UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-60233-CIV-ARTAU

EFREN CAPOTE,
Petitioner,
v.
GARRETT RIPA, Field Office Director,
Miami Field Office, U.S. Immigration
and Customs Enforcement, *et al.*,
Respondents.
_______________________________/

REPLY TO PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE WHY THE PETITION SHOULD NOT BE DISMISSED

Respondents file this Reply to Petitioner, Efren Capote's Response (ECF No. 5) to the Court's Order to Show Cause Why the Petition Should Not be Dismissed (ECF NO. 3).

INTRODUCTION

Petitioner was ordered removed on January 13, 2010. *See* Petition at Exhibit F. Petitioner was not, however, removed at that time, but allowed to remain out of custody pursuant to an Order of Supervision (OSUP). *See* Petition at Exhibit A. On November 3, 2025, U.S. Immigration and Customs Enforcement revoked the OSUP and detained Petitioner for the purpose of executing his removal. *See* Petition at ¶ 26. Petitioner is currently in ICE custody at the Broward Transitional Center, pending his removal.

Petitioner here argues that ICE's revocation of his OSUP violated his substantive and procedural due process rights, the Administrative Procedures Act (APA), and the *Accardi* doctrine. *See* Petition, Counts I – 5, 7. Petitioner also argues that there is no statute permitting his detention. See Petition, Count 6.

As explained below, the Court does not have jurisdiction to review the government's decision to revoke Petitioner's OSUP for the purpose of executing his removal.

ARGUMENT

I. This Court Lacks Jurisdiction Over Petitioner's Claims.

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation omitted); *see also Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1328 n.4 (11th Cir. 1999) ("A federal court not only has the power but also the obligation at any time to inquire into jurisdiction whenever the possibility that jurisdiction does not exist arises."). For these reasons, before this Court can proceed, it must determine whether it has jurisdiction over this action. *See Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1323 (11th Cir. 2012) ("Prior to making an adjudication on the merits, we must assure ourselves that we have jurisdiction to hear the case before us.").

A. Congress Stripped this Court of Jurisdiction to Prevent the Execution of Removal Orders.

Petitioner is, in essence, asking this Court to prevent ICE from executing his removal order by ordering his immediate release. See Petition at 26 ("Petitioner requests that this Court . . . [o]rder Petitioner's immediate release…"). This Court, however, lacks jurisdiction to grant such relief.

Federal law precludes a district court from interfering with the government's decision or action to execute orders of removal. 8 U.S.C. § 1252(g). Section 1252(g) specifically states that "no court shall have jurisdiction to hear any cause or claim by … any alien arising from the decision or action by [ICE] to … execute removal orders against any alien.' 8 USC § 1252(g). This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." *Id.*

The Eleventh Circuit has explained that "[s]ection 1252(g) bars review over 'any' challenge to the execution of a removal order – and makes no exception for those claiming to challenge the

government's 'authority' to execute their removal orders." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021) (holding that where there is challenge to the validity of a removal order, district courts lack jurisdiction to hear any "cause or claim brought by an alien arising from the government's decision to execute a removal order"). The petitioners in *Camarena* were in virtually identical situations as the one Petitioner finds himself in, in that they (a) did not challenge their orders of removal, (b) had remained in the United States via an order of supervision, and (c) filed habeas petitions after DHS attempted to execute orders of removals. Under these circumstances, the Eleventh Circuit found that the district court lacked jurisdiction to grant relief because Section 1252(g) strips courts of jurisdiction to prevent the execution of removal orders. *Id.* at 1272-73.

Here, like the petitioners in *Camarena*, Petitioner does not challenge the validity or existence of the order of removal. Instead, he suggests his re-detention was unlawful, and he requests immediate release from detention. Section 1252(g), as interpreted by the Eleventh Circuit in *Camarena*, deprives this Court of jurisdiction to grant such relief. *See also Rivera-Amador v. Rhoden*, Case No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *3 (M.D. Fla. Dec. 19. 2025) (holding that Section 1252(g) "divests the Court of jurisdiction" from enjoining respondents from detaining and deporting petitioner subject to a removal order); *Mapoy v. Carroll*, 185 F.3d 224, 230 (4th Cir. 1999) (holding that district court lacked jurisdiction to hear a challenge to execution of order of deportation pursuant to § 1252(g)); *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *3 (S.D. Fla. Aug. 8, 2025) ("The Court finds that § 1252(g) deprives it of subject-matter jurisdiction over Respondent's decision to revoke the OSUP…").

In summary, Congress divested this Court of jurisdiction to prevent the execution of removal orders, meaning it should dismiss the Petition for lack of jurisdiction.

B. Neither the Habeas Statute Nor the APA Provides Jurisdiction Over a Claim Challenging the Revocation of an OSUP

Neither the habeas statute (28 U.S.C. § 2241) nor the Administrative Procedures Act (5 U.S.C. § 702, *et seq.* (APA)) provides for judicial review of ICE's decision to revoke Petitioner's OSUP. This Court's jurisdiction pursuant to 28 U.S.C. § 2241, by its plain language, permits courts to rule on claims related to an "applicant's commitment or detention." 28 U.S.C. § 2241. The clear language of the statute and "the common-law history of the writ" showed that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Alawieh v. Tweedie*, Case No. 25-10614-LTS, 2025 WL 3171170, at *3 (D. Mass. 2025), *appeal docketed*, No. 25-2238 (1st Cir. Dec. 31, 2025) (quoting *Preiser v. Rodriguez*, 411 U.S. 475 (1973)) (citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). If a "petitioner seeks relief that 'falls outside the scope of the writ as it was understood when the Constitution was adopted,' [those] claims are beyond the reach of a federal court's habeas jurisdiction." *Id.* (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020)). Thus, to prevail, Petitioner must show that the alleged violations that he claims, based on the factual predicate that he alleges, fall within the reach of this Court's ability to grant habeas relief. *See, generally, Mayers v. U.S. Dept. of I.N.S.*, 175 F.3d 1289, 1300 (11th Cir. 1999) (describing how in *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 265, 268, (1954), the Supreme Court explained that the "crucial question is whether the alleged conduct . . . deprived petitioner of any of the rights guaranteed [to] him by the statute or by the regulation issued pursuant thereto.").

In this case, Petitioner cannot do so. As a district court recently observed, "[w]hile some procedural violations may, in some circumstances, rise to the level of a due process violation," not all alleged violations "rise to the level of a due process violation and/or would independently entitle

[a petitioner] to a grant of habeas relief in the form of release from detention." *Van v. Oddo*, Case No. 3:25-CV-00322, 2025 WL 3492736, at *4 (W.D. Pa., Dec. 5, 2025) (finding no habeas relief for alleged failures to provide notice for reasons of revocation and lack of "informal review"). This is particularly true in this case where Petitioner does not even identify how, if at all, ICE failed to properly revoke his OSUP, let alone how such failure would entitle him to release from detention. Instead, Petitioner imposes his own conditions for when ICE can properly revoke an OSUP which find no support in the law. For example, in Count One, Petitioner suggests that ICE was required to find that he was either flight risk or a danger to the community before it could revoke his OSUP. That is incorrect. Under 8 C.F.R. § 241.4(l), ICE has the discretion to revoke an OSUP if the purposes of release have been served, or if the alien violates a condition of release, or if it is appropriate to enforce a removal order or to commence removal proceedings, or if any circumstance indicates that release would no longer be appropriate. See 8 C.F.R. § 241.4(l). ICE's authority to revoke an OSUP does not depend upon the alien being a flight risk or a danger to the community.

As for Count Two, where Petitioner alleges that ICE failed to provide adequate notice of the revocation or an opportunity to be heard, ICE denies such failure, but such a claim could easily be resolved,[1] meaning the alleged violation does not rise to a level of a constitutional claim. *See, e.g., Van v. Oddo*, 2025 WL 3492736 at *4 (finding no violation). For these reasons, Petitioner's reliance on technical violations of internal policies do not relate to Petitioner's "commitment or detention" and do not rise to a Constitutional or statutory violation warranting habeas relief. *Id.*

---

[1] Of note, Petitioner does not even try to allege what facts he would have raised at such an interview.

As for Petitioner's challenges the revocation of the OSUP under the APA, the Act does not confer jurisdiction over a claim arising from the execution of a final order of removal. *See, e.g., Westley v. Harper*, No. 25-229, 2025 WL 592788 at *6 (E.D.La. Feb. 24, 2025) (concluding that APA did not confer jurisdiction over habeas petitioner's challenge to ICE's revocation of OSUP for the purpose of effecting removal); *Berhane v. Prendis*, No. 3:04-CV-2145-N, 2004 WL 2348226, at *3 (N.D. Tex. Oct. 18, 2004) (explaining that no general jurisdiction provisions, including the APA, federal question, the Declaratory Judgment Act, the All Writs Act, the mandamus provision, the suspension clause, or common law gives a federal district court jurisdiction over a petitioner's claims arising from the execution of a final order of removal), *adopted*, 2004 WL 2624260 (N.D. Tex. Nov. 12, 2004).

CONCLUSION

For the foregoing reasons, the Court lacks subject matter jurisdiction over Petitioner's challenge to the revocation of the OSUP.

Respectfully submitted.
JASON REDING QUINONES
UNITED STATES ATTORNEY

By: */s/ Carlos Raurell*
Assistant U.S. Attorney
Florida Bar No. 529893
United States Attorney's Office
Southern District of Florida
99 NE 4th Street, Florida 33132
Telephone: (305) 961-9243
E-mail: carlos.raurell@usdoj.gov
Counsel for Respondents