

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 26-20868-CIV-DAMIAN

Felix Mustelier Zambrano,

Petitioner,

v.

Florida Soft Side South, *et al.*,

Respondents.

**RESPONSE TO ORDER TO SHOW CAUSE AND PETITION FOR A
WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Respondents, through the undersigned Special Assistant United States Attorney, respectfully submits this Response to this Court's Order to Show Cause (ECF No. 4) and Petitioner Felix Mustelier Zambrano's *Pro Se* Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 1) ("Petitioner" and the "Petition"). For the reasons set for below, this Court should dismiss the petition for lack of jurisdiction, or in the alternative deny the Petition on the merits.

I. FACTUAL BACKGROUND

Petitioner Felix Mustelier Zambrano is a native and citizen of Cuba who was paroled into the United States at or near Miami, Florida on or about February 12, 2012. *See* Exh. A, Notice to Appear ("NTA"), at 3. Petitioner's parole expired on February 11, 2014. *Id.*

On December 1, 2013, Petitioner was arrested by the Lansing Police Department for the offense of Operating a Motor Vehicle while Impaired. *See* Exh. I, Declaration of Deportation Officer, at 2. On February 25, 2014, Petitioner was convicted and sentenced to nine (9) months of probation. *Id.*

On May 19, 2016, Petitioner was convicted of the offense Failure to Return Rental Property \$200 or more but less than \$1,000 in Charlotte, Michigan. *Id.* Petitioner was sentenced to twelve (12) months of probation. *Id.*

On May 23, 2016, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), encountered Petitioner at his probation officer's office while conducting enforcement actions in Michigan. *See* Exh. B, Form I-213, Record of Deportable/Inadmissible Alien, at 2. Petitioner was arrested and transported to the Detroit Field Office for processing. *Id.* That same day, ICE ERO issued an NTA that charged Petitioner with inadmissibility in violation of INA § 212(a)(7)(B)(i)(II), as amended, as a nonimmigrant who is not in possession of a valid nonimmigrant visa or border crossing identification card at the time of application for admission, and in violation of INA § 212(a)(2)(A)(i)(I), as amended, in that you are an alien who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime. *See* Exh. A, at 3.

On June 14, 2016, ICE amended the NTA by filing a Form I-261, Additional Charges of Inadmissibility/Deportability. In lieu of the type of proceeding listed in the original NTA in Box 3 (You have been admitted to the United States, but are removable for the reasons stated below), ICE amended the NTA to Box 1 (You are an arriving alien). *See* Exh. C, Form I-261, Additional Charges of Inadmissibility/Deportability. Also, on July 14, 2016, at a master calendar hearing, ICE orally withdrew the INA § 212(a)(2)(A)(i)(I) charge on Petitioner's NTA. *See* Exh. I, at 3.

On August 11, 2016, Petitioner had a hearing in front of an immigration judge on the merits of his applications for relief. *See* Exh. D, Immigration Judge Order. The immigration judge denied all relief and ordered Petitioner removed from the United States. *Id.* Petitioner did not appeal this

order. *See* Exh. I, at 3. On November 3, 2016, Petitioner was released from ICE custody. *See* Exh. E, Release Notification, at 1.

On March 12, 2017, Petitioner was arrested by the Lansing Police Department for Assault Excluding Sexual. *See* Exh. I, at 3. On May 16, 2017, the charges were dismissed against Petitioner. *Id.*

On November 19, 2025, Petitioner was encountered by ERO, after he reported to ERO Miami Miramar Sub-Office, under OSUP. *See* Exh. B, at 2. ERO identified Petitioner, determined that he was amenable to immigration custody re-determination and took Petitioner into custody. *Id.* Also on November 19, 2025, Petitioner was given an informal interview where he was informed that his OSUP had been revoked to effectuate his removal from the United States. *See* Exh. G, Revocation of Release. Petitioner was given an opportunity to ask questions regarding the OSUP revocation but stated that he did not have any questions at the time. *See* Exh. I, at 3.

On January 20, 2026, Petitioner was served with a Notice of Removal to Third Country – Mexico and refused to sign. *See* Exh. H, Notice of Removal; Exh. I, at 3.

To date, Petitioner remains in ICE custody at Florida Soft Side South. *See* Exh. I, at 4. Petitioner is detained pursuant to section 241 of the INA.

II. ARGUMENT

In his *pro se* Petition, Petitioner raises two claims. First, he alleges that, while he is subject to a final order of removal, his “continued detention is not reasonably related to effectuating removal” and is therefore unconstitutional. *See* Petition, at 1. Second, Petitioner alleges that his “prolonged immigration detention without a bond hearing or meaningful judicial review” violates the Due Process Clause of the Fifth Amendment. *Id.* This Court lacks jurisdiction as to both claims

and should, therefore, dismiss for lack of jurisdiction. In the alternative, this Court should deny the Petition on the merits.

A. Lack of Jurisdiction

1. The Petition Should be Denied for Lack of Jurisdiction, or in the Alternative, Transferred to the Middle District of Florida where Petitioner is detained.

Petitioner is currently detained at Florida Soft Side South in Collier, Florida. Collier County is in the Middle District of Florida. *See* Federal Judicial Districts of Florida, <https://www.flsd.uscourts.gov/Federal-Judicial-Districts-Florida>.

Section 2441 allows “the [U.S.] Supreme Court, any justice thereof, the district courts and any circuit judge” to grant writs of habeas corpus “within their respective jurisdictions.” 28 U.S.C. § 2441(a). The Supreme Court has interpreted the “within their respective jurisdiction language to mean that a Section 2441 petitioner challenging his present physical custody must file a petition for writ of habeas corpus in the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 446-47 (2004); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (finding that that even for habeas petitions filed by immigration detainees, “jurisdiction lies in only one district: the district of confinement.”). Even if “a district court has proper jurisdiction when a habeas petition has been filed...a subsequent transfer of the prisoner will not defeat habeas jurisdiction, but only ‘so long as an appropriate respondent with custody remain[s]’ in the district.” *Copley v. Keohane*, 150 F.3d 827, 830 (8th Cir. 1998) (citing *Jones v. Cunningham*, 371 U.S. 236, 243-44 (1963)). The appropriate respondent is the immediate custodian. *See Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004) (“In challenges to present physical confinement...the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.”)

In this case, jurisdiction lies with the Middle District of Florida, which is the district of confinement. *See* 28 U.S.C. § 89(b). Accordingly, the Petition should be dismissed, or in the alternative, transferred to the Middle District of Florida.

2. The Petition Should be Denied for Lack of Jurisdiction because Congress Stripped this Court of Jurisdiction to Prevent the Execution of Removal Orders.

“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.”).

In his *pro se* Petition, Petitioner is, in essence, asking this Court to prevent ICE from executing Petitioner’s removal order by ordering the immediate release of Petitioner. *See* Petition, at 1. This Court, however, lacks jurisdiction to grant such relief.

Federal law precludes a district court from interfering with government’s decision or action to execute orders of removal. 8 U.S.C. § 1252(g). Section 1252(g) specifically state 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.*

As the Eleventh Circuit explained, “Section 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 *Camarana* were in virtually identical situations as the one Petitioner finds himself in, in that (a) they did not challenge their orders of removal, (b) 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, as the petitioners in *Camarana*, Petitioner does not challenge the validity or existence of the order of removal. Instead, he argues that Petitioner's re-detention was arbitrary, and he requests immediate release from detention. *See* Petition, at 1. Section 1252(g), as interpreted by the Eleventh Circuit in *Camarana*, deprives this Court of jurisdiction to grant such relief. *See Pedrozo Echevarria v. Krome*, Case No. 1:26-CV-20204-SMITH (S.D. Fla. Feb. 13, 2026); *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. Petitioner’s Claims Fail on the Merits Because ICE is Authorized to Detain and Deport Him and There Has Been No Constitutional Violation.

If this Court finds that it has jurisdiction, it should nonetheless deny the Petition on the merits because Petitioner’s claim that his detention violates his Constitutional rights lacks merit. To the contrary, Petitioner – who is subject to a final order of removal – is being lawfully detained, pursuant to 8 U.S.C. § 1231(a)(6), and his allegations that his removal is not reasonably foreseeable lacks merit. For these reasons, this Court should deny the Petition.

1. ICE Lawfully Detained Petitioner Pursuant to 8 U.S.C. § 1231.

Section 241 of the Immigration and Nationality Act (8 U.S.C. § 1231) states, “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” 8 U.S.C. § 1231 (a)(1)(A). That period is called the “removal period,” and the Attorney General must detain the alien during the “removal period”. 8 U.S.C. § 1231(a)(2)(A). The removal period is “extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien 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 subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(C).

2. Petitioner Has Not Yet Been Detained for Six Months.

Under 8 U.S.C. § 1231(a)(6), an alien like Petitioner, who was ordered removed and who is inadmissible under 8 U.S.C. § 1182, may be detained beyond the removal period for a period reasonably necessary to remove the alien. That said, the Supreme Court ruled that the statute “does not permit indefinite detention.” *Zadvydas v. Davis*, 533 US 678, 682 (2001). To help guide lower

court determinations, and to limit the occasions when courts will need to make them, the Supreme Court in *Zadvydas* held that six months of post-removal-order detention is presumptively reasonable. *Id.* at 700–01. In cases where detention lasts longer than the presumptively reasonable period of six months, “an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

Thus, to establish a valid claim for unlawful indefinite detention under *Zadvydas*, a detained alien must show (1) “postremoval order detention in excess of six months” and (2) “a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Petitioner here has not made such a showing.

As of this writing, Petitioner has been detained in ICE’s custody fewer than 100 days, far shorter than the 180-day period that the Supreme Court held presumptively reasonable in *Zadvydas*. For this reason, Petitioner’s challenge to his detention is premature. *See Farah v. U.S. Att’y Gen.*, 12 F.4th 1312, 1332-33 (11th Cir. 2021) (“If after six months he is still in custody and has not been removed from the United States, then he can challenge his detention under section 1231(a). But until then, his detention is presumptively reasonable under *Zadvydas*.”), *overruled on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 419-23 & n.2 (2023); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (holding that the “six-month period ... must have expired at the time [the petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*”); *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009) (“[B]ecause only 53 days elapsed between the final removal order and the filing of the petition, Gozo’s *Zadvydas* claim is premature.”); *Gonzalez v. Barr*, Case No. 20-10130-CV-KING, 2020 WL 7294570 (S.D.Fla. Dec. 10, 2020) (King, J.) (“[T]he 180 days in post-order custody must have expired before an individual

can challenge custody under 8 U.S.C. § 1231”); *Salpagarova v. Immigration and Naturalization Service*, Case No. 20-61739-CVSINGHAL, 2020 WL 13550204 (S.D.Fla. Oct. 20, 2020) (Signal, J.) (“Petitioner is not entitled to relief because she has not been detained for more than six months after being subject to a final order of removal”); *Espinoza-Sorto v. Agudelo*, 2025 WL 3012786, *7 (S.D. Fla. Oct. 28, 2025) (holding that a noncitizen’s habeas challenge to his detention under 8 U.S.C. § 1231 “is premature” where “Petitioner has only been detained for four months”); *Barrios v. Ripa*, 2025 WL 2280485, *8 (S.D. Fla. Aug. 8, 2025) (holding that that a noncitizen’s habeas challenge to his detention under 8 U.S.C. § 1231 “is premature” where the noncitizen filed his petition significantly before the 6-month period set by the Supreme Court in *Zadvydas*).¹

3. Petitioner Cannot Establish That Removal Is Not Likely to Occur.

Moreover, this Court can deny Petitioner’s Constitutional challenge because Petitioner cannot meet his burden of proving that his removal is not reasonably foreseeable. *Callender v. Shanahan*, 281 F. Supp. 3d 428, 434 (S.D.N.Y. 2017) (describing how *Zadvydas* “places an initial burden on the detainee” to establish that the “no significant likelihood” standard has been met). The Petition failed to include nonspeculative assertions that his removal is not reasonably foreseeable, meaning Petitioner has not met his burden. *Callender*, 281 F. Supp. 3d at 434–35 (holding that petitioner must present more than “mere assertions that removal is unforeseeable”).

¹ Courts outside this District have reached similar conclusions. *Louis v. U.S. Atty. Gen’l*, Case No. 2:20-cv-135-FtM-38NPM, 2020 WL 1049169 (M.D. Fla. Mar. 4, 2020) (“[W]hen he filed the Petition, Petitioner had been in custody only 92 days, much less than the 180-day presumptive reasonable period. The Court dismisses the Petition without prejudice as premature”); *See, e.g., Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 (D. Mass. 2017) (“As petitioner has been detained for approximately two months as of this date, the length of his detention does not offend due process.”); *Julce v. Smith*, No. CV 18-10163-FDS, 2018 WL 1083734, at *5 (D. Mass. Feb. 27, 2018) (deeming habeas petition “premature at best” as it was filed after three months of post-final order detention).

4. The Revocation of Petitioner's OSUP Comports with Applicable Regulations and the Constitution.

Finally, Petitioner argues that his detention is unlawful because, he “voluntarily appeared for his scheduled ICE check-in” and “despite voluntary compliance” he was detained without explanation or written notice. *See* Petition, at 1. He further argued that his detention is arbitrary and punitive. *Id.* This claim lacks merit because DHS complied with the statutory and regulatory requirements in revoking Petitioner's order of supervision in that DHS provided Petitioner notice, an informal interview, and an opportunity to address the reasons for the revocation.

Although the applicable statute, 8 U.S.C. § 1231(a)(3), is silent as to revocation procedures for an individual released pursuant to an Order of Supervision, ICE issued Post-Order Custody Regulations (“POCR”), located in 8 C.F.R. § 241.4, describing the mechanisms for custody reviews, release from ICE custody, and revocation of release for individuals with final orders of removal. The specific regulatory provisions concerning revocation of release are contained at 8 C.F.R. § 241.4(l) and provide significant discretion to ICE to revoke release. *See Leybinsky v. U.S. Immigr. & Customs Enf't*, 553 F. App'x 108, 110 (2d Cir. 2014) (noting the “broad discretionary authority the regulation grants ICE” to revoke release); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (explaining that while the revocation regulation “provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion”). For example, the regulations authorize revocation when ICE's Field Office determines that “[t]he purposes of release have been served,” or when “[i]t is appropriate to enforce a removal order . . . against an alien,” or when “[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2)(i)-(iv) (emphasis added).

The regulations require that, when ICE revokes release of an individual, pursuant to 8 C.F.R. § 241.4(l), the alien will be notified of the reasons for revocation of his release and will be afforded an initial “informal interview” promptly after his return to ICE custody. *Id.* If ICE determines revocation remains appropriate after conducting the informal interview, then ICE will provide notice to the individual of a further custody review that “will ordinarily be expected to occur within approximately three months after release is revoked.” 8 C.F.R. § 241.4(l)(3). However, ICE is not required to “conduct a custody review under these procedures when [ICE] notifies the alien that it is ready to execute an order of removal.” 8 C.F.R. § 241.4(g)(4); *Rodriguez-Guardado*, 271 F. Supp. 3d at 335. Furthermore, if ICE determines in its “judgment [that] travel documents can be obtained, or such document is forthcoming, the alien will not be released unless immediate removal is not practicable or in the public interest.” 8 C.F.R. § 241.4(g)(3).

5. ICE complied with the POCR Regulations to Arrest Petitioner.

Here, the Assistant Field Office Director (“AFOD”) issued Petitioner a written revocation notice on November 19, 2025, explaining that ICE was revoking his release pursuant to its discretion under 8 C.F.R. §§ 241.4(l)(2)(i)-(iv). *See* Exh. G, at 1. Per the revocation notice, Petitioner was notified that he “will promptly be afforded an informal interview and the opportunity to respond to the reasons for the revocation and to provide evidence to demonstrate that your removal is unlikely.” *Id.* Moreover, Petitioner was given notice of the reasons for revocation, was provided an interview and had opportunity to respond to the revocation. In revoking Petitioner’s supervised release, ICE complied with the regulation that allows revocation when ICE determines that it “is appropriate to enforce a removal order . . . against an alien” and when ICE finds that the “purposes of release have been served.” 8 C.F.R. § 241.4(l)(2).

When ICE “determined that revocation was necessary to initiate [] removal ... [n]o further justification was required.” *Doe v. Smith*, No. 18-cv-11363-FDS, 2018 WL 4696748, at *11 (D. Mass. Oct. 1, 2018). The regulation does not require the AFOD “to make a formal determination that his revocation was in the public interest[;]” instead, the AFOD has “discretion to determine when revocation is appropriate.” *Id.* The regulation provides a “short and straight path for immigrants whom the government is ready and able to remove.” *Alam v. Nielsen*, 312 F. Supp. 3d 574, 582 (S.D. Tex. 2018). As such, ICE has ample justification per its regulation to revoke release. *See Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *5 (S.D. Fla. Sept. 9, 2025) (holding that § 241.4(l) provides government has “extraordinarily broad discretion to revoke an OSUP” under similar circumstances); *Barrios*, 2025 WL 2280485, at *4 (noting the broad discretion afforded to revoke an OSUP when effectuating an order of removal and that such a decision is not subject to judicial review under §1252(g)). Courts routinely conclude that compliance with the POCR regulations protect an individual’s constitutional rights while detained while executing a removal order. *See, e.g., Moses v. Lynch*, No. 15-cv-4168, 2016 WL 2636352, at *4 (D. Minn. Apr. 12, 2016) (“When immigration officials reach continued-custody decisions for aliens who have been ordered removed according to the custody-review procedures established in the Code of Federal Regulations, such aliens receive the process that is constitutionally required.”); *Portillo v. Decker*, No. 21-cv-9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022) (collecting cases supporting the conclusion that the POCR framework has routinely been deemed constitutional and noting that petitioner had not “cite[d] legal authority in support of his generalized laments about the administrative process”).

Because Petitioner cannot establish that ICE acted arbitrarily in revoking his OSUP, his argument fails, and this Court should deny the Petition. *See, e.g., Perez v. Berg*, No. 24-cv-3251

(PAM/SGE), 2025 WL 566884, at *7 (D. Minn. Jan. 6, 2025), *report and recommendation adopted*, No. 24-cv-3251 (PAM/ECW), 2025 WL 566321 (D. Minn. Feb. 20, 2025) (finding no due process violation “[a]bsent an indication that ICE failed to comply with its regulatory obligations in some more specific way”); *Doe*, 2018 WL 4696748, at *7 (dismissing habeas claim where “there was no regulatory violation” in connection with custody reviews).

III. CONCLUSION

For all these reasons, this Court lacks jurisdiction to grant relief and should dismiss the Petition for lack of jurisdiction. In the alternative, this Court should deny the Petition because Petitioner cannot establish that he has been in custody for six months or that his removal is not reasonably foreseeable, and he cannot establish violations of the regulations applicable to his OSUP.

Dated: February 18, 2026,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Respondents' Return to Habeas Corpus was mailed to Petitioner at the address listed below on February 18, 2026.

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Krome Service Processing Center
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Respectfully submitted,

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