

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

RAFAEL EMILIO ARCILA PEREZ,

Petitioner,

v.

Case No. 2:26-cv-107-SPC-NPM

A No. 

Venezuela

WARDEN, SOUTH FLORIDA SOFT-
SIDED FACILITY SOUTH, et al. (all
official capacity),¹

Respondents.

_____ /

Response to Habeas Petition

Petitioner Rafael Emilio Arcila Perez challenges the revocation of his Order of Supervision (“OSUP”) along with the resulting detention by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”). Arcila Perez alleges that he has valid temporary protected status (“TPS”), so he claims OSUP revocation was improper along with any detention or removal.

The Court lacks jurisdiction. Apart from that, ICE properly exercised its discretion to revoke Arcila Perez’s OSUP—a decision on which the Court is statutorily prohibited from reviewing. And detention during this period is reasonable. So the

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. See, e.g., *Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE either to bring petitioner for a bond hearing or release by a specific date).

Court should deny the Petition.

Regardless of how the Court rules, it should clarify the scope of its holding. Specifically, if the Court concludes Arcila Perez has TPS or some other protection from removal, it must declare so and enter an injunction. As it stands, DHS terminated his TPS, revoked his OSUP, and intends to remove unless some Order in place prevents that action.

Background

This is an immigration habeas case. Arcila Perez is a citizen and national of Venezuela. (Doc. 1 at 1). He came to the United States in 2002. (Doc. 1 at 6).

In 2010, Arcila Perez pled guilty and was convicted of felony use of a fraudulent immigration document. (Doc. 1-1 at 12-16). Around this time, he applied for asylum. (Doc. 1 at 6). An immigration judge denied asylum and ordered Arcila Perez removed from the United States. (Doc. 1 at 6). He unsuccessfully appealed, making the order of removal final. (Doc. 1 at 6).

In 2013, ICE released Arcila Perez on an OSUP. (Doc. 1-1 at 24). In 2022, he applied for TPS under the 2021 Venezuelan TPS designation. (Doc. 1-1 at 30-31). That TPS status was valid until September 2025. (Doc. 1-1 at 30).

In January 2026, ICE revoked the OSUP because it determined revocation is in the public interest and it is appropriate to enforce the removal order. (Ex. 1 at 12). Specifically, ICE has determined it intends to remove Arcila Perez to Mexico. (Ex. 1 at 3). That OSUP revocation was signed by Supervisory Detention and Deportation Officer (“SDDO”) Wilson. (Ex. 1 at 13). SDDOs are authorized to revoke OSUPs in

the Miami Field Office. (Ex. 2 at 2-3).

What's more, ICE provided Arcila Perez an informal interview to contest the revocation and detention. (Ex. 1 at 15). This interview occurred on January 6. (Ex. 1 at 15). Yet ICE exercised its discretion to continue with removal and detention pending that process.

ICE was in the process of removing Arcila Perez when he filed a temporary restraining order ("TRO"). The Court granted a TRO—which stopped removal and ordered release.

Certified Habeas Return

The Court has power to grants writs of habeas corpus where (among other instances) petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner bears the burden to prove custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

After Arcila Perez's conviction, an IJ ordered him removed. He unsuccessfully appealed. So his order of removal became final. At that point, Arcila Perez was removable from the United States. The Attorney General (through her delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(1)(A), (a)(3).

ICE was detaining Arcila Perez under 8 U.S.C. § 1231(a)(6) pending his removal. ICE was actively executing removal when the Court entered the TRO.

The period of Arcila Perez's detention was well within the presumptively reasonable limits established in *Zadvydas*. Even if he were able to challenge detention

before then, Arcila Perez cannot show there is no significant likelihood of removal in the reasonably foreseeable future (“SLRRFF”).

Discussion

Arcila Perez challenges his previous detention and removability under various theories. These claims fail. As described below, the Court has no jurisdiction. Even if it did, detention has not extended to a length creating constitutional questions; nor did ICE violate any law in proceeding with removal.

A. TPS Status

Before getting lost in the weeds, it is necessary to determine if Arcila Perez has TPS. Given ongoing litigation, the status of Venezuelan TPS is confusing.

As the Court recognized, a district court granted summary judgment—holding the DHS termination and vacatur of Venezuelan TPS was unlawful. *Nat’l TPS All. v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025). The Supreme Court, however, granted DHS an emergency stay of that order until final resolution of the case and all appeals—including a cert petition. *Noem v. Nat’l TPS All.*, 146 S. Ct. 23, 24 (2025). Put different, the *Nat’l TPS* order purporting to strike down the DHS termination and vacatur of Venezuelan TPS has no legal effect right now.

Through nothing short of legal gymnastics to circumscribe that stay, the same district court recently entered a declaratory judgment on the legal question it already answered in its now-stayed summary judgment order. *Nat’l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 WL 3539156 (N.D. Cal. Dec. 10, 2025). Then, yesterday, the

Ninth Circuit affirmed the underlying summary judgment order. *Nat'l TPS All. v. Noem*, No. 25-5724, 2026 WL 226573 (9th Cir. Jan. 28, 2026). DHS will almost certainly seek cert on the merits. Until that happens, however, the summary judgment decision on Venezuelan TPS is on hold by Order of the Supreme Court:

The September 5, 2025 order entered by the United States District Court for the Northern District of California, case No. 25-cv-1766, is stayed as to the Venezuela vacatur and Venezuela termination, pending the disposition of the Government's appeal in the United States Court of Appeals for the Ninth Circuit and disposition of a petition for a writ of certiorari, if such writ is timely sought. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

Nat'l TPS, 146 S. Ct. at 24.

That's a lot to unravel. To determine whether Venezuelan TPS is still valid requires reading the tea leaves of a largely unexplained emergency stay order and wondering whether the Supremes will ultimately agree with the Ninth Circuit. Fortunately here, the Court need not get into those questions because the TPS issue can be resolved on factual grounds specific to Arcila Perez. Specifically, he does not have TPS because (1) it expired, and he has not been approved for reregistration; and (2) he was never eligible in the first instance so any TPS is (or will be) withdrawn.

1. Expiration

Arcila Perez's status is clear. His TPS facially expired on September 10, 2025. (Doc. 1-1 at 30). Noem's termination of Venezuelan TPS extended that status until November 7, 2025 (at the latest). *Termination of the 2021 Designation of Venezuela for Temporary Protected Status*, 90 Fed. Reg. 43225-02 (Sept. 8, 2025). While Arcila Perez

filed another TPS application pending to reregister, USCIS never granted it. Arcila Perez, therefore, does not have current TPS.

The competing notices of Mayorkas and Noem related to 2023 Venezuelan TPS in litigation are of no consequence here. Whether Venezuelan TPS as a whole was extended or vacated does not actually impact Arcila Perez. Noem terminated 2021 Venezuelan TPS designations—extending any deadlines expiring in September 2025 until November 2025. *Termination of the 2021 Designation*, 90 Fed. Reg. 43225-02 at 43231. That notice is not subject to any litigation and terminated Arcila Perez’s status late last year. As the Court already held, the 2023 designation and termination issues “did not impact the 2021 designation.” *Mejia v. Noem*, 2:25-cv-981-SPC-NPM, 2025 WL 3078656, at *1 n.2 (M.D. Fla. Nov. 4, 2025) (Chappell, J.). Because Arcila Perez was a 2021 Venezuelan TPS designee, his status expired regardless of litigation awaiting reversal from the Supreme Court.

Best case scenario for Arcila Perez, he is somehow considered a 2023 TPS designation, Mayorkas’s ongoing action stands, and Venezuelan TPS is validly extended until October 2026.² Yet extending TPS does not automatically extend the expiration dates for people currently holding that TPS. Said different, extending the program does not alleviate an individual TPS holder’s obligation to apply—and be approved—for a TPS extension.

Don’t take ICE’s word for it, Mayorkas said it himself in the 2023 Extension:

The extension allows existing TPS beneficiaries to retain TPS through

² ICE disputes that conclusion and appeal. But reaching that question is not needed here.

October 2, 2026, if they otherwise continue to meet the eligibility requirements for TPS. *Existing TPS beneficiaries*, including those registered under the October 3, 2023 TPS designation or the prior March 9, 2021 TPS designation, *who wish to extend their status through October 2, 2026, must re-register during the re-registration period described in this notice.*

...

... Venezuela TPS beneficiaries who appropriately apply for TPS or re-register under this Notice *and are approved by USCIS* will obtain TPS through the same extension date of October 2, 2026.

Extension of the 2023 Designation of Venezuela for Temporary Protected Status, 90 FR 5961-01, at 5962 (Jan. 17, 2025) (emphasis added). The 2023 Extension laid out the process by which existing TPS holders could apply to reregister for continued status:

To re-register for TPS based on the designation of Venezuela, you must submit Form I-821. When filing an application to re-register for TPS, you do not need to pay the application fee; however, you are required to pay the biometric services fee. . . .

...

Individuals who have a Venezuela TPS application (Form I-821) that was still pending as of January 17, 2025, do not need to file the application again. If USCIS approves an individual's Form I-821, USCIS will grant the individual TPS through October 2, 2026.

Extension, 2025 WL 224823, at 5966 (Jan. 17, 2025).

To seek a TPS extension, Arcila Perez filed an application in May 2025. (Doc. 1-1 at 33-36). Crucially, USCIS never approved him for an extension. USCIS had the right to review the reregistration application, conduct any necessary background checks, and determine whether Arcila Perez remained eligible for TPS. *See Bautista-Perez v. Holder*, 745 F. Supp. 2d 948, 957 n.8 (N.D. Cal. 2010). In fact, USCIS can—and has—denied reregistration for applicants—like Arcila Perez—who were never

eligible due to criminal convictions. *Mejia Rodriguez v. DHS*, 562 F.3d 1137, 1140-41(11th Cir. 2009). Since USCIS never approved his reregistration into TPS, Arcila Perez's status remains expired.

What's more, reregistration "applicants attest to their continuing eligibility." 8 C.F.R. § 244.17(a). Without the actual TPS application or reregistration, Respondents cannot determine what statements or documents Arcila Perez provided. Yet the Form I-821, Application for TPS, specifically asks if the applicant has ever been convicted of a felony in the United States:

Have you *EVER* been convicted of:

8.a. Any felony committed in the United States?

☐ Yes ☐ No

Available at, <https://www.uscis.gov/sites/default/files/document/forms/i-821.pdf>.

As explained below, Arcila Perez undisputedly has a federal felony conviction. It is unclear how he could have successfully applied or reregistered for TPS with an automatically disqualifying felony conviction unless he made material false statements on those applications. In short, approval of Arcila Perez's reregistration was not a ministerial, foregone conclusion.

As discussed, Arcila Perez's TPS expired before his detention and this resulting habeas. His claims related to TPS, therefore, fail.

2. *Eligibility*

Perhaps more to the point, Arcila Perez should not have been awarded TPS in the first place. An alien is ineligible for TPS "if the Attorney General finds that" he

“has been convicted of any felony.” 8 U.S.C. § 1254a(c)(2)(B)(i).

Here, there is nothing to find—Arcila Perez is a convicted felon. (Doc. 1-1 at 12-16). He pled guilty and was convicted of a felony in the Southern District. *United States v. Arcila Perez*, No. 0:10-cr-60181 (S.D. Fla.); (Doc. 1-1 at 12). Without more, that felony conviction rendered Arcila Perez ineligible for TPS. 8 U.S.C. § 1254a(c)(2)(B)(i); *see also Rubio v. Sessions*, 891 F.3d 344, 350 (8th Cir. 2018) (“An alien is ineligible for TPS if he has been convicted of any felony.” (cleaned up)).

That Arcila Perez was sentenced to probation, rather than prison, is irrelevant. The INA defines a conviction as “a formal judgment of guilt of the alien entered by a court” if (1) “the alien has entered a plea of guilty” and (2) “the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty.” 8 U.S.C. § 1101(a)(48)(A). On the face of his conviction, Arcila Perez’s guilty plea and term of probation meet both parts of that definition. *E.g., Resendiz-Alcaraz v. U.S. Attorney General*, 383 F.3d 1262, 1268-69 (11th Cir. 2004) (“Petitioner’s state conviction satisfies these conditions. He pled guilty to the possession offense and was subject to a penalty of one year probation.”); *Gill v. Ashcroft*, 335 F.3d 574, 576 (7th Cir. 2003).

So unraveling the specifics of Venezuelan TPS here is completely unnecessary. Arcila Perez’s TPS was invalid from the start and expired last year, nonetheless.

Even if Arcila Perez could somehow still have TPS despite its expiration and his ineligibility, the Attorney General would have no option other than immediately withdrawing that improperly conferred status. 8 U.S.C. § 1254a(c)(3)(A). Congress did not award discretion over whether to withdraw TPS granted to ineligible aliens; rather,

the Attorney General “shall” do so. *Id.*; see also *Kingdomware Tech., Inc. v. United States*, 579 U.S. 162, 171-72 (2016) (“recognizing that shall is mandatory and normally creates an obligation impervious to judicial discretion” (cleaned up)). Put different, if the Court concludes Arcila Perez has TPS, there is nothing preventing the Attorney General from immediately withdrawing his TPS (i.e., fulfilling her statutory duty), redetaining him, and again executing removal.

Since there is no dispute Arcila Perez was convicted of a felony that he committed in the United States, it’s undisputed that he “shall not be eligible for” TPS. 8 U.S.C. § 1254a(c)(2)(B)(i). So any habeas relief based on TPS is misplaced.

B. Lack of Jurisdiction

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They “possess only that power authorized by Constitution and statute.” *Id.* (citations omitted).

In the context of immigration habeas cases related to removal—like here—the INA divests this Court’s jurisdiction. 8 U.S.C. §§ 1252(b)(9), (g). As discussed, the Court lacks jurisdiction over Arcila Perez’s claims. Regardless of how he words the matter, Arcila Perez challenges revocation of his OSUP and detention to execute a final order of removal.

1. Jurisdiction Stripping Under § 1252(g)

There is no jurisdiction to review “any” claim “arising from the decision or action” to “execute removal orders.” 8 U.S.C. § 1252(g). This provision bars habeas review in federal courts when the claim arises from a decision or action to “execute”

a final order of removal. *Reno v. American-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999).

Courts consistently hold that § 1252(g) eliminates subject-matter jurisdiction over challenges—including constitutional claims—to an arrest or detention for the purpose of executing a final removal order. *E.g.*, *Camarena v. ICE*, 988 F.3d 1268, 1273-74 (11th Cir. 2021) (“[W]e do not have jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the government’s decision to execute a removal order.”); *Johnson v. U.S. Attorney General*, 847 F. App’x 801, 802 (11th Cir. 2021); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).³ Likewise, § 1252(g) precludes review of the method by which ICE chooses to commence removal proceedings. *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, the provision bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.”).

Arcila Perez’s TPS expired and his OSUP was revoked, so ICE detained him to execute the final removal order. He is well within the presumptively reasonable period of detention (as detailed below). And ICE was literally about to execute final removal

³ See also *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) (“Under a plain reading of the text of the statute, the Attorney General’s enforcement of long-standing removal orders falls squarely under the Attorney General’s decision to execute removal orders and is not subject to judicial review.”); *Tazu v. U.S. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020) (“The plain text of § 1252(g) covers decisions about whether and when to execute a removal order.”); *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

when the Court entered a TRO to stop that process. This action was and remains an effort to interfere with or halt that legal process. The INA plainly strips the Court's jurisdiction in these instances. 8 U.S.C. § 1252(g).

Some courts hold there is jurisdiction to review compliance with OSUP revocation regulations. *E.g.*, *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 154 (W.D.N.Y. 2025) (“In other words, while courts cannot question the discretion that is exercised, they can address the process used to exercise that discretion.”). Respectfully, those decisions are mistaken.

“When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Camarena*, 988 F.3d at 1272 (cleaned up). Challenges to detention for noncompliance with OSUP revocation procedures fall directly within the jurisdiction-stripping provisions where—as here—the revocation was for the purpose of executing a final order of removal. *Roe v. Oddo*, No. 3:25-cv-128, 2025 WL 3030692, at *11-14 (W.D. Pa. Oct. 30, 2025).⁴ Outside creative wordplay, there is simply no way to get around the plain language of the statute:

In addition, the [OSUP] revocation was clearly related to the execution of [alien's] final removal order. The decision to revoke the [OSUP], in other words, “arose from” the decision to “execute the removal order.” Under both statutory text and judicial precedent, Section 1252(g) bars judicial review of ICE's revocation decision.

Nino v. Johnson, No. 16-cv-2876, 2016 WL 6995563, at *4 (N.D. Ill. Nov. 30, 2016)

⁴ See also *Van Phan v. Oddo*, No. 3:25-cv-348-KAP, 2026 WL 60337, at *2 (W.D. Pa. Jan. 8, 2026); *Lin v. Borgen*, No. 25-CV-05618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025).

(cleaned up).

Arcila Perez challenges his detention as unlawful based on expired TPS and ICE's alleged noncompliance with regulatory requirements when it revoked his OSUP to remove him. Without a doubt, that is a fact pattern "arising from the decision or action" to "execute removal orders." 8 U.S.C. § 1252(g). Put different, the INA expressly strips jurisdiction.

Any contrary conclusion offers hopelessly disjointed logic. The claim is that detention is unlawful because TPS is valid the OSUP revocation was no good. But the TPS termination and OSUP revocation were exercises of discretion to execute a removal order, which mandates detention pending removal. So the claim is a direct attack on the propriety of that decision to execute a removal order. No matter how Arcila Perez tries to dress it up, he's challenging ICE's decisions and actions to execute the order of removal. *Westley v. Harper*, No. 25-229, 2025 WL 592788, at *5 (E.D. La. Feb. 24, 2025).

The Court lacks jurisdiction for a separate reason.

2. *Jurisdiction Stripping Under § 1252(b)(9)*

There is no jurisdiction to review "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" outside a case reviewing the final removal order. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). The zipper clause is "a jurisdictional bar where" petitioner seeks "review of an order of removal [or] the decision to seek removal." *DHS v. Regents of Univ. of*

Cal., 591 U.S. 1, 19 (2020) (cleaned up).

There is a single path for judicial review of removal orders—“a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). Reading § 1252(a)(5) and (b)(9) together, courts conclude petitioners must funnel all aspects of challenges to removal proceedings through that avenue. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhomie v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”).

The zipper clause encompasses more than § 1252(g). *AADC*, 525 U.S. at 483. Under these provisions, “most claims that even relate to removal” are improper in a district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020). There are limitations on how broadly courts interpret the zipper clause. *E.g. Canal A*, 964 F.3d at 1257. But a claim obviously “arises from a removal proceeding when the parties are challenging removal proceedings.” *Id.* (cleaned up); *see also Regents of Cal.*, 591 U.S. at 19.

Here, the crux of this case challenges ICE’s execution of Arcila Perez’s final removal order to stop the removal process. These are the exact claims barred by the zipper clause. 8 U.S.C. § 1252(b)(9).

3. Conclusion of Jurisdiction Stripping

As discussed above, Arcila Perez’s claims fall squarely within the INA’s jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). The Court,

therefore, lacks subject-matter jurisdiction and must dismiss.

C. Constitutionally Lawful Detention

Even if the Court disagrees with the above, it must still deny the writ. Arcila Perez cannot make a claim for unlawfully prolonged detention at this time. Nor can he show lack of SLRRFF.

Typically Respondents offer a detailed argument here. There is no need. ICE demonstrated SLRRFF beyond a reasonable doubt. The Court entered a TRO to stop removal. Had that not occurred, Arcila Perez would almost certainly have been removed by now. He cannot, therefore, show lack of SLRRFF or unreasonably prolonged detention.

As explained, these claims fail. Apart from that, Arcila Perez fails to show any regulatory violation.

D. Complying with OSUP Regulations

Arcila Perez's challenge to alleged violations of OSUP and immigration regulations are mistaken and asks the Court to review decisions it plainly lacks jurisdiction over. In short, ICE exercised its discretion to revoke Arcila Perez's OSUP and complied with its obligations in doing so.

Regulations—particularly 8 C.F.R. §§ 241.4 and 241.13—specify procedures for ICE to revoke OSUPs. ICE gave Arcila Perez notice and the reasons for his revocation along with a prompt informal interview to respond. That satisfies either regulation.

ICE provided Arcila Perez notice and interview. In exercising its discretion,

ICE revoked the OSUP due to changed circumstances because it determined it is in the public interest to do so, and it is appropriate to enforce the removal order. ICE provided an informal interview for Arcila Perez to respond, which he did not provide. After this interview, ICE chose not to release and remove.

The procedure described above is exactly what relevant regulations require. 8 C.F.R. §§ 241.13(i); 241.4(l). Since ICE did not violate any regulations, habeas fails.

Section 241.13 “establishes special review procedures for those aliens who are subject to a final order of removal and are detained . . . where the alien has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future.” *Id.* § 241.13(a). If ICE determines there is no SLRRFF, it can release under an OSUP—which happened to Arcila Perez. *Id.* § 241.13(h). But that is not somehow legal status to remain in the United States forever. These OSUPs must specifically “promote the ability of [ICE] to effect the alien’s removal as ordered, or removal to a third country, should circumstances change in the future.” *Id.*

Nor is an OSUP the final word on SLRRFF. ICE can revoke them. *Id.* § 241.13(i). Notably, it may revoke “if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(2). ICE must then provide an informal interview—allowing the alien to respond and submit any evidence regarding SLRRFF. *Id.* § 241.13(i)(3). If ICE determines revocation and detention remain appropriate, an alien may seek another request for review based on any additional evidence. *Id.* § 241.13(j).

Likewise, the procedure required by § 241.4 does not change the outcome. That provision sets out procedures and “authority to continue an alien in custody or grant release or parole.” 8 C.F.R. § 241.4(a). Certain officials “may continue an alien in custody beyond the removal period . . . pursuant to the procedures described in this section.” *Id.*

For aliens released under supervision, authorities have broad powers to revoke their status. *Id.* § 241.4(l). Again, notice and interview procedures apply when ICE revokes release due to violations of OSUP conditions. *Id.* § 241.4(l)(1), (3). Yet one subsection—§ 241.4(l)(2)—likely does not include those notice, explanation, or interview requirements. *Id.* § 241.4(l)(2); *Tanha v. Warden, Balt. Detention Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *6 n.10 (D. Md. July 22, 2025). Regardless, of the notice procedure required, § 241.4(l) vests broad “discretion” if “in the opinion of the revoking official” ICE should “enforce a removal order” (among other options). 8 C.F.R. § 241.4(l)(2).

This “regulation permits the Government extraordinarily broad discretion to revoke an OSUP.” *Tran v. Baker*, No. 1:25-cv-01598-JRR, 2025 WL 2085020, at *4 (D. Md. July 24, 2025). In fact,

the regulation does not compel the Government to demonstrate what facts or factors, if any, it considered in deciding to revoke; nor does the regulation (or any other authority of which the court has been made aware) require the Government to demonstrate what, if any, steps it took to effect or secure removal prior to OSUP revocation.

Id.; see also *Grigorian*, 2025 WL 1895479, at *6 (noting differences between both subsections). The Court recently recognized the deference afforded to ICE when it

decides the time is appropriate to revoke an OSUP and enforce a removal order. *Valdes-Santovenia v. Ripa*, No. 2:25-cv-01063-JES-DNF, 2025 WL 3771264, at *3 (M.D. Fla. Dec. 31, 2025) (Steele, J.).

As described above, ICE revoked the OSUP. This was based on its discretionary determination that it is in the public interest to do so and proper to enforce the removal order. Because ICE provided Arcila Perez notice and an informal interview required by either § 241.4(l) or § 241.13(i), he cannot establish a violation. In short, “any other regulatory imperfections, such as delayed notice or minimal explanation, do not strip ICE of its statutory authority” or otherwise support a habeas claim for unlawful detention. *Morales Sanchez v. Bondi*, No. 5:25-cv-02530-AB-DTB, 2025 WL 3190816, at *3 (C.D. Cal. Oct. 3, 2025).

Crucially, the actual decision to revoke is entirely discretionary and beyond the Court’s review—it can only maybe review the process by which revocation occurred.⁵ *Navarro v. Bondi*, No. 8:25-cv-3213-KKM-NHA, 2025 WL 3275944, at *2 (M.D. Fla. Nov. 25, 2025) (“In the present context, courts differentiate between the decision to revoke an OSUP and a failure to follow procedures in doing so.” (cleaned up)); *Ceesay*, 781 F. Supp. 3d at 154. Put bluntly: courts “will not further scrutinize ICE’s discretionary decision” in that regard. *Oddo*, 2025 WL 1892445, at *8; *Yi Mei Zhen v. ICE*, No. 3:25-cv-01507-PAB, 2025 WL 2258586, at *10 (N.D. Ohio Aug. 7, 2025).

What’s more, even if the Court could get to the issue of SLRRFF, Arcila Perez

⁵ Again, the revocation of an OSUP is clearly a “decision or action” to “execute removal orders” stripped from the Court’s jurisdiction. 8 U.S.C. § 1252(g)

cannot show its absence. The only thing that prevented removal here was a TRO.

Even if some further notice and an interview were required, the proper relief would be ordering that to occur. *See Yi Mei*, 2025 WL 2258586, at *10 n.19 (noting “even if these procedures have not yet been completed, courts have found that such procedures may take place after the detention has occurred”). The remedies sought of release from custody are “an overreach and not the appropriate cure.” *Tanha*, 2025 WL 2062181, at *6; *see also Tran*, 2025 WL 2085020, at *6-7 (holding errors in notice procedure “do not entitle [petitioner] to release from detention”). The proper remedy for these allegations would be—at most—ordering ICE to provide Arcila Perez notice and an informal interview before removal. *See, e.g., I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025) (“And while habeas is a proper vehicle to challenge detention that is without statutory authority or violative of the Constitution, it is not a proper vehicle for vindicating every procedural error the Government may have committed along the way.”).

True, some courts have ordered release when they believed ICE should be providing more robust notice and hearing. *E.g., Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *8-10 (S.D. Fla. Sept. 9, 2025). Respectfully, many of these decisions appear driven by policy disagreement with the current immigration enforcement environment rather than grounding in any cognizable law. To be clear, there is nothing in the INA or relevant regulatory scheme providing for full-blown evidentiary hearings with defined preparation deadlines when ICE revokes an OSUP. The regulations simply say aliens get an “informal interview” after revocation to

contest revocation and detention. 8 C.F.R. §§ 241.4(l)(1); 241.13(i)(3). And if that doesn't result in release, the alien can request a more thorough review. 8 C.F.R. §§ 241.4(l)(3); 241.13(j).

At this stage, ICE already provided the minimum notice and hearing required by regulation. To conclude otherwise would simply be reading more requirements into ICE's own regulations to say it should provide more initial opportunity for aliens to contest revocation and detention. But that isn't adjudicating a due process or *Accardi* claim; that's policymaking. Due process is simply the process due under the law and circumstances—not an individual's most desired procedure. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (cleaned up)).

ICE can revoke OSUPs in its discretion based on its determinations—which are substantively unreviewable. ICE can continue to detain if an alien does not change its mind after informal interview. All this happened here. Now, Arcila Perez is free to contest SLRRFF with ICE again using the regulatory procedure and providing evidence in support of his position. Or if he is not removed within the 180-day *Zadvydas* time, he can refile a habeas petition to challenge SLRRFF before the Court. Until then, this action is premature and there is nothing for the Court to review.

In short, ICE did not violate the OSUP or regulations raised in the Petition. Nor have any due process violations occurred.

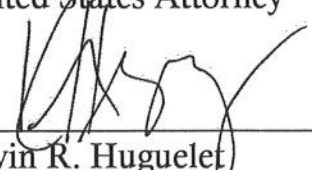
Conclusion

For those reasons, the Court should deny the Petition and clarify Arcila Perez does not have current TPS. If the Court concludes he has TPS or is otherwise protected from removal, it should clarify that holding. If the Court specifies Arcila Perez has a Court Order preventing removal, then Respondents can appeal; if the Court does not specify an Order prevents removal, then ICE would likely move forward with removal.

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Respectfully submitted,

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