

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROBERTO FRANCISCO FRANCO
RODRIGUEZ,

Petitioner,

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

v.

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

Respondents.

RESPONSE TO PETITIONER'S MOTION TO ENFORCE JUDGMENT

On March 17, 2026, this Court granted habeas relief in part, ordering Respondents to provide Petitioner Roberto Francisco Franco Rodriguez with an informal interview required by 8 C.F.R. § 241.13(i)(3) by April 3, 2026, and release if that procedure was not provided by the Court's deadline. (Doc. 19 at 21-22.) Federal Respondents have since filed a notice of compliance informing the Court that on March 26, 2026, Franco Rodriguez was served with a notice of revocation and provided an informal interview to afford him an opportunity to respond to the reasons for revocation of his order of supervision. (Doc. 21.) Franco Rodriguez now moves for relief under Federal Rule of Civil Procedure 60(b) asking this Court to set aside its

prior judgment or, in the alternative, order his immediate release. His motion should be denied.

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 On November 2, 2025, Franco Rodriguez's Order of Supervision was revoked, and he was taken into ICE custody.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 February 2, 2026, ICE was notified that the Cuban government approved Franco Rodriguez's repatriation to Cuba. (Bermudez Decl., Ex. 2 ¶ 9.) As such, Franco Rodriguez was allocated a seat on a removal flight to Cuba scheduled in March 2026. *Id.* Franco Rodriguez was scheduled to depart on a removal flight to Cuba on or about March 13, 2026, but that removal did not occur, and Franco Rodriguez was not repatriated to Cuba. (Cuevas Decl., Ex. 3 ¶ 5.) According to ICE, it intends to remove Franco Rodriguez to a third country, and it is in the process of coordinating the logistics of that removal. *Id.* ¶¶ 7, 9.

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*

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. Franco Rodriguez has not shown he is entitled to Rule 60(b) relief due to a lack of removal to Cuba.

Franco Rodriguez first contends he should be granted release because this Court’s judgment rested on inaccurate factual premises regarding his removal to Cuba. Franco Rodriguez’s argument confuses the basis for the Court’s order. The Court declined to order Franco Rodriguez’s immediate release because he failed to state a claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001). As stated in its March 17, 2026, order, Franco Rodriguez’s *Zadvydas* claim “immediately runs into a math problem: he has not been detained long enough. ICE grabbed him on November 2, 2025. Because he has been in custody just over four months, he remains squarely within the window in which his detention is presumptively reasonable.” (Doc. 19 at 8.) As the Eleventh Circuit has recognized, a petitioner under a final removal order must be in custody for six months before he can state a claim under *Zadvydas*. See *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (“This six-month period thus must have expired at the time [the petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*.”) Because Franco Rodriguez had not been in custody for six months when he filed his petition, the Court correctly found he failed to state a claim.

Divorced from any *Zadvydas* analysis, the Court's discussion of ICE's plan to remove Franco Rodriguez to Cuba was tied to his procedural due process claim. (Doc. 19 at 13) ("When the government deprives someone of liberty without an adequate hearing, the standard judicial remedy is to order the government to hold that hearing, not to simply unlock the jailhouse doors.") Although the Court did cite Franco Rodriguez's scheduled removal to Cuba in its analysis, the Court framed that plan as an additional reason for denying immediate release. As the Court stated, "[A] procedural foul usually calls for a procedural fix." *Id.* Franco Rodriguez's unconsummated removal to Cuba therefore does not alter the Court's reasoning rejecting release as a generally appropriate remedy for a procedural violation.

Even if ICE's uncompleted plan to remove Franco Rodriguez to Cuba were relevant, this Court's order was not based upon "'mistake, inadvertence, surprise, or excusable neglect' or 'newly discovered evidence.'" *Saito v. Lewis*, No. 2:23-CV-506-SPC-KCD, 2023 WL 5526667, at *1 (M.D. Fla. Aug. 28, 2023). Rather, the Court's order was based upon then-available information as to ICE's plans at the time of its order, not clairvoyance. While ICE may not have been successful in its removal plan, the Court's analysis was correct based upon what was anticipated at the time of its March 17, 2026, order. Subsequent events do not undo that judgment.

II. Franco Rodriguez's detention at Alligator Alcatraz does not him entitle relief under Rule 60(b).

Franco Rodriguez also argues that his present detention at Alligator Alcatraz warrants relief under Rule 60(b). He is incorrect. Although the Court found Franco Rodriguez's challenge to his detention at Alligator Alcatraz was moot following his transfer to another facility, this Court also rejected his argument on alternative grounds:

But even looking past the mootness hurdle, Rodriguez would still fall short. Suppose he is exactly right, and Alligator Alcatraz was operating in clear violation of the law. That fact would not entitle him to the relief he wants—release from ICE custody. A challenge to the conditions of confinement does not suddenly invalidate the legal basis for that confinement. If a detention center is sub-par or operated unlawfully, the proper judicial remedy is to order the government to fix the facility or to transfer the detainee to one that passes muster.

(Doc. 19 at 19-20.) This Court has repeatedly adopted the same reasoning. *See Fernandez Del Pino v. Warden of Alligator Alcatraz*, No. 2:26-CV-377-KCD-NPM, 2026 WL 820476, at *5 (M.D. Fla. Mar. 25, 2026); *Sendra Gonzalez v. Warden of Alligator Alcatraz*, 2:26-cv-274-KCD-NPM, Doc. 14 at 19 (M.D. Fla. Mar. 30, 2026); *Dumont Rodriguez v. Warden of Alligator Alcatraz*, 2:26-cv-00268-KCD-NPM, Doc 15 at 12 (M.D. Fla. Mar. 30, 2026). Franco Rodriguez fails to show legal error in the Court's analysis. *See Charlot v. United States*, No. 2:17-CV-372-FTM-29-MRM, 2018 WL 5309760, at *1 (M.D. Fla. July 2, 2018) ("A motion for reconsideration does not

provide an opportunity to simply reargue, or argue for the first time, an issue the Court has already determined.”).

III. ICE has provided Franco Rodriguez an informal interview.

Finally, Franco Rodriguez contends this Court should order his release due to ICE’s failure to afford him an informal interview. Agency records belie his contention. As demonstrated in Federal Respondents’ notice of compliance, on March 26, 2026, ICE served a notice of revocation of release informing Franco Rodriguez that his release has been revoked because circumstances have changed such that there is a significant likelihood of removal in the reasonably foreseeable future, and ICE is seeking a travel document to effect his expeditious removal to Mexico. (Doc. 21-1 at 1-2.) The same day, Deportation Officer Anthony Lima conducted an informal interview to afford Franco Rodriguez an opportunity to respond to the reasons for revocation of his order of supervision. *Id.* at 3. Franco Rodriguez refused to sign the record memorializing the informal interview without his attorney present. *Id.*

Lima’s declaration describes his normal procedure for conducting an informal interview. (Lima Decl., Ex. 4 ¶ 3.) He provides that during an informal interview, an alien is typically provided service of process, and Lima normally explains the order of supervision revocation process and gives an alien an opportunity to make a

statement. *Id.* Lima further indicates that Franco Rodriguez did not provide a written statement or document during the interview. *Id.* ¶ 4.

Title 8 C.F.R. § 241.13(i)(3) sets forth the procedures for revoking an alien's order of supervision:

Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Franco Rodriguez motion, however, argues he did not receive an informal interview under 8 C.F.R. § 241.13(i)(3) because he was not provided a host of procedures:

- (i) Respond directly to each stated reason for revocation, including providing explanations, clarifications, or contesting factual assertions;
- (ii) Submit documentary evidence or written statements demonstrating compliance with supervision conditions or mitigating circumstances that would justify continued release;
- (iii) Provide witness statements or contact information, if relevant, to corroborate their claims or challenge the asserted violations;
- (iv) Be questioned on any disputed facts, such as alleged violations of supervision, travel, reporting failures, or other behavioral issues that the Service claims justify revocation;
- (iv) Receive consideration of evidence regarding the likelihood of removal in the reasonably foreseeable future, which may involve explaining travel restrictions, country conditions, or other factors that affect enforceability of a removal order;

- (v) Have a meaningful opportunity to clarify inconsistencies or miscommunications, ensuring that ICE officers evaluate the alien's assertions on the merits rather than relying solely on written notices.

(Doc. 22 at 6-7.) Despite Franco Rodriguez's citation to the contrary, the measures he demands appear nowhere in 8 C.F.R. § 241.13(i)(3). Section 241.13(i)(3) requires an alien be afforded an opportunity to respond to reasons for the revocation and submit evidence to show he or she believes there is no significant likelihood he will be removed in the reasonably foreseeable future.

Agency records show Franco Rodriguez was given an informal interview on March 26, 2026, where he was given an opportunity to respond to the reasons for revocation of his supervised release. Concededly, the informal interview record does not check a box to indicate whether Franco Rodriguez provided a written statement or provide any documents. *See* Doc. 21-1 at 3. The text of the regulation, however, does not require a document exchange; it requires an alien be provided an opportunity to respond. As stated in Franco Roriguez's motion, he responded "that ICE already tried to remove me to Mexico and failed" (Doc. 22-2 at 1.) Although Franco Rodriguez now suggests he is due a list of other procedures (e.g. table, private setting, and a location away from a cell doorway), those requirements are neither mandated by 8 C.F.R. § 241.13(i)(3) nor this Court's order.

CONCLUSION

Federal Respondents respectfully request Franco Rodriguez's motion to enforce be denied.

DATED this 1st day of May, 2026.

Respectfully submitted,

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