

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

NORBEY RAMIRO BOLIVAR,

Petitioner,

v.

FIELD OFFICE DIRECTOR GARRETT
RIPA, ET AL.,

Respondents.

Case No . 2:25-CV-1203-SPC-DNF

**PETITIONER'S RESPONSE TO RESPONDENTS' OPPOSITION TO PETITION
FOR WRIT
OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

I. Petitioner Has Not Failed to Identify an Appropriate Respondent

Respondents argue that the present case should be dismissed as the warden of the facility Petitioner is currently held in was not listed as a Respondent. However, that is not correct. This Court has previously held that: “[w]hile a prisoner’s immediate custodian is normally the only proper respondent in a habeas action, immigration detention is more complicated.” *Krechmar v. Parra*, 2:25-cv-01095-SPC-DNF (M.D. Fla. Dec 15, 2025).

“[w]hile Alligator Alcatraz is a state-run facility, ICE controls who is admitted, detained, and released.’ The **warden of Alligator Alcatraz would be ill-equipped to respond to the merits of Krechmar's claims and to be the sole defender of the federal government's interests.** The Southern District of Florida explained why the director of ICE's local field office is a more appropriate respondent: **Moreover, when a federal immigrant detainee is housed in a contract facility, the federal official charged with overseeing the detainees in that facility is more akin to the ‘immediate**

custodian’... than a non-federal warden. Federal immigration detainees are detained ‘pursuant to the power and authority of the federal government’ and not the warden of the nonfederal facility where they are detained.” *Krechmar v. Parra*, 2:25-cv-01095-SPC-DNF (M.D. Fla. Dec 15, 2025) (citing to *Rumsfeld v. Padilla*, 542 U.S. at 434, 124 S.Ct. 2711; *Saravia [v. Sessions]*, 280 F.Supp.3d 1668, 1186 (N.D. Cal. 2017).) (emphasis added).

This Court in *Krechmar* found that Garrett Ripa, Director of ICE's Miami Field Office is a proper respondent. *Id.*, at 6. In this case, the Petitioner ICE Miami Field Director. Garret Ripa is a named Respondent. Therefore, a proper Respondent has been named in this petition for a Writ of Habeas.

II. 8 U.S.C. 1252(g) Does Not Preclude Review of Petitioner’s Claims

The Respondents mistakenly assert that this action should be dismissed because Petitioner is challenging ICE’s authority to reinstate his final order and challenging DHS’s detention for the purpose of reinstating that order. *See* ECF No.11 at p. 6. Respondents rely on *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (“AADC”), stating that 8 U.S.C. § 1252(g) bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.”

Respondents’ reliance on 8 U.S.C. § 1252(g) is misplaced because it rests on a fundamental mischaracterization of Petitioner’s claim. Petitioner does not challenge the Attorney General’s discretionary decision to execute the removal order against him. Rather, Petitioner challenges the legality of his detention under a framework devised by the Supreme Court. The INA does not strip this Court of jurisdiction over this action. *See, Krechmar v. Parra*,

2:25-cv-01095-SPC-DNF (M.D. Fla. Dec 15, 2025). Here, the action being challenged is not the validity of a removal order, but the manner in which DHS is detaining Petitioner without constitutionally adequate process. A due process challenge to unlawful detention is categorically distinct from a challenge to the government's authority to remove.

Respondents blatantly misstate the S.D. Fla. decision on *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025), claiming that in that case, the court found that 8 U.S.C. § 1252(g) barred habeas petitioner's claims that OSUP had been improperly revoked, *See* ECF No.11 at p. 7. When in fact, the court in *Barrios v. Ripa* only held that:

“§ 1252(g) deprives it of subject-matter jurisdiction over Respondents' decision to revoke the OSUP, but not their purported failure to comply with their own procedures in doing so... However, the Court does have jurisdiction to adjudicate whether Respondents complied with their own OSUP revocation procedures. The Eleventh Circuit has consistently held that even where the statutory framework grants agency discretion, courts have jurisdiction to review whether an agency adhered to its own regulations and procedures.” *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *8, 9 (S.D. Fla. Aug. 8, 2025) (citing to *Kurapati v. U.S. Bureau of Citizenship and Immig. Services*, 775 F.3d 1255, 1262 (11th Cir. 2014) and *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *3-5 (S.D. Fla. July 8, 2025).

Specifically, in *Grigorian v. Bondi*, the court held that § 1252(g) did not strip the Court of jurisdiction to evaluate whether the government complied with OSUP revocation procedures), *Grigorian*, 2025 WL 1895479, at *3-5.

The Petitioner in this case did not receive proper notice of the revocation of his OSUP. Rather, the Notice of Revocation that he was presented with had no signature of any kind nor was it dated. Petitioner's claim is not about

Respondent's decision to revoke the OSUP but rather that the absence of any signature renders the Notice invalid and void ab initio, as no authorized official executed the revocation. This failure by Respondents falls within this Court's jurisdiction as they failed to comply with their own procedures. A subsequent attempt at rectification of the Notice of Revocation does not erase the fact that Respondent's revoked Petitioner's OSUP without adequately following their own procedures and thus have violated his rights.

II. 8 U.S.C. § 1252(b)(9) Does Not Bar This Court's Review

Respondents also argue that this Court also lacks jurisdiction under 8 U.S.C. § 1252(b)(9), also known as the "zipper clause". The zipper clause only applies to claims requesting review of a removal order. *Krechmar v. Parra*, 2:25-cv-01095-SPC-DNF, *3 (M.D. Fla. Dec 15, 2025) (citing *Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006)). Here, as in *Krechmar v. Parra*, the Petitioner does not challenge the commencement of a proceeding, the adjudication of a case, or the execution of his removal order, nor is he requesting the Court to review the removal order. Rather, the Petitioner is challenging the legality of his detention as Respondents did not follow the required procedures and did not properly serve Petitioner with valid Notice.

IV. Petitioner's Detention is Not Lawful:

A. The Respondents have already exceeded the amount of time they can legally reasonably hold Petitioner

Respondents are not entitled to keep Petitioner in custody indefinitely. He has already been detained for over 7 months since the reinstatement of his removal order. Thus, the Respondents must show that there is a significant likelihood that Petitioner will be removed in the foreseeable future. 8 C.F.R. § 241.13(i)(2). Petitioner was ordered removed on April 08, 2004. Then, he was re-detained on July 13, 2015 and released from custody on January 14, 2016 – six (6) months after his redetention as the Respondents have calculated. *See* ECF No. 11. Then, he was retained on December 7, 2026, over 30 days ago. Petitioner's current detention is unreasonable and he is thus entitled to immediate release as he was previously in detention following a final order for six months and a day and then he was detained on December 7, 2025, over a month ago.

B. Petitioner's Order of Supervision Was Not Lawfully Revoked

Respondents contend that ICE lawfully revoked Petitioner's Order of Supervision in compliance with governing statutes and regulations. That contention fails. The detention at issue rests on a revocation notice that was neither properly executed nor properly served. As established by counsel's sworn affidavit, submitted as Petitioner's Exhibit A, the operative document relied upon to detain Petitioner was unsigned and undated. ICE cannot cure these defects through post-hoc justification. Because the agency failed to effectuate a procedurally valid revocation, the detention violates the Accardi doctrine and procedural due process. As set forth in counsel Pena's sworn affidavit, submitted as Petitioner's Exhibit A, the revocation notice provided to Petitioner at the time of his detention

was unsigned and undated. Counsel personally reviewed the document in Petitioner's possession during two separate attorney-client meetings conducted after detention and confirmed on each occasion that the notice lacked both a supervisory signature and a date. See Pet'r's Ex. A. An unsigned and undated revocation notice lacks any indicia of final agency authorization and cannot constitute a lawful revocation of supervision. Absent execution, the document reflects neither approval by a supervising officer nor completion of the agency's decision-making process. ICE therefore cannot rely on that document to justify continued custody.

It is well settled that an administrative agency must follow its own regulations, particularly where liberty interests are implicated. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Although ICE has discretionary authority to revoke an order of supervision under 8 C.F.R. § 241.4(l)(2), that discretion must be exercised through a procedurally valid decision. A revocation notice that is unsigned and undated is not a lawful agency action and cannot support a custody determination under *Accardi*. Where, as here, ICE failed to comply with its own procedures, the purported revocation is invalid and cannot justify detention.

Respondents appear to rely on a "Notice of Revocation of Release & Informal Interview," submitted as Respondents' Exhibit F. However, the notice in Petitioner's possession—the document counsel personally reviewed on two

separate occasions and which was relied upon to effectuate detention—is not the same document submitted by Respondents as Exhibit F. See Pet’r’s Ex. A. Even assuming Respondents’ Exhibit F reflects a fully executed revocation notice, it is legally irrelevant if it was not served on Petitioner. Administrative law focuses on the operative agency action actually communicated to the affected individual, not on documents later produced during litigation. ICE may not detain an individual based on one document and later justify that detention with a different decision.

An agency action must be upheld, if at all, on the grounds invoked at the time it was taken. *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). Where two versions exist—one allegedly complete and one actually served—the only operative action is the one provided to the individual. The existence of materially different versions confirms a procedural defect that cannot be cured post hoc.

The Fifth Amendment requires notice reasonably calculated to apprise the individual of the action taken. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). See also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Respondents have failed to establish that Petitioner’s Order of Supervision was lawfully revoked. The revocation relied upon to detain Petitioner was procedurally defective, violated ICE’s own regulations under Accardi, and deprived Petitioner of liberty without constitutionally adequate notice.

The Respondents have argued that “Petitioner has failed to demonstrate how 8 C.F.R. § 241.13 is applicable here where he has not yet requested, much less received, a formal headquarters-level decision concerning the likelihood of his removal in the reasonably foreseeable future”. ECF No.11 at p. 9. This statement is legally flawed. There is not a single reason for Petitioner to have requested a formal headquarters-level decision under 8 C.F.R. § 241.13(d)(1) as this statute refers to the procedures that must be taken before ICE releases a person with a final order *on an order of supervision* after the 90 days initial period of removal. In this case, the Petitioner’s initial 90 day period ended back in 2015. Furthermore, this statute does not apply to any procedure regarding the revocation of an order of supervision. Even in those cases where the statute would apply, the Respondents are incorrect to even suggest that filing a written request under 241.13(d)(1) is a mandatory requirement before filing a Writ of Habeas as the statute clearly states that the “alien **may** submit”, not that “the alien **shall** submit” a written request for release.

C. Respondents Have not Demonstrated a Significant Likelihood of Removal in the Reasonably Foreseeable Future

Respondents argue “[T]hat an alien ordered removed be detained for the 90-day removal period after his order of removal becomes final... But even where removal is not made on that schedule, the government is permitted to continue to detain an alien—or to detain him again in the future for the purpose of executing

the order—and there is no statutory limit on how long that post-removal detention period may last.” See ECF 11 at p.13.

Respondents argue that Petitioner has only been detained most recently for 30 days and as such his claim for habeas is premature as he has not been detained for longer than six months. However, in *Andino Gonzalez v. Noem*, this Court found that the detention period does not begin on the most recent re-detention date. Rather, this court held “[t]hat assumption is inconsistent with *Zadvydas*. It would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months.” No. 2:25-cv-01176-SPC-NPM...at 5. (M.D. Fla. Jan 07, 2026) citing to *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002). Although Respondents argue that Petitioner will be removed in the reasonably foreseeable future to Mexico, rather than Colombia, his country of citizenship, they have taken no steps to initiate this removal. Additionally, the Petitioner does not have any ties to Mexico. As such, Respondents assertion that Petitioner’s habeas claim is premature is invalid as per the precedent set forth by this very Court and Petitioner is entitled to immediate release.. ICE recognized when it placed Petitioner on OSUP in January 2016, Petitioner did not pose a danger to the community nor a flight risk. Over the following nine (9) years, Petitioner complied with every requirement of supervision. Petitioner has not been arrested or convicted of any new offense since July 2015 when he was charged for his

re-entry in, and no evidence exists to justify a sudden shift in Respondents' position.

Petitioner is not a Mexican national and Respondent have produced no proof of: a request for travel documents; a response from the Mexican government; a timeline for removal; or any indication that removal is feasible.

D. Respondents Fail to Justify Continued Detention Despite Petitioner's Medical Condition

Respondents argue that Petitioner's medical condition and the conditions of his confinement do not render his detention unconstitutional. The government based their argument on *Demore v. Kim*, 538 U.S. 510 (2003). However, the government reliance on *Demore v. Kim* is incorrect. *Demore* addressed brief, mandatory detention **during the pendency of removal** proceedings and rested on the assumption that such detention would be of limited duration. *Id.* at 529–30. The Supreme Court expressly distinguished that scenario from prolonged or indefinite detention raising serious constitutional concerns. *Id.* at 527–28; *Zadvydas*, 533 U.S. at 690.

Petitioner here has shown that detention—despite ICE's actual notice of recent surgery—has resulted in limited access to necessary medication and a foreseeable risk of harm. This is not a challenge to uncomfortable conditions, but to the lawfulness of continued confinement under the Due Process Clause.

Respectfully submitted,

/s/ Patricia Castillo Flanagan

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: January 9, 2026

Signed: **/s/ Patricia Castillo Flanagan**

Patricia Castillo Flanagan, Esq.

/s/ Melisa Peña

Melisa Peña, Esq.