UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JORGE HERNANDEZ MENENDEZ,

Petitioner,

v. Case No. 2:26-cv-754-SPC-NPM

RIPA, et al.,

Respondents.
_________________________________/

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, by and through undersigned counsel, hereby respectfully files this Reply in response to Respondents' Opposition to Petition for Writ of Habeas Corpus. [ECF No. 4].

I. RESPONDENTS' OPPOSITION CONFIRMS THAT ICE DID NOT COMPLY WITH 8 C.F.R. § 241.13(i).

First, Respondents confirm that ICE's revocation of Petitioner's Order of Supervision ("OSUP") was under 8 C.F.R. § 241.13(i)(2) based on changed circumstances that create a significant likelihood of his removal in the reasonably foreseeable future. [ECF No. 4 at 2, 12-13]. That being the case, such "[c]hanged circumstances . . . must have existed at or before the OSUP revocation; post-hoc justifications are inadequate." *See Munagi v. McDonald*, No. CV 25-13175-NMG, 2025 WL 3688023, at *2 (D. Mass. Dec. 19, 2025) ("The question before the Court is not whether petitioner's deportation is now likely in the reasonably foreseeable future but whether such likelihood existed at the time his OSUP was revoked.").

That follows from 8 C.F.R. § 241.13(i)(3) itself. If ICE revoked Petitioner's OSUP because changed circumstances allegedly made removal significantly likely, then those changed circumstances necessarily had to exist at the time of revocation, because that was the basis on which Petitioner's liberty was taken that day. And "[u]pon revocation," Petitioner was entitled to be notified of those reasons and then given a prompt informal interview to respond to them. *See* 8 C.F.R. § 241.13(i)(3).

But that is not what happened here, and Respondents' assertion that "ICE complied with its regulations," [ECF No. 4 at 12], is disingenuous because it fails on the face of their own chronology and plain text of the regulation. Title 8 C.F.R. § 241.13(i)(3)'s literal first two words are "***Upon revocation*** . . . ." (emphasis added). Not the next day, not the next week, not the next month, or as in Petitioner's case, not over 3 months later. *See* [ECF No. 4-1 at 5-6].

ICE revoked Petitioner's OSUP and re-detained him on November 4, 2025. [ECF No. 4-1 at 2, 10]. In their Opposition, Respondents do not claim that, on that date, ICE provided Petitioner any notice of the supposed changed circumstances that now made his removal significantly likely in the reasonably foreseeable future. Nor do Respondents identify any specific changed circumstances that actually existed on that date. The silence on that point is telling. Instead, the clear chronology reflected in Respondents' own records, unfortunately shows that ICE first detained Petitioner, only to later attempt to construct a post hoc rationale for that detention.

According to Respondents, it was not until February 13, 2026—3 months and 9 days of languishing in detention after Petitioner's liberty was deprived—that ICE finally issued a Notice of Revocation. *See* [ECF No. 4-1 at 5-6]. Even then, the notice did not identify any actual changed circumstances. *Id.* It merely recited the legal standard that circumstances had changed and added only that Petitioner's "case is under review for removal to an alternate country." *Id.* That is not the reasoned and fact-specific notice 8 C.F.R. § 241.13(i)(3) requires, but rather the opposite.

A statement that a case is merely "under review" for removal to an alternate country does not establish that removal has become significantly likely in the reasonably foreseeable future. At most, it reflects that ICE was exploring the possibility after Petitioner had already been re-detained 3 months before. That is a post hoc rationalization and a clear violation of 8 C.F.R. § 241.13(i).

That same day, in what appears to be ICE treating § 241.13(i) as a procedural checklist rather than a substantive safeguard, Respondents purport that ICE gave Petitioner his "informal interview." However, the "informal interview" was not at all a meaningful "opportunity to respond to the reasons for revocation stated in the notification." *See* 8 C.F.R. § 241.13(i)(3). Where the only stated reason was that his case was "under review" for possible alternate-country removal, there was nothing concrete for Petitioner to rebut.

Moreover, if, as of February 13, 2026, Petitioner's case was merely "under review" for removal to an alternate country, then that alone confirms that, on November 4, 2025, there were no changed circumstances establishing a significant likelihood of removal in the reasonably foreseeable future.

Worse still, according to Respondents' own chronology, Petitioner was not even informed until two weeks later, on February 27, 2026, that ICE intended to remove him to Mexico. *See* [ECF No. 4-1 at 4]. So at the time of the February 13 interview, ICE had not even identified the country that supposedly made removal newly foreseeable. Therefore, the informal interview was not a real opportunity to respond to an actual basis for revocation.

Even today, Respondents have not identified any concrete steps toward Petitioner's removal to Mexico that would qualify as changed circumstances under 8 C.F.R. § 241.13(i)(2). Respondents provide no evidence that they have obtained a travel document for Mexico, submitted a request for one, secured any commitment from Mexico that such a document will issue, or identified any timeline on which removal to Mexico could actually occur. ICE's asserted speculative intent to remove Petitioner to Mexico remains just that.

Finally, underscoring the weakness of their position, Respondents end with an out of context quotation from *Tran v. Warden*, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at *10 (M.D. Fla. Mar. 10, 2026), and crucially omit that in *Tran*, unlike here, that petitioner was provided notice of revocation and an informal interview on the very day he was re-detained.

The facts are clear. Respondents did not comply with 8 C.F.R. § 241.13(i). As ICE failed to follow its own regulation, the revocation of Petitioner's OSUP was invalid, and his present detention is unlawful.

II. PETITIONER'S DETENTION VIOLATES THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE.

"The presumptively reasonable six-month period for detention pending removal commences at the beginning of the removal period." *Chumachenko v. Noem*, No. 2:26-CV-00344-SPC-NPM, 2026 WL 545453, at *2 (M.D. Fla. Feb. 27, 2026) (citing *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002)); *see also Diaz-Castro v. U.S. Dep't of Homeland Sec.*, No. 2:26-CV-00496-SPC-NPM, 2026 WL 685639, at *3 (M.D. Fla. Mar. 11, 2026) ("Because the six-month period for presumptively reasonable detention has expired, *Zadvydas*'s burden-shifting framework applies.").

This Court's decision in *Diaz-Castro* is analogous to the present case, where Diaz-Castro also had an over-decade-old removal order, was detained the day after Petitioner at the same location, and ICE also intended to remove him to the third country of Mexico. *See* No. 2:26-CV-00496-SPC-NPM, 2026 WL 685639, at *1-3. This Court reasoned that the assumption that "the six-month presumptively reasonable period of detention resets each time a noncitizen is detained . . . is inconsistent with *Zadvydas* [as] [i]t would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every 180 days." *Id.* at *2.

Further, here, like in *Diaz-Castro*, Petitioner "has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." See *id.* at *3. Like in *Diaz-Castro*, here, "ICE claims it will attempt to remove him to Mexico" and "there is no evidence suggesting Mexico is likely to accept him into the country." *Id.* In fact, Respondents show that ICE had transferred Petitioner to the Texas border with Mexico for two weeks, but ended up transferring him back to South Florida even before the instant habeas petition was filed. [ECF No. 4-1 at 10].

Similarly, in *Osvaldo Ginart Mecias v. Warden*, this Court reasoned the following when granting a habeas petition:

> The government was unable to remove him to Cuba in 2018, no change in circumstances makes removal to Cuba more likely now, and a recent attempt at removal to Mexico was unsuccessful. The burden thus shifts to the respondent. The government makes a vague and conclusory claim that Ginart Mecias failed to comply with removal, but they provide no explanation or supporting evidence. Nor do they present any evidence that another attempt at removal will likely be successful.

No. 2:26-CV-00621-SPC-DNF, 2026 WL 776148, at *2 (M.D. Fla. Mar. 19, 2026). Here, too, Respondents are unable to remove Petitioner to Cuba due to his 2015 grant of CAT Deferral, and any attempts at removal to Mexico have been unsuccessful, with no evidence provided that another attempt will be any different.

III. RESPONDENTS HAVE NOT SHOWN THAT 8 U.S.C. § 1231(a)(1)(C) TOLLED THE REMOVAL PERIOD.

Respondents argue that 8 U.S.C. § 1231(a)(1)(C) extended Petitioner's removal period because he allegedly "failed to comply with his obligation" to assist in "obtaining a travel document." [ECF No. 4 at 6-7]. In support, Respondents offer only a conclusory notice telling Petitioner that he was given a "Form I-229(a) and Instruction Sheet to Detainee, of specific requirements to complete and [was] given 30 days to comply with [his] obligation to assist in obtaining a travel document." *See* [ECF No. 4-1 at 8].[1] The Notice ends by alleging in conclusory fashion that Petitioner "failed to follow procedures" and

---

[1] This "Notice of Failure to Comply Pursuant to 8 C.F.R. § 241.4(g)" contains several irregularities that substantially undermine its reliability. First, it was generated only after this habeas action was filed. Second, although Respondents provide a proof of service for that notice, they conspicuously provide no proof of service for the underlying February 18, 2026 instruction document that Petitioner supposedly failed to honor. Third, the notice also appears to be an incompletely edited template: the office information in the header is left blank, and the purported signatory's printed name is omitted, making it difficult to determine who actually executed it. Lastly, while the notice is dated March 23, 2026, it was not served on Petitioner until two days later at the end of the day—the same day Respondents' filed this tolling argument before the Court. At minimum, these irregularities substantially diminish the notice's value as proof of actual noncompliance.

"failed to comply with [his] obligation and [is] acting to prevent [his] removal from the United States." *Id.*

Yet, Respondents do not provide a copy and show this Court what a "Form I-229(a) and Instruction Sheet to Detainee" is or what the requirements that Petitioner allegedly did not comply with were. Respondents do not explain what efforts to allegedly "assist in obtaining a travel document" Petitioner was expected to make while ICE simultaneously transferred him all around the country. *See* [ECF No. 4-1 at 10]. Respondents identify no underlying facts showing what Petitioner actually did or refused to do that supposedly prevented removal. Respondents do not show that Petitioner refused to sign a necessary application, refused to provide identifying information (which DHS clearly already has), refused to attend a consular interview, submitted false information, or otherwise obstructed any concrete removal process. There is no actual objective evidence of noncompliance.

Respondents' cited cases do not hold that ICE may toll the removal period simply by issuing a notice that vaguely accuses the detainee of noncompliance. In *Vega Hernandez v. U.S. I.C.E.*, a Middle District Court recently rejected an attempt to rely on a "failure to sign" where the record did not actually show "how [the petitioner's] failure to sign the forms impeded ICE's ability to remove him." No. 3:26-CV-8-MMH-MCR, 2026 WL 776166, at *3-4 (M.D. Fla. Mar. 19, 2026). Here, Respondents do not even allege that

Petitioner did not sign something, but rather only provide the conclusory statement that "you have failed to follow procedures, you have failed to comply with your obligation, and are acting to prevent your removal from the United States." *See* [ECF No. 4-1 at 8].

Because Respondents have not demonstrated actual noncooperation within the meaning of 8 U.S.C. § 1231(a)(1)(C), they cannot toll the removal period, cannot suspend *Zadvydas*, and cannot avoid habeas relief on that basis.

IV. RESPONDENTS MISCHARACTERIZE PETITIONER'S THIRD-COUNTRY ARGUMENT.

Petitioner did not bring a free-standing challenge to DHS's third-country-removal policy in the abstract. Rather, Petitioner argued that, because he already holds a grant of CAT Deferral of removal from the Immigration Court, Respondents may not attempt to remove him to Mexico through surprise, ad hoc procedures that disregard the protections supplied by the INA, the CAT regulations, and the Fifth Amendment.

Petitioner's claim is not detached from his present detention. Respondents themselves have invoked prospective third-country removal as the purported basis for his continued detention. Petitioner's third-country argument has always been tied to his CAT posture. Petitioner's Habeas Petition further alleged that, notwithstanding his CAT protection, Respondents attempted to effectuate third-country removal through surprise, same-moment interviews conducted without meaningful advance notice. That is not the process required by law.

Petitioner's CAT status is also central to the foreseeability analysis. As Petitioner's Habeas Petition explained, a grant of CAT-based protection is "a powerful indication of the improbability of his foreseeable removal, by any objective measure." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). Respondents still have not shown that Mexico has agreed to accept Petitioner, that a valid travel document has been secured, or that the procedural steps in Immigration Court necessary for lawful third-country removal of a CAT-protected noncitizen have been completed.

Accordingly, Respondents cannot sidestep Petitioner's CAT-based argument by recasting it as a duplicative policy challenge.

CONCLUSION

For these reasons, Petitioner respectfully requests that this Court grant Petitioner's requested relief.

Dated: March 27, 2026

Respectfully submitted,

/s/Diego Monserratte
Diego Monserratte
Florida Bar No. 1058106
Urizar Molina PA
9130 S. Dadeland Blvd., Ste 1623
Miami, Florida 33156
Dir.: (305) 849-4966
diego@urizarlaw.com