

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

MORENO-RUBIO, Erlin A.,

A 

Petitioner-Plaintiff,

v.

**Garrett Ripa, in his official capacity as
Field Office Director, Miami field Office,
U.S. Immigration and Customs
Enforcement; Warden, Florida Soft Side
South Detention Center; U.S.
Department of Homeland Security; and
U.S. Immigration and Customs
Enforcement,**

Respondents-Defendants.

Case No. 2:26-cv-655-SPC-NPM

**Reply to Government Response
to Petitioner's Verified Petition
for Writ of Habeas Corpus**

**REPLY TO GOVERNMENT RESPONSE TO PETITIONER'S
VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

The Government argues that the Immigration and Nationality Act ("INA") strips the Court of jurisdiction over this action. Moreno-Rubio does not challenge the commencement of a proceeding, the adjudication of a case, or the execution of his removal order. Nor does he ask the Court to review the removal order. Rather, Moreno-

Rubio challenges the legality of his detention under a framework devised by the Supreme Court. The INA does not strip the Court of jurisdiction over this action.

The Court lacks jurisdiction. ICE improperly exercised its discretion to revoke Moreno Rubio's OSUP. Even the detention during this period is reasonable. So the Court should grant the Petition.

This Court has subject matter jurisdiction under *28 U.S.C. § 2241* and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under *28 U.S.C. § 1331* because this action arises under federal law, including the Immigration and Nationality Act, *8 U.S.C. § 1101, et seq.*, and Administrative Procedure Act, *5 U.S.C. § 551, et seq.* Because Petitioner is in custody under the authority of the United States, and he claims he is being detained in violation of federal law, Petitioner has properly invoked the Court's habeas jurisdiction pursuant to *28 U.S.C. § 2241*.

LEGALITY OF DETENTION

"Once a noncitizen's order of removal becomes administratively final, the Government 'shall' remove the person within 90 days." *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (quoting *8 U.S.C. § 1231(a)(1)(A)*). The government must detain the noncitizen during the 90-day removal period, which begins

when the removal order becomes administratively final. *Id.* Detention may continue after the removal period, but not indefinitely. The Government detained Moreno-Rubio on September 29, 2010, and he was removed on October 13, 2010. **(Exhibit 9-1, Notice to Intent to Reinstate Prior Order)** Petitioner never received a credible fear interview. Petitioner was removed to Honduras and came back quickly because the same people tried to do harm to him once more. He spent over ten (10) years in the United States before being arrested in a domestic situation with his significant other. His boyfriend has problems with him and decided to have him arrested. All charges were dropped, and Petitioner was placed in withholding of removal proceedings. Although the standard for withholding of removal is much greater than asylum, the immigration judge granted it. ICE placed him on an order of supervision. **(Exhibit 1-6, Order of Supervision)**

Petitioner was re-detained on March 2, 2026, and is in Alligator Alcatraz. As the government notes in its response, “he has been in ICE custody for sixteen days (not including detention time in previous years).” **(Government’s Response at page 2)** The previous time has never been counted by the government, but it should be counted, because that is the law. **(See Verified Petition for Writ of Habeas Corpus)** It would be unfair to start the clock each and every time a person were re-detained. Petitioner

could be let out of prison, once a year, re-detained, kept for six (6) months, and start the process over again.

ICE claims that it is actively working towards executing removal to a third country. ICE knows that the Petitioner has the HIV virus and that no other country will accept him. ICE has been giving Petitioner his Biktarvy medication at Alligator Alcatraz. Conditions at Alligator Alcatraz may worsen Petitioner's condition. The next argument is that even if Petitioner were able to challenge detention before then, Moreno Rubio cannot show that there is no SLRRFF. As a homosexual, ICE knows that Petitioner cannot just be sent anywhere without taking into account what could happen to him. If he was almost killed in Honduras various times, ICE knows the sentiments of all Latin American and African countries. ICE knows that it will be impossible to send him anywhere.

The government makes the argument that, "Moreno Rubio has only been in detention for just sixteen days. He was first detained on March 2 and sued on March 8. At that point, Moreno Rubio had only been detained for seven days. **(Government's Response at page 5)** Petitioner believes that even one day in a prison is more than it should be. Now, it is up to eighteen (18) days. Citing a decision by Judge Dudek, who is in the minority on this, disagrees and incorrectly holds that the *Zadvydas* period runs

from actual detention—not a statutory period that may have expired decades ago. Many of the other judges around the country have disagreed with this interpretation. (*citations omitted*) In *Zadvydas*, the Supreme Court held, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Zadvydas v. Davis*, 533 U.S. 678 (2001). If removal is not practically attainable, detention no longer serves its statutory purpose of “assuring the alien’s presence at the moment of removal.” *Id.* at 699. The Court found it unlikely Congress “believed that all reasonably foreseeably removals could be accomplished in [90 days].” *Id.* at 701. So, “for the sake of uniform administration in the federal courts,” it established a “presumptively reasonable period of detention” of six months—the 90-day removal period plus an additional 90 days. *Id.* That time has since long passed. Over 5 years have come and gone. To rearrest someone and have the 6-month period start over is unreasonable.

The respondents argue **Moreno Rubio’s** petition is premature because he has not been detained for longer than six months. Their argument assumes the six-month clock started on March 2, 2026, when Petitioner’s current detention began, despite his six-month detention in 2021. That assumption is inconsistent with *Zadvydas*. It would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by

releasing and re-detaining them every six months. As the Eleventh Circuit recognized, “[t]he Supreme Court’s stated rationale for establishing a presumptively reasonable ‘6-month period’ for detention pending removal supports our conclusion that this period commences at the beginning of the removal period.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

Because the six-month period for presumptively reasonable detention has expired, *Zadvydas*’s burden-shifting framework applies. Courts use a burden-shifting framework to judge the constitutionality of additional post-removal detention:

After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut the showing.

Id.

Moreno-Rubio has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. In fact, ICE made that determination in 2021, when it released **Moreno-Rubio** under an order of supervision. The burden thus shifts to the respondents, but they make no attempt at rebuttal. There is no evidence before the Court to suggest removal is more likely now than it was in 2021.

The Government argues that “ICE properly exercised its discretion to revoke **Moreno Rubio’s** OSUP—a decision on which the Court is statutorily prohibited from reviewing.” The Government curiously notes that the OSUP set out various conditions that Moreno Rubio was required to follow while allowed to stay in America on supervision.

One of the conditions was that Petitioner was to report when required. The Government argues that they are trying to remove **Moreno Rubio** because he is a convicted felon. (**Government’s Response at page 12**). This is false. Petitioner has never been convicted of any crime. The Government argues that ICE can revoke release due to violations of OSUP conditions. Petitioner has complied with all conditions and has never missed an appointment.

The Government also argues that ICE can revoke OSUPs in its discretion based on its determinations—which are substantively unreviewable. This statutory bar against judicial review precludes a Court from exercising jurisdiction over the Government’s decision to “commence proceedings, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C § 1252(g). However, the Supreme Court has narrowly interpreted § 1252(g) as applying “only to three discrete actions that the Attorney General may take: [his] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute

removal orders.’’ *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis omitted) (*quoting* 8 U.S.C. § 1252(g)); *see Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025) (noting courts have “distinguished between challenges to ICE’s discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not.”).

Here, Petitioner does not challenge the legitimacy of his April 2001 order of removal or ICE’s discretionary authority to decide “when” or “whether” to execute such removal order. *See Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (*quoting Tazu v. Att’y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020)). Rather, Petitioner challenges his present detention as unlawful, as well as the Government’s authority to re-detain him under the post-removal detention statute without notice and an opportunity to respond. Accordingly, this Court has jurisdiction to consider Petitioner’s claims. *See Zadvydas*, 533 U.S. at 687 (confirming that 28 U.S.C. § 2241 confers jurisdiction on the federal courts to hear cases about the detention of individuals with final removal pending their removal).

In its final argument against release, the government says that, “regulations simply say aliens get an “informal interview” after revocation to contest revocation and detention. 8 C.F.R. §§ 241.4(l)(1); 241.13(i)(3). And if that doesn’t result in release, the

alien can request a more thorough review. 8 C.F.R. §§ 241.4(l)(3); 241.13(j).” **(Government’s Response at page 20)** ICE also says that ICE has already provided minimum notice required by regulation, and that any remedy would be limited to whatever further curative process the Court deems appropriate. **(Government’s Response at page 20)** Maybe ICE should understand that when playing with people’s liberty, the minimum is not the only thing that should be done. ICE should go the extra mile as this is the United States of America where we do not put people in jail for reasons that are not articulated in a cohesive fashion. The only remedy is an order of release and to disallow further detention.

CONCLUSION

WHEREFORE, Petitioner requests that this Court:

- a. finds no significant likelihood Petitioner will be removed in the reasonably foreseeable future.
- b. That he is entitled to immediate release from detention, but remain subject to the terms of the 2021 order of supervision.

Respectfully submitted,

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/s/ Julio Gutierrez

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 19, 2026, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Julio Gutierrez