

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Carlos Jorge Barrios Espinosa

Petitioner,

v.

Field Office Director, Garrett J. Ripa,
et al.

Respondents.

Case No. 2:26-cv-695-SPC-NPM

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE

Petitioner replies to Respondents' Response to Habeas Petition (Doc. 5). First, Petitioner's re-detention violates the Immigration and Nationality Act ("INA") and the Fifth Amendment's Due Process Clause because there is no significant likelihood that Petitioner will be removed in the reasonably foreseeable future. Second, Petitioner's re-detention violates procedural due process because he was not afforded timely notice or a meaningful opportunity to respond. Third, Petitioner's re-detention violates the regulations governing the revocation of orders of supervision because Respondents did not provide Petitioner with the required timely revocation notice and informal interview and the revoking officer with delegated authority did not make the appropriate pre-deprivation findings.

ARGUMENT

A. Petitioner's Re-detention Violates 8 U.S.C. § 1231(a)(6) and the Fifth Amendment's Due Process Clause

The INA provides that after a removal order becomes final, the government “shall remove the [noncitizen] from the United States within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A). Detention may continue after the removal period, but not indefinitely. 8 U.S.C. § 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). “For the sake of uniform administration in the federal courts,” the Supreme Court established a “presumptively reasonable period of detention of six months.” *Id.* The six-month presumptively reasonable period of detention pending removal *commences at the beginning of the removal period*. *Akinwale v. Ashcroft*, 287 F. 3d 1050, 1052 n.3 (11th Cir. 2002). After this period, if the noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must either rebut the showing or release the noncitizen. *Id.*; *Jennings v. Rodriguez*, 583, U.S. 281, 299 (2018). “If removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 700-01.

Respondents argue that Petitioner's action is premature because his current detention has not exceeded six months. However, assuming the 180 days resets each time a noncitizen is detained “would effectively allow DHS to

detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every 180 days.” *Sardinas v. Noem*, No. 2:26-CV-00067, 2025 WL 232405, at *3 (M.D. Fla. Jan. 29, 2026); *Gonzalez v. Noem*, No. 2:25-CV-01176-SPC-NPM, 2026 WL 44818, at *3 (M.D. Fla. Jan. 7, 2026); *Rubinshteyn v. Mordant*, No. 2:26-CV-00279-SPC-NPM, 2026 WL 507717, at *3 (M.D. Fla. Feb. 24, 2026).

Here, the six-month period for presumptively reasonable detention has clearly expired, and *Zadvydas*’s burden shifting framework applies. Petitioner carried his initial burden by showing a good reason to believe that there is no significant likelihood of removal in the reasonable future. U.S. Immigration and Customs Enforcement (“ICE”) presumably made that determination when it released Petitioner in 2005 under an order of supervision.

Respondents make no real attempt at rebuttal. Respondents state that “ICE is currently working to remove [Petitioner] to Mexico,” but has not provided any evidence that removal to Mexico is possible. (Doc. 5 at 60). Respondents submitted a declaration written by Deportation Officer Juan Cuevas which describes general procedures regarding the process of third-country removals to Mexico. (Doc. 5-2 at 116-117). However, there is no indication on the record that Mexico is currently accepting Cuban nationals from the United States or that ICE has contacted Mexico about accepting Petitioner specifically. *Sardinas*, 2025 WL 232405, at *3. Even more, upon

information and belief, Respondents have already tried and failed to remove Petitioner to Mexico. Thus, there is no significant likelihood that Petitioner will be removed in the reasonably foreseeable future.

B. Petitioner's Re-Detention Violates Procedural Due Process

Noncitizens, even those with final orders of removal, are entitled to due process protections under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Zadvydas*, 533 U.S. at 693. Courts take a two-step approach when examining procedural due process claims. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). First, they assess whether a protected liberty interest exists and second, they determine what procedures are necessary to ensure that any deprivation of a protected liberty interest accords with the Constitution. *Id.*

It is well-established that all people within the U.S., including noncitizens subject to a final order of removal, possess a liberty interest in their physical freedom. *See Zadvydas*, 533 U.S. at 693. Supreme Court precedent also makes clear that individuals whose physical freedom is qualified in some way nonetheless have a liberty interest that “is valuable and must be seen as within the protection” of the Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Here, Petitioner had a protected liberty interest in his 20-year-long supervised release from immigration custody.

Given that a protected liberty interest exists, the Court must then assess what process is due, using the flexible balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). “Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process.” *Morrissey*, 408 U.S. at 481-82. Nonetheless, at its core, procedural due process requires, at a minimum, notice and the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews*, 424 U.S. at 333. Here, both fundamental procedural safeguards are deficient.

In their response, Respondents stated that, on March 19, 2026, Petitioner was “provided a notice of revocation of release informing him [that] ICE determined that there is a significant likelihood of removal in [the] reasonably foreseeable future.” (Doc. 5 at 64). In support, Respondents filed a “Notice of Revocation of Release,” dated March 19, 2026. (Doc. 5-1 at 104-05). Respondents then allege that on the same day, Petitioner “was provided an informal interview and opportunity to respond to the reasons for revocation of his order of supervision.” (Doc. 5 at 64). In support, Respondents filed a document titled “Alien Informal Interview Upon Revocation of Order of Supervision.” (Doc. 5-1 at 106). Upon information and belief, the alleged “informal interview” consisted of a 1-minute phone call to Petitioner where an

ICE officer asked him whether he thinks he should be able to remain in the United States. Notably, Respondents argue that although there was an “initial delay,” Petitioner’s “present detention is lawful” because he received notice and an informal interview. (Doc. 5 at 64).

A bare-bones notice of revocation of release and a 1-minute phone call to Petitioner four months after his current detention are insufficient to satisfy procedural due process. Even more, this process was only given to Petitioner after he filed this petition on March 12, 2026. Courts have held that a post-deprivation review held months after an individual is detained is “simply too little, too late to protect the core liberty interest at stake.” *Franco Rodriguez*, 2026 WL 746563, at *5 (M.D. Fla. Mar. 17, 2026); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9 (S.D. Fla. Sept. 9, 2025).

Additionally, here, Petitioner was not interviewed at a meaningful time or in a meaningful manner. Petitioner was called, without prior notice, and simply asked if he thought he should be able to remain in this country, to which Petitioner responded that he wanted to remain in the United States to be with his children. (Doc. 5-1 at 106). If Respondents had afforded Petitioner a meaningful opportunity to be heard, Petitioner would have been willing and able to present evidence that he has a pending Motion for Post-Conviction Relief in Hudson County, New Jersey.

C. Petitioner's Re-detention Violates the Regulations Governing the Revocation of an Order of Supervision

Two regulations, 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, detail the proper bases for re-detention and the specific procedures ICE must follow upon the revocation of an order of supervision. Notably, the regulations require that the Department of Homeland Security (“DHS”) (1) notify the noncitizen “of the reasons for revocation of his or her release [upon revocation]” and (2) conduct an “initial informal interview promptly after” the noncitizen’s “return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).

The regulations also permit only certain officials to revoke a noncitizen’s release: the ICE Executive Associate Director, a field office director, or an official “delegated the function or authority . . . for a particular geographic district, region, or area.” *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160-61 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 241.4(l)(2); 1.2). If the field office director, or a delegated official intends to revoke release, they must first find that “revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2). Government agencies are required to follow their own regulations. *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954); *Cesay*, 781 F. Supp. 3d at 166.

Respondents argue that the notice and informal interview given to Petitioner on March 19, 2026 was sufficient to comply with 8 C.F.R. § 241.13(i)(3). (Doc. 5 at 64). However, the untimeliness of both the notice and the alleged interview, the language in the revocation notice, and the manner of the interview all suggest otherwise. Notice must be given immediately upon revocation and the language in a revocation notice that “summarily asserts that changed circumstances render [the noncitizen’s] removal from the U.S. significantly likely in the reasonably foreseeable future” does “not satisfy the Government’s obligation to provide the ‘reasons’ why” the petitioner was re-detained. *Roble v. Bondi*, 803 F. Supp. 3d 766, 771-72 (D. Minn. 2025); *see also Sun v. Noem*, No. 3:25-cv-02433-CAB-MMP, 2025 WL 2800037, at *2 (S.D. Cal. Sept. 30, 2025). Additionally, the informal interview required by the regulations must occur shortly after re-detention. *See Constantinovici v. Bondi*, F. Supp. 3d, No. 3:25-cv-02405-RBM-AHG, 2025 WL 2898985, at *6 (S.D. Cal. Oct. 10, 2025) (holding that ICE providing an interview six weeks after re-detention cannot reasonably be construed as a “prompt” interview). A post-habeas quick phone call over four months after Petitioner’s detention does not satisfy the “prompt” informal interview requirement.

Further, the officer that revoked Petitioner’s order of supervision was a Supervisory Detention and Deportation Officer (“SDDO”) with the last name Bauza. (Doc. 5-1 at 105). The officer’s first name is not written on the Notice of

Revocation of Release. *Id.* Given that a SDDO made the decision to revoke Petitioner's order of supervision, they must have first found that "revocation [was] in the public interest and circumstances [did] not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). There is no evidence that such findings were made.

Dated: March 26, 2026

Respectfully submitted,

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