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.

REPLY TO GOVERNMENT'S POSITION ON THE LACK OF JURISDICTION ON THE PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Efren Capote ("Petitioner" or "Mr. Capote"), respectfully submits this reply to the government's position on lack of jurisdiction to show cause why this petition should not be dismissed. Respondent does not attack on the Government's execution of this 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. Petitioner would also rely on previously made arguments in his initial petition for Writ of habeas Corpus.

We are here to decide basic fundamental 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? Petitions for writs of ***HABEAS CORPUS*** are the only avenue that a detainee has to fight this re-detention.

ARGUMENT

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). Under ***28 U.S.C. § 2241***, a district court has

the authority to grant a writ of ***Habeas Corpus*** when the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." ***28 U.S.C. § 2241(c)(3).*** 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.

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.").

This jurisdictional bar is narrow. "The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '***commence*** proceedings, ***adjudicate*** cases, or ***execute*** removal orders." ***Reno v. American-Arab Anti-Discrimination Comm.***, 525 U.S. 471, 482 (1999); ***see also Jennings v. Rodriguez***, 583 U.S. 281, 294 (2018) When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged. ***Canal A Media Holding, LLC v. United States Citizenship and Immigration Servs.***, 964 F.3d 1250, 1258 (11th Cir. 2020). The Supreme Court found it "implausible that the mention of three

discrete events along the road to deportation was a shorthand way to referring to all claims arising from deportation proceedings." ***Reno*** at 482.

The zipper clause, referred to by the government, in its brief, only applies to claims requesting review of a removal order. ***See Madu v. U.S. Attorney Gen.***, 470 F.3d 1362, 1365 (11th Cir. 2006) (holding the INA did not divest the district court of jurisdiction over a ***§ 2241*** challenge to detention of the petitioner pending deportation). Supreme Court and Eleventh Circuit precedent is clear. The zipper clause only applies to claims requesting review of a removal order. ***See Madu***, 470 F.3d at 1365 (holding the INA did not divest the district court of jurisdiction over a ***§ 2241*** challenge to detention of the petitioner pending deportation). Petitioner is not asking for review of an order of removal; he is not challenging the decision to detain Petitioner in the first place or to seek removal; and Petitioner is not even challenging any part of the process by which Petitioner's removability will be determined." ***Jennings***, 583 U.S. at 294. Therefore, the zipper clause does not apply.

Petitioner does not challenge the commencement of a proceeding, the adjudication of a case, or the execution of his removal order. Nor does he ask the Court to review the removal order. Rather, Petitioner challenges the legality of his detention based on the process used to revoke his release, and he alleges the

respondents lack legal authority to detain him in Broward Transitional Center. Judgment in Petitioner's favor will not impair the government's ability to execute the removal order. The INA does not strip the Court of jurisdiction over this action.

Although ***8 U.S.C. § 1252(g)*** limits jurisdiction over challenges to the execution of removal orders, petitioner does not seek to enjoin or challenge the removal itself. Rather, in this case, petitioner does not challenge the decision or action to commence proceedings, adjudicate cases, or execute removal orders. Respondents inaccurately state in their response that Petitioner "essentially seeks this Court's review of a decision and action by the Attorney General to execute that order."

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. 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) Petitioner challenges his present detention as unlawful, as well as the Government's authority to re-detain him under the post-removal detention statute without notice and an opportunity to respond. Accordingly, this Court has jurisdiction to consider

Petitioner's claims. ***See Zadvydas***, at 687, (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).

The government contends that because it has re detained the Petitioner, it may hold him for six months from that date before running afoul of ***Zadvydas***. But nothing in ***Zadvydas*** precludes a challenge to detention before the presumptively constitutional time period has elapsed. ***Zadvydas*** specifically holds that continued detention is proper only when the noncitizen's removal is reasonably foreseeable. "If removal is not reasonably foreseeable; the court should hold continued detention is unreasonable and no longer authorized by statute." ***Id.*** at 699-700. The government's contention that it may avoid the holding of ***Zadvydas*** and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or ***Zadvydas*** itself. *See, e.g.,* ***Nguyen v. Scott,*** No. 2:25-cv-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) (rejecting the government's argument that the six-month period resets when the government re-detains a noncitizen); ***Sied v. Nielsen,*** No. 17-cv-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); ***Chen v. Holder,*** No. 6:14-2530, 2015 WL 132366635, at *2 (W.D. La. Nov. 20, 2015) ((rejecting the government's argument that a petition was premature under ***Zadvydas***

and noting that "surely, under the reasoning of ***Zadvydas***, a series of releases and re-detentions by the government, while technically not in violation of the presumptively reasonable jurisprudential six-month removal period, in essence results in an indefinite period of detention, albeit executed in successive six-month intervals.").

Petitioner does not argue that ICE is forever barred from executing his removal order. However, Petitioner asks this Court to reject the government's contention that he must remain in detention, whenever ICE wants, for six months before this Court may consider whether his continued detention violates his due process rights. The only way for Petitioner to say that this is a violation of his rights is to do this through a Petition for a Writ of Habeas Corpus.

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 lmmigr. & Customs Enf't***, 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***, 533 U.S. 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) (for the proposition that even when a statute strips jurisdiction over a substantive discretionary decision, it does not strip jurisdiction over procedural challenges. ***Id.***

Once removal is no longer reasonably foreseeable, like in this case, continued detention is not authorized. ***Zadvydas v. Davis***, 533 U.S. 678, 699 (2001). Upon release, a noncitizen subject to a final order of removal must comply with certain conditions of release. **8 U.S.C. § 1231(a)(3)(6)**. The revocation of petitioner's release is governed by ***8 C.F.R. § 241.13(i)***, which specifically applies to noncitizens whom the government has determined "there is no significant likelihood . . . [that they] can be removed in the reasonably foreseeable future." ***8 C.F.R. § 241.4(b)(4); 8 C.F.R. § 241.13(b)(1)***

The government's discretion to revoke the release of a noncitizen whose

removal was previously found to be unlikely in the reasonably foreseeable future is limited. ***See Tran v. Bondi***, No. 2:25-CV-02335-DGE-TLF, 2025 WL 3725677, at *7 (W.D. Wash. Dec. 24, 2025). The government make revoke the release of a noncitizen "who violates any of the conditions of release may be returned to custody." ***8 C.F.R. § 214.13(i)(1).*** This provision does not apply because there is no allegation petitioner violated the conditions of release.

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)).

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***.

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.***

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.

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 17th, 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