

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

YOSLEMU ESCALONA
RODRIGUEZ,

Petitioner,

v.

Case No. 2:26-cv-688-JES-NPM

GARRETT RIPA, *et al.*,

Respondents.

_____ /

REPLY TO RESPONDENTS' RESPONSE

Petitioner, through undersigned counsel, respectfully submits this Reply to Respondents' Response to the Court's Order to Show Cause. (Doc. 5).

I. The Government's Certified Return Of Petitioner's True Cause Of Detention Is Categorically Incorrect.

Respondents' certify as true, that Petitioner is being detained pursuant to 8 U.S.C. § 1225(b)(2)(A). *See* Doc. 5 at 3. **This is incorrect¹.**

Section 1231(a) governs "detention and removal of aliens ordered removed" and applies specifically to detention after entry of a final order of removal. *See* 8 U.S.C. § 1231. The statute establishes that the removal period

¹ All emphasis is added herein unless otherwise noted.

begins on the date the order of removal becomes administratively final. *See* 8 U.S.C. § 1231.

Here, as acknowledged by Respondents, Petitioner's final order of removal was entered on March 9, 2020. *See* Doc. 5 at 2; *see also* Doc. 1-4. As such, by operation of law, and as Petitioner argued in his Petition, his detention is governed by 8 U.S.C. § 1231, not 8 U.S.C. § 1225(b)(2)(A). *See* Doc. 1 at ¶37.

Moreover, Respondents' argue that "[b]ased on the extensive allegations relating to bond hearings, it is presumed that Petitioner alternatively seeks a bond hearing under 8 U.S.C. § 1226." *See* Doc. 5 at 2, fn.1. **This too is incorrect.**

Petitioner argued that he is being detained pursuant to 8 U.S.C. § 1231, and was subject to an Order of Supervision, pursuant to 8 C.F.R. §§ 241.4 and 241.13. *See* Doc. 1 at ¶37—¶42; *see also id.* at ¶48—¶69.

The Petition for Writ of Habeas Corpus references 8 U.S.C. § 1226, a total of three (3) times. *See* Doc. 1 at ¶¶ 39, 70, and 81. Petitioner's abbreviated references to 8 U.S.C. § 1226—peripherally through the authorities cited—were in support of his argument(s) that Respondents' violated his right to due process, that the separation of powers doctrine requires this Court to reject Respondents' re-interpretation of the INA, and that the Government is manipulating the system. *Id.*

Nevertheless, Respondents argue that *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is controlling. *See* Doc. 5 at 4. **This is inaccurate.** Petitioner's detention is governed by 8 U.S.C. § 1231, and 8 C.F.R. §§ 241.4 and 241.13, not 8 U.S.C. §§ 1225(b)(2)(A) and 1226(a), thus *Hurtado* is inapplicable. *See generally, Gimenez Rivero v. Sheriff John Mina, et al.*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at *5 (M.D. Fla. Jan. 26, 2026) ("If the Government is going to argue for expanding the interpretation of a law or maintain a widely rejected position to preserve its appellate rights, it may do so. But its lawyers must make those arguments in a way that comports with their professional obligations, as lawyers have done since time immemorial: **Cite the contrary binding authority and argue why it's wrong. Don't hide the ball.** Don't ignore the overwhelming weight of persuasive authority as if it won't be found.").

II. The Government's Record Attachments Are Dispositive.

Respondents argue that on December 8, 2025, "ICE issued Petitioner a notice of revocation of release and afforded the initial informal interview." *See* Doc. 5 at 3. However, Respondents go on to note that, as of March 27, 2026, "the undersigned has not been able to determine if copies of supporting documents can be obtained." *See* Doc. 5 at 3, fn.3.

The facts of the instant case are nearly identical to that of *Maryanovksy*

v. Ripa, No. 3:25-CV-1599-MMH-SJH, 2026 WL 496778 (M.D. Fla. Feb. 23, 2026). In *Maryanovsky*, Respondents failed to provide the petitioner “Notice of Revocation of Release until January 21, 2026, over a month after ICE detained Maryanovsky and a day after the Court directed Respondents to file a supplemental response to the merits of the Petition. *Id.* at *4.

Here, Respondents “updated” Notice of Revocation of OSUP was allegedly served on Petitioner on March 27, 2026, the date this Court ordered Respondents to show cause by. *See* Doc. 5 at 3. Moreover, the “updated” Notice of Revocation of Release states that “[o]n 12/08/2025, you will be afforded an informal interview at which you will be given an opportunity to respond to the reasons for this revocation.” *See* Doc. 5-5 at 2. Further, it was signed by Assistant Field Office Director, Juan Gonzalez. *Id.* However, the Notice itself states that 8 C.F.R. § 241.4 revocation must be made by the Executive Assistant Director, or by the Field Office Director “where there is a public interest to do so and referral to EAD not reasonable[.]” *See* Doc. 5-5 at 2. Juan Gonzalez is neither of these. He lacked the authority to revoke Petitioner’s OSUP.

More importantly, due process requires that Notice be served on Petitioner **prior to his informal interview**. However, as seen *supra*, it was signed March 27, 2026, nearly four (4) months after the date Petitioner was supposed to have his informal interview. “The Notice, in effect, provides no

notice at all.” *Fuentes v. Ripa*, No. 3:26-CV-134-MMH-PDB, 2026 WL 717982 at *3 (M.D. Fla. Mar. 16, 2026) (Howard, C.J.).

The record evidence in this case is dispositive and Respondents’ “re-detention violated the regulations designed to afford [Petitioner] due process, and relief on Count One is due to be granted.” *Maryanovksy*, 2026 WL 496778, at *4. As such, Petitioner’s immediate release is required.

III. Respondents’ Procedural Defect Was Harmful Error Requiring Petitioner’s Immediate Release.

Respondents assertion that Petitioner’s “OSUP was properly revoked and, in any event, any procedural defect was harmless error that has been corrected” is incorrect. *See* Doc. 5 at 6. Respondents argue that “Petitioner has failed to meet his burden of showing any defect has prejudiced him.” *Id.* at 7. However, as the Chief Judge for the Middle District of Florida held in *Maryanovksy*, both 8 C.F.R. §§ 241.4 and 241.13, require notice upon revocation of OSUP, and an informal interview, as these “regulations [are] designed to afford [Petitioner] due process[.]” *See Maryanovsky v. Ripa*, No. 3:25-cv-1599-MMH-SJH, 2026 WL 496778 at *4 (M.D. Fla. Feb. 23, 2026) (Howard, C. J.).

Respondents do not deny that “§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges” to detention. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). The federal habeas statute,

28 U.S.C. § 2241(c)(3), “authorizes a district court to grant a writ of habeas corpus whenever a petitioner is ‘in custody in violation of the Constitution or laws or treaties of the United States.’” *Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003) (quoting 28 U.S.C. § 2241(c)(3)). “The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

That includes an attack on the legality of custody based on violations of the regulations at 8 C.F.R. §§ 241.4 and 241.13, and the APA. *See See McSweeney v. Warden of Otay Mesa Det. Facility*, No. 3:25-CV-02488-RBM-DEB, 2025 WL 2998376, at *7 (S.D. Cal. Oct. 24, 2025) (“Both § 241.4 and § 241.13 were intended to provide due process protections to [noncitizens] following the removal period as they are considered for continued detention, release, and then possible revocation of release. ICE deprived Petitioner of these due process protections when it failed to provide him with sufficient notice or a prompt interview to respond to the reasons for revocation of his release.” (internal quotations and citation omitted)).

“While ICE has wide discretion to detain, release, or revoke an alien's supervision, it is required to follow its own regulations.” *Fuentes*, 2026 WL 717982 *at 3. Further, a claim under the APA challenging the procedures employed in detaining an individual may be reviewed in “any applicable form

of legal action, including actions for ... writs of ... habeas corpus, in a court of competent jurisdiction.” 5 U.S.C. § 703. Thus, Petitioner is entitled to immediate release, contrary to Respondents assertion that “[a]ny equitable remedy related to a defect in the OSUP revocation is not release but procedural correction”. See Doc. 5 at 7.

IV. Fifth Circuit Decision And Second Circuit Decision Are Inapposite.

Respondents argue that “two circuits have now ruled that aliens who have not been admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) regardless of whether the alien is already present in the United States. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026); *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026).” See Doc. 5 at 5.

However, Respondents fail to acknowledge that Petitioner’s detention is governed by 8 U.S.C. § 1231, and 8 C.F.R. §§ 241.4 and 241.13, not 8 U.S.C. §§ 1225(b)(2)(A) and 1226(a). Assuming *arguendo* that 8 U.S.C. §§ 1225(b)(2)(A) and 1226(a) applies, Respondents still fail to acknowledge that (1) the *Buenrostro-Mendez* and *Avila* courts did not reach the due process questions, confining their analyses and holdings to statutory interpretations—see generally *Buenrostro-Mendez*, 2026 WL 323330, at *1–10; *Avila*, 2026 WL 819258 at *1–6—(2) the cases were remanded to the district court, not for

dismissal, but “for further proceedings consistent with this opinion”—(*Buenrostro-Mendez*, 2026 WL 323330, at 10; *Avila*, 2026 WL 819258 at *6)—and (3) even federal district court judges in Texas—who are bound by the Fifth Circuit’s decision in *Buenrostro-Mendez*—have concluded that the panel’s 2–1 decision permits them to continue ordering the release of certain noncitizens on alternative grounds².

In particular, the judges have relied on constitutional arguments asserting that individuals with longstanding ties to the United States possess a cognizable liberty interest. Under the Constitution, such an interest may not be deprived without, at minimum, an opportunity to be heard before a neutral judicial officer. Judge Kathleen Cardone, an El Paso based appointee of George W. Bush, stated that, “[t]his conclusion is not changed by the Fifth Circuit’s recent decision,” and concluded that the Fifth Circuit’s decision “has no bearing on this Court’s determination of whether [the petitioner] is being detained in violation of his constitutional right to procedural due process.” *See Cumbe Lema v. De Anda-Ybarra*, 3:26-cv-00249, Doc. 5 at 2-3 (W.D. Tex. Feb. 9, 2026).

Judge David Briones, an El Paso-based Clinton appointee, reached an analogous conclusion, stating that, “[t]he Court reiterates its original holding

² Kyle Cheney, *Judges May Have Found a Way to Bypass 5th Circuit Ruling Upholding Trump’s Mass Detention Policy*, POLITICO (Feb. 10, 2026, 1:58 PM EST), <https://www.politico.com/news/2026/02/10/texas-immigration-detention-rulings-00774124>.

that noncitizens who have ‘established connections’ in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law.” See *Hassen v. Noem, Secretary, U.S. Department of Homeland Security*, 3:26-cv-00048, Doc. 8 at 3-4 (W.D. Tex. Feb. 9, 2026).

V. The Government Is Manipulating The System.

On March 4, 2026, in this District, an opinion was issued in *Correa Cabral v. Quinones, et al.*, No. 6:26-cv-425-GAP-LHP, Doc. 20 (M.D. Fla. Mar. 4, 2026), wherein the Court found that “Respondents do not concede, or even mention, is that **the Government has manipulated the process to ensure that Petitioner has no reasonable possibility of obtaining release on bond.**” *Id.* at 4-5 (emphasis added).

DHS/ICE’s use of illegitimate documentation, to mandatorily detain a noncitizen who has no criminal record, who has resided in this County on an Order of Supervision since November 10, 2020, and who has established deep and strong ties to the community is abhorrent. The United State’s Attorney’s Office is constrained to rely upon questionably inaccurate documentation as matters of the record in presenting argument to this Court. However, every attorney submitting filings to this Court is required to certify that all factual assertions are supported by evidence and that all legal arguments are

grounded in existing law or a good-faith argument for its extension. *See* Fed. R. Civ. P. 11.

It becomes an untenable position for the Attorney General's Office, or any officer of the court acting on its behalf, to uphold their duty of candor to the Court. *See Gimenez Rivero*, No. 6:26-cv-66-RBD-NWH, 2026 WL 199319, at *6 (M.D. Fla. Jan. 26, 2026) ("Members of this Bar have a duty of candor to the Court.").

The only appropriate remedy, under the facts of this case, is for the Petitioner to be immediately released. Petitioner's immediate release is required to return him to the status quo. The status quo refers to "the last uncontested status which preceded the pending controversy." *Doe*, 778 F.Supp.3d at 1166 (citing *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). That is the moment prior to Petitioner's unlawful detention. *See Singh v. Andrews*, No. 25-cv-00801, 2025 WL 1918679, at *5, 2025 U.S. Dist. LEXIS 132500, at *13 (E.D. Cal. July 11, 2025) (entering a preliminary injunction ordering immediate release of immigration detainee on similar circumstances).

VI. Conclusion

There remain no safeguards available to adequately protect Petitioner's liberty interests. As such, the only suitable relief is for this Court to immediately release Petitioner and enjoin and restrain Respondents and all

other persons or entities acting in active concert or participation with them from re-arresting or re-detaining Petitioner until further Order of this Court.

Respondents' failure to accurately certify Petitioner's basis of detention, failure to provide accurate documentation, and failure to cite binding legal authority requires this Court to grant the Petition for Writ of Habeas Corpus. Alternatively, Petitioner requests Oral Arguments should the Court determine that immediate release is unwarranted on the pleadings.

DATED this 29th day of March, 2026.

/s/Joel Alexis Caminero
Joel Alexis Caminero, Esq.
Florida Bar # 127294
Caminero Law, PLLC
5728 Major Blvd, STE 750
Orlando, FL 32819
Tel. (407) 409-2529
Email: joel@caminerolawfirm.com

Attorney for Petitioner