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

DAMIEN ESCOBAR GAMES,
Petitioner,

v.

DIR. KEVIN GUTHRIE, ET AL.,[1]
Respondents.

Case No. 2:26-cv-836-KCD-NPM

FEDERAL RESPONDENTS' RESPONSE TO HABEAS PETITION

Petitioner Damien Escobar Games challenges his ongoing detention by immigration authorities. He alleges that Immigration and Customs Enforcement's ("ICE") detention has been excessive. Petition for Writ of Habeas Corpus, ECF No. 1, ("Petition"). 1. The Court lacks jurisdiction over these claims. But that aside, Petitioner—subject to a final order—has been properly detained. His order of supervision ("OSUP") has been properly revoked for the purpose of executing that valid removal order. The Court is statutorily prohibited from reviewing ICE's decision to revoke his OSUP and furthermore, the period for which Petitioner has been detained remains presumptively reasonable at this time. Because his detention is lawful, the Petition should be dismissed.

[1] Secretary of Homeland Security Markwayne Mullin is automatically substituted for his predecessor under Rule 25(d) of the Federal Rules of Civil Procedure.

Background

This is an immigration habeas case. Escobar Games is a citizen and national of Cuba. *See* Petition, ¶¶ 1, 13. He was paroled into the United States on August 23, 1995 but never adjusted status. *Id.*, ¶ 1; *see also* Notice to Appear, attached as "Exhibit A" at 1. In 2000, following his convictions for several theft offenses, Escobar Games was placed in removal proceedings. Ex. A. On October 25, 2000, he was ordered removed from the United States. Petition, ¶¶ 3, 19; *see also* Order of the Immigration Judge, attached as "Exhibit B." Neither party reserved appeal of that decision. Ex. B.

Escobar Games was not immediately detained following the issuance of that order of removal however he was taken into custody on July 31, 2002 where he remained until his release 89 days later on October 28, 2002. *See* EARM Detention History, attached as "Exhibit C." Escobar Games remained in the United States under the OSUP until a check-in appointment on December 10, 2025, when ICE determined it was appropriate to revoke the OSUP and take him into custody once more. *See* Petition, ¶ 21; *see also* Notice of Revocation of Release and Informal Interview, attached as "Exhibit D." An informal interview was completed on that day as well. Ex. D

On March 23, 2026, this matter commenced with the filing of a petition for writ of habeas corpus. ECF No. 1. An order to show cause was issued on March 24, 2026. ECF No. 5. The government now timely responds to the Petition.

Certified Habeas Return

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

Escobar Games was denied relief from removal and ordered removed from the United States on October 25, 2000. He is currently detained under 8 U.S.C. § 1231(a) pending ICE's execution of that removal order.

Discussion

Escobar Games challenges his detention as a violation of the Fifth Amendment due process clause, Administrative Procedures Act ("APA") and Mandamus Act but his claims fail because the Court has no jurisdiction. Even if it did, detention has not extended to a length creating constitutional questions nor has ICE violated any law or regulation in revoking his OSUP and 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 here—the INA divests this Court's jurisdiction where Petitioner challenges ICE's detention effected for the purpose of executing a final order of removal. 8 U.S.C. § 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] Here, Petitioner's OSUP was revoked and he was detained for the purpose of executing a final removal order. *See* Ex. B, Ex. D. This habeas action represents an effort to interfere with or halt that legal process in violation of § 1252(g)'s jurisdiction-stripping mandate.

B. Lack of Standing

Petitioner does not have standing to bring his APA claim. By the APA's terms,

[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).

it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234- 35 (1953)); *see also Tran v. Warden, Florida Soft Side South*, No. 2:25-cv-1224-KCD-NPM (M.D. Fla. Mar. 10, 2026), Dkt. 16 at pp. 16-17.

Similarly, to the extent Plaintiff seeks relief under the Mandamus Act, the writ of habeas corpus precludes subject matter jurisdiction over his claim. Mandamus is an extraordinary remedy, which is only available when "(1) the plaintiff has a clear right to the relief requested; (2) the defendant has a clear duty to act; and (3) no other adequate remedy is available." *Serrano v. U.S. Atty. Gen.*, 655 F.3d 1260, 1263 (11th Cir. 2011) (per curiam) (citation omitted). Here, the availability of relief under habeas precludes an independent claim under the Mandamus Act. In other words, the relief Petitioner seeks under both causes of action is essentially the same, rendering the grant of any relief under the Mandamus Act improper. *See Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1268 (11th Cir. 2011).

C. Constitutionally Lawful Detention

Even if the Court disagrees with the above, it must still deny the writ. Escobar Games cannot make a claim for unlawfully prolonged detention.

1. Petitioner May Be Detained Because He Has a Final Order of Removal.

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 may be detained beyond that removal period, a period known as the "post-removal" period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683; *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 yet indefinite detention would present obvious constitutional concerns. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). So the Supreme Court has interpreted 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 the significant likelihood of removal in the reasonably foreseeable future ("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).[3] 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 (M.D. Fla. Dec. 21, 2011) (Steele, J.). Here, Petitioner is subject to a final order of removal. Ex. B. Though the removal period has passed, his detention beyond that timeframe is permissible as the government seeks to execute that order.

[3] 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 did not, *Cesar* and any progeny are incorrect. *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.

2. *Revocation of Petitioner's OSUP Was Legally Sound.*

Turning first to revocation of Petitioner's release—the precursor to his detention—Petitioner has been provided adequate notice of his release and the opportunity to respond, in line with the applicable regulations. *See* Ex. D.[4]

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." 8 C.F.R. § 241.13(a). If ICE determines there is no SLRRFF at a given point in time it can release an alien under an OSUP—which appears to have happened for Escobar Games following his 89-day detention in 2002. *Id.* § 241.13(h); *see* Ex. C. But release on OSUP does not equate to legal status to remain in the United States forever. 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." 8 C.F.R. § 241.13(h)(1). And the circumstances have changed here. If ICE detains an individual on this basis, it must then provide that individual with an informal interview—allowing the alien to respond and submit any evidence regarding SLRRFF. *Id.* § 241.13(i)(3). This was also done here. Ex. D at 3. Where ICE determines revocation and detention remain appropriate after that interview—as it did here—the alien may seek another request for review based on any

[4] Exhibit D reference both 8 C.F.R. §§ 241.4 and 241.13. For reasons discussed further below, § 241.13 appears to be the appropriate regulatory framework. Respondents aver, however, that their actions comply with the requirements set forth under either regulatory scheme.

additional evidence. 8 C.F.R. § 241.13(j).

Likewise, the procedure required by § 241.4 does not change the outcome here. 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). For aliens released on an OSUP, authorities have broad powers to revoke that supervision order. *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)—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 v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla. Sept. 9, 2025) (noting differences between both subsections). Both this Court and Judge Steele have recently recognized the deference afforded to ICE when it decides the time is appropriate to revoke an OSUP and enforce a removal order. *See Valdes-*

Santovenia v. Ripa, No. 2:25-cv-01063-JES-DNF, 2025 WL 3771264, at *3 (M.D. Fla. Dec. 31, 2025) (Steele, J.); *see also Tran v. Warden, Florida Soft Side South*, No. 2:25-cv-1224-KCD-NPM, 2026 WL 672969 at *8 (M.D. Fla. Mar. 10, 2026).

As described above, ICE revoked OSUP here based on its discretionary determinations under either § 241.4(*l*) or § 241.13(i) and Escobar Games cannot establish a violation under either regulation, particularly where notice and an informal interview have been provided. Respondents aver that Escobar Games was initially placed on OSUP in 2002 based on lack of SLRRFF to Cuba, meaning that revocation of OSUP would properly fall under 8 C.F.R. § 241.13(i). And ICE's reference to both 8 C.F.R. §§ 241.4 and 241.13 in the 2025 OSUP revocation do not doom their defense. *Tran*, 2026 WL 672969 at *9 (use of the wrong regulatory label is irrelevant where the core rationale has not changed and the reasoning articulated is sound under the correct label).

Crucially, the decision to revoke an OSUP is entirely discretionary and beyond the Court's review—any judicial review is arguably limited to the process by which revocation occurred.[5] *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*, 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;

[5] 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).

Yi Mei Zhen v. ICE, No. 3:25-cv-01507-PAB, 2025 WL 2258586, at *10 (N.D. Ohio Aug. 7, 2025).

For these reasons, there is no basis to conclude that Petitioner's detention is unlawful due to any regulatory violation.

3. *Even With a Regulatory Violation Outright Release is Improper*

Even were further notice and an interview required, the proper relief would be ordering additional process, not outright release. *See Tran*, 2026 WL 672969 at *9 ("The writ of habeas corpus is a profound remedy, not a penalty for bureaucratic typos."); *see also 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"). The remedy sought—release from custody—is "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"). The proper remedy to any procedural deficiency would be—at most—ordering ICE to provide Escobar Games with whatever additional process the Court deems appropriate. *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.").

True, some courts have ordered release when they believed ICE should have provided more robust notice and hearing. *E.g.*, *Grigorian*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *8-10. Respectfully, many of these decisions appear driven by policy disagreement with the current immigration enforcement environment rather than grounding in the law. The regulations mandate notice and—in some instances—an opportunity to be heard via an informal interview. 8 C.F.R. §§ 241.4(l)(1); 241.13(i)(3). And if that does not result in release, the alien can request a more thorough review. 8 C.F.R. §§ 241.4(*l*)(3); 241.13(j).

4. Petitioner's Detention Remains Within the Presumptively Reasonable Period.

Not only was revocation of Escobar Games's OSUP proper, the period for which he has been detained remains presumptively reasonable. Petitioner has been in detention since December 10, 2025 bringing the total number of days in custody to 121, below the 180-day threshold for what is considered to be presumptively reasonable. *See Akinwale*, 287 F.3d at 1051-52. And though district courts disagree on whether prior periods of post-final order detention—such as Petitioner's 2002 detention period—should aggregate into this presumptively reasonable period, Respondents aver that aggregating under the circumstances present here would not be consistent with *Zadvydas*.

It goes without saying an alien must be detained (or otherwise in custody) to effect removal unless the alien leaves voluntarily. Escobar Games has not left voluntarily notwithstanding his nearly 26-year old removal order. ICE is now attempting to remove him. Furthermore, ICE's last attempt at executing his order took place almost 24 years ago, in 2002. *Zadvydas* stands for the principle that prolonged and indefinite detention is improper. *Zadvydas*, 533 U.S. 679. And statute has created the removal period for the purpose of allowing the government a reasonable opportunity to take the steps necessary to remove someone. *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008). With these considerations in mind, it would make little sense to aggregate the current detention period with Petitioner's prior detention as it would prematurely foreclose the presumptively reasonable period. *See e.g., Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42 (CDL), 2018 WL 1321576 at *3 (M.D. Ga. Mar. 14, 2018) (rejecting strict adherence to 180-day time period and urging analysis based upon removal efforts at present); *Tran*, 2026 WL 672969, at *5 (urging a balancing of the circumstances and reasoning that "absent evidence of such bad faith or a deliberate strategy of looping confinement, courts should presume that a subsequent detention is a genuine, independent effort to effectuate removal.").

There is no indicia of bad faith nor is there any continuous looping of detention here. There are two periods of detention: one in 2002 and another at present. Furthermore, circumstances have changed such that ICE deems it appropriate to attempt removal once more. Put simply, this case is unripe. The burden-shifting analysis into SLRRFF has not been triggered and ICE need not show SLRRFF at this moment in time. *Guzman Chavez*, 594 U.S. at 529 (cleaned up); *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). 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*.").

To require detailed justification from ICE before the *Zadvydas* period expires would be a significant infringement on separation-of-powers principles as questions related to immigration are "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 is not 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 decisionmaking 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 Escobar Games in line with what the law allows. Unless and until his detention raises a constitutional problem—i.e., after six months—the Executive branch must be permitted to proceed without interference.

Conclusion

For the foregoing 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.

Date: April 10, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 10, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will furnish copies of these documents to all registered counsel of record.

Dated: April 10, 2026 Signed:

/s/Amanda Saylor
Amanda Saylor
Assistant United States Attorney