

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

Case No.: 2:26-CV-133-JES-DNJ

MIAKEL GUERRA MORALES,

Petitioner,

v.

KELIE WALKER, in her official capacity as Acting Field Office
Director, Miami Field Office:

KEVIN GUTHRIE, in his official capacity as Executive Director
of the Florida Field Management Division;

TODD LYONS, in his official capacity as Acting Director,
Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity as Secretary of the
Department of Homeland Security;

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION
TO PETITION FOR WRIT OF HABEAS CORPUS AND
REQUEST FOR EMERGENCY INJUNCTIVE RELIEF**

Petitioner Miakel Guerra Morales respectfully submits this Reply to Respondents' Response in Opposition to the Petition for Writ of Habeas Corpus and Request for Emergency Injunctive Relief. In their response, Respondents fail to justify the continued detention of Mr. Guerra Morales, a matter that raises serious constitutional and statutory concerns. This Reply address the deficiencies in Respondents' arguments, clarifies the legal

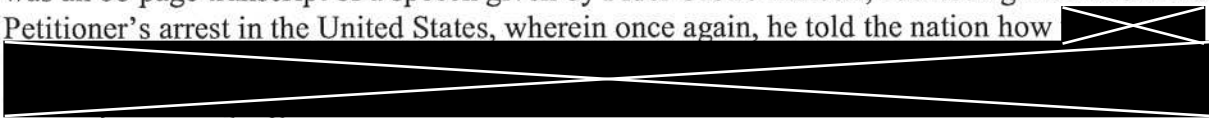
and factual basis for the relief sought, and underscores the urgent need for this Court to grant immediate relief to prevent ongoing and irreparable harm.

I. FACTS AND PROCEDURAL BACKGROUND

Born under the communist dictatorship of Fidel Castro, but raised by a family who still remembered what it was like to live in a free society, Petitioner Guerra Morales spent his young life dreaming of fleeing from the island of Cuba. In March of 2001, the Petitioner who was 25 years of age at the time, filled with the yearning to taste freedom for the very first time, together with other family members and friends, caused a commuter Cuban airliner to be diverted to Key West, Florida. Petitioner, based on years of Communist propaganda and misinformation, sincerely believed that he and his family and friends would be received by the United States government, and that the United States would confer lawful status to him and his family. This belief was based on years of listening to speeches by President Fidel Castro often proclaiming that the Imperialist Yankees would accept any Cuban national as long as they would make it to United States territory. The misguided and regrettable decision to divert the commuter aircraft cost the Petitioner to spend a few days short of 21 years in prison¹.

After spending 21 years in prison, the Petitioner was placed in removal proceedings

¹Evidence substantiating Petitioner's belief was presented at his removal hearing before the Immigration Judge. These events were televised in Cuba and around the world. One exhibit was an 88 page transcript of a speech given by Fidel Castro himself, addressing the nation after Petitioner's arrest in the United States, wherein once again, he told the nation how



and remained detained. During the course of his removal proceedings Petitioner presented extensive evidence in support of his application for protection under the Convention Against Torture (“CAT”).² As a result of all of the evidence presented, Petitioner prevailed on his application deferral of removal under CAT. The Department of Homeland Security took an appeal. Thereafter, the Board of Immigration Appeals remanded the case for clarification of the immigration court’s initial Order granting CAT. Shortly thereafter, on March 1, 2023 the Immigration Judge once again entered an Order granting Petitioner deferral of removal under the Convention Against Torture. On the same day as the Order, Petitioner was *immediately* released from custody. Pursuant to the Immigration Judge’s Order, Petitioner cannot be removed to Cuba, nor any third country that would re-foul him to Cuba in violation of the CAT Treaty.³

Following his release from immigration custody, Respondents placed Petitioner on an Order of Supervision (“OSUP”) which he never violated. Indeed he has last reported on February 3, 2025 and was set to report again on February 3, 2026. Without cause or provocation, Respondents spontaneously arrested Petitioner when he arrived into the Sarasota-Bradenton International Airport on December 30, 2025. He and his spouse, Maria

²The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994).

³Article III of CAT states: No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Reyes had traveled to the west Coast of Florida in order to visit family for the holiday. Petitioner's mother and older brother are both United States citizens, as are Ms. Reyes, and numerous other family members.

Respondents attached three documents to its Response and argue that these documents satisfy compliance with the regulations. However, these documents on their face are highly suspicious and appear to be an attempt to show compliance where no compliance has been had. The pertinent documents are found at DE:9, DE:9-3, DE:9-4 and DE:9-5. DE:9-3 is entitled a "*Notice of Revocation*" letter which appears to be dated December 31, 2025, both the date and the signature of the official are in miniature electronic form. This document does not show when or where it was allegedly presented to Petitioner, even more troubling is what purports to be the proof of service for document DE: 9-3. A close examination of this document reveals its title as "*Notice to Alien of File Custody Review*", as opposed to "*Notice of Revocation of Release*". No where do the Respondents allege that a copy of document 9-3 was ever provided to the Petitioner. Indeed, it was not.

The second document is found at DE:9-4. This document is entitled "*Notice of Removal*" which purports to advise the Petitioner that Respondents "intend" removal to a third country. This document is dated January 16, 2026. The document indicates that it was "read" and "served" on the Petitioner. It does not reveal the location of where this document was purportedly "read" and "served" on Petitioner. (See DE:9-4) Lastly, Respondents present a third document entitled "*Alien Informal Interview*" purporting to show that on February 11,

2026, an “informal” interview of the Petitioner was conducted at the Krome Processing Center. This document is a computer generated document, which has been filled in with Petitioner’s name and Alien Identification Number which has been redacted. Like the previous two documents, DE:9-5 was never shown nor provided to Petitioner. Interestingly enough, while Respondents claim in DE:9 9-5, not only that Petitioner was given the opportunity of an informal interview and he refused to participate. However, in their Response, Respondents allege that “ICE provided an informal interview for Guerra Morales to respond, which he did” and only thereafter, Respondents claim, “ICE chose not to release.” The contradictory assertions and the documents provided by Respondents in support of their position that they’ve complied with the regulations are troubling and wholly insufficient. Even if this Court was to believe that an informal interview took place on February 11, 2026, 43 days *after* Petitioner’s arrest⁴, ICE’s representations to this Court that only “[a]fter this interview ICE chose not to release” Petitioner, is clearly incorrect. A decision not to release him had been made on December 30th when ICE took him into custody. Again, Petitioner has not had the mandated interview at any time, be that Krome Detention Center, Alligator Alcatraz or in Tampa. The filing of these documents are of great concern, as Petitioner has never seen these documents, nor have these documents ever been provided to him.

The only time the Petitioner was asked to sign a document was when he was held in

⁴See footnote 8 referencing President Trump’s Executive Order 14165.

the Tampa area for hours after his illegal arrest on December 30th, 2025. While several officers debated what was to be done with him, one officer flashed a document seeking Petitioner's signature. This officer advised the Petitioner that he needed to sign the document as evidence that he wanted to appear before a judge in order to request a bond. Petitioner was never given a copy of the document nor was Petitioner afforded an opportunity to review the document. At no time has Petitioner received copies of any of the documents referenced above.

Either way, revocation of the order of supervision and present detention is a violation of procedural and substantive due process in violation of the regulations and statute, as outline with supporting citations below. "The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands. *Grigorian v. Bondi*, 25-cv-22914-RAR (S.D.Fla. Sept. 9, 2025).

II. LEGAL ARGUMENT

A. This Court has jurisdiction to grant this Petition

Habeas corpus jurisdiction exists under 28 U.S.C. §2241 and is addressed in the petition. The Court's jurisdiction is fundamental and viable, notwithstanding 8 U.S.C. §1252(g), a section of the Immigration & Nationality Act ("INA") the Government routinely invokes in most immigration-related federal cases. This case is no exception. Thus, Respondents wrongly argue that the INA "divests this Court of jurisdiction". Their error is only compounded by wrongfully arguing that Petitioner is asking this Court to prevent

Respondents' from "executing removal orders". Unfortunately, the Government continuously makes this claim, understanding full well, that Petitioner is correctly invoking the jurisdiction of this Court, *not* for the purpose of challenging Respondents legal right to execute on removal orders, but rather, Petitioner is asking this Court to exercise jurisdiction in order review statutory and constitutional claims arising from his illegal detention. *Zadvydas v. Davis*, 522 U.S. 678, 688 (2001)(under §2241 (c)(3) habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention). See also *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (reaffirming Court's decision in *Reno*, *infra*). Thus, because questions of detention are distinct from the substance of a removal order, this Court has jurisdiction to consider a post-removal order habeas petition. *Zadvydas*, *supra* at 689. The decision to detain is distinct from the decision to execute a removal order. See *Madu v. United States AG*, 470 F.3d 1362, 1368 (11th Cir. 2006). The constitutionality of immigration detention in any given case falls squarely within the context of a habeas corpus claim. *Trump v. J.G.G.* 145 S. Ct. 1003 (2025).

Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any claim arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. §1252 (g). The Supreme Court has interpreted this provision narrowly. See *Reno v. Am-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999). In *Reno*, the Supreme Court explained that §1252(g) does not cover "all claims arising from deportation proceedings" nor

does it impose “a general jurisdictional limitation.” *Id* at 487, rather, the Supreme Court outline the narrow aspect of §1252(g) when it wrote, “[t]he provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.’” The Supreme Court went on to state, “[i]t is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to *all claims arising from deportation proceedings.*” (Emphasis added) *Id* at 482.

This Court has previously addressed the issue concerning the narrow reading of §1252(g) by *Reno*. See *Cetino v. Hardin*, 2:25-cv-01037-JES-DNF (M.D.Fla. December 12, 2025). While the factual scenario at issue in *Cetino* differs from that of Petitioner’s, the issue of the Court’s jurisdiction and its interpretation of §1252(g) is the same. Thus, this Court wrote, “[w]hen asking if a claim is barred by §1252(g), courts must focus on the action being challenged.” *Id* at pg. 3, citing to *Canal A. Media Holding, LLC v. United States Citizenship and Immigr. Servs.* 964 F.2d 1250, 1258 (11th Cir. 2020). Furthermore, this Court also referenced *Grigorian v. Bondi*, 25-cv-22914-RAR (S.D.Fla. Sept. 9, 2025) which previously had held only a few months prior that §1252(g) is “inapplicable to an alien’s challenge of immigration detention based on ICE’s noncompliance with statutory requirements when revoking an order of supervised release.” *Id* at 4. See also *Krechmar v. Parra*, 2:25-cv-01095-SPC-DNF (M.D.Fla. Dec. 15, 2025).

The cases relied upon by the Respondents are inapplicable to Petitioner’s case. See

Camarena v. ICE, 988 F.3d 1268 (11th Cir. 2021), in this case Petitioner sought to delay execution on the order of removal pending applications for provisional unlawful presence waivers). *Gupta v. McGahey*, 708 F.3d 1062 (11th Cir. 2013) (the Court held that §1252(g) precluded subject matter jurisdiction over a *Bivens* action⁵)

Respondents' argument that this Court lacks jurisdiction under the 8 U.S.C. §1252(g), commonly referred to as the zipper clause" is likewise unavailing. As this Court has previously held, the "zipper clause only applies to claims requesting review of a removal order." See *Cetino v. Hardin*, 2:25-cv-01037-JES-DNF (M.D.Fla. December 12, 2025). Petitioner is not asking this Court to review the final order of removal, nor DHS's decision to see removal.

Petitioner is likely to prevail on the claim that this Court has jurisdiction over all issues raised, notwithstanding Respondents' objections.

B. Petitioner does not make a "prolonged detention" claim but argues a due process violation of the statute and regulations

Petitioner rejects the Respondents' characterization of his habeas as a prolonged detention case. At page 8 of their Response, (DE:9, p. 8) Respondents frame Petitioner's claim as one of "unlawfully prolonged detention" under *Zadvydas*. But this is not a prolonged detention habeas petition. Petitioner cites *Zadydas* for its analysis of the post-removal order

⁵See *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

detention statute at 8 U.S.C. §1231.⁶ Under the statute, Respondents shall remove an alien in 90 days immediately after an order. See 8 U.S.C. §1231(a)(1)(A). After a 90-day period, if the noncitizen (alien) does not leave or is not removed, he shall be subject to supervision, the details to be spelled out by regulation. 8 U.S.C. §1231(a)(3). After a six-month period, detention is presumably unconstitutional unless removal is imminent, or the noncitizen is a significant danger to the community⁷. More importantly here, the statute sets forth a time frame of events and it takes a calendrical approach, not a mathematical approach: First, the removal order; then, 90 days of detention; and then, six months maximum detention. This is the chronology. The focus is on events, not numbers.

What the law does not say is that Respondents may detain at any time they feel inclined, or that, while six months is the maximum, the months can occur in nonconsecutive increments or once every few years for a period of time until mathematically the time periods are reached. Instead, 90 days immediately after the removal order (the “removal period”) the

⁶*Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) also reaffirms the district courts’ jurisdiction over habeas corpus immigration-detention cases under 8 U.S.C. §2241 (c)(3), habeas proceedings remain available as a forum for statutory and constitutional challenges to the post-removal period detention. See **Argument A**, *supra* for discussion regarding courts’ continuing jurisdiction over habeas claim in the immigration detention setting.

⁷There is no issue of danger to the community in this case. On March 3, 2023, immediately upon the final decision granting deferral under CAT, on the very same day, Petitioner was released on an OSUP. The assessment by ICE that Petitioner was not a danger was consistent with the findings of the Honorable United States Magistrate Court Hugh Morgan, and the April 17, 2003 order by the Honorable District Court Judge James Lawrence King, affirming the findings of Magistrate Morgan in Case Number: 03-10016-CR-King. This order was affirmed on appeal by the 11th Circuit Court of Appeals in Case number: 03-12513. Additionally, members of Congress, both Democrats and Republicans members penned a letter to then Commissioner of ICE, Michael Garcia urging the release of the Petitioner.

question becomes: is removal imminent? Another synonym for imminent used by the law is “significant likelihood of removal in the reasonably foreseeable future” (SLRRFF”).

Here, Petitioner was released from Respondents’ custody a little less than three years ago. The post-removal order period long expired. Clearly Respondents’ could not practically or legally execute removal to a third country. Now, the statute and regulations take over. The Court should reject Respondent’s categorization of the petition as a prolonged detention claim when it is not. As a result, Respondents’ argument is misplaced as it does not meaningfully reply to Petitioner’s petition.

C. Petitioner’s detention is in violation of 8 U.S.C. §1231

Respondents violated the law in detaining Petitioner.⁸ 8 U.S.C. §1231(a)(1)(A) defines the “removal period” as within 90 days of the removal order. The period begins on the date of the order being administratively final. During this specific period, the government “shall” detain. 8 U.S.C. §1231(a)(2). If the alien does not leave or is not removed “within” the 90-day period, the alien, pending removal, “shall” be subject to supervision. 8 U.S.C. §1231(a)(3). Herein, Congress calls for regulations prescribed by the Attorney General. The regulations “shall” include provisions requiring the alien to: (A) to appear before an

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Respondents also violated President Trump’s Executive Order 14165, Securing Our Borders, which specifies aliens previously released for lack of SLRRFF may be detained if removal appears significantly likely in the reasonably foreseeable future. Promptly, ideally within two days, the arresting officer or another officer will conduct an interview of the alien and provide the alien an opportunity to ask questions and tell why he or she should be released. None of this has occurred in Petitioner’s case. 90 FR 8467, 1/30/25.

immigration officer periodically for identification; (B) if necessary submit to medical examination, (C) give information about his nationality, circumstances, habits and activities, and, (D) obey reasonable written restrictions. *Id.*

The Regulations

Respondents promulgated regulations following the *Zadvydas* decision. Petitioner's detention violates their own regulations. "[C]ourts have repeatedly recognized the importance of process, particularly where, as here, a person's freedom stands in the balance." *Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137 (W.D.N.Y. 2025)(internal citations omitted). As a noncitizen with deferral under CAT, the question is whether there is a "significant likelihood" of removal in the "reasonably foreseeable future". 8 U.S.C. §§241.4(a)(3) and (4). The government may also release an individual on an order of supervision where there is no danger to the public or risk of flight. 8 C.F.R. §241.13(b). As previously stated, ICE has an acronym for these individuals who cannot be removed –these individuals are often from Cuba--which is SLRRFF. The Respondents' regulations confirm what the statute says: the six-month period dates "from the beginning of the removal period." 8 C.F.R. §241.13(b)(2)(iii). Where there is no SLRRFF the government "shall" promptly make arrangements for release of the alien. 8 C.F.R. §241.13(g)(1).

An alien who violates the release conditions of OSUP may be returned to custody. 8 C.F.R. §241.13(i)(1). Revocation may occur only if there is a violation or if the government determines there is a significant likelihood that the alien may be removed in the reasonably

foreseeable future. 8 C.F.R. §241.2(i)(2). He is entitled to an interview. *Id.*

Missing from Respondents' filing is any document evidencing removal is "significantly likely" in the "reasonably foreseeable future" Unquestionably, removal *cannot* be to Cuba. And there is no evidence that ICE has applied to a third country, or that a third country has accepted Petitioner and will not remove him to Cuba. Respondents' failure to abide by the statute and regulations means his arrest and custody is illegal and merits habeas relief. See *Bunthoeun Kong v. United States*, 62 F.4th 608, 619 (1st Cir. 2023; *Sering Ceesay v. Kurzdofer* 781 F. Supp 137 (W.D.N.Y. 2025); *Bonitto v. Bureau of Immigration & Customs Enf't.*, 547 F.Supp.2d 747 (S.D. Tex. 2008).

Three years after the removal period expired, Respondents have made no showing that removal to a third country is imminent; Petitioner is therefore likely to prevail on his claim that detention is unlawful and a violation of the statute and regulations. See *Ambila v. Joyce*, 2:25-cv-00267-NT, 2025 (D. Maine, Jan. 24, 2026).

D. Petitioner's removal is not significantly likely in the reasonable Foreseeable future.

Even if ICE could present evidence that another country besides Cuba has accepted Petitioner for removal, Petitioner has the right to a claim of persecution and/or torture in *that* country, before an immigration judge. 8 C.F.R. §1240.10(f)(the immigration judge shall identify for the record a country or countries in the alternative to which an alien's removal may be made); *D.V.R. v. United States Dept of Homeland Security*, Civil Action No. 25-10676-BEM (D. Mass. Mar. 28, 2025). Once an immigration judge advises an alien of a third

country of removal, the individual is entitled to contest removal and seek relief therefrom. 8 U.S.C. §1229a(4)(a noncitizen alien has the right to apply for relief from removal). Regulation, statute, and a class action injunction protect Petitioner from removal to a third country at this time. The removal period passed three years ago and does not “re-start.”

Considering Petitioner’s due process rights embodied in statute and regulation, as well as the DVR class action injunction, he is likely to prevail on the claim that removal is not significantly likely, and detention is unlawful.

III. CONCLUSION

The record demonstrates Petitioner is likely to succeed on the merits of his claim that his arrest and detention are unlawful under 8 U.S.C. §1231(a). Petitioner respectfully seeks his immediate release from custody

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