

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

NORBERT NWOSU,

Petitioner,

v.

KRISTI NOEM, ET AL.,

Respondents.

Case No. 2:26-cv-183-KCD-DNF

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Norbert Nwosu ("Petitioner") seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody. Petitioner also brings challenges pursuant to the Accardi Doctrine, regulation, statute, and the Fifth Amendment to the United States Constitution. His petition must be denied.

BACKGROUND

Petitioner is a citizen of Nigeria. *See* ECF No. 1, Petitioner for Habeas Corpus ("Petition"), ¶ 20. He entered the United States on a B2 visitor visa on February 7, 1989 but failed to depart the United States when his visa expired on August 6, 1989. *See* Notice to Appear, attached as "Exhibit A." Petitioner was placed in removal

proceedings due to his lack of authorization to remain in the United States and he was ultimately ordered removed *in absentia* when he failed to appear for his hearing. *Id.*; *see also* Petition, ¶ 30; ECF No. 1-2. Petitioner filed a motion with the immigration court seeking to have his removal proceedings reopened, however an Immigration Judge denied the motion in an order dated August 24, 2020. *See* Immigration Judge Decision, attached as “Exhibit B” at 2. Nwosu appealed the denial decision to the Board of Immigration Appeals (“BIA”), additionally seeking dismissal of removal proceedings, but neither was granted. *See* BIA Decision dated October 10, 2024, attached as “Exhibit C.” Petitioner then sought reconsideration of the BIA’s decision. *See* BIA Decision dated January 27, 2025, attached as “Exhibit D.” The BIA declined to reverse the October 2024 decision. *Id.* Petitioner has no appeal pending at this time and his order of removal is now final. *See* 8 C.F.R. § 1241.1(a).

Petitioner is currently detained at the Florida Soft Side South detention facility. Petition, ¶¶ 3, 11, 12. Prior to his recent detention Petitioner was under an order of supervision. *Id.*, ¶ 31. However, the order of supervision was revoked on November 5, 2026 under the regulations set forth at 8 C.F.R. § 241.4. *See* Notice of Revocation of Release, attached as “Exhibit E.” A warrant of removal has issued as the government intends to execute his final order of removal. *See* Warrant of Removal/Deportation, attached as “Exhibit F.” On January 29, 2026, Petitioner filed the instant petition seeking habeas relief. *See generally* Petition. The next day, the Court issued an order directing Respondents to show cause no later than February 27, 2026 as to why the

Petition should not be granted. ECF No. 3. In response to this Court's order, ECF No. 3, and for the reasons set forth below, Respondents respectfully request that this Court deny all relief.¹

CERTIFIED HABEAS RETURN

ICE is detaining Nwosu under the detention provisions of 8 U.S.C. § 1231. *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

ARGUMENT

I. The Immigration and Nationality Act Precludes Review of Petitioner’s Claims

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*,

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). Respondents respectfully acknowledge that this Court has found to the contrary—*see Rubio Rubio v. Hardin, et al.*, No. 2:26-cv-125-KCD-NPM (Feb. 24, 2026), Dkt. 13 at p. 6—however Respondents raise the argument for preservation purposes.

525 U.S. 471, 483 (1999) (“*AADC*”) (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). Here, Petitioner is subject to a final order of removal—Petition, ¶ 30; ECF No. 1-2—and he challenges ICE’s detention for the purpose of executing that order. *See* Petition. This matter thus falls squarely within the specific actions *Jennings* contemplated, namely the discrete action of executing a removal order, and this Court lacks jurisdiction to hear Petitioner’s claims. *See e.g., Rivera-Amador v. Rhoden*, No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *2 (M.D. Fla. Dec. 19, 2025); *see also Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025) (finding 8 U.S.C. § 1252(g) to bar habeas petitioner’s claims that OSUP had been improperly revoked).

II. Petitioner’s Detention is Lawful

A. The INA mandates Petitioner’s detention.

Should the Court determine that it retains jurisdiction over Petitioner’s habeas claims—and it should not—he still cannot establish eligibility for habeas relief because his detention is lawful. An alien with a final order of removal is subject to the detention and removal standards set forth at 8 U.S.C. § 1231. The statute directs that an alien

ordered removed be removed within 90 days of his order becoming final and that he remain detained during that timeframe. 8 U.S.C. § 1231 (a)(1)(A), (a)(2)(A). If the government is unable to remove an individual during that statutory period, the INA empowers ICE to release him on an order of supervision. 8 U.S.C. § 1231(a)(3).

When removal is not effectuated within the 90-day statutory period, the government is also permitted to continue to detain an alien—or to detain him again in the future for the purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). 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.

Here, Petitioner was ordered removed *in absentia* on April 16, 1998. Petition, ¶ 30; ECF No. 1-2. Petitioner filed a motion to reopen immigration proceedings in 2020 which was denied. Exhibit B. He then sought appeal of that Immigration Judge order, however that was unsuccessful. Exhibits C, D. Petitioner—now having been denied reopening of immigration proceedings by both the Immigration Court and the BIA—is now subject to a final order of removal. *See* 8 C.F.R. § 1241.1(a). Petitioner was detained for the purpose of executing his removal order. *See* Exhibits E, F.

B. Revocation of Petitioner’s Order of Supervision Followed the Regulations.

Petitioner argues that Respondents have violated the regulations at 8 C.F.R. §§ 241.4 and 212.13. *See* Petition, ¶¶ 8-9. Petitioner is mistaken. First and foremost notice was provided as to the basis for which Petition was detained as reflected in the

revocation notice. Exhibit E. Furthermore, the discretionary revocation of an alien's order of supervision under 8 C.F.R. § 241.4(l)(2)—the subsection of the regulation governing government revocation of release for the purpose of enforcing a removal order—does not require that the individual be afforded an interview or opportunity to respond to the agency's revocation. *Compare* 8 C.F.R. § 241.4(l)(1) (“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”) *with* 8 C.F.R. § 241.4(l)(2) (no such language); *see also* *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025) (finding no entitlement to notice or informal review where the order of supervision was being revoked under 8 C.F.R. § 241.4(l)(2)). In short, Petitioner has been aware of the basis on which he has been detained for some time now and Respondents have not run afoul of the regulations.

Petitioner relies on *United States ex rel. Accardi v. Shaughnessy*, known as the “*Accardi* doctrine,” which requires an agency to follow its regulations. *See* 347 U.S. 260 (1954). But the Supreme Court in *Accardi* did not sweepingly conclude that agencies violate due process any time they fail to follow a regulation in a way that impacts an individual's rights. Rather, *Accardi* “enunciates[s] principles of federal administrative law rather than of constitutional law.” *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). “*Accardi* is based on administrative law principles, not constitutional due process requirements.” *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212

(D.D.C. 2020) (quoting *Vanover v. Hantman*, 77 F.2d 91, 103 (D.D.C. 1935), *aff'd*, 38 F. App'x 4 (D.C. Cir. 2002)) (explaining limits on the *Accardi* doctrine). Here, Petitioner has not shown that any arguable violation of the regulatory provisions amount to a due process violation, since he has not shown that he will be denied any notice and opportunity to be heard. Furthermore, Petitioner has shown no prejudice, as he must, in order to prevail on his due process claims. *See United States v. Valencia Vergara*, 264 F. App'x 832, 834 (11th Cir. 2008). Review of Petitioner's detention has followed applicable regulatory guidelines and he has shown no denial of that process.

Finally, were there a procedural due process violation the proper remedy would be additional process, not release from detention. A procedural due process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. Indeed, in *Accardi* itself, the Supreme Court did not order substantive relief but instead ordered the agency to afford the process provided in its regulations. *See Accardi*, 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeals' failure to comply with its regulations, "he should receive a new hearing before the Board"). Thus, even under *Accardi*, Petitioner should at most be given only what the text of the regulation requires. Consistent with this reasoning, district courts have declined release of a detainee as a remedy to procedural regulatory violations. *See e.g., Douglas v. Baker*, No. 25-cv-2243-ABA, 2025 WL 2687354, at *6 (D. Md. Sept. 19, 2025); *Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 382 (D. Md. Aug. 11, 2025); *Doe v. Smith*, No. CV 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). This Court should do the same.

C. Petitioner's Period of Detention is Presumptively Reasonable

As discussed *supra* the INA requires that an alien ordered removed be detained for the 90-day removal period after his order of removal becomes final. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). But even where removal is not effected on that schedule, the government is permitted to continue to detain an alien—or to detain him again in the future for the purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, 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.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (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 that considers 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*, 287 F.3d at 1051-52; *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).

Here, Respondents urge the Court to find that the presumptively reasonable

detention period has not elapsed, and Petitioner's habeas petition is premature. Petitioner has been detained for 112 days. *See* Petition, ¶¶ 2, 3, 36. There is no indication that Petitioner was detained post-final order previously. *See generally* Petition (reflecting no detention following the entry of the *in absentia* order of removal and then a period of detention following Petitioner's arrest for battery in 2021 at ¶ 31). Petitioner sought reopening of his 1998 removal order in 2020 without success. *See* Exhibit B. He then appealed that 2020 decision with the BIA which was not resolved until the BIA's decisions dismissing the appeal in 2024 and denying reconsideration in 2025. Exhibits C, D. To the extent that Petitioner argues that any portion of his 2021 detention should be included in the presumptively reasonable calculation, doing so would be at odds with the statute, in which the removal period clock starts only once the order of removal is final. *See* 8 U.S.C. § 1231(a)(1)(B)(i). Because Respondents remain within the presumptively reasonable six-month period contemplated by *Zadvydas* any challenge as to Petitioner's detention under 8 U.S.C. § 1231 fails.

CONCLUSION

The court should deny this petition. This Court is barred from considering Petitioner's claims under the INA. Furthermore, Petitioner—detained for the purpose of executing his final order of removal—has been properly detained pursuant to 8 U.S.C. § 1231 consistent with the applicable regulations. Respondents have acted lawfully and this Petition should be denied.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Amanda Saylor
Amanda Saylor
Assistant United States Attorney
Florida Bar No. 1031480
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6020
Email: Amanda.Saylor@usdoj.gov
Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 24, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: February 24, 2026

Signed:

/s/Amanda Saylor

Amanda Saylor

Assistant United States Attorney