UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ERNEST JOSEPH, Plaintiff-Petitioner, v. **SCOTTY RHODEN**, **GARRETT J. RIPA**, **TODD LYONS**, **KRISTI NOEM**, and **PAMELA BONDI**, Defendants-Respondents.	Civil No. 3:25-cv-01579-MMH-PDB

REPLY IN SUPPORT OF HABEAS PETITION

COMES NOW Plaintiff-Petitioner Ernest Joseph ("Plaintiff-Petitioner"), in accordance with Local Rule 3.01(c) and this Court's Order (Dkt. No. 5), who respectfully files this Reply in support of his Petition for Writ of Habeas Corpus, and respectfully states as follows:

INTRODUCTION

Over fourteen (14) years ago, the Northern District of Florida found legally insufficient speculative, conclusory, and unsupported assurances by DHS that removal was reasonably foreseeable and provided habeas relief. *See Ernest Joseph v. Attorney General, et al.*, No. 4:11-cv-525 (N.D. Fla.) Nothing has changed. DHS similarly makes speculative, conclusory, and unsupported representations that Plaintiff-Petitioner is significantly likely to be removed in

the reasonably foreseeable future absent any concrete, actionable, real, or *bona fide* progress in effectuating removal. *See, e.g.*, Declaration of Milciades Amparo, Jr. (Dkt. No. 7-3) at ¶ 7 ("ICE intends to remove petitioner to Mexico . . . ."). Additionally, DHS relies on *post hoc* rationalizations; paperwork generated over three (3) weeks after re-detention (just days before its response deadline); vague references to potential third-country removal to Mexico; and conclusory declarations that omit the most basic facts required under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Because DHS has not and cannot demonstrate a significant likelihood of removal in the reasonably foreseeable future, continued detention of Plaintiff-Petitioner is unlawful under Section 1231(a)(6).[1] The Court may—and should—resolve this case on that basis alone. Indeed, very recent authority from this District confirms that re-detention does not reset the removal clock and that similarly vague references to third-country removal—particularly Mexico—do not satisfy the Government's burden. See *Beltran v. Ripa*, No. 2:25-cv-01174-SPC-NPM, 2026 U.S. Dist. LEXIS 273, at *3–4 (M.D. Fla. Jan. 5, 2026) (copy filed herewith as Exhibit B).[2]

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[1] For sake of brevity, references to the legal standard, i.e., Significant Likelihood of Removal in the Reasonably Foreseeable Future, will be abbreviated as "SLRRFF" herein.

[2] Alternatively, failure by DHS to comply with mandatory regulatory revocation procedures in connection with Orders of Supervision and its unlawful pursuit of third-

DISCUSSION

A. This Court Has Jurisdiction to Review Unlawful Post-Order Detention, Re-Detention and OSUP Revocation.

Federal courts have long exercised habeas jurisdiction under 28 U.S.C. § 2241 to review the legality of immigration detention, including post-order detention under Section 1231(a)(6), re-detention following release, and compliance with the regulations governing Orders of Supervision. *See Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Jennings v. Rodriguez*, 583 U.S. 131, 142–43 (2018); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–67 (11th Cir. 2006); *Grigorian v. Bondi*, 2025 U.S. Dist. LEXIS 175489, at *10–13 (S.D. Fla. Sept. 9, 2025); *Barrios v. Ripa*, 2025 U.S. Dist. LEXIS 153228, at *17–22 (S.D. Fla. Aug. 8, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 159–66 (W.D.N.Y. 2025); *Escalante v. Noem*, 2025 U.S. Dist. LEXIS 148899, at *9–11 (D. Ariz. Aug. 7, 2025); *Roble v. Bondi*, 2025 U.S. Dist. LEXIS 164108, at *6–9 (D. Minn. Aug. 25, 2025); *Tadros v. Noem*, 2025 U.S. Dist. LEXIS 113198, at *10–14 (D.N.J. June 12, 2025).

Sections 1252(b)(9) and 1252(g) do not strip jurisdiction over this action. These provisions merely bar judicial review of certain decisions or actions taken to commence proceedings, adjudicate cases, or execute removal orders.

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country removal provide independent grounds for relief. But the lack of SLRRFF is dispositive and offers the Court a clear, narrow, and sufficient basis to grant the writ.

See 8 U.S.C. §§ 1252(b)(9) & 1252(g). These provisions do not bar judicial challenges to unlawful detention distinct and not involving any review of removal order merits.

The Supreme Court has repeatedly rejected efforts to read Section 1252(b)(9) as a "zipper clause" that sweeps all immigration-related claims into the exclusive review of courts of appeals. *See Jennings v. Rodriguez*, 583 U.S. 131, 142–43 (2018) (holding Section 1252(b)(9) "does not present a jurisdictional bar" to challenges to detention); *see also INS v. St. Cyr*, 533 U.S. 289, 314 (2001) (same). Additionally, Section 1252(g) is narrowly construed to apply only to three discrete actions: (1) commencement of removal proceedings; (2) adjudication of removal proceedings; or (3) execution of removal orders. *See Reno v. American-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 482 (1999).

The claims at issue herein do not fall within any of these categories. Plaintiff-Petitioner does not challenge the validity of his removal order, the commencement of proceedings, or the Attorney General's discretionary decision to execute removal. He challenges continued immigration detention absent any realistic prospect of removal.

The Supreme Court and Eleventh Circuit have uniformly held unlawful immigration detention claims to be cognizable in habeas notwithstanding Sections 1252(b)(9) and 1252(g). *See Zadvydas*, 533 U.S. at 687–88; *Jennings*,

583 U.S. at 142–43; *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–67 (11th Cir. 2006); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1216–17 (11th Cir. 2016), *vacated as moot*, 890 F.3d 952 (11th Cir. 2018).

Indeed, a Court within this District recently rejected the same jurisdictional arguments DHS advances here in an eerily similar habeas proceeding. In *Beltran*, the Court exercised habeas jurisdiction over a challenge to post-order re-detention under Section 1231(a)(6), notwithstanding the Government's invocation of Sections 1252(b)(9) and 1252(g). *See Beltran*, 2026 U.S. Dist. LEXIS 273, at *3–4. Judge Chappell held that where a petitioner challenges continued detention divorced from any realistic prospect of removal, jurisdiction under Section 2241 is proper. *Id.* at *4 ("The INA does not strip the Court of jurisdiction over this action."). As in *Beltran*, Plaintiff-Petitioner herein challenges the legality of continued detention absent SLRRFF and failure by DHS to comply with regulatory requirements governing OSUP revocation. Those claims fall squarely within a permissible scope of habeas review.

Federal courts also retain jurisdiction to review whether DHS has complied with statutory and regulatory constraints on detention authority. *Zadvydas*, 533 U.S. at 688; *Jennings*, 583 U.S. at 142–43. And District Courts consistently recognize their jurisdiction to review claims that DHS failed to comply with 8 C.F.R. §§ 241.4 and 241.13 when revoking an Order of

Supervision. *See, e.g., Barrios*, 2025 U.S. Dist. LEXIS 153228, at *17–22); *Ceesay*, 781 F. Supp. 3d at 159–66; *Makuey*, 2025 U.S. Dist. LEXIS 259981, at *31–33. Moreover, it is axiomatic that under the longstanding *Accardi* doctrine, federal agencies are bound to follow their own regulations, and that District Courts have jurisdiction to enforce that obligation where liberty is at stake. *See Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954).

For these reasons, the jurisdictional challenges proffered by DHS not only lack merit but also strain credulity and candor.

B. DHS Has Not Demonstrated A Significant Likelihood Of Removal In The Reasonably Foreseeable Future.

The dispositive issue in this case is whether DHS has met its burden of demonstrating SLRRFF. It has not.

Under *Zadvydas*, once a noncitizen detained under 8 U.S.C. § 1231(a)(6) provides good reason to believe that removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *See Zadvydas*, 533 U.S. at 701. In this analysis, conclusory assurances, speculation, or generalized statements about diplomatic efforts are insufficient. *Id.* at 690–91. The exacting legal standard of SLRRFF safeguard unlawful deprivation of liberty. Detention that is no longer reasonably related to the purpose of effectuating removal violates due process and exceeds statutory authority. *Id.* at 690. For this reason, DHS

must demonstrate SLRRFF based upon more than mere speculative, conclusory, and unsupported assurances. But that is all DHS offers here and in this context.

1. Re-Detention Does Not Reset Zadvydas framework.

Parenthetically, it is well-established that re-detention does not trigger a new presumptively reasonable period of detention; this argument is foreclosed by overwhelming authority. *See Siguenza v. Moniz*, 2025 U.S. Dist. LEXIS 188746, at *7–*9 (D. Mass. Sept. 25, 2025) (collecting cases); *Sied v. Nielsen*, 2018 U.S. Dist. LEXIS 66374, at *16 (D. Mass. Apr. 19, 2018) ("Several courts have held that the six-month period does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-detains him again."); *Makuey*, 2025 U.S. Dist. LEXIS 259981, at *31–33. This District recently reaffirmed—days ago—this same principle in *Beltran*, holding that DHS must demonstrate SLRRFF at the outset of re-detention. *See Beltran*, 2026 U.S. Dist. LEXIS 273, at *5-6 (*citing Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002)).

2. Speculative, Aspirational, Indefinite, Or Conditional Removal Plans Are Insufficient For SLRRFF.

The only evidence attempting to demonstrate SLRRFF offered by DHS in this action is the conclusory statement: "ICE intends to remove petitioner to Mexico . . . ."). *See* Declaration of Milciades Amparo, Jr. (Dkt. No. 7-3) at ¶

7. ("ICE intends to remove petitioner to Mexico . . . ."). Yet the authority averred by DHS to remove Plaintiff-Petitioner to Mexico—aside from being unlawful as detailed *infra* at D—is not unconditional or unqualified. As Deportation Officer Amparo explains, upon transfer to an ICE field office "along the southwest border that processes third-country removals to Mexico . . . receiving ERO field office will then notify Mexico's Instituto Nacional de Magracion (INM) of the petitioner's upcoming removal to Mexico . . . [f]ollowing INM's final acceptance . . . ." Plaintiff-Petitioner will be processed for removal to Mexico. *Id.* at ¶¶ 8-11.

The uncertainty that precludes any finding of SLRRFF here is the open question whether INM will provide "final acceptance" of Plaintiff-Petitioner for removal to Mexico. *Id.* at ¶ 11. This is logically indistinguishable from attempts by DHS to remove Plaintiff-Petitioner to Haiti already found to be legally insufficient in the context of prior habeas litigation. *See Ernest Joseph v. Attorney General, et al.*, No. 4:11-cv-525 (N.D. Fla.). In that action, DHS presented no confirmation by Haiti that it would accept Plaintiff-Petitioner for removal; accordingly, the detention at issue was found to be violative of Section 1231(a)(6) warranting habeas relief.

At this juncture, DHS appears to have abandoned Haiti for the even more problematic option of Mexico. Yet the prospect of removal to Mexico is equally uncertain to occur (and certainly not significantly likely to occur in the

reasonably foreseeable future). No acceptance, agreement to accept, travel document, flight manifest, or other mechanism supports the assertion by DHS there is any SLRRFF related Plaintiff-Petitioner. This is insufficient. *See Makuey*, 2025 U.S. Dist. LEXIS 259981, at *31–33 (rejecting reliance on speculative third-country removal); *Siguenza*, 2025 U.S. Dist. LEXIS 188746, at *8–9 (same); *Beltran*, 2026 U.S. Dist. LEXIS 273, at *6 ("respondents offer no evidence to suggest removal to Mexico or any other country is more likely now than it was in 2013 . . . [finding] no significant likelihood [of removal] in the reasonably foreseeable future" and granting habeas and ordering release from detention).

Under *Zadvydas*, once a noncitizen makes a showing that removal is not significantly likely in the reasonably foreseeable future, the burden shifts to DHS to rebut that showing with concrete evidence. *Id.* at 701. Such evidence must be individualized, reliable, and grounded in reality and not merely based upon intent, hope, speculation, priorities, or possibilities. *See Sied*, 2018 U.S. Dist. LEXIS 66374, at *14–16; *Siguenza*, 2025 U.S. Dist. LEXIS 188746, at *7–9 (collecting cases). But that is all DHS offers here.

In addition to noting the contingency or condition of INM will provide "final acceptance" of Plaintiff-Petitioner for removal to Mexico, *see* Dkt. No. 7-3 at ¶ 11, DHS concedes—by its own conduct—that removal to Mexico is not presently feasible absent consent of Plaintiff-Petitioner, as evidenced by its

attempt to obtain his consent to removal to Mexico. *See* Declaration of Karen Winston (filed herewith as Exhibit A) at ¶¶ 18-21. If DHS possessed unilateral authority and realistic pathway to remove detainees to Mexico, it would not have requested Plaintiff-Petitioner's consent to removal to Mexico. This further demonstrates the hollow and flimsy—and legally insufficient—SLRRFF showing by DHS in this action.

District Courts have recognized that where ability to effectuate removal depends on future cooperation or consent by the detained individual, such dependency defeats any claim that removal is legally or practically feasible in the reasonably foreseeable future. *See, e.g., Makuey*, 2025 U.S. Dist. LEXIS 259981, at *32–33 (rejecting reliance on speculative third-country removal dependent on future contingencies and finding that removal premised on cooperation not yet obtained does not satisfy *Zadvydas*); *Ceesay*, 781 F. Supp. 3d at 165–66 (holding detention unlawful where DHS's asserted removal authority depended on contingencies outside its control rather than concrete authorization).[3] The same is true here. DHS has not and cannot meet its burden of demonstrating SLRRFF.

[3] This inference is further reinforced by documented evidence DHS has attempted to coerce consent to removal to Mexico from detained individuals, including through intimidation and physical force. *See* ACLU Letter to DHS (Dec. 8, 2025) (raising documented concerns regarding coercive third-country removals to Mexico); Supporting Declarations (describing coercion and intimidation to compel consent to Mexico removal); Douglas MacMillan, "ACLU Claims Cuban Detainees Were Beaten

* * *

Where DHS fails to demonstrate SLRRFF, continued detention under Section 1231(a)(6) is unlawful and appropriate remedy is release under appropriate conditions. *Zadvydas*, 533 U.S. at 699; *Beltran*, 2026 U.S. Dist. LEXIS 273, at 6; *Siguenza*, 2025 U.S. Dist. LEXIS 188746, at *20–21. For this reason, the Court need not reach the alternative arguments below regarding OSUP revocation or lawfulness of third-country removal to resolve this action favorable to Plaintiff-Petitioner. Failure by DHS to demonstrate SLRRFF is dispositive and compels relief.

C. DHS Violated Its Own Regulatory Requirements Governing OSUP Revocation.

The detention challenged herein is independently unlawful because DHS failed to comply with its own regulatory framework governing revocation of an Order of Supervision ("OSUP"). These regulations sharply circumscribe the authority of DHS to revoke supervision and require strict procedural and substantive predicates that are absent here.

Under 8 C.F.R. §§ 241.4 and 241.13, DHS may revoke an OSUP only upon a showing of one of three narrowly defined grounds: (a) a violation of the conditions of release; (b) materially changed circumstances rendering removal

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for Refusing Removal to Mexico," WASHINGTON POST (Dec. 8, 2025) (reporting on abuse and mistreatment by DHS officials to coerce consent by detainees to third-country removals) (composite filed herewith as Exhibit D).

significantly likely in the reasonably foreseeable future; or (c) newly discovered information demonstrating that the original release decision was erroneous. *See Barrios*, 2025 U.S. Dist. LEXIS 153228, at *17–22; *Grigorian*, 2025 U.S. Dist. LEXIS 175489, at *14–20; *Zongbo Zhu v. Genalo*, 2025 U.S. Dist. LEXIS 166176, at *18–23 (S.D.N.Y. Aug. 26, 2025).

None of these predicates exist here. DHS does not and cannot identify any violation of OSUP by Plaintiff-Petitioner. He has completely complied with all OSUP requirements. *See* Exhibit A at ¶¶ 5 & Appendix A (compliance log demonstrating perfect compliance). Plaintiff-Petitioner has also committed no criminal conduct since placement on OSUP. *Id.* at ¶ 6. DHS makes no argument here that OSUP violation or criminal conduct are at play.

DHS relies exclusively on the assertion of materially changed circumstances constituting SLRRFF based solely upon its representation that removal to Mexico is imminent. As detailed *supra* at B.2., that theory fails. District Courts have repeatedly held that an asserted change in circumstances premised on speculative future removal cannot justify OSUP revocation. *See, e.g., Makuey*, 2025 U.S. Dist. LEXIS 259981, at *31–33; *Ceesay*, 781 F. Supp. 3d at 159–66. For instance, in *Barrios*, the Southern District of Florida emphasized that DHS bears the burden of demonstrating compliance with the regulatory predicates for revocation and may not revoke supervision based on generalized enforcement initiatives or speculative prospects of removal.

Barrios, 2025 U.S. Dist. LEXIS 153228, at *19–22. Moreover, where DHS fails to satisfy a regulatory ground for revocation, it "lacks authority to detain the noncitizen under Section 1231(a)(6)." *Id.* at *22.

Procedural defects here are equally fatal. Before revoking OSUP, DHS must provide written notice to the subject providing reasons for revocation and conduct a prompt informal interview affording the noncitizen an opportunity to respond. *See* 8 C.F.R. § 241.4(l)(1). These safeguards are mandatory not discretionary. Under the *Accardi* doctrine, agencies are bound to follow their own regulations when individual liberty is at stake. Accardi, 347 U.S. at 266–68. DHS did not comply.

Plaintiff-Petitioner was re-detained first and papered later. No process was afforded prior to or immediately upon his re-detention by DHS on December 15, 2025. The January 6 and 7 notices of revocation by DHS filed herewith at Appendices C-E to Exhibit A are internally inconsistent and appear designed merely to manufacture documentary evidence supporting *post hoc* rationalizations for a detention already existent for weeks. *See* Exhibit A at Appendices C-E. Additionally, the purported "informal interview" conduced on January 7, 2026 (same date response to habeas petition due) did not address any regulatory ground for revocation whatsoever. *See* Exhibit A at Appendix F; *see also* Dkt. No. 7-5 (alter version of same document filed by DHS). These efforts by DHS to mitigate its failure to abide by its own regulations pre-

deprivation of liberty cannot legally justify it after the fact. cannot cure an unlawful deprivation of liberty. *See Ceesay*, 781 F. Supp. 3d at 163–66; *Grigorian*, 2025 U.S. Dist. LEXIS 175489, at *17–20.

* * *

Separately, it should be noted that DHS conducted interviews of Plaintiff-Petitioner, solicited information, and attempted to obtain his consent to removal to Mexico—all occurring from January 5-7, 2026—while having actual knowledge that he was represented by counsel and without prior notice or opportunity to participate by undersigned counsel. *See* Exhibit A at ¶¶ 25-26; *see also* Notice of Appearance (Dkt. No. 6) (Dec. 30, 2025).

This conduct violated Plaintiff-Petitioner's right to counsel and among other rules governing the parties hereto and/or their counsel of record. It has long been recognized that noncitizens possess a statutory and Fifth Amendment right to counsel in the immigration context and that government conduct which circumvents or disregards that right undermines the fundamental fairness of the process and violates due process. *See, e.g., Pennant v. U.S. Att'y Gen.*, 766 F. App'x 937, 939–41 (11th Cir. 2019). The Eleventh Circuit has explained:

> "It is well established in this Circuit that noncitizens have a Fifth Amendment right to counsel in deportation proceedings. Congress codified this right to counsel in the Immigration and Nationality Act. Deportation 'visits a great hardship on the individual

> and deprives him of the right to stay and live and work in this land of freedom.' For that reason, '[m]eticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.' The high stakes of a removal proceeding and the maze of immigration rules and regulations make evident the necessity of the right to counsel."

Id. at 939–40 (*quoting Mejia-Rodriguez v. Reno*, 178 F.3d 1139, 1146 (11th Cir. 1999); *Bridges v. Wixon*, 326 U.S. 135, 154 (1945)).

The decision by DHS to bypass counsel of record while interrogating Plaintiff-Petitioner and attempting to solicit his consent to third-country removal—despite its actual notice of representation—violates these settled principles and further undermines the legitimacy of *post hoc* efforts by DHS to justify the detention at issue in aid of its response to the habeas petition under review by this Court. *See also Dakane v. U.S. Att'y Gen.*, 399 F.3d 1269, 1273–74 (11th Cir. 2005) (recognizing statutory and constitutional right to counsel in removal proceedings); *Mejia-Rodriguez*, 178 F.3d at 1146; *Bridges*, 326 U.S. at 154.

At bottom, the OSUP revocation here violated both the substantive limits and procedural mandates of 8 C.F.R. §§ 241.4 and 241.13. Because DHS lacked authority to revoke OSUP vis-a-vis failure to follow its own rules, the re-detention of Plaintiff-Petitioner at stake is unlawful regardless of the

resolution of the question of SLRRFF. Habeas relief is therefore warranted on OSUP revocation as well.

D. Reliance on Third-Country Removal to Mexico by DHS Is Legally Defective And Insufficient To Show SLRRFF.

Even if DHS could otherwise demonstrate a significant likelihood of removal in the reasonably foreseeable future—which it cannot—its reliance on purported third-country removal to Mexico fails as a matter of law and therefore cannot satisfy *Zadvydas*. SLRRFF requires more than a hypothetical destination; it requires a lawful and realistically executable removal. *Zadvydas*, 533 U.S. at 690–91. A prospective unlawful removal cannot provide the predicate foreseeability necessary to justify continued Section 1231(a)(6) detention. District Courts have consistently recognized that speculative or legally infirm third-country removal theories do not meet the Government's burden. *See Makuey*, 2025 U.S. Dist. LEXIS 259981, at *31–33; *Siguenza*, 2025 U.S. Dist. LEXIS 188746, at *8–9.

The District of Massachusetts squarely addressed this issue in *D.V.D.*, holding that DHS's practice of conducting third-country removals without adequate notice, opportunity to contest removal, or lawful authorization violates due process and the Immigration and Nationality Act. *See D.V.D. v. DHS*, 778 F. Supp. 3d 355, 368–82 (D. Mass. Apr. 18, 2025) (certifying nationwide class and entering preliminary injunction requiring written notice

and a meaningful opportunity to seek CAT protection before removal to a third country) (copy filed herewith at Exhibit C), *appeal pending*, No. 25-1393 (1st Cir.); *DHS v. D.V.D.*, 145 S. Ct. 2153 (Jun. 23, 2025) (granting emergency application by DHS to stay preliminary injunction pending appeal). In *D.V.D.*, the District Court found that DHS cannot execute third-country removal where the noncitizen has had no meaningful opportunity to challenge removal to that country or where removal would expose the individual to serious harm. *Id.* at 375–80. Although the nationwide injunction entered in *D.V.D.* is currently stayed, the District Court's legal analysis is developed, persuasive, and applies with equal force here.

DHS has presented no evidence that removal to Mexico would be lawful, permissible under the INA, or consistent with due process. DHS has not identified any agreement by Mexico to accept Plaintiff-Petitioner; any individualized determination authorizing his removal to Mexico; or any process by which Plaintiff-Petitioner could contest removal to Mexico. It has offered no support, relief, or resources designed to reasonably facilitate removal of Plaintiff-Petitioner to Mexico. It appears DHS simply intends to drop Plaintiff-Petitioner across the border with the clothes on his back and nothing more.

If DHS was permitted to remove Plaintiff-Petitioner to Mexico it would likely result in foreseeable disastrous consequences. As Ms. Karen Winston explains in her Declaration, Plaintiff-Petitioner:

> has no legal status in Mexico, no familial, cultural, or community ties to Mexico, no financial resources there, and does not speak Spanish. He has never lived in or traveled to Mexico and is ethnically and linguistically distinguishable from the vast majority of Mexican nationals . . .
>
> Removing Ernest to Mexico would literally constitute depositing a person with no legal status, no language ability, no resources, and no connections into a foreign country with nothing more than the clothes on his back, leaving him immediately vulnerable to homelessness, exploitation, criminal activity, and other harms.

See Exhibit A at ¶¶ 19-20

The invocation of third-country removal to Mexico by DHS cannot salvage its failure to demonstrate—or even attempt to demonstrate—SLRRFF in relation to Haiti, which is Plaintiff-Petitioner's country of origin and only lawful place of his potential repatriation.

Because DHS has not established a lawful, realistic pathway to removal, continued detention under Section 1231(a)(6) is unauthorized. The Court may—and should—resolve this case on the absence of SLRRFF alone, without reaching additional constitutional or regulatory questions. *See Zadvydas*, 533 U.S. at 699–701; *Beltran*, 2026 U.S. Dist. LEXIS 273, at *6. But there are

ample other grounds warranting habeas relief and immediate release of Plaintiff-Petitioner who is subject to ongoing unlawful deprivation of liberty in violation of Section 1231(a)(6) and bedrock Constitutional rights.

CONCLUSION

WHEREFORE, Plaintiff-Petitioner respectfully requests the Court enter an Order: (1) issuing a writ of habeas corpus directing Defendants-Respondents to immediately release Plaintiff-Petitioner from custody under reasonable conditions of supervision; (2) declaring unlawful and permanently enjoining re-detention of Petitioner-Plaintiff by DHS absent (i) evidence of materially changed circumstances and (ii) sufficient prior written notice to Plaintiff-Petitioner and a constitutionally adequate individualized opportunity to be heard; (3) awarding Plaintiff-Petitioner his reasonable costs and attorneys' fees incurred in this action in accordance with the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(2); and (4) granting such other and further relief as this Court deems appropriate, just, or equitable under the circumstances.

Date: January 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 2026, the foregoing was electronically filed with the Clerk of Court by causing a copy to be electronically filed via the CM/ECF system, which will send notice of the filing to all attorneys of record.

/s/ Christopher W. Dempsey
CHRISTOPHER W. DEMPSEY
Attorney for Plaintiff-Petitioner

EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ERNEST JOSEPH, Plaintiff-Petitioner, v. **SCOTTY RHODEN**, **GARRETT J. RIPA**, **TODD LYONS**, **KRISTI NOEM**, and **PAMELA BONDI**, Defendants-Respondents.	Civil No. 3:25-cv-01579-MMH-PDB

DECLARATION OF KAREN WINSTON

1. My name is Karen Winston. I am forty-seven (47) years old, reside in the State of Florida, a member in good standing of The Florida Bar, and have personal knowledge of the matters set forth herein.

2. I make this Declaration to supplement my Affidavit previously filed in this action and in support of the Reply by my long-time partner Ernest Joseph ("Ernest") to the Response filed by Defendant-Respondents opposing his Habeas Petition (Dkt. Nos. 1-1, 3-10 & 7).

3. I also make this Declaration to authenticate and explain documents annexed hereto as appendices; provide context regarding their creation and timing; and correct misimpressions created by the Response filed by Defendants-Respondents (Dkt. No. 7).

4. On January 7, 2026, I traveled to the Baker Correctional Institution located in Sanderson, Florida where Ernest is presently detained, for an in-person visit. During that visit, I met with Ernest and obtained copies of documents that had been provided to him by U.S. Department of Homeland Security ("DHS") officials.

5. Except for the document reflecting Ernest's long-standing compliance with his Order of Supervision at Appendix A, and correspondence from the Haitian Consulate at Appendix B, all documents described below were generated weeks after the filing of the Habeas Petition at issue and after DHS had already revoked Ernest's Order of Supervision and re-detained him, many of them in the days immediately preceding DHS's January 7, 2026, deadline to file its Response to the Habeas Petition. *See* Dkt. No. 5.

6. Ernest has not committed any criminal conduct of any kind since he was released on an Order of Supervision almost fourteen years ago, nor has he ever violated any condition of supervision. To the contrary, he has strictly, continuously, and perfectly complied with all reporting and supervision requirements imposed by DHS, as evidenced by the supervision log annexed hereto at Appendix A.

Description & Authentication of Appendices

7. Appendix A is a copy of Ernest's Order of Supervision reporting records, reflecting years of consistent, in-person compliance with all reporting

requirements imposed by DHS. These records pre-date the instant habeas litigation and conclusively demonstrate that Ernest has complied fully with all conditions of supervision without a single violation to date.

8. Appendix B is correspondence from the Consulate General of the Republic of Haiti dated July 26, 2017, confirming Ernest's continued good faith attempts to cooperate with DHS to obtain documentation from the Haitian government to establish his nationality. The underscores DHS's long-standing awareness of the difficulty in securing travel documents for Ernest that has continuously endured following the prior Habeas Petition granted by Northern District of Florida in 2012.

9. Appendix C is a Notice of Revocation dated January 5, 2026, which states as grounds for revocation "recent criminal history" and "failure to follow conditions." No additional information, explanation, or specific details are provided. These assertions are false. Ernest has no recent criminal history, has not engaged in any criminal activity since his release, and has not failed to comply with any condition of supervision.

10. Appendix D is a Notice of Revocation dated January 6, 2026, which abandons the prior justifications entirely and instead states: "Your case is under current review by Haiti for the issuance of a travel document." This notice contains no reference to any criminal conduct, no allegation of an OSUP violation, and no citation to any new factual development related to Haiti.

Indeed, to my knowledge, removal of Ernest to Haiti remains at impasse and no material development has occurred since Ernest's prior Habeas Petition was granted in 2012.

11. Appendix E is a Notice of Revocation provided to Ernest on January 7, 2026, although the first page reflects a digital signature dated January 6, 2026. This notice adds, for the first time, the assertion that "a 3rd country of removal (Mexico) has been identified" and concludes—without any supporting evidence, explanation, or details—that there is a "significant likelihood of removal in the reasonably foreseeable future."

12. The shifting rationales reflected across the January 5, January 6, and January 7 notices—none of which identify any actual violation of supervision or new criminal conduct—strongly suggest that DHS was manufacturing post hoc justifications for a detention decision already made, rather than revoking supervision based on any genuine regulatory ground, related to Ernest's habeas action and responsive deadline.

13. Appendix F consists of materials labeled as an "Alien Informal Interview." On January 7, 2026, Ernest met with a DHS official who provided him with the 3rd revocation document. The DHS officer told Ernest he "had a few questions for him." After responding to the questions, Ernest requested a copy of the questionnaire completed. The DHS officer at first refused but

eventually provided the attached copy with questions and handwritten answers, which official told Ernest he was not supposed to receive.

14. The handwritten interview document materially differs from the typed interview document filed by DHS in support of its Response to the Habeas Petition. Certain questions and responses that were marginally favorable to Ernest—including references to his family and long-term residence—are omitted from the typed version filed by DHS (Dkt. No. 7-5).

15. The interview does not meaningfully address any factor relevant to revocation of an Order of Supervision or removal and instead elicits basic background information long known to DHS.

16. Also, when the DHS official asked Ernest about his father, Ernest explained that he had since learned that the person named as his father, Moravil Joseph, was not actually his biological father and that he did not know who his biological father was. The official stated he would make note of that and drew and put the asterisk next to the response.

17. Ernest was also asked if there is anything else he would like to add. Ernest responded that he deeply missed his children. This detail was omitted by the DHS official.

DHS Conduct Following Re-Detention

18. On January 5, 2026, an official of DHS approached Ernest in detention and requested that he sign a document consenting to his removal to

Mexico. The DHS official asked Ernest if he was interested in going to Mexico. Ernest replied that he has no connection to Mexico and refused to sign the document consenting to his removal to Mexico.

19. Ernest has no legal status in Mexico, no familial, cultural, or community ties to Mexico, no financial resources there, and does not speak Spanish. He has never lived in or traveled to Mexico and is ethnically and linguistically distinguishable from the vast majority of Mexican nationals.

20. Removing Ernest to Mexico would literally constitute depositing a person with no legal status, no language ability, no resources, and no connections into a foreign country with nothing more than the clothes on his back, leaving him immediately vulnerable to homelessness, exploitation, criminal activity, and other harms.

21. The request for consent to removal to Mexico occurred weeks after Ernest's re-detention, just two (2) days prior to DHS's deadline to respond to the Habeas Petition on January 7, 2026, and without any indication that DHS had secured acceptance from Mexico or conducted any individualized assessment of his ability to survive or function there.

22. It is unclear why DHS requested Ernest's consent to removal to Mexico if his removal to Mexico was significantly likely to occur in the reasonably foreseeable future.

Timing, Representation & Procedural Irregularities

23. In accordance with the Court's Order (Dkt. No. 5) setting an expedited briefing schedule DHS's Response to the Habeas Petition was due on January 7, 2026.

24. Notably, many of the documents annexed hereto—including the revised Notices of Revocation and the informal interview materials—were generated in the days immediately preceding DHS's January 7, 2026, response deadline, after Ernest had already been re-detained, and after his Habeas Petition was on file with this Court.

25. All of the interviews, notices, and requests described above—including the request for consent to removal to Mexico—were conducted without notice to or participation by counsel, notwithstanding DHS's actual knowledge that Ernest is represented by legal counsel.

26. Counsel for DHS entered a formal Notice of Appearance in this action on December 30, 2025 (Dkt. No. 6). The United States Government therefore had actual knowledge that Ernest is represented by legal counsel, at minimum, as of that date. Despite this, DHS officials continued to communicate directly with Ernest about matters central to this litigation, including removal, revocation of supervision, and detention, without notifying counsel or affording counsel any opportunity to be present or heard.

27. These actions occurred while Ernest was detained, unrepresented during custodial questioning, and facing imminent and unlawful removal efforts, raising serious concerns regarding DHS's disregard of his right to counsel and the integrity of its administrative process.

* * *

28. Taken together, the documents annexed hereto reflect a pattern of after-the-fact document generation, shifting rationales, selective presentation of evidence, and custodial interactions conducted outside the presence of counsel, all occurring after the filing of the Habeas Petition at issue.

29. DHS has yet to identify any actual violation of supervision conditions, any new criminal conduct, or any concrete steps demonstrating a realistic prospect of removal.

30. Its attempt to demonstrate a significant likelihood of removal in the reasonably foreseeable future here are eerily similar to its efforts related to Ernest's prior habeas action in 2012, wherein the District Court ruled relief was warranted.

31. These facts are critical to the Court's evaluation of the Response by DHS and to determining whether Ernest's re-detention rests on materially changed circumstances or instead on impermissible litigation-driven post hoc rationalizations untethered to any legal authority.

In accordance with 28 U.S.C. § 1746, I hereby declare and affirm under penalty of perjury, that I have reviewed the foregoing and the facts alleged therein are true and accurate to the best of my knowledge and belief, and the Exhibits filed therewith are true, accurate, and authentic.

Dated: 1/9/2026

Signed by:
Karen Winston
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KAREN WINSTON
Partner of Plaintiff-Petitioner