UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:26-cv-20317-DSL

ORLANDO NICOLAS LOPEZ-MARRERO,
A# [redacted]
Petitioner,

v.

PAM BONDI, U.S. Attorney General, et.al.,
Respondents.
_____/

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Petitioner, Orlando Nicolas Lopez-Marrero ("Petitioner" or "Mr. Lopez"), through undersigned counsel, respectfully submits this Reply in further support of his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and in opposition to Respondents' Response to the Court's Order to Show Cause (DE 7).

INTRODUCTION AND BACKGROUND

Mr. Lopez has lived in the United States for more than forty-five (45) years since arriving as part of the 1980 Mariel boatlift. For decades, he has made this country his home. He has raised three United States citizen children alongside his longtime United States citizen partner. He has worked, paid taxes, and complied with every requirement imposed by Immigration and Customs Enforcement ("ICE").

For over fifteen (15) years, Mr. Lopez has lived under an Order of Supervision ("OSUP"), reporting as required and abiding by all conditions of release. At no time did he abscond. At no time did he violate the terms of his supervision.

On January 12, 2026, during a routine OSUP check-in, ICE summarily detained him.

ICE has failed to comply with the regulatory framework governing revocation of an Order of Supervision and the additional protections applicable to Mariel parolees. Mr. Lopez has not violated his supervision, nor is there any significant likelihood of removal in the reasonably foreseeable future. His detention is unlawful and violates both governing regulations and the Fifth Amendment.

I. ICE FAILED TO COMPLY WITH THE MANDATORY REGULATORY FRAMEWORK GOVERNING REVOCATION OF RELEASE UNDER 8 C.F.R. § 241.4(l)(2) AND 8 C.F.R. § 212.12 (PAROLE DETERMINATIONS AND REVOCATIONS RESPECTING MARIEL CUBANS)

Petitioner was lawfully released under an Order of Supervision and, as a Mariel parolee, is further governed by the specific regulatory framework set forth in 8 C.F.R. § 212.12. ICE's re-detention was not an act of unreviewable discretion; it was a regulatory action that required compliance with binding procedural safeguards.

Under 8 C.F.R. § 241.4(l)(2), revocation of release under an Order of Supervision must be grounded in regulatory criteria and supported by articulated justification[1]. The regulation does not authorize arbitrary or unexplained revocation. Once ICE has exercised its discretion to restore liberty through supervised release, re-detention must be justified by regulatory standards and supported by a reasoned determination consistent with the custody review framework set forth in 8 C.F.R. § 241.4. Summary revocation untethered to those criteria exceeds the bounds of the agency's authority. Mr. Lopez's status as a Mariel parolee independently invokes 8 C.F.R. §

[1] 8 C.F.R. § 241.4(l)(2) provides in relevant part:
"Determination by Service. The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section."

212.12, which establishes a structured custody review system specific to Mariel Cubans[2]. That regulation contemplates individualized review and articulated reasoning before continued detention or revocation of parole. See 8 C.F.R. § 212.12(b), (d). The regulation reflects that detention is not automatic and must be supported by regulatory criteria.

Respondents have not demonstrated compliance with either framework. There is no evidence of a properly conducted custody review consistent with § 241.4, nor evidence that the specialized review procedures applicable to Mariel Cubans under § 212.12 were followed. When an agency fails to adhere to its own regulations affecting liberty, its actions exceed lawful authority and are subject to judicial review.

Petitioner does not challenge the validity of his underlying removal order. He challenges ICE's failure to comply with binding regulatory requirements governing revocation of supervised release and parole. That distinction is dispositive.

II. THE COURT HAS SUBJECT MATTER JURISDICTION

Respondents argue that this Court lacks jurisdiction under 8 U.S.C. § 1252(g). That argument is incorrect.

This Petition does not challenge the removal order, its validity, or a discretionary decision to execute removal. Rather, Petitioner challenges the legal basis for his re-detention and ICE's failure to comply with mandatory regulatory prerequisites.

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[2] 8 C.F.R. § 212.12(b), (d) provides in relevant part:
Parole authority and decision. The authority to grant parole under section 212(d)(5) of the Act to a detained Mariel Cuban shall be exercised by the Commissioner, acting through the Associate Commissioner for Enforcement, as follows.... § 212.12(b)
"***Recommendations to the Associate Commissioner for Enforcement.*** Parole recommendations for detained Mariel Cubans shall be developed in accordance with the following procedures..." § 212.12(d).

Federal district courts retain jurisdiction under 28 U.S.C. § 2241 to review the legality of immigration detention. See *Zadvydas v. Davis,* 533 U.S. 678, 687–88 (2001). The Supreme Court has repeatedly emphasized that 8 U.S.C. § 1252(g) is narrow and applies only to three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. Am.–Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *Jennings v. Rodriguez,* 583 U.S. 281, 294 (2018); *Camarena v. Dir.,* ICE, 988 F.3d 1268, 1272 (11th Cir. 2021).

The Eleventh Circuit has likewise recognized that habeas jurisdiction remains where a petitioner challenges the legality of detention rather than the removal order itself. *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006).

Mr. Lopez's claim targets the underlying legal bases for his detention — specifically, ICE's failure to comply with 8 C.F.R. § 241.4(l)(2) and 8 C.F.R. § 212.12. Such claims fall squarely within this Court's subject matter jurisdiction.

III. FEDERAL COURTS HAVE REAFFIRMED THAT ICE MUST COMPLY WITH STATUTORY AND REGULATORY SAFEGUARDS BEFORE DEPRIVING LIBERTY

Federal courts have reaffirmed that immigration authorities must adhere to governing statutory and regulatory prerequisites before depriving an individual of liberty. Recently, in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, slip op. at __ (D. Mass. Feb. 25, 2026)[3], the court emphasized that agency action affecting liberty must comply with applicable statutory and regulatory safeguards and that courts retain authority to review whether the Executive Branch has acted within those bounds. Specifically, the court concluded that "Defendants' third-

[3]https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.241.0.pdf?utm_source=substack&utm_medium=email

country removal policy, as embodied in DHS's March 30, 2025 memorandum, titled 'Guidance Regarding Third Country Removals,' and ICE's July 9, 2025 memorandum, titled 'Third Country Removals Following the Supreme Court's Order in Department of Homeland Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025),' is unlawful and sets aside that policy." *Id.* at 81.

The principle is fundamental: once liberty has been restored through lawful release, it is not revocable at whim. Where Congress and the agency have prescribed procedures governing detention and release, those procedures are mandatory. ICE's failure to adhere to the regulatory framework set forth in 8 C.F.R. § 241.4(l)(2) and 8 C.F.R. § 212.12 presents the same structural concern—agency action taken outside the limits of its lawful authority. These regulations provide specific rules protecting Mariel Cubans who are presumed refugees, like Mr. Lopez.

Further, the constitutional concerns are heightened where an individual has expressed fear of removal to an unidentified third country. Removal to an unspecified country, particularly one to which the individual has no ties and no prior notice, raises serious procedural and due process implications. It emphasizes that removal is not presently foreseeable in any meaningful or concrete sense. An alien cannot be detained indefinitely based on speculative transfer to an unknown third country, especially where the government has not identified a receiving nation, secured travel documents, or provided notice sufficient to permit the individual to contest the proposed removal. Detention premised on such uncertainty is not meaningfully tied to effectuating removal and therefore falls squarely within the constitutional concerns articulated in *Zadvydas*.

IV. PETITIONER'S DETENTION IS NOT LAWFUL UNDER 8 U.S.C. § 1231 AND VIOLATES THE FIFTH AMENDMENT

Mr. Lopez has had a final order of removal since 1992. The statutory 90-day removal period under 8 U.S.C. § 1231(a)(1) expired decades ago. Even the six-month presumptively reasonable period recognized in *Zadvydas* has long passed.

Mr. Lopez has lived under a final order of removal for over thirty-three (33) years. During that time, ICE repeatedly determined that removal was not reasonably foreseeable and released him under an Order of Supervision.

Respondents identify no change in circumstances, no receiving country, no travel document, and no concrete steps toward effectuating removal. There is no significant likelihood of removal in the reasonably foreseeable future.

Detention under 8 U.S.C. § 1231 must be meaningfully tied to removal. *Zadvydas,* 533 U.S. at 699. Indefinite detention based on speculative future removal is unconstitutional. *Clark v. Martinez,* 543 U.S. 371, 384 (2005).

Mr. Lopez's continued detention, after decades of acknowledged non-removability and long-standing compliance with supervision, violates the Fifth Amendment.

V. PETITIONER'S *ZADVYDAS* CLAIM IS NOT PREMATURE

Respondents argue that Mr. Lopez's claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001), is premature. It is not.

The six-month period referenced in *Zadvydas* is a presumptive benchmark, not a mandatory waiting period. The Supreme Court made clear that detention is permissible only so long as removal is reasonably foreseeable and that courts may intervene when detention is no longer

meaningfully tied to removal. *Id.* at 688–90. The Constitution does not require an individual to remain detained for six months where the absence of foreseeable removal is already evident.

Here, the removal period began more than three decades ago. Mr. Lopez has lived under a final order of removal since 1992. ICE repeatedly determined during those decades that removal was not reasonably foreseeable and released him under an Order of Supervision. The government cannot reset the statutory clock by re-detaining Mr. Lopez after years of supervised release. To permit such manipulation would nullify the constitutional limitations recognized in *Zadvydas*.

Moreover, once detention extends beyond the presumptively reasonable period, the burden shifts to the government to demonstrate a significant likelihood of removal in the reasonably foreseeable future. See 8 C.F.R. § 241.13(i)(2). Respondents have made no such showing. They identify no receiving country, no travel document, no diplomatic acceptance, and no concrete steps toward effectuating removal.

The constitutional infirmity becomes even more pronounced to the extent that the government suggests speculative third-country removal. Detention cannot be justified by hypothetical relocation to an unidentified country without demonstrated acceptance, formal arrangements, or procedural safeguards. The absence of a designated receiving nation, particularly where the detainee has expressed fear of return to such a destination, confirms that removal is neither imminent nor reasonably foreseeable. Indefinite detention based on conjectural third-country placement is precisely the unbounded executive authority that *Zadvydas* sought to prevent. Mr. Lopez fears going to any third country—due process requires time and notice for him to express his fear once a country has been identified.

In the absence of evidence of imminent or realistically foreseeable removal, continued detention violates § 1231 as interpreted in *Zadvydas* and offends the Due Process Clause of the Fifth Amendment.

VI. ICE FAILED TO PROVIDE THE PROCEDURAL SAFEGUARDS REQUIRED BY ITS OWN REGULATIONS

Even aside from the absence of foreseeable removal, ICE failed to comply with procedural safeguards governing revocation of release.

8 C.F.R. § 241.4(l) requires notice of the reasons for revocation and a prompt informal interview following return to custody. Respondents' conclusory assertion that an interview occurred is unsupported by specific details, timing, or documentation. Petitioner maintains that no meaningful informal interview occurred.

Additionally, 8 C.F.R. § 212.12 requires that detention decisions for Mariel Cubans follow the Cuban Review Plan procedures, including panel review and proper supervisory authority. Respondents provide no evidence that those procedures were followed. Failure to comply with mandatory regulations governing liberty renders detention unlawful.

CONCLUSION

For the foregoing reasons stated above and in the original petition, Petitioner respectfully requests this Court grant the Petition for Writ of Habeas Corpus, and order Mr. Lopez's immediate release from ICE custody. In the alternative, Petitioner requests this Court hold a hearing on Petitioner's request for a Temporary Restraining Order and Petition for Writ of Habeas Corpus.

Respectfully submitted,

/s/Linda Osberg-Braun, Esq.
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send notice of such filing to all counsel of record.

Respectfully submitted,

//s/Linda Osberg-Braun, Esq.
Counsel for Petitioner