

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FRANK PADRON FUENTES,

Petitioner,

v.

WARDEN, FLORIDA BAKER
CORRECTIONAL INSTITUTE,
et al. (all official capacity),¹

Case No. 3:26-cv-134-MMH-PDB

A No. 

Cuba

Respondents.

Response to Habeas Petition

Petitioner Frank Padron Fuentes challenges the revocation of his Order of Supervision (“OSUP”) along with the resulting detention by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”). The Court should deny the Petition.

Background

Fuentes is a citizen and national of Cuba. Ex. 1 at 1. He arrived in the United States in 2005 in Miami. *Id.* In 2012, he was convicted in the District Court for the Middle District of Florida for conspiracy to commit access device fraud, possession of

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. *See, e.g., Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE either to bring petitioner for a bond hearing or release by a specific date).

device making equipment, and possession of 15 or more unauthorized access devices. *Id.* at 2. He was sentenced to 22 months' imprisonment and ordered to pay \$26,717.46 in restitution. *Id.* Because of the criminal conviction, ICE placed him in removal proceedings. *Id.* An immigration judge ordered him removed to Cuba on May 6, 2013. *Id.* at 4. At some point, he was released on an OSUP. On November 18, 2025, a warrant was issued for Fuentes as well as a revocation of release. *Id.* at 5, 8. ICE also issued a notice of removal for Fuentes to South Sudan that day. *Id.* at 7. A IJ revoked the OSUP on December 18, 2025. Ex. 2.

Certified Habeas Return

The Court has power to grants writs of habeas corpus where (among other instances) petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner bears the burden to prove custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

After Fuentes's convictions, an IJ ordered him removed. And his order of removal became final. At that point, Fuentes was removable from the United States. The Attorney General (through her delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(1)(A), (a)(3). ICE is detaining Fuentes under 8 U.S.C. § 1231(a)(6) pending his removal.

ARGUMENT

I. The Court lacks jurisdiction over Fuentes's claims.

Federal courts have limited jurisdiction and “possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). In this case, 8 U.S.C. § 1252(g) divests this Court’s jurisdiction to consider Fuentes’s claims of unlawful detention. Further, he has failed to exhaust other remedies available to him before turning to the District Court for intervention.

There is no jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (cleaned up). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

This bar is subject to limitations and must be applied “to just those three specific actions” listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, “courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). Detaining an alien while a removal determination remains pending constitutes an action taken to commence proceedings. *Gupta*, 709

F.3d at 1065; *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“Because [the alien] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*.”); *Johnson v. U.S. Att’y Gen.*, 847 F. App’x 801, 802 (11th Cir. 2021). “By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.” *Alvarez*, 818 F.3d at 1203. Here, Fuentes is being detained “while awaiting a removal determination.” *Gupta*, 709 F.3d at 1065. Under *Gupta*’s binding interpretation of Section 1252(g), the Court has no jurisdiction. *Id.* The Court must therefore dismiss this action for lack of subject matter jurisdiction.

II. Fuentes’s detention does not violate the Fifth Amendment’s Due Process Clause.

Even if the Court were to conclude it has jurisdiction over Fuentes’s petition, his claims lack merit. After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the

post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale*, 287 F.3d at 1052 (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play regarding the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *Guo Xing Song v. U.S. Attorney General*, 516 F. App’x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009). At bottom, “This presumptively reasonable six month period must have expired at the time of the filing of a petition.” *E.g.*, *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011).

Fuentes filed the present petition well before expiration of six months in detention. He was detained on November 18, 2025, and filed the present petition on January 23, 2026. To date, he has been in detention for 100 days.

As previously discussed, the presumptively reasonable period is not

rebuttable before it expires. It is only afterward that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” See *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. See *Akinwale*, 287 F.3d at 1051-52. Indeed, to hold otherwise would impose unnecessary burdens on ICE as it carries out the Executive Branch’s foreign policy responsibilities. See *Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “require courts to listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise”).

III. ICE has complied with its regulations regarding revocation of an order of supervision.

ICE has revoked Fuentes’s OSUP under 8 C.F.R. § 241.4(l). Ex. 1 at 5. Title 8 C.F.R. § 241.4(l)(2) provides,

Release may be revoked in the exercise of discretion when, in the opinion of the revoking 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.

Id. § 241.4(l)(2).

Section 241.4(l)(2) does not require notice, explanation, or an interview for the alien to respond. *Compare id.*, with *id.* § 241.4(l)(1); *Tanha v. Warden, Balt. Detention Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *6 n.10 (D. Md. July 22, 2025). This “regulation permits the Government extraordinarily broad discretion to revoke an OSUP.” *Tran*, 2025 WL 2085020, at *4. In fact,

the regulation does not compel the Government to demonstrate what facts or factors, if any, it considered in deciding to revoke; nor does the regulation (or any other authority of which the court has been made aware) require the Government to demonstrate what, if any, steps it took to effect or secure removal prior to OSUP revocation.

Id.; see also *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *6 (S.D. Fla. July 8, 2025) (noting differences between both subsections).

While some courts disagree, see *Banega v. Warden*, 2:25-cv-01152-JES-DNF, Doc. 25 (M.D. Fla. Jan. 29, 2026); *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025), those decisions disregard the plain language of § 241.4(l)(2). Courts cannot find ICE violated its own regulations for failing to follow notice and hearing requirements that do not exist. The provisions exclude such demands from § 241.4(l)(2). “When a deliberative body includes particular language in one section of a [regulation] but omits it in another, it is generally presumed that it acts intentionally

and purposely in the disparate inclusion or exclusion.” *SEC v. Levin*, 849 F.3d 995, 1004 (11th Cir. 2017) (cleaned up). The Court must read those regulations as they are written without engrafting notice and hearing provisions where they were not otherwise provided.

Fuentes’s only possible challenge to the lawfulness of detention is based on ICE’s technical compliance with § 241.4(l)(2)(iii). But the provision permits revocation based on a discretionary “opinion” that “[i]t is appropriate to enforce a removal order or to commence removal proceedings.” *Id.* ICE made that determination and revoked Fuentes’s supervised release. *See* Composite Exhibit, Ex. 1 at 5. Courts “will not further scrutinize ICE’s discretionary decision” in that regard. *Roe v. Oddo*, No. 3:25-CV-128, 2025 WL 1892445, at *8 (W.D. Pa. July 9, 2025); *Yi Mei Zhen v. ICE*, No. 3:25-cv-01507-PAB, 2025 WL 2258586, at *10 (N.D. Ohio Aug. 7, 2025).

CONCLUSION

Respondents respectfully request Fuentes’s petition be denied.

Respectfully submitted,

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