

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

Case No. 1:25-cv-23169-RKA

Wilfredo Alberto LEZAMA GARCIA,

Petitioner/Plaintiff,

v.

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


Respondents/Defendants.


PETITIONER'S REPLY TO RESPONDENT'S RESPONSE

INTRODUCTION

Petitioner Mr. Wilfredo Lezama Garcia, hereby replies to Respondent's response in opposition to Petitioner's second amended petition for writ of habeas corpus. Mr. Lezama Garcia's petition should be granted because ICE has failed to prove that there is a significant likelihood of removal in the reasonably foreseeable future; they have only proven they lack a plan.

FACTUAL BACKGROUND

Mr. Lezama Garcia was born in Caracas, Venezuela, fleeing the country after 

 See Ex. B at 10. He has requested removal documents from eight different safe third countries after an immigration judge granted him a withholding of removal on May 12, 2023. See Ex. B. He now challenges his unlawful detention and the unlawful *manner* in which ICE revoked his OSUP. Ex. 27. Mr. Lezama Garcia has shown his removal is not in the reasonably foreseeable future and ICE has zero evidence to show otherwise. They have

made no showing either that removal efforts are in progress or provided any assurances that that he will not be removed to a country that will in turn remove him to Venezuela, in violation of the immigration judge's order and international and domestic law, where he will be targeted and tortured. *See* DE 16, 22, 24-1, 24-2, and 33.

Since his re-detention and unlawful OSUP revocation on July 6, 2025, ICE first interviewed Mr. Lezama Garcia on August 19, 2025, for a Post-Order Custody Review pursuant to 8 C.F.R. § 241.4(1)(3). This is distinct from an informal OSUP revocation interview. Not once did ICE provide any progress or clarity about the foreseeability of removing Mr. Lezama Garcia to a safe third country. Nor did ICE provide any names of countries that they were considering for removal. Violating their own regulations, ICE did not "promptly" provide Mr. Lezama Garcia with the "opportunity to respond to the reasons" for his OSUP revocation. 8 C.F.R. § 241.13(i)(3). Rather, they waited more than three months to conduct Mr. Lezama Garcia's informal interview on November 4, 2025, violating 8 C.F.R. § 241.13(i)(3). During this interview, ICE informed undersigned counsel that they had no safe third country in mind. Still today, ICE has no plan and cannot identify a safe third country for removal. ICE conducted another interview of Mr. Lezama Garcia pursuant to Section 241.4(i)(3) on February 11, 2026, and still did not have a plan for removal. Mr. Lezama Garcia submitted an evidentiary package in favor of his release to ICE the following day, February 12, and have not heard back from ICE. Ex. F. ICE in their return to this petition also did not submit any evidence indicating they have a safe third country in mind. They have no plan and Mr. Lezama Garcia continues to languish in their custody.

PROCEDURAL HISTORY

Mr. Lezama Garcia filed this petition in the Southern District when he was at Krome Service Processing Center in Miami, following the Court's instructions. *See* DE 12. On September

5, 2025, Mr. Lezama Garcia amended his initial habeas petition. *See* DE 19. ICE submitted their response on October 10, 2025. *See* DE 21 and 22. Two weeks later, Mr. Lezama Garcia submitted his first reply to ICE’s response, on October 24, 2025. *See* DE 23. At no point in this litigation has ICE identified a potential safe third country for removal or articulated any plans for removal. Mr. Lezama Garcia filed his second amended petition for habeas corpus on January 13, 2026, after his unlawful detention exceeded the presumptively reasonable six-month mark. *See* DE 27. ICE submitted their response on February 11, 2026, alleging much of the same claims they did in their first response on October 10, 2025. *See* DE 33.

ARGUMENT

I. Mr. Lezama Garcia’s Detention is Unlawful Under *Zadvydas*.

Mr. Lezama Garcia’s re-detention since July 6, 2025, is unlawful because he has a withholding of removal order as to Venezuela issued by an immigration judge, ICE has no evidence showing plans to remove him to any safe third country, and even assuming they do identify a safe third country, he is entitled to defend against any country identified. Thus, there is no significant likelihood of his removal in the reasonably foreseeable future, and this petition should be granted.

ICE incorrectly argues that Mr. Lezama Garcia “has failed to carry his burden to show that his removal is not reasonably foreseeable.” DE 33 at 8. ICE also misses the mark arguing that Mr. Lezama Garcia’s prior detention should not count toward the total time of detention for current *Zadvydas* analysis, because “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.” *Id.* at 7. Both arguments fail. *See infra* at 4-7, 9-13. Mr. Lezama Garcia has been detained 3 years and 2 months in aggregate and has been illegally re-detained for about seven

months and three weeks. Ex. A; DE 27 at 15 (Petitioner's Second Amended Petition for Writ of Habeas Corpus and Complaint). This Court can grant his petition under either reading of *Zadvydas*.

To start, this petition could have been granted long ago as *Zadvydas* does not prohibit the filing of a habeas petition before 180 days; it merely provides a rebuttable "presumption" that 180 days of detention is reasonable. 533 U.S. 678, 701 (2001) (recognizing a "presumptively reasonable period of detention") (emphasis added). "[T]he *Zadvydas* presumption . . . is rebuttable. The presumption of reasonableness is the default, but if a person 'can prove' that his removal is not reasonably foreseeable, then he can overcome that presumption." *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *9 (D.N.J. June 24, 2025) (ordering the petitioner's release); *id.* at *6 ("In practical terms, before the six-month period elapses, the government bears no burden to justify detention, and the petitioner must claim and prove, that his removal is not reasonably foreseeable."); *see also Ali v. DHS*, 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, . . . and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits."). Mr. Lezama Garcia has indeed carried his burden, both before and after the 180-day period ran, by showing ICE has no plan for removal and no safe third country to send him to. *See* DE 23 at 12.

Now that Mr. Lezama Garcia has shown his removal is not reasonably likely, the burden shifts to ICE to provide actual evidence, not just "intentions," or "conclusory statements," that his removal is reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701-02 (rejecting the Fifth Circuit's holding that continued detention is lawful as long as "good faith efforts to effectuate . . . deportation continue" and instead requiring the Government respond with, "evidence sufficient to rebut [Petitioner's] showing."); *see Aguilar v. Noem*, 25-cv-03463NYW, 2025 WL 3514282, at *5 (D.

Colo. Dec. 8, 2025) (granting habeas petition where ICE made conclusory statements). ICE has no evidence to overcome Mr. Lezama Garcia's showing that his removal is not reasonably foreseeable.

a. ICE Presented No Evidence of a Plan for Removal; Showing Removal Is Not Reasonably Likely.

Mr. Lezama Garcia should be released from custody because his removal is not reasonably foreseeable and ICE has not overcome this showing. ICE has provided no evidence to this Court that there is a plan for removal and only argues that Mr. Lezama Garcia has not carried his burden. *See* DE 33 at 8. There is no evidence in their response. *See* DE 33.

But Mr. Lezama Garcia has carried his burden to show removal is not reasonably foreseeable by demonstrating: “1) he has now been detained over 180 days since his OSUP was revoked with no deportation in sight; 2) he has been granted withholding of removal to the one country that could be expected to accept him; 3) no other safe country has agreed to accept him or issued travel documents; 4) no alternate country has even been identified by ICE; 5) ICE has had since December of 2022, and at the latest May 12, 2023, to find an alternative safe country; 6) ICE officers re-detained him on the incorrect assumption that they could deport him to Venezuela; 7) there are no changed circumstances to support a determination that there is a significant likelihood that Mr. Lezama Garcia may be removed in the reasonably foreseeable future; and 8) if and when a proposed safe third country is identified, he is entitled to notice and an opportunity to defend himself against deportation to that third country.” DE 27 at 25.

Rather than rebut these eight, specific reasons why Mr. Lezama Garcia's removal is not reasonably foreseeable, as required by *Zadvydas*, ICE simply argues Mr. Lezama Garcia has not met his burden. *Compare Zadvydas*, 533 U.S. at 701, with DE 33 at 8. In doing so, ICE points to one conclusory sentence in the Notice of Revocation from October 9, 2025, nearly six months ago,

copied from their own regulations. DE 22, Ex. K. They cannot rely on a one-sentence copy-paste, restatement of the regulation to show removal is likely; this is not evidence of likelihood.

To be sure, this Court has denied habeas petitions where the petitioner failed to carry his burden to show removal was not reasonably foreseeable. *See Lambert v. Garland*, No. 22-23976-CIV-RKA, 2023 U.S. Dist. LEXIS 25909 (S.D. Fla. Feb. 15, 2023) (denying a habeas petition where petitioner's native country was accepting deportees and petitioner acted to obstruct his repatriation). But this case is different. Unlike *Lambert* where the petitioner refused to cooperate, Mr. Lezama Garcia has sought travel documents to eight countries. *Compare Lambert*, 2023 U.S. Dist. LEXIS 25909 at *8-*9, with DE 23 at 12. Unlike *Lambert* where Jamaica was "accepting individuals removed from the [U.S.] and flights are being regularly scheduled," Mr. Lezama Garcia has a withholding of removal order as to Venezuela. *Compare Lambert*, 2023 U.S. Dist. LEXIS 25909 at *8, with Ex. B. And unlike *Lambert* where petitioner prevented ICE's removal efforts, here, ICE has not made any effort to remove Mr. Lezama Garcia. *Compare Lambert*, 2023 U.S. Dist. LEXIS 25909 at *12-*13, with DE 23 at 12.

Instead, this case is identical to *Pierre v. Field Office Director*, where the court granted habeas relief ordering immediate release after 57 days in ICE custody, and found:

[T]he Court has provided the Government *eight* weeks from the date of Petitioner's December 3, 2025 re-detention to come up with a plan for Petitioner's removal, but the Government has failed to provide even the scantiest details about how, when, and to where Ms. Peirre will be deported. The sum total of the Government's representations at this point is that they "intend" to remove Ms. Pierre to Mexico, and that Mexico is accepting Haitian nationals without travel documents. No representation has been made that Mexico will accept Ms. Pierre specifically, who has a criminal history, no ties to Mexico, and does not speak Spanish. Nor the Government provided any time frame as to when that information could be obtained. The best the Government could come up with was a request to once again continue this case for 30 days, and let Ms. Pierre languish in detention, while the Government figures it out.

Pierre v. Field Office Director, No. 0:25-CV-62475-WPD (S.D. Fla. Jan 29, 2026) (Dimitrouleas, J.) (emphasis in original).

Here, ICE has had over seven months, not weeks, (and counting). *See* DE 27 at 15. ICE insists their “Decision to Continue Detention,” dated October 9, 2025, establishes a likelihood of removal. DE 33 at 8 (citing DE 22-11, Exhibit K). However, the quote they cite in their Response is nothing more than a copy paste of the regulation, concluding that ICE has determined there is a “significant likelihood of removal in the reasonably foreseeable future.” *Compare* DE 22-11, with 8 C.F.R. § 241.13 (“Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future”); *and* 8 C.F.R. § 241.4(i)(7) (“a detained alien is not significantly likely in the reasonably foreseeable future”). This “bare assertion[]” does not satisfy ICE's burden under *Zadyvdas* such that his removal can continue lawfully. *See Aguilar*, 2025 WL 3514282, at *5 (granting habeas petition where ICE made conclusory statements). Further, the Decision to Continue Detention – issued nearly six months ago – is not evidence of travel documents, a plan for removal, proof of communication with a safe third country, or any indicia that ICE has a plan in place to effectuate Mr. Lezama’s removal in the foreseeable future. *See Arach v. Baltazar*, 25-cv-03195-PAB, 2025 WL 3227529, at *4 (D. Colo. Nov. 19, 2025) (holding that “the government must make legitimate progress toward removal.”). As stated earlier, Mr. Lezama Garcia has successfully overcome the reasonableness presumption by showing his removal is not foreseeable, and ICE has not produced any evidence to the contrary.

Several habeas courts have addressed the issue of Third Country Removal in the context of persons on OSUP who have been previously granted protection under the Convention Against Torture or the Immigration and Nationality Act, finding no significant likelihood of removal in the reasonably foreseeable future because of how rare it is to remove people granted such relief. *See*

e.g., *Munoz-Saucedo*, 2025 WL 1750346 at *1 (granting habeas relief where petitioner had been granted withholding of removal to his home country and the Government had not “not identified any potential countries during his supervised release or re-detention”); *Ndandu v. Noem*, No. 3:25-CV-02939-RBM-MSB, 2026 WL 25848, at *5 (S.D. Cal. Jan. 5, 2026) (granting habeas relief where DHS could not identify a third country for removal after one month, and finding the six month presumption in *Zadvydas* rebuttable); *Garcia-Aleman v. Bondi, et. al*, No. SA-25-CV 886-OLG (HJB), 2025 WL 3534806, at *3 (W.D. Tex. Nov. 24, 2025), *report and recommendation adopted sub nom* No. SA-25-CV-00886-OLG, 2025 WL 3532179 (W.D. Tex. Dec. 9, 2025) (ordering immediate release after OSUP revocation for withholding grant where ICE failed to demonstrate any potential third country is likely to accept for removal); *Medellin Martinez v. Bondi*, No. SA:25-CV-1319-OLG, at 5 (W.D. Tex. Nov. 21, 2025) (“[E]ven if ICE had outstanding requests with such countries, which they do not, that fact alone would be insufficient to show that his removal is likely to occur in the reasonably foreseeable future.”); *see Pierre*, No. 0:25-CV-62475-WPD at *12 (granting habeas relief 57 days after re-detention finding deportation was not reasonably foreseeable to a third country.). Here, Mr. Lezama Garcia has shown that his removal is not reasonably foreseeable, and ICE has failed to produce any evidence to show otherwise. His petition should be granted.

b. The Presumptively Reasonable Post Order Removal Period Has Passed and Under Any Calculation, His Unlawful Detention Must End.

ICE confuses Mr. Lezama’s removal period calculation and when a person like Mr. Lezama Garcia can challenge unconstitutional detention. Nothing in *Zadvydas* prohibits a person from challenging their detention as unconstitutional before the six-month mark. *Zadvydas*, at 689. ICE’s position otherwise “[allows] ‘gamesmanship’ by [ICE] ‘picking third country after third country’” until they finally find a country to accept a person like Mr. Lezama Garcia, no matter how long it

takes. *See Constant v. Perry, et al.*, No. 1:25-cv-01916-RDA-WEF, at *4 (E.D. Va. Oct 31, 2025). Although this Court could have ordered release prior to the 6-month mark, his release is now also appropriate under either of ICE's calculations about the presumptive time period.

To start, once a petitioner receives a final removal order, ICE has 90 days to remove them. 8 U.S.C. § 1231(a)(1)(A). As ICE points out, Section 1231(a)(6) allows ICE to detain an individual "beyond" this period, but the Supreme Court in *Zadvydas* read an implicit Constitutional limitation into the statute, finding that an individual may only be detained for a period of time "reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. This calculation included an additional 90 days, equating to six months total. *Id.* at 701. Under Section 1231, the six-month post order removal period, not periods, begins on the latest of three 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; or (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." 8 U.S.C. § 1231(a)(1)(B). ICE ignores that the Eleventh Circuit clarified "*removal period*" not "*periods*" when discussing the post-order removal period and that the period does not restart. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002). There is only one post order removal period. *Id.* at 1052 n.3 ("[t]he Supreme Court's stated rationale for establishing a presumptively reasonable '6-month period' for detention pending removal supports our conclusion that this period commences at the beginning of the removal period.").

It has been three years and two months since Mr. Lezama Garcia's removal order became administratively final on December 12, 2022, and two years and nine months since he was granted withholding of removal from Venezuela on May 12, 2023. *See Ex. A, B.* He was well past the six-month mark prior to his re-detention in July of 2025. Mr. Lezama Garcia's order of removal

became administratively final on December 12, 2022, and an immigration judge granted Mr. Lezama Garcia withholding of removal under 8 U.S.C. § 1231(b)(3) on May 12, 2023. *See* Ex. A, B. Only the first clause under 8 U.S.C. § 1231(a)(1)(B) applies to him, as his “removal order” was never “judicially reviewed” and was final as of December 12, 2022. *See* DE 24-1, 24-2; Ex. B. Under the plain reading of the statute, Mr. Lezama Garcia’s removal period started on December 12, 2022. Even assuming ICE wanted to wait to seek travel documents until his immigration court case concluded, ICE released Mr. Lezama Garcia from their custody in May of 2023 and did not appeal the decision of the immigration judge. Notably, ICE could have attempted to seek travel documents while he reported on his OSUP. *See Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025) (granting release where petitioner was never detained in ICE custody prior to OSUP revocation and noting “some if not most of those arrangements, such as securing approval from a foreign country to remove an individual to that nation, *can likely be pursued even while the noncitizen is on release*”) (emphasis added).

ICE incorrectly claims that the six-month *Zadvydas* presumptively reasonable detention period resets when a Petitioner is released for a lengthy period and then re-detained. *See* DE 33 at 7; *contra Diallo v. Joyce*, No. 25- CV-9909 (AS), 2025 WL 3718477, at *2 (S.D.N.Y. Dec. 23, 2025) (“[Section 1231(a)(6) isn’t a free-roaming right to arrest and detain people any time it sees fit, even a decade after the fact.”). This is incorrect. *See Lozaro Beltran, v. Ripa*, No. 2:25-CV-01174-SPC-NPM, 2026 WL 21252, at *2 (M.D. Fla. Jan. 5, 2026) (finding no restarting of the removal period because “[it] would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months”). Even following ICE’s wish to restart the six-month clock, more than seven months have passed since ICE re-detained him on July 6, 2025. At no point since Mr. Lezama Garcia’s re-detention has ICE shown

that removal is likely. Although this Court could have adjudicated his petition before the 180-day presumptively reasonable period, Mr. Lezama Garcia has now even exceeded that period such that habeas relief is appropriate now.

c. Mr. Lezama Garcia Has the Right to Contest Any Identified Country and Express Fear Before an Immigration Judge

ICE is unable to deport Mr. Lezama Garcia to a safe third country in the reasonably foreseeable future. ICE has no plan to do so. However, Mr. Lezama Garcia fears ICE will unlawfully deport him to a third country that is *not* safe under a procedurally inadequate process. *See* Ex. E (DHS Memo). Absent intervention from this Court, ICE may remove him to a country where he fears persecution without notice and hearing. *See Id.* ICE may also remove Mr. Lezama Garcia to a country that will in turn remove him to Venezuela. *See Id.*

ICE operates under guidance from a DHS Memo issued March 30, 2025, which permits removal of individuals to a third country “without the need for further assurances,” so long as the U.S. government “believes those assurances to be credible.” *Id.* These diplomatic assurances are wholly inadequate. ICE is removing people to countries where they will be detained and imprisoned or disappeared. *See Thach Wana v. Bondi*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *6 (W.D. Wash. Dec. 15, 2025) (“[finding] that the government is intentionally removing noncitizens to countries with which they have no connection, often in contravention of the governing statute and regulations, and knowing that they will be subject to imprisonment or other punishment.”). ICE is deporting people to a third country—a country never designated or identified for removal by an immigration judge—without notice or opportunity to contest removal based on a fear of persecution, torture, or even death in that country. *See DHS v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025) (Sotomayor, J., dissenting). Only an immigration judge’s order could adequately prevent against dangerous third country removals.

Further, the so-called diplomatic assurances do not require confirmation from the receiving country that the individual will not be removed to a country where they fear persecution or torture, essentially sanctioning layovers for removals in contravention of immigration judges' orders. *See* Ex. E. In some instances, individuals are removed to countries that intend to repatriate them to countries in violation of U.S. immigration judge orders. *See D.V.D.*, 145 S. Ct. at 2153 (Sotomayor, J., dissenting) (explaining that “[ICE] wrongfully deported one plaintiff to Guatemala, even though an Immigration Judge found he was likely to face torture there. Then, in clear violation of a court order, it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel. An attentive District Court’s timely intervention only narrowly prevented a third set of unlawful removals to Libya.”). Under the Memo, should ICE designate a third country for removal, which they do not appear to be doing in this case, Mr. Lezama Garcia faces removal to a third country with no meaningful opportunity to challenge that decision or reach a judge. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 737 (W.D. Wash. 2025); *see* Ex. E. Where an individual expresses fear of removal to the third country, the Memo does not lead to review of that claim before an immigration judge. Instead, the Memo states ICE should refer the person to U.S. Citizenship and Immigration Services for screening. Ex. E at 2. To even access the U.S.C.I.S. fear screening process, the individual must affirmatively express a fear of return. The Memo prohibits immigration officers from asking individuals if they fear removal to the designated third country. Ex. E at 2 (“Immigration officers will not affirmatively ask whether the alien is afraid of being removed to that country” because “[it] is not unreasonable for an alien in that circumstance to be expected to affirmatively express a fear of persecution or torture.”). Neither the diplomatic assurances procedure nor the U.S.C.I.S. referral procedure comport with statutory and regulatory protections for people who have a fear of return or procedural due process. Mr. Lezama Garcia is

at grave risk of being deported to a country that is not safe. Nothing in ICE's brief allays these fears.

II. ICE's Violated Its Own Implementing Regulations Such that His Revocation Violated His Due Process Rights and His Re-Detention is Unlawful.

In its reply, ICE concedes that Mr. Lezama Garcia did not receive the required interview but argues the error was harmless and that Mr. Lezama Garcia's requested remedy is inappropriate, without more. *See* DE 33 at 8-9. Government agencies should not be allowed to sidestep their constitutional and regulatory obligations and masquerade them as "harmless error." *See Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) ("[T]he detainees are entitled to notice and opportunity to be heard appropriate to the nature of the case."). ICE's categorization of their failure to follow their own regulations as "harmless" is an attempt to skirt accountability. DE 33 at 8; *see also* DE 22 at 9, n.4 (Return of Amended Petition) (dated Oct. 10, 2025) ("However, upon further review, it appears Petitioner was not afforded an informal interview. Respondents intend to file a supplemental declaration(s) at a later date for further clarification on this point."). The agency is unequivocally subject to its own regulatory and constitutional constraints. *See Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089 (W.D. Tex. Oct. 22, 2025) (finding ICE violated their own regulations where OSUP revocation letter merely contained cursory and conclusory language); *see also Roble v. Bondi*, 803 F.Supp.3d 766, 771-72 (finding a generalized written notice insufficient for purposes of § 241.13(i)(3), and "parroting the regulatory text" is unacceptable).

Habeas relief is appropriate when executive agencies, even ICE, violate their own regulations. *See Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *27 (S.D. Fla. Sep. 9, 2025) (Ruiz, J.) (holding that the failure to provide an informal interview promptly after petitioner's detention violates both ICE's own regulations and the Fifth Amendment Due Process

Clause). The opportunity to contest detention through an informal interview under 8 C.F.R. § 241.4(l)(3) is not some “ticky-tacky procedural requirement;” it “strikes at the heart of what due process demands.” *Id.* at *26.

ICE violated Mr. Lezama Garcia’s due process rights and their own regulations by failing to provide notice and an opportunity to challenge the reasons for his re-detention, as required by federal regulation. 8 C.F.R. § 241.4(l) (“Upon revocation, the alien will be notified for the reasons for revocation.”); *id.* (ICE must provide an informal interview “promptly after his or her return to Service custody.”); *see also M.S.L., v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (stating that two days “cannot reasonably be construed as ‘prompt’” and crediting the Respondents for not even “attempt[ing] to argue that.”).

Mr. Lezama Garcia need not show prejudice because 8 C.F.R. § 241.4(l) confers a “procedural benefit[] . . . in the face of otherwise unfettered discretion” by giving him the opportunity to be heard and to challenge the revocation of his OSUP. *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 538 (1970). Notice and an opportunity to be heard is a foundational constitutional principle within the OSUP revocation regulation. 8 C.F.R. § 241.4(l). “Due process and the rule of law require more than a ‘detain now, figure it out later’ approach.” *Albolhassan Hassanzadeh v. Warden*, No. ED CV 25-2113-DMG (MAX), 2025 WL 3306272, at *5 (C.D. Cal. Nov. 25, 2025) (ordering immediate release and return to previous OSUP terms after ICE did not engage in the informal interview shortly after apprehension).

In any event, Mr. Lezama Garcia can establish prejudice. *See Zadori v. Noem*, No. 5:25-CV-02832-MRA-DFM, 2025 WL 3724456 at *4 (C.D. Cal. Nov. 19, 2025) (affirming persuasive decisions that hold “when ICE fails to follow its own regulations in revoking release, the detention is unlawful, and the petitioner's release must be ordered.”). If ICE had interviewed Mr. Lezama

Garcia, he would have notified ICE that he had been granted withholding of removal. Because ICE told Mr. Lezama Garcia they intended to send him to Venezuela, ICE would likely have released him. *See* DE 27. Mr. Lezama Garcia would also have informed ICE he could not be deported to Mexico. *See* Ex. B at 10. Accordingly, ICE violated his procedural due process rights in abdicating their regulatory requirements, and he suffered prejudice as a result.

III. This Court Has Subject Matter Jurisdiction Over Mr. Lezama Garcia's Claims.

ICE claims that all of Mr. Lezama Garcia's claims "arise from Respondents' decision to execute [his] removal order." DE 33 at 4. However, Mr. Lezama Garcia does not challenge that ICE can effectuate a removal order. DE 27. He challenges "the manner in which ICE executes the removal order," and whether ICE "complied with their own OSUP revocation procedures." *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 151 (W.D.N.Y. 2025); *see Barrios v. Ripa*, No. 25-cv-22644-DPG, 2025 WL 2280485, at *9 (S.D. Fla. Aug. 8, 2025); *see also Grigorian*, 2025 WL 2604573, at *4 (Section 1252(g) left intact the Court's authority to review whether ICE followed required procedures in revoking an order of supervision). ICE misunderstands the distinction.

First, ICE cites *Barrios v. Ripa*, which supports jurisdiction over this challenge. *See* DE 33 at 7. The *Barrios* Court found jurisdiction "to adjudicate whether Respondents complied with their own OSUP revocation procedures." *Barrios*, 2025 WL 2280485, at *9. The *Barrios* decision is consistent with other courts that also "distinguished between challenges to ICE's *discretion* to execute a removal order, which are barred [under 1252(g)], and challenges to the *manner* in which ICE executes the removal order, which are not." *Ceesay*, 781 F. Supp. 3d at 151 (citing *Torres-Jurado v. Biden*, 2023 WL 7130898 (S.D.N.Y. Oct. 29, 2023) at *2 (collecting cases)) (emphasis added); *see also Zavvar*, 2025 WL 2592543, at *3 (finding jurisdiction because the habeas petition "d[id] not seek a stay [...] removal but rather challenge[d] the legality of

Zavvar’s detention pending the execution of his removal order.”); *see also Villanueva v. Tate*, 801 F.Supp.3d 689, 698 (S.D. Tex. 2025) (same).

As in *Ceesay* and *Zavvar*, Mr. Lezama Garcia does not challenge the legality of his removal order, or ICE’s authority to execute it. Rather, he challenges his re-detention, arguing his detention is “unlawful because the government improperly revoked the [OSUP] under which [he] had been released.” *Ceesay*, 781 F. Supp. 3d at 153-54; *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7, 9 (S.D.N.Y. Aug. 26, 2025) (collecting cases) (finding, in part, ICE violated due process clause in failing to follow its own OSUP revocation procedures); *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at *7 (W.D. Ky. Sept. 4, 2025) (finding ICE's failure to follow their own regulations violates the *Accardi* doctrine and procedural due process rights); *K.E.O.* at *7 (“The Court acknowledges that the [U.S.] has broad discretion to enforce immigration laws and, possibly, to revoke Petitioner's [OSUP]. But it must follow the law and give every word in the applicable statutes and regulations their full meaning.”). ICE argues they re-detained Mr. Lezama Garcia to effectuate removal, but this does not forgive their regulatory violation or allow them to evade a reviewing court when they break the law. *See* 8 C.F.R. § 241.4; DE 33 at 5-6.

ICE argues Mr. Lezama Garcia’s challenge to his OSUP revocation is barred. *See* DE 33 at 5. This is incorrect. ICE relies upon an extremely broad interpretation of 8 U.S.C. § 1252(g) that the Supreme Court, and district courts around the country, have rejected. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 492 (1999) (interpreting the jurisdictional bar as applying narrowly to only the three distinct actions listed in the statute: (1) commencing proceedings; (2) adjudicating cases; and (3) executing removal orders). The statute does not cover every action that may occur in the deportation process, including OSUP revocation. It is well established in the Eleventh Circuit that 1252(g) “does not cover all claims arising from deportation

proceedings or impose a general jurisdictional limitation.” *See, e.g., Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020) (assuming jurisdiction over a Fifth Amendment claim); *see also Madu v. Att’y Gen.*, 470 F.3d 1362, 1367-68 (11th Cir. 2006).

Camarena also does not support ICE’s argument. DE 33 at 5 (citing *Camarena v. ICE Director*, 988 F.3d 1268 (11th Cir. 2021)). There, the plaintiffs sought to enjoin their removal orders while they sought discretionary relief. *Id.* at 1270. The Eleventh Circuit held that the claims fell within § 1252(g)’s bar because they challenged the “execution” of a removal order. *Id.* at 1272-73. By contrast, as discussed *supra*, Mr. Lezama Garcia does not seek to enjoin the execution of his order. He challenges ICE’s procedural defects in revoking his OSUP, actions outside § 1252(g).

Courts, including the Supreme Court, routinely assert jurisdiction over regulatory and constitutional claims in habeas cases. *See Zadvydas*, 533 U.S. at 687-88 (jurisdictional bars do not preclude review of constitutional claims, including those challenging the legality of detention on substantive due process grounds); *see also D.V.D.*, 145 S. Ct. at 2153 (2025) (addressing irreparable harm in a habeas challenge to removal and assuming jurisdiction); *see also Barrios*, 2025 WL 2280485, at *12 (“It is undisputed that the Court has jurisdiction to adjudicate statutory and constitutional challenges to post-removal-period detention.”) (internal quotations omitted).

Finally, this Court has the authority to order Mr. Lezama Garcia stay within this district, especially to ensure that he is available for a hearing. *See Johnson v. Eisentrager*, 339 U.S. 763, 778 (1950) (“A basic consideration in habeas corpus practice is that the prisoner will be produced before the court. This is the crux of the statutory scheme established by the Congress.”). The All-Writs Act confers broad power to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). Transferring him would prevent him appearing as a witness and would preclude his access to counsel. Transfer

would also prevent ICE from conducting interviews and signing documents to comply with any removal efforts, which they have not done for over seven months. Prohibiting his transfer benefits Mr. Lezama Garcia, ICE and this litigation.

Dated: February 27, 2026

Respectfully submitted,

s/ Andrea Jacoski
Andrea Jacoski, Fla. Bar No. 1059001
ajacoski@law.miami.edu

Rebecca Sharpless, Fla. Bar No. 0131024
rsharpless@law.miami.edu

Immigration Clinic
University of Miami School of Law
1311 Miller Drive, B400
Coral Gables, FL 33146
Phone: 305-284-3576
Fax: 305-284-6093

Attorneys for Petitioner

*Law students Joseph Korzeb and Carlos Jose Santiago contributed to the drafting of this pleading.

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 Reply to Respondent's Response are true and correct to the best of my knowledge.

Dated this 27th day of February 2026.

s/ Andrea Jacoski

Andrea Jacoski

Attorney for Petitioner