UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 0:26-cv-60233-EA

EFREN CAPOTE,
[redacted],

Petitioner-Plaintiff,

v.

Garrett Ripa, in his official capacity as Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement; Warden, Broward Transitional Center; U.S. Department of Homeland Security; and U.S. Immigration and Customs Enforcement,

Respondents-Defendants.

Petitioner's Response to Order to Show Cause why the Petition Should not be Dismissed

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INTRODUCTION

Petitioner Efren Capote ("Petitioner" or "Mr. Capote"), respectfully submits this brief to show cause why this petition should not be dismissed. This petition for Habeas Corpus does not amount to an attack on the Government's execution of their removal orders. The Government executed that removal order fifteen (15) years ago. That has already been established and the Petitioner did not appeal that decision fifteen (15) years ago. This is a case about fairness. What is fairness in a case like this? Is it fair to re-detain an alien every time there is a new whim in the Department of Homeland Security? This is the United States of America. This is a and where we are supposed to have due process and fair play. The only avenue that a detainee has to fight this re-detention is through Habeas Corpus.

ARGUMENT

At its core, Habeas Corpus exists to stop the government from imprisoning people without lawful justification. A government that can detain individuals indefinitely, without having to explain itself to a court, possesses unchecked power over personal liberty. Habeas corpus forces the government to answer a simple but powerful question: "By what authority are you holding this person?" Habeas corpus is a practical expression of the separation of powers. It is the only meaningful check on prolonged, arbitrary, or unlawful detention of non-citizens. It ensures that the executive branch (immigration

authorities) cannot be the sole judge of its own detention decisions. By requiring review by the judiciary, Habeas Corpus keeps courts as an active check on executive authority.

Without habeas corpus, detention decisions would rest almost entirely in the hands of the executive branch, undermining the balance of power that defines American constitutional governance. A defining feature of any authoritarian regime is detention without judicial review. We have the examples of many nations in the world. This country is different. Habeas corpus draws a bright line between lawful governance and tyranny. It affirms that in the United States, the government answers to the law, and not the other way around. Habeas corpus is often the only mechanism that allows a neutral federal court to review whether detention complies with the Constitution and federal law.

Our founding forefathers were very wise to put this clause in the Constitution of the United States. Our founding forefathers had lived through the tyranny that was before the American Revolution. The Constitution guarantees the availability of the writ of habeas corpus "to every individual detained within the United States." ***Hamdi v. Rumsfeld***, 542 U.S. 507, 525 (2004) (citing ***U.S. Const., Art I, § 9, cl. 2***). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." ***Preiser v. Rodriguez,*** 411 U.S. 475, 484 (1973). A writ of habeas corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or

federal law. 28 U.S.C. § 2241(c)(3). Section 2241 habeas corpus proceedings provide a forum for statutory and constitutional challenges to post-removal detention. ***Jimenez v. Cronen***, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) (citing ***Zadvydas v. Davis***, 533 U.S. 678, 693 (2001)).

"The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." ***Preiser***, 411 U.S. at 484. "[D]istrict courts retain jurisdiction under ***28 U.S.C. § 2241*** to consider habeas challenges to immigration detention that are sufficiently independent of the merits of [a] removal order." ***Lopez-Marroquin v. Barr***, 955 F.3d 759 (9th Cir. 2020) (citing ***Singh v. Holder***, 638 F.3d 1196, 1211–12 (9th Cir. 2011)). In the Petition, Petitioner seeks his immediate release from ICE custody, which he contends violates the Fifth Amendment Due Process Clause of the U.S. Constitution and the Administrative Procedures Act. Because Petitioner is in custody under the authority of the United States, and he claims he is being detained in violation of federal law, Petitioner has properly invoked the Court's habeas jurisdiction pursuant to ***28 U.S.C. § 2241***.

Noncitizens, even those subject to a final Order of Removal, have constitutional rights just like everyone else in the United States. *See* ***Zadvydas v. Davis,*** 533 U.S. 678, 693 (2001). And while the new administration may have changed how it prioritizes the removals of noncitizens; it may not do so at the expense of fairness and due process.

See Trump v. J.G.G., No. 24A93 l, 2025 WL I 024097, at *2 (Apr. 7, 2025) (per curium) ("It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.") It also may not do so in violation of its own regulations. ***See Gulf States Manufacturers, Inc. v. Nat'l Labor Relations Bd.***, 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); ***see also Bonilla v. Immigration & Naturalization Service,*** 547 F. Supp. 2d 747, 755 (S.D. Tex. 2008) ("Where individual interests are implicated, the Due Process clause requires than an executive agency adhere to the standards by which it professes its action to be judged." (citing ***Vitarelli v. Seaton***, 359 U.S. 535, 547 (1959)).

Under ***8 U.S.C. § 1231(a)***, the government may detain a noncitizen for removal only during the 90-day "removal period," which begins when the removal order becomes administratively final. ***8 U.S.C. § 1231(a)(l)(A)-(B)(i)***. In other words, the Petitioner has already spent an extended period of time incarcerated, after his original criminal sentence and a determination is usually made whether to place a person on an order of supervised release, which guarantees supervision and restricts movement of that individual. Petitioner has been on these restrictions for ver fifteen (15) years. This period may be extended only if the noncitizen "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure

or conspires or acts to prevent the alien's removal." ***8 U.S.C. § 123l(a)(l)(C)***. The Supreme Court has also recognized a constitutional limitation on post-removal- period detention: such detention is permissible only when there is a "significant likelihood of removal in the reasonably foreseeable future." ***Zadvydas*** at 701.

Petitioner's post-order detention is mandatory for the first 90 days of the removal period and therefore, lawful. However, Petitioner's 90-day removal period expired over fifteen (15) years ago. Petitioner's 180-day removal period has also lapsed. Petitioner was released on March 23, 2010, because he could not be removed from the United States. His order became final on January 13, 2010. His 180-day ***Zadvydas*** presumptively reasonable period expired September 19, 2010.

Contrary to what the government will argue, the statute and regulation is clear: the 90-day removal period runs from the latest of the date of the Order of Removal becomes final, the date on which a court-ordered stay of removal expires, or the date the noncitizen is released from detention. *See* ***8 U.S.C. § 1231 (a)(l)(B); 8 C.F.R. §24l.4(g)(l)(i).*** Petitioner's 90-day detention post removal period ran fifteen (15) years ago, therefore, his detention is unlawful.

Here, Petitioner does not challenge the decision or action to commence proceedings, adjudicate cases, or execute removal orders. Petitioner is not challenging ICE officials' decision to revoke his supervised release or execute his order of removal. Petitioner challenges the manner in which the government has re-detained him under

this order. This Court unquestionably has jurisdiction to review Petitioner's claims that the government has violated his statutory and constitutional rights to due process by re-detaining him. ***See Demore v. Kim***, 538 U.S. 510, 516-17 (2003)(citing 28 U.S.C. § 224l(c)(3)); ***Baez v. Bureau of Immigration & Customs Enforcement***, 150 F. App'x 311, 312 (5th Cir. 2005) (per curiam) (courts retain the power to hear statutory and constitutional challenges to immigration detention when those claims do not challenge the final order of removal). Nothing in ***8 U.S.C. § 1252(a)(2)(B)(ii)*** prevents the Court from considering Petitioner's challenge to the manner in which the government revoked his Order of Supervision or considering whether the government followed its own regulations in doing so. ***See Zadvydas***, at 687-88 (holding that a § 2241 petition is the proper vehicle for a petitioner to use to challenge the legality and constitutionality of post-removal period detention); ***Oyelude v. Chertoff,*** 125 F. App'x 543, 546 (5th Cir. 2005) (courts have jurisdiction to review detention "insofar as that detention presents constitutional issues, such as those raised in a habeas petition"); ***Mantena v. Johnson***, 809 F.3d 721, 728-29 (2d Cir.2015) (even when a "statute strips jurisdiction over a substantive discretionary decision, [it] does not strip jurisdiction over procedural challenges" and when procedural requirements bind an official's exercise of discretion, "courts retain jurisdiction to review whether those requirements have been met").

Petitioner's petition does not challenge his removal; he challenges the manner in which the government revoked his release, which he contends was done without due

process and in violation of ICE's own regulations. Petitioner's due process and statutory claims are not barred by ***8 U.S.C. §1252(g).***

When the United States Constitution was written, the writ of habeas corpus was the only English common law writ given specific reference in the document. ***Article I, Section 9,*** of the Constitution provides that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." ***U.S. Const., Art. 1, § 9, cl. 2.***

This provision, known as the Suspension Clause, both recognized the existence of the writ of habeas corpus and stipulated the conditions under which it could be withheld. Federal courts have authority to grant a writ of habeas corpus to an individual in custody if such custody is in "violation of the Constitution or laws or treaties of the United States[.]" ***28 U.S.C. § 2241(c)(3).*** The Framers of the U.S. Constitution considered the writ of habeas corpus to be so critical to the protection of individual liberty that they identified specific and limited grounds for suspension of the writ. ***Boumediene v. Bush***, 553 U.S. 723, 743 (2008). The writ of habeas corpus "protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account." *Id.* at 745.

The Court has power to conduct meaningful review of the cause for detention and the executive's power to detain, and to issue an equitable remedy under the writ of habeas corpus that includes release of the prisoner, and the means to correct errors in

the government's process. ***Id.*** at 779-787. "The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its preeminent role is recognized by the admonition in the Constitution that: 'the Privilege of the Writ of Habeas Corpus shall not be suspended. . .' ***U.S. Const., Art. 1, § 9, cl. 2.*** "The scope and flexibility of the writ — its capacity to reach all manner of illegal detention — its ability to cut through barriers of form and procedural mazes — have always been emphasized and jealously guarded by courts and lawmakers." ***Harris v. Nelson***, 394 U.S. 286, 291 (1969). "The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." ***Id.***

The REAL ID Act, passed in 2005, stripped federal district courts of jurisdiction to review aliens' challenges to their "**final orders of removal**." ***(emphasis added)*** See ***8 U.S.C. § 1252(a)(5)*** ("[A] petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal."); ***8 U.S.C. § 1252(b)(9)*** (consolidating "review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions," arising from a removal action in the statute's judicial review procedure). In addition, the statute states that "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 ICE to commence proceedings, adjudicate cases, or execute removal orders." ***8 U.S.C. § 1252(g).*** This provision completely

removes federal habeas jurisdiction with respect to ICE's discretionary decisions in these three categories. See ***id.***; ***Reno v. Am.-Arab Anti-Discrimination Comm.***, 525 U.S. 471, 482–83 (1999) (limiting reach of provision to "three discrete actions"). This will be more fully discussed below.

Even after the REAL ID Act, however, the district court holds jurisdiction to review habeas challenges to unlawful immigration detention. See ***Aguilar v. U.S. Immigration and Customs Enforcement Div. of Dep't of Homeland Sec.***, 510 F.3d 1, 11 (1st Cir. 2007) ("District courts retain jurisdiction over challenges to the legality of detention in the immigration context."). Subject-matter jurisdiction over detention challenges extends to petitions regarding the "availability of bail." ***Id.*** This Court has subject matter jurisdiction under ***28 U.S.C. § 2241*** and the Suspension Clause of the Constitution because this action is a Habeas Corpus petition and under ***28 U.S.C. § 1331*** because this action arises under federal law, including the Immigration and Nationality Act, ***8 U.S.C. § 1101, et seq.***, and Administrative Procedure Act, ***5 U.S.C. § 551, et seq.***, ***Habeas Corpus Act of 1867 (14 Stat. 385)***

How can we determine if ICE followed their own regulations and whether detention violates the Constitution if there is no Habeas Corpus? This Court has subject matter jurisdiction to determine whether ICE complied with its own regulations and whether petitioner's detention violates the Constitution.

At any time, the Court may raise the issue of its own jurisdiction. ***Arbaugh v. Y&H Corp.***, 546 U.S. 500, 514 (2006) (holding that courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party."). Although ***8 U.S.C. § 1252(g)*** limits jurisdiction over challenges to the execution of removal orders, Petitioner does not seek an Order from this Court that stays his removal from the United States or challenge removal itself. Rather, Petitioner challenges the lawfulness of his detention following revocation of an Order of Supervision. ***See Ceesay v. Kurzdorfer***, 781 F. Supp. 3d 137, 150 (W.D.N.Y. 2025) (discussing and distinguishing from ***Singh v. Napolitano***, 500 F. App'x 50 (2d Cir. 2012) and ***Tazu v. Att'y Gen. U.S.***, 975 F.3d 292 (3d Cir. 2020)).

Congress amended ***8 U.S.C. §1252(g)*** after ***I.N.S. v. St. Cyr***, 533 U.S. 289, 314 (2001), to explicitly bar habeas and other federal claims whenever a matter falls within the scope of the ***1252(g)*** bar. ***See Ruiz-Martinez v. Mukasey***, 516 F.3d 102, 105 (2d Cir. 2008). But the Supreme Court teaches that ***1252(g)*** must be read narrowly, to only apply to the three actions listed in that statute: including, as pertinent here, the decision to "execute" removal orders. See ***Reno v. Am.- Arab Anti-Discrimination Comm.***, 525 U.S. 471, 488 (1999) (hereinafter "AADC"). The Supreme Court, consistent with the presumption in favor of judicial review and Section ***1252(g)'s*** text and purpose, has stressed that the "discretion-protection" of ***§ 1252(g)*** was not crafted to bar non-final-order review of "all claims arising from deportation proceedings." ***Id.*** at 482, 487.

Instead, as Justice Scalia, writing for the Court, explained, ***§ 1252(g)*** does not contain a broad application, but rather one that is "much narrower." ***Id.*** at 482. Based on the Court's guidance, ***§ 1252(g)*** thus applies only to a discrete area over which the Executive may exercise its "prosecutorial discretion" to "initiat[e]. . . prosecut[e] . . . [or] abandon" removal proceedings." ***Id.*** at 482-83, 485 n.9. As Justice Scalia noted, "there are of course many other decisions or actions that may be part of the deportation process" that do not fall within those three acts, "such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." ***Id.*** at 482.

In ***Jennings v. Rodriguez***, a plurality of the Supreme Court reiterated that although ***§ 1252(g)*** by its terms covers claims "arising from" the "decision or action" by the Executive to "commence proceedings, adjudicate cases, or execute removal orders," the "arising from" language "refers to just those three specific actions themselves." 583 U.S. 281, 294 (2018). It does not "sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." ***Id.*** *see also* ***Zadvydas v. Davis*** , 533 U.S. 678, 687 (2001) (confirming that ***28 U.S.C. §2241***, confers jurisdiction on the federal courts to hear cases about the detention of individuals with final removal pending their removal) Similarly, in ***Dep't of Homeland Sec. v. Regents of Univ. of Calif.***, the Supreme Court again emphasized that ***§ 1252(g)*** is

"narrow" and does not cover "all claims arising from deportation proceedings" or impose "a general jurisdictional limitation." 591 U.S. 1, 19 (2020) (internal quotations omitted).

Petitioner's re-detention was not the "execution" of a removal order. At the time of his unnoticed detention on November 3, 2025, ICE's later preparation of a notice of revocation of release has never even been produced. Unlike in ***Tazu***, here, the government did not have the travel documents needed to actually effectuate Petitioner's removal at the time of his re-detention. Instead, Petitioner's detention on November 3, 2025, was based upon one ICE Officer's unilateral and unlawful decision that Petitioner should be detained for no reason other than political numbers. As such, Petitioner has been detained by ICE for three and a half months—a far cry from the mere days long, brief detention contemplated by ***Tazu***. at 298.

Meanwhile, courts in other circuits have found jurisdiction over similar claims challenging the legality of detention, despite §1252(g). See, ***e.g., Michalski v. Decker,*** 279 F.Supp.3d 487, at 495 (S.D. N.Y. 2018) (finding none of 1252(g)'s "discrete actions are implicated by [petitioner's] challenge to his detention"); ***Xiu Qing You v. Sessions***, No. 18-CV-5392 (GBD) (SN), 2019 U.S. Dist. LEXIS 130786, *18 (S.D.N.Y. Aug. 2, 2019) adopted by ***Xiu Qing You v. Nielsen***, No. 18-CV-5392 (GBD) (SN), 2020 U.S. Dist. LEXIS 96124, **14-16 (S.D.N.Y., June 1, 2020) (finding that ***§1252(g)*** did not strip the Court of jurisdiction to determine if detention was unlawful and found "that

Petitioner's detention was unlawful" under the INA); ***accord Rombot v. Souza***, 296 F. Supp. 3d 383, at 388 (d. Mass. 2017)(granting habeas petition and ordering alien's release after finding that ICE never determined that the petitioner was "a danger to the community or a flight risk, or that he violated the conditions of his Order of Supervision..."[C]ourts in this district have found that there is no deprivation of jurisdiction to hear claims arising from unlawful arrest or detention, because those claims are too distinct to be said to 'arise from' the commencement of removal proceedings.").

Even if this Court finds that the government had decided to "execute" Petitioner's removal, which we obviously know is impossible because Cuba has refused his relocation many times, his claims do "not arise" from that decision. ***Jennings***, at 294, ("arising from" language should not "sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General"). This is because ***§ 1252(g)*** was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." ***AADC***, 525 U.S. at 485 n.9 (1999). Thus, where a Petitioner is "not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined," jurisdiction lies. ***Jennings***, 583 U.S. at 294. Justice Alito's opinion in Jennings cautions courts to reject an "expansive interpretation" of ***§ 1252(g)*** that would lead to "staggering results

. . . that no sensible person could have intended." ***Id***. at 293-4 (internal quotation removed). The test to determine whether a claim is "arising from" execution of a removal order "is not whether detention is an action taken to remove a [noncitizen] but whether the legal questions in this case arise from such an action." ***Id***. at 295 n.3.

Where "those legal questions are "too remote from the actions taken," jurisdiction is proper. ***Id***. Jennings identified a non-exhaustive list of legal issues "too remote" to trigger ***§ 1252(g)***, including unconstitutional detention claims. ***Id.*** at 293. Here, too, the legal questions before this Court as to whether ICE's unilateral revocation of Petitioner's OSUP, despite clear requirements for an orderly departure, violated his due process rights and ICE's own regulations, are too remote from a decision or action to execute a removal order to trigger ***8 U.S.C. § 1252(g)***. ICE has obtained a travel document, yet Cuba refuses to accept him. Thus, Petitioner's challenge to his detention on November 3, 2025, does not "arise from" a decision or action to "execute" a removal order because Petitioner was practically unremovable on that date (and remains so as of the date of this filing). Petitioner's ongoing detention-the purpose of which is to remove him from the United States, flows from his unlawful detention or about November 3, 2025. Petitioner's claims in his Petition all challenge his unlawful detention on November 3, 2025, and all actions by the government flow from that unlawful detention.

CONCLUSION

This court should exercise jurisdiction and release the Petitioner's unlawful detention.

Respectfully submitted,

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I HEREBY CERTIFY that on February 5, 2026, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Julio Gutierrez