UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MANUEL FORTE CUETO,
Petitioner,

v.

Case No. 2:26-cv-733-KCD-NPM

WARDEN, Florida Soft Side South facility, in his official capacity; KELIE WALKER, in her official capacity as Field Office Director of U.S. Immigration and Customs Enforcement Miami Field Office; KRISTI NOEM, in her official capacity as the Secretary of the U.S. Department of Homeland Security; TODD M. LYONS, in his official capacity as Director of U.S. Immigration and Customs Enforcement; PAMELA BONDI, in her official capacity as Acting Attorney General of the United States,
Respondents.
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Response to Habeas Petition

Petitioner Manuel Forte Cueto's Petition challenges the propriety of revocation of his OSUP and asserts procedural flaws in that revocation. *See, e.g.*, Dkt. 1 at ¶ 28, 33. Petitioner also asserts that he has been detained past the presumptive six-month *Zadyvas* detention period, based on his prior detention in 2001. *See, e.g.*, *id.* at ¶ 42. He brings claims for violations of substantive and procedural due process, the APA, and the *Accardi* doctrine, among others. *See generally* Dkt. 1. He seeks immediate release. *See id.*

The Federal Respondents herby respond. The Court lacks jurisdiction. Apart from that, ICE properly exercised its discretion to revoke Petitioner's OSUP—a decision on which the Court is statutorily prohibited from reviewing. And detention during this period is reasonable. So the Court should deny the Petition.

Background

The Petitioner is a 70-year-old male, native and citizen of Cuba. *See* Dkt. 1 at ¶ 19; *see also* Ex. A at 1 (I-213). He arrived in the United States about 54 years ago (i.e., 1972) and has resided in the United States since. *See* Dkt. 1 at ¶ 19. He was a lawful permanent resident until his green card was revoked following a September 28, 1999, final order of removal, *see id.*; *see also* Ex. B (EOIR printout showing date of removal order), apparently stemming from his 1998 State criminal convictions. *See* Ex. C (Fla. DOC website). Petitioner was previously detained from September 8, 1999, until July 28, 2000, (i.e., 324 days), after which he was released on an order of supervision. *See* Ex. D (ICE detention history).

ICE detained Petitioner again on January 9, 2026, *see* Ex. A at 2, pursuant to a warrant. *See id.* at 4. That same day, ICE served him with a Notice of Revocation of Release, *see* Ex. E at 1-2,[1] and afforded an informal interview. *See id.* at 3. On January 20, 2026, ICE served Petitioner with a Notice of Removal to Mexico. *See* Ex. F.

[1] This copy of the Notice of Revocation is unsigned, though the Proof of Service is signed. The undersigned is (and has been) endeavoring to obtain a signed copy of the Notice but was not able to do so as the time of filing this Response. If a signed copy can be obtained prior to the Court's ruling on this Petition, the undersigned will seek such leave as may be required to submit same.

Petitioner has been in ICE detention since January 9, 2026, *see* Ex. D, or a total of 84 days as of the date (April 3, 2026) this Response is filed. He is currently detained at the Florida Soft Side South facility. *See* Ex. G. This challenge followed

Certified Habeas Return

The Court has power to grants writs of habeas corpus where (among other instances) petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioners bear the burden to prove custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

An IJ ordered Petitioner removed. That decision has become final. At that point, Petitioner was removable from the United States. The Attorney General (through her delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(1)(A), (a)(3).

ICE has the authority to detain Petitioner under 8 U.S.C. § 1231(a) pending his removal. *See also* Ex. A at 2 ("Subject will be in ICE custody pending removal.") ICE intends to remove him to Mexico. *See* Ex. F. The period of Petitioner's detention is still within the presumptively reasonable limits established in *Zadvydas*. Even if he were able to challenge detention before then, Petitioner cannot show there is no SLRRFF.

Discussion

Petitioner's claims fail. As described below, the Court has no jurisdiction. Even if it did, detention has not extended to a length creating constitutional questions; nor did ICE violate any law in proceeding with removal.

A. Lack of Jurisdiction

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution and statute." *Id.* (citations omitted). In the context of immigration habeas cases related to removal like the instant, the INA divests this Court's jurisdiction. 8 U.S.C. §§ 1252(b)(9), (g). As discussed, the Court lacks jurisdiction over Petitioner's claims. Regardless of how he words the matter, Petitioner challenges revocation of his OSUP and detention to execute a final order of removal.

1. Jurisdiction Stripping Under § 1252(g)

There is no jurisdiction to review "any" claim "arising from the decision or action" to "execute removal orders." 8 U.S.C. § 1252(g). This provision bars habeas review in federal courts when the claim arises from a decision or action to "execute" a final order of removal. *Reno v. American-Arab Anti-Discrimination Committee* (*AADC*), 525 U.S. 471, 482 (1999).

Courts consistently hold that § 1252(g) eliminates subject-matter jurisdiction over challenges—including constitutional claims—to an arrest or detention for the purpose of executing a final removal order. *E.g.*, *Camarena v. ICE*, 988 F.3d 1268, 1273-74 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order."); *Johnson v. U.S. Attorney General*, 847 F. App'x 801, 802 (11th Cir. 2021); *Gupta* *v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).[2] Likewise, § 1252(g) precludes review of the method by which ICE chooses to commence removal proceedings. *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, the provision bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.").

Petitioner's OSUP was revoked, and ICE detained him to execute the final removal order. *See* Ex. A at 2 ("Subject will be in ICE custody pending removal.") ICE has informed him of its intent to remove him to Mexico. *See* Ex. F. He is within the presumptively reasonable period of detention (as detailed below). The requested relief would interfere with or halt that process. The INA plainly strips the Court's jurisdiction in these instances. 8 U.S.C. § 1252(g).

Some courts hold there is jurisdiction to review compliance with OSUP revocation regulations. *E.g.*, *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 154 (W.D.N.Y. 2025) ("In other words, while courts cannot question the discretion that is exercised, they can address the process used to exercise that discretion."). Respectfully, those decisions are mistaken. "When asking if a claim is barred by § 1252(g), courts must

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[2] *See also Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review."); *Tazu v. U.S. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020) ("The plain text of § 1252(g) covers decisions about whether and when to execute a removal order."); *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

focus on the action being challenged." *Camarena*, 988 F.3d at 1272 (cleaned up). Challenges to detention for noncompliance with OSUP revocation procedures fall directly within the jurisdiction-stripping provisions where—as here—the revocation was for the purpose of executing a final order of removal. *Roe v. Oddo*, No. 3:25-cv-128, 2025 WL 3030692, at *11-14 (W.D. Pa. Oct. 30, 2025).[3] Petitioner cannot avoid the plain language of the statute:

> In addition, the [OSUP] revocation was clearly related to the execution of [alien's] final removal order. The decision to revoke the [OSUP], in other words, "arose from" the decision to "execute the removal order." Under both statutory text and judicial precedent, Section 1252(g) bars judicial review of ICE's revocation decision.

Nino v. Johnson, No. 16-cv-2876, 2016 WL 6995563, at *4 (N.D. Ill. Nov. 30, 2016) (cleaned up).

Petitioner's challenges to his detention, and his assertion ICE did not comply with regulatory requirements in revoking his OSUP to remove him, is necessarily a fact pattern "arising from the decision or action" to "execute removal orders," 8 U.S.C. § 1252(g), for which INA expressly strips jurisdiction.

Any contrary conclusion relies on disjointed logic. The claim is that detention is unlawful because the OSUP revocation was improper. But the OSUP revocation was itself the exercise of discretion to execute a removal order, which mandates detention pending removal. So the claim is a direct attack on the propriety of that

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[3] *See also Van Phan v. Oddo*, No. 3:25-cv-348-KAP, 2026 WL 60337, at *2 (W.D. Pa. Jan. 8, 2026); *Lin v. Borgen*, No. 25-CV-05618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025).

decision to execute a removal order. No matter how Petitioner might frame it, he's challenging ICE's decisions and actions to execute the order of removal. *Westley v. Harper*, No. 25-229, 2025 WL 592788, at *5 (E.D. La. Feb. 24, 2025). In any event, the Court lacks jurisdiction for a separate reason.

2. *Jurisdiction Stripping Under § 1252(b)(9)*

There is no jurisdiction to review "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" outside a case reviewing the final removal order, 8 U.S.C. § 1252(b)(9), known as the "zipper clause." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). That clause is "a jurisdictional bar where" petitioner seeks "review of an order of removal [or] the decision to seek removal." *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up).

There is a single path for judicial review of removal orders—"a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). Reading § 1252(a)(5) and (b)(9) together, courts conclude petitioners must funnel all aspects of challenges to removal proceedings through that avenue. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).").

The zipper clause encompasses more than § 1252(g). *AADC*, 525 U.S. at 483.

Under these provisions, "most claims that even relate to removal" are improper in a district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020). There are limitations on how broadly courts interpret the zipper clause. *E.g. Canal A*, 964 F.3d at 1257. But a claim obviously "arises from a removal proceeding when the parties are challenging removal proceedings." *Id.* (cleaned up); *see also Regents of Cal.*, 591 U.S. at 19. Here, the crux of this case necessarily challenges ICE's execution of Petitioner's final removal order to stop the removal process. These are the exact claims barred by the zipper clause. 8 U.S.C. § 1252(b)(9).

3. Conclusion of Jurisdiction Stripping

As discussed above, Petitioner's claims fall within the INA's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). The Court, therefore, lacks subject-matter jurisdiction and must dismiss.

B. Constitutionally Lawful Detention

Even if the Court disagrees with the above, it must still deny the writ, as Petitioner cannot make a claim for unlawfully prolonged detention at this time, nor can he litigate SLRRFF prematurely.

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a "post-removal" period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Yet indefinite detention would present obvious constitutional concerns. *Id.* So the Supreme Court interprets this 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." *Guzman Chavez*, 594 U.S. at 529; *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 regarding SLRRFF. *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).[4] At bottom, "This presumptively reasonable six month period must have expired at the time of the filing of a petition." *E.g.*, *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009) (Steele, J.); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2

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[4] Some districts disagree. *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Of course, *Akinwale* binds the Court. Even if it didn't, *Cesar* and any progeny are wrong. *Zadvydas* recognized the presumptive six-month period for the specific "sake of uniform administration in the federal courts." *Zadvydas*, 533 U.S. at 701. That was not an invitation to make up exceptions to this ripeness doctrine—like *Cesar* did.

(M.D. Fla. Dec. 21, 2011) (Steele, J.).

Petitioner has been in detention for 84 days, well less than the 180-day period that is presumptively reasonable; this precludes jurisdiction. *Akinwale*, 287 F.3d at 1051-52. To contend ICE cannot detain him for the purpose of removal, as Petitioner does, would effectively eliminate ICE's ability to ever remove an alien unless it does so within the presumptively reasonable timeframe. *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (Apr. 25, 2012). *Zadvydas* doesn't sweep that broad. It goes without saying an alien must be detained (or otherwise in custody) to effect removal unless the alien leaves voluntarily. Petitioner has not left voluntarily, and ICE is attempting to remove him. If the Court accepts his position, it is unclear how ICE would be able to remove Petitioner. *But see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody . . . while arrangements were being made for their deportation.").

Because Petitioner was most recently detained on January 6, 2026, any *Zadvydas* challenge fails. *E.g.*, *Jiang*, 2009 WL 260378, at *2 ("This presumptively reasonable six month period must have expired at the time of the filing of a petition."). ICE recognizes this Court has held the *Zadvydas* period is coterminous with the statutory removal and post-removal periods—meaning it can run while an alien is outside detention. *Beltran v. ICE*, No. 2:25-cv-01174-SPC-NPM, 2026 WL 21252 (M.D. Fla.

Jan. 5, 2026) (Chappell, J.); *Godinez Perez v. Noem*, No. 2:25-cv-00429-JES-NPM, 2025 WL 2806557, at *2 (M.D. Fla. Oct. 2, 2025) (Steele, J.).

Respectfully, ICE disagrees based on the INA and *Zadvydas* itself. *See, e.g., Da Wu v. ICE*, No. 3:25-cv-1254-JEP-MCR (M.D. Fla. Feb. 3, 2026) (adopting ICE's general interpretation of this question); *see also Gonzalez Barrera v. U.S. Att'y General*, No. 3:26-cv-282-WWB-SJH, 2026 WL 472340, at *1-2 (M.D. Fla. Feb. 19, 2026) (agreeing). Other recent cases have held that this period begins at the start of an alien's actual detention and begins again when ICE makes a renewed effort to remove after failing long ago. *Mendez Arteaga v. Miami Field Office*, Case No. 2:26-cv-449-KCD-DNF, Dkt. 12 at 8-10 (M.D. Fla. March 16, 2026) (rejecting argument that distinct periods of confinement should necessarily be aggregated, particularly where no evidence of improper motive by the Government); *Lam v. Director*, Case No. 2:25-cv-1201-KCD-DNF, Dkt. 24 at ** 5-6, 7 (M.D. Fla. March 6, 2026) (same); *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025) (holding claim premature and rejecting argument that aggregate prior detentions considered for *Zadvydas* purposes); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300 (S.D. Fla. July 17, 2025) (holding claim premature when removal period ended in 2014); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *7-8 (S.D. Fla. July 8, 2025) (same for 2011). Other courts agree. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before

Petitioner's continued § 1231(a)(6) [re-]detention poses a constitutional issue.").

With *Zadvydas*, the "basic question" is "whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Court "used the words 'detain' and 'custody' to refer exclusively to physical confinement and restraint." *Jennings v. Rodriguez*, 583 U.S. 281, 311 (2018). *Zadvydas* protects against unconstitutionally indefinite detention; it did not interpret starting an imaginary detention clock based on statutory periods divorced from physical restraint. Again, to conclude the detention period started with the statutory removal time requires a corresponding finding that ICE has been unconstitutionally detaining Petitioner since his OSUP release. That is a factual impossibility. Yet it also imposes an impossible burden on ICE—requiring it to justify extended detention if the burden shifts. *See Zadvydas*, 533 U.S. at 701 ("And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink.").

Akinwale and other courts recognize that calculating time will often begin when detention is required (i.e., start of the removal period). 8 U.S.C. § 1231(a)(2)(A). But this would only be the case where petitioner challenges detention beginning at that time. If—as here—petitioner gets detained years later, no reasonable interpretation of *Zadvydas*, *Akinwale*, or any other binding law suggests the six-month period can expire before detention occurs. Many cases on this exact issue hold the period begins with actual detention. *E.g.*, *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) (rejecting claim as premature for petitioner who was not detained during removal period because "it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody").[5] Again, *Zadvydas* "exclusively" addressed "physical confinement and restraint." *Jennings*, 583 U.S. at 311.

Here, Petitioner is in the "post-removal period" under 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 683. It is "presumptively reasonable" for ICE to detain an individual with that status for a total of six months. *Id.* at 701. Petitioner is presently still within that reasonable detention period.

A dicta footnote in *Akinwale* does not alter this outcome. 287 F.3d at 1053 n.3. In part, *Akinwale* decided whether the action was premature. *Id.* at 1051-52. There was no doubt it was since petitioner filed four months after he was "taken into custody." *Id.* 1051. In dicta and its related footnote, *Akinwale* stated the six-month term was inclusive of the removal period (i.e., six months in total, not six months on top of the ninety-day removal period). ICE does not dispute that. Instead, *Akinwale*'s express holding is relevant: petitioner "must show post-removal order detention in excess of six months." *Id.* at 1052.

Petitioner cannot make that showing, as it is undisputed he has not been in

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[5] *See also Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 n.7 (S.D.N.Y. 2017); *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017); *Rivera v. Hassell*, No. 4:15-01497-WMA-SGC, 2016 WL 4257692, at *3 (N.D. Ala. July 12, 2016), *R&R adopted*, 2016 WL 4257052 (Aug. 10, 2016); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012); *Raia v. Aviles*, No. 11-3374 (WJM), 2011 WL 2710275, at *5 & n.9 (D.N.J. July 6, 2011); *Thelemaque v. Barr*, No. 20-20467-CIV-ALTONAGA/Reid, 2020 WL 13551808, at *2 & n.1 (S.D. Fla. Mar. 30, 2020); *Aionesei-Lupu v. Barr*, No. 1:20-cv-22998-BLOOM, 2020 WL 8679783, at *2 (S.D. Fla. July 23, 2020); *Cruz v. Lumpkin*, No. H-23-2224, 2023 WL 4566252, at *1 n.7 (S.D. Tex. July 17, 2023).

physical detention for six months. As explained, the constitutional detention period cannot start running without some form of constraint. This case is unripe because *Zadvydas* does not protect against detention that never existed.

Importantly, that six-month period is a bright-line, irrebuttable presumption of constitutionally acceptable detention. *See Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F.3d at 1052.[6] It is only "after" this time that SLRRFF and *Zadvydas* burden-shifting comes into play. *Guzman Chavez*, 594 U.S. at 529 (cleaned up); *see also Jennings*, 583 U.S. at 298-99; *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). After means "following in time or place or subsequently to the time when or later in time." *Intellectual Ventures I LLC v. Ubiquiti, Inc.*, No. 1:23-cv-00865-JCG, 2025 WL 1640270, at *3 (D. Del. June 10, 2025) (cleaned up). The word gets used to "describe a temporal sequence." *Id.*; *see also Arlaine & Gina Rockey, Inc. v. Cordis Corp.*, No. 02-22555-CIV, 2004 WL 5504978, at *42 (S.D. Fla. Jan. 5, 2004) (giving "after" its "ordinary meanings" like "following in time"). Until the Supreme Court recognizes a *Zadvydas* challenge *during* that six-month period, the Court cannot create that cause of action where none exists in derogation of *Akinwale*. *See* 287 F.3d at 1052 ("This six-month period thus must have expired . . . in order to state a claim under *Zadvydas*.").

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[6] *See also 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); *Vaz v. Skinner*, 634 Fed. App'x 778, 782 (11th Cir. 2015); *Ivantchouk v. U.S. Attorney General*, 417 Fed. App'x 918, 921 (11th Cir. 2011); *Chance v. Napolitano*, 453 F. App'x 535, 536 (5th Cir. 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011); *Okpoju v. Ridge*, 115 F. App'x 302, 302 (5th Cir. 2004).

To require detailed justification from ICE before the *Zadvydas* period expires is a significant infringement on separation of powers principles. Essentially every question related to immigration is "exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). This isn't a recent development. *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments." (cleaned up)). That power, however, is always "subject to important constitutional limitations." *Zadvydas*, 533 U.S. at 695. "In these cases, we focus upon those limitations." *Id.*

Other principles of judicial review come into play too. *Id.* at 700. Courts "recognize primary Executive Branch responsibility" in this field. *Id.* They must also "give expert agencies decision making leeway in matters that invoke their expertise." *Id.* Important here, that includes "Executive Branch primacy in foreign policy matters." *Id.* These basic separation-of-powers principles "require courts to listen with care when the Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise." *Id.*

The Executive branch is attempting to remove Petitioner. He is from Cuba—a country with a government traditionally hostile to the United States. The Executive's efforts to remove Petitioner in these circumstances go to the very core of its power to enforce immigration laws and conduct delicate, ever-shifting foreign policy negotiations. *See United States v. Texas*, 599 U.S. 670, 679 (2023) ("That principle of enforcement discretion over arrests and prosecutions extends to the immigration context, where the Court has stressed that the Executive's enforcement discretion implicates not only normal domestic law enforcement priorities but also foreign-policy objectives." (cleaned up)); *Biden v. Texas*, 597 U.S. 785, 805-06 (2022) ("That is no less true in the context of immigration law, where the dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation's foreign policy." (cleaned up)). Until Petitioner's detention raises a constitutional problem—i.e., after six months—the political branches (namely, the Executive) must be permitted to pursue law enforcement and foreign policy objectives without interference.

To find otherwise would demand the Executive explain its constitutionally acceptable actions for the Judiciary to decide if it concurs based on an individual judge's interpretation of current world events. Yet in the American system of delegated, separated powers, coequal branches need not justify to one another the determinations made within their legal discretion. That is especially true where—as here—the law largely entrusts the subject to the Executive alone.

What's more, an interpretation allowing a challenge now grants rights based on the statutory definitions of removal and post-removal periods under 8 U.S.C. § 1231. But that statute literally specifies it "shall [not] be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United

States." *Id.* § 1231(h). The only way to conclude SLRRFF burden-shifting applies now is by first concluding ICE's failure to remove within the statutory period somehow entitles Petitioner to review. Again, that's atextual.

Even if the Court were to get past the bright-line cutoff, Petitioner cannot show no SLRRFF exists. *See Zadvydas*, 533 U.S. at 689. At this point, ICE is working toward removal the reasonably foreseeable future, as evidenced by it having served him with a notice of intent to remove to Mexico. *See* Ex. F. Even though it is not yet ICE's burden to rebut, this is insufficient to rebut ICE's SLRRFF determination as the six-month *Zadvydas* has not yet expired. Additionally, Petitioner fails to show any regulatory violation.

C. Complying with OSUP Regulations

Petitioner's challenge to alleged violations of OSUP and immigration regulations are mistaken and asks the Court to review decisions it plainly lacks jurisdiction over. In short, ICE exercised its discretion to revoke Petitioner's OSUP and complied with its obligations in doing so.

Regulations—particularly 8 C.F.R. §§ 241.4 and 241.13—specify procedures for ICE to revoke OSUPs. ICE gave Petitioner notice and the reasons for his revocation *see* Ex. E at 1 (citing 8 C.F.R. § 241.4(l)(2),[7] and afforded an informal interview to respond. *See id.* at 3. That satisfies either regulation.

ICE provided Petitioner notice and interview. In exercising its discretion, ICE

[7] As noted, the undersigned is endeavoring to obtain a signed copy of the Notice but was not able to do so as the time of filing this Response.

revoked the OSUP due to changed circumstances because it determined it is in the public interest to do so, and it is appropriate to enforce the removal order. ICE provided an informal interview for Petitioner to respond. *See* Ex. E. at 2. After this interview, ICE chose not to release. Now, therefore, Petitioner will receive a new review if he believes removal unlikely. The procedure described above is exactly what relevant regulations require. 8 C.F.R. §§ 241.13(i); 241.4(l). Since ICE did not violate any regulations, habeas fails.

Section 241.13 "establishes special review procedures for those aliens who are subject to a final order of removal and are detained . . . where the alien has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future." *Id.* § 241.13(a). If ICE determines there is no SLRRFF, it can release under an OSUP—which presumably happened here for Petitioner in 2000, *id.* § 241.13(h), though records of that are not presently available, apparently due to the passage of time. But an OSUP is not somehow legal status to remain in the United States forever. These OSUPs must specifically "promote the ability of [ICE] to effect the alien's removal as ordered, or removal to a third country, should circumstances change in the future." *Id.*

Nor is an OSUP the final word on SLRRFF, as ICE can revoke an OSUP. *Id.* § 241.13(i). Notably, it may revoke "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2). ICE must then provide an informal interview—allowing the alien to respond and submit any evidence regarding SLRRFF.

Id. § 241.13(i)(3). If ICE determines revocation and detention remain appropriate, an alien may seek another request for review based on any additional evidence. *Id.* § 241.13(j).

Likewise, the procedure required by § 241.4 does not change the outcome. That provision sets out procedures and "authority to continue an alien in custody or grant release or parole." 8 C.F.R. § 241.4(a). Certain officials "may continue an alien in custody beyond the removal period . . . pursuant to the procedures described in this section." *Id.*

For aliens released under supervision, authorities have broad powers to revoke their status. *Id.* § 241.4(l). Again, notice and interview procedures apply when ICE revokes release due to violations of OSUP conditions. *Id.* § 241.4(l)(1), (3). Yet one subsection—§ 241.4(l)(2)—likely does not include those notice, explanation, or interview requirements. *Id.* § 241.4(l)(2); *Tanha v. Warden, Balt. Detention Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *6 n.10 (D. Md. July 22, 2025). Regardless, of the notice procedure required, § 241.4(l) vests broad "discretion" if "in the opinion of the revoking official" ICE should "enforce a removal order" (among other options). 8 C.F.R. § 241.4(l)(2).

This "regulation permits the Government extraordinarily broad discretion to revoke an OSUP." *Tran v. Baker*, No. 1:25-cv-01598-JRR, 2025 WL 2085020, at *4 (D. Md. July 24, 2025). In fact,

> the regulation does not compel the Government to demonstrate what facts or factors, if any, it considered in deciding to revoke; nor does the regulation (or any other authority of which the court has been made

> aware) require the Government to demonstrate what, if any, steps it took to effect or secure removal prior to OSUP revocation.

Id.; *see also Grigorian*, 2025 WL 1895479, at *6 (noting differences between both subsections). The Court recently recognized the deference afforded to ICE when it decides the time is appropriate to revoke an OSUP and enforce a removal order. *Valdes-Santovenia v. Ripa*, No. 2:25-cv-01063-JES-DNF, 2025 WL 3771264, at *3 (M.D. Fla. Dec. 31, 2025) (Steele, J.).

As described above, ICE revoked the OSUP. This was based on its discretionary determination that it is in the public interest to do so and proper to enforce the removal order. Because ICE provided Petitioner notice and an informal interview required by either § 241.4(l) or § 241.13(i), he cannot establish a violation. In short, "any other regulatory imperfections, such as delayed notice or minimal explanation, do not strip ICE of its statutory authority" or otherwise support a habeas claim for unlawful detention. *Morales Sanchez v. Bondi*, No. 5:25-cv-02530-AB-DTB, 2025 WL 3190816, at *3 (C.D. Cal. Oct. 3, 2025).

Crucially, the actual decision to revoke is entirely discretionary and beyond the Court's review—it can only maybe review the process by which revocation occurred.[8] *Navarro v. Bondi*, No. 8:25-cv-3213-KKM-NHA, 2025 WL 3275944, at *2 (M.D. Fla. Nov. 25, 2025) ("In the present context, courts differentiate between the decision to revoke an OSUP and a failure to follow procedures in doing so." (cleaned up)); *Ceesay*,

[8] Again, the revocation of an OSUP is clearly a "decision or action" to "execute removal orders" stripped from the Court's jurisdiction. 8 U.S.C. § 1252(g)

781 F. Supp. 3d at 154. Put bluntly: courts "will not further scrutinize ICE's discretionary decision" in that regard. *Oddo*, 2025 WL 1892445, at *8; *Yi Mei Zhen v. ICE*, No. 3:25-cv-01507-PAB, 2025 WL 2258586, at *10 (N.D. Ohio Aug. 7, 2025).

Even if the Court could reach the issue of SLRRFF, Petitioner cannot show its absence. It appears his argument is that ICE's inability to remove years ago plus the fact he hasn't been removed since January 9, 2026, establish lack of SLRRFF, but that is not so. Petitioner falls short on a lack of SLRRFF showing, as nothing prevents his removal to a third country. *See Godinez Perez*, 2025 WL 2806557, at *3 (holding SLRRFF not established on conclusory allegations for alien who had withholding of removal to home country).

Even if some further notice and an interview were required, the proper relief would be ordering that to occur. *See Yi Mei*, 2025 WL 2258586, at *10 n.19 (noting "even if these procedures have not yet been completed, courts have found that such procedures may take place after the detention has occurred"). Indeed, a recent decision recognized this outcome:

> Second, even if a procedural defect occurred—if, for example, the "informal interview" required by § 241.13(i)(3) was delayed—it does not follow that the outcome is immediate release. The remedy for a procedural violation is generally a new proceeding that cures the defect, not a windfall of liberty that effectively decides the merits of the case.

Banjoko v. Rambosk, No. 2:26-cv-58-KCD-DNF, 2026 WL 145467, at *2 (M.D. Fla. Jan. 20, 2026). The remedies sought of release from custody are "an overreach and not the appropriate cure." *Tanha*, 2025 WL 2062181, at *6; *see also Tran*, 2025 WL 2085020, at *6-7 (holding errors in notice procedure "do not entitle [petitioner] to release from detention"). At most, the proper remedy for these allegations would be ordering ICE to provide notice and an informal interview before removal. *See, e.g.*, *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025) ("And while habeas is a proper vehicle to challenge detention that is without statutory authority or violative of the Constitution, it is not a proper vehicle for vindicating every procedural error the Government may have committed along the way.").

Some decisions have ordered release when an informal interview did not occur. *Maryanovsky v. Ripa*, No. 3:25-cv-1599-MMH-SJH, 2026 WL 496778, at *4 (M.D. Fla. Feb. 23, 2026) (Howard, C.J.); *Banega v. Warden*, No. 2:25-cv-1152-JES-DNF, 2026 WL 234042, at *4 (M.D. Fla. Jan. 29, 2026) (Steele, J.). But in those instances, ICE failed to provide an informal interview at all.

Others decisions have granted release when they believed ICE should be providing more robust notice and hearing. *E.g.*, *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *8-10 (S.D. Fla. Sept. 9, 2025). Respectfully, these decisions are not grounded in any cognizable relief under the INA. To be clear, there is nothing in the INA or relevant regulatory scheme providing for full-blown evidentiary hearings with defined preparation deadlines when ICE revokes an OSUP. The regulations simply say aliens get an "informal interview" after revocation to contest revocation and detention. 8 C.F.R. §§ 241.4(l)(1); 241.13(i)(3). And if that doesn't result in release, the alien can request a more thorough review. 8 C.F.R. §§ 241.4(l)(3); 241.13(j).

At this stage, ICE already provided the minimum notice and hearing required by regulation. To conclude otherwise would simply be reading more requirements into ICE's own regulations to say it should provide more initial opportunity for aliens to contest revocation and detention. But that isn't adjudicating a due process or *Accardi* claim; that's policymaking. Due process is simply the process due under the law and circumstances—not an individual's most desired procedure. *See, e.g.*, *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (cleaned up)).

ICE can revoke OSUPs in its discretion based on its determinations—which are substantively unreviewable. ICE can continue to detain if an alien does not change its mind after informal interview. All this happened here. Now, Petitioner is free to contest SLRRFF with ICE again using the regulatory procedure and providing evidence in support of his position. Or if he is not removed within the 180-day *Zadvydas* time, he can refile a habeas petition to challenge SLRRFF before the Court. Until then, this action is premature and there is nothing for the Court to review.

In short, ICE did not violate the OSUP or regulations raised in the Petition. Nor have any due process violations occurred.

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Conclusion

For those reasons, the Court should deny the Petition. To the extent that the Court grants any relief, the only proper relief would be whatever notice and hearing requirement it believes proper—not outright release.

Respectfully submitted,

April 3, 2026

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CERTIFICATE OF FILING

I hereby certify that, on the date set forth above, I filed the foregoing documents and any exhibits referenced therein using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/ Charles T. Harden III
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