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

Jesus Valdes-Santovenia

Petitioner

vs.

Garret Ripa, Miami Field Office
Director, Immigration and Customs
Enforcement;

Kristi Noem, Secretary of Homeland
Security; and

Pamela J. Bondi, Attorney General of
the United States,

Respondents

Case No. : 2:25-CV-1063-JES-DNF

PETITIONER'S RESPONSE TO THE GOVERNMENT

This case is simple: the Government seeks to detain, indefinitely, a longtime resident of the United States for no legal reason. The Government wants to nullify centuries of jurisprudence involving the Great Writ by simply misstating the law. Jesus is not raising a claim under the APA, his conviction is not for a controlled

substance under Florida law, and the Honorable Court's habeas jurisdiction is not precluded by statute. The Honorable Court should respectfully order Jesus's release since his detention is unlawful.

I. The Honorable Court's Jurisdiction to Review Mr. Valdes's Constitutional Claims is not Precluded by 8 U.S.C. §1252.

The Honorable Court remains the proper forum to review the Agency's actions and their validity. Courts have long reviewed the legality of one's detention through habeas proceedings. *Accord Saint Fort v. Ashcroft*, 329 F.3d, 197-201(1st Circuit 2003). In fact, the Supreme Court ruled that habeas review and judicial review are separate and habeas review could be used to review the legal validity of a final removal order even with preclusion statutes in place. *I.N.S. v. St. Cyr*, 533 U.S. 289, 298-316 (2001) (ruling that habeas jurisdiction still exists to resolve questions of law and the executive's interpretation of the laws). The Writ may also be used challenge detentions based on errors of law including erroneous application and interpretation of statutes. *Id.* At 302. Moreover, the Supreme Court has ruled that eliminating habeas review and substituting it with judicial review violates the Suspension Clause. *Boumediene v. Bush*, 553 U.S. 723 (2008).

In the case at bar, the Government argues that the Honorable Court is stripped of its habeas power because of the preclusion clause in 8 U.S.C. §1252. However, the cases mentioned *supra* clearly show that the Honorable Court is the venue to challenge the validity of his detention, and the process that led to it. *St. Cyr*, 533 U.S.

at 298-316. In fact, the Government's response asks the Honorable Court to strip itself of jurisdiction in contradiction of the Suspension Clause. *Boumediene*, 553 U.S. at 723.

To be clear, Mr. Valdes is asking the Honorable Court to review the following issues:

- Whether he should be detained since there was a major change in law that makes him eligible for relief.
- Whether the revocation of his supervised release, leading to his detention was legal.

These questions are purely legal questions and do not implicate INA §242 review and do not challenge the length of his detention. These questions are clearly reviewable by the Honorable Court.

II. There Are No Legal Basis for the Detention Since Jesus is Not an Aggravated Felon.

There have been major changes in law at the Eleventh Circuit that would raise questions relating to Jesus's detention. As mentioned in the initial petition, the Eleventh Circuit has ruled that Fla. Stat. § 893.135(1)(a) is overbroad since Florida's drug schedules are broader than their federal counterparts. The Eleventh Circuit ruled that Florida's definition of marijuana included all parts of the marijuana plant, not just the leaves, making Florida's charts overbroad. *Said v. U.S. Att'y Gen.*, 28 F.4th 1328, 1333 (11th Cir. 2022).

Here, the government's own evidence shows that Mr. Valdes was allegedly convicted of the same statute that was involved in *Said*. [Doc. 8 Exh. A]. Applying the categorical approach to the case at bar, since the Eleventh Circuit ruled that Florida's schedules are overbroad, Mr. Valdes's conviction could have been for a substance not prohibited under the federal statutes, and as such his detention is illegal.

This interpretation goes hand in hand with the Government's interpretation of *Said*. The Government in this case argues that Mr. Valdes should await the resolution of his case before the Executive Office of Immigration Review. Undersigned has had two clients removed from the United States *despite* pending motions to reopen and stay proceedings, which would have previously halted removals, and the Respondents no longer follow these guidelines.

The Honorable Court should respectfully rule that Jesus's conviction is no longer a proper basis for his removal and grant this petition.

III. Jesus is not Raising an APA Claim Before the Honorable Court but Challenging the Revocation of his Supervised Release that Led to his Detention.

The Honorable Court should respectfully release Jesus from custody since the Respondents violated Mr. Valdes's due process rights by not following their own procedures and not abiding by APA criteria. To be clear Mr. Valdes is not raising a

APA claim but arguing that the Respondents violated his due process rights by not following their own regulations, which violates due process and the APA, making his detention illegal. An Agency's failure to follow its own regulations is a violation of an immigrant's due process rights. *Campos v. I.N.S.*, 32 Fed.Supp.2d 1337, 1348 (S.D. Fla. Dec. 9, 1998) (holding that deportable aliens have procedural due process rights, which would be violated by the Agency's failure to follow its own regulations). An immigrant must show prejudice to succeed on a procedural due process claim. *Javier Gonzalez v. U.S. Att'y Gen.*, 844 F. App'x 129, 130 (11th Cir. 2021). Prejudice in this context means that the immigrant must show that the outcome would have been different were it not for the due process violation. *Serrano-Molina v. U.S. Att'y Gen.*, 712 F. App'x 938, 941 (11th Cir. 2017).

The procedures to revoke supervised release by the Respondents are listed in 8 CFR §241.4. To revoke a supervised release Respondent Ripa, or his designee, must make the determination that there has been a major change in circumstances, or that the immigrant's removal to the country of removal or a third country is imminent. 8 CFR §241.4(b)(4). At all times, any custody determinations shall be in writing and must include a detailed analysis of the reasons behind the determination. 8 C.F.R. § 241.4 (d).

The District Director must use the following criteria to determine whether an immigrant must be detained after the review process:

- (1) Travel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest;
- (2) The detainee is presently a non-violent person;
- (3) The detainee is likely to remain nonviolent if released;
- (4) The detainee is not likely to pose a threat to the community following release;
- (5) The detainee is not likely to violate the conditions of release; and
- (6) The detainee does not pose a significant flight risk if released. 8 C.F.R. § 241.4(e).

In cases where the District Director is revoking the supervised release, the following factors should be used:

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate. 8 C.F.R. § 241.4 (1)(2).

It is important to state that as mentioned *supra*, Mr. Valdes is no longer deportable as an aggravated felon, so these procedures do not apply to him. However, should the Honorable Court rule otherwise, the Respondents clearly violated Mr. Valdes's procedural due process rights, making his detention unconstitutional. **To begin, there have been no changes in circumstances in the case at bar to warrant detention.** [emphasis added].

Additionally, Respondents did not follow the procedures in 8 C.F.R. § 241.4 (d), since they did not issue a detailed analysis for the reasons for revoking Mr.

Valdes's supervised release. The determination was lacking for any reasons and simply states that Mr. Valdes did not produce any evidence. Moreover, the determination did not include an analysis of the factors under 8 C.F.R. § 241.4(e). The determination did not include where Mr. Valdes was likely to obtain a travel document any time soon, no matter whether Mr. Valdes was a threat to the community.

Lastly, the Respondents clearly did not follow the factors listed in 8 C.F.R. § 241.4 (1)(2). The Deportation Officer did not determine whether the purpose of the release have been served, whether Mr. Valdes violated any conditions of his release, whether it is appropriate, or likely, to enforce the removal order, or release is inappropriate because of Mr. Valdes's conduct. The Respondents did not follow their own regulations, and such failure is a clear violation of Mr. Valdes's procedural due process rights, making his detention unlawful.

Mr. Valdes could show that were it not for those failures, he would not have been detained. Mr. Valdes clearly meets the criteria for release under 8 C.F.R. § 241.4(e). In fact, for more than 13 years, the Respondents have been regularly granting him extensions of his supervised release without any questions. Were it not for the Respondents' failure to follow their own regulations and procedures, Mr. Valdes would not be presently detained.

Since Mr. Valdes has clearly showed that the Honorable Court has jurisdiction in this case and that his detention is unlawful, the Honorable Court should respectfully grant the instant petition and release him from custody.

Respectfully submitted:

s/Ahmad Yakzan
AHMAD YAKZAN
Attorney for Petitioner

Certificate Of Service

I, Ahmad Yakzan, Counsel to the Petitioner, do hereby attest that I sent a copy of the foregoing to the Respondents via CM/ECF on December 15, 2025.

s/Ahmad Yakzan
AHMAD YAKZAN
Attorney for Petitioner