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-00183-KCD-DNF

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

COMES NOW, the Petitioner, **NORBERT NWOSU,** by and through undersigned counsel and hereby submits this Reply to the Respondents' opposition to Mr. Nwosu's Petition for Writ of Habeas Corpus. The Petitioner would note that the absence of any rebuttal is not a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus.

I. This Honorable Court's review is not barred by INA § 1252(g).

The Respondents argue that section 1252(g) of the Immigration and Nationality Act ("INA") strips the Court of jurisdiction over this action. INA §1252(g) bars courts from hearing certain claims. It states:

> Except as provided in this section and notwithstanding any other provisions of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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 the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

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) ("We did not interpret this language to sweep in any claim that technically can be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves."). "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 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, the Petitioner challenges the legality of his detention under a framework devised by the Supreme Court. The INA does not strip the Court of jurisdiction over this action.

II. Petitioner's continued detention is unlawful.

"Once a noncitizen's order of removal becomes administratively final, the Government 'shall' remove the person within 90 days." *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (*quoting* 8 U.S.C. § 1231(a)(1)(A)). The government must detain the noncitizen during the 90-day removal period, which begins when the removal order becomes administratively final. *Id.* Detention may continue after the removal period, but not indefinitely.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." 533 U.S. at 700-01 (2001). If removal is not practically attainable, detention no longer serves its statutory purpose of "assuring the alien's presence at the moment of removal." *Id.* at 699. The Court found it unlikely Congress "believed that all reasonably foreseeably removals could be accomplished in [90 days]." *Id* at 701. So, "for the sake of uniform administration in the federal courts," it established a "presumptively reasonable period of detention" of six months—the 90-day removal period plus an additional 90 days. *Id.* Courts use a burden-shifting framework to judge the constitutionality of additional post-removal detention:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut the showing.

Id.

The Respondents argue the petition is premature because the Petitioner has not been detained for longer than six months. Their argument assumes the six-month clock started on November 5, 2025, when his current detention began. That assumption is inconsistent with *Zadvydas*. It would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months. As the Eleventh Circuit recognized, "[t]he Supreme Court's stated rationale for establishing a presumptively reasonable '6-month period' for detention pending removal supports our conclusion that this period commences at the beginning of the removal period." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

The Petitioner was ordered removed *in absentia* on April 16, 1998. The Petitioner avers that the removal period began on that date. The Respondents cite the procedural history in attempts to change the date on which the removal period began, but the regulations provide a certain answer. An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final if an immigration judge orders an alien removed in the alien's absence, **immediately upon entry of such order**. 8 C.F.R. § 1241.1(e). (*emphasis added*).

The Petitioner filed a Motion to Reopen the order with the Immigration Judge, which triggered an automatic stay of the order. *See* INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii). While the statute and regulations dictate the placement of a stay, the stay does not affect the administrative finality of the order, only the execution of it[1]. Regardless of this distinction, the Immigration Judge denied the Motion to Reopen on August 24, 2020, and the order remained administratively final. Even though the Petitioner filed an appeal of the Immigration Judge's denial of the Motion to Reopen with the Board of Immigration Appeals and a Motion to Reconsider after that, an Immigration Judge's order is not automatically stayed in appeals to the Board from an Immigration Judge's denial of a motion to reopen removal proceedings conducted in absentia, and motions to reopen or reconsider a prior Board decision are not automatically stayed. *See* INA §§ 240(b)(5)(C),

[1] In fact, even if a stay is triggered, it ceases to have effect if it is granted or communicated after the non-citizen has been placed aboard an aircraft or other conveyance for removal and normal boarding has been completed, highlighting that a stay does not change the administratively final nature of the order. 8 C.F.R. §§ 241.6, 1241.6.

240(c)(7)(C)(iv); 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v), and 1003.23(b)(4)(ii), (iii)(C). The order remains administratively final.

Because the six-month period for presumptively reasonable detention has expired, *Zadvydas's* burden-shifting framework applies. The Petitioner has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. In fact, ICE made that determination in 2021, when it released him under an order of supervision. There has been no change and no significant likelihood of removal in the reasonably foreseeable future. The Petitioner entered the United States as a child on February 3, 1989. His parents chose to overstay, and he began residing in the U.S. He is married to a United States citizen who filed a visa on his behalf, and he has an approved I-212 conditional waiver for the order of removal, and a pending I-601A provisional waiver for unlawful presence. The Petitioner was taking all the steps necessary to legalize his status. He is not a flight risk or a danger to the community. The Respondents make no statement and provide no evidence that ICE has ever obtained travel documents for this Petitioner, or a similarly situated one. The Respondents make no rebuttal indicating it is reasonably foreseeable that he will be removed. There is no evidence before the Court that suggests removal is more likely now than it was in 2021, or the 25 years since the 1998 order.

III. The revocation of the Petitioner's Order of Supervision was unlawful.

A. The revocation violates ICE's regulations and the Fifth Amendment.

ICE failed to provide Petitioner with meaningful opportunity to contest the revocation of his OSUP through an informal interview. This violates both ICE's own regulations and the Due Process Clause of the Fifth Amendment. The Respondents argue that Section 241.4(l)(2) "does not require notice, explanation, or an interview for the alien to respond ". *See* Docket Entry 11, Response at 6. But that position is undermined by the evidence provided in support of their response, i.e. the Notice of Revocation itself.

Upon revocation of an OSUP under § 241.4(l), an alien must be "notified of the reasons for revocation." 8 C.F.R. § 241.4(l)(1). "[A]fter his or her return to [ICE] custody" the alien must be "afforded an initial informal interview promptly to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* "If the alien is not released from custody following the informal interview," ICE must then commence "[t]he normal review process ...with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked." *Id.* § 241.4(l)(3). The notice and informal interview requirements appear in § 241.4(1)(1), but not § 241.1(l)(2). However, courts have "interpreted section 241.4(l) as requiring an informal interview upon the revocation of release regardless of the reason for the revocation"—meaning that the notice and informal interview requirement stated in § 241.4(1)(1) applies to revocation under § 241.4(1)(2). *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at 6–7 (S.D. Fla. Sept. 9, 2025) (*citing Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025)) The four reasons for revocation stated in § 241.4(l)(2) are inclusive of the single reason stated in § 241.4(l)(1)—violation of conditions of release. Indeed, it would be nonsensical if an alien detained for violation of conditions of release would receive notice and an interview under § 241.4(l)(1) but not § 241.4(l)(2) given that both provisions specify that a violation of conditions of release is a basis for revoking an OSUP. *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla. Sept. 9, 2025)

Second, and even more tellingly, § 241.4(3)—titled "[t]iming of review when release is revoked"—clearly applies to all aliens whose release is revoked regardless of reason, and provides that "[i]f the alien is not released from custody *following the informal interview provided for in paragraph (l)(1)* of this section, [ICE] shall schedule the review process in the case of an alien whose previous release" has been revoked. *Grigorian* at *7. This provision implies "that 'the informal interview provided for in paragraph (l)(1) of this section' applies to all [detained on revocation of an OSUP] regardless of whether or not release is revoked for a violation." *Id.*

The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172, (2021) ("At one level, today's dispute may seem semantic, focused on a single word, a small one at that. But words are how the law constrains power."). The Fifth Amendment to the U.S. Constitution provides that "[n]o person shall be...deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. "Freedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. In its most elemental formulation, "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, (1965)).

Importantly, the interpretation the government proposes in the Response is contrary to ICE's explicit statement in the Notice of Revocation of Release they provided to this Honorable Court. *See* DE 11-5. The Notice states that he would "be afforded an informal interview" and "an opportunity to respond to the reasons for the revocation" of release. *Id.* This suggests that the government's stance that no informal interview is required in the Petitioner's situation is a "post hoc rationalization[ ] of past agency action" that should not be given deference. *See Lockheed Martin Corp. v. Morganti*, 412 F.3d 407, 411 (2d Cir. 2005). The Notice states plainly that he will be afforded an informal interview and provided with the opportunity to respond to the reasons for revocation and provide evidence to demonstrate that his removal is unlikely. The Respondents failed to comply with that detailed process in any meaningful way.

There was no meaningful notice provided and no prompt informal interview. There is no indication that the Petitioner was made aware of the reasons for revocation, or that he was then provided an opportunity to respond to them. There is no part of the response or evidence that addresses the alleged change in circumstances as identified by the Respondents or the Respondents' claim that there is no impediment to seeking a travel document now despite having released Petitioner in the past. The process afforded here fails to comply with ICE's own regulations or comport with traditional notions of due process.

B. Notice of Revocation is signed by the incorrect official.

ICE's regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." 8 C.F.R. §§ 1.2, 241.4(l)(2). If the field office director or a delegated official intends to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). In *Ceesay v. Kurzdorfer*, the district court found that the ICE assistant field office director, like the one in the instant case, lacked authority to revoke noncitizen's release. 781 F. Supp. 3d 137 (W.D.N.Y. 2025).

The language of section 241.4 specifically limits the power of anyone who is not the Executive Associate Director to revoke release. It provides that "[a] district director may also revoke release of a[noncitizen] when"—and only when—"in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). So, before a district director can revoke release, the district director must make certain findings. And even if the term "district director" might include the delegation to an "field office director" or "assistant field office director", which is far from clear, the government has not alleged that those requisite findings were made—explicitly or otherwise—before revoking the Petitioner's release. *See* DE 11-5.

The Notice of Revocation contains an unclear signature, making it impossible to ascertain who signed it on whose behalf. The signature line has the title "Signature of Field Office Director, ERO/Designated Representative" and the line is marked with a "for" and a signature that is unclear. The line on the bottom that reads "Print Name Title and Location" referring to the individual who signed, says "Zoelle Rivera, Assistant Field Office Director, Miami, FL". provided is signed by an unknown individual "for" Zoelle Rivera, the Assistant Field Office Director, at Miramar, FL. The government has not argued that whoever signed the Notice had that authority because they are the equivalent of a district director, and even if it had, there is no evidence that the signor made the findings that a district director is required to make before revoking the Petitioner's release. As a result, this Court cannot conclude that whoever signed the Notice had the authority to revoke release and should find that the Petitioner's release was not lawfully revoked and hold that he is entitled to relief on that basis alone.

CONCLUSION

WHEREFORE, Petitioner renews his requests that this honorable Court exercise jurisdiction over this matter; declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations and the *Accardi* doctrine and Order Petitioner's immediate release and Order such other relief as this Court may deem just and proper.

Respectfully submitted,

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