

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Case No. 2:26-cv-00705-KCD-DNF

EDUARDO TIMONEDA,
Petitioner,

v.

KELIE WALKER, et al.,

Respondents.

PETITIONER'S TRAVERSE

This case concerns whether Petitioner's detention resulting from ICE's revocation of his Order of Supervision violated his substantive and procedural due process rights, the *Accardi* doctrine, and applicable federal regulations, specifically 8 C.F.R. § 212.12, which governs Mariel Cubans.¹ Respondents' opposition claims unfettered discretion to ignore the regulatory framework in § 212.12, have not identified any country willing to accept Petitioner, have made no removal attempt, and offer nothing but vague assurances of future action. Petitioner replies in turn.

- I. **Petitioner's Parole is Solely Governed by § 212.12 because §§ 241.13 and 241.4(b) expressly prohibit their application to Mariel Cubans, even those with a final order of removal issued by an immigration judge.**

The Petitioner was not, and **could not** have been, released at any time under 8 C.F.R. § 241.13 given that such provision expressly **prohibits** its application to Mariel Cubans. Section 241.13 reads as follows:

Limitations. This section does **not** apply to:

- (i) Arriving aliens, including those who have not entered the United States, those who have been granted immigration parole into the United States, and **Mariel Cubans whose parole is governed by § 212.12 of this chapter;**

¹ As held in recent decisions similar to the present case in all material respects. *See infra* n. 9 for string citations of cases.

8 C.F.R. 241.13(b)(3)(i) (emphasis in original and emphasis added).

A second provision in 8 C.F.R. § 241.4 also makes clear its regulatory scheme does not apply to **any** Mariel Cuban even **following entry of a final order of removal by an immigration judge**. The section reads:

Parole for certain Cuban nationals. The review procedures in this section do not apply to **any** inadmissible Mariel Cuban who is being detained by the Service pending an exclusion or removal proceeding, **or following entry of a final exclusion** or pending his or her return to Cuba or removal to another country. Instead, the determination whether to release on parole, or to revoke such parole, or to detain, shall in the case of a Mariel Cuban be governed by the procedures in **8 CFR 212.12**.

8 C.F.R. § 241.4(b)(1) (emphasis in original and emphasis added).

Hence, the Respondents' position [ECF No. 6, p. 5], that because Petitioner has a final order of removal somehow 241.13 applies, simply cannot be reconciled with the clear and direct language of the rules and long-established Department of Homeland Security practices (DHS). **Exh. A – Exh. B**². This is an erroneous interpretation which the regulations and subsequent DHS guidance directly forbid. On its face, § 214 **prohibits** its application to Mariel Cubans with the exact fact pattern of the Petitioner: a Mariel Cuban who may have been initially paroled but then detained by DHS, placed in removal proceedings, and issued a final order of removal by an immigration judge. 8 C.F.R. § 214.4(b)(1). *See Exh. A compare language with that of Exh. B*.

To support their erroneous interpretation, Respondents cite to *Clark v. Martinez*, 543 U.S. 371 (2005). [ECF No. 6, p. 6]. Although the litigants in *Clark* were Mariel Cubans, the core issue in that case was whether 8 U.S.C. § 1231(a)(6) applied to aliens ordered removed who are inadmissible under § 1182. *Id.* at 378. *Clark* clarified that the protections afforded to aliens under

² Relevant Portions excerpted and highlighted in the 2006 Torres Memo, *infra* n.5.

*Zadvydas*³ also apply to **inadmissible** aliens. *Id.* at 379. Nowhere in the *Clark* decision, or in its *dicta*, is the issue of whether the litigants' initial parole revocation under 212.12 was legal. Nowhere in the *Clark* decision did Justice Scalia conclude that 212.12 was rendered inapplicable to the litigants simply because the litigants prevailed on their *Zadvydas* claim. On the contrary, **footnote 3 in that opinion is crucially in support of Petitioner's 212.12 argument.**

Footnote 3 states that litigant Benitez, who was actively on parole under section 212.12 through the pendency of *Clark*, nonetheless had a continuing personal stake in the case because if he prevailed on his *Zadvydas* claim then the government lacked the authority to **continue** to detain him "unless he violated the conditions of release . . . or his detention became necessary to effectuate his removal." *Id.* at n.3. Footnote 3 of Justice Scalia's opinion stated the obvious—that **even if** Benitez prevailed, his release into the United States was not as a matter of right if he: (1) violated the conditions of his parole or if (2) detention became necessary to effectuate removal to Cuba. *Id.* And once that "parole is revoked, 'the alien shall . . . be **returned to the custody from which he was paroled** and therefore *his case shall continue to be dealt within the same manner as that of any other applicant for admission.*' " *Id.* at 385 (emphasis added and in original) (internal citations omitted). Hence, Petitioner was "returned" to custody under 212.12.

Footnote 3 did **not** invalidate the government's ability to revoke a parole or instruct the government to stop following the procedures set forth under applicable regulations if parolees violate conditions of their parole. For these reasons, the government's presentation of *Clark*

³ *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme 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.* Petitioner's removal became final in 1991. That six-month period has long expired here. See *Beltran v. Ripa, et al.*, No. 2:25-CV-01174-SPC-NPM (M.D. Fla. Jan. 5, 2026).

mischaracterizes the case's core issue, its holding, and any applicability to the Petitioner's case. In fact, *Clark* supports the grant of this petition given its interpretation of the *Zadvydas* holding.

II. The 2006 Torres Memorandum Provided Directives of Cuban Review Panels for Mariel Cubans Under by 212.12 and Superseded The 2005 Cerda Memorandum.

The Respondents cite to an outdated 2005 ICE Memorandum (Cerda Memo) [ECF No. 6-2] which reads that "The [*Clark*] Court found that the six-month presumptive detention period noted in *Zadvydas* applies equally to all categories of aliens described in INA § 241(a)(6) [8 U.S.C. § 1231(a)(6)]. As a result, the provision of 8 C.F.R. § 241.13 now apply to inadmissible and excludable aliens, including Mariel Cubans, alien crewmen and stowaways." Then, they cite to the Cerda Memo: "Custody Review for Mariel Cubans under 8 C.F.R. § 212.12 are no longer in effect, and therefore Cuban Review Plan (CRP) panels and procedures are discontinued, effective immediately. Any portion of previously issued guidance that otherwise limits § 241.13 custody review in certain classes of aliens is now superseded by this memorandum." [ECF No. 6, p. 7].

First, the Cerda Memo holds zero weight against codified regulations enacted by Congress. There have never been any changes to §§ 212.12, 241.13, or 241.4 that would give DHS the authority to suspend rules that Congress enacted. If Congress wanted the release of Mariel Cubans to be governed by a section outside of 212.12, it could have done so. "If that is so, Congress can attend to it." *Clark*, 543 U.S. 371 at 386. Respondents' assertion that the Cuban Review Panel has not been in effect for several years is also unpersuasive and complicit in allowing a government agency to engage in patterns and practice unauthorized by law.⁴ Any detention premised on those provisions is *ultra vires*.

⁴ Respondents cite to a case from a District Court in Maryland which is not controlling authority before this Court and its petitioner never contested which detention authority applied to him. *Marquez-Coromina v. Hollingsworth*, 692 F. Supp. 2d 565, 569 (D. Md. 2010) ("[T]he record in this case is silent as to the statutory and regulatory scheme applied to Petitioner . . . it is undisputed that he is presently detained pursuant to the . . . implementing regulations of 8 C.F.R. § 241.14."). The record before this Court is not silent as to which statutory

More importantly the **Cerda Memo is evidently superseded by the Torres Memo published March 27, 2006, which continued to set forth the Cuban Review Panel process for Mariel Cubans under 212.12.**⁵ **Exh. B.** “This [*Zadvydas*] decision applies to aliens admitted into the United States as refugees and those who entered without inspection, **but does not apply to** aliens paroled under section 212(d)(5) of the Immigration and Nationality Act (Act), arriving aliens, **or Mariel Cubans.**” *Id.* Chapter 18 of the 2006 Torres Memo guided the parole process for Mariel Cubans as dictated by 8 C.F.R. § 212. **Exh. A – Exh. B.** To cure any doubt, details of **how** that process is carried out is enumerated in detail in Appendix 18-1 of the Cuban Review Plan. **Exh. A.** As such, Respondents have the available instructions⁶ on the proper means by which to revoke a Mariel Cuban Order of Supervision (“OSUP”) or parole. **Exh. A;** 8 C.F.R. § 212.12. Thus, Respondents’ opposition is based on conjecture,⁷ lacks merit, and is contrary to codified regulations and instructive guidance which DHS has structured specifically for Mariel Cubans. *Id.*

III. Petitioner’s Detention Violates Procedural and Substantive Due Process.

Petitioner’s position is that he prevails on his claim based on basic principles of statutory interpretation given that the regulations at issue expressly lay out which authority governs the

regulation governs, and Petitioner has never ceded that point. Thus, *Marquez*, a case dealing with a prolonged detention claim, is not controlling and entirely inapplicable to the present issue before this Court.

⁵ U.S. Department of Homeland Security, John P. Torres, Acting Director, ICE, “Detention and Deportation Officer’s Field Manual” (Mar. 27, 2006), available at https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf (last accessed April 7, 2026).

⁶ Part of Respondents’ argument is that Petitioner failed to “identify a single due process protection somehow offered [to] him by § 212.12 that is not otherwise provided by § 241.13.” [ECF No. 6, p. 7] It is strongly evident in reviewing ICE’s own 2006 Torres Memo, which details the process for Mariel Cuban parole revocations, that it is vastly different in a number of ways, including, but not limited to, the required forms, method of representation, instructions to DHS ICE officers, worksheets, and more. *See Exh. A; supra* n. 4 for access to entire document available via ICE’s online website.

⁷ The documents Respondent provided are clearly manufactured to give the appearance of due process. This is evident in that the “Notice of Revocation of Release” (March 26, 2026) is dated the same day to when ICE claims it gave the Petitioner an “Alien Informal Interview” (March 26, 2026) [ECF No. 6-2 at 25-27], yet these materials were not produced until after Petitioner filed his habeas petition and nearly four months after his detention. How can Petitioner be said to have received notice or participated in a meaningful interview when both occurred simultaneously on paper, and only surfaced long after his liberty had already been deprived?

Petitioner's case. Compare 8 C.F.R. § 212.12 with the limiting language of §§ 241.13(b)(3) and 241.4(b)(1). See **Exh. A – Exh. B**. The Petitioner has not been afforded due process under any⁸ regulatory scheme. *Zadvydas*, 533 U.S. 678 at 693. Various district court cases throughout the country have found that individuals like Petitioner are entitled to release under 212.12 because Respondents have violated their due process by ignoring the correct federal regulations.⁹ The *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), factors weigh in Petitioner's favor: his profound liberty interest since he is being detained unlawfully, the high risk of erroneous deprivation absent required procedures since ICE ignored the governing regulation, and the absence of any countervailing government interest. *Id.* The Court should continue to uphold the safeguards established by § 212.12. **Exh A.**

IV. Even if Respondents Rely on 8 C.F.R. § 241.13, The Revocation Process was Facially Defective and Denied Due Process.

First, the Notice of Revocation of Release is materially incomplete. Although ICE checked “changed circumstances,” it failed to identify any factual basis for that conclusion as the notice requires—omitting whether a travel document has been obtained, any anticipated removal date, or even the country of removal.¹⁰ [ECF No. 6-1 at 25-26]. Such omissions deprive Petitioner of notice of the actual grounds for revocation and make it impossible to respond meaningfully, in direct violation of 8 C.F.R. § 241.13(i)(3), which requires notice of the reasons for revocation.

⁸ *Supra*, n. 6.

⁹ See *Ochoa Banega v. Warden of Soft Side South et al.*, No. 2:25-cv-1152-JES-DNF (M.D. Fla. Jan. 29, 2026); *Perez v. Warden, et al.*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026); *Beltran v. Ripa, et al.*, No. 2:25-CV-01174-SPC-NPM (M.D. Fla. Jan. 5, 2026); *Grigorian v. Bondi*, 2025 WL 2604573 (S.D. Fla. Sept. 9, 2025); *K.E.O. v. Woosley*, 2025 WL 2553394 (W.D. Ky. Sept. 4, 2025); *Zhu v. Genalo*, No. 1:25-cv-6523-JLR, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Phan v. Noem*, 2025 WL 2898977 (S.D. Cal. Oct. 10, 2025); *Villanueva v. Tate*, 2025 WL 2774610 (S.D. Tex. Sept. 26, 2025).

¹⁰ Yet, in a circular argument, the Respondents assert that “Timoneda was provided a notice of revocation of release informing him ICE determined there is a significant likelihood of removal in reasonably foreseeable future.” [ECF No. 6, p. 8]. The Notice of Revocation provides checkboxes for underlying facts such as travel documents, removal country, and scheduled removal date, all of which ICE left blank, leaving Petitioner with no concrete reason for revocation at all.

Second, the purported “informal interview” was not meaningful as a matter of law. The Respondents admit that the Notice of Revocation and the Interview Notice are dated the exact same day as the interview itself. [ECF No. 6, p. 8-9]. A same-day notice-and-interview structure eliminates any real “opportunity” to respond, as required by the regulation as there is no time to review the allegations, gather evidence, and prepare a response.¹¹

As this Court, and others, has recognized, the informal interview must be substantive, not a mechanical formality.¹² Here, the combination of (1) an incomplete notice and (2) a same-day interview reduced due process to a mere check-the-box exercise, which Respondents failed to execute according to the notice’s own requirements, leaving checkboxes meant to identify the factual basis for revocation unmarked. These defects, even under § 241.13, violate both the regulation and due process. The revocation of the release cannot stand nor be cured through post-hoc procedural formalities. Allowing the Government to rely on post-filing conduct would undermine the very purpose of judicial review.¹³ It would create a perverse incentive structure where agencies could detain individuals without process and cure defects only if challenged.

WHEREFORE, Petitioner respectfully requests that the Court grant the writ and order his immediate release under the prior conditions of supervision.

Dated: April 20, 2026

Respectfully submitted,



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¹¹ Respondents’ opposition rests entirely on actions taken after the Petition was filed. [ECF No. 6, p. 8-9]. Habeas corpus is concerned with whether detention was lawful at the time the petition was filed, not if the Government can later construct a record of compliance after being haled into federal court. Habeas review serves to test the legality of executive detention as it exists, not as the Government wishes it had existed. *See Zadvydas*, 533 U.S. at 699.

¹² *See Franco Francisco v. ICE*, No. 2:26-cv-2-KCD-DNF, 2026 WL 746563, at *18 (M.D. Fla. Mar. 17, 2026); *Grigorian v. Bondi*, 2025 WL 2604573, at *18 (S.D. Fla. Sept. 9, 2025) (“Petitioner’s initial encounter with Officer Utrera on June 23, 2025, was not a meaningful opportunity to be heard—regardless of whether it is framed as an ‘informal interview.’”).

¹³ Detain-first, justify-later is fundamentally incompatible with due process, which requires notice and an opportunity to be heard before a deprivation of liberty occurs.