

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

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

**ROBERTO FRANCISCO FRANCO
RODRIGUEZ,**
Petitioner,

v.

KELIE WALKER, et al.,
Respondents.

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PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION

Petitioner, by and through undersigned counsel, respectfully submits this reply to Respondents' Opposition. Respondents' Opposition fails to explain material facts reflected in the record and relies on incomplete agency documentation that does not fully and accurately reflect the underlying events. In short, Respondents have failed to comply with this Court's Order directing them to provide Petitioner with a meaningful opportunity to be heard via an informal interview. Moreover, since the filing of the underlying petition, Petitioner has now surpassed the six-month detention threshold, independently entitling him to relief. *See Hidalgo Hernandez v. Noem, et al.*, Case No. 2:26-cv-515-KCD-NPM, at *6 (M.D. Fla. Mar. 24, 2026). Respondents' Opposition further underscores that removal is not reasonably foreseeable.

I. Respondents failed to comply with the Court's order.

This Court has recognized that the purpose of the informal interview is to serve as a meaningful procedural safeguard. *See* [ECF No. 19, p. 11-12]. The record demonstrates that no such meaningful process occurred. Respondents' documentation and supporting declarations omit a critical portion of what actually occurred during the "informal interview." Petitioner's sworn

declaration states that he informed the ICE officer that he had previously been sent to Mexico and returned. [ECF No. 22-2]. This is an assertion directly relevant to the Government's stated rationale for continued detention and alleged removal efforts. That statement is entirely absent from the Government's documentation of the statements or evidence provided at the time of the "informal interview." [ECF No. 24-1–24-4]. Instead, Respondents' documentation makes no reference to Petitioner's substantive statement regarding prior attempted removal to Mexico. *Id.* The omission is not incidental. It removes from the record the only substantive response Petitioner provided during the encounter and demonstrates lack of compliance with 8 C.F.R. § 241.13(i)(3).

This gap is reinforced in Respondents' Opposition and supporting declarations, which remain silent on this point. [ECF No. 24, p. 8]. Respondents' reliance on "then-available information" and "not clairvoyance" does not address the present defect in their position. [ECF No. 24, p. 4]. Petitioner's Rule 60(b) argument is not that the Court erred by assessing the record as it existed at the time, but that the factual premises underlying Respondents' representations regarding imminent removal remain unsubstantiated by any competent evidence in the record. Even now, Respondents cannot produce basic indicia of the alleged March 2026 removal flight, such as a flight ticket, travel document, repatriation confirmation from Cuba, or any comparable documentary proof, despite continuing to assert that removal was scheduled. Instead, Respondents continue to rely on the same recycled declarations, without evidentiary support, to suggest that removal was and remains viable. [ECF No. 24-1–24-4]. That ongoing absence of corroborating documentation underscores that the asserted basis for continued detention is not supported by the record, reflects the continuing reliance on unsubstantiated representations regarding removal, and reinforces the extraordinary circumstances warranting Rule 60(b) relief.

Neither the Opposition nor the declarations from ICE officers address Petitioner's response or provide any explanation for its exclusion from the interview record, though the Respondents acknowledge Petitioner did provide a response:

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.)

[ECF No. 24, p. 8]. Here, Respondents acknowledge the oral statement occurred, yet neither the interview record nor the supporting declaration explains why that statement was not memorialized, evaluated, or incorporated into the agency's review of whether continued detention was warranted. *See id.* As a result, there is no indication that Petitioner's response was meaningfully considered in the custody determination, or even placed before the decisionmaker in a form capable of review. The record is therefore silent where it matters most: on the detainee's substantive response to the basis for revocation. That omission is compounded by Respondents' failure to engage with it in any meaningful way in their Opposition. *See id.* There is no explanation for its absence from the agency record or documentation submitted to the Court. *See id.* Because Respondents failed to provide the informal interview required by the regulation and this Court's Order, the alternative relief specified by the Court, release, is now warranted.

II. Petitioner has surpassed 180 days of detention and removal is not reasonably foreseeable.

Even if the Court were to accept Respondents' arguments regarding prior rulings, the legal posture of this case has fundamentally changed. Petitioner has been detained since November 2, 2025, and has now exceeded 180 days in custody. This without a doubt surpasses any presumptively reasonable length of detention. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Akinwale*

v. Ashcroft, 287 F.3d 1050 (11th Cir. 2002). The burden therefore shifts to the Government to demonstrate that removal is significantly likely in the reasonably foreseeable future. That burden requires evidence, not speculation. Respondents have produced no evidence, no travel document, no diplomatic agreement, no confirmed acceptance by any country, and no scheduled removal. Instead, Respondents rely on mostly stale, recycled declarations and vague statements about “ongoing efforts.” [ECF No. 24-1–24-4]. As the Government did in *Hidalgo Hernandez*, “the Government extends hope and a placeholder. It relays an assertion from ICE that the agency is working towards executing a third-country removal to Mexico. The Government readily admits it has not a single document to support this representation, but promises to file the paperwork if it ever materializes.” *Hidalgo Hernandez v. Noem, et al.*, Case No. 2:26-cv-515-KCD-NPM, at *6 (M.D. Fla. Mar. 24, 2026). As this Court made clear in *Hidalgo Hernandez*, such unsupported representations cannot justify indefinite detention.

The reasoning and outcome in *Hidalgo Hernandez*, apply directly here. As in that case, Petitioner here has surpassed the six-month threshold, demonstrated that removal is not reasonably foreseeable, and the Government has failed to meet its evidentiary burden. Petitioner’s detention has now exceeded 180 days following his detention on November 2, 2025. Under *Zadvydas*, this triggers the burden-shifting framework adopted in *Akinwale*. Like in *Hidalgo Hernandez*, there is no dispute that the temporal requirement has been satisfied. The question, therefore, is whether removal is reasonably foreseeable, and if not, whether the Government can prove otherwise. The answer is that removal is not reasonably foreseeable and that the Government has not and cannot prove otherwise.

Petitioner has already carried the initial burden by providing “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” See *Hidalgo*

Hernandez v. Noem, et al., Case No. 2:26-cv-515-KCD-NPM, at *5 (M.D. Fla. Mar. 24, 2026). Specifically, Petitioner points to the diplomatic barriers of returning Mariel Cubans to Cuba that remain firmly in place today. [ECF No. 1, p. 11]. Next, Petitioner identifies the worsening U.S.-Cuba relations, wherein the Cuban government continues to reject or fail to issue travel documents for Mariel-era individuals. *Id.* Also, Petitioner highlights in his Petition for Writ of Habeas Corpus that the Government has had nearly twenty-four (24) years to execute his removal order. [ECF No. 1, p. 7]. As such, Petitioner has more than satisfied his burden to show that removal is not reasonably foreseeable in the near future. As in *Hidalgo Hernandez*, these are not speculative concerns; rather, they are concrete, documented obstacles that have already prevented removal for an extended period of time. *See Hidalgo Hernandez v. Noem, et al.*, Case No. 2:26-cv-515-KCD-NPM, at *5 (M.D. Fla. Mar. 24, 2026). They establish that removal is not around the corner but rather remains indefinite.

Because Petitioner has met the initial burden, the Government must present evidence demonstrating that removal is significantly likely in the reasonably foreseeable future. It has not done so. Instead, the Government relies on the same boilerplate submissions and unsupported assertions as they did in *Hidalgo Hernandez*:

It relays an assertion from ICE that the agency is working towards executing a third-country removal to Mexico... [but] has not a single document to support this representation... A mere representation from an agency to its lawyers—unbacked by a shred of evidence—cannot justify keeping a man locked in a cell.

Hidalgo Hernandez v. Noem, et al., Case No. 2:26-cv-515-KCD-NPM, at *6 (M.D. Fla. Mar. 24, 2026). As a result, the Court held that continued detention was unlawful and ordered release, concluding that the Government “offers nothing to suggest removal...is more likely now than it

was in [prior years].” See *Hidalgo Hernandez v. Noem, et al.*, Case No. 2:26-cv-515-KCD-NPM, at *6-7 (M.D. Fla. Mar. 24, 2026).

This same analytical framework, and the Court’s rejection of speculation in lieu of evidence, applies directly to Petitioner’s case. The Government’s response relies on “representation[s] from an agency to its lawyers,” but none of these materials provide “a shred of evidence” or any individualized, case-specific documentation that removal is actually forthcoming in Petitioner’s case. See *Hidalgo Hernandez v. Noem, et al.*, Case No. 2:26-cv-515-KCD-NPM, at *6 (M.D. Fla. Mar. 24, 2026). Critically, the Government produced no confirmed travel documents, no diplomatic assurances, no scheduled removal, no concrete timeline, and no documentary evidence substantiating its claims. [ECF No. 24-1–24-4]. Declarations by ICE officers saying “ICE intends to remove petitioner to a third country pursuant to INA § 241(b)(2)(E). The Petitioner will receive a Notice of Removal to third country prior to his transfer to the relevant ICE field office location that will process the third-country removal. As of April 30, 2025, ICE is in the process of coordinating the logistics of the removal to the third country[,]” are unsupported, like past assurances that have not come to fruition, that do not satisfy the Government’s burden at this juncture. [ECF No. 24-3, p. 2]; see also *Hidalgo Hernandez v. Noem, et al.*, Case No. 2:26-cv-515-KCD-NPM, at *6 (M.D. Fla. Mar. 24, 2026). Ultimately, the Government here offers nothing to suggest that removal is any more likely now than it was when Petitioner was arbitrarily detained more than six months ago. Under *Zadvydas*, continued detention under these circumstances is unconstitutional.

III. Release is warranted.

Respondents’ Opposition attempts to justify continued detention through vague, unsupported internal declarations from an agency to its lawyers. The record demonstrates that

Respondents failed to comply with this Court's Order. Additionally, after more than six months of detention, Respondents still cannot produce a single piece of objective evidence demonstrating that removal is forthcoming and past assertions have been refuted by the passage of time. Their reliance on recycled declarations about vague, future efforts only highlights that failure. Under *Zadvydas* and this Court's decision in *Hidalgo Hernandez v. Noem*, continued detention under these circumstances is unlawful. Where the Government cannot carry its burden, "the remedy is release," subject to appropriate conditions of supervision. For all of these reasons, Petitioner respectfully requests that the Court enforce its prior Order and order his immediate release, or alternatively grant relief under Rule 60(b), vacate the judgment, and reopen these proceedings, and grant release under *Zadvydas*.

Respectfully submitted,

Dated: May 13, 2026

s/ Felix A. Montanez

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