

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. ____-Civ-

Wilfredo Alberto LEZAMA GARCIA,

Petitioner/Plaintiff,

v.

Officer in Charge of Krome Service
Processing Center; Field Office Director for
the Miami Field Office, U.S. Immigration and
Customs Enforcement; and Executive
Director, Florida Division of Emergency
Management,

Respondents/Defendants.

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

1. Petitioner Wilfredo Alberto Lezama Garcia is a 36-year-old Venezuelan torture survivor who, in 2023, was granted withholding of removal under 8 U.S.C. § 1231(b)(3)(A) by an immigration judge. He files this action to challenge his unlawful re-detention by Respondents and to prevent his imminent and unlawful deportation.
2. On May 12, 2023, an immigration judge granted Mr. Lezama Garcia withholding of removal under 8 U.S.C. § 1231(b)(3)(A). *See* Exhibit 1. The government did not file an appeal.
3. After Mr. Lezama Garcia won his case in court, Immigration and Customs Enforcement (“ICE”) released him. For over a year, Mr. Lezama lawfully resided and worked in the

United States. On Sunday, July 6, 2025, without notice or warning, ICE re-detained Mr. Lezama Garcia. A deportation officer orally told Mr. Lezama that ICE can remove him back to Venezuela, despite the judge's order granting him withholding of removal to that country.

4. ICE transported Mr. Lezama Garcia to Dade-Collier Training and Transition Airport ("TNT"), where he remains today.
5. There is no lawful basis for his detention and deportation.
6. ICE's detention and deportation of Mr. Lezama Garcia violates the Immigration and Nationality Act, the Administrative Procedure Act, and the Fifth Amendment of the Constitution.
7. Mr. Lezama seeks injunctive, habeas, and declaratory relief and asks the Court to order his immediate release from ICE custody, order that he not be transferred to a place outside of this district, and order that he not be removed pending the adjudication of this petition.

JURISDICTION

8. This action arises under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*; the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq.*; and the U.S. Constitution.
9. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). The Court may grant relief pursuant to the U.S. Constitution, art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201-02 (Declaratory Judgment

Act); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. §§ 702, 706 (judicial review of agency actions).

VENUE

10. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1), (b)(2) and (e)(1). Venue is proper under 28 U.S.C. § 1391(b)(1) because Respondents Ripa and Parra reside in this district, and all defendants are residents of Florida, the State in which this district is located. Venue is proper under (b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district. Venue is proper under (e)(1) because Respondents Ripa and Parra are officers or employees of the United States acting in an official capacity, and they reside in this district, and a substantial part of the events or omissions giving rise to the claim occurred in this district. Respondents Ripa and Parra have custody and control over Mr. Lezama Garcia.

PARTIES

11. Wilfredo Alberto Lezama Garcia is a Venezuelan man who has been lawfully living and working in the United States after an immigration judge granted him withholding of removal in 2023. Respondents and their agents are currently detaining him in immigration custody.
12. Respondent Charles Parra is sued in his official capacity as the Officer in Charge of the Krome Service Processing Center. In this capacity, he is responsible for the detention of the people held at TNT. Respondent Parra is a legal custodian of Mr. Lezama Garcia and has authority to release him.

13. Respondent Field Office Director for the ICE Miami Field Office, Garrett J. Ripa, is sued in his official capacity. In this capacity, he has control over the detention facility in which Mr. Lezama Garcia is being held. He is a legal custodian of Mr. Lezama and is authorized to release him. *Masingene v. Martin*, 424 F.Supp.3d 1298, 1302-03 (S.D. Fla. 2020) (Williams, J.) (holding that proper respondent was director of ICE field office responsible for overseeing contract facility where detainee was detained rather than warden of county facility, since ICE field office was responsible for supervising federal immigrant detainees at county facility and possessed the authority to direct detainee's release, and warden lacked authority to release detainee). "A local warden's custody over the detainee is limited only to the extent provided by the facility's contract with the federal government [...] ICE is in complete control of detainees' admission and release." *Id.* at 13013 (quotations omitted); *see also Gayle v. Meade*, 614 F. Supp. 3d 1175, 1235 (S.D. Fla. 2020) (Cooke, J.) (citing *Masingene v. Martin*, 424 F.Supp.3d 1298 (S.D. Fla. 2020) (Williams, J.)).

14. The federal official with the most immediate control over the custody of the person is the proper respondent, rather than the local warden. *Rodriguez Sanchez v. Decker*, No. 18-CV-8798, 2019 WL 3840977, at *2-3 (S.D.N.Y. Aug. 15, 2019) (discussing field office director's regulatory authority to grant release or parole); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1186 (N.D. Cal. 2017); *Zabadi v. Chertoff*, 2005 WL 1514122, at *3 (N.D. Cal. June 17, 2005) (finding that the field office director, who could direct the county warden to release the petitioner was the proper respondent); *Sanchez-Penunuri v. Longshore*, 7 F. Supp. 3d 1136, 1145 (D. Colo. 2013) (observing that "the ICE District Director is the only

official who appears authorized by regulation to make custody decisions for immigration detainees”); *Chiwanga v. Garland*, No. 22-CV-116-JFH, 2022 WL 20208543, at *1 (E.D. Okla. May 20, 2022) (same).

15. Respondent Kevin Guthrie is the Executive Director of the Florida Division of Emergency Management and is sued in his official capacity. Respondent Guthrie is the warden of TNT.

STATEMENT OF FACTS

16. Mr. Lezama Garcia was born in Caracas, Venezuela. He fled the country after Venezuelan officials detained, interrogated, and tortured him in their custody. He entered the United States on November 26, 2021.
17. ICE began proceedings to deport Mr. Lezama Garcia to Venezuela following his conviction for conspiracy to commit bank theft in violation of 13 U.S.C § 371.
18. Mr. Lezama Garcia was sentenced to credit time served of six months and eleven days due to his cooperation and minimal involvement in the underlying conduct.
19. After Mr. Lezama Garcia expressed a fear of return to Venezuela, an immigration judge, on May 12, 2023, granted him withholding of removal under 8 U.S.C. § 1231(b)(3). Exhibit 1.
20. The immigration judge granted Mr. Lezama Garcia withholding of removal based upon both past persecution and a well-founded fear of future persecution in Venezuela. *Id.*
21. ICE did not appeal the judge’s decision and released him from their custody.
22. On July 6, 2025, ICE re-detained Mr. Lezama Garcia after he spent time in jail for a probation violation for a 2024 DUI conviction.

23. A DUI conviction is not a basis for withdrawing, or seeking to withdraw, a grant of withholding of removal.
24. An ICE officer told Mr. Lezama Garcia that ICE can remove him to his native country of Venezuela.
25. When Mr. Lezama informed the officer that he had won withholding of removal from an immigration judge, the ICE officer told him it did not matter and that ICE can still remove him to Venezuela.
26. ICE did not issue a warrant for his immigration arrest or any other document advising Mr. Lezama Garcia of the alleged basis for his re-detention and deportation, despite the immigration judge's order granting him withholding of removal.
27. ICE transported Mr. Lezama Garcia to TNT, a makeshift detention site where Respondents are holding him in a metal cage in a tent comparable to a dog kennel. Respondents are detaining Mr. Lezama Garcia in conditions not unlike those he experienced in Venezuela when government held him in an overcrowded and unsanitary cell.¹

APPLICABLE LAW

28. The Immigration and Nationality Act provides "the Attorney General *may not remove* an alien to a country if the Attorney General decides that the alien's life or freedom would be

¹ Gisela Salomon, "Detained immigrants at 'Alligator Alcatraz' say there are worms in food and wastewater on the floor," ASSOCIATED PRESS, *available at* <https://apnews.com/article/alligator-alcatraz-immigration-detainees-florida-cc2fb9e34e760a50e97f13fe59cbf075> (last visited July 11, 2025); Kate Payne, "Republican donors and Florida's hurricane know-how helped build 'Alligator Alcatraz' so quickly," ASSOCIATED PRESS, *available at* <https://apnews.com/article/alligator-alcatraz-republican-donors-hurricanes-936556033be361d96bdb5d38b24c81d7> (last visited July 11, 2025).

threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A) (emphasis added). This prohibition on returning a person to a country where their life would be threatened is commonly referred to as “withholding of removal.”

29. A person convicted of an aggravated felony who has a fear of returning to their home country is screened to see if they have a reasonable fear of being persecuted. 8 U.S.C. § 1228; 8 C.F.R. §§ 208.31 and 238.1(f)(3). People found to have a reasonable fear may seek withholding of removal before an immigration judge in withholding-only proceedings. 8 C.F.R. § 238.1(c)(1); *Priva v. U.S. Att’y Gen.*, 34 F.4th 946, 953 (11th Cir. 2022).
30. The applicant bears the burden of demonstrating that his life or freedom would more likely than not be threatened upon return to his country because of his race, religion, nationality, political opinion, or membership in a particular social group. *See Mendoza v. U.S. Att’y Gen.*, 327 F.3d 1283, 1287 (11th Cir. 2003); 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 208.16(b).
31. Once the immigration judge grants withholding, ICEs cannot deport the person to the country, or countries, to which deportation was withheld. If ICE would like to deport the person to another country that “will accept the alien into that country,” 8 U.S.C. § 1231(b)(2)(E)(vii), the INA prohibits deportation to that country if the person would likely face persecution or torture. 8 U.S.C. § 1231(b)(3)(A). People must have the opportunity to apply for withholding of removal to any country to which ICE seeks to deport them.

EQUAL ACCESS TO JUSTICE ACT

32. The Equal Access to Justice Act, 28 U.S.C. § 2412, permits this Court to award attorney fees and costs to Mr. Lezama Garcia if he prevails because this action is a civil action brought against agency officials and an agency of the United States.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

WITHHOLDING OF REMOVAL

33. The allegations in the above paragraphs are realleged and incorporated herein.
34. In unlawfully detaining Mr. Lezama Garcia for removal, Respondents violate 8 U.S.C. § 1231(b)(3)(A) and 8 C.F.R. § 208.16, which prohibit Respondents from deporting people to places where their “life or freedom would be threatened.”
35. An immigration judge granted Mr. Lezama Garcia withholding of removal under 8 U.S.C. § 1231(b)(3)(A) on May 12, 2023, and ICE did not appeal the decision. Exhibit 1. Respondents released Mr. Lezama Garcia from their custody after the immigration judge granted withholding of removal. Respondents have no legal authority to re-detain or deport Mr. Lezama Garcia to Venezuela or any other country where his “life or freedom would be threatened.” His re-detention and imminent deportation violate the INA.

COUNT II

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

36. The allegations in the above paragraphs are realleged and incorporated herein.

37. Under the APA, reviewing courts must also “hold unlawful and set aside agency action” that is “arbitrary, capricious, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The applicable inquiry is whether the agency action was reasonable and reasonably explained. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 145 S. Ct. 1497, 1511 (2025) (deference is due to agency decisions only “so long as they fall within a broad zone of reasonableness”).

38. By detaining Mr. Lezama Garcia with no legal basis, Respondents have not acted reasonably. Their failure to give a lawful explanation of their decision to detain and deport him is also unreasonable. Mr. Lezama Garcia has been afforded no verbal or written explanation or notice as to a lawful basis of his detention or deportation. Respondents have not served him with any papers. ICE has only stated that they intend to remove him to Venezuela, in violation of the immigration judge’s order granting him withholding of removal. The decision to re-detain and deport him was arbitrary and capricious, in violation of the APA.

COUNT III

VIOLATION OF FIFTH AMENDMENT PROCEDURAL DUE PROCESS RIGHTS

39. The allegations in the above paragraphs are realleged and incorporated herein.

40. As the Supreme Court has made clear, the Fifth Amendment’s Due Process Clause “applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Procedural due process constrains government decisions that deprive individuals

of liberty interests within the meaning of the Due Process Clause. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “[A]t a minimum, the Due Process Clause requires notice and the opportunity to be heard incident to the deprivation of life, liberty or property at the hands of the government.” *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)). Mr. Lezama Garcia has a liberty interest in being at liberty and not deported. *Mejia Rodriguez v. Reno*, 178 F.3d 1139, 1146 (11th Cir. 1999) (citing *Bridges v. Wixon*, 326 U.S. 135, 154 (1945); *Kaoru Yamataya v. Fisher*, 189 U.S. 86 (1903); *Haitian Refugee Center v. Smith*, 676 F.2d 1023, 1037 n. 30 (5th Cir. 1982)).

41. Respondents provided no notice to Mr. Lezama Garcia that he would be re-detained and deported, much less a pre-deprivation opportunity to respond. This re-detention and deportation violate his Fifth Amendment right to procedural due process.
42. Immigration agencies must follow regulations designed to protect individuals’ liberty and property interests, and when they fail to do so, they violate procedural due process.
43. ICE’s unlawful arrest and detention of Mr. Lezama Garcia has deprived him of liberty without due process of law. There is no legal authority for his ongoing unlawful detention by Respondents, and he has not been given notice of a lawful reason for his re-detention or an opportunity to challenge the re-detention or his deportation. By re-detaining and deporting Mr. Lezama Garcia despite the protection he has been granted under 8 U.S.C. § 1231(b)(3)(A), Respondents violate Mr. Lezama Garcia’s due process rights.

COUNT IV

VIOLATION OF FIFTH AMENDMENT SUBSTANTIVE DUE PROCESS RIGHTS

44. The allegations in the above paragraphs are realleged and incorporated herein.
45. “[S]ubstantive due process’ prevents the government from engaging in conduct that ‘shocks the conscience,’ ... or interferes with rights ‘implicit in the concept of ordered liberty.’” *United States v. Salerno*, 481 U.S. 739, 746 (1987) (internal citations omitted). Constitutional substantive due process protections extend to noncitizens. *See Reno v. Flores*, 507 U.S. 292, 306 (1993). The re-detention of Mr. Lezama Garcia violates substantive due process because there is no legitimate purpose for his detention.
46. Because “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects,” *Zadvydas*, 533 U.S. at 690, the Constitution only permits civil detention when it serves a “legitimate nonpunitive objective,” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). Detention must always be reasonably related to that objective, and “where detention’s goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed.” *Zadvydas*, 533 U.S. at 690 (internal citations and quotations omitted). At that point, it simply becomes “the exercise of power without any reasonable justification,” violating the Fifth Amendment’s due process guarantee. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).
47. The re-detention of Mr. Lezama Garcia does not serve a “legitimate nonpunitive objective,” as he has been granted withholding of removal. There is no purpose for his

detention, let alone a “reasonable justification.” *Lewis*, 523 U.S. at 845. His re-detention by Respondents violates the Fifth Amendment’s due process guarantee.

PRAYER FOR RELIEF

WHEREFORE, Wilfredo Alberto Lezama Garcia respectfully requests that the Court:

1. Assume jurisdiction over this matter;
2. Stay his transfer to any place outside the Southern District of Florida pending the Court’s adjudication of this Petition;
3. Stay his removal from the United States pending the Court’s adjudication of this Petition;
4. Declare Mr. Lezama Garcia’s detention unlawful;
5. Enter an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within five days;
6. Grant Mr. Lezama Garcia a Writ of Habeas Corpus ordering Respondents to immediately release him;
7. Award Mr. Lezama Garcia reasonable costs and attorney’s fees; and
8. Grant any further relief this Court deems just and proper.

Dated: July 14, 2025

Respectfully submitted,

s/ Andrea Jacoski
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Wilfredo Alberto Lezama Garcia, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 14th day of July, 2025.

s/ Andrea Jacoski
Andrea Jacoski