UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Alejandro Osvaldo Ghysels Reales

Petitioner,

v.

Case No. 2:26-cv-425-KCD-NPM

Field Office Director, Garrett J. Ripa, et al.

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE

Petitioner replies to Respondents' Response to Habeas Petition (Doc. 9). First, the Court has jurisdiction over Petitioner's habeas corpus petition. Second, Petitioner's re-detention violated procedural due process because he was not afforded notice or a meaningful opportunity to respond. Third, Petitioner's re-detention violated substantive due process because Respondents had no legitimate, non-punitive objective in revoking his order of supervision while he had deferred action status.

ARGUMENT

A. Jurisdiction

Respondents argue that 8 U.S.C. § 1252(g) strips the Court of jurisdiction over Petitioner's claims. Section 1252(g) states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen] under this chapter." 8 U.S.C. § 1252(g). This jurisdictional bar is narrow and only applies to the three discrete aforementioned actions. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Moreover, the Supreme Court recently reiterated that Section 1252(g) does not "sweep in any claim that technically can be said to 'arise from' the three listed actions of the Attorney General." *Jennings v. Rodriguez,* 583 U.S. 281, 294, (2018). Instead, courts must focus on "just those three specific actions themselves" when asking if an action is barred by § 1252(g). *Id.* Here, Petitioner does not challenge the commencement of a proceeding, the adjudication of a case, or the execution of his removal order. Rather, Petitioner is challenging Respondents' failure to follow the constitutional and regulatory procedures that must accompany Respondents' discretionary decision to detain Petitioner.

Next, Respondents argue that 8 U.S.C. § 1252(b)(9), also known as the "zipper clause," strips this Court of jurisdiction. The zipper clause "bars review of claims arising from 'action[s] or 'proceeding[s] brought to remove a[] [noncitizen]." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (quoting 8 U.S.C. § 1252(b)(9)). The Eleventh Circuit has held "that the zipper clause only affects cases that involve[] review of an order of removal." *Canal A Media Holding, LLC v. United States Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1257 (11th Cir. 2020). Here, as mentioned above, Petitioner is not challenging his removal proceedings. Thus, Respondents' "reliance on § 1252(b)(9) is misplaced." *Franco Rodriguez v. Acting Director U.S. Immigr. Customs & Enf't*, No. 2:26-CV-2-KCD-DNF, 2026 WL 746563, at *3 (M.D. Fla. Mar. 17, 2026) (quoting *Fernandez-Garcia v. U.S. Att'y Gen.*, No. 1-20-CV-23599-UU, 2021 WL 8821923, at *5 (S.D. Fla. Apr. 15, 2021).

Accordingly, the Immigration and Nationality Act ("INA") does not strip the Court of jurisdiction over this action.

B. Petitioner's Re-detention Violated Procedural Due Process

Noncitizens, even those with final orders of removal, are entitled to due process protections under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Zadvydas v. Davis*, 533 U.S. 678, 693. Courts take a two-step approach when examining procedural due process claims. *Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982)*. First, they assess whether a protected liberty interest exists and second, they determine what procedures are necessary to ensure that any deprivation of a protected liberty interest accords with the Constitution. *Id.*

It is well-established that all people within the U.S., including noncitizens subject to a final order of removal, possess a liberty interest in their physical freedom. *See Zadvydas*, 533 U.S. at 693. Supreme Court precedent also makes clear that individuals whose physical freedom is qualified in some way nonetheless have a liberty interest that "is valuable and must be seen as within the protection" of the Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Here, Petitioner had a protected liberty interest in his 15-year-long supervised release from immigration custody.

Given that a protected liberty interest exists, the Court must then assess what process is due, using the flexible balancing test set forth in *Mathews v. Eldrige*, 424 U.S. 319, 335 (1976). "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Morrissey*, 408 U.S. at 481-82. Nonetheless, at its core, procedural due process requires, at a minimum, notice and the opportunity to be heard at a meaningful time and in a meaningful manner. *Matthews*, 424 U.S. at 333. Here, both fundamental procedural safeguards are missing.

In their response, Respondents allege that U.S. Immigration and Customs Enforcement ("ICE") "served [Petitioner] with a Notice of Revocation of Release…and attempted to interview him." (Doc. 9 at 183). In support, Respondents filed a "Notice of Revocation of Release" dated February 2, 2026. (Doc. 9-2). Undersigned counsel reviewed this document with Petitioner via video call on March 19, 2026. Petitioner affirmed he has never been shown, read, or given a copy of the Notice that was alleged to have been served to him on February 2, 2026, at "1157." (Doc. 9-2 at 198). Notably, the Notice is almost entirely typed and does not have Petitioner's signature. (Doc. 9-2 at 197).

Additionally, Respondents offer conflicting accounts regarding whether an informal interview took place. While the Respondents allege that ICE "attempted to interview" Petitioner, the "Alien Informal Interview" document filed by Respondents states that an "initial informal interview" was conducted by Deportation Officer Nathaniel Espinoza-Navarette. (Doc. 9 at 2; Doc. 9-2 at 199). Importantly, the document states that, at the interview, Petitioner "did not provide a written statement" and "did not provide any documents." (Doc 9-2 at 199). To date, Petitioner reiterates that he has not been afforded an opportunity to respond to the reasons for the revocation of release or provide evidence to demonstrate that his removal is unlikely.

In fact, on February 2, 2026, Petitioner had in hand an ICE stay of removal packet that was filed the same day he was detained. (Doc 1-12 at 63). The stay of removal included, among other documents, evidence that U.S. Immigration and Customs Enforcement ("USCIS") issued Petitioner a Bona Fide Determination of his U-visa petition along with deferred action, as well as an I-130 Petition for Alien Relative approval notice. *Id.* Thus, if Respondents had afforded Petitioner the opportunity to be heard, he would have been willing and ready to present evidence to challenge ICE's rationale for detaining him after 15 years of supervised release. Specifically, Petitioner would have raised the argument that a "grant of deferred action is an 'affirmative immigration benefit' that effectively make it unlawful for a removal order to be executed while the noncitizen has deferred action status." *Espinoza-Sorto v. Agudelo*, No. 1:25-CV-23201, 2025 WL 3012789, at *5 (S.D. Fla. Oct. 28, 2025).

Additionally, the purported new file review "within approximately three months from the date of th[e] [Notice of Revocation of Release]" is insufficient to safeguard Petitioner's right to be free from physical restraint. (Doc. 9-2 at 197). Courts have held that a post-deprivation review held months after an individual is detained is "simply too little, too late to protect the core liberty interest at stake." *Franco Rodriguez*, 2026 WL 746563, at *5 (M.D. Fla. Mar. 17, 2026); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9 (S.D. Fla. Sept. 9, 2025).

C. Petitioner's Re-detention Violated Substantive Due Process

Substantive due process requires that a noncitizen's detention bear a reasonable relationship to the two regulatory purposes of immigration detention: preventing danger to the community or flight prior to removal. *See Zadvydas*, 533 U.S. at 690-91. Respondents argue that Petitioner's claim that his detention violates substantive due process is premature because his current detention has not exceeded 180 days – the six-month presumptively reasonable period of detention. (Doc. 9 at 7-8). However, the six-month period of presumptive reasonableness set out in *Zadvydas* "outlined a 'guide' for approaching these detention challenges . . . not a prohibition on claims challenging detention less than six months." *Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018). Even more, assuming the 180 days resets each time a noncitizen is detained "would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every 180 days." *Sardinas v. Noem*, No. 2:26-CV-00067, 2025 WL 232405, at *3 (M.D. Fla. Jan. 29, 2026). Here, given that the six-month period for presumptively reasonable detention expired over 15 years ago, the burden-shifting framework applies. Petitioner complied with every condition of his order of supervision and there is no evidence indicating that he is a danger to the community. Respondents' sole possible basis for detaining Petitioner is that it may do so in order to remove him. However, because Petitioner's deferred action status prevents his removal, his detention violates substantive due process and is unlawful.

Dated: March 24, 2026

Respectfully submitted,

/s/ Juliana M. Lopez
Juliana M. Lopez, Esq.
Florida Bar Number: 1050003
Cordero & Associates, P.A.
800 S. Douglas Road, Ste. 350
Coral Gables, FL 33134
Tel: (305) 777-2677
Email: jlopez@corderoassociates.com
Attorney for Petitioner