8-10. These claims should be dismissed because they are not cognizable in this habeas proceeding.

The scope of the Court's habeas jurisdiction is limited to reviewing the legality of detention and cannot be used as a mechanism to review collateral issues. "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). "Habeas is at its core a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody[.]" *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Simply stated, habeas is not available to review questions unrelated to the cause of detention. Its sole function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Pierre v. United States*, 525 F.2d 933, 935-36

(5th Cir. 1976). Habeas “cannot be utilized as a base for the review of a refusal to grant collateral administrative relief or as a springboard to adjudicate matters foreign to the question of the legality of custody.” *Id.* at 936.

Here, in the claims not based on *Zadvydas*, Petitioner does not assert that ICE/ERO lacks sufficient statutory authority for her present detention; rather, Petitioner challenges the procedures ICE/ERO employed in revoking her OSUP. Pet. ¶¶ 8-10. But the procedures utilized in revoking Petitioner’s OSUP are collateral to the cause of Petitioner’s detention: enforcement of her final order of removal. *See* 8 U.S.C. § 1231(a)(6). Petitioner does not dispute that she is subject to a final order of removal. Pet. ¶ 25. The procedures used to revoke of Petitioner’s OSUP are collateral to the legality of Petitioner’s detention pursuant to 8 U.S.C. § 1231(a)(6), because the final order of removal is the “cause of detention.” *Pierre*, 525 F.2d at 935-36. Accordingly, Petitioner’s claims seeking review of that separate administrative determination and the procedures underlying that collateral determination are not cognizable in habeas. *Id.*

Moreover, Petitioner has filed a habeas petition—not a civil complaint—and any claims that could be construed to under the APA and *Accardi* are not cognizable in habeas. This Court addressed this issue in *Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). There a non-citizen filed a habeas petition challenging his continued detention. *Villafuerte*, 2018 WL 6626640, at *1. The non-citizen also raised an APA claim concerning the denial of his application for immigration status. *Id.* at *1-2. The Court held that Petitioner’s APA claim was “not cognizable” for two reasons. First, the non-citizen sought a form of “collateral administrative relief” which is not properly within the purview of habeas corpus. *Id.* at *2 (quotations and citations omitted). Second, it was “inappropriate” to permit the non-citizen to raise

a civil claim because the non-citizen filed a habeas petition with a far lower filing fee. *Id.* The Court should reach the same conclusion here.

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

Additionally, Petitioner's claims can be construed to request judicial review of ICE/ERO's decision to revoke her OSUP. To the extent Petitioner challenges ICE/ERO's *decision* to revoke her OSUP itself, as well as ICE/ERO's internal consideration of the issue in making that decision, that challenge 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.²

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

Because ICE/ERO revoked Petitioner's OSUP in order to execute her 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-

² Respondent contends that sections 1252(g) and 1252(a)(2)(B)(ii) bar only Petitioner's claims challenging ICE/ERO's *decision to detain her at all* rather than continue her release under an OSUP. As discussed below, Petitioner's challenge to whether her *continued detention* complies with 8 U.S.C. § 1251(a)(6) is governed by *Zadvydas*, and Respondent does not contend that the Court lacks jurisdiction over that claim.

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.*, 954 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. 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 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 her OSUP was an action taken, in part, to execute her removal order because ICE/ERO revoked her OSUP to enforce the removal order against her “as ICE has the ability and means to effectuate [her] removal.” Scott Decl. Ex. I. 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 this claim 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’s beyond the ninety-day removal period. Because ICE/ERO is vested with this discretion by statute, 8 U.S.C. § 1252(a)(2)(B)(ii) deprives the Court of subject matter jurisdiction over Petitioner’s claims challenging ICE/ERO’s discretionary decision to continue her detention by revoking her 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 pursuant to 8 U.S.C. § 1227(a)(2)(A)(ii, and (iii) based on her convictions of breach of trust with fraudulent intent and aggravated identity theft. Scott Decl. ¶¶ 4-5, 8 & Exs. C, E. Although she 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. §] 1182 . . . *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.

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.Z. 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 portions of the Petition discussed above for lack of subject matter jurisdiction.

C. Petitioner's claims seeking notice and an informal interview are moot.

In Count One, Petitioner asserts that ICE/ERO failed to comply with applicable regulations in revoking her OSUP. Pet. ¶ 8-9. Specifically, Petitioner asserts ICE/ERO failed to provide “pre-detention” notice of the reasons for revoking her OSUP and ICE/ERO failed to afford her an interview to contest her OSUP revocation. *Id.* To the extent Petitioner claims she is entitled to notice and an interview, the Court should dismiss these claims as moot because ICE/ERO has afforded her this relief as she was provided with notice and an informal interview is scheduled for February 18, 2026. *See* Scott Decl. ¶ 14 & Ex. I.

“Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of ‘Cases’ and ‘Controversies.’” *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th

Cir. 2001) (quoting U.S. CONST. art. III, § 2). “The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy.” *Id.* (internal quotations and citation omitted).

“A cause of action becomes moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) (internal quotations and citation omitted). “In considering mootness, [courts] look at the events at the present time, not at the time the complaint was filed[.]” *Id.* (citation omitted). “If the injury ceases, or is rendered unamenable to judicial relief, then the case becomes moot and thereby incapable of further Article III adjudication.” *Checker Cab Operators, Inc. v. Miami-Dade Cnty.*, 899 F.3d 908, 915 (11th Cir. 2018). Put another way, “[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.” *Al Najjar*, 273 F.3d at 1336 (citation omitted). “Indeed, dismissal is required because mootness is jurisdictional.” *Id.* (citation omitted).

Here, in Count One, Petitioner argues that her OSUP revocation violates due process because ICE/ERO did not provide her with “any notice, any notice of revocation of her supervision, nor a ‘prompt’ informal interview.” Pet. ¶ 9. Petitioner’s OSUP was revoked pursuant to 8 C.F.R. § 241.4(l). That regulation provides, in relevant part, that “[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1).

Petitioner’s claims are now moot because ICE/ERO has provided Petitioner written notice

of the reasons for her OSUP revocation and an informal interview has been scheduled for February 18, 2026. On February 11, 2026, ICE/ERO served Petitioner with a Notice of Revocation of Release signed by a Deportation Officer (“DO”). Scott Decl. ¶ 14 & Ex. I. The Notice states the reason for Petitioner’s OSUP revocation: “[Petitioner violated a condition of [her] release,” specifically a finding that she “failed to report on December 16, 2016”; and “[i]t is appropriate to enforce the removal order entered against [her] as ICE has the ability and means to effectuate [her] removal.” *Id.* Ex. I. An informal interview with Petitioner is scheduled to take place on February 18, 2026. *Id.*

Because ICE/ERO has provided Petitioner notice and an informal interview is scheduled in accordance with 8 C.F.R. § 241.4(l)(1), Petitioner’s claims that her OSUP revocation violates due process and violates the regulatory requirements in the absence of these procedures “no longer presents a live controversy with respect to which the court can give meaningful relief.” *Djadju*, 32 F.4th at 1106 (internal quotations and citation omitted). Any purported injury resulting from the OSUP revocation in the absence of these procedures has ceased. *See Checker Cab Operators*, 899 F.3d at 915. Because these claims are now moot, “dismissal is required because mootness is jurisdictional.” *Id.* (citation omitted).

D. Petitioner’s OSUP revocation claims do not entitle her to release.

To the extent the Court rejects the above bases for dismissal and finds that ICE/ERO has not complied with the applicable regulations and that this violates the APA, the only appropriate remedy is an order for compliance with the regulations—not release from custody, and therefore the claims lack merit in this habeas action. ICE/ERO has the discretion to detain Petitioner pursuant to 8 U.S.C. § 1231(a)(6) because there is a significant likelihood of removal in the reasonably foreseeable future. *See infra II.B.* Given that Petitioner’s due process claims challenge only

compliance with the OSUP revocation regulations—not the statutory authority for detention under § 1231(a)(6)—the only appropriate remedy would be an order for compliance with those regulations. *See Flores–Powell v. Chadbourne*, 677 F. Supp. 2d 455, 476 (D. Mass. 2010) (“Rather, the remedy should be tailored to the injury suffered ... and should not unnecessarily infringe on competing interests”) (quoting *United States v. Gordon*, 156 F.3d 376, 381 (2d Cir. 1998)); *see also United States v. Caceres*, 440 U.S. 741, 760 (1979) (forcing agency compliance with their own regulations when the regulations afford individual rights and protections); *Bonitto v. Bureau of Immigr. & Customs Enf’t*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) (“This Court must insist on DH’s compliance with the post-order custody regulations if [petitioner’s] detention is to remain constitutional”). Such a remedy is tailored to the injury suffered and does not infringe upon the Government’s competing interest in detaining Petitioner for the purpose of effectuating her removal. *Id.* Release, on the other hand, as Petitioner requests, would greatly infringe on the Government’s interest in effectuating Petitioner’s removal. Because release is not the appropriate remedy, it follows that habeas is not the appropriate vehicle, and therefore the OSUP claims are without merit within this habeas action.

II. Petitioner fails to state a claim pursuant to *Zadvydas*.

In addition to her contentions that her OSUP revocation violated her rights, Petitioner claims her detention violates the Supreme Court’s interpretation of the INA in *Zadvydas* and its progeny. Pet. ¶ 9. The Court should dismiss this claim because 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—authorizes Petitioner’s detention. Specifically, Petitioner fails to state a claim for relief under *Zadvydas* because (1) her claim is premature, and (2) in the alternative, there is a significant likelihood of removal in the reasonably foreseeable future.

A. Petitioner fails to state a claim because her *Zadvydas* claim is premature.

The Court should dismiss the Petition because Petitioner had not been detained post-final order of removal for more than six months since she last entered ICE/ERO custody at the time she filed her Petition. Accordingly, she cannot state a claim for relief under *Zadvydas* because her detention is presumptively reasonable, and 8 U.S.C. § 1231(a)(6) therefore continues to authorize her detention.

In *Zadvydas*, the Supreme Court held that six months of post-final order of removal detention under 8 U.S.C. § 1231(a)(6) is “a presumptively reasonable period of detention” from a due process standpoint. 533 U.S. at 701. Because six months of post-final order of removal detention is presumptively reasonable, the Eleventh Circuit has held that “in order to state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months[.]” *Akinwale*, 287 F.3d at 1052. More specifically, the Eleventh Circuit has made clear that the “six-month period thus must have expired at the time [Petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*.” *Id.*; see also *Themeus v. U.S. Dep’t of Justice*, 643 F. App’x 830, 833 (11th Cir. 2016); *Guo Xing Song v. U.S. Att’y Gen.*, 516 F. App’x 894, 899 (11th Cir. 2013).

Here, Petitioner was ordered removed on June 20, 2013. Scott Decl. ¶ 8 & Ex. E. Petitioner was released pursuant to an OSUP on September 18, 2013. Scott Decl. ¶ 11 & Ex. G. Petitioner was re-detained on December 10, 2025, so that ICE could “enforce the removal order entered against [her] as ICE has the ability and means to effectuate [her] removal.” *Id.* ¶ 12 & Ex. I. Petitioner filed her Petition on January 8, 2026, less than one month after her most recent detention began. ECF No. 1. Therefore, at the time the Petition was filed, Petitioner had not been detained beyond the *Zadvydas* presumptively reasonable six-month period since she re-entered ICE/ERO custody. Accordingly, she fails to state a claim under *Zadvydas*, and the Petition should be dismissed as premature. See *Akinwale*, 287 F.3d at 1052; *Themeus*, 643 F. App’x at 833; *Guo Xing*

Song, 516 F. App'x at 899.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens' habeas applications raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *L.A.A.C. v. Bondi*, No. 4:25-cv-199-CDL-ALS, 2025 WL 2490291, at *2 (M.D. Ga. June 26, 2025), *recommendation adopted*, 2025 WL 2484015 (M.D. Ga. Aug. 28, 2025); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Garcon v. Warden, Irwin Cty. Det. Ctr.*, No. 7:16-CV-158-WLS-MSH, 2017 WL 9250368, at *2 (M.D. Ga. Aug. 30, 2017), *recommendation adopted*, 2018 WL 2056562 (M.D. Ga. Feb. 27, 2018); *Elieenist v. Mickelson*, No. 15-61701-Civ, 2015 WL 5316484, at *3 (S.D. Fla. Aug. 18, 2015), *recommendation adopted*, 2015 WL 5308882 (S.D. Fla. Sept. 11, 2015); *Maraj v. Dep't of Homeland Sec.*, No. CA 06-0580-CG-C, 2007 WL 748657, at *3 (S.D. Ala. Mar. 7, 2007); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1363-65 (N.D. Ga. 2002). The Court should similarly dismiss the Petition here because Petitioner cannot show that the *Zadvydas* six-month presumptively reasonable detention period had “expired at the time [Petitioner's] § 2241 petition was filed[.]” *Akinwale*, 287 F.3d at 1052 (emphasis added).

Petitioner argues that her previous period of post-final order of removal detention—between April 10, 2013 and September 18, 2013—should be added to the current period of detention in determining whether she satisfies the timing element of her *Zadvydas* claim. Pet. ¶ 49. This argument should be rejected.

As this Court has recognized, *Zadvydas* is not “a permanent ‘Get Out of Jail Free Card’ that may be redeemed at any time just because an alien was detained too long in the past.” *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018). Rather, the “focus [for *Zadvydas*] is on today[.]” *Id.* (emphasis in original) (denying *Zadvydas* claim where

the non-citizen had multiple periods of post-final order of removal detention that collectively amounted to more than six months). For this reason, the Court has held that the *Zadvydas* six-month presumptively reasonable detention period re-commences when a non-citizen is re-detained after previously spending time in ICE/ERO custody.

In *M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136 (M.D. Ga. Oct. 19, 2023), a non-citizen was detained post-final order of removal for approximately seven months before his release under an order of supervision. *M.K.*, No. 4:23-cv-136, R. & R. 2 (M.D. Ga. Oct. 19, 2023), ECF No. 12. ICE/ERO re-detained him approximately eleven years later, and the non-citizen sought habeas relief under *Zadvydas* approximately two months after his re-detention. *Id.* The Court held that the *Zadvydas* six-month period re-commenced when the non-citizen was most recently detained by ICE/ERO. *Id.* at 3-7. In reaching this conclusion, the Court reasoned that the *Zadvydas* six-month period was intended “to allow the Government to arrange for an alien’s removal.” *Id.* at 6 (citing *Zadvydas*, 533 U.S. at 700-01). If a non-citizen’s prior periods of post-final order of removal detention were cumulated with his present period of detention, this “would effectively eviscerate § 1231(a)’s purpose of allowing the Government time to arrange for an alien’s removal, including contacting foreign consulates and obtaining necessary travel documents.” *Id.* at 6-7. Because the non-citizen’s most recent period of post-final order of removal detention had not exceeded six months, the Court dismissed his petition as premature. *Id.* This Court recently applied this same rule. See *J.A.S. v. Warden, Stewart Detention Center*, No. 4:25-cv-244-CDL-CHW, Order & R. 4-8 (M.D. Ga. Oct. 14, 2025), ECF No. 8 (dismissing a Cuban habeas petitioner’s *Zadvydas* claim as premature where he had been detained post-final order of removal less for less than six months following re-arrest after a period of release).

The circumstances of this case demonstrate why prior periods of detention should not be

cumulated in assessing whether a *Zadvydas* claim is premature. As this Court has recognized, in evaluating a *Zadvydas* claim, “the proper perspective is *today*. Not whether someone may subjectively believe that Petitioner’s rights have been violated in the past[.]” *Meskini*, 2018 WL 1321576, at *4. “The question is, as of *this moment* and given the current circumstances, whether Petitioner is likely to be removed in the reasonably foreseeable future or whether he is not.” *Id.*

Although Petitioner was previously detained post-final order of removal for approximately six months in 2013, she filed the Petition less than one month after she was re-detained on December 10, 2025. Just like in *M.K.*, her *Zadvydas* claim is therefore premature because she cannot show more than six months of post-final order of removal detention since her most recent re-detention. Accordingly, Petitioner’s *Zadvydas* challenge should be dismissed as premature.

B. In the alternative, there is a significant likelihood of removal in the reasonably foreseeable future.

Even if the Court ignores that Petitioner’s challenge to her post-final order of removal detention is premature on its face—which it should not—the Petition should still be dismissed because Petitioner fails to show that she is entitled to release under *Zadvydas*. Specifically, she fails to meet her evidentiary burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. Further, even if the burden is shifted, Respondent meets her burden.

Petitioner primary argument that she meets her *Zadvydas* burden is her claim that Laos does not have a repatriation agreement with the United States and that she is stateless. Pet. ¶ 7. ICE, however, has obtained a travel document for Petitioner to Laos. Scott Decl. ¶ 13 & Ex. H. Petitioner’s removal is expected to take place no later than April 30, 2026. *Id.* ¶ 15. She therefore fails to meet her *Zadvydas* burden accordingly.

Beyond these contentions, Petitioner is left with the mere conclusory assertion that she is

unlikely to be removed in the near future, mostly relying on the fact that she was not removed following previous efforts. But as courts in the Eleventh Circuit—including this Court—have recognized, such conclusory assertions are insufficient to state a claim under *Zadvydas*. See *Novikov v. Gartland*, No. 5:17-cv-164, 2018 WL 4100694, at *2 (S.D. Ga. Aug. 28, 2018), *recommendation adopted*, 2018 WL 4688733 (S.D. Ga. Sept. 28, 2018); *Gueye v. Sessions*, No. 17-62232-Civ, 2018 WL 11447946, at *4 (S.D. Fla. Jan. 24, 2018); *Rosales-Rubio v. Att’y Gen. of United States*, No. 4:17-cv-83-CDL-MSH, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018), *recommendation adopted*, 2018 WL 5290094 (M.D. Ga. Feb. 8, 2018). Rather, Petitioner must provide “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Gozo*, 309 F. App’x at 346 (internal quotations omitted) (emphasis added). Further, as this Court has repeatedly held, the “focus [for *Zadvydas*] is on *today*[.]” *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018). Because Petitioner provides little evidence to show she cannot be removed under the current circumstances, she cannot meet her burden under *Zadvydas*.

Even if Petitioner had presented evidence sufficient to shift the burden to Respondent—which she has not—Respondent meets his burden. A travel document from Laos has been obtained for Petitioner. Scott Decl. ¶ 13. Additionally, ICE/ERO is currently coordinating Petitioner’s removal from the United States to Laos. *Id.* ¶ 15. There is a significant likelihood of removal in the reasonably foreseeable future to Laos. *Id.* Petitioner’s removal should take place no later than April 30, 2026—which is before the presumptively reasonable six-month period since she re-entered ICE/ERO custody. *Id.*

In evaluating the present likelihood of removal, courts “must take appropriate account of the greater immigration-related expertise of the Executive Branch” and “listen with care [to] the

Government’s foreign policy judgments[.]” *Zadvydas*, 533 U.S. at 700. This is particularly true “for example, [when] the status of repatriation negotiations[] are at issue[.]” *Id.* In that case, courts must “grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.” *Id.*; *see also Meskini*, 2018 WL 1321576, at *3-4.

Petitioner’s continued detention pursuant to 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—satisfies due process because her detention is presumptively reasonable and because there is a significant likelihood of removal within the reasonably foreseeable future. Accordingly, the Petition should be dismissed.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted, this 11th day of February, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed Respondent's Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Xao Thao
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 11th day of February, 2026.

BY: s/ Travis D. Lynes
TRAVIS D. LYNES
Assistant United States Attorney