

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Carlos Jorge Barrios Espinosa,

Petitioner,

Case No. 2:26-cv-00695-SPC-NPM

v.

Garrett J. Ripa, Field Office
Director of Enforcement and
Removal Operations, Miami Field
Office, Immigration and Customs
Enforcement et al.,

Respondents.

_____ /

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

Petitioner Carlos Barrios Espinosa seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that the length of his detention is unlawful, and ICE did not follow its regulations when revoking his order of supervision. His petition should be denied. In *Zadvydas v. Davis*, the Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678 (2001). Barrios Espinosa had been detained for 126 days when he filed the present petition. ICE has also afforded Barrios Espinosa proper notice of his revocation and an informal interview. Barrios Espinosa's detention is therefore lawful.

BACKGROUND

Barrios Espinosa is a national and citizen of Cuba who was paroled into the United States on January 16, 1997. (Composite Exhibit, Ex. 1 at 1, 2.) On August 6, 1999, he was convicted of two counts of endangering the welfare of a child. *Id.* at 7. He is a registered sex offender. *Id.*

He was ordered removed from the United States on December 30, 2004. *Id.* at 2. Barrios Espinosa was released on an order of supervision on April 4, 2005. *Id.* at 49. He was placed in immigration custody on November 6, 2025. *Id.* at 1.

On March 19, 2026, Barrios Espinosa was served with a notice of revocation of release. *Id.* at 39. The notice provides that Barrios Espinosa's release has been revoked pursuant to 8 C.F.R. § 241.13(i). *Id.* The notice indicates that circumstances have changed such that there is a significant likelihood of removal in the reasonably foreseeable future, and his case is under review for removal to an alternate country. *Id.* at 39-40. Also on March 19, 2026, Barrios Espinoza was provided an informal interview in which he was provided an opportunity to respond to the reasons for revocation. *Id.* at 41.

ICE is currently working to remove Barrios Espinosa to Mexico and asserts there is a significant likelihood of removal in the reasonably foreseeable future. (Cuevas Decl., Ex. 2 ¶¶ 7-13.)

On March 12, 2026, Barrios Espinosa filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and regulations governing detention. (Doc. 1.)

He is currently detained at Florida Soft Side South.

ARGUMENT

I. Barrios Espinosa’s detention does not violate the Fifth Amendment’s Due Process Clause.

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). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the 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*, 287 F.3d at 1052 (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 the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 689. If an alien “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must either rebut that showing or release the alien. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *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). At bottom, “[U]ntil the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *E.g.*, *Khalil Al Ellary*, 2:26-cv-00112-KCD-DNF, Doc. 7 (M.D. Fla. Feb. 27, 2026); *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011).

Barrios Espinosa filed the present petition well before expiration of six months in detention. He was detained on November 6, 2025, and filed the present petition on March 12, 2026. At that point, Barrios Espinosa been detained for 126 days; to date, he has been in detention for 137 days.

As previously stated, it is only after six months that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the

reasonably foreseeable future.” *See Jennings*, 583 U.S. at 299 (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”); *Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF (M.D. Fla. Feb. 27, 2026) (denying petition when alien had not been detained for six months). Before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal.¹ *See Akinwale*, 287 F.3d at 1051-52. *See Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “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”).

Finally, Barrios Espinoza’s procedural due process claim should be rejected. “[S]ince Petitioner is not entitled to release under *Zadvydas*, he is not entitled to this type of remedy even if he could establish due process violations.” *Rene v. Sec’y Of Dep’t Of Homeland Sec.*, No. 06-0336 JAG, 2007 WL 708905, at *5 (D.N.J. Mar. 5, 2007). Recently, Judge Dudek rejected a similar challenge while noting that “ICE’s regulations strike that constitutional balance by guaranteeing written notice and an informal interview that allows the individual to respond.” *Tran v. Warden, Fla. Soft.*

¹ Respondents acknowledge this Court has previously disagreed. *See Chumachenko v. Noem*, 2:26-cv-00344-SPC-NPM, Doc. 6 (M.D. Fla. Feb. 27, 2026).

Side South Det. Cntr, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at *6 (M.D. Fla. Mar. 10, 2026) (*citing* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)). “These guardrails are undoubtedly sufficient considering the interests at play.” *Id.*

II. ICE has complied with its regulations regarding revocation of an order of supervision.

ICE complied with its regulations in revoking Barrios Espinosa’s order of supervision under 8 C.F.R. § 241.13(i). Title 8 C.F.R. § 241.13(i)(3) provides,

Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Here, agency records show that on March 19, 2026, Barrios Espinosa was provided a notice of revocation of release informing him ICE determined there is a significant likelihood of removal in reasonably foreseeable future. (Composite Exhibit, Ex. 1 at 39.) The same day, Barrios Espinosa was provided an informal interview and opportunity to respond to the reasons for revocation of his order of supervision. *Id.* at 41. Although there may have been an initial delay in connection with notice and an informal interview, because Barrios Espinosa has now received the procedures set forth in § 241.13(i)(3), his present detention is lawful.

CONCLUSION

Respondents respectfully request Barrios Espinosa's petition be denied.

DATED this 23rd day of March, 2026.

Respectfully submitted,

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