IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

ISSA LY, Petitioner, v. KEVIN RAYCRAFT, Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement, Department of Homeland Security, *et al.*, Respondents.	Case No. 1:25-cv-00958 District Judge Jeffery P. Hopkins Magistrate Judge Peter B. Silvain, Jr.

RETURN OF WRIT

Petitioner, Issa Ly, is lawfully detained pursuant to 8 U.S.C § 1231(a) and this Court cannot enjoin action taken to remove Petitioner from the United States. As such, this Court should deny and dismiss the Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. (Petition, ECF 1.) Petitioner has raised no issues subject to judicial review and pled no facts inconsistent with due process. Any due process violation is harmless. Therefore, this Court should deny and dismiss the petition pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted.

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I. FACTUAL BACKGROUND

Petitioner, Issa Ly ("Petitioner" or "Issa Ly"), brings this action as a petition for habeas corpus under 28 U.S.C. § 2241. (Petition, ECF 1, PageID 1.) Issa Ly is a 51-year-old native and citizen of Mauritania and claims he entered the United States 25 years ago, on October 23, 2000. (*Id.* PageID 3, 5, ¶¶17, 24-24; Declaration of Suha Peng, Ex. A, at 1-2, ¶¶4-5.)

He filed a claim for asylum on February 7, 2001, a Notice to Appear was issued, commencing removal proceedings on August 11, 2001. (Petition, ECF 1, PageID 5-6, ¶¶26-28; Peng Decl., Ex. A, at 2, ¶6-7; NTA, Ex. B.) Petitioner's applications for asylum and withholding of removal were denied and Petitioner was ordered removed to Mauritania. (Petition, ECF 1, PageID 6, ¶¶29-31; Peng Decl., Ex. A, at 2, ¶8; January 13, 2008 Removal Order, Ex. C.)

On February 21, 2008, Petitioner appealed the decision denying asylum and withholding of removal. (Petition, ECF 1, PageID 6, ¶31; Peng Decl., Ex. A, at 2, ¶9.) The appeal was dismissed by the BIA. (Petition, ECF 1, PageID 6, ¶32; Peng Decl., Ex. A, at 2, ¶10; BIA Decision, Ex. D.) He also appealed to the Sixth Circuit Court of Appeals, but it was dismissed. (Petition, ECF 1, PageID 6, ¶32; Peng Decl., Ex. A, at 2, ¶11-13; 6th Circuit Decision, Ex. E.)

On February 21, 2012, the Petitioner was placed on supervision. (Petition, ECF 1, PageID 6, ¶¶33-34; Peng Decl., Ex. A, at 2, ¶14.)

On February 6, 2014, ICE found that Petitioner had not complied with the order of supervision requirement that he make efforts to obtain a travel document. (Peng Decl., Ex. A, at 3, ¶15.) He was reminded of this requirement in May 2016, and again in May 2017. (*Id.* at ¶¶16-17.) He applied for a travel document that year. (*Id.* at ¶18.) Between 2017 and 2024, Petitioner reported that he made not further attempts to obtain a travel document. (*Id.* at ¶¶19-20.)

On October 23, 2025, Petitioner's supervision was revoked and he was taken into ICE custody pending execution of his order of removal to Mauritania. (Petition, ECF 1, PageID 6-7, ¶¶36-37; Peng Decl., Ex. A, at 3, ¶21; Notice of Revocation of Release, Ex. .) The Notice of Revocation of Release incorrectly stated that he was to be removed to Venezuela. (Petition, ECF 1, PageID 7, ¶37; Notice of Revocation of Release, Ex. F.) He was detained at Butler County Correctional Complex. (Petition, ECF 1, PageID 7, ¶38.)

On November 10, 2025, ICE requested a travel document from Mauritania for Petitioner's removal. (Peng Decl., Ex. A, at 3, ¶22.)

On November 25, 2025, petitioner was served with a Notice to Alien of File Custody Review as required by 8 C.F.R. § 241.4. (*Id.* at 3, ¶23; Notice to Alien of Custody Review, Ex. G.)

Petitioner filed this Petition for a Writ of Habeas Corpus on December 23, 2025, alleging that he has been unlawfully taken into custody and detained, in violation of the Due Process Clause of Fifth Amendment to the United States Constitution, the Administrative Procedures Act 5 U.S.C.

§ 701, *et seq.* ("APA") and the Immigration and Nationality Act ("INA") § 241(a), 8 U.S.C. § 1231(a). (Petition, ECF 1, PageID 7-18, ¶¶42-101.) Petitioner seeks declaratory and injunctive relief, release from custody, and attorney's fees. (*Id.* at PageID 19, ¶¶1-7.)

On December 31, 2025, a biographical questionnaire was completed by the Petitioner regarding his Post Order Custody Review. (Peng Decl., Ex. A, at 3, ¶25.)

On January 6, 2026, the Post Order Custody Review was completed by ICE ERO. (*Id.* at 3, ¶26.)

There are no known institutional barriers preventing ICE from obtaining a travel document from Mauritania for Issa Ly. (*Id.* at ¶25.) Individuals have been removed from the United States by ICE to Mauritania and there is no reason to believe removals to Mauritania will not continue. (*Id.*) There are no known institutional barriers preventing ICE from removing Petitioner to Mauritania in the reasonably foreseeable future. (*Id.* at 4, ¶26.)

II. LEGAL AND STATUTORY BACKGROUND

"The Immigration and Nationality Act (INA) establishes procedures for removing aliens living unlawfully in the United States." *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). "If the immigration judge decides that the alien is inadmissible or deportable and that the alien is not entitled to any of the relief or protection that he requested, the immigration judge will issue an order of removal." *Id.* at 528 (citing 8 U.S.C. § 1229a(c)(5)).

The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

The statute referring to a 90-day removal period, 8 U.S.C. § 1231(a)(1)(A), holds: "Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." *Martinez v. Larose*, 968 F.3d 555, 559 (6th Cir. 2020).

"The removal period is defined as beginning on the latest of three events: (1) "[t]he date the order of removal becomes administratively final"; (2) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order"; or (3) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* at 559–60 (citing 8 U.S.C. § 1231(a)(1)(B)).

Regarding detaining an alien beyond the 90-day period, 8 U.S.C. § 1231(a)(6) states:

> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

"§ 1231(a)(3) allows for supervised release after the 90-day removal period expires '[i]f the alien does not leave or is not removed' during that time period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 538 (2021).

Once the 90-day removal period has elapsed, the alien becomes subject to 8 U.S.C. § 1231(a)(6) which makes detention discretionary. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 639 (D. Mass. 2018). "Continued detention under this provision creates the 'post-removal-period.'" *Id.* "[I]n enacting § 1231, Congress and the President anticipated that not all aliens ordered removed would be deported during the removal period. *See* § 1231(a)(3) (referring to 'an alien' who 'does not leave ... within the removal period')." *Jimenez v. Cronen*, 317 F. Supp. 3d at 651. Thus, 8

U.S.C. § 1231 expressly anticipates revocation of supervision and detention beyond the 90-day removal period.

III. LAW AND ARGUMENT

Petitioner seeks declaratory relief and release from detention. (Petition, ECF 1, PageID 19.) Despite having a valid final order of removal, he argues that his detention is not authorized because his final order expired. (*Id.* at PageID 8, ¶45.) Petitioner concedes individuals may be detained beyond the removal period pursuant to 8 U.S.C. § 1231(a)(6), if they are unlikely to comply with the order of removal, found to be a risk to the community, or likely to be removed in the reasonably foreseeable future. (*Id.* at PageID 8, ¶¶46-47.) He claims that his supervision was unlawfully revoked and he is unlawfully detained, in violation of the INA, the APA and the *Accardi* Doctrine, and the Fifth Amendment's Due Process Clause of the United States Constitution. (*Id.* at PageID 7-11, 11-18, ¶¶42-57, 58-101); 8 U.S.C. § 1231(a)(6).

Petitioner's claims fail. Petitioner is really asking this Court to delay and to stop his removal, which this Court has no jurisdiction to do. Thus, the Court should deny and dismiss his Petition.

IV. STANDARD OF REVIEW

This Court should begin its analysis with the threshold issue of "whether this the Court has subject matter jurisdiction." *See e.g., Zhen v. Doe*, Case No. 3:25-cv-01507, 2025 WL 2258586 (N.D. Ohio Aug. 7, 2025) (citing *Karki v. Jones*, Case No. 1:25-cv-281, 2025 WL 1638070, at *3 (S.D. Ohio June 9, 2025) ("The fundamental question of subject matter jurisdiction must precede any analysis of the merits on this matter.").

The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts are courts with limited jurisdiction and may only hear cases that are "authorized by Constitution and statute." *Id.* If at any time, the court determines that it lacks subject-matter jurisdiction, that court must dismiss the action in front of them. *Mich. Emp't Sec. Comm'n v. Wolverine Radio Co.*, 930 F.2d 1132 (6th Cir. 1991). The requirement that a plaintiff establish subject-matter jurisdiction "as a threshold matter 'spring[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 95 (1998) (some internal quotation marks omitted).

A motion under Fed. R. Civ. P. 12(b)(1) can raise facial or factual attacks. *W6 Rest. Grp., Ltd v. Loeffler*, 140 F.4th 344, 349 (6th Cir. 2025). Regardless of which attack is used, the plaintiff bears the burden of persuading the Court that subject matter jurisdiction exists. *Dismas Charities, Inc. v. U.S. Dep't of Justice*, 401 F.3d 666, 671 (6th Cir. 2005).

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests whether that plaintiff has pleaded a cognizable claim in his or her complaint. "To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 176 F.3d 315, 319 (6th Cir. 1999) (internal quotation omitted). A court should dismiss a claim under Rule 12(b)(6) when the plaintiff has failed to plead sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff [has pleaded] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556

(2007)). A complaint need not contain detailed factual allegations but must raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555.

The Court should deny the Petition because this Court lacks subject-matter jurisdiction over his claims because 8 U.S.C. § 1252, *et seq.*, precludes the review. Even if the Court had jurisdiction, Petitioner still fails to plead plausible claims for relief.

V. THIS COURT LACKS JURISDICTION

A. This Court Lacks Jurisdiction Pursuant to 8 U.S.C. § 1252

In reality, Petitioner challenges his detention for the execution of his final order of removal. The Court lacks jurisdiction to hear a challenge to Petitioner's removal under 8 U.S.C. § 1252. As such, this Court should deny the Petition and dismiss this action for lack of subject matter jurisdiction. In enacting the REAL ID Act, Congress limited the jurisdiction of federal courts through 8 U.S.C. § 1252(g) as follows:

> Except as provided in this section and notwithstanding any other provision 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) (emphasis added). "In the REAL ID Act, Congress decided that, as a matter of public policy, [federal courts] do not have jurisdiction to decide claims that arise from the decision of the Executive Branch to execute a removal order." *Rranxburgaj v. Wolf,* 825 F. App'x 278, 283 (6th Cir. 2020). This holds true "whether or not [federal courts] agree with ICE's decision to execute [a petitioner's] removal order." *Id.*

These types of claims are barred under 8 U.S.C. §1252(g). This statute bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to "execute removal orders." Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471, 482 (1999).

The Sixth Circuit, and including other Courts of Appeals, have consistently held that similar petitioners' challenges to removal are barred by § 1252(g). *Hamama v. Adducci*, 912 F.3d 869, 874–77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *see also Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (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. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's authority to execute a removal order rather than its execution of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting the argument that jurisdiction remained in similar circumstances because petitioner was challenging, DHS's legal authority as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen., U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

Title 8 U.S.C. § 1252(g) therefore limits jurisdiction as it relates to claims arising from such execution of removal orders—even if federal question jurisdiction would otherwise be proper. *See Elgharib v. Napolitano,* 600 F.3d 597, 607 (6th Cir. 2010). By its terms, this statutory limitation also applies to habeas relief under 28 U.S.C. § 2241, which would typically provide jurisdiction over cases where an alien is held in custody in violation of the Constitution or the laws of the United States. *Zadvydas v. Davis,* 533 U.S. 678, 687 (2001).

A habeas petition is proper where it "challenged only the government's failure to give notice and the due process implications of the undocumented petitioner's arrest and detention, and because the petition did not address the merits of the underlying order of removal," *Kellici v. Gonzalez*, 472 F.3d 416,419-20 (6th Cir. 2006). The petitioner in the *Kellici* decision, did not receive notice of an "Order to Appear," and the habeas petition was related solely to the government's failure to provide him notice of the "Order to Appear," at his removal hearing. *Id.* at 417. In fact, *Kellici's* petition did not mention his final order of removal. *Id.*

In a very similar case to this one, a district court found no jurisdiction to "consider the legality of the circumstances surrounding petitioner's arrest and the revocation of the OSUP because the matter is squarely within the holding of *Tazu v. Att'y Gen., U.S.*, 975 F.3d 292, 298 (3d Cir. 2020)." *See Van Phan v. Oddo,* No. 3:25-cv-348, 2026 WL 60337, *2 (W.D. Penn. Jan. 8, 2026). In the *Tazu* decision, the Third Circuit concluded that the petitioner "**attack**[s] **the *action* taken to execute** [his removal] **order. So under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it.**" *Id.* citing *Tazu*, 975 F.3d at 298) (emphasis in original).

Petitioner was lawfully arrested and detained in order to execute his valid final order of removal. (Peng Decl., Ex. A, at 3, ¶21; Notice of Revocation of Release, Ex. F, at 1.) To the extent Petitioner challenges the lawfulness of ICE's decision to detain him *for* the enforce his removal order, (Petition, ECF 1, PageID 1, 7-19, ¶1, 42-101); the jurisdiction-stripping provisions of §1252(g) apply to this habeas petition. *Grigorian v. Bondi*, Case No. 25-cv-22914, 2025 WL 1895479, *4 (S.D. Fla July 8, 2025) (distinguishing between challenge to ICE decision or action to detain in furtherance of execution of removal order versus challenge to "underlying legal bases" of those decisions or actions).

This Court lacks jurisdiction because Petitioner is challenging ICE's "decision to execute his removal, the decision to detain him, the methods by which he was detained, [and] the Government's authority to deport or detain him. *See Grigorian v. Bondi*, No. 25-CV-22914, 2025 WL 1895479, at *4 (S.D. Fla. July 8, 2025). He is not challenging ICE's failure to "comply with the statutory requirements required to revoke an Order of Supervision outlined in 8 C.F.R. § 241.4(l)(2)." *Id.*

In Count One, Petitioner claims ICE's decision to revoke his order of supervision had no legitimate, non-punitive objective. (*Id.* at PageID 11-12, ¶¶58-62.) This is a challenge to ICE's decision and action to execute Petitioner's removal order.

In Count Two, he claims that ICE was required to give him notice and an opportunity to respond *prior* to revoking his order of supervision. (*Id.* at PageID 12-13, ¶¶66-67.) This is a challenge to ICE's decision and action taken to execute his removal order by challenging the methods by which he was detained.

In Count Three, the Petitioner again challenges ICE's decision to execute his removal order by claiming revocation of the order of supervision violates the APA. (*Id.* at PageID 13-14, ¶¶69-

78.) Indeed, Petitioner's claims that his order of supervision was unlawfully revoked because it was not revoked by the ICE Executive Associate Director, without a number of findings regarding the Petitioner, directly challenge ICE's decision to detain the Petitioner, the methods by which he was detained, and the authority by which he was detained. (*Id.*)

Petitioner's remaining claims that ICE's revocation of his order of supervision is arbitrary and capricious, in excess of statutory authority, that it was ultra vires, and in violation of the Accardi doctrine, also directly challenge ICE's decision to detain Petitioner and the methods by which he was detained. (*Id.* at PageID 15-18, ¶¶79-101.)

Petitioner is contesting ICE's decisions and **actions taken** to revoke his order of supervision in **execution** of his valid, final order of removal. (emphasis added). Indeed, Petitioner's claims relate directly to his final order of removal. By making these arguments, Petitioner is necessarily challenging the action taken to execute his removal order, which this Court has no jurisdiction to review. As a result, the jurisdiction-stripping provisions of §1252(g) apply to this habeas petition.

B. Sections 1252(a)(5) and (b)(9) Bar Review of Petitioner's Claims.

This Court also lacks jurisdiction over Petitioner's claims concerning removal orders issued under section 1229a given 8 U.S.C. § 1252(a)(5) and (b)(9). Section 1252(b)(9) provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9). Section 1252(a)(5) provides that [n]otwithstanding any other provision of law (statutory or nonstatutory) . . . or any other habeas corpus provision . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal . . . ."

In relation to section 1252(a)(9), the Sixth Circuit has explained that district courts "are prohibited from reviewing and vacating a removal order." *Hamdi v. Napolitano*, 620 F.3d 615, 625 (6th Cir. 2010); *see also Lopez-Meija v. Lynch*, Case No. 1:16-cv-549, 2017 WL 25501, at *5 (S.D. Ohio Jan. 3, 2017). In fact, the First Circuit has noted that § 1252(b)(9)'s "expanse is breathtaking." *Aguilar v. U.S. Immigration & Customs Enf't Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 9-12 (1st Cir. 2007).

Petitioner appealed his removal order pursuant to the administrative process, but it was denied both times. (Peng Decl., Ex. A, at 2, ¶¶8-13.) He could seek an emergency stay of removal as a part of the administrative process. *See generally* 8 C.F.R. § 1003.2(f), 1003.23(b)(v). However, because Petitioner's requested relief arises from an "action taken . . . brought to remove" Petitioner "from the United States" and is a petition for habeas corpus, this court lacks jurisdiction. § 1252(b)(9).

Thus, to obtain habeas relief, Petitioner must not merely show that he is "in custody," but rather that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *see also Dickerson v. United States*, 530 U.S. 428, 439, n.3 (2000) ("Habeas corpus proceedings are available only for claims that a person 'is in custody in violation of the Constitution or laws or treaties of the United States,'" quoting 28 U.S.C. § 2254(a)). Petitioner cannot meet this burden because he is lawfully detained. Therefore, this Court lacks jurisdiction to consider Petitioner's challenge to his detention and pending removal. *See, e.g,* *Touray v. Lynch,* No. 1:25-cv-683, 2025 WL 2778271, at *3 (S.D. Ohio Sept. 30, 2025). Thus, the Petition should be denied and dismissed.

VI. PETITIONER'S DETENTION PENDING REMOVAL IS LAWFUL

Petitioner claims that ICE revoked Petitioner's order of supervision, without providing notice as required under 8 C.F.R.§ 241.4(l)(1), violated Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution, the APA, *Accardi* Doctrine, and the INA. (Petition, ECF 1, PageID 1-2, 7-18, ¶¶1, 4, 42-101.) However, 8 C.F.R.§ 241.4(l)(1) does not apply to § 241.4(l)(2)(iii), Petitioner has received due process according to § 241.4, and, Petitioner's removal is significantly likely to occur in the reasonably foreseeable future as ICE ERO requested and is awaiting a travel document for the petitioner from the government of Mauritania. (Peng Decl., Ex. A, at 3, ¶22.) Further, ICE is unaware of any institutional barriers that would prevent obtaining travel documents and the petitioner's removal from occurring in the reasonably foreseeable future. (*Id.* at 3-4, ¶¶25-26). Petitioner's removal is expected to occur in the reasonably foreseeable future. (*Id.*)

A. ICE Complied with Due Process and 8 C.F.R. § 241.4.

There is no question that ICE has authority to detain Petitioner during the removal process. "Detention during removal proceedings is a constitutionally permissible part of [the removal] process." *Demore v. Kim*, 538 U.S. 510, 531 (2003). Moreover, immigration officials retain discretion not to execute a final order of removal within 90 days. *Arizona v. Biden*, 40 F.4th 375, 391 (6th Cir. 2022). "Immigration authorities, as the Supreme Court has made clear, have considerable discretion over whom to arrest and remove." *Id.* (citing *Arizona v. U.S.*, 567 U.S. 387, 396 (2012)).

In keeping with the discretion afforded in 8 U.S.C. § 1231(a)(3), ICE placed Petitioner on supervision in February 2012. (Petition, ECF 1, PageID 6, ¶34; Seng Decl., Ex. A, at 2, ¶14.) DHS regulations later permitted ICE to detain Petitioner in order to effectuate his removal. *See* 8 C.F.R. § 241.4. Addressing the procedure of revocation of release after the removal period, § 241.4(l)(2)(iii), states: "Release may be revoked in the exercise of discretion when, in the opinion of the revoking official . . . [i]t is appropriate to enforce a removal order . . ." 8 C.F.R. § 241.4(l)(2)(iii). That is precisely what happened here. ICE is enforcing the removal order for Petitioner to return to his home country, Mauritania. (Seng Decl., Ex. A, at 1-3, ¶¶2, 4, 8, 21-22; Notice of Revocation of Release, Ex. E; Notice to Alien of Custody Review, Ex. G.)

The Supreme Court has long recognized that immigration-related decisions of executive branch officers, as in this case, afford due process in the absence of judicial review. "[A]s to 'foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law,' 'the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.'" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892)). "Since then, the [Supreme] Court has often reiterated this important rule." *Id.* (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953), and *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative").

The essential requirements of procedural due process are: (1) notice; and (2) an opportunity to be heard. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970); *Gorman v. Univ. of R.I.*, 837 F.2d 7, 12 (1st Cir. 1988). A person may be afforded notice and opportunity to be heard at a "meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Petitioner cannot and does not demonstrate that he has been deprived of these requirements.

i. The Notice and Interview Requirements for Revocation of Supervision for Violations of Conditions of Release Under § 241.4(l)(1) Do Not Apply to Revocation of Supervision to Enforce a Removal Order Under §241.4(l)(1)(iii) nor Petitioner.

DHS regulations permit ICE to detain the Petitioner in order to effectuate his removal. *See* 8 C.F.R. § 241.4. 8 C.F.R. § 241.4(l) governs revocation release for aliens on supervision. § 241.4(l)(1), applies exclusively to aliens who have violated the conditions of their release, and requires notice and an informal interview upon revocation. It makes sense that the notice and informal interview requirement in section 241.4(l)(1) is necessary for aliens who have violated the conditions of their release: those provisions provide such aliens with the opportunity to contest the alleged violations of their release, as criminal defendants are entitled to notice and an opportunity to be heard when their supervision is revoked. *See* Federal Rule of Criminal Procedure 32.1.

In fact, nowhere in § 241.4(l)(2) is there a requirement for an alien to be notified of the reasons for revocation and an informal interview pursuant to § 241.4(l)(1). Because of this, ICE is permitted to use its discretion to revoke an alien's order of supervision without providing for notice or an informal interview in § 241.4(l)(1). Indeed, ICE is authorized to end Petitioner's supervised release and detain him while processing his removal. *Id.*; 8 C.F.R. § 241.4.

The notice and informal interview requirement in § 241.4(l)(1) is unnecessary when revoking supervision under § 241.4(l)(1) in order to effectuate an alien's removal because an alien subject to a removal order already has notice that he or she is subject to removal, having been through removal proceedings and been ordered removed. Indeed, requiring notice and an informal interview for those with a removal order, who have not violated their conditions of release, results in re-litigation of the alien's removal orders.

Here, Petitioner was arrested and detained for the purpose of enforcing his removal order pursuant to section 8 C.F.R. § 241.4(l)(2)(iii), not for violating the conditions of his release. (Peng Decl., Ex. A, at 3, ¶21; Notice of Revocation of Release, Ex. F.) As a result, § 241.4(l)(1) does not apply to him.

Petitioner received actual notice that his order of supervision was being revoked for his removal from the United States when he received the Notice of Revocation of Release. (Peng Decl., Ex. A, at 3, ¶¶21-22, 24; Notice of Revocation of Release, Ex. F.) Although the Notice of Revocation of Release identified Venezuela as the removal country, this mistake quickly remedied. (Notice of Revocation of Release, Ex. F.) Also, the Petitioner knew the removal country was incorrect when he filed his Petition on December 23, 2025. (Petition, ECF 1, at 7, ¶37.)

Petitioner has been involved in the removal process since he was initially detained. Petitioner would also have known and participating in requesting a travel document for his removal to Mauritania, which was requested on November 10, 2025. (Peng Decl., Ex. A, at 3, ¶22.) Further, Petitioner was informed that he was detained and required to cooperate with his removal when served with the Notice to Alien of File Custody Review on November 25, 2025. (Notice to Alien of File Custody Review, Ex. G, at 1-2.) Petitioner completed a biographical questionnaire for his custody review on December 31, 2025. (Peng Decl., Ex. A, at 4, ¶25.)

Because § 241.4(l)(1) does not apply to aliens who are re-arrested and detained for the purpose of enforcing their removal order pursuant to section 8 C.F.R. § 241.4(l)(2)(iii), Respondents did not fail to provide notice and an informal interview. Petitioner's claims that his process rights were violated for failure to provide notice pursuant to § 241.4(l)(1) is without merit. (Petition, ECF 1, PageID 7-14, ¶¶42-78.)

Simply because § 241.4(l)(1) does not apply to aliens, like Petitioner, who are re-detained for the purpose of enforcing their removal pursuant to section 8 C.F.R. § 241.4(l)(2)(iii), does not mean the Petitioner did not receive due process as required under the 5th Amendment to the United States Constitution. Petitioner received the required due process. Indeed, § 241.4 requires ICE to provide due process when supervision is revoked according to § 241.4(l)(iii). That is: ICE must provide due process according to the "normal review process" if the alien was not release pursuant to § 241.4(l)(1). § 241.4(l)(3). Because Petitioner received the notice and opportunity to respond to his detention for removal from the United States to Mauritania, according to § 241.4, Respondents complied with the Due Process Clause.

Pursuant to the custody review procedures described in § 241.4, ICE is required to provide *all* aliens notice and an opportunity to respond to his or her revocation of release and detention. *See e.g.,* 8 C.F.R. § 241.4(l)(3); § 241.4(d) Custody determinations; § 241.4(g)(5) Alien's compliance and cooperation; § 241.4(h) Custody review procedures; § 241.4(i) Determinations by the Executive Associate Commissioner. Specifically, § 241.4(l)(3) provides that the government will "commence 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." Indeed, ICE is required to conduct an initial custody review and provide the alien with notice and the opportunity to respond in writing, which may also include an interview. § 241.4(h) (1)-(2) and (i). This is exactly what happened here.

Specifically, Petitioner knows that he entered the United States without a valid visa or entry document and was ordered removed to Mauritania (which he twice appealed). (Petition, ECF 1, PageID 5-6, ¶¶24-32; Peng Decl., Ex. A, at 2, ¶¶9-13.) When an alien is released on supervision, removal orders do not disappear. The statute explicitly provides that release is provided "pending removal." 8 U.S.C. § 1231(a)(3). Petitioner also knew his supervision was revoked for execution of his removal order from the United States. (Notice of Revocation of Release, Ex. F; Peng Decl., Ex. A, at 3, ¶21-24; Notice to Alien of Custody Review, Ex. G.) He was provided an opportunity to respond the as part of the Post Order Custody Review and provided a questionnaire, which he submitted to ICE. (Peng Decl., Ex. A, at 4, ¶25.) Because of this due process, and the current due process with this habeas case, Petitioner has received constitutional and regulatory due process.

ii. This Court Should Not Apply 8 C.F.R. § 241.4(l)(1) to § 241.4(l)(2)(iii) or Petitioner.

The Respondents recognizes that district courts in the Sixth Circuit, and around the United States, have concluded that the notice and informal interview provisions in § 241.4(l)(1) apply to revocations under section 241.4(l)(2)(iii). *See Constantinovici v. Bondi*, Case No. 3:25-cv-2405, 2025 WL 2898985 (S.D. Cal. October 10, 2025) (finding § 241.4(l)(1) applies to revocations of supervision for removal under section 241.4(l)(2).); *Mbonga v. Raycraft*, No. 4:25-CV-2315, 2025 WL 3122829, at *4 (N.D. Ohio Nov. 7, 2025) ("Respondents argue that [the notice and opportunity due process safeguards in] 241.4(l)(1) do[] not apply to Mr. Mbonga because he did not violate the conditions of his release. However, it does not make sense that someone who does not violate the conditions of their release would be afforded less procedural safeguards than someone who does. Other courts agree."); *K.E.O. v. Woosley*, No. 4:25-CV-74, 2025 WL 2553394, at *5-7 (W.D. Ky. Sept. 4, 2025) (rejecting government's argument that §241.4(l)(1) notice and informal interview not required).

In the *Constantinovici* decision, the district court reasoned that aliens arrested and detained for removal under § 241.4(l)(2)(iii) would be entitled to less due process than aliens who are re-detained for violating a condition of release. *Constantinovici*, 2025 WL 2898985, at *5 (citing *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D. N.Y. May 2, 2025)). However, this is not necessarily the case, and even if true, aliens arrested for violations of their supervision necessarily require additional due process for each alleged violation resulting in a revocation of supervision on top due process related to their removal orders. The due process required for aliens detained only for enforcement of their removal orders is much less because they have already received due process having been through removal proceedings and subject to removal orders. Moreover, due process is ongoing for those in detention for removal from the United States as their detention is required to be reviewed on an ongoing basis. *See* 8 C.F.R. § 241.4; (Notice of Revocation of Release, Ex. E, Notice to Alien of Custody Review, Ex. G; Peng Decl., Ex. A, at 3-4, ¶¶21-26.)

Further, there is no requirement that ICE notify an alien prior to revoking their supervision. The regulation contemplates that the normal review process and interview "will ordinarily be expected to occur within approximately three months after release is revoked." § 241.4(l)(3). § 241.4(l)(1) also reflects that the informal interview occurs "after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." If ICE was required to notify aliens in advance of actual supervision, any number of aliens will immediately abscond or go into hiding to avoid arrest, knowing their removal from the United States is imminent.

Moreover, the argument in the *Zhu v. Genalo* decision in New York, that "'[t]he Government's interpretation of paragraph 241.4(l) would result in imbalanced procedural safeguards for non-citizens' re-detained under § 241.4(l)(2)," incorrectly assumes that no due process is given to one detained under § 241.4(l)(2). *Zhu v. Genalo*, Case No. 1:25-cv-6523, 2025 WL 2452352, *7 (S.D. N.Y. Aug. 26, 2025). That is simply not the case.

As discussed above, pursuant to § 241.4(l)(3), if an alien "is not released from custody following the informal interview provided for in paragraph (l)(1), . . . the HQPDU Director" is required to "schedule the review process," for the alien, which includes notice and scheduling of an interview. § 241.4(h) and (l)(3). Importantly, just because § 241.4(l)(3) mentions the informal interview, does not mean § 241.4(l)(1) should apply to § 241.4(l)(2). § 241.4(l)(3) requires that the custody review procedures begin for all aliens whose supervision has been revoked. § 241.4(l)(3). If an alien is released from custody, commencing the custody review procedures is simply unnecessary.

This Court should not follow the *Constantinovici* decision and other similar decisions, which find that § 241.4(l)(1) applies to § 241.4(l)(2)(iii) revocations. Due process is required for all aliens whose supervision is revoked, and who are not released, and all receive notice and an opportunity to be heard pursuant to § 241.4, *et seq.*, specifically, the custody review procedures set forth in § 241.4(h) and (i).

B. Even if § 241.4(l)(1) Applies to § 241.4(l)(2)(iii), Petitioner Cannot Demonstrate Prejudice and His Detention is Lawful.

Even assuming this Court determines that ICE was required to follow § 241.4(l)(1) for aliens arrested and detained for removal pursuant to § 241.4(l)(2)(iii), and ICE failed to provide notice and an informal interview under § 241.4(l)(1), the Petitioner must demonstrate that he was substantially prejudiced to establish a due process violation. *See Warner v. Ashcroft*, 381 F.3d 534 (6th Cir. 2004) (proof of prejudice required to establish due process violation in immigration proceeding); *see also Ramos Rafael v. Garland*, 15 F.4th 797, 801 (6th Cir. 2021) (actual prejudice necessary to establish due process violation in immigration hearing) (citing *Garza-Moreno v. Gonzales*, 489 F.3d 239 (6th Cir. 2007) (alien must show error and substantial prejudice to establish due process violation in immigration proceedings)). The Petitioner cannot do so here because the outcome will not change. The Petitioner is still subject to a removal order to Mauritania, he knows he is ICE custody for removal from the United States to Mauritania, and he filed a petition for a writ of habeas corpus demanding that ICE "make a return certifying the true cause of the detention." 28 U.S.C. § 2243. Here, the true cause of detention is for ICE to execute Petitioner's removal order to Mauritania. Petitioner was provided notice of the reasons for detention multiple times and he has responded. As a result, the Petitioner cannot demonstrate prejudice.

In *Karki v. Raycraft*, (E.D. Mich. Dec. 8, 2025) a petitioner in the Eastern District of Michigan alleged that ICE failed to provide him the required notice and informal interview pursuant to 8 C.F.R. § 241.4(l)(1). *Karki*, 2025 WL 3516782, at *6. The district court found that, even assuming ICE violated its own regulations and failed to provide the petitioner notice and an informal interview under § 241.4(l)(1), "any deprivation of process by the Government's failure to follow its regulatory procedures is harmless," because a showing of <u>prejudice</u> is required. *Id.* at *7. (emphasis added).

The district court explained, "In the context of a due process challenge to a removal order, the Sixth Circuit has found that 'to establish the requisite prejudice, [the alien] must show that the due process violations led to a substantially different outcome from that which would have occurred in the absence of those violations.'" (citing *Graham v. Mukasey*, 519 F.3d 546, 549-550 (6th Cir. 2008)); *see also Abdulahad v. Garland*, 99 F.4th 275, 295 (6th Cir. 2024) (endorsing a limited application of harmless-error doctrine in immigration proceedings).

For example, in *Surovtsev v. Noem*, the district court concluded that ICE's failure to "abide by the requirements of 8 C.F.R. §§ 241.4(l) and 241.13(i)(3) and the error was harmful, a writ of habeas corpus would not be the appropriate remedy." Case No. 1:25-CV-160, 2025 WL 3264479, at *4 (N.D. Tex. Oct. 31, 2025). Indeed, the district court credited the "procedures in [the federal habeas] case," explaining that, the petitioner in that case, "has clearly been given notice because the respondents have fully explained through briefing and declarations the basis for their conclusion." *Id.* (citing *Nguyen v. Noem*, —— F. Supp. 3d ——, No. 6:25-CV-057, 2025 WL 2737803, *5 (N.D. Tex. Aug. 10, 2025)). The court further concluded that the petitioner "received more than a full notice and an opportunity to be heard, even if the respondents failed to conform to the regulations set forth in section 241.4(l)(1), any error is now harmless in light of the procedures in this case." *Id. see also Rocha v. Rice*, No. 1:25-cv-02147, 2025 WL 3769275, *1 (W.D. La. Dec. 31, 2025) ("To the extent petitioner was deprived of an informal interview and limited opportunity to respond, as set forth in § 241.4(l)(1) or § 241.13(i)(3), he has now had that opportunity through his habeas petition and fails to show any basis on which this court would question his removability . . . ."); *Bahadorani v. Bondi*, No. 25-cv-1091, 2025 WL 3048932, *2-*3 (W.D. Okla. Oct. 31, 2025) (failure to comply with 8 C.F.R. § 241.13(i)(2)-(3) at most harmless error where petitioner received Notice of Revocation of Release and received two interviews and had opportunity to submit information concerning custody); *Ladak v. Noem*, No. 1:25-cv-194, 2025 WL 3764016, *5 (N.D. Tex. Dec. 30, 2025) (failure to follow procedural requirements of § 241.4(l)(1) or § 241.13 harmless where petitioner had more than full notice and opportunity to respond in habeas proceeding). In the *Ladak* decision, the district court explained that, "Because habeas is not backward-looking, the process provided now renders forward-looking relief inappropriate." *Id.* at *5 (citing *Walker v. Wainwright*, 390 U.S. 335, 336 (1968) ("[T]he great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention.")

The Petitioner cannot demonstrate prejudice because he cannot demonstrate that failure to give notice and an informal interview would lead to a substantially different outcome from that which would have occurred in absence of the violations. He cannot demonstrate prejudice here because even if ICE complied with §241.4(l)(1) notice and informal interview requirement, nothing changes. Petitioner would still be in detention for ICE's execution of his removal order to Mauritania. Indeed, ICE determined that Petitioner's removal is significantly likely to occur in the reasonably foreseeable future. (*Id.* at 1.)

Further, Petitioner filed a Petition for a Writ of Habeas Corpus, this return was filed by Respondents, and Petitioner can file a reply. Petitioner has received due process required by the United States Constitution, even if agency regulations were violated. Petitioner is still subject to a removal order. As a result, Petitioner was not prejudiced. Indeed, any regulatory violation by the Respondents is harmless.

Petitioner received notice that he was detained by ICE to effectuate his removal to Mauritania. He would have had the opportunity to contest why his supervision was revoked and that he should be released, as part of his Post Order Custody Review. Due process does not entitle him to relitigate his removal order. Any violation is without prejudice as Petitioner received the required due process. This Court should dismiss the Petition.

Finally, without any basis, Petitioner claims that the official responsible for revoking the Petitioner's order of supervision had not been delegated the authority to revoke an order of supervision. (Petition, ECF 1, PageID 7, 14, 17, ¶¶39, 73-75, 78, 99-101.) In the Notice of Revocation of Release, it states, "This letter is to inform you that your order of supervision has been revoked . . . ." (Notice of Revocation of Release, Ex. F.) The Notice is in the past tense and does not state that the ICE Deportation Officer revoked the Petitioner's order of supervision. (*Id.*) In fact, there is no evidence in the record whatsoever that any ICE officer acted *ultra vires* in revoking Petitioners order of supervision. This bare allegation is insufficient to conclude that ICE acted without authority to revoke Petitioner's order of supervision. Should this Court wish to inquire further, ICE respectfully requests the opportunity to demonstrate the circumstances surrounding the decision to revoke Petitioner's order of supervision.

Detaining Petitioner to enforce his removal does not violate the Fifth Amendment, the APA, the *Accardi* Doctrine, or the INA. (Seng Decl., Ex. A, at 3-4, ¶¶19-25.)

CONCLUSION

This Court lacks subject matter jurisdiction, Petitioner's detention is lawful, and the Petition should be denied and dismissed.

Respectfully submitted,

DOMINICK S. GERACE II
United States Attorney

s/William B. King II
WILLIAM B. KING II (094046)
Assistant United States Attorney
Attorney for the Federal Respondents
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
Office: (513) 684-3711
Fax: (513) 684-6972
E-mail: Bill.King@usdoj.gov