

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSE SANTIAGO VILA-ALFARO,

Petitioner,

Case No. 2:26-cv-637-KCD-DNF

v.

UNITED STATES OF AMERICA,

Respondent.

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Jose Santiago Vila-Alfaro ("Vila-Alfaro") petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, arguing his he is being detained in violation of the Fifth Amendment, the Immigration and Nationality Act, and the *Accardi* doctrine. His petition should be denied.

BACKGROUND

Vila-Alfaro is a 64-year-old citizen of Cuba who entered the United States on or about May 25, 1980.¹ (Composite Exhibit. Ex. 1 at 2-3.) He was ordered removed on August 19, 1999. (*Id.* at 2.) ICE advises that Vila-Alfaro received indefinite parole in error. ICE advises that he first reported on an order of supervision on February 28, 2009. On November 25, 2025, Vila-Alfaro was arrested for possession of cocaine. (*Id.*) He was subsequently taken into ICE custody on

¹ The petition identifies Vila-Alfaro as 65-years old. (Doc. 1 at ¶ 65)

November 27, 2025. (*Id.* at 3.) The next day, Vila-Alfaro's Order of Supervision was revoked, and he was provided with an informal interview. (*Id.* at 4.) U.S.

Immigration and Customs Enforcement is pursuing removal to Mexico. (*Id.* at 7.)

ICE advises that Vila-Alfaro is being held at the Florida Soft Side South Facility.

On March 5, 2026, Vila-Alfaro filed a petition for writ of habeas corpus. (Doc. 1.)

LEGAL STANDARD

The Court has the power to grant a writ of habeas corpus where Vila-Alfaro "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). "The burden rests on the person in custody to prove his detention is unlawful." *Benito Vasquez v. Moniz*, No. 25-11737-NMG, 2025 WL 1737216, at *1 (D. Mass. June 23, 2025).

Vila-Alfaro has a final removal order. At this point, Vila-Alfaro is removable from the United States. The Attorney General (through her delegates) has a statutory obligation to execute that removal. 8 U.S.C. § 1231(a)(5).

ICE is detaining Vila-Alfaro under 8 U.S.C. § 1231(a)(6) pending his removal. ICE is working towards executing removal.

The period of Vila-Alfaro's detention is still well within the presumptively reasonable limits established in *Zadvydas*. Even if he were able to challenge detention

before then, Vila-Alfaro has not alleged that there is not a significant likelihood of removal in the reasonably foreseeable future (“SLRRFF”).

ARGUMENT

In the petition, Vila-Alfaro challenges only the legality of his detention based on the process used to revoke his release. (Doc. 1. at ¶ 33) He is not challenging the commencement of his removal proceeding, the adjudication of his case, the execution of his removal order, nor is he seeking review of his removal order. (*Id.* at ¶¶ 34-35) Thus, the sole basis is that the Respondents have not complied with the 8 C.F.R. § 212.12. (*Id.* at ¶ 46) As explained below, the Court should deny the petition.

I. Lack of Jurisdiction

While Federal Respondents believe the Court lacks jurisdiction, the undersigned realizes it will fail here. Plus, Jurisdiction is a non-waivable matter should Federal Respondents choose to appeal. So for the brief purpose of preservation, Federal Respondents contend 8 U.S.C. § 1252(g), (b)(9) strip jurisdiction. Even if the Court finds jurisdiction, Vila-Alfaro’s claims still fail. *See Tran v. Warden*, No. 2:25-cv-1224-KCD-NPM, 2026 WL 672969 (M.D. Fla. Mar. 10, 2026).

II. Constitutionally Lawful Detention

Even if the Court disagrees with the above, it must still deny the writ. Vila-Alfaro cannot make a claim for unlawfully prolonged detention at this time. Nor can

he litigate SLRRFF prematurely.

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Yet indefinite detention would present obvious constitutional concerns. *Id.* So the Supreme Court interprets this post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play regarding SLRRFF. *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale*, 287 F.3d at 1051-52; *Guo Xing Song v. U.S. Attorney*

General, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009).² At bottom, “[t]his presumptively reasonable six month period must have expired at the time of the filing of a petition.” *E.g.*, *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009) (Steele, J.); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011) (Steele, J.). *See also Lam v. Dir., ICE*, No. 2:25-cv-1202-KCD-DNF, slip op. at 4-5 (M.D. Fla. Mar. 6, 2026) (dismissal of habeas petition as premature, petition only detained for four months “squarely within window in which his detention is presumptively reasonable”).

Vila-Alfaro has been in detention for 119 days. He was first detained on November 27, 2025, and sued on March 5, 2026. At that point, Vila-Alfaro had only been detained for 98 days. Either timeline is well under the 180-day period that is presumptively reasonable. That is fatal to jurisdiction. *Akinwale*, 287 F.3d at 1051-52.

To contend ICE cannot detain him for the purpose of removal, as Vila-Alfaro does, would effectively eliminate ICE’s ability to ever remove an alien unless it does so within the presumptively reasonable timeframe. *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (Apr. 25, 2012). *Zadvydas* doesn’t sweep that

² Some districts disagree. *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Of course, *Akinwale* binds the Court. Even if it didn’t, *Cesar* and any progeny are wrong. *Zadvydas* recognized the presumptive six-month period for the specific “sake of uniform administration in the federal courts.” *Zadvydas*, 533 U.S. at 701. That was not an invitation to make up exceptions to this ripeness doctrine—like *Cesar* did.

broad. It goes without saying an alien must be detained (or otherwise in custody) to effect removal unless the alien leaves voluntarily. Vila-Alfaro has not left voluntarily, and ICE is attempting to remove him. If the Court accepts his position, it is unclear how ICE would be able to remove Vila-Alfaro—which ICE is actively working toward. *But see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody . . . while arrangements were being made for their deportation.”).

Because Vila-Alfaro was first detained on November 27, 2026, any *Zadvydas* challenge fails. *E.g., Jiang*, 2009 WL 260378, at *2 (“This presumptively reasonable six month period must have expired at the time of the filing of a petition.”). Moreover, Vila-Alfaro has not alleged that there is not a SLRRFF.

ICE recognizes Judge Chappell and Steele have held the *Zadvydas* period is coterminous with the statutory removal and post-removal periods—meaning it can run while an alien is outside detention or aggregate periods. *Beltran v. ICE*, No. 2:25-cv-01174-SPC-NPM, 2026 WL 21252 (M.D. Fla. Jan. 5, 2026) (Chappell, J.); *Godinez Perez v. Noem*, No. 2:25-cv-00429-JES-NPM, 2025 WL 2806557, at *2 (M.D. Fla. Oct. 2, 2025) (Steele, J.). This Court, however, disagrees and correctly holds that the *Zadvydas* period runs from actual detention—not a statutory period that may have

expired decades ago. *Khalil al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026); *Lageyre-Ravelo v. ICE*, No. 2:25-cv-1171-KCD-DNF, 2026 WL 575183, at *5-6 (M.D. Fla. Mar. 2, 2026).

Notably, Judge Pratt issued a recent decision adopting ICE's general interpretation of this question. *Da Wu v. ICE*, No. 3:25-cv-1254-JEP-MCR (M.D. Fla. Feb. 3, 2026). Judge Berger just agreed. *Gonzalez Barrera v. U.S. Att'y General*, No. 3:26-cv-282-WWB-SJH, 2026 WL 472340, at *1-2 (M.D. Fla. Feb. 19, 2026). So too did three Southern District cases—agreeing that this period begins at the start of an alien's actual detention and begins again when ICE makes a renewed effort to remove after failing long ago. *Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025) (holding claim premature and rejecting argument that aggregate prior detentions considered for *Zadvydas* purposes); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300 (S.D. Fla. July 17, 2025) (holding claim premature when removal period ended in 2014); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *7-8 (S.D. Fla. July 8, 2025) (same for 2011). Other courts agree. *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) [re-]detention poses a constitutional issue.").

With *Zadvydas*, the "basic question" is "whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699.

In *Zadvydas*, the Court “used the words ‘detain’ and ‘custody’ to refer exclusively to physical confinement and restraint.” *Jennings v. Rodriguez*, 583 U.S. 281, 311 (2018). *Zadvydas* protects against unconstitutionally indefinite detention; it did not interpret starting an imaginary detention clock based on statutory periods divorced from physical restraint. Again, to conclude the detention period started with the statutory removal time requires a corresponding finding that ICE has been unconstitutionally detaining Vila-Alfaro since his OSUP release. That is a factual impossibility. Yet it also imposes an impossible burden on ICE—requiring it to justify extended detention if the burden shifts. *See Zadvydas*, 533 U.S. at 701 (“And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”).

Akinwale and other courts recognize that calculating time will often begin when detention is required (i.e., start of the removal period). 8 U.S.C. § 1231(a)(2)(A). But this would only be the case where petitioner challenges detention beginning at that time. If—as here—petitioner gets detained years later, no reasonable interpretation of *Zadvydas*, *Akinwale*, or any other binding law suggests the six-month period can expire before detention occurs. Many cases on this exact issue hold the period begins with actual detention. *E.g.*, *Cheng Ke Chen v. Holder*, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011) (rejecting claim as premature for petitioner who was not detained during removal period because “it defies common sense to suggest that *Zadvydas* time can run

while a petitioner is not in custody”).³ Again, *Zadvydas* “exclusively” addressed “physical confinement and restraint.” *Jennings*, 583 U.S. at 311.

Here, Vila-Alfaro is in the “post-removal period” under 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 683. It is “presumptively reasonable” for ICE to detain an individual with that status for a total of six months. *Id.* at 701. To this day, Vila-Alfaro is still within that reasonable detention period.

A dicta footnote in *Akinwale* does not alter this outcome. 287 F.3d at 1053 n.3. In part, *Akinwale* decided whether the action was premature. *Id.* at 1051-52. There was no doubt it was since petitioner filed four months after he was “taken into custody.” *Id.* 1051. In dicta and its related footnote, *Akinwale* stated the six-month term was inclusive of the removal period (i.e., six months in total, not six months on top of the ninety-day removal period). ICE does not dispute that. Instead, *Akinwale*’s express holding is relevant: petitioner “must show post-removal order detention in excess of six months.” *Id.* at 1052.

There is no way Vila-Alfaro can make that showing. It is undisputed he has not been in physical detention for six months. As explained, the constitutional detention

³ See also *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 n.7 (S.D.N.Y. 2017); *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017); *Rivera v. Hassell*, No. 4:15-01497-WMA-SGC, 2016 WL 4257692, at *3 (N.D. Ala. July 12, 2016), *R&R adopted*, 2016 WL 4257052 (Aug. 10, 2016); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012); *Raia v. Aviles*, No. 11-3374 (WJM), 2011 WL 2710275, at *5 & n.9 (D.N.J. July 6, 2011); *Thelemaque v. Barr*, No. 20-20467-CIV-ALTONAGA/Reid, 2020 WL 13551808, at *2 & n.1 (S.D. Fla. Mar. 30, 2020); *Aionesei-Lupu v. Barr*, No. 1:20-cv-22998-BLOOM, 2020 WL 8679783, at *2 (S.D. Fla. July 23, 2020); *Cruz v. Lumpkin*, No. H-23-2224, 2023 WL 4566252, at *1 n.7 (S.D. Tex. July 17, 2023).

period cannot start running without some form of constraint. This case is unripe because *Zadvydas* does not protect against detention that never existed.

Importantly, that six-month period is a bright-line, irrebuttable presumption of constitutionally acceptable detention. See *Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F.3d at 1052.⁴ It is only “after” this time that SLRRFF and *Zadvydas* burden-shifting comes into play. *Guzman Chavez*, 594 U.S. at 529 (cleaned up); see also *Jennings*, 583 U.S. at 298-99; *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Jama v. ICE*, 543 U.S. 335, 347-48 (2005). After means “following in time or place or subsequently to the time when or later in time.” *Intellectual Ventures I LLC v. Ubiquiti, Inc.*, No. 1:23-cv-00865-JCG, 2025 WL 1640270, at *3 (D. Del. June 10, 2025) (cleaned up). The word gets used to “describe a temporal sequence.” *Id.*; see also *Arlaine & Gina Rockey, Inc. v. Cordis Corp.*, No. 02-22555-CIV, 2004 WL 5504978, at *42 (S.D. Fla. Jan. 5, 2004) (giving “after” its “ordinary meanings” like “following in time”). Until the Supreme Court recognizes a *Zadvydas* challenge *during* that six-month period, the Court cannot create that cause of action where none exists in derogation of *Akinwale*. See 287 F.3d at 1052 (“This six-month period thus must have expired . . . in order to state a claim under *Zadvydas*.”).

⁴ See also *Guo Xing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009); *Vaz v. Skinner*, 634 Fed. App'x 778, 782 (11th Cir. 2015); *Ivantchouk v. U.S. Attorney General*, 417 Fed. App'x 918, 921 (11th Cir. 2011); *Chance v. Napolitano*, 453 F. App'x 535, 536 (5th Cir. 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011); *Okpoju v. Ridge*, 115 F. App'x 302, 302 (5th Cir. 2004).

To require detailed justification from ICE before the *Zadvydas* period expires is a significant infringement on separation of powers principles. Essentially, every question related to immigration is “exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). This isn’t a recent development. *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) (“For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government’s political departments.” (cleaned up)). That power, however, is always “subject to important constitutional limitations.” *Zadvydas*, 533 U.S. at 695. “In these cases, we focus upon those limitations.” *Id.*

Other principles of judicial review come into play too. *Id.* at 700. Courts “recognize primary Executive Branch responsibility” in this field. *Id.* They must also “give expert agencies decisionmaking leeway in matters that invoke their expertise.” *Id.* Important here, that includes “Executive Branch primacy in foreign policy matters.” *Id.* These basic separation-of-powers principles “require courts to listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.” *Id.*

The Executive branch is attempting to remove Vila-Alfaro. He is from Cuba—a country whose government is traditionally hostile to the United States. The

Executive's efforts to remove Vila-Alfaro in these circumstances go to the very core of its power to enforce immigration laws. *See United States v. Texas*, 599 U.S. 670, 679 (2023) ("That principle of enforcement discretion over arrests and prosecutions extends to the immigration context, where the Court has stressed that the Executive's enforcement discretion implicates not only normal domestic law enforcement priorities but also foreign-policy objectives." (cleaned up)); *Biden v. Texas*, 597 U.S. 785, 805-06 (2022) ("That is no less true in the context of immigration law, where the dynamic nature of relations with other countries requires the Executive Branch to ensure that enforcement policies are consistent with this Nation's foreign policy." (cleaned up)). Until Vila-Alfaro's detention raises a constitutional problem—i.e., after six months—the political branches (namely, the Executive) must be permitted to pursue law enforcement and foreign policy objectives without interference.

To find otherwise would demand the Executive explain its constitutionally acceptable actions for the Judiciary to decide if it concurs based on an individual judge's interpretation of current world events. Yet in the American system of delegated, separated powers, coequal branches need not justify to one another the determinations made within their legal discretion. That is especially true where—as here—the law largely entrusts the subject to the Executive alone.

What's more, an interpretation allowing a challenge now grants rights based on the statutory definitions of removal and post-removal periods under 8 U.S.C. § 1231.

But that statute literally specifies it “shall [not] be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States.” *Id.* § 1231(h). The only way to conclude SLRRFF burden-shifting applies now is by first concluding ICE’s failure to remove within the statutory period somehow entitles Vila-Alfaro to review. Again, that’s atextual.

Even if the Court were to get past the bright-line cutoff, there is no way for Vila-Alfaro to show no SLRRFF exists. *See Zadvydas*, 533 U.S. at 689. At this point, ICE has taken Vila-Alfaro into custody and is working toward removal “the reasonably foreseeable future.” *See id.*

As explained, these claims fail. Apart from that, Vila-Alfaro fails to show any regulatory violation.

C. Mariel Boatlift Regulations

In the petition, Vila-Alfaro the Federal Respondents address those specific to the claim alleged: 8 C.F.R. § 212.12. Those provisions once applied to Cubans—like Vila-Alfaro—who arrived during the Mariel Boatlift. There are several reasons why these regulations are irrelevant here.

First, they do not apply to Vila-Alfaro. He was ordered removed and placed on an OSUP, which was revoked for removal. These events put Vila-Alfaro squarely

within § 241.13 rather than § 212.12.⁵ *Marquez-Coromina v. Hollingsworth*, 692 F. Supp. 2d 565, 571 (D. Md. 2010) (Section 212.12 “does not address continued detention after the removal order has been issued.”).

This Court recently addressed a similar case. *Franco Francisco v. ICE*, No. 2:26-cv-2-KCD-DNF, 2026 WL 746563, at *5 n.2 (M.D. Fla. Mar. 17, 2026). *Franco Francisco* recognized that subsequent events like achieving legal status, getting it revoked, and being placed on an OSUP may pull a petitioner “completely out of § 212.12’s orbit.” *Id.* Likewise, Vila-Alfaro was ordered removed and placed on an OSUP. To now revoke the OSUP, detain, and remove has nothing to do with the long-since lapsed Mariel regulations; rather, it relates to the scheme under which Vila-Alfaro and ICE have been proceeding for a decade.

Second, Judge Chappell’s decision does not change the outcome. *Perez v. Warden*, No. 2:26-cv-9-SPC-DNF, 2026 WL 131650, at *3 (M.D. Fla. Jan. 19, 2026). Due to incomplete briefing from ICE, the issue was never fully developed. *Id.* at *1. The Cuban Review Plan under § 212.12 was effectively abrogated when the Supreme Court eliminated the distinction between Mariel Cubans and other aliens. *Clark v. Martinez*, 543 U.S. 371, 386 (2005); *see also Marquez-Coromina*, 692 F. Supp. 2d at 572 (explaining “that *Clark* removed the distinctions among the three categories of aliens

⁵ The US Attorney’s Office has no information indicating that ICE invoked special detention under § 241.14(a)(1)—which potentially justifies continued detention even if the Court found no SLRRFF.

identified in 8 U.S.C. § 1231(a)(6),” which justified “separate treatment of Mariel Cubans under § 212.12”). Immediately after that decision—over twenty years ago—ICE issued interim guidance to end the Cuban Review Plan:

Effective immediately, all aliens detained post-final order for 180 days will receive custody reviews pursuant to the regulations under 8 CFR § 241.13. Custody reviews for Mariel Cubans under 8 CFR § 212.12 are no longer in effect, and therefore Cuban Review Plan (CRP) panels and procedures are to be discontinued, effective immediately. Any portion of previously issued guidance that otherwise limits § 241.13 custody reviews to certain classes of aliens is now superseded by this memorandum.

(Ex. 4 at 2). ICE never amended the regulations to address the change in law. As one court said, “it is mystifying that the regulatory language has not been amended to comport with the Supreme Court’s decision in *Clark*.” *Marquez-Coromina*, 692 F. Supp. 2d at 572. But at bottom, the Cuban Review Plan has not been in operation for over twenty years. Nor have Cuban Review Panels existed during that time.

And third, Vila-Alfaro fails to identify a single due process protection somehow offered him by § 212.12 that is not otherwise provided by § 241.13. Nearly all § 212.12 provided detailed procedures for making and granting initial parole decisions, along with revoking parole previously granted. Vila-Alfaro had been out on an Order of Supervision since February 28, 2009. It’s unclear what part of § 212.12 would even apply to someone like Vila-Alfaro—who had parole revoked long ago and has been out on supervision under an entirely different regulatory scheme for over fifteen years. For instance, continued detention under the Cuban Review Plan was only assessed

annually. 8 C.F.R. § 212.12(g)(2); *Sierra v. INS*, 258 F.3d 1213, 1216 (10th Cir. 2001) (“Mariel Cubans who are being detained have their cases reviewed every year to determine whether they should be paroled.”). And Vila-Alfaro has not been detained for anywhere nearly a year.

Due process and *Accardi* claims amount to what process is due under the law while properly following an agency’s regulations. Given their possible unconstitutionality, Cuban Review Panels under § 212.12 have not been offered or available in the United States since 2005. (Ex. 4). Relying on that scheme, Vila-Alfaro does not ask for the process due; he asks the Court to resurrect a regulatory framework jettisoned long ago after a Supreme Court decision changed the law. In that way, he apparently asks the Court to empanel the first Cuban Review Panel in two decades. Or Vila-Alfaro asks the Court to hold he can never be removed—despite his final order—because any procedure under the Cuban Review Plan cannot exist to review his detention anymore.

In short, § 212.12 is a red herring and the typical regulations apply.

CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that Vila-Alfaro’s petition be denied.

Dated: March 26, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

/s/ Christopher J. Emden
CHRISTOPHER J. EMDEN
Assistant United States Attorney
USA No. 158
400 North Tampa St., Suite 3200
Tampa, FL 33602
Telephone No.: (813) 274-6000
Facsimile No.: (813) 274-6198
E-mail: Christopher.Emden@usdoj.gov
Lead Counsel for Federal Respondents