UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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

JIMMIE ANGEL DURAND-CRESPO,

Petitioner,

v.

WARDEN, Florida Soft Sided Facility, in his official capacity;

KELIE WALKER, in her official capacity as Field Office Director of U.S. Immigration and Customs Enforcement Miami Field Office;

Respondents.
_____/

PETITIONER'S REPLY IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS

Respondents ask the Court to deny this Petition as premature because Mr. Durand has not yet been detained for 180 days. (*See* Doc. 5 at 3-6). But the six-month presumption of *Zadvydas v. Davis*, 533 U.S. 678 (2001), speaks to only one of the Petition's three claims, and Respondents' own exhibits prove the other two. And, as of today's filing—July 20, 2026—Mr. Durand has been detained for 154 days after his order of removal was reinstated. If the Court does not order immediate release due to Respondents' failure to follow the OSUP revocation procedure, Mr. Durand requests that the Court order Respondents to show cause why removal is reasonably likely by the 180th day—August 15, 2026.

This Reply proceeds as follows. In Parts A and B, Petitioner demonstrates how Respondents' filing confirms the due process and regulatory violations set forth in counts Two and Three of his Petition. In part C, Petitioner rebuts Respondents' *Zadvydas* argument, as relevant to Count One of his Petition.

A. Mr. Durand Did Not Receive an Informal Interview.

Respondents assert that they provided Mr. Durand with an informal interview on February 24, 2026. (Doc. 5 at 6). Not so. Mr. Durand was not interviewed on that day—or any other. Exhibit 1 (Declaration of Jimmie Durand).

The interview form Respondents filed is facially deficient. The space for Mr. Durand's "oral response" is empty, and the officer did not check either box indicating whether the detainee "did" or "did not" provide a statement or documents. (Doc. 5-1 at 8.) This is not a case where the record is silent on a peripheral detail, as Respondents suggest in their "presumption of regularity" footnote. (Doc. 5 at 3 n.1). Rather, it is a case where the very form meant to document Mr. Durand's interview reflects no interview at all.

Moreover, "the 'presumption of regularity' is dislodged here by the numerous factual errors in Respondents' filings." *Temahagari v. Bondi*, No. 25-CV-02484-LK, 2026 WL 353264, at *7 (W.D. Wash. Feb. 9, 2026). **First** is the blank interview form, which supports Mr. Durand's sworn Declaration that no interview occurred. Ex. 1. **Second** is the I-213 prepared to support this detention, which reports that Mr. Durand "is not married" and "does not have children or dependents." (Doc. 5-1 at 1). Those statements are flatly refuted by USCIS's

approval of Mr. Durand's U.S.-citizen wife's I-130 spousal petition on his behalf (Doc. 1-3), and by his three U.S.-citizen children. (Doc. 1 ¶ 2); Ex. 1. **Third** are the entries in the I-213 next to "MEDICAL PROBLEMS," "FAMILY CONCERNS," and "MILITARY SERVICE"—for each of these factors, the deportation officer wrote, "Unable to Interview, quick turnaround case." (Doc. 5-1 at 3). Those entries amount to admissions that no individualized review of Mr. Durand's circumstances occurred; ICE did not even look at Mr. Durand's USCIS file before deciding to detain him. **Fourth** is the certificate of service on the May 13, 2026, Notice of Removal, which certifies that the notice's contents "were read to Obando Vargas, Ricardo"—not Mr. Durand. (Doc. 5-1 at 16). An agency processing "quick turnaround" detentions on blank forms bearing other detainees' names is not entitled to a presumption that its officers properly discharged their duties.[1]

"The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands." *Grigorian v. Bondi*, 824 F. Supp. 3d 1243, 1255 (S.D. Fla. 2025). "This failure violates both ICE's own regulations and the Due Process Clause of the Fifth Amendment and compels Petitioner's release." *Banega v. Warden of Soft Side S. Facility*, No. 2:25-CV-1152-JES-DNF, 2026 WL 234042, at *4 (M.D. Fla. Jan. 29, 2026).

[1] "[T]he presumption of regularity and integrity previously and routinely afforded to the Executive branch...has been undeniably eroded in this jurisdiction and across the country." *Doe v. Edlow*, No. 2:26-CV-494, 2026 WL 1945085, at *23 (S.D. Ohio July 6, 2026) (quoting *Singh v. Tsoukaris*, Case No. 1:26-cv-1531, ECF No. 10 at 2 (D.N.J. Feb. 20, 2026)).

B. The Regulatory Predicate for Revocation Was Absent.

ICE checked exactly one basis for revocation: "Circumstances have changed such that there is a significant likelihood of removal in the reasonably foreseeable future." (Doc. 5-1 at 6). On February 24, 2026, that statement was demonstrably untrue. ICE held no travel document, (*id.* at 3), and removal to Venezuela was, and remains, legally barred. The revocation notice concedes that his case was merely "under review for removal to an alternate country." (*Id.* at 7.) A removal that is legally barred as to the designated country and merely "under review" as to every other is not one that is significantly likely in the reasonably foreseeable future.

As for the notation that Mr. Durand had been "convicted of numerous Larceny," (Doc. 5-1 at 6), Respondents' criminal history compilation shows that the most recent such conviction was entered on June 27, 2013. (*Id.* at 3). ICE thereafter renewed Mr. Durand's order of supervision on March 12, 2015, (Doc. 1-2), and continued him on supervision through a decade of annual check-ins, each of which concluded that there was no change in circumstances justifying revocation. (Doc. 1 ¶¶ 23, 38). Convictions ICE knew about for over a decade are not "changed" circumstances.

Respondents assert that the decision to revoke an OSUP is "entirely discretionary and beyond the Court's review"—while conceding in the same sentence that "judicial review is arguably limited to the process by which revocation occurred." (Doc. 5 at 7). Precisely. Counts Two and Three challenge the process, not the exercise of enforcement discretion. And it is well established that

8 U.S.C. § 1252(g) does not bar habeas review of whether a detention is lawful. *Zadvydas*, 533 U.S. at 687.

Respondents' answer to the *Accardi* claim—that *Accardi* "enunciate[s] principles of federal administrative law rather than of constitutional law" (Doc. 5 at 9)—proves nothing. Custody imposed in violation of the agency's binding regulations is custody "in violation of the . . . laws . . . of the United States," 28 U.S.C. § 2241(c)(3), and is redressable in habeas whether the violation is labeled administrative or constitutional. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *see also Doe v. Chestnut*, No. 1:26-CV-02229-TLN-DMC-HC, 2026 WL 1999108, at *5 (E.D. Cal. July 10, 2026) (citing courts that "found it is appropriate to order the release of immigration detainees when it is determined that ICE violated their own policies when effectuating the detention of a noncitizen."). Accordingly, Count Three pleads the regulatory violation directly, and Count Two states a procedural due process claim under *Mathews v. Eldridge*, 424 U.S. 319 (1976), which Respondents never engage: They do not dispute the weight of Mr. Durand's liberty interest, and their only answer on the risk of erroneous deprivation is a presumption of regularity that their own exhibits rebut.

Respondents propose that any deficiency be remedied by "additional process." (Doc. 5 at 8.) But the process at issue exists to prevent an erroneous deprivation of liberty *before* it occurs. Once ICE has detained a man for months on a decision reached before he had an opportunity to be heard, an after-the-fact interview conducted by the same office that predetermined the outcome "cannot

retroactively cure the lack of process resulting in [his] wrongful detention." *Rodriguez Romero v. Ladwig*, No. CV 25-1106-JWD-EWD, 2026 WL 321437, at *8 (M.D. La. Feb. 6, 2026); *accord Grigorian*, 824 F. Supp. 3d at 1256.

Mr. Durand is a 61-year-old aviation mechanic, a homeowner, the husband of a U.S. citizen, and the father of three U.S.-citizen children—the youngest of whom was born on June 24, 2026, while he was detained. Ex. 1 ¶ 6. Mr. Durand has not yet met his newborn daughter because Respondents failed to conduct the most cursory investigation into Mr. Durand's circumstances before detaining him. He should be released immediately.

C. Mr. Durand Has Been Detained 154 Days and Removal Is Not Reasonably Likely in the Foreseeable Future.

Mr. Durand has been in ICE custody since February 23, 2026. (Doc. 5 at 2). As of today—July 20, 2026—he will have been detained for 147 days in 2026 alone. But Mr. Durand accrued an additional seven days of post-order-of-removal detention in 2002, because he was held that many days after his order of removal was reinstated on September 19, 2002. (Doc. 1-2 at 1); (*see* Doc. 5 at 2 (showing that Mr. Durand was released on OSUP on September 26, 2002)). Thus, in total, Mr. Durand has been detained 154 days since his reinstated order of removal.[2] He will cross the 180-day mark on August 15, 2026.

---

[2] The 180-day *Zadvydas* clock does not reset "each time a noncitizen is detained." *Pineda v. Warden, Glades Cnty. Det. Ctr.*, No. 2:26-CV-335-JES-FNF, 2026 WL 672941, at *3 (M.D. Fla. Mar. 10, 2026); *accord Paneque v. Mordant*, No. 2:25-CV-1179-JES-NPM, 2026 WL 251785, at *2 (M.D. Fla. Jan. 30, 2026).

Respondents make no effort to show that Mr. Durand's removal is reasonably likely by August 15, 2026—or ever. Mr. Durand continues to have Withholding of Removal to Venezuela. 8 U.S.C. § 1231(b)(3)(A). Removal to Venezuela is accordingly not delayed; it is unlawful, and Respondents identify no effort to reopen or terminate that withholding.

Nor do Respondents contest that Mr. Durand's removal to a third country is factually impossible and legally impermissible. (*See* Doc. 1 ¶¶ 39-41); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 821 F. Supp. 3d 102, 117 (D. Mass. 2026). Apart from issuing a Notice of Removal to Mexico but serving it to the wrong detainee, (Doc. 5-1 at 16), Respondents have taken no steps to actually remove Mr. Durand to that country. "They do not . . . allege that Mexico has agreed to accept" Mr. Durand, or that they are in the process of securing travel documents, or that they have even contacted Mexico. *Paneque*, 2026 WL 251785, at *3. An unsupported assertion from Respondents that they *intend* to remove an individual to Mexico "is insufficient to show a realistic likelihood of removal." *Id.*; *accord, e.g.*, *Rajigah v. Conway*, 268 F. Supp. 2d 159, 166 (E.D.N.Y. 2003).

CONCLUSION

For the foregoing reasons and those stated in the Petition, the Court should grant the writ and order Mr. Durand's immediate release. In the alternative, the Court should order Respondents to show cause why Mr. Durand's removal is reasonably likely by his 180th day of post-removal detention: August 15, 2026.

Dated: July 20, 2026

Respectfully submitted,

/s/ Andrew Udelsman
Fla. Bar No. 1051696
Southern Poverty Law Center
2 S. Biscayne Blvd., Ste. 3200
Miami, FL 33131
Tel.: (786) 390-2698
andrew.udelsman@splcenter.org

Andrea Alajbegovic*
MS Bar No. 106442
Southern Poverty Law Center
111 East Capitol Street, Ste. 280
Jackson, MS 39201
(601) 265-8309
andrea.alajbegovic@splcenter.org

Maitte Barrientos
Fla. Bar No. 1010180
Catholic Legal Services | Miami
1469 NW 13th Terrace, Suite 100
Miami, FL 33130
786.530.2515
mbarrientos@cclsmiami.org

Counsel for Petitioner

*Motion for *pro hac vice* admission pending

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 20, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Andrew Udelsman
Andrew Udelsman