

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

AMIRIS MEDINA HERRERA,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 4:26-cv-719-CDL-AGH
	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On July 6, 2026, Petitioner filed an amended petition for a writ of habeas corpus (“Petition”) challenging his continued post-final-order detention pursuant to 8 U.S.C. § 1231. ECF No. 10. Petitioner asserts five grounds for relief, including a prolonged-detention claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and various due-process, APA, and Accardi-based challenges to third-country removal and the revocation of his Order of Supervision. For the reasons set forth below—including Petitioner’s failure to meet his burden under *Zadvydas*, the jurisdictional bars imposed by 8 U.S.C. § 1252(g), and the lack of any cognizable claim under habeas corpus—the Petition should be denied.

BACKGROUND

For purposes of background, Respondents rely on the Declaration of Deportation Officer Kirk R. Scott submitted in this case (“Scott Decl. II”), as well as Officer Scott’s prior declaration submitted in Petitioner’s earlier habeas action, *A.M.H. v. Warden, Stewart Detention Center, et al.*, Case No. 4:25-cv-483-CDL-AGH (“Scott Decl. I”). Together, “Scott Decl. I” and “Scott Decl.

It” accurately summarize the circumstances underlying Petitioner’s custodial status and immigration history. Respondents refer the Court to both declarations for the factual record.

LEGAL FRAMEWORK

Because Petitioner is detained post-final order of removal, his detention is governed by 8 U.S.C. § 1231. Congress provided in 8 U.S.C. § 1231(a)(1) that ICE/ERO shall remove an alien within ninety (90) days of the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court’s final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. §§ 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the “removal period,” detention is mandatory. *See id.* at § 1231(a)(2).

If ICE/ERO does not remove an alien within ninety days, detention may continue if it is “reasonably necessary” to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); 8 U.S.C. § 1231(a)(6) (providing that an alien who is subject to mandatory detention, inadmissible, or who has been determined to be a risk to the community or a flight risk, “may be detained beyond the removal period”). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. 533 U.S. at 700. “After this 6-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.* at 701 (emphasis added); *see also* 8 C.F.R. § 241.13. Where there is no significant likelihood of removal in the reasonably foreseeable future, the alien should be released from confinement. *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that “in order

to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; 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) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52).

ARGUMENT

Petitioner raises five claims. He alleges: (1) his detention violates *Zadvydas*, because removal to Cuba is not reasonably foreseeable; (2) his detention constitutes unlawful indefinite detention under the Fifth Amendment; (3) ICE/ERO violated due process by failing to provide notice or an opportunity to contest third-country removal to Mexico; (4) ICE/ERO unlawfully revoked his Order of Supervision (“OSUP”) without required procedures; and (5) ICE/ERO violated the APA and the Accardi doctrine by not following 8 C.F.R. § 241.13(i) during OSUP revocation. None of these claims entitle Petitioner to habeas relief.

I. Petitioner has failed to meet his burden under *Zadvydas* because he offers no evidence that his removal is unlikely to occur in the reasonably foreseeable future.

Petitioner alleges his detention has become unlawful because Cuba “will not repatriate him,” and Mexico has purportedly rejected him due to age and medical issues. Pet. ¶¶ 14, 23, 25, 47–52. These assertions are unsupported and contradicted by ICE/ERO’s contemporaneous records.

The order of removal designates Cuba as the country of removal. Ex. D; Scott Decl. II ¶ 8. ICE/ERO immediately began removal efforts following Petitioner’s release from state custody, including transmitting a travel document request to the Cuban Consul General on September 12,

2023. Scott Decl. II ¶ 10. ICE/ERO renewed repatriation efforts by issuing a new nomination for Petitioner's return to Cuba on January 4, 2026. Scott Decl. II ¶ 13. Petitioner identifies no communication from Cuba indicating permanent refusal or cessation of diplomatic engagement.

Petitioner also claims ICE/ERO "never told him" he was being removed to Mexico. Pet. ¶¶ 22, 70. ICE/ERO records directly refute this. Petitioner was served written notice of third-country removal to Mexico on January 6, 2026. Scott Decl. II ¶ 14; Ex. G. ICE/ERO scheduled Petitioner's removal for February 10, 2026 (Scott Decl. II ¶ 15), transferred him to El Paso, Texas on February 13, 2026, for removal staging (Scott Decl. II ¶ 16), and advised him that removal was imminent, consistent with his allegation at Pet. ¶ 25.

Removal did not fail because Mexico rejected Petitioner. ICE/ERO attempted removal twice, and each time Petitioner refused to comply. On February 21, 2026, Petitioner refused to sign removal paperwork and stated he "would not go to Mexico." Scott Decl. II ¶ 17. When ICE/ERO attempted again on February 25, 2026, Petitioner refused to exit the holding room and again stated he would not go. Scott Decl. II ¶ 18. His refusals—not any documented position from Mexico—prevented ICE/ERO from completing removal. ICE/ERO returned Petitioner to Stewart solely because of these refusals. Scott Decl. II ¶ 19.

Petitioner further asserts ICE/ERO cannot remove him to a third country without his "consent." Pet. ¶¶ 13, 22–23. That is legally incorrect. Congress authorizes removal to "another country whose government will accept the alien." 8 U.S.C. § 1231(b)(2)(E)(vii). Nothing in the INA requires a detainee's consent before ICE executes third-country removal. ICE's service of the removal notice, scheduling of removal, and transfer for execution confirm that his consent was neither sought nor required. Scott Decl. II ¶¶ 14–18.

Additionally, ICE/ERO continues active removal efforts. As Scott Decl. II ¶ 24 confirms, Petitioner has been nominated for removal to a country covered by a recently adopted removal agreement. That country has provided diplomatic assurances that individuals removed under the agreement will not be persecuted or tortured, and the Department of State has deemed the assurances credible. ICE/ERO expects a response “over the next few weeks.” Scott Decl. II ¶ 24. Petitioner presents no evidence that removal under this agreement is unlikely or foreclosed.

Because ICE/ERO continues active efforts to effectuate Petitioner’s removal to Cuba, Mexico, and an additional third country, and because Petitioner presents no evidence showing that removal is not reasonably foreseeable, he cannot meet his burden under *Zadvydas*.

II. The Court lacks subject-matter jurisdiction to review ICE/ERO’s discretionary revocation of Petitioner’s OSUP and its execution of the final removal order.

Petitioner argues ICE/ERO unlawfully revoked his OSUP without notice or an opportunity to respond. Pet. ¶¶ 59–75. These claims fall squarely within the jurisdiction-stripping provision at 8 U.S.C. § 1252(g), which prohibits judicial review of claims “arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” The Supreme Court has held that § 1252(g) applies precisely to these “three discrete actions.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

ICE/ERO revoked Petitioner’s OSUP and re-detained him on July 10, 2025, because ICE/ERO was resuming execution of the final removal order. Scott Decl. II ¶ 12; Ex. G; *see also* Scott Decl. I ¶ 12. Courts within this Circuit consistently hold that challenges to detention arising from execution of a removal order are barred by § 1252(g). *Canal A Media Holding, LLC v. U.S. Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1257–58 (11th Cir. 2020); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *Cho v. United States*, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016).

Even if jurisdiction existed, ICE/ERO acted within its statutory discretion. ICE/ERO may detain or re detain a noncitizen with a final removal order beyond the ninety day removal period, and may revoke supervised release “when any other circumstance indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2). Petitioner does not dispute the existence of his final order of removal. Scott Decl. II ¶ 8; Ex. D; *see also* Scott Decl. I ¶ 8. Nor does he allege that ICE/ERO lacked authority to revoke supervised release; he challenges only the procedures. Such challenges do not entitle him to habeas relief.

III. Petitioner’s procedural due-process challenges to third-country removal do not implicate the legality of his current custody and are not cognizable in habeas.

Petitioner alleges ICE/ERO violated due process by failing to provide fear screening, notice, or an opportunity to contest removal to Mexico. Pet. ¶¶ 60–65, 70–71. ICE/ERO served Petitioner with written notice of third-country removal to Mexico on January 6, 2026, *see* Scott Decl. II ¶ 14, and subsequently scheduled and attempted removal on multiple occasions between February 10 and February 27, 2026. *See id.* ¶¶ 15–19. These allegations concern potential future removal procedures, not the legality of current custody under 8 U.S.C. § 1231(a)(6). Petitioner is detained pursuant to § 1231(a)(6). *See id.* ¶ 23.

The Eleventh Circuit has held that habeas jurisdiction under § 2241 extends only to challenges to present custody and does not encompass collateral procedural complaints. *Arnaiz v. Warden, Fed. Satellite Low*, 594 F.3d 1326, 1329 (11th Cir. 2010). Petitioner’s claims concern procedures ICE/ERO may use while executing removal—not whether ICE/ERO has statutory authority to detain him. Habeas cannot be used to restrain execution of removal orders. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 482.

Petitioner’s consent-based theory is incorrect. Congress authorizes removal to “another country whose government will accept the alien.” 8 U.S.C. § 1231(b)(2)(E)(vii). Nothing in the

INA requires a detainee's consent or judicial review before ICE/ERO executes third-country removal. ICE/ERO's nomination of Petitioner for repatriation on January 4, 2026, and ICE/ERO's pursuit of removal under a new diplomatic agreement underscore that ICE/ERO continues to act within statutory authority. *See* Scott Decl. II ¶¶ 13–14, 24.

Because Petitioner's allegations challenge only future removal procedures and not present custody, they fall outside the scope of habeas review.

IV. Petitioner's APA and Accardi claims are not cognizable in habeas and lack merit.

Petitioner asserts that ICE/ERO violated 8 C.F.R. § 241.13(i) and the Accardi doctrine by failing to follow OSUP revocation procedures. Pet. ¶¶ 66–76. These claims fail for multiple reasons.

First, APA and Accardi claims are not cognizable in habeas. This Court has held that APA based claims are “not cognizable” in § 2241 proceedings because they seek “collateral administrative relief.” *Villafuerte v. Warden, Stewart Det. Ctr.*, 2018 WL 6626640, at 1–2 (M.D. Ga. Nov. 27, 2018). The Accardi doctrine does not expand habeas jurisdiction.

Second, even if these claims were cognizable, they lack merit. ICE/ERO retains broad discretion to revoke supervised release under 8 C.F.R. § 241.4(l)(2), including where “any other circumstance indicates that release would no longer be appropriate.” Petitioner cites no authority holding that § 241.13(i) creates individual rights enforceable in habeas or overrides ICE/ERO's statutory authority under § 1231(a)(6). Because Petitioner's APA and Accardi claims address only alleged internal procedural defects—and not the legality of his current detention—they must be dismissed.

CONCLUSION

For the reasons explained above, Petitioner has failed to demonstrate that his removal is not reasonably foreseeable, as required to obtain habeas relief under *Zadvydas*. The record—including notices issued by ICE/ERO, Petitioner's repeated refusals to comply with removal procedures, and active ongoing efforts to effectuate removal to Cuba, Mexico, and a third country—squarely refutes each of Petitioner's factual allegations. Petitioner's remaining claims, including his due process challenges to third-country removal and his OSUP revocation claims under the APA and Accardi doctrine, are jurisdictionally barred, not cognizable in habeas, and independently without merit. Because Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231(a)(6), and because none of his claims state a basis for habeas relief, the Petition should be denied.

Respectfully submitted, this 17th day of July, 2026.

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