

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No.: 25-CV-22624-JEM

EURIALO LOSADA DIAZ,

Petitioner,

v.

CHARLES PARRA, in his official capacity as
Assistant Field Office Director;

GARRETT RIPA, in his official capacity as
Field Office Director, Miami Field Office;

TODD LYONS, in his official capacity as
Acting Director, Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as
U.S. Secretary of Homeland Security;

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION
TO PETITION FOR WRIT OF HABEAS CORPUS AND
REQUEST FOR EMERGENCY INJUNCTIVE RELIEF**

Petitioner Eurialo Losada Diaz respectfully submits this Reply to Respondents' Response in Opposition to the Petition for Writ of Habeas Corpus and Request for Emergency Injunctive Relief. In their response, Respondents fail to justify the continued detention of Mr. Losada Diaz, a matter that raises serious constitutional and statutory concerns. This Reply addresses the deficiencies in Respondents' arguments, clarifies the legal and factual basis for the relief sought, and underscores the urgent need for this Court to grant immediate injunctive relief to prevent ongoing and irreparable harm.

I. FACTS AND PROCEDURAL BACKGROUND

Born in Cuba but residing in the United States since the age of ten, Petitioner Losada was initially a lawful permanent resident ("green card" holder). His parents are U.S. citizens, and his younger brother is an American citizen. Today, Mr. Losada is 46 years of age, married to an American citizen, and together he and his spouse have a ten-month old baby girl. Since 2020, he has worked for a local design store. South Florida is his home.

On May 20, 2021, following a hearing on the Petitioner's family history in Cuba and their personal political and religious beliefs, an immigration judge granted Petitioner Losada deferral of removal under the Convention Against Torture ("CAT").¹ Under this order, Petitioner cannot be removed to Cuba, nor any third country that would re-foul him to Cuba in violation of the CAT Treaty.²

Following his release from Krome, Respondents placed Petitioner on an Order of Supervision ("OSUP") which he has never violated. Indeed, he reported last in January of 2025 and was set to report again on June 18, 2025. Without cause or provocation, Respondents spontaneously arrested Petitioner outside his mother's home on June 7, 2025, as he and his spouse were preparing to move into their very first home.

Respondents now file with the Court a copy of a Notice of Revocation and that document is dated June 7, 2025. However, Petitioner did not receive this document on June 7, 2025. The date appears to have been whited out and re-written. He received a document of third country removal on June 16, 2025, which officials at Krome later told him to disregard. Petitioner was only served

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994).8 CFR § 1208.16 essentially codifies the Convention Against Torture, which is an international treaty and not incorporated with the Immigration and Nationality Act.

² Article III of the CAT states: No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

documents (warrant of arrest; revocation of supervision) on the date of filing of Respondent's Response, June 16, 2025, at Krome, which Counsels received June 18, 2025, after visiting Krome. It appears that Respondents are trying to re-trace their steps and correct errors after the fact to support their legal arguments made before the fact.

Either way, revocation of the order of supervision and present detention is a violation of procedural and substantive due process in violation of the regulations and statute, as outlined with supporting citations, below.

II. LEGAL ARGUMENT

A. Petitioner does not make a "prolonged detention" claim but argues a due process violation of the statute and regulations.

Petitioner rejects the Respondents' characterization of his habeas as a prolonged detention case. At page 3 of their Response, [ECF Doc. 10, p. 3] Respondents frame Petitioner's claim as "a violation of" *Zadvydas v. Davis*, 533 U.S. 678 (2001). But this is not a prolonged detention habeas petition. Petitioner cites *Zadvydas* for its analysis of the post-removal order detention statute at 8 U.S.C. § 1231.³ Under that statute, Respondents shall remove an alien in 90 days immediately after an order. 8 U.S.C. § 1231a)(1)(A). After a 90-day period, if the noncitizen (alien) does not leave or is not removed, she shall be subject to supervision, the details to be spelled out by regulation. 8 U.S.C. § 1231(a)(3). After a six-month period, detention is presumably unconstitutional unless removal is imminent, or the non-citizen is a significant danger to the community. More importantly here, the statute sets forth a timeframe of events and is takes a calendrical approach, not a

³ *Zadvydas v. Davis* also reaffirms the district courts' jurisdiction over habeas corpus immigration-detention cases. 533 U.S. 678, 688 (2001) (under 8 U.S.C. § 2241(c)(3), habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to the post-removal-period detention). The courts' continuing jurisdiction over habeas claims in the immigration detention setting is discussed in a separate section.

mathematical approach: First, the removal order; then, 90 days of detention; and then, six months maximum detention. This is the chronology. The focus is on events, not numbers.

What the law does not say is that Respondents may detain at any time they feel inclined, or that, while six months is the maximum, the months can occur in nonconsecutive increments--or once every few years for a period of time until mathematically the time periods are reached. Instead, 90 days immediately after the removal order (the "removal period") the question becomes: is removal imminent? Another synonym for imminent used by the law is "reasonably foreseeable future."

Here, Petitioner was released from Respondents' custody four years ago. The post-removal order period long expired. Clearly, Respondents could not practically or legally execute removal to a third country. Now, the statute and regulations (discussed below) take over. The Court should reject Respondent's categorization of the petition as a prolonged detention claim when it is not. As a result, Respondents' argument is misplaced as it does not meaningfully reply to Petitioner's petition.

B. Petitioner's detention is in violation of 8 U.S.C. 1231.

Respondents violated the law in detaining Petitioner.⁴ 8 U.S.C. § 1231(a)(1)(A) defines the "removal period" as within 90 days of the removal order. The period begins on the date of the order being administratively final. During this specific period, the government "shall" detain. 8 U.S.C. § 1231(a)(2). If the alien does not leave or is not removed "within" the 90-day period, the alien, pending removal, "shall" be subject to supervision. 8 U.S.C. § 1231(a)(3). Herein, Congress

⁴ Respondents also violate President Trump's Executive Order 14165, Securing Our Borders, which specifies aliens previously released for lack of SLRRFF may be detained if removal appears significantly likely in the reasonably foreseeable future. Promptly, ideally within two days, the arresting officer or another officer will conduct an interview of the alien and provide the alien an opportunity to ask questions and tell why he or she should be released. None of this has occurred in Petitioner's case. 90 FR 8467, 1/30/25

calls for regulations prescribed by the Attorney General. The regulations "shall" include provisions requiring the alien to: periodically appear, submit to medical examination, given information about his nationality, circumstances, habits and activities, and obey reasonable written restrictions. *Id.*

The regulations

Respondents promulgated regulations following the *Zadvydas* decision. Their detention of Petitioner violates their own regulations. As a non-citizen with deferral under the CAT the question is whether there is a "significant likelihood" of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.4(a)(3) and (4). The government may also release an individual on an order of supervision where there is no danger to the public or risk of flight. 8 C.F.R. § 241.13(b). ICE has an acronym for these individuals that cannot be removed (often but not always from Cuba) which is "SLRRFF." The Respondents' regulations confirm what the statute says: the six-month period dates "from the beginning of the removal period." 8 C.F.R. § 241.13(b)(2)(iii). Where there is no SLRRFF the government "shall" promptly make arrangements for release of the alien. 8 C.F.R. § 241.13(g)(1).

An alien who violates the release conditions of OSUP may be returned to custody. 8 C.F.R. § 241.12(i)(1). Revocation may occur only if there is a violation or if the government determines there is a significant likelihood that the alien may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.2(i)(2). He is entitled to an interview. *Id.*

Missing from Respondents' filing is any document evidencing removal is "significantly likely" in the reasonably foreseeable future. It cannot be Cuba. And there is no evidence that ICE has applied to a third country, or that a third country has accepted Petitioner and will not remove him to Cuba. Respondents' failure to abide by the statute and regulations means his arrest and custody is illegal and merits habeas relief. *See Bunthoeun Kong v. United States*, 62 F. 4th 608,

619 (1st Cir. 2023); *Sering Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258 (W.D.N.Y. May 2, 2025); *Bonitto v. Bureau of Immigration & Customs Enft.*, 547 F. Supp. 2d 747 (S.D. Tex. 2008).

Four years after the removal period expired, Respondents have made no showing that removal to a third country is imminent; Petitioner is therefore likely to prevail on his claim that detention is unlawful and a violation of the statute and regulations. *See Ambila v. Joyce*, 2:25-cv-00267-NT, 2025 U.S. Dist. LEXIS 99565, 2025 WL 1504832 (D. Maine May 27, 2025).

C. Petitioner's removal is not significantly likely in the reasonably foreseeable future.

Even if ICE could present evidence that another country besides Cuba has accepted Petitioner for deportation, Petitioner has a right to make a claim of persecution and/or torture in *that* country, before an immigration judge. 8 C.F.R. § 1240.10(f) (the immigration just shall identify for the record a country or countries in the alternative to which an alien's removal may be made); *D.V.D. v. United States Dept of Homeland Security*, Civil Action No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 61563 (D. Mass. Mar. 28, 2025). Once an immigration judge advises an alien of a third country of removal, the individual is entitled to contest removal and seek relief therefrom. 8 U.S.C. § 1229a(4) (a non-citizen alien has the right to apply for relief from removal). Regulation, statute, and a class action injunction protect Petitioner from removal to a third country at this time. The removal period passed over four years ago and does not "re-start."

Considering Petitioner's due process rights embodied in statute and regulation, as well as the *DVR* class action injunction, he is likely to prevail on the claim that removal is not significantly likely, and detention is unlawful.

D. The Court has jurisdiction to issue a writ of habeas corpus, ordering Petitioner's release, in conjunction with or alternatively, enjoining transfer.

Habeas corpus jurisdiction exists under 28 U.S.C. § 2241 and is addressed in the petition. The Court's jurisdiction is fundamental and viable, notwithstanding 8 U.S.C. § 1252(g), a section of the Immigration and Nationality Act ("INA") the Government routinely invokes in most immigration-related federal cases. The federal courts, including the Supreme Court and the Eleventh Circuit Court of Appeals, have made clear that the district courts' habeas jurisdiction over unlawful custody survives certain legislative changes to the immigration statutes.

Petitioner is not herein contesting the substance of his removal order, but his present-day unlawful arrest, detention, and transfer away from his family, his attorneys, and the authority of this Court.

Eight U.S.C. § 1252(g) states in pertinent part that no court shall have jurisdiction to hear a cause or claim by or on behalf of an alien arising from a decision or action by the Attorney General to: commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act. The law envisions review of immigration court cases and removal decisions by an immigration judge to be heard (following review by the Board of Immigration Appeals) through the Courts of Appeal. 8 U.S.C. § 1252(a)(5); § 1252(b)(9). However, these provisions do not deprive the district courts of habeas jurisdiction over statutory and constitutional claims addressing detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (under § 2241(c)(3) habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention); *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) (The provision applies only to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders."); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (reaffirming Court's decision in *Reno v. American-Arab ADC* that scope relates only to those three actions); *Madu v. United States AG*,

470 F.3d 1362, 1366 (11th Cir. 2006) (court retains habeas jurisdiction to adjudicate claim regarding existence of lawful removal order); *Bunthoeun Kong v. United States AG*, 62 F.4th 608,614 (3d Cir. 2023) (8 USC § 1252(b)(9)'s phrase is not 'infinitely elastic' and does not encompass claims collateral to the removal order, such as unlawful detention).

Because questions of detention are distinct from the substance of a removal order, this Court has jurisdiction to consider a post-removal order habeas petition. *Zadvydas v. Davis*, 533 U.S. at 689. The decision to detain is distinct from the decision to execute a removal order. *Madu v. United States AG*, 470 F.3d at 1368. The constitutionality of immigration detention in any given case falls squarely within the context of a habeas corpus claim. *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025).

Petitioner is likely to prevail on the claim that this Court has jurisdiction over all issues raised, notwithstanding Respondents' objections.

E. Petitioner faces irreparable harm if the Court does not enjoin Respondents from transfer.

Petitioner seeks an order he be released, but as a secondary issue, while this issue is under consideration, Petitioner asks the Court to enjoin his transfer. Petitioner faces irreparable harm if he is transferred.

At this time, and as stated in the habeas petition, the Respondents are holding individuals in Djibouti, Africa, pending removal to Sudan or Libya. <https://www.npr.org/2025/06/06/g-s1-71039/migrants-djibouti-ice-shipping-container>. The deportation and detention of hundreds of non-American citizens to the CEPCOT prison in El Salvador, with bodies being spirited away before the courts could act, is also well documented. These unlucky people's habeas petitions were not filed in time to prevent deportation without due process. An order enjoining transfer is

necessary because the destination may be a third country where there is no access to counsel or the immigration court (or this Court) whatsoever.

In addition, transfer out-of-state means that this Court's authority may be lessened (not legally, but as a practical matter): it is cumbersome to communicate, much less enforce orders (and sanctions) if Respondents hold Petitioner in another state. Counsels require liberal access to meet with Petitioner in person in a confidential setting. Yet if allowed to transfer the client, Respondents could potentially move Petitioner every week or so. Also, the Court may require testimony from Petitioner, or from other individuals working for Respondents and performing functions relative to potential removal. Accordingly, to preserve Petitioner's access to counsel, the Court's access to witnesses, and to protect and ensure this Court's authority, Respondents should be temporarily restrained from transferring Petitioner away from South Florida. *See, e.g., Ambila v. Joyce*, 2:25-cv-00267-NT, 2025 U.S. Dist. LEXIS 99565, 2025 WL 1504832 (U.S.D.C. Maine May 27, 2025).

Respondents hold out 8 U.S.C. § 1252(a)(2)(B) to support the proposition that this Court does not have jurisdiction to require Petitioner's detention in South Florida. However, 8 U.S.C. § 1252(a)(2)(B) refers to discretionary decision-making in the adjudicative process, where the Attorney General (not ICE's) discretion is specified in the text of a statutory section. *See Spencer Enters. v. United States*, 345 F.3d 683, 696 (9th Cir. 2003); *Aguilar v. United States Immigration & Customs Enft Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 20 (1st Cir. 2007) (discretion must be specified in the particular statutory section); *Zhao v. Gonzales*, 404 F.3d 295, n. 5 (5th Cir. 2005) (*Van Ding* misstates the statutory text, omitting the phrase "the authority for which is specified" before "under this subchapter.") While Respondents cite to a Tenth Circuit decision (*Van Dinh v. Reno*, 197 F.3d 427 (10th Cir. 1999)), the First, Fifth and Ninth Circuit Courts of Appeal disagree with the Tenth's insertion of a discretionary component to the transfer question.

Normally, ICE will detain where they have bed space or for other factors. But this is not the "normal" case. Mr. Losada has filed a habeas corpus petition seeking emergency and extraordinary relief over his custody. Petitioner asserts he is detained in violation of the United States Constitution. This is a pending case and there will be questions for Petitioner, as well as his custodians. This honorable Court has every right to exercise its authority to preserve the *status quo* during this litigation and enjoin Respondents from spiriting Petitioner away to a remote location.

F. The balance of equities and the public interest weigh in favor of granting relief.

Petitioner asks the Court to order his immediate release from custody. If Respondents truly believe that removal to a third country may occur in the future, they have tools at their disposal to ensure Petitioner's compliance. These include electronic monitoring, curfew, and frequent reporting. On the other hand, detention is expensive and places a heavy burden on the families and detainees. Petitioner has strong family ties, a good job, and is raising a child. Equities and the public interest weigh in favor of release with conditions.

III. CONCLUSION

The record demonstrates Petitioner is likely to succeed on the merits of his claim that his arrest and detention are unlawful under 8 U.S.C. § 1231(a). Transfer out of South Florida will cause irreparable harm in litigating this case. The balance of overall equities and the public interest weigh in favor of granting habeas relief. Wherefore Petitioner seeks his immediate release from custody. Discretely, he moves that Respondents be enjoined from transferring him.

RESPECTFULLY SUBMITTED on this day 18th day of June, 2025.

(Signature on subsequent page)

/s/ Mary E. Kramer

Mary E. Kramer

FL Bar No. 0831440

Jose W. Alvarez

FL Bar No. 1054382

Law Office of Mary Kramer, P.A.

168 SE 1st Street, Suite 802

Miami, FL 33131

(305) 374-2300

mary@marykramerlaw.com;

josew@marykramerlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of June, 2025, I electronically filed the foregoing Reply to Respondents' Response in Opposition to the Petition for Writ of Habeas Corpus and Request for Emergency Injunctive Relief with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Counsel for Respondents:

H. Ron Davidson
ASSISTANT U.S. ATTORNEY
Court ID A5501144
E-mail: H.Ron.Davidson@usdoj.gov
United States Attorney's Office
99 N.E. 4th Street, Suite 300
Miami, Florida 33132
Telephone: (305) 961-9405

/s/ Mary E. Kramer
Mary E. Kramer