

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JORGE S. PEREZ-MARRERO,

Petitioner,

Case No. 2:26-cv-674-SPC-DNF

v.

MARKWAYNE MULLIN et al.,

Respondents.

FEDERAL RESPONDENTS' MOTION FOR CLARIFICATION

Federal Respondents respectfully request clarification of the Court's April 10, 2026, order directing Federal Respondents to conduct a custody review considering whether Petitioner Jorge Perez-Marrero presents a danger to the community sufficient to justify continued detention. (Doc. 16.)

BACKGROUND

On March 10, 2026, Perez-Marrero filed a petition for writ of habeas corpus. (Doc. 1.) In their response, Federal Respondents argued that Petitioner's detention did not violate the Fifth Amendment to the U.S. Constitution because his period of detention remained presumptively reasonable. *See* Doc. 6; *see also Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Because Perez-Marrero's detention remained presumptively reasonable, Federal Respondents argued that the burden-shifting framework requiring the government to demonstrate a significant likelihood of

removal in the reasonably foreseeable future (“SLRRFF”) had not been triggered. *Id.* The Court disagreed, finding that the presumptively reasonable detention period had expired and that the government had not demonstrated SLRRFF. (Doc. 16.) However, given the Petitioner’s criminal record, the Court directed ICE to “conduct a custody review to determine whether Perez-Marrero poses a danger to the community sufficient to justify continued detention.” *Id.* at 4.

DISCUSSION

Federal Respondents’ position is that where a determination has been made that there is no SLRRFF—as is the case here with the Court’s finding—the operative regulation governing detention is 8 C.F.R. § 241.13. This regulation considers the alien’s likelihood of removal in the reasonably foreseeable future and generally does not permit the government to base its detention decision on whether the alien presents a potential danger to the community. *Id.* There is a narrow exception for “special circumstances” in which the alien’s detention may be considered under a separate regulation: 8 C.F.R. § 241.14. *See* 8 C.F.R. § 241.13(e)(6). Examples of “special circumstances” include contagious disease posing a threat to public safety, potential serious adverse foreign policy consequences, terrorism, or where the alien has been deemed “specially dangerous” based on his commission of serious crimes on account of a mental condition or personality disorder. 8 C.F.R. § 241.14(b)–(f).

In Federal Respondents’ view the facts do not support a conclusion that Perez-Marrero falls within any of § 241.14’s criteria. Therefore, Perez-Marrero’s detention

should be considered under § 241.13. Given the Court's determination that the government failed to establish SLRRFF, the appropriate remedy here would be an order directing Federal Respondents to release Perez-Marrero from custody under appropriate conditions of supervision to be determined by ICE. *See* 8 C.F.R. § 241.13(g)(1) (where the alien has demonstrated to ICE that there is no significant likelihood of removal, "[u]nless there are special circumstances justifying continued detention, the Service shall promptly make arrangements for the release of the alien subject to appropriate conditions, as provided in" 8 C.F.R. § 241.13(h)). Put simply, although Federal Respondents appreciate the opportunity the Court has provided to consider Perez-Marrero's potential danger to the community, under the facts of this case, Federal Respondents do not see a regulatory mechanism that would permit the Federal Respondents or the Court to continue Perez-Marrero's detention due to concerns about his dangerousness.

Federal Respondents respectfully request clarification as to whether the Court's order directing them to conduct a custody review to consider whether Perez-Marrero presents a danger to the community is appropriate in light of the regulatory framework. If so, to ensure compliance with the Court's order, Federal Respondents respectfully request further clarification as to the specific criteria the Court would like them to consider in determining whether Perez-Marrero presents a danger to the community. If the Court concludes that such review is not appropriate, Federal Respondents request that the Court issue an order directing Federal Respondents to

release Perez-Marrero under appropriate conditions of supervision to be determined by ICE.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), the undersigned certifies that he has conferred with counsel for Perez-Marrero (via email) and the State Respondent (via telephone) concerning the instant motion. State Respondent takes no position on the motion. Perez Marrero's position is as follows: "Petitioner opposes the motion to the extent Respondents seek any relief other than Petitioner's immediate release under appropriate conditions of supervision. As acknowledged in the motion, Respondents do not believe Petitioner falls within the narrow 'special circumstances' exception under 8 C.F.R. § 241.14, and the Court has already determined that removal is not reasonably foreseeable. Accordingly, Petitioner maintains that continued detention is not legally justified and that release is the appropriate remedy."

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DATED this 6th day of May, 2026.

Respectfully submitted,

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