UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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

ROBERTO FRANCO RODRIGUEZ,
Petitioner,

v.

KELIE WALKER, et al.

Respondents.
_______________________________________/

PETITIONER'S REPLY

Petitioner respectfully submits this reply to Respondents' submission [ECF No. 14]. This case concerns whether ICE's revocation of Petitioner's long-standing Order of Supervision ("OSUP") and resulting detention violated the Fifth Amendment, the *Accardi* doctrine, and binding federal regulations. *See Ochoa Banega v. Warden of Soft Side South et al.*, No. 2:25-cv-1152-JES-DNF (M.D. Fla. Jan. 29, 2026); *Perez v. Warden, et al.*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026). Petitioner has been detained well beyond the 90-day removal that expired more than two decades ago when he was previously released. Respondents have not meaningfully addressed these issues and instead relies on regulatory provisions that on their face do not apply to Petitioner. Under such circumstances, this Court should order his release from custody. *See id.*

I. Introduction

Roberto Francisco Franco Rodriguez (hereinafter "Mr. Franco" or "Petitioner") is a 55-year-old native and citizen of Cuba who entered the United States during the Mariel boatlift in 1980 and was paroled into the U.S. After completing his criminal sentence and receiving a final order of removal in 2002, the Government was unable to effectuate removal and released him on an OSUP, with which he complied for more than two decades. On November 2, 2025, Petitioner appeared for routine ICE reporting and was taken into custody at Florida Soft Side South ("Alligator Alcatraz"). ICE purported to revoke his release under 8 C.F.R. §§ 241.4 and 241.13 based on an asserted likelihood of removal.

Petitioner filed this habeas petition on January 2, 2026. Respondents argue that this Court lacks jurisdiction, detention is authorized under § 1231, and that ICE may revoke OSUPs with boundless discretion. These arguments misread the INA, controlling precedent, and the applicable regulatory framework. Various district court cases throughout the country have found that individuals like Petitioner are entitled to release and have held that the procedures employed by Respondents to detain them violate their due process rights and applicable federal regulations.[1]

II. Argument

a. Jurisdiction and Venue

Respondents again invoke 8 U.S.C. §§ 1252(b)(9) and 1252(g), despite acknowledging that this Court has repeatedly rejected the application of these jurisdictional bars vis-à-vis challenges to detention authority. [ECF No. 14, p. 4]. Petitioner does not challenge his removal order or its execution; he challenges the lawfulness of his detention. This Court's prior rulings control, and §§ 1252(b)(9) and 1252(g) do not apply. Also, Petitioner challenges not just his physical confinement but the lawfulness of ICE's discretionary decision revoking his release, which was made and implemented by officials with legal custody and authority, making them the proper respondents. Therefore, the INA does not strip the Court of jurisdiction over this action.

b. Legality of Detention

[1] The mine run of courts have found jurisdiction to challenge OSUP revocation. *See Ochoa Banega v. Warden of Soft Side South et al.*, No. 2:25-cv-1152-JES-DNF (M.D. Fla. Jan. 29, 2026); *Perez v. Warden, et al.*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026); *Beltran v. Ripa, et al.*, No. 2:25-CV-01174-SPC-NPM (M.D. Fla. Jan. 5, 2026); *Grigorian v. Bondi*, 2025 WL 2604573 (S.D. Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, 2025 WL 2553394 (W.D. Ky. Sept. 4, 2025); *Zhu v. Genalo*, No. 1:25-cv-6523-JLR, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Phan v. Noem*, 2025 WL 2898977 (S.D. Cal. Oct. 10, 2025); *Villanueva v. Tate*, 2025 WL 2774610 (S.D. Tex. Sept. 26, 2025).

i. The INA does not mandate Petitioner's detention.

First, Respondents argue the Petitioner is "properly detained pursuant to 8 U.S.C. § 1231" because the "Petitioner was ordered removed in 2002 and he remains subject to a final, executable removal order today." [ECF No. 14, p. 8]. The Government's claim that Cuba has "accepted" Petitioner for repatriation relies solely on the unsubstantiated hearsay of an ICE employee, [ECF No. 14-2], with no reference or attachment of documentation from Cuba confirming "acceptance" or even a reference to the issuance of travel documents. [ECF No. 14, p. 3]. Petitioner complied with transport to the border, and Mexican authorities chose not to admit him. Respondents have not denied—much less refuted—the truth of this statement. [ECF No. 14, p. 3].

. In the past few weeks, diplomatic tensions between the United States and Cuba have drastically escalated, including through issuance of an executive order that authorizes the imposition of tariffs on countries that provide crude oil to Cuba.[2] Respondent's reliance on a post-hoc and speculative justification of the Petitioner's continued detention is so tenuous given recent developments that it does not show that Petitioner's removal is even remotely foreseeable now--much less that his sudden and arbitrary re-detention was lawful in the first place.

In addition, the Government relies on *Zadvydas v. Davis*, 533 U.S. 678 (2001) to argue that even after the 90-day removal period expires, the Government may continue, or later resume, detention to carry out the removal, and federal regulations do not set a time limit on such post-removal detention. [ECF No. 14, p. 7-8]. Petitioner's order of removal became final on September 11, 2002, thus the six-month presumptively reasonable detention period expired more than twenty

[2] Exec. Order No. 14380, Addressing Threats to the United States by the Government of Cuba, 91 Fed. Reg. 5085 (Jan. 29, 2026) ("[T]he policies, practices, and actions of the Government of Cuba constitute an unusual and extraordinary threat…to the national security and foreign policy of the United States… an additional *ad valorem* rate of duty may be imposed on goods imported into the United States that are products of any other country that directly or indirectly sells or otherwise provides any oil to Cuba." *see also* Vanessa Buschschlüter, Bernd Debusmann Jr. & Max Matza, *Cuba Says Group Shot on U.S.-Registered Speedboat Planned "Armed Infiltration"*, BBC News (Feb. 25, 2026), https://www.bbc.com/news/articles/c24drvj8yl2o describing fatal interception of a U.S.-registered boat by Cuban authorities and noting escalating diplomatic tensions).

years ago. The six-month period for detention pending removal "commences at the beginning of the removal period." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002). The Southern District of Florida recently rejected the Government's position:

> In this case, the Government has had over thirteen years to make such arrangements for Petitioner's removal. Petitioner's period of detention did not restart on December 3, 2025: it has been running since December 17, 2013. Most of these arrangements could have "likely be[en] pursued even while the noncitizen [was] on release." The Government may not sit on its hands for thirteen years before deciding to implement an order of removal and then hold the non-resident in detention while it figures out how to effectuate removal. Such conduct runs afoul of the very danger outlined in *Zadvydas*.

Pierre v. Field Office Director, No. 0:25-cv-62475-WPD (S.D. Fla. Jan. 29, 2026) (internal citations omitted).[3] Accordingly, ICE cannot restart that clock by releasing and re-detaining Petitioner at will, nor may it rely on the wrong regulatory authority to justify such detention.

ii. Revocation of Petitioner's OSUP violated applicable federal regulations

Next, Respondents impliedly (and correctly) concede that § 212.12 is the governing regulatory framework for Mariel Cuban detention decisions when writing: "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)." [ECF 14, p. 9]. That acknowledgment, however, directly

[3] Courts have found that when a non-citizen "was previously detained, then released on supervised release . . . his 90-day removal period has long expired." *See Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025 WL 2871914, at *2 (E.D. Tex. Oct. 9, 2025). That is, Courts have "broadly agree that 'the six-month period [under Zadvydas] does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-detains him again.'" *Diaz-Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485, at *7 n.6 (W.D.La. Oct. 15, 2019) (quoting *Sied v. Nielsen*, 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D.Cal. Apr. 19, 2018)), *report and recommendation adopted*, No. 1:19-CV-670-P, 2019 WL 6037220 (W.D.La. Nov. 13, 2019); *accord Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D.Tex. Sept. 26, 2025) ("The government's contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself."); *accord Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (finding that "re-detention after release on an Order of Supervision "is not your typical first round detainment of an alien awaiting removal."); *see also Solis Nolasco v. Noem*, No. CV GLR-25-3847, 2026 WL 25002, at *4 (D. Md. Jan. 5, 2026). Likewise, the Eleventh Circuit speaks in terms of a "removal period," not "periods," immediately following the finality of the order of removal. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

undermines their own position, because the Notice of Revocation of Release issued to Petitioner was issued under §241.4, a regulation that plainly does not apply to Mariel Cubans and provides no authority for revoking an order of supervision. By relying on § 241.4 instead of § 212.12, Respondents fail to act within the regulatory authority that governs this class of cases. Far from foreclosing relief, the Government's acknowledgment of § 212.12 as the relevant authority reinforces Petitioner's claim that the revocation under § 241.4 was unlawful, entitling him to appropriate habeas relief.

The Respondents' cited regulations under § 241 explicitly do not govern Mariel Cubans:

> (2) ***Parole for certain Cuban nationals.*** The review procedures in this section do not apply to any inadmissible Mariel Cuban who is being detained by the Service pending an exclusion or removal proceeding, or following entry of a final exclusion or pending his or her return to Cuba or removal to another country. Instead, the determination whether to release on parole, or to revoke such parole, or to detain, shall in the case of a Mariel Cuban be governed by the procedures in 8 CFR 212.12.
>
> 8 C.F.R. § 241.4(b)(2).
>
> (3) ***Limitations.*** This section does not apply to:
> (i) Arriving aliens, including those who have not entered the United States, those who have been granted immigration parole into the United States, and Mariel Cubans whose parole is governed by § 212.12 of this chapter.
>
> 8 C.F.R. § 241.13(b)(3)(i).

By invoking § 241.4 to justify detention and attempted removal, Respondents acted beyond their regulatory authority. Any detention premised on those provisions is ultra vires.

Respondents attempt to evade responsibility by claiming that Petitioner "has not shown that any deviation from the procedures set forth in 8 C.F.R. § 212.12 amounts to a due process violation." [ECF No. 14, p. 10]. The Court should continue to uphold the important protections established by § 212.12 to ensure the safeguards promulgated by the legacy-INS are not corroded. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), all factors weigh in Petitioner's favor: his profound liberty interest since he is being detained unlawfully, the high risk of erroneous deprivation absent required procedures since ICE ignored the governing regulation and cited inapplicable authority, and the absence of any countervailing government interest since Petitioner complied with supervision and poses no flight risk. This regulatory "deviation," as the Respondents label, is not a technical error; it is a violation of Petitioner's due process rights.

Respondents suggest that Petitioner argues his detention is unlawful because removal to Cuba is improbable [ECF No. 14, p. 8], but Petitioner's contention is first that his detention is unlawful because ICE revoked his OSUP without legal authority [ECF No. 1, p. 3]. In the same way that a habeas petitioner challenging a criminal conviction could certainly do so when no indictment issued and no trial was ever held, Petitioner here must first point to the antecedent steps that the government ignored wholesale. Under §212.12, the Government was required to follow specific procedures to revoke parole or deny release, but Respondents have done none of these, nor identified this correct regulation on their Notice for Revocation of Release:

(i) No Associate Commissioner or formally designated official acted, as required by § 212.12(b), (h).
(ii) No Cuban Review Panel was convened, as required by § 212.12(d).
(iii) No record review or personal interview occurred per § 212.12(d)(4).
(iv) No written recommendation or documentation was issued per § 212.12(d)(4).
(v) No hearing or procedural safeguards were observed per § 212.12(d), (h).
(vi) Low-level officers acted without authority, in violation of § 212.12(b), (h).

A recent district court decision in the Middle District of Florida explains: "The Court recognizes significant value in the safeguards required by § 212.12. They ensure immigration detention serves its statutory purposes and is used in accordance with the laws enacted by Congress." *Perez v. Warden, et al.*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026). In their response, the Government has failed to rebut any of these regulatory deficiencies. The initial, unlawful revocation of the Petitioner's OSUP without legal authority reinforces that his confinement, and any attempted removal, premised on that unlawful revocation cannot be justified.

Despite acknowledging that § 212.12 applies to Mariel Cubans, like Petitioner, and instead of addressing to the Court the Government's noncompliance with the proper regulatory framework, Respondents assert that Cuba has accepted Petitioner based solely on a single hearsay statement from an ICE employee, without even indicating that travel documents have issued. [ECF No. 14, p. 3]. In a companion regulation, inability to obtain travel documentation is one of the factors considered in eligibility for release from detention and would certainly be considered during a properly conducted informal interview before re-detention took place. *See* 8 CFR §241.4(e), (l). Yet none of these procedural safeguards were followed here, much less the applicable ones in §212.12: No meaningful opportunity was given for Petitioner to challenge his sudden re-detention four months ago, in a violation of constitutional due process that persists to this day.

III. Conclusion

WHEREFORE, Petitioner respectfully requests that the Court grant the writ and order his immediate release under the prior conditions of supervision.

Respectfully submitted,

Dated: March 6, 2026

/s/ Felix A. Montanez
Felix A. Montanez, Esq.
Fla. Bar No. 102763
Preferential Option Law Offices, LLC
P.O. Box 60208
Savannah, GA 31420
912.604.5801
felix.montanez@preferentialoption.com

Counsel for the Petitioner