UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 25-CV-23169-ALTMAN

WILFREDO ALBERTO LEZAMA GARCIA,

Petitioner,

v.

MIAMI FIELD OFFICE DIRECTOR
Immigration and Customs Enforcement, *et. al.*
Respondents.
____/

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE TO PETITIONER'S SECOND AMENDED PETITION FOR HABEAS CORPUS

Respondents[1], by and through the undersigned Assistant United States Attorney, hereby respond to the Court's Order to Show Cause [D.E. 32] and explain why the Court should deny Petitioner Wilfredo Alberto Lezama Garcia's Second Amended Petition for a Writ of Habeas Corpus [D.E. 27] ("Petition"), and dismiss this matter in its entirety.

I. FACTUAL[2] AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Venezuela. *See* D.E. 22-1, Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien, dated 12/07/2022 (2022 I-213). He entered the United States without inspection or parole on or about November 26, 2021. *See* D.E. 22-1, Exhibit A, 2022 I-213. Petitioner was initially encountered by U.S. Customs and Border Protection on November

---

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner has appeared to change the named respondents through his amendments but it is not clear on the docket. Since Petitioner is at Krome, the only proper respondent would be the custodian at Krome.

[2] Respondents direct the Court to exhibits filed with their October 2025 Response (*see* D.E. 22) and supplemental declarations (*see* D.E. 24).

26, 2021. *See* D.E. 22, Exhibit A, 2022 I-213. He was released from U.S. Immigration and Customs Enforcement ("ICE") custody on his own recognizance on December 15, 2021, following the issuance of a Notice to Appear (NTA) requiring him to appear before the Executive Office for Immigration Review (Immigration Court).[1] *See* D.E. 22-1, Exhibit A, 2022 I-213. On or about October 25, 2022, Petitioner was convicted in the United States District Court for the Western District of Oklahoma of Conspiracy to Commit Bank Theft, in violation of 18 U.S.C. § 371. *See* D.E. 22-2, Exhibit B, Judgment and Indictment for Conspiracy. Petitioner was sentenced to imprisonment for time served and ordered to pay restitution in the amount of $22,400.00. *See* D.E. 22-2, Exhibit B, Judgment and Indictment for Conspiracy; *see also* D.E. 22-1, Exhibit A, 2022 I-213. As a result of this conviction, on November 4, 2022, ICE detained the Petitioner, canceled the NTA, and notified Petitioner that it was seeking to remove him from the United States pursuant to INA § 238(b) (8 U.S.C. § 1228(b)). *See* D.E. 22-3, Exhibit C, Notice of Intent to Issue a Final Administrative Removal Order. *See also* D.E. 22-4, Exhibit D, Form I-213, Record of Deportable/Inadmissible Alien, dated 06/19/2025 (2025 I-213). Petitioner was charged with removability as an aggravated felon under INA § 237(a)(2)(A)(iii), (8 U.S.C. § 1227(a)(2)(A)(iii)). *See* D.E. 22-3, Exhibit C, Notice of Intent to Issue a Final Administrative Removal Order. Petitioner contested his deportability and requested withholding or deferral of removal to Venezuela. *See* D.E. 22-3, Exhibit C, Notice of Intent to Issue a Final Administrative Removal Order. ICE released the Petitioner on an Order of Supervision (OSUP). *See* D.E. 22-1, Exhibit A, 2022 I-213. On or about December 7, 2022, Petitioner was

as convicted of Driving Under the Influence – Impairment, in the County Court of St. Lucie County, Florida and sentenced to 12 months' probation. *See* Exhibit H, Judgment, DUI, dated 12/18/2024. Petitioner later violated the terms of his probation, sentenced to 10 days credit

time served, and ordered to serve the remainder of his 12-month probationary sentence. *See* Exhibit I, Judgment, Violation of Probation, dated 03/27/2025.

On June 18, 2025, ERO Miami encountered Petitioner at the Saint Lucie County Jail in Fort Pierce, Florida following his arrest for a probation violation. *See* Exhibit D, 2025 I-213; *see also* D.E. 16, Exhibit J, Declaration. ERO Miami lodged an Immigration Detainer - Notice of Action, Form I-247A. *See* D.E. 16, Exhibit J, Declaration. Petitioner was detained at the Florida Soft-sided Facility South also known as "TNT" or "Alligator Alcatraz," located in Ochopee, Florida from July 6, 2025, to July 16, 2025. *See* D.E. 16, Exhibit J, Declaration, ¶ 16. On July 16, 2025, Petitioner was transferred to Krome Service Processing Center ("Krome"), where he is currently detained. *See* D.E. 16, Exhibit J, Declaration, ¶ 17.

On July 16, 2025, ICE served upon Petitioner a Notice of Revocation of Release advising him that he would remain in ICE custody pursuant to 8 C.F.R. § 241.4. *See* D.E. 22-10, Exhibit J, Notice of Revocation of Release. On October 9, 2025, Petitioner was served with a "Decision to Continue Detention" advising him that ICE had reviewed his custody status and determined that he would continue to be detained pending removal. *See* D.E. 22-11, Exhibit K, Decision to Continue Detention, dated 10/09/2025.

Petitioner originally filed a petition for habeas corpus on July 16, 2025. D.E. 1. Petitioner then sought leave to file an amended petition, which was granted on August 25, 2025. D.E. 18. Petitioner filed his first amended petition on September 5, 2025 (D.E. 19), to which Respondents responded on October 14, 2025. D.E. 22. Petitioner then filed leave to file a second amended petition on January 13, 2025 (D.E. 25) which was granted. On February 5, 2026, the Court entered an order to show cause directing Respondents to respond as to why the Petition should not be granted. D.E. 32. Since even upon amendment, Petitioner fails to

establish entitlement to the relief requested, Respondents request the Court deny the Petition and dismiss the case entirely.

II. ARGUMENT

In his Petition filed on January 13, 2026, Petitioner challenges the constitutionality of his detention by Respondents and asks this Court to order his immediate release from ICE custody, order that he not be transferred to any place outside this District and further order that he not be removed from the United States pending the adjudication of his Petition. Specifically, Petitioner argues that ICE has no legal authority to re-detain and remove him to Venezuela or any other third country. Petitioner further argues that since ICE has not identified a third country to which he could be removed, his removal is not reasonably foreseeable and his detention is, therefore, unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Finally, Petitioner argues that he was denied due process under the Fifth Amendment because he was not provided an "informal interview" with "opportunity to respond to the reasons" for revocation of his OSUP.

As a threshold issue, this Court should dismiss the Petition for lack of subject matter jurisdiction under 8 U.S.C. § 1252 (g), because Petitioner's claims arise from Respondents' decision to execute Petitioner's removal order. Nonetheless, if assuming this Court has jurisdiction over Petitioner's claims, ICE's decision to re-detain and deport Petitioner is lawful under 8 U.S.C. § 1231. Furthermore, Petitioner's detention is not prolonged, and he cannot meet his burden of establishing that there is not a substantial likelihood of his removal in the reasonably foreseeable future pursuant to *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Accordingly, the Petition should be denied.

A. This Court lacks subject matter jurisdiction pursuant to 8 U.S.C. § 1252(g)

"Federal Courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Section 1252(g) of Title 8, United States Code provides that "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 ... execute removal orders against any alien*." 8 U.S.C.§ 1252(g) (emphasis added). The statutory provision plainly bars direct and indirect attacks on the execution of a removal order which is precisely the relief Petitioner requests here—that this Court stay his removal from the United States or to any place outside the Southern District of Florida. [ECF No. 19 at pg. 21]. Such direct attacks are barred under § 1252 (g) and clearly fall outside of this Court's jurisdiction. *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("the statute's words make that clear. One word in particular stands out: 'any.' Section 1252(g) bars review over 'any' challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders.").

Similarly, this Court is prohibited from reviewing ICE's decision to revoke Petitioner's OSUP. *See Westley v. Harper*, Case No. 25-229, 2025 WL 592788 (E.D. La. Feb. 24, 2025). In *Westley*, the district court dismissed an alien's habeas petition that challenged the alien's detention following the agency's allegedly unlawful revocation of supervised release. The court found it lacked subject matter jurisdiction over the alien's petition because the revocation of supervised release was part of ICE's effectuation of the plaintiff's removal and judicial review was, therefore, prohibited by 8 U.S.C. § 1252(g)). *Id.* at *5. Here, ICE revoked Petitioner's OSUP because he violated the conditions of supervision, and re-detained him in order to effectuate his removal from

the United States. ICE's actions were clearly lawful and undertaken for the purpose of executing the final order of removal pending against Petitioner. Therefore, this Court lacks jurisdiction to review ICE's decision to revoke Petitioner's OSUP and take him into custody pursuant to 8 U.S.C. § 1252(g), because those actions were taken for the purpose of executing the final order of removal pending against him.

B. Petitioner's continued detention pending removal is lawful under the Immigration and Nationality Act (INA)

Assuming this Court had jurisdiction to review Petitioner's claims, Petitioner's argument that his re-detention violates 8 U.S.C. § 1231 and is unconstitutional is without merit. First and foremost, Petitioner's detention is lawful. Petitioner was ordered removed pursuant to 8 U.S.C. § 1228(b), which is the statute governing expedited removal of aliens convicted of aggravated felonies and is subject to detention under 8 U.S.C. § 1231(a). More specifically, 8 U.S.C. § 1231(a) directs ICE to detain and remove an alien subject to a final order of removal within the 90-day removal period prescribed therein. *See* 8 U.S.C. § 1231(a)(1)(A). During the removal period, the Attorney General is required to detain the alien. 8 U.S.C. § 1231(a)(2)(A). "An alien ordered removed who is...removable under section... 8 U.S.C. §1227 (a)(2) [aggravated felon]... may be detained beyond the removal period" or released subject to supervision. 8 U.S.C. § 1231(a)(6).

The Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), that an alien subject to a final removal order may be detained for "a period reasonably necessary to secure removal." Such detention is "presumptively reasonable" for six months. *Id.* at 701. However, "[t]his 6–month presumption . . . does not mean that every alien not removed must be released after six months." *Id.* Rather, an alien, such as Petitioner, "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* "Therefore, 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." *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002). Where an alien cannot meet his burden of establishing that the evidence shows that there is not a substantial likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g., Oladokun v. U.S. Atty. Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012); *Akinwale*, 287 F.3d at 1052.

Relatedly, if an alien is granted withholding of removal, ICE may not remove the alien to the country designated in the removal order. *See* 8 U.S.C. § 1231(b)(3). Moreover, "withholding of removal is a form of 'country specific' relief" and "nothing prevents DHS 'from removing [the] alien to a third country other than the country to which removal has been withheld'", and a "grant" of withholding of removal is necessarily accompanied by a removal order. *Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (citations omitted) (alterations in original). Withholding of removal is, thus, not an entitlement to remain in the United States. *See id.* at 536 (distinguishing between asylum, which "permits an alien to remain in the United States," and withholding, which "only bars deporting an alien to a particular country or countries." (citation omitted)).

Here, Petitioner has been detained since July 6, 2025. To the extent that Petitioner argues that his prior detention should count toward the total time of detention for this *Zadvydas* analysis, courts have held that the six-month *Zadvydas* presumptively reasonable detention period restarts when a Petitioner is released for a lengthy period and then re-detained. *See Barrios v. Ripa,* Case No. 25-cv-22644-Gayles, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025) (rejecting petitioner's argument to count his detention in the aggregate based on prior detentions, noting that "any subsequent period of detention, even one day, would raise constitutional concerns" and "adjudicating the constitutionality of every re-detention would obstruct an

area that is in the discretion of the Attorney General-effectuating removals" citing to 8 U.S.C. § 1252(g)); *see also 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)(noting a "strong argument exists" the removal period did not begin until the petitioner, who had previously been in ICE custody before serving a prison sentence, was returned to ICE custody). Furthermore, Petitioner has failed to carry his burden to show that his removal is not reasonably foreseeable. His claim that the government has failed to identify a third country to which he could be removed is not a "good reason to believe that there is no significant likelihood of removal in the foreseeable future." *Akinwale,* 287 F.3d at 1052. Decision to Continue Detention, Petitioner's "Removal [is] Expected to be Effected within [the] Reasonabl[y] Foreseeable Future." *See* D.E. 22-11, Exhibit K, Decision to Continue Detention, dated 10/09/2025.[3] Therefore, Petitioner has failed to carry his burden to show that his removal is not reasonably foreseeable. Thus, he is not entitled to habeas relief, and the Petition must be dismissed.

C. Petitioner's detention does not violate the Administrative Procedure Act, (APA), or the Due Process Clause of the Fifth Amendment

Petitioner argues here that ICE has failed to provide him with an opportunity to challenge the reasons for his re-detention and deportation through an initial informal interview as required pursuant to 8 C.F.R. § 241.4(l), in violation of its own regulations, the APA, and the Due Process Clause of the Fifth Amendment. Here, Petitioner's OSUP was revoked pursuant to 8 C.F.R. § 241.4(l) because he violated the conditions of his release, by violating the terms of his state probation. He is being lawfully detained pursuant to 8 U.S.C. § 1231, because it is necessary to secure his removal. Assuming arguendo, this Court finds that Petitioner was entitled to an informal interview under § 241.4(l), Respondents maintain that such procedural error was harmless, and therefore, the remedy is not to release Petitioner, an alien convicted of serious

criminal offenses constituting aggravated felonies. *See Barrios*, 2025 WL 2280485, at *19-20 ("Even if Petitioner could establish that Respondents violated their OSUP revocation procedures, the Court finds that Petitioner's release from detention, or a stay of removal, would not be appropriate"). In sum, ICE's revocation of Petitioner's release was lawful and undertaken in accordance with 8 CFR § 241.4(l). Regardless, the Court does not have jurisdiction to review ICE's decision to revoke Petitioner's release and take him into custody because those actions were taken for the purpose of executing the final order of removal pending against him. Therefore, for the reasons explained herein, the Petition should be denied.

Dated: February 11, 2026

Respectfully submitted,

JASON A. REDING QUIÑONES
UNITED STATES ATTORNEY

By: ***Monica L. Haddad***
MONICA L. HADDAD
Assistant U.S. Attorney
Florida Bar No. 99426
Email: Monica.Haddad@usdoj.gov
U.S. Attorney's Office
Southern District of Florida
500 S. Australian Avenue, Suite 400
West Palm Beach, Florida 33401
Telephone: (561) 209-1004
Facsimile: (561) 820-8777

Attorney for Respondents