

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

FORT MYERS DIVISION

Case No.: 2:25-cv-697-JLB-KCD

MANUEL YAX ZAPETA,

Petitioner,

v.

KEVIN GUTHRIE, *et al.*,

Respondents.

**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITION AND
MOTION FOR TEMPORARY RESTRAINING ORDER**

COMES NOW, Petitioner **MANUEL YAX ZAPETA**, through undersigned counsel and hereby files his reply to Respondent's Response to Petition and Motion for Temporary Restraining Order (Doc. 13) and in support states as follows:

INTRODUCTION

Petitioner faces imminent, potentially irreversible removal within hours, while Respondents admit they cannot confirm whether required statutory and regulatory safeguards were followed before his sudden re-detention after 27 years. The urgency of this matter cannot be overstated: the government concedes it has 'scarce information' and 'no documentation' to demonstrate compliance, yet seeks to proceed with expeditious removal. This Reply addresses and refutes Respondents' mischaracterizations and highlights their own admissions that warrant immediate injunctive relief.

LEGAL ARGUMENT

A. Respondents' Jurisdiction Argument Under § 1252(g) is Misplaced

Respondents' reliance on 8 U.S.C. § 1252(g) as jurisdiction stripping is tenuous due to the provision being narrowly drawn to apply only to challenges arising directly from the Attorney General's decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge the validity of his final removal order, nor the government's general authority to execute it.

Rather, as made clear in Petitioner's Amended Habeas (Doc. 4 at 7–9) and TRO (Doc. 12 at 8–11), Petitioner postures and restates that Respondents' have failed to comply with mandatory statutory and regulatory pre-deprivation procedures before detaining Petitioner decades after the statutory removal period ended. These claims are collateral to the removal order itself, focusing solely on violations of 8 C.F.R. §§ 241.4 and 241.13 and the Fifth Amendment's due process guarantees.

Courts routinely find jurisdiction in this posture. *See Ortega v. Kaiser*, No. 1:24-cv-3024, 2024 WL 6583607, at *3 (D. Colo. Nov. 5, 2024); *Galindo Arzate v. Andrews*, No. 2:25-cv-00352, 2025 WL 2230521, at *4–5 (E.D. Cal. May 2, 2025).

Respondents' own filing confirms this is not a record-based challenge to a removal order: they admit having “scarce information on hand specific to Zapeta” and “no documentation other than what Zapeta provided with his Amended Petition” (Doc. 13 at 1). These admissions show the government's position is not grounded in a developed administrative record, nor that they acted attentively, underscoring that judicial review is not jurisdictionally barred but urgently necessary.

B. Respondents’ “Lawful Detention” Argument Misstates the Nature of Petitioner’s Claim

Respondents argue detention is lawful under 8 U.S.C. § 1231(a)(6), but that provision must be read with its accompanying procedural safeguards. It authorizes detention during and, in certain circumstances, beyond the removal period — not arbitrary re-detention decades after the removal period has expired without adherence to the procedures in 8 C.F.R. §§ 241.4 and 241.13.

As argued in Petitioner’s Amended Habeas (Doc. 4 at 10–13) and TRO (Doc. 12 at 12–14), this is not a “prolonged detention” case under *Zadvydas v. Davis*, 533 U.S. 678 (2001). The removal period ended in 1998. Petitioner was on OSUP from March 2020 until his sudden detention in 2025, without prior notice or custody review.

Once more, Respondents admit they “have no information about what happened during the intervening time” (Doc. 13 at 2) and “cannot say one way or the other whether any notice or interview occurred” (Doc. 13 at 13). These are not minor record gaps — they are concessions that the agency cannot prove compliance with the very regulations that give it authority to detain in this posture. Courts have held that such failures render detention unlawful. *See Nguyen v. Hyde*, No. 2:24-cv-01235, 2024 WL 4992296, at *5 (W.D. Wash. Aug. 23, 2024); *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735 (E.D. Cal. July 16, 2025).

C. Respondents Mischaracterize Petitioner’s Claims and Concede Critical Facts Supporting Immediate Relief

Respondents mischaracterize Petitioner’s position as arising from “violations of OSUP” (Doc. 13 at 12–13). Petitioner does not allege that he violated his OSUP conditions, nor have Respondents presented even a scintilla of evidence of said violation. The claim is that Respondents violated statute, regulations, and the Fifth Amendment by detaining him without following the required *pre*-deprivation process.

Respondent's Answer concedes several key points: (1) Respondents "cannot say one way or the other whether any notice or interview occurred" before revocation and detention (Doc. 13 at 13); and (2) Respondents "could not retrieve documentation relevant to Zapeta" and have "no information about what happened during the intervening time" (Doc. 13 at 1–2, 13). Put squarely, if proper procedures had indeed been followed, such information would be readily available and painless for Respondent's to produce. *See Morrissey v. Brewer*, 408 U.S. 471, 489 (1972).¹

Respondents also rely on 8 C.F.R. § 241.4(l)(2), but that subsection addresses revocation of release for those already in custody during the removal period — not re-arrest of someone supervised for years beyond it. To apply it here would erase the procedural safeguards Congress and the agency put in place.

Finally, Respondents' suggestion that ICE could simply provide required procedures later (Doc. 13 at 13–14) is directly contrary to *Zadvydas*, 533 U.S. at 690–91, which underscores that such protections must be provided *before* detention and removal to ensure meaningful review. Post hoc compliance cannot remedy an unlawful deprivation of liberty, but instead demonstrates clear and unequivocal attempts to circumvent and bypass long-standing, constitutionally protected process.

The government's inability to confirm whether the law was followed, coupled with their inability to provide removal timing assurances (Doc. 13 at 1–2), is precisely why a TRO is

¹ [I]ndividuals on conditional liberty (such as OSUP) are entitled to at a minimum: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. *Id.*

warranted to maintain the status quo until an evidentiary hearing can determine the legality of the detention and removal.

D. Even in the Most Favorable Light of Respondent's Position, the Weight of Their Argument is De Minimis Based on Their Decades Long Failure to Act Under Long Standing Precedent outlined in *Matter of Pena-Diaz*

Even if every assertion in Respondents' opposition (Doc. 13) were accepted as true, the weight of their position is minimal when viewed through the legal lens established in *Matter of Pena-Diaz*, 20 I. & N. Dec. 841, 846 (BIA 1994). There, the BIA held that "when an alien's eligibility for a new form of relief from deportation arises due to the Service's deliberate failure to enforce a final deportation order, it is equally appropriate to consider this factor in deciding whether or not the proceedings should be reopened in the exercise of discretion," and that "in a case such as the respondent's, where the Service has affirmatively permitted the alien to remain, the equities in the alien's favor become particularly strong."

Respondents admit that Petitioner was allowed to remain in the United States for nearly three decades, including five years under an order of supervision without any violations (Doc. 13 at 1-2). They further admit they have "scarce information" and "no documentation" to show compliance with required procedures before re-detention (Doc. 13 at 1-2, 13).

Under *Pena-Diaz*, these facts mean that, even assuming lawful authority to act, the government's equities are substantially diminished by its own prolonged inaction and tolerance. By contrast, Petitioner's equities — 27 years of lawful employment, deep church and community service, and reliance on the government's intentional non-enforcement — weigh heavily in favor of maintaining the status quo pending full adjudication.

Respondents' failure to address this controlling standard underscores that their position, at its strongest, cannot outweigh the equities and due process concerns before the Court.

CONCLUSION

For the foregoing reasons, and for those stated in Petitioner's Amended Habeas (Doc. 4) and TRO (Doc. 12), the Court should: (1) grant the requested Temporary Restraining Order; (2) enjoin Respondents from removing Petitioner pending resolution of these proceedings; (3) order Respondents to return Petitioner to Florida from the Alexandria Staging Facility in Louisiana; and (4) grant the Amended Petition for Writ of Habeas Corpus and order Petitioner's immediate release from custody.

Respectfully submitted on this day 9th of August, 2025.

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