

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

MANUEL FORTE CUETO,

Petitioner,

v.

WARDEN, Florida Soft Side South
facility, et al.,

Respondents.

Case No. 2:26-cv-733-KCD-NPM

PETITIONER'S TRAVERSE

I. THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 2241

Petitioner challenges the legality of his detention, not the removal order itself. This Court has exercised § 2241 jurisdiction over materially identical Order of Supervision ("OSUP") revocation challenges on multiple occasions. *See Banjoko v. Rambosk*, No. 2:26-cv-58-KCD-DNF, 2026 WL 145467 (M.D. Fla. Jan. 20, 2026); *Lam v. Director*, No. 2:25-cv-1201-KCD-DNF (M.D. Fla. Mar. 6, 2026).

II. PETITIONER'S ZADVYDAS CLAIM IS NOT PREMATURE

A. The Claim Is Ripe Because Removal Is Not Reasonably Foreseeable Now.

Zadvydas v. Davis held that post-removal detention must be "limited to a period reasonably necessary to bring about removal." 533 U.S. 678, 689 (2001). The six-month period is a presumption, not a jurisdictional bar. The constitutional question is whether detention remains reasonable, not simply how many days have

elapsed. Cuba's non-acceptance of repatriation is established in the record. ICE released Petitioner on an Order of Supervision in 2000 after determining removal was not feasible. Doc. 9-4. Respondents point only to a Notice of Intent to Remove to Mexico, dated January 20, 2026. Doc. 9-6. There is no evidence Mexico has agreed to accept Petitioner, no travel document, no removal flight, and no third-country repatriation agreement. A notice of intent is not evidence of significant likelihood of removal in the reasonably foreseeable future ("SLRRFF").

B. The Record Demonstrates Bad Faith.

Respondents' Answer fails to address the manner of re-detention. Petitioner received a call to report to the ICE field office because his ankle monitor was malfunctioning. He complied and was arrested. The Record of Deportable/Inadmissible Alien Form ("I-213 form") states the ATD unit arrested Petitioner after determining he had "violated the terms and conditions of the ATD program." Doc. 9-1. Yet the Notice of Revocation (Doc. 9-5) leaves the "violation of release conditions" field blank and checks only that "it is appropriate to enforce the removal order." The stated basis for arrest in the I-213 form appears nowhere in the Notice of Revocation. The April 3 Notice of Revocation of Release (Doc. 12, Ex. H) purports to cure this by asserting changed circumstances under § 241.13(i), but the changed-circumstances field is blank. Doc. 12, Ex. H, p. 1. No facts, no diplomatic development, no travel document, no removal flight. ICE checked a box

and offered nothing. The sequence, a pretextual summons, a Notice of Revocation abandoning the stated basis for arrest, and a belated unsupported changed-circumstances claim, is the kind of bad-faith re-detention that warrants this Court to scrutinize the Respondent's actions and the resulting due process violations.

C. "Separation of Powers" Does Not Insulate Unconstitutional Detention.

Respondents' invocation of executive authority and foreign policy deference, Dkt. 9 at 15-16, does not insulate unconstitutional detention. *Zadvydas* acknowledged executive primacy in removal matters and still imposed constitutional limits. 533 U.S. at 695-700. Reviewing the legality of detention enforces those limits. It does not usurp them.

II. ICE'S REGULATORY VIOLATIONS AMOUNT TO A DUE PROCESS VIOLATION RENDERING DETENTION UNLAWFUL: RELEASE IS THE ONLY APPROPRIATE REMEDY

A. This Court Retains Jurisdiction to Review Regulatory and Constitutional Compliance.

Habeas corpus exists to test the legality of detention, not merely to affix procedural labels to governmental action. Respondents concede that courts may review "the process by which revocation occurred." Dkt. 9 at 20. The question is not whether ICE had authority to revoke. It is whether ICE exercised that authority in conformity with the Constitution and its own regulations. Where it did not, habeas relief including release is appropriate. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

B. The First Notice of Revocation and January 9 Interview Are Facially Defective and Non-Compliant.

Respondents acknowledge that the Notice of Revocation is unsigned. Dkt. 9 at 2 n.1. The Proof of Service is also unsigned by the Interviewing Officer and Petitioner. Doc. 9-5. The "violation of release conditions" field on the Notice is blank despite the encounter narrative saying otherwise. Doc. 9-5. The "did/did not" election checkboxes on the interview record are empty. Doc. 9-5. The interview record, the Notice, and the arrest are all dated January 9, 2026, the same day Petitioner was taken into custody. The Notice of Removal to Mexico is not dated until January 20, 2026. Doc. 9-6. The interview itself is as deficient as the notice it follows: the checkboxes for written statement and documents were not completed, no oral response was memorialized, no basis for revocation was communicated, no time to prepare was given, and no Spanish-language assistance was provided despite Spanish being Petitioner's primary language. Doc. 9-5. The interpreter field on the Notice of Removal reflects "N/A," rendering that notice functionally unintelligible to him. Doc. 9-6. Sections 241.4(l) and 241.13(i)(3) require a meaningful opportunity to respond to the stated reasons for revocation. An unsigned, incomplete notice that identifies no basis for revocation, followed by a perfunctory same-day encounter with no record made, no language assistance, and no opportunity to prepare and respond meaningfully, does not satisfy that requirement. 8 C.F.R. §§ 241.4(l), 241.13(i).

C. The April 3, 2026, Attempted Notice and Interview Are Compounding Violations.

On April 3, 2026, the same day Respondents filed their Answer and 84 days into Petitioner's detention, ICE served a new Notice of Revocation of Release and conducted an informal interview. Doc. 12, Ex. H. These documents do not cure the original defects. They compound them. The new Notice checks the box under § 241.13(i) asserting a SLRRFF, but the field designated for the changed circumstances is entirely blank. Doc. 12, Ex. H, p. 1. No facts, no diplomatic development, no travel document, no removal flight have been presented. A checked box with no supporting content is not a compliant determination. The interview record reflects one entry under Petitioner's oral response: "No statements." Doc. 12, Ex. H, p. 3. Petitioner was not informed of the alleged changed circumstances, was not given an opportunity to respond, and was not provided Spanish-language assistance.

Most critically, the Proof of Service confirms that the "cc: Attorney of Record" box is unchecked. Doc. 12, Ex. H, p. 2. Undersigned counsel had filed a Notice of Appearance with ICE prior to April 3, 2026. Exhibit A. Under 8 C.F.R. § 241.4(h)(3), ICE must forward any notice to counsel of record by regular mail. It did not. Conducting a revocation interview without notice to counsel is an independent regulatory violation. The April 3 documents do not cure the January 9 defects.

D. The I-213 Form's Additional Facial Deficiencies

The I-213 form contains two independent deficiencies. First, the deportation officer's initials are missing from USC derivation status section, leaving the document uncertified and providing no assurance that any officer verified or adopted the factual assertion underlying Petitioner's detention. Doc. 9-1, pg. 1. Second, the encounter narrative states Petitioner was arrested because ATD "determined FORTE CUETO had violated the terms and conditions of the ATD program," *Id.*, while the Notice of Revocation issued the same day leaves the "violation of release conditions" field blank and instead selects Petitioner's order of removal as the reason for revocation. Doc. 9-5. Page 5 of Doc. 9-1 is also empty of any signature or fingerprint, providing no confirmation that Petitioner was actually given the informal interview and had the opportunity to respond to the factual assertions against him. A person who does not know the consistent stated basis for his detention cannot meaningfully respond to it.

E. *Mathews v. Eldridge* Violations Warrant Release.

Respondents cite *Banjoko v. Rambosk*, for the proposition that procedural defects warrant only additional process, not release. 2026 WL 145467, at *2 (M.D. Fla. Jan. 20, 2026). *Banjoko* addressed a single delayed interview. This case presents cumulative failures at every stage. *Mathews v. Eldridge* requires balancing the private interest at stake, the risk of erroneous deprivation, and the government's

interest. 424 U.S. 319, 335 (1976). All three favor Petitioner. The private interest is substantial: a 70-year-old man who has resided in the United States for over 54 years, detained without lawful process. The risk of erroneous deprivation is documented in this record: an unsigned Notice of Revocation with no stated basis, Doc. 9-5; a same-day interview with no language assistance and incomplete checkboxes, Doc. 9-5; a Notice of Removal to a third-country with no evidence of SLRRFF, Doc. 9-6; a belated April 3 interview without notice to counsel despite a filed appearance, Doc. 12, Ex. H, p. 2; and an I-213 form inconsistent with the Notice of Revocation on the stated basis for arrest. Doc. 9-1.

Where cumulative failures render the revocation process constitutionally infirm, detention lacks a lawful foundation. *Accardi*, 347 U.S. at 268; *Zadvydas*, 533 U.S. at 689. Release is the appropriate remedy.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus and order his immediate release from custody and return to the conditions of his OSUP.

Respectfully submitted,

DATED: APRIL 13, 2026
MIAMI, FLORIDA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 13, 2026, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, which will serve all counsel of record via Notices of Electronic Filing.

/s/ Raul J. Muniz