IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JIMMIE DURAND CRESPO,

Petitioner,

Case No. 2:26-cv-1966-JES-KRH

v.

WARDEN, SOUTH FLORIDA
DETENTION FACILITY, et al.,

Respondents.
_____/

FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jimmie Durand Crespo seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, requesting his immediate release from immigration custody on the basis that the length of his detention is unlawful and that he did not receive the proper procedure. His petition should be denied. In *Zadvydas v. Davis*, the Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678 (2001). Petitioner had been detained for 108 days when he filed the Petition. His present detention is therefore lawful.

BACKGROUND

Petitioner is a national and citizen of Venezuela. (Exhibit 1, Composite Exhibit, at 1). He first entered the United States at or near Miami, Florida on April 3,

1990. (*Id.* at 2). He was then ordered removed to Venezuela on April 24, 1990, and was removed two days later. (*Id.*).

After his first removal, Petitioner reentered the United States without inspection at an unknown place on or around April 17, 2002. (*Id.*). Subsequently, an immigration judge reinstated his final order of removal but also granted withholding of removal to Venezuela based on his fear of persecution. (*Id.* at 2, 4; *see also id.* at 9 (stating that he "reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act")). On September 26, 2002, Petitioner was released on an order of supervision ("OSUP"). (*See id.* at 29).

While Petitioner was released on OSUP, he was convicted of theft multiple times. (*See id.* at 3, 21–25). The convictions include petit theft and grand theft in the third degree. (*See id.* at 21–25).

On February 21, 2026, Petitioner was arrested pursuant to a bench warrant for driving while his license was suspended, and an immigration detainer was issued. (*Id.* at 2). Petitioner was then transferred to immigration custody on February 23, 2026. (*Id.* at 1–3; *see also id.* at 29). Then, on February 24, 2026, Petitioner was served with a notice that ICE intended to revoke his OSUP because he had been "convicted of numerous larceny" and that the circumstances had changed such that there is a significant likelihood of removal in the reasonably foreseeable future. (*Id.* at 6–7). On

the same day, Petitioner had an informal interview to afford him an opportunity to respond to the reasons for revocation of his OSUP.[1] (*Id.* at 8).

On April 21, 2026, Petitioner was served with a notice that ICE intended to remove Petitioner to Mexico. (*Id.* at 13). Petitioner was again served with a notice that ICE intended to remove Petitioner on May 13, 2026. (*Id.* at 16).

On June 11, 2026, Petitioner filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment. (Doc. 1). To date, Petitioner has been detained for 126 days. (Ex. 1 at 29).

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). Petitioner has a final removal order. Thus, ICE is detaining Petitioner under 8 U.S.C. § 1231 pending his removal.

ARGUMENT

I. Petitioner's detention is presumptively lawful.

After a final removal order, an alien must be removed within ninety days—*i.e.*,

[1] Undersigned counsel notes that the deportation officer did not indicate whether or not Petitioner provided a statement or documents during the informal interview. (*See id.* at 8). However, "official government actions and administrative records carry a 'presumption of regularity,'" so courts should "presume that public officers have properly discharged their duties" absent contradictory evidence. Order, *Banjoko v. Rambosk*, No. 2:26-cv-58-KCD-DNF, Doc. 25 at 3 (M.D. Fla. June 23, 2026) (quoting *United States v. Chem. Found.*, 272 U.S. 1, 14 (1926)).

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). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the 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*, 287 F.3d at 1052 (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 the "significant likelihood of removal in the reasonably foreseeable future." *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 v. Ashcroft*, 287 F.3d 1050, 1051–52 (11th Cir. 2002); *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009). At bottom, "until the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe." *E.g.*, *Al Ellary v. Noem*, No. 2:26-cv-00112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb.

27, 2026); *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011).

Petitioner filed the instant Petition before expiration of six months in detention. He was most recently detained on February 23, 2026, and filed the present petition on June 11, 2026. (Ex. 1 at 29; Doc. 1). At that point, Petitioner been detained for 108 days; to date, he has been detained for 126 days. (*See* Ex. 1 at 29). Thus, Federal Respondents' position is that his present detention is still lawful under *Zadvydas*.

It is only afterward that the parties can engage in *Zadvydas* burden-shifting related to the "significant likelihood of removal in the reasonably foreseeable future." *See Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is "[a]fter this 6-month period"); *Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026) (denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051–52; *see also Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters "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"). Thus, Federal Respondents assert that the burden has not yet shifted to them to show that there is a significant likelihood of removal in the reasonably

foreseeable future for Petitioner. *See Jennings*, 583 U.S. at 299 (2018); *Zadvydas*, 533 U.S. at 701.

II. Revocation of Petitioner's OSUP Was Legally Sound.

Petitioner's allegation that revocation of his OSUP is legally deficient is wrong. (*See* Doc. 1 ¶¶ 44–47). Agency records show that on February 24, 2026, Petitioner was provided a notice of revocation of release informing him ICE was seeking to effect his removal. (Ex. 1 at 6–7). The same day, Petitioner was provided an informal interview and opportunity to respond to the reasons for revocation of his order of supervision. (*Id.* at 8). As the documentation demonstrates, ICE has exercised its discretion to revoke OSUP under 8 C.F.R. § 241.13(i) and complied with regulatory obligations in doing so.

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." 8 C.F.R. § 241.13(a). Release on OSUP, however, does not confer legal status to remain in the United States forever. 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." 8 C.F.R. § 241.13(h)(1). And circumstances have changed here. If ICE detains an individual on this basis, it must then provide the alien with an informal interview—allowing the alien to respond and submit any evidence regarding SLRRFF. *Id.* § 241.13(i)(3). This was done here. (Ex. 1 at 8). If ICE determines revocation and detention remain appropriate after that

interview—as it did here—the alien may seek another request for review based on any additional evidence. 8 C.F.R. § 241.13(j).

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 v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *6 (S.D. Fla. Sept. 9, 2025) (noting differences between both subsections). This district has recently recognized the deference afforded to ICE when it decides the time is appropriate to revoke an OSUP and enforce a removal order. *See e.g.*, *Valdes-Santovenia v. Ripa*, No. 2:25-cv-01063-JES-DNF, 2025 WL 3771264, at *3 (M.D. Fla. Dec. 31, 2025); *Tran v. Warden, Florida Soft Side South*, No. 2:25-cv-1224-KCD-NPM, 2026 WL 672969 at *8 (M.D. Fla. Mar. 10, 2026).

Crucially, the decision to revoke an OSUP is entirely discretionary and beyond the Court's review—any judicial review is arguably limited to the process by which revocation occurred.[2] *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

[2] 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).

so." (cleaned up)); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3, 137, 154 (W.D.N.Y. May 2, 2025). 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). For these reasons, Petitioner has not met his burden to demonstrate that his detention is unlawful based upon perceived regulatory deficiencies in the revocation of his OSUP.

Even if additional procedures were required, the proper relief would be ordering additional process, not outright release. *See Tran*, 2026 WL 672969 at *9 ("The writ of habeas corpus is a profound remedy, not a penalty for bureaucratic typos."); *see also 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 remedy sought—release from custody—is "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 any procedural deficiency would be—at most—ordering ICE to provide Petitioner with whatever additional process the Court deems appropriate. *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.").

While some courts have ordered release when they believed ICE should have

provided more robust notice and hearing, Federal Respondents respectfully disagree. *E.g.*, *Grigorian*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *8–10. The regulations mandate notice and an opportunity to be heard via an informal interview. 8 C.F.R. § 241.13(i)(3). Petitioner was afforded this process, and thus, his Petition should be denied.

III. Petitioner's *Accardi* Claims Fail.

Petitioner has not shown that deviation from the OSUP revocation procedures amounts to a due process violation. (*See* Doc. 1 ¶¶ 44–47). Petitioner relies on *United States ex rel. Accardi v. Shaughnessy*, where the Supreme Court established a doctrine—now known as the "*Accardi* doctrine"—that generally requires an agency to follow its regulations. *See* 347 U.S. 260 (1954). But the Supreme Court in *Accardi* did not determine the sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that affects a party's rights. As the Supreme Court has clarified, *Accardi* "enunciates[s] principles of federal administrative law rather than of constitutional law." *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). "*Accardi* is based on administrative law principles, not constitutional due process requirements." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (explaining limits on the *Accardi* doctrine). Here, Petitioner has not shown that any arguable violations of the regulatory provisions at issue amount to a due process violation, since he has not shown that he was denied any notice and opportunity to be heard on the basis for his OSUP revocation.

CONCLUSION

Based on the foregoing, the Court should deny the Petition and dismiss the action as premature. Should the Court determine that inadequate process has been provided or that detention has been unlawfully extensive, Federal Respondents respectfully defer to the Court as to the appropriate remedy.

Dated: June 29, 2026

Respectfully Submitted,

GREGORY W. KEHOE
United States Attorney

By: */s/Avery A. Holloman*

AVERY A. HOLLOMAN
Assistant U.S. Attorney
Florida Bar No. 1035595
U.S. Attorney's Office
400 West Washington St., Suite 3100
Orlando, FL 32801
Tele. (407) 648-7500
Fax (407) 648-7588
Email: Avery.Holloman@usdoj.gov