

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

H.S.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 4:26-cv-131-CDL-CHW
	:	28 U.S.C. § 2241
Warden, STEWART DETENTION	:	
CENTER, ¹	:	
	:	
Respondent.	:	
_____	:	

REPORT AND RECOMMENDATION

Before the Court is Respondent Warden Jason Streeval's Motion to Dismiss (Doc. 5) Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). For the following reasons, it is **RECOMMENDED** that the motion to dismiss (Doc. 5) be **GRANTED** and that Petitioner's application for habeas corpus relief (Doc. 1) be **DISMISSED**.

BACKGROUND

Petitioner, a native and citizen of Iran, entered the United States on September 20, 1979, on an F-1 student visa. (Doc. 5-1, ¶ 4-5); (Doc. 5-3). Petitioner stayed beyond his period of authorized stay, and he was placed in deportation proceedings on November 16, 1984. (Doc. 5-1, ¶ 5-6). Following Petitioner's application for relief, an Immigration Judge denied Petitioner's application and request for voluntary departure on July 7, 1987, and ordered Petitioner removed

¹ [T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (citations omitted). The Clerk's office is **DIRECTED** to change the docket to reflect the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

to Iran. (*Id.*, ¶ 7–8); (Doc. 5-5). The Board of Immigration Appeals (“BIA”) dismissed Petitioner’s appeal in October 1991. (Doc. 5-1, ¶ 9); (Doc. 5-6).

Immigrations and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) encountered Petitioner in April 2003 and took Petitioner into custody. (Doc. 5-1, ¶ 10). The BIA denied Petitioner’s subsequent Motion to Reopen, and on February 12, 2004, ICE/ERO released Petitioner on an Order of Supervision (“OSUP”). (*Id.*, ¶ 11–12). On December 1, 2019, Petitioner’s spouse filed a Form I-130 Petition for Alien Relative that was approved in September 2022. (*Id.*, ¶ 13); (Doc. 5-8).

Petitioner again encountered ICE/ERO on December 11, 2025, when he reported for his yearly meeting pursuant to his OSUP. (Doc. 5-1, ¶ 14). ICE/ERO took Petitioner into custody and revoked his OSUP. (*Id.*); (Doc. 5-9). Petitioner was still detained as of February 26, 2026, the date of his affidavit.

Petitioner filed this habeas action pursuant to Section 2241 on January 23, 2026. (Doc. 1). On February 17, 2026, Respondent filed a motion to dismiss the petition. (Doc. 5). Petitioner filed a response in opposition to the motion to dismiss on March 3, 2026. (Doc. 7). This motion is ripe for review.

DISCUSSION

In this Section 2241 petition, Petitioner presents four grounds for relief. In Count One, Petitioner alleges that his continued detention violates 8 U.S.C. § 1231(a)(6). (Doc. 1, p. 14). Petitioner asserts in Count Two that his prolonged detention violates substantive due process under the Fifth Amendment. (*Id.*, pp. 14–15). In Count Three, Petitioner asserts a procedural due process

violation under the Fifth Amendment. (*Id.*, pp. 15–16). Finally, Petitioner alleges a violation under the Administrative Procedure Act in Count Four. (*Id.*, pp. 16–17).

Respondent argues in his motion to dismiss that Petitioner fails to state a claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Respondent also argues that Petitioner’s claims that he has been denied a custody review required by applicable regulations lack merit. Finally, Respondent argues that the Court lacks subject matter jurisdiction to review ICE/ERO’s decision to revoke Petitioner’s OSUP. As discussed below, Respondent’s motion to dismiss should be granted.

I. Petitioner’s Claims Are Premature Under *Zadvydas*.

Respondent urges the Court dismiss Petitioner’s Section 2241 petition, arguing that Petitioner’s detention is governed by 8 U.S.C. § 1231(a)(6) and that any claim for relief pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001) is premature. Petitioner responds with two arguments. First, the six-month presumptively reasonable period does not “restart” with Petitioner’s re-detention. As discussed below, the precedent in this district has squarely rejected the argument Petitioner presents. Second, Petitioner states that the “presumptively reasonable period” is simply a presumption. As discussed below, Petitioner’s arguments are not persuasive.

Under § 1231(a), “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A). This removal period begins on the latest of three triggering dates:

- (i) The date the order of removal becomes administratively final.
- (ii) If 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.
- (iii) If the alien is detained or confined (except under an immigration process), the

date the alien is released from detention or confinement.

Id. at §§ 1231(a)(2)(B)(i)–(iii).

Detention during this 90-day “removal period” is mandatory. *Id.* at § 1231(a)(2)(A). This removal period shall be extended “and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.” *Id.* at § 1231(a)(1)(C). Detention may also continue beyond the 90-day period if it is “reasonably necessary” to effectuate removal. *Zadvydas*, 533 U.S. at 689; 8 U.S.C. § 1231(a)(6).

Although § 1231(a)(6) does not limit the length of post-final order detention, the Supreme Court of the United States determined in *Zadvydas* that detention for up to six months is presumptively reasonable. *Zadvydas*, 533 U.S. at 701. Following this six-month period, “once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.* The United States Court of Appeals for the Eleventh Circuit has explained that for an alien to state a claim under *Zadvydas*, he must show “(1) that the six-month period, which commences at the beginning of the statutory removal period, has expired when the § 2241 petition is filed; and (2) ‘evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.’” *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009) (quoting *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002)).

Respondent argues that this petition should be dismissed as premature because Petitioner has not been detained for longer than six months as of the date of Petitioner’s filing. Respondent

contends that December 11, 2025, is the triggering date of the presumptively reasonable six-month period because that was the date Petitioner most recently entered ICE custody. (Doc. 5, p. 5). If this is the applicable date, Petitioner's habeas action, filed on January 23, 2026, less than two months later, is premature. In such a situation, Petitioner was still being detained within the presumptively reasonable time frame under *Zadvydas*, and this petition should be dismissed without prejudice as premature.

Petitioner appears to argue that the six-month period began the date Petitioner was ordered removed. As the Court has recognized, there is support for this argument—in other districts. See *Salmon v. McAleenan*, No. 4:18-cv-01978-KOB-JHE, 2020 WL 2488090, at *2 n.2 (N.D. Ala. May 14, 2020). The cases from this district, however, do not support Petitioner's argument. Rather, precedent from this district and the Court emphasize that the removal period did not begin until Petitioner returned to ICE custody on December 11, 2025. *J.A.S. v. Warden, Stewart Detention Center*, No. 4:25-cv-244-CDL-CHW (M.D. Ga. filed Oct. 14, 2025) at *6; *Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018) (“A strong argument exists that the *Zadvydas* removal period did not even begin until . . . Petitioner was returned to ICE custody after serving his criminal prison sentence.”); see also *M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136-CDL-MSH (M.D. Ga. filed Oct. 19, 2023), report and recommendation adopted, No. 4:23-cv-136-CDL-MSH (M.D. Ga. filed Dec. 1, 2023).

Respondent directs the Court to its decision in *M.K. v. Warden, Stewart Det. Ctr.*, for support of his contention that the six-month period “reset” when Petitioner re-entered ICE custody in October 2025. (Doc. 12, pp. 19–20). In *M.K.*, the petitioner was in ICE custody for eight months in 2012 before he was released under an order of supervision. He did not return to ICE custody until May 2023. In recommending that the petitioner's application be dismissed as premature, the

court noted, “Finding Petitioner’s current detention presumptively unreasonable because of a period of detention occurring over eleven years ago would effectively eviscerate § 1231(a)’s purpose of allowing the Government time to arrange for an alien’s removal, including contacting foreign consulates and obtaining necessary travel documents.” *Id.*

In this case, there is no need to divert from this district’s precedent. Petitioner’s order of removal became final on October 22, 1991, when his appeal was dismissed. (Doc. 5-6); *see* 8 C.F.R. § 1241.1(b). Petitioner re-entered ICE/ERO custody from April 24, 2003, to February 12, 2004, when he was released on his OSUP. (Doc. 5-1, ¶¶ 10–12). Petitioner did not encounter ICE/ERO again for over twenty years, until his current period of detention began on December 11, 2025. (*Id.*, ¶ 14). Petitioner then filed this Section 2241 petition on January 23, 2026—less than two months later. (Doc. 1). Petitioner, as of the time of his petition, was still being detained within the presumptively reasonable six-month time frame under *Zadydas*. *See Gozo*, 309 F. App’x at *2. Petitioner was in ICE custody for less than six months at the time of his filing, and Petitioner’s argument that the Court should find his current detention presumptively unreasonable because of his period of detention over twenty years ago is not persuasive. As such, Petitioner’s Section 2241 petition is premature.

II. Jurisdictional Challenges to Count Four

A. Subject-Matter Jurisdiction

Respondent also urges the Court to dismiss Count Four because the Court lacks subject matter jurisdiction to consider claims seeking review of Petitioner’s OSUP revocation.

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). In other words, this Court may only hear a case over which it has subject matter

jurisdiction. *See id.* There are generally three ways a party may establish subject matter jurisdiction in federal court: “(1) jurisdiction pursuant to a specific statutory grant; (2) federal question jurisdiction pursuant to 28 U.S.C. § 1331; or (3) diversity jurisdiction pursuant to 28 U.S.C. § 1332.” *Hallett v. Ohio*, 711 F. App’x 949, 950 (11th Cir. 2017) (per curiam) (citation omitted). “[T]he party invoking the court’s jurisdiction bears the burden of proving the existence of federal jurisdiction,” and if “the district court lacks subject matter jurisdiction, it has no power to render a judgment on the merits and should dismiss the complaint” *Id.* Petitioner argues that the Court has jurisdiction pursuant to the Suspension Clause of the United States Constitution, 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331, 28 U.S.C. § 1651 (All-Writs Act), and 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act). (Doc. 1, p. 4). Respondent asserts that 8 U.S.C. §§ 1252(g) and (a)(2)(B)(ii) bar the Court from exercising jurisdiction over Count Four. (Doc. 5, pp. 11–16).

Section 1252 provides for the judicial review of orders of removal. Section 1252(a)(2)(B)(ii) provides that

[n]otwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

8 U.S.C. § 1252(a)(2)(B)(ii).

Section 1252(g) similarly provides that

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, . . . 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).

Section 1252(g) is “narrow[ly] read[]” so that it blocks courts from exercising jurisdiction over only “three discrete actions[: the] ‘decision or action’ to ‘*commence* proceedings, *adjudicate* cases, or *execute* removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999) (quoting Section 1252(g)).

The Court agrees with Respondent to the extent that Section 1252(g) deprives the Court from exercising “subject-matter jurisdiction over Respondent[’s] decision to revoke the OSUP, but not [ICE’s] purported failure to comply with their own procedures in doing so.” *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025). “The decision to revoke Petitioner’s OSUP, for the stated purpose of executing his removal order, clearly falls under the purview of [Section] 1252(g).” *Id.*

The Court does have jurisdiction to review whether ICE adhered to its own policies and procedures in its revoking Petitioner’s OSUP. *Kurapati v. U.S. Bureau of Citizenship & Immigr. Servs.*, 775 F.3d 1255, 1262 (11th Cir. 2014); *see Barrios*, 2025 WL 2280485, at *5; *see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 150–55 (W.D.N.Y. 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *3–4 (S.D.N.Y. Aug. 26, 2025). As such, neither Sections 1252(g) or 1252(a)(2)(B)(ii) bar Petitioner’s challenge to the manner in which ICE effected the revocation of his OSUP, to the extent Petitioner asserts the revocation was done without adequate process and in violation of ICE’s own regulations.

B. Lawfulness of Petitioner's Re-detention

To the extent Petitioner argues that ICE violated its own regulations and his due process rights by failing to provide him with prompt notice and an informal interview and by not having the appropriate authority revoke his OSUP, such arguments are not persuasive.²

1. *Notice and Interview*

First, Petitioner has not shown that ICE violated its own regulations to provide him with notice and an informal interview. The plain language of 8 C.F.R. § 241.4(l)(1) provides that

[a]ny alien . . . who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. . . . Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly 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.

8 C.F.R. 241.4(l)(1).

This regulation makes clear that ICE was required to provide Petitioner with notice of the reasons for revocation and an informal interview.

ICE appears to have complied with this requirement, and Petitioner has not provided any evidence to the contrary. Rather, Petitioner's own statements in his notarized affidavit indicate that he spoke with "agent Knowles" on or about January 10–12, 2026. Specifically, Petitioner stated that

[We] discussed condition in Iran, fear of return, chance of him being able to get travel document in light of current events and other possibilities. He confirmed that it will be difficult to obtain travel document from Iran's consult (especially with

² While Petitioner does not directly argue that he did not receive prompt notice or an informal interview and that an unauthorized person revoked his OSUP, many of the cases Petitioner cites to reach conclusions that a violation occurred in those circumstances. *See* (Doc. 1, p. 11); (Doc. 7, pp. 5, 10, 11). As such, out of an abundance of caution, this Report and Recommendation considers any such argument.

current protests, uprising, demonstration, killing, and massive arrests). Then, we talked about the future and length of time in detention. I realized that he is talking about several months. So, I suggested and he noted in one of the forms (application), he was filling (while questioning me), about other countries. He asked what other countries. I suggests the neighbors to the North (Canada) or South (Mexico or El Salvador).

(Doc. 7-1, ¶ 5).

Based on the record in this case, the Court cannot say that Petitioner was not afforded notice and an interview. As such, any argument Petitioner makes that ICE failed to abide by its regulations to provide notice and an interview fails.³

2. Authority to Revoke Release

Lastly, any argument that Petitioner is entitled to release because the revocation notice was not issued or signed by the appropriate official is not persuasive. *See* (Doc. 7, p. 5 (“*see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 159-66 (W.D.N.Y. 2025) (finding violations when unauthorized authority revoked petitioner’s OSUP and respondents failed to provide an informal interview).”).

8 C.F.R. § 241.4(l)(2) provides that

[t]he Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.

8 C.F.R. § 241.4(l)(2).

³ Even if Respondent did not provide an interview, the Court feels that an appropriate remedy would be that ICE/ERO afford Petitioner an interview, not release from custody.

The Court has recently considered this argument and rejected it. *T.C.T. v. Warden, Stewart Det. Ctr.*, No. 4:25-CV-373 (CDL), 2026 WL 493471 (M.D. Ga. Feb. 23, 2026).

CONCLUSION

For the reasons discussed herein, it is **RECOMMENDED** that Respondent's Motion to Dismiss (Doc. 5) be **GRANTED** and that Petitioner's application for habeas corpus relief (Doc. 1) be **DISMISSED**.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. Any objection is limited in length to TWENTY (20) PAGES. See M.D. Ga. L.R. 7.4. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 22nd day of April, 2026.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge