

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROBERTO FRANCISCO FRANCO
RODRIGUEZ,

Petitioner,

No. 2:26-cv-00002-KCD-DNF

v.

WARDEN, Florida Soft Side South
facility, in his official capacity,

Respondents.

RESPONSE TO PETITIONER'S MOTION
FOR RELIEF FROM FINAL JUDGMENT

Petitioner Roberto Francisco Franco Rodriguez moves for relief from the final judgment dismissing his petition for writ of habeas corpus on the basis that his petition is moot due to his removal from the United States. Following the Respondents' assertion that the petitioner was removed from the United States, Respondents have learned that Franco Rodriguez was booked out of custody at the Port Isabel Service Process Center in Los Fresnos, Texas to proceed with removal. That removal, however, was not successfully consummated, and he is currently at the Central Louisiana ICE Processing Center. Respondents have no opposition to relief from the judgment based upon mootness, as Franco Rodriguez is currently in ICE's custody.

Nevertheless, Respondents respectfully submit that Franco Rodriguez's petition should be denied on alternative grounds.

FACTUAL BACKGROUND

Franco Rodriguez is a national of Cuba who was ordered removed from the United States on September 11, 2002. (Doc. 1-4 at 2.) He was placed under an Order of Supervision on December 10, 2002. (Doc. 1-5 at 3.) On November 2, 2025, Franco Rodriguez's Order of Supervision was revoked, and he was taken into ICE custody. (Composite Exhibit, Ex. 1.) Franco Rodriguez filed a petition for writ of habeas corpus on January 2, 2026. (Doc. 1.)

On January 24, 2026, Franco Rodriguez was transferred from the Miami Staging Facility at Krome Service Processing Center in Miami, Florida to Port Isabel Service Process Center in Los Fresnos, Texas. (Bermudez Decl., Ex. 2 ¶ 4.) On January 26, 2026, he was transported to the port of entry at or near Hidalgo, Texas to effectuate his removal order to Mexico. *Id.* ¶ 5. ICE booked him out of custody in its systems to proceed with removal. *Id.* ¶ 6.

Respondents filed an opposition on January 26, 2026, asserting the petition for writ of habeas corpus was moot due to Franco Rodriguez's removal from the United States. (Doc. 9.) Respondents provided a detention history record indicating that

Franco Rodriguez had been “Released – Removed.”¹ (Doc. 9-1.) Nevertheless, according to ICE, he was transported back to Port Isabel Service Process Center and remains in ICE custody.² (Bermudez Decl., Ex. 2 ¶ 6.)

As a result of Franco Rodriguez’s return to Port Isabel Detention Center, ICE’s systems were updated to reflect his status to in custody from January 24, 2026, to February 1, 2026, at Port Isabel Service Process Center. (Bermudez Decl., Ex. 2 ¶ 7; Detention History, Ex. 3.) On February 1, 2026, Franco Rodriguez was transferred to Central Louisiana ICE Processing Center. (Bermudez Decl., Ex. 2 ¶ 8; Detention History, Ex. 3.)

On February 2, 2026, ICE was notified that the Cuban government has approved Franco Rodriguez’s repatriation to Cuba. (Bermudez Decl., Ex. 2 ¶ 9.) As such, Franco Rodriguez has been allocated a seat on a removal flight to Cuba scheduled in March 2026. *Id.*

LEGAL STANDARD

“Rule 60(b) provides for relief from judgments on the grounds of ‘mistake, inadvertence, surprise, or excusable neglect’ or ‘newly discovered evidence.’” *Saito*

¹ The initial information regarding Franco Rodriguez’s removal status was based on detention history record indicating the petitioner had been “Released – Removed.” The undersigned apologizes for the error and will take additional measures to ensure a petitioner’s detention history accurately reflects a petitioner’s current removal status at the time of filing.

² The undersigned is currently unable to confirm or deny Franco Rodriguez’s assertion that he was refused by the Mexican government. *See* Mot. for Relief from Final Judgment, Doc. 11 at 3.

v. Lewis, No. 2:23-CV-506-SPC-KCD, 2023 WL 5526667, at *1 (M.D. Fla. Aug. 28, 2023). “The decision to reconsider ‘is committed to the sound discretion of the district judge.’” *Id.*

ARGUMENT

I. Respondents Walker, Noem, Lyons, and Bondi are improperly named.

The only appropriate respondent to a habeas case is the official with physical custody of Franco Rodriguez. 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (“[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”). Accordingly, all Respondents other than the Warden of Florida Soft Side South, are improper parties to this action and should be dismissed.

II. The Immigration and Nationality Act precludes review of Franco Rodriguez’s claims.

A. 8 U.S.C. § 1252(g)

Respondents acknowledge the Court’s prior rulings concerning jurisdiction under 8 U.S.C. § 1252(g) control the result in this case should the Court adhere to its legal reasoning. *See e.g., Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). While Respondents respectfully disagree, in the interest of judicial economy, and to expedite the Court’s consideration

of this matter, Respondents incorporate by reference the legal arguments regarding jurisdiction under Sections 1252(g) as presented in *Hernandez-Lopez*.³ *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025) (Doc. 19 at 5-6). Should the Court prefer more exhaustive briefing, Respondents respectfully request leave to provide it upon the Court's request.

B. 8 U.S.C. § 1252(b)(9)

The Court also lacks jurisdiction on separate grounds. The INA precludes the Court's review of "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" except when brought pursuant to judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause" and applies where Franco Rodriguez seeks "review of an order of removal [or] the decision to seek removal." *Canal A*, 964 F.3d at; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—the subsection that provides the single, proper path for judicial review of removal orders—courts have concluded that petitioners must funnel all aspects of challenges to removal proceedings through the avenue set forth in Section 1252(a)(5), which takes place after a final order of removal has issued. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The REAL ID Act clarified that final

³ Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of judicial economy, Respondents respectfully request the Court to suspend application of the rule. See Local Rule 1.01(a) and 1.01(b).

orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”).

The zipper clause’s restrictions are broad, but not without limitation. *See, e.g., Canal A*, 964 F.3d at 1257. However, a claim that arises from actions or proceedings brought to remove an alien clearly falls within its parameters. *See Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings). While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293-94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294-95.

Here, Franco Rodriguez challenges the government’s failure to reopen removal proceedings and obtain a new order of removal with a third country designation—a direct attack to his existing deportation order. (Petition, Doc. 1 ¶ 50.) While Franco Rodriguez’s challenge to the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9), his attack on the

sufficiency of that order places his claims within 8 U.S.C. § 1252(b)(9)'s jurisdictional bar. The Court should therefore dismiss Franco Rodriguez's petition for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

III. Franco Rodriguez's detention is lawful.

A. The INA mandates Franco Rodriguez's detention.

Should the Court determine that it retains jurisdiction over Franco Rodriguez's habeas claims, he still cannot establish eligibility for habeas relief because his detention is lawful. An alien with a final order of removal is subject to the detention and removal standards set forth at 8 U.S.C. § 1231. The statute directs that an alien ordered removed be removed within 90 days of his order becoming final and that he remain detained during that timeframe. 8 U.S.C. § 1231 (a)(1)(A); (a)(2)(A). If the government is unable to remove an individual during that statutory period, the INA empowers ICE to release him on an order of supervision. 8 U.S.C. § 1231(a)(3). Importantly, an order of supervision is not indefinite, rather the regulations permit the government to revoke the order for a variety of reasons, among them because the purposes of the release have been served, and it is appropriate to enforce a removal order. *See* 8 C.F.R. § 241.4(l)(2). When removal is not facilitated within the 90-day statutory period, the government is still 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. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579

(2022).⁴

Here, Franco Rodriguez was ordered removed in 2002 and he remains subject to a final, executable removal order. While he was initially released on an order of supervision, ICE recently determined that it is appropriate to proceed with executing the order. Franco Rodriguez is therefore an alien subject to a final order of removal and has been properly detained pursuant to 8 U.S.C. § 1231. Franco Rodriguez contends his detention for the purpose of removal is unlawful because his removal to Cuba is improbable and there is “no indication that any viable removal country had been identified” suggesting that third-country removal would run afoul of Fifth Amendment Due Process principles. *See* Petition, Doc. 1 ¶ 41.

As previously discussed, on February 2, 2026, ICE was notified that the Cuban government has approved Franco Rodriguez’s repatriation to Cuba. (Bermudez Decl., Ex. 2 ¶ 9.) As such, Petitioner has been allocated a seat on a removal flight to Cuba scheduled in March 2026. *Id.* There is therefore a significant likelihood of removal for Franco Rodriguez’s native country in the foreseeable future. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (“[I]n order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no

⁴ The U.S. Supreme Court has nevertheless interpreted the post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001)

significant likelihood of removal in the reasonably foreseeable future.”).

B. Revocation of Franco Rodriguez’s Order of Supervision compiles with agency regulations.

As discussed, an alien subject to a final order of removal that was not executed in the 90-day removal period may be released on a revocable order of supervision. As relevant here, the Cuban Review Plan sets forth regulations for when parole can be withdrawn or revoked for a Mariel Cuban. 8 C.F.R. § 212.12(e), (h). That authority confers broad discretion on the government. *See, e.g., id.* § 212.12(e) (providing that the authorized official may, “in his or her discretion, withdraw approval for parole of any detainee prior to release when, in his or her opinion, the conduct of the detainee, *or any other circumstance*, indicates that parole would no longer be appropriate” (emphasis added)). The regulations also establish procedures for periodic review, after a parole revocation, of a Mariel Cuban’s continued detention. *Id.* § 212.12(g) (providing that such review “will *ordinarily* be expected to occur within *approximately* three months after parole is revoked”) (emphasis added)).

Franco Rodriguez argues that ICE should not have revoked his parole and that it should have reviewed his detention by under § 212.12. He argues that any defects in failing to follow these regulations amount to a due process violation. This argument fails for multiple reasons. First, Franco Rodriguez has not shown a regulatory violation. Section 212.12 grants the government broad discretion granted to the government to revoke parole. Franco Rodriguez has not shown that there is no

circumstance at all that warrants his detention, especially given ICE's efforts to effectuate his removal. Nor has Franco Rodriguez shown that any timing of a file review violates § 212.12. Section 212.12(g) provides, "The review process will commence with a scheduling of a file review, which will ordinarily be expected to occur within approximately three months after parole is revoked." Because Franco Rodriguez's Order of Supervision was revoked on November 2, 2025, his petition is premature.

Second, Franco Rodriguez has not shown that any deviation from the procedures set forth in 8 C.F.R. § 212.12 amounts to a due process violation. Franco Rodriguez relies on *United States ex rel. Accardi v. Shaughnessy*, where the Supreme Court established a doctrine—now known as the "*Accardi* doctrine"—that generally requires an agency to follow its regulations. *See* 347 U.S. 260 (1954). But the Supreme Court in *Accardi* did not determine the sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that affects a party's rights. As the Supreme Court has clarified, *Accardi* "enunciates[s] principles of federal administrative law rather than of constitutional law." *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). "*Accardi* is based on administrative law principles, not constitutional due process requirements." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (explaining limits on the *Accardi* doctrine). Here, Franco Rodriguez has not shown that any arguable violations of the regulatory provisions at issue amount to

a due process violation, since he has not shown that he will be denied any notice and opportunity to be heard on the basis for his parole revocation.

Third, the proper remedy for lack of procedural due process is additional process, not immediate release. A procedural due process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. Indeed, in *Accardi* the Supreme Court did not order substantive relief (there, the suspension of deportation) but rather ordered the agency to afford the process provided in its regulations. *See Accardi*, 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving BIA's failure to comply with its regulations, "he should receive a new hearing before the Board").

C. Franco Rodriguez is lawfully detained under U.S. Immigration and Customs Enforcement authority.

Finally, Franco Rodriguez argues he is lawfully detained at Florida Soft Side South, also known as Alligator Alcatraz. Because Franco Rodriguez is no longer detained at the facility, his allegations regarding detention at Alligator Alcatraz are moot. Even if his allegations were not moot, as declared by U.S. Immigration and Customs Enforcement in litigation also pending in this district, immigration detainees at the facility detained by the State of Florida pursuant to 8 U.S.C. § 1357(g):

Federal law authorizes state officers and employees to "perform a function of an immigration officer," including the "detention of aliens," pursuant to an agreement with the federal government. *See* 8 U.S.C. § 1357(g)(1). The aliens at Alligator Alcatraz are detained by the State of Florida pursuant to that authority. . . . State officers detaining aliens

pursuant to this authority are also subject to the “direction and supervision of the” federal government. 8 U.S.C. § 1357(g)(3).

C.M. et al v. Noem et al., 2:25-cv-00747-SPC-DNF, Doc. 53 (M.D. Fla.) (Fed. Def.’s Resp. to Pls’ Expedited Disco. Req.)

This Court recently denied plaintiffs’ motion for a preliminary injunction seeking to prevent the State of Florida from holding immigration detainees at the facility. *M. A. v. Guthrie*, No. 2:25-CV-765-KCD-DNF, 2025 WL 3677008 (M.D. Fla. Dec. 18, 2025). The Court concluded plaintiff and the proposed the class were unable to show an irreparable injury absent an injunction, because “he (and the proposed class) is subject to confinement by the Attorney General. *M. A. v. Guthrie*, No. 2:25-CV-765-KCD-DNF, 2025 WL 3677008, at *2 (M.D. Fla. Dec. 18, 2025).” As recognized by *M.A.*, individuals at Alligator Alcatraz are subject to the Attorney General’s detention regardless of whether they are located at that facility or another location. Franco Rodriguez’s requested release from custody is therefore incongruous with the nature of his complaint.

CONCLUSION

Respondents respectfully request that Franco Rodriguez’s petition be denied.

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DATED this 4th day of February, 2026.

Respectfully submitted,

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