UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EDUARDO ALEJANDRO
DELGADO-DE ARMAS

Petitioner, Case No. 2:26-cv-792-KCD-DNF

v.

WARDEN, et al.,

Respondents.
_______________________________/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Alejandro Eduardo Delgado De Armas [De Armas] 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"). De Armas alleges that the OSUP revocation was improper. The Federal Respondent disagrees.

ICE properly exercised its discretion to revoke De Armas'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

FACTS

De Armas is a 63-year-old male, who is a national and citizen of Cuba. Ex. 1, I-213; Dkt. 1, ¶ 26. The petitioner entered the United States at or near Key Largo at an unknown date and time. *Id.* On November 9, 1998, the petitioner was charged as a basis for removal under 212(A)(2)(c) and ordered removed by an Immigration Judge on November 24, 1998. *Id.*; Dkt. 1, Ex. B. Respondents released De Armas on an OSUP. Ex. 2 (OSUP). Based on a search for the BIA appeals, none were found involving this A number. Dkt. 1, at Ex. B.

De Armas was charged with Possession of a Weapon and Cocaine Possession on March 1, 1988, and sentenced to 7 years imprisonment. *See* Ex. 1. Then the petitioner was charged with two counts of drug trafficking on January 6, 2011, and January 19, 2011, and was sentenced to 5 years imprisonment. Ex. 1. De Armas was placed on an OSUP on April 28, 2015. Dkt. 1, ¶ 27; Ex. 2 (OSUP).

On November 19, 2025, Respondents revoked De Armas's OSUP pursuant to 8 C.F.R. § 241.4(l)(2)(i)-(iv). *See* Ex. 3, OSUP Revocation. Respondents discussed with de Armas the revocation of his OSUP, basically offering him an informal interview to contest the revocation and decision to detain. *Id.*, at 4. He was also issued a Notice of Removal (Ex. 4, Notice of Removal dated January 16, 2026) and a Warrant of Removal (Ex. 5, Warrant of Removal dated November 19, 2025).

On November 19, 2025, the petitioner was taken into custody while reporting at the ICE Miramar office. Dkt. 1, ¶ 28. The petitioner is currently being housed at Florence SPC and has been currently in custody for approximately 138 days.

On March 18, 2026, De Armas filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, the Accardi doctrine to name a few. (Dkt. 1.) De Armas does not challenge the commencement of a proceeding, the adjudication of a case, or the execution of his removal order. Nor does he ask the Court to review the removal order. Dkt. 1. Rather, he challenges the legality of his detention based on the process used to revoke his release, and he alleges the respondents lack legal authority to detain him at Florence SPC[1].

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).

De Armas has a final removal order. At this point, De Armas 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)(5).

ICE is detaining De Armas under 8 U.S.C. § 1231(a)(6) pending his removal. ICE is working towards executing removal.

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

[1] On the date the petition was filed, De Armas was housed at the Florida Soft Sided facility. On March 26, 2026, Respondents transferred De Armas to Florence SPC, Florence Arizona.

ARGUMENT

De Armas challenges his detention under various theories. These claims fail. As described below De Armas's detention has not extended to a length creating constitutional questions; nor did ICE violate any law in proceeding with removal.

A. **Constitutionally Lawful Detention**

De Armas 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).[2] 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").

De Armas has only been in detention for approximately one hundred and thirty-eight days. He was first detained on November 19 and sued on March 18. At that point, De Armas had only been detained for one hundred and thirty-eight days. The

[2] 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.

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 De Armas 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. De Armas has not left the US voluntarily, and ICE is attempting to remove him. If the Court accepts his position, it is unclear how ICE would be able to remove De Armas—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 the Court 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 ICE ordered De Armas removed. Now, ICE contends SLRRFF exists, and it is attempting to remove. What's more, these concerns are addressed by courts crafting equitable tests to define the limits of how to address redetention claims—as the Court 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 De Armas was first detained on November 19, 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 Judge Chappell and 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 or aggregate periods. *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.). This Court, 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 De Armas 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").[3] Again, *Zadvydas* "exclusively" addressed

[3] *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

"physical confinement and restraint." *Jennings*, 583 U.S. at 311.

Here, De Armas 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, De Armas 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 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 De Armas 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

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*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).

F.3d at 1052.[4] 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 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*

[4] *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).

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 De Armas. He is a convicted felon from Cuba—a country whose government is traditionally hostile to the United States. The Executive's efforts to remove De Armas 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 De Armas'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 De Armas to review. Again, that's atextual.

Even if the Court were to get past the bright-line cutoff, there is no way for De Armas 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.* It recently took De Armas into detention and claims that there is SLRRFF. There are no allegations—much less evidentiary support—to rebut ICE's SLRRFF determination.

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

C. Mariel Boatlift Regulations

Before turning to the normal regulatory issues, the Federal Respondents address those specific to the claim alleged: 8 C.F.R. § 212.12. Those provisions once applied to Cubans—like De Armas—who arrived during the Mariel Boatlift. There are several reasons why these regulations are irrelevant here.

First, they do not apply to De Armas. He was ordered removed and placed on an OSUP, which was revoked for removal. These events put De Armas squarely within § 241.13 rather than § 212.12.[5] *Marquez-Coromina v. Hollingsworth*, 692 F. Supp. 2d 565, 571 (D. Md. 2010) (Section 212.12 "does not address continued detention after the removal order has been issued.").

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[5] The US Attorney's Office has no information indicating that ICE invoked special detention under § 241.14(a)(1)—which potentially justifies continued detention even if the Court found no SLRRFF.

This Court recently addressed a similar case. *Franco Francisco v. ICE*, No. 2:26-cv-2-KCD-DNF, 2026 WL 746563, at *5 n.2 (M.D. Fla. Mar. 17, 2026). *Franco Francisco* recognized that subsequent events like achieving legal status, getting it revoked, and being placed on an OSUP may pull a petitioner "completely out of § 212.12's orbit." *Id.* Likewise, De Armas was ordered removed and placed on an OSUP. To now revoke the OSUP, detain, and remove has nothing to do with the long-since lapsed Mariel regulations; rather, it relates to the scheme under which De Armas and ICE have been proceeding for a decade.

Second, Judge Chappell's decision does not change the outcome. *Perez v. Warden*, No. 2:26-cv-9-SPC-DNF, 2026 WL 131650, at *3 (M.D. Fla. Jan. 19, 2026). Due to incomplete briefing from ICE, the issue was never fully developed. *Id.* at *1. The Cuban Review Plan under § 212.12 was effectively abrogated when the Supreme Court eliminated the distinction between Mariel Cubans and other aliens. *Clark v. Martinez*, 543 U.S. 371, 386 (2005); *see also Marquez-Coromina*, 692 F. Supp. 2d at 572 (explaining "that *Clark* removed the distinctions among the three categories of aliens identified in 8 U.S.C. § 1231(a)(6)," which justified "separate treatment of Mariel Cubans under § 212.12"). Immediately after than decision—over twenty years ago—ICE issued interim guidance to end the Cuban Review Plan:

> Effective immediately, all aliens detained post-final order for 180 days will receive custody reviews pursuant to the regulations under 8 CFR § 241.13. Custody reviews for Mariel Cubans under 8 CFR § 212.12 are no longer in effect, and therefore Cuban Review Plan (CRP) panels and procedures are to be discontinued, effective immediately. Any portion of previously issued

> guidance that otherwise limits § 241.13 custody reviews to certain classes of aliens is now superseded by this memorandum.

(Ex. 5 at 2). ICE never amended the regulations to address the change in law. As one court said, "it is mystifying that the regulatory language has not been amended to comport with the Supreme Court's decision in *Clark*." *Marquez-Coromina*, 692 F. Supp. 2d at 572. But at bottom, the Cuban Review Plan has not been in operation for over twenty years. Nor have Cuban Review Panels existed during that time.

And third, De Armas fails to identify a single due process protection somehow offered him by § 212.12 that is not otherwise provided by § 241.13. Nearly all § 212.12 provided detailed procedures for making and granting initial parole decisions, along with revoking parole previously granted. Recall, De Armas's parole was granted and revoked in the 80s. He raised no challenge to that process here. It's unclear what part of § 212.12 would even apply to someone like De Armas—who had parole revoked long ago and has been out on supervision under an entirely different regulatory scheme for ten years. For instance, continued detention under the Cuban Review Plan was only assessed annually. 8 C.F.R. § 212.12(g)(2); *Sierra v. INS*, 258 F.3d 1213, 1216 (10th Cir. 2001) ("Mariel Cubans who are being detained have their cases reviewed every year to determine whether they should be paroled."). And De Armas has not been detained for anywhere near a year.

Due process and *Accardi* claims amount to what process is due under the law while properly following an agency's regulations. Given their possible unconstitutionality, Cuban Review Panels under § 212.12 have not been offered or available in the United States since 2005. (Ex. 4). Relying on that scheme, De Armas does not ask for the process due; he asks the Court to resurrect a regulatory framework jettisoned long ago after a Supreme Court decision changed the law. In that way, he apparently asks the Court to empanel the first Cuban Review Panel in two decades. Or De Armas asks the Court to hold he can never be removed—despite his final order—because any procedure under the Cuban Review Plan cannot exist to review his detention anymore.

In short, § 212.12 is a red herring and the typical regulations apply.

D. Complying with OSUP Regulations

De Armas'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 De Armas'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 De Armas notice and the reasons for his revocation—that satisfies either regulation.

ICE provided De Armas notice of revocation. In exercising its discretion, ICE revoked the OSUP due to changed circumstances because it determined it is appropriate to enforce the removal order and it has the means to do so. An informal interview occurred for De Armas 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 him under an OSUP—which happened for De Armas. *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 re-detention after two decades. The Court 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. De Armas was released on OSUP in 2015. There was no SLRRFF then. 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 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 of seeking removal now.

Should De Armas allude to the heightened standards in *Kong* any reliance on those heightened standards argument do not apply. "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.*

An argument that ICE must detail what circumstances have changed is wrong too. *See Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn 2025). The regulation requires ICE to notify noncitizens of the (1) reason for revocation and (2) identify the changes in circumstances. Here, the change was identified as changed circumstances to remove. "There is not much more information a notice could include that would give an alien a more concrete reason for their revocation." *See Doe v. Easterwood*, No. 25-CV-196 CJW-KEM, 2025 WL 4093531, at *6 (N.D. Iowa Dec 5, 2025)

Even if it did apply, which it doesn't, the procedure required by § 241.4 would 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 De Armas 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.[6] *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, De Armas cannot show its absence. If his argument is that ICE's failure to remove him years ago plus the fact he hasn't been removed establishes a lack of SLRRFF. Not so. De Armas falls short on his SLRRFF argument as ICE is actively working on his removal. De

[6] 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)

Armas's claims concerning the conditions in the country of removal do not rebut SLRRFF. *See Godinez 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, the Court just recognized this outcome:

> 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 and hearing required by regulation. An informal interview occurred. But even if it were delayed or otherwise deficient, that would not warrant release. The remedy would whatever 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, De Armas 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,

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