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

JOSE MANUEL LOPEZ-NUNEZ,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:26-cv-1000-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
Respondent.	:	

RESPONSE TO PETITION

On July 8, 2026, the Court received Petitioner's § 2241 petition (ECF No. 1). Petitioner asserts four claims: (1) an Administrative Procedure Act ("APA") claim alleging that ICE detained him in violation of the preliminary injunction entered in *Immigration Center for Women and Children v. Noem* ("*ICWC*"); (2) a procedural due process claim and an Accardi claim based on ICE/ERO's alleged failure to follow USCIS's victim-based policies and the guidance Petitioner contends were reinstated by *ICWC*; (3) a substantive due process challenge alleging that Petitioner is being arbitrarily detained without a valid justification; and (4) an APA claim asserting ICE's failure to obtain a prima facie determination from USCIS before detaining Petitioner.

As explained below, each claim fails because it is jurisdictionally barred under 8 U.S.C. §§ 1252(b)(9) and 1252(g), legally unsupported, or factually contradicted by the administrative record. The record confirms that Petitioner is subject to a final order of removal, that he was

[1] In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in his Petition. "[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, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden as the sole appropriately named respondent in this action.

previously removed to Mexico in 2012, that the prior order was reinstated following his unlawful reentry, and that he is currently detained under 8 U.S.C. § 1231(a). The record further confirms that ICE/ERO has initiated and is coordinating a referral to USCIS for an initial determination on Petitioner's pending victim-based filings. Petitioner therefore cannot establish that ICE/ERO has acted unlawfully or outside its statutory authority. Respondent respectfully requests that the Court deny the Petition.

BACKGROUND

For purposes of background, Respondent relies on the Declaration of Deportation Officer Marilyn Guerra ("Guerra Decl."), submitted concurrently with this filing. The Guerra Declaration accurately summarizes the circumstances underlying Petitioner's custodial status and immigration history, and Respondent refers the Court to it 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 § 1231(a)(1) that the Department of Homeland Security, through Immigration and Customs Enforcement and Enforcement and Removal Operations ("ICE/ERO"), shall remove an alien within ninety days of the latest of: (1) the date the order of removal becomes administratively final; (2) if the 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). Detention during this ninety-day "removal period" is mandatory. *See id.* § 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). The Supreme Court held that detention for six months is presumptively

reasonable. *Zadvydas*, 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; *see also* 8 C.F.R. § 241.13.

In *Akinwale v. Ashcroft*, the Eleventh Circuit clarified 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 1050, 1052 (11th Cir. 2002). Thus, Petitioner bears the burden of demonstrating: (1) detention exceeding 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 four claims in the Petition. This Court lacks subject-matter jurisdiction under 8 U.S.C. §§ 1252(b)(9) and 1252(g), which bar district court review of claims arising from ICE/ERO's decision to execute a removal order. *Camarena v. ICE*, 988 F.3d 1268, 1272 (11th Cir. 2021). Even if the Court reached the merits, the administrative record establishes that Petitioner is subject to a final order of removal (Guerra Decl. ¶¶ 7–9, 13), that his prior order was reinstated after his unlawful reentry (*id.* ¶ 10), and that ICE/ERO lawfully took him back into custody on June 26, 2026, pursuant to 8 U.S.C. § 1231 (*id.* ¶ 12). The record further confirms that ICE/ERO has initiated and is coordinating a referral to USCIS (*id.* ¶ 14). These facts foreclose all claims.

I. *ICWC* Does Not Compel Petitioner's Release From Detention

In *ICWC*, the Central District of California held that 8 U.S.C. § 1252(f)(1) barred the class-wide injunctions plaintiffs sought to prevent DHS from applying the 2025 Guidance, the De Facto Revocation Policy, and the Blind Removal Policy (collectively, the "2025 Policies"). 2026 WL 1455004, at 16–18, 46–47. The court instead entered three nationwide administrative stays under 5 U.S.C. § 705. *Id.* at 46–47. Because the court stayed the 2025 Guidance "including its rescission of prior policies," *id.* at 47, the practical effect of the order was to restore ICE Directive 11005.3 for class members.

Crucially, *ICWC* does not: (1) order class-wide release; (2) bar ICE from detaining class members; or (3) restrict ICE from executing removal orders. The only coercive relief issued consists of two re-entry injunctions for the named plaintiffs. *Id.* For all others, the consequence of *ICWC* is narrow: class members receive the benefit of the reinstated 2021 Directive—nothing further.

Even assuming, arguendo, that Petitioner is a member of one or more classes and that the § 705 stays reinstated the 2021 Directive for him, nothing in *ICWC* entitles him to automatic release. Courts addressing identical arguments have uniformly held that *ICWC* does not require the release of detainees outside the issuing district. *See, e.g.*, *Ayala Morales v. Olson*, No. 2:26-cv-00375-JRS-MJD, 2026 WL 1781976, at 3 (S.D. Ind. June 22, 2026).

The record shows Petitioner's victim-based filings remain pending before USCIS (Guerra Decl. ¶ 11), and ICE/ERO is coordinating a referral for an initial determination (*id.* ¶ 14). Nothing in the 2021 Directive requires release while USCIS completes its review.

Moreover, ICE/ERO acted within the scope of the Directive. ICE/ERO encountered Petitioner at a scheduled Order of Supervision ("OSUP") check-in (*id.* ¶ 12), revoked his OSUP

(*id.*; Ex. G), and detained him under the reinstated removal order (*id.* ¶¶ 10, 12–13). Nothing in *ICWC* overrides ICE/ERO's statutory authority to detain under § 1231(a).

II. *ICWC* Is Not Binding Upon This Court

ICWC is not binding upon this Court, and numerous courts have declined to grant habeas relief based on that out-of-district, non-final order. *See, e.g.*, *Rauda Choto v. Ladwig*, No. 26-0322, 2026 WL 1652576, at 1 (W.D. La. June 8, 2026) ("The Court is not persuaded that the existence of a non-final order entered in separate litigation independently establishes Petitioner's entitlement to emergency injunctive relief...."). Nothing in *ICWC* expands this Court's jurisdiction or authorizes interference with the execution of a removal order. The Eleventh Circuit holds that such claims are barred. *See Camarena*, 988 F.3d at 1272.

1. The Government Cannot Be Made to Do in Two Steps What Congress Foreclosed in One

Petitioner attempts to transform *ICWC*'s § 705 stays into a release mandate. That approach conflicts with § 1252(f)(1) and the Supreme Court's interpretation that the bar applies "regardless of the nature of the action or claim" and broadly prohibits efforts to "restrain" removal. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 549–51 (2022); *see also Biden v. Texas*, 597 U.S. 785, 798 (2022). Courts may not do indirectly what Congress forbids directly. *See California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982).

2. The *ICWC* Order Is an Improper Universal Injunction Dressed as a Class Remedy

Petitioner's interpretation would transform *ICWC* into a nationwide injunction—precisely the type the Supreme Court has prohibited. *See Trump v. CASA*, 606 U.S. 831, 852 (2025). Section 1252(f)(1) further limits relief to the individual noncitizen "against whom proceedings ... have

been initiated." *Id.* Because *ICWC* cannot override § 1252(f)(1), it cannot be construed to compel release.

III. Petitioner's *Zadvydas* Statutory Claim Fails Because His Imminent Removal Is Factually and Legally Foreseeable

Petitioner's statutory claim under *Zadvydas* fails. *See* Pet. ¶¶ 22, 31, 40–43. Under *Zadvydas*, detention for six months is presumptively reasonable, and Petitioner bears the burden of showing "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701; *see also Akinwale*, 287 F.3d at 1052. Speculation about delays does not satisfy this burden. *See Novikov v. Gartland*, No. 5:17-cv-164, 2018 WL 4100694, at *2 (S.D. Ga. Aug. 28, 2018).

The record shows Petitioner is subject to a reinstated final removal order (Guerra Decl. ¶¶ 7–10, 13). He is a citizen of Mexico (*id.* ¶ 3), ICE/ERO successfully removed him there in 2012 (*id.* ¶ 9), and Mexico continues to accept returnees (*id.* ¶ 15). ICE/ERO has initiated and is coordinating a referral to USCIS for a determination on his pending filings (*id.* ¶ 14). Once USCIS completes its review, ICE/ERO will be able to carry out his removal.

Collateral USCIS processing does not establish that removal is not foreseeable. *See Novikov*, 2018 WL 4100694, at *2. The question is removal capability once legal barriers are cleared—not whether USCIS has adjudicated petitions.

Petitioner also delayed removal. ICE/ERO reinstated his prior order and issued him an OSUP on November 12, 2020 (Guerra Decl. ¶ 10). He later failed to comply with OSUP terms, including declining participation in ICE/ERO's enforcement interview during revocation (*id.* ¶ 12; Ex. G). Under § 1231(a)(1)(C), noncooperation extends the removal period. A detainee cannot refuse cooperation and then assert unreasonable delay.

Removal remains viable and legally foreseeable. Petitioner's *Zadvydas* claim fails.

IV. Petitioner's Procedural and Substantive Due Process Claims Fail as a Matter of Law

Petitioner's constitutional claims fail. Procedurally, *Zadvydas* provides the governing due process framework for § 1231(a) detention. Because removal is foreseeable, no procedural violation exists. Internal agency guidance does not create individual liberty interests. *See Reno v. Am.–Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999).

Substantively, civil detention is permissible when reasonably related to effectuating removal. *Zadvydas*, 533 U.S. at 690. Petitioner is subject to a reinstated final order of removal, was previously removed to Mexico (Guerra Decl. ¶ 9), Mexico continues to accept returnees (*id.* ¶ 15), and ICE/ERO is coordinating the USCIS referral necessary to complete removal (*id.* ¶ 14). Detention bears a reasonable relation to removal and is lawful.

CONCLUSION

For the foregoing reasons, this Court lacks jurisdiction to review Petitioner's challenges to ICE/ERO's execution of his final order of removal, and, in any event, none of his claims has merit. *ICWC* provides no basis for release, removal remains reasonably foreseeable, and Petitioner's constitutional and statutory theories fail. The Petition should be denied.

Respectfully submitted this 30th day of July, 2026.

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