

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, Assistant FOD, USCIS, <i>et al.</i> ,)
)
Respondents.)
_____)

PETITIONER’S SUPPLEMENTAL BRIEF IN RESPONSE COURT ORDER

The Court directs the parties to address “the current posture of this case” and “whether [recent] developments are relevant to the Court’s disposition of the Petition.” (ECF No. 13). In the time since this action was filed, federal courts have confronted cases of the same posture as Petitioner: long-compliant supervisees suddenly re-detained without the required custody reviews, and without any demonstrable evidence of removal. This brief postures that courts decisively find that: (1) Current and routine ICE practice lacks statutory and regulatory authority to detain; (2) ICE cannot remove individuals with lawfully granted protective status; and (3) subsequent attempts to remedy such unlawful detention are not permitted. Based on the growing body of authority across the country, Petitioner asks his habeas petition be granted and the court order his immediate release.

I. Respondents Have Failed to Comply with Statutory Authority and Ignored Regulation on Post-Order Detention

Federal courts in the following cases have granted habeas and ordered release where the non-citizen was compliant with a long-standing order of supervision (OSUP), the regulatory

criteria for revocation of OSUP was not present, and the procedural requirements of the regulations were not followed. In Petitioner's case, he was not only unlawfully arrested without notice, but he has not once been timely served any requisite documents pertaining to post-order detention, and mandatory custody review. See *Declaration of Eurialo Losada* attached hereto as Exhibit "A."¹

In *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 5442119 (S.D. Fla. Sept. 9, 2025), the petitioner had lived for twelve years on OSUP after an Immigration Judge (IJ) granted him deferral of removal under the Convention Against Torture (CAT), when ICE suddenly re-detained him during a routine check-in without providing the mandatory post-revocation interview. The Court held that ICE's "failure to provide Petitioner with an informal interview promptly after his detention ... violates both ICE's own regulations and the Fifth Amendment." *Id.* at 9–10.

In *Zhu v. Genalo*, No. 1:25-cv-6523, 2025 WL 5522170 (S.D.N.Y. Aug. 26, 2025), the petitioner lived on OSUP for more than a decade before ICE re-detained him using a boilerplate Notice of Revocation. The court held that ICE "failed to conduct any individualized review or provide a contemporaneous written finding" required by § 241.4. *Id.* at 5. "Generic forms cannot substitute for the mandatory custody review contemplated by the regulations." *Id.* at 6.

In *Hernandez Escalante v. Noem*, No. 9:25-cv-182-MJT, 2025 WL 5081487 (E.D. Tex. July 11 & Aug. 2, 2025), the petitioner was taken back into custody after more than three years on OSUP. The government conceded that no custody review had been completed and no travel documents had issued. The court held that detention "unsupported by any contemporaneous review or finding of foreseeable removal" is ultra vires under § 1231(a)(6). *Id.* at 7.

¹ Petitioner includes all of the documents he or undersigned have been served with by Respondents and their agents attached as Exhibit B through Q. Any document not included has never been served nor presented to Petitioner.

In *Ping Heng Qui v. Carter*, No. CIV-25-3131-JWL, 2025 WL 2770502 (D. Kan. Sept. 26, 2025) the petitioner was on OSUP for over 25 years when ICE unlawfully detained him. The District Court granted the habeas petition and ordered immediate release. The decision noted that 8 CFR § 241.13 and § 241.4 both apply (in that order) to revocation, which must be based on a finding of changed circumstances: that removal is significantly likely in the foreseeable future. Of note, the harm of non-compliance with regulatory procedure is unlawful detention, which cannot be cured through subsequent substitute process. The only remedy is release. *Id.* at 7.

In *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025), the petitioner lived on OSUP for over twenty years when ICE abruptly re-detained him at a routine check-in. *Id.* at 1. The court emphasized that once ICE revokes OSUP under § 241.4(l), the agency must conduct an informal interview, followed by a full custody review within approximately three months, and thereafter must initiate a § 241.13 *Zadvydas* review if the record contains “substantial reason to believe” removal is not significantly likely. *Id.* at 4–6 (quoting § 241.4(i)(7)).

II. Detention Is Unlawful Because Petitioner’s Deferral of Removal Under CAT Precludes Execution of His Removal Order

Federal courts have repeatedly rejected the government’s unlawful practice of re-detaining individuals who received lawful protective status by an IJ and attempt to remove them to that very country they received protection from.

In *Grigorian*, the petitioner received deferral of removal under CAT and remained on supervision for twelve years. When ICE re-detained him in 2025 despite the still-active deferral, this Court held that ICE’s failure to follow § 241.4—particularly the required interview and the need to consider the deferral’s legal effect—violated both the regulations and the Fifth Amendment. *Grigorian*, 2025 WL 5442119, at 5.

In *Marquez v. Ripa*, No. 25-CV-23256-RKA (S.D. Fla. July 25, 2025), the petitioner—an asylee whose removal to Cuba was legally barred due to an IJ granting protection under CAT—was unlawfully arrested by ICE. Within 48 hours of filing a writ of habeas corpus before this Court, Judge Altman issued an Order to Show Cause. Respondents never filed a response, and released the petitioner four days later. *See* Petitioner’s Notice of Voluntary Dismissal with Prejudice, *Marquez v. Ripa*, No. 25-CV-23256-RKA (S.D. Fla. July 25, 2025).

In *Phongsavanh v. Williams*, No. 4:25-cv-00426-SMR-SBJ, 2025 WL 7009421 (S.D. Iowa Nov. 7, 2025), a Laotian national with CAT deferral was re-detained after nearly twenty-five years of supervision. ICE argued that “removal may now be possible,” but the court rejected that claim because ICE had “failed to identify any country willing to accept [the petitioner]” or any “changed circumstances” rendering removal foreseeable. *Id.* at 9–10.

In *Wing Nuen Liu v. Carter*, No. 25-CV-412, 2025 WL 2174032 (E.D. Va. Apr. 17, 2025), petitioner had an active CAT deferral when ICE re-detained him after years of compliance. The court held that “a standing deferral order under 8 C.F.R. § 208.17 constitutes a legal bar to removal that cannot be overridden by administrative speculation.” *Id.* at 6. Detention absent a § 241.13 finding of foreseeable removal “exceeds the narrow authority Congress conferred in § 1231(a)(6).” *Id.* at 7.

III. Removal to a Third Country Requires Actual Acceptance, Not Unsupported Assertion

Having no lawful means remove Petitioner to Cuba—the sole country designated in his 2021 removal order—Respondents will seek to remove him to Mexico or another “third country.” The statutory framework governing post-order custody is tethered to actual and demonstrable evidence of removal, not hypothetical or aspirational possibilities. District courts have repeatedly

rejected attempts to justify revocation based on subsequent conjecture or substitute process as a remedy for illegal arrest and detention.

In *Grigorian*, this Court rejected ICE's claim that it could continue detention while exploring "possible arrangements" with third countries. The court held that "speculative or anticipated diplomatic developments do not satisfy the requirement of a reasonably foreseeable removal," and that ICE had shown "no evidence" that any country agreed to accept the petitioner. *Grigorian*, 2025 WL 5442119, at 5–6.

In *Phan v. Becerra*, No. 2:25-cv-281, 2025 WL 2390089 (W.D. Wash. May 6, 2025), the government argued that removal might resume once "future diplomatic efforts" matured. The court rejected this, holding that "administrative optimism does not meet the constitutional standard for foreseeable removal." *Id.* at 5. Under § 241.13(f), ICE must present concrete evidence, not conjecture. See *Id.*

Finally, courts emphasize that third-country removal is virtually nonexistent: in *Puertas-Mendoza v. Bondi*, the court found that "less than two percent" of individuals granted withholding or CAT relief are ever removed to a third country and that foreign governments "routinely deny" such requests. *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 U.S. Dist. LEXIS 223234 (W.D. Tex. Oct. 22, 2025). Moreover, the court held that ICE's coercive attempts to pressure the petitioner into agreeing to removal to a barred country—combined with the absence of any evidence that any third country would accept him— "show that [his] removal is not reasonably foreseeable." *Id.* at 10–11.

CONCLUSION

Because ICE lacked and still lacks any statutory, regulatory, or constitutional authority to detain Petitioner, the Court should order his immediate release.

Respectfully submitted this 5th day of December 2025.

/s/ Jose W. Alvarez

Jose W. Alvarez

Mary E. Kramer

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