

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

ERLIN MORENO RUBIO,

Petitioner,

v.

SECRETARY, U.S. DEPARTMENT
OF HOMELAND SECURITY, et al.
(all official capacity),

Respondents.

Case No. 2:26-cv-655-SPC-NPM

A No. 
Honduras

Response to Habeas Petition

Petitioner Erlin Moreno Rubio 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”). Moreno Rubio alleges that the OSUP revocation was improper. The Federal Respondents disagree.

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

Background

Moreno Rubio is a citizen and national of Honduras. (Ex. 1 at 1-2). In 2010, he illegally entered the United States and was removed. (Ex. 1 at 2). At some point

Moreno Rubio illegally reentered the country. (Ex. 1 at 2); *see* 8 U.S.C. § 1326(a) (making illegal reentry a felony).

In 2020, ICE encountered him while in state custody for aggravated assault and domestic violence charges. (Ex. 2 at 3). ICE reinstated Moreno Rubio's removal. (Ex. 2 at 4). He was placed in withholding only proceedings—where an immigration judge (“IJ”) granted withholding to Honduras. (Ex. 2 at 1). After detention, ICE released him on an OSUP. (Ex. 2 at 5)

On March 2, ICE encountered and detained Moreno Rubio. (Ex. 1 at 2). ICE revoked the OSUP to execute Moreno Rubio's removal order to a third country. (Ex. 3 at 1). And ICE offered an informal interview to contest the revocation and decision to detain. (Ex. 3 at 3).

Moreno Rubio is detained at Alligator Alcatraz. Today, he has been in ICE custody for sixteen days (not including detention time in previous years). This challenge follows.

Certified Habeas Return

The Court has the power to grant writs of habeas corpus where (among other instances) the petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Petitioners bear 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).

An IJ ordered Moreno Rubio removed and ICE did so. After he illegally reentered, ICE reinstated that removal. Moreno Rubio is 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 is detaining Moreno Rubio under 8 U.S.C. § 1231(a)(6) pending his removal. ICE is working towards executing removal to a third country.

The period of Moreno Rubio's detention is still well within the presumptively reasonable limits established in *Zadvydas*. Even if he were able to challenge detention before then, Moreno Rubio cannot show that there is no SLRRFF.

Discussion

Moreno Rubio challenges his detention 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. Lack of Jurisdiction

While Respondents believe the Court lacks jurisdiction, the undersigned realizes it will fail here. Plus, Jurisdiction is a non-waivable matter should Respondents choose to appeal. So for the brief purpose of preservation, Respondents contend 8 U.S.C. § 1252(g), (b)(9) strip jurisdiction. Even if the Court finds jurisdiction, Moreno Rubio's claims still fail. *See Tran v. Warden*, No. 2:25-cv-1224-KCD-NPM, 2026 WL 672969 (M.D. Fla. Mar. 10, 2026).

B. Constitutionally Lawful Detention

Even if the Court disagrees with the above, it must still deny the writ. Moreno Rubio cannot make a claim for unlawfully prolonged detention at this time. Nor can

he litigate SLRRFF prematurely.

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Yet indefinite detention would present obvious constitutional concerns. *Id.* So the Supremes interpret this post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play regarding SLRRFF. *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale*, 287 F.3d at 1051-52; *Guo Xing Song v. U.S. Attorney General*, 516 F. App’x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App’x 344,

346 (11th Cir. 2009).¹ At bottom, “This presumptively reasonable six month period must have expired at the time of the filing of a petition.” *E.g.*, *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009) (Steele, J.); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011) (Steele, J.). *See also* *Lam v. Dir., ICE*, No. 2:25-cv-1202-KCD-DNF, slip op. at 4-5 (M.D. Fla. Mar. 6, 2026) (dismissal of habeas petition as premature, petition only detained for four months “squarely within window in which his detention is presumptively reasonable”).

Moreno Rubio has only been in detention for just sixteen days. He was first detained on March 2 and sued on March 8. At that point, Moreno Rubio had only been detained for seven days. Either timeline is well under the 180-day period that is presumptively reasonable. That is fatal to jurisdiction. *Akinwale*, 287 F.3d at 1051-52.

To contend ICE cannot detain him for the purpose of removal, as Moreno Rubio does, would effectively eliminate ICE’s ability to ever remove an alien unless it does so within the presumptively reasonable timeframe. *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (Apr. 25, 2012). *Zadvydas* doesn’t sweep that broad. It goes without saying an alien must be detained (or otherwise in custody) to effect removal unless the alien leaves voluntarily. Moreno Rubio has not left

¹ Some districts disagree. *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Of course, *Akinwale* binds the Court. Even if it didn’t, *Cesar* and any progeny are wrong. *Zadvydas* recognized the presumptive six-month period for the specific “sake of uniform administration in the federal courts.” *Zadvydas*, 533 U.S. at 701. That was not an invitation to make up exceptions to this ripeness doctrine—like *Cesar* did.

voluntarily, and ICE is attempting to remove him. If the Court accepts his position, it is unclear how ICE would be able to remove Moreno Rubio—which ICE is actively working toward. *But see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody . . . while arrangements were being made for their deportation.”).

As Judge Dudek explained in *Tran*, any concern about a never-ending hamster wheel of redetention to manipulate the *Zadvydas* period is misplaced. 2026 WL 672969, at *3-5. For starters, from a factual matter, that didn’t happen here. Previous detention was a statutory requirement after the IJ ordered Moreno Rubio removed. Now, ICE contends removal is appropriate, and it is attempting to identify a third country for removal. What’s more, these concerns are addressed by courts crafting equitable tests to define the limits of how to address redetention claims—as Judge Dudek did in *Tran*. *Id.* In the common law way, courts (including likely the Supreme Court) must develop a framework for this judicially created cause of action. And any sort of blanket counting of detention periods, which could span decades, is simply not how *Zadvydas* applies on its face. *Id.* (“Because habeas relief is governed by equitable principles, courts are empowered to look beyond a mere mathematical tally to examine the totality of the circumstances.”).

Because Moreno Rubio was first detained on March 2, any *Zadvydas* challenge fails. *E.g., Jiang*, 2009 WL 260378, at *2 (“This presumptively reasonable six month

period must have expired at the time of the filing of a petition.”).

ICE recognizes this Court and Judge Steele have held the *Zadvydas* period is coterminous with the statutory removal and post-removal periods—meaning it can run while an alien is outside detention and periods can get aggregated. *Beltran v. ICE*, No. 2:25-cv-01174-SPC-NPM, 2026 WL 21252 (M.D. Fla. Jan. 5, 2026) (Chappell, J.); *Godinez Perez v. Noem*, No. 2:25-cv-00429-JES-NPM, 2025 WL 2806557, at *2 (M.D. Fla. Oct. 2, 2025) (Steele, J.). Judge Dudek, however, disagrees and correctly holds that the *Zadvydas* period runs from actual detention—not a statutory period that may have expired decades ago. *Khalil al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026); *Lageyre-Ravelo v. ICE*, No. 2:25-cv-1171-KCD-DNF, 2026 WL 575183, at *5-6 (M.D. Fla. Mar. 2, 2026).

Notably, Judge Pratt issued a recent decision adopting ICE’s general interpretation of this question. *Da Wu v. ICE*, No. 3:25-cv-1254-JEP-MCR (M.D. Fla. Feb. 3, 2026). Judge Berger just agreed. *Gonzalez Barrera v. U.S. Att’y General*, No. 3:26-cv-282-WWB-SJH, 2026 WL 472340, at *1-2 (M.D. Fla. Feb. 19, 2026). So too did three Southern District cases—agreeing that this period begins at the start of an alien’s actual detention and begins again when ICE makes a renewed effort to remove after failing long ago. *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025) (holding claim premature and rejecting argument that aggregate prior detentions considered for *Zadvydas* purposes); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300 (S.D. Fla. July 17, 2025) (holding claim

premature when removal period ended in 2014); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *7-8 (S.D. Fla. July 8, 2025) (same for 2011). Other courts agree. *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) (“The government is entitled to its six-month presumptive period before Petitioner’s continued § 1231(a)(6) [re-]detention poses a constitutional issue.”).

With *Zadvydas*, the “basic question” is “whether the detention in question exceeds a period reasonably necessary to secure removal.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Court “used the words ‘detain’ and ‘custody’ to refer exclusively to physical confinement and restraint.” *Jennings v. Rodriguez*, 583 U.S. 281, 311 (2018). *Zadvydas* protects against unconstitutionally indefinite detention; it did not interpret starting an imaginary detention clock based on statutory periods divorced from physical restraint. Again, to conclude the detention period started with the statutory removal time requires a corresponding finding that ICE has been unconstitutionally detaining Moreno Rubio since his OSUP release. That is a factual impossibility. Yet it also imposes an impossible burden on ICE—requiring it to justify extended detention if the burden shifts. *See Zadvydas*, 533 U.S. at 701 (“And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”).

Akinwale and other courts recognize that calculating time will often begin when detention is required (i.e., start of the removal period). 8 U.S.C. § 1231(a)(2)(A). But this would only be the case where petitioner challenges detention beginning at that time. If—as here—petitioner gets detained years later, no reasonable interpretation of

Zadvydas, *Akinwale*, or any other binding law suggests the six-month period can expire before detention occurs. Many cases on this exact issue hold the period begins with actual detention. *E.g.*, *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) (rejecting claim as premature for petitioner who was not detained during removal period because “it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody”).² Again, *Zadvydas* “exclusively” addressed “physical confinement and restraint.” *Jennings*, 583 U.S. at 311.

Here, Moreno Rubio is in the “post-removal period” under 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 683. It is “presumptively reasonable” for ICE to detain an individual with that status for a total of six months. *Id.* at 701. To this day, Moreno Rubio is still within that reasonable detention period.

A dicta footnote in *Akinwale* does not alter this outcome. 287 F.3d at 1053 n.3. In part, *Akinwale* decided whether the action was premature. *Id.* at 1051-52. There was no doubt it was since petitioner filed four months after he was “taken into custody.” *Id.* 1051. In dicta and its related footnote, *Akinwale* stated the six-month term was inclusive of the removal period (i.e., six months in total, not six months on top of the

² See also *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 n.7 (S.D.N.Y. 2017); *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017); *Rivera v. Hassell*, No. 4:15-01497-WMA-SGC, 2016 WL 4257692, at *3 (N.D. Ala. July 12, 2016), *R&R adopted*, 2016 WL 4257052 (Aug. 10, 2016); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012); *Raia v. Aviles*, No. 11-3374 (WJM), 2011 WL 2710275, at *5 & n.9 (D.N.J. July 6, 2011); *Thelemaque v. Barr*, No. 20-20467-CIV-ALTONAGA/Reid, 2020 WL 13551808, at *2 & n.1 (S.D. Fla. Mar. 30, 2020); *Aionesei-Lupu v. Barr*, No. 1:20-cv-22998-BLOOM, 2020 WL 8679783, at *2 (S.D. Fla. July 23, 2020); *Cruz v. Lumpkin*, No. H-23-2224, 2023 WL 4566252, at *1 n.7 (S.D. Tex. July 17, 2023).

ninety-day removal period). ICE does not dispute that. Instead, *Akinwale*'s express holding is relevant: petitioner "must show post-removal order detention in excess of six months." *Id.* at 1052.

There is no way Moreno Rubio can make that showing. It is undisputed he has not been in physical detention for six months. As explained, the constitutional detention period cannot start running without some form of constraint. This case is unripe because *Zadvydas* does not protect against detention that never existed.

Importantly, that six-month period is a bright-line, irrebuttable presumption of constitutionally acceptable detention. *See Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F.3d at 1052.³ It is only "after" this time that SLRRFF and *Zadvydas* burden-shifting comes into play. *Guzman Chavez*, 594 U.S. at 529 (cleaned up); *see also Jennings*, 583 U.S. at 298-99; *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). After means "following in time or place or subsequently to the time when or later in time." *Intellectual Ventures I LLC v. Ubiquiti, Inc.*, No. 1:23-cv-00865-JCG, 2025 WL 1640270, at *3 (D. Del. June 10, 2025) (cleaned up). The word gets used to "describe a temporal sequence." *Id.*; *see also Arlaine & Gina Rockey, Inc. v. Cordis Corp.*, No. 02-22555-CIV, 2004 WL 5504978, at *42 (S.D. Fla. Jan. 5, 2004) (giving "after" its "ordinary meanings" like "following in time"). Until the Supreme Court

³ *See also Guo Xing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009); *Vaz v. Skinner*, 634 Fed. App'x 778, 782 (11th Cir. 2015); *Ivantchouk v. U.S. Attorney General*, 417 Fed. App'x 918, 921 (11th Cir. 2011); *Chance v. Napolitano*, 453 F. App'x 535, 536 (5th Cir. 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011); *Okpoju v. Ridge*, 115 F. App'x 302, 302 (5th Cir. 2004).

recognizes a *Zadvydas* challenge *during* that six-month period, the Court cannot create that cause of action where none exists in derogation of *Akinwale*. *See* 287 F.3d at 1052 (“This six-month period thus must have expired . . . in order to state a claim under *Zadvydas*.”).

To require detailed justification from ICE before the *Zadvydas* period expires is a significant infringement on separation of powers principles. Essentially, every question related to immigration is “exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). This isn’t a recent development. *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) (“For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government’s political departments.” (cleaned up)). That power, however, is always “subject to important constitutional limitations.” *Zadvydas*, 533 U.S. at 695. “In these cases, we focus upon those limitations.” *Id.*

Other principles of judicial review come into play too. *Id.* at 700. Courts “recognize primary Executive Branch responsibility” in this field. *Id.* They must also “give expert agencies decisionmaking leeway in matters that invoke their expertise.” *Id.* Important here, that includes “Executive Branch primacy in foreign policy matters.” *Id.* These basic separation-of-powers principles “require courts to listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government

appropriate leeway when its judgments rest upon foreign policy expertise.” *Id.*

The Executive branch is attempting to remove Moreno Rubio. He is convicted felon who ICE already removed from the country once. The Executive’s efforts to remove Moreno Rubio in these circumstances go to the very core of its power to enforce immigration laws. *See United States v. Texas*, 599 U.S. 670, 679 (2023) (“That principle of enforcement discretion over arrests and prosecutions extends to the immigration context, where the Court has stressed that the Executive’s enforcement discretion implicates not only normal domestic law enforcement priorities but also foreign-policy objectives.” (cleaned up)); *Biden v. Texas*, 597 U.S. 785, 805-06 (2022) (“That is no less true in the context of immigration law, where the dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation’s foreign policy.” (cleaned up)). Until Moreno Rubio’s detention raises a constitutional problem—i.e., after six months—the political branches (namely, the Executive) must be permitted to pursue law enforcement and foreign policy objectives without interference.

To find otherwise would demand the Executive explain its constitutionally acceptable actions for the Judiciary to decide if it concurs based on an individual judge’s interpretation of current world events. Yet in the American system of delegated, separated powers, coequal branches need not justify to one another the determinations made within their legal discretion. That is especially true where—as here—the law largely entrusts the subject to the Executive alone.

What’s more, an interpretation allowing a challenge now grants rights based on

the statutory definitions of removal and post-removal periods under 8 U.S.C. § 1231. But that statute literally specifies it “shall [not] be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States.” *Id.* § 1231(h). The only way to conclude SLRRFF burden-shifting applies now is by first concluding ICE’s failure to remove within the statutory period somehow entitles Moreno Rubio to review. Again, that’s atextual.

Even if the Court were to get past the bright-line cutoff, there is no way for Moreno Rubio to show no SLRRFF exists. *See Zadvydas*, 533 U.S. at 689. At this point, ICE is working toward removal “the reasonably foreseeable future.” *See id.* Moreno Rubio was just detained. ICE now believes it can remove in the reasonably foreseeable future. There are no allegations—much less evidentiary support—to rebut ICE’s SLRRFF determination.

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

C. Complying with OSUP Regulations

Moreno Rubio’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 Moreno Rubio’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 Moreno Rubio notice and the reasons for his revocation—that satisfies either regulation.

ICE provided Moreno Rubio notice of revocation. In exercising its discretion, ICE revoked the OSUP due to the public interest and it is appropriate to enforce the removal order. At that time, an informal interview occurred for Moreno Rubio to have an opportunity to contest the revocation and detention.

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 for Moreno Rubio. *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.*

The facts here track *Tran*. In *Tran*, petitioner was released on OSUP because his removal to Vietnam was not reasonably foreseeable. 2026 WL 672969, at *1. Petitioner invoked regulatory compliance to challenge redetention after two decades. Judge Dudek disagreed—holding this fact pattern implicated § 241.13. *Id.* at *7. That’s notable because “unlike its counterpart, § 241.13 contains no rigid signature requirement limiting revocation authority to field office directors or other specific high-ranking officials. It simply says the agency can revoke an order of supervision if changed circumstances mean removal is now significantly likely.” *Id.* at *7.

Here, the situation is similar. Moreno Rubio was released on OSUP in 2021 because the IJ granted withholding to Honduras, so removal was not then reasonably foreseeable. Simply put, the requirements of § 241.13 apply.

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).

ICE has easily satisfied this standard. “[T]he regulations do not demand a full-blown evidentiary trial or a judicial-style opinion before ICE can yank an alien back from release. Section 241.13(i) leaves the determination of whether ‘circumstances have changed’ squarely in the agency’s hands.” *Tran*, 2026 WL 672969, at *8. Where—as here—ICE “pivoted to an entirely new strategy” by finding a new removal country, “[t]hat geographical shift matters” because “[t]he specific diplomatic roadblocks, repatriation dead-ends, and missing paperwork that thwarted his return to [the home country] simply do not apply to this new destination”—“charting a new course to a new country is the very definition of a changed circumstance.” *Id.* This holding aligns with ICE’s charting of a new course for third-country removal.

Any reliance on the heightened standards from *Kong v. United States*, 62 F.4th

608, 620 (1st Cir. 2023), is inapt. “The First Circuit in *Kong* grabbed a demanding checklist from subsection (f) and grafted it onto the revocation process. The trouble is, § 241.13(f) has nothing to do with revoking supervised release.” *Tran*, 2026 WL 672969, at *8. Subsection (f) establishes a framework for initial release determination, not a revocation. Instead, § 241.13(i) discusses revocation, which “simply does not demand the exhaustive, show-your-work fact finding required by subsection (f). It asks only that the agency determine circumstances have changed and notify noncitizen of its decision.” *Id.*

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). Judge Steele 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-1063-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 Moreno Rubio notice 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); see also *Tran*, 2026 WL 672969 at *8 (“When the Government pursues a completely different diplomatic route, it stands to reason that the old obstacles are left behind. For the agency’s purposes under the regulations, charting a new course to a new country is the very definition of a changed circumstance.”).

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.⁴ *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, Moreno Rubio cannot show its absence. It appears his argument is that ICE’s inability to remove years ago plus the fact he hasn’t been removed in a few weeks establishes a lack of SLRRFF. Not so. Moreno Rubio falls short on his SLRRFF argument as ICE just detained and is actively working on his removal. *See Godínez Perez*, 2025 WL 2806557, at *3 (holding SLRRFF not established on allegations for alien who had withholding of removal to home country).

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”). Indeed, Judge Dudek just recognized this outcome:

⁴ 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)

Second, even if a procedural defect occurred—if, for example, the “informal interview” required by § 241.13(i)(3) was delayed—it does not follow that the outcome is immediate release. The remedy for a procedural violation is generally a new proceeding that cures the defect, not a windfall of liberty that effectively decides the merits of the case.

Banjoko v. Rambosk, No. 2:26-cv-58-KCD-DNF, 2026 WL 145467, at *2 (M.D. Fla. Jan. 20, 2026). 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”). At most, the proper remedy for these allegations would be ordering ICE to provide 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—including Chief Judge Howard and Judge Steele—have ordered release when an informal interview did not occur. *Maryanovsky v. Ripa*, No. 3:25-cv-1599-MMH-SJH, 2026 WL 496778, at *4 (M.D. Fla. Feb. 23, 2026) (Howard, C.J.); *Banega v. Warden*, No. 2:25-cv-1152-JES-DNF, 2026 WL 234042, at *4 (M.D. Fla. Jan. 29, 2026) (Steele, J.). But in those instances, ICE failed to provide an informal interview at all.

Others granted 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, these decisions are not

grounded in any cognizable relief under the INA. 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 has already provided minimum notice required by regulation. Revocation and an informal interview occurred. So any remedy would be limited to whatever further curative process the Court deems appropriate.

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, Moreno Rubio 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.

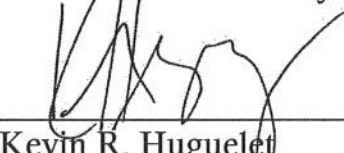
Conclusion

For those reasons, the Court should deny the Petition. To the extent that the Court grants any relief, the only proper relief would be whatever notice and hearing requirement it believes proper—not outright release.

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Respectfully submitted,

GREGORY W. KEHOE
United States Attorney



Kevin R. Huguelet
Assistant United States Attorney
Florida Bar Number 125690
Kevin.Huguelet@usdoj.gov
2110 First Street, Suite 3-137
Fort Myers, Florida 33901
(239) 461-2237

(Lead counsel for Federal Respondents)