

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

ALEJANDRO EDUARDO
DELGADO DE ARMAS

Petitioner,

Case No. 2:26-cv-792-KCD-DNF

v.

Warden, et al.,

Respondents.

_____ /

PETITIONER'S TRAVERSE

Respondents' revocation of Petitioner's Order of Supervision (OSUP) violated the Fifth Amendment, the *Accardi* doctrine, and federal regulations, specifically 8 C.F.R. § 212.12, which expressly governs Mariel Cubans.

I. Delgado's Parole is Solely Governed by § 212.12 Because §§ 241.13 and 241.4(b) Expressly Prohibit Their Application to Mariel Cubans.

Delgado was not, and could not have been, released at any time under 8 C.F.R. § 241.13 since that provision expressly "does not apply to ... Mariel Cubans whose parole is governed by § 212.12 of this chapter[.]" 8 C.F.R. § 241.13(b)(3)(i). Section 241.4 likewise does not apply to any Mariel Cuban, even following entry of a final order of removal:

The review procedures in this section do not apply to any inadmissible Mariel Cuban who is being detained by the Service . . . 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; emphasis added). Respondents' position that § 241.13 applies because Delgado has a final order of removal (ECF 12 at 14) cannot be reconciled with the clear language of the rules and long-established Department of Homeland Security (DHS) practices. *See* Exs. A – B (excerpts of 2006 ICE Manual).¹ Both §§ 241.4 and 241.13 unquestionably prohibit application to Mariel Cubans like Delgado, who was initially paroled but then detained by DHS, placed in removal proceedings, and issued a final order of removal. 8 C.F.R. § 241.4(b)(1). *Compare* Ex. A, *with* Ex. B.

Respondents erroneously cite to *Clark v. Martinez*, 543 U.S. 371, 378 (2005), a case involving Mariel Cubans but centering on whether 8 U.S.C. § 1231(a)(6) applied to noncitizens ordered removed who are inadmissible under § 1182. *Clark* extended the *Zadvydas*² protections to inadmissible noncitizens but did not address the legality of parole revocation under § 212.12. *Id.* at 379. On the contrary, footnote 3 of *Clark* supports Delgado's argument, clarifying that even if a noncitizen prevails on a *Zadvydas* claim, his release remains conditional and violation of parole or necessity for removal allows for a return to custody under

¹ *See* U.S. Department of Homeland Security, John P. Torres, Acting Dir., ICE, "Detention and Deportation Officer's Field Manual" (Mar. 27, 2006), available at https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf ("Torres Memo").

² *Zadvydas v. Davis*, 533 U.S. 678 (2001) established a "presumptively reasonable period of detention" of six months: the 90-day removal period under 8 U.S.C. § 1231(a)(1)(A), plus an additional 90 days. *Id.* Delgado's removal became final in 1999. He was previously detained in immigration custody for approximately 18 months between 2000 and 2002. [DE 1 at ¶4]. The six-month period has thus long expired in Delgado's case. *See Beltran v. Ripa, et al.*, No. 2:25-CV-01174-SPC-NPM (M.D. Fla. Jan. 5, 2026).

§ 212.12. *Id.* Hence, when Respondents revoked Delgado’s OSUP, he was “returned” to custody under § 212.12.

II. The 2005 Cerda Memorandum Was Superseded by the 2006 Torres Memorandum, Which Prescribed Directives Applicable Here for Mariel Cubans as Governed by § 212.12.

Respondents cite an outdated 2005 ICE Memorandum (“Cerda Memo”) to argue that § 241.13 applies and has nullified § 212.12. ECF 12 at 15-16. The Cerda Memo holds no weight against duly promulgated regulations. *See, e.g., Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000) (interpretations contained in policy statements, agency manuals, and enforcement guidelines “lack the force of law”). If DHS wished to create an alternative regulatory scheme for the release of Mariel Cubans outside of § 212.12, it had to follow the Administrative Procedure Act to promulgate a new regulation. It did not. Respondents’ assertion that the Cuban Review Panel has not been in effect for several years merely evidences the government’s failure to comply with the law.³

More importantly the 2006 Torres Memo superseded the Cerda Memo and continued to set forth the Cuban Review Panel process for Mariel Cubans under § 212.12. Ex. B; *see* n.1, *supra*.⁴ “This [*Zadvydas*] decision applies to aliens admitted into the United States as refugees and those who entered without

³ Respondents’ reliance on *Marquez-Coromina v. Hollingsworth*, 692 F. Supp. 2d 565, 569 (D. Md. 2010) is misplaced. The petitioner there never contested the governing detention authority. *See id.* at 569 (stating that it was “undisputed” that the detention was “pursuant to ... § 241.14”). Delgado disputes the issue and maintains that § 212.12 governs.

⁴ *See also* U.S. Department of Homeland Security, Victor X. Cerda, Acting Director, ICE, “Interim Guidance Regarding Post-Order Custody Reviews (POCR) After the Supreme Court Decision in *Clark v. Martinez*” (Jan. 21, 2005), available at https://www.ice.gov/doclib/foia/dro_policy_memos/clark_v_martinez_1_21_2005.pdf.

inspection, but does not apply to aliens paroled under section 212(d)(5) of the [INA], arriving aliens, or Mariel Cubans.” *Id.*, Ch. 17.1(a). Chapter 18 of the Torres Memo guides the parole process for Mariel Cubans under 8 C.F.R. § 212. *Id.* Appendix 18-1 of the Cuban Review Plan details how that process is to be carried out, including how to lawfully revoke a Mariel Cuban OSUP or parole. Ex. A; 8 C.F.R. § 212.12.⁵ Respondents failed to abide by codified regulations and the instructive guidance DHS structured specifically for Mariel Cubans. *Id.*

III. Delgado’s Detention Violates Due Process.

The regulations at issue expressly identify which authority governs this case. Compare 8 C.F.R. § 212.12 with the limiting language of §§ 241.13(b)(3) and 241.4(b)(1). Delgado has not been afforded due process under any regulatory scheme. A growing chorus of district courts have found that individuals like Delgado are entitled to release under § 212.12 because Respondents have violated their due process rights by ignoring the correct regulations.⁶ The *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), factors weigh in Delgado’s favor: his profound liberty interest since he is being detained unlawfully, the high risk of erroneous

⁵ Respondents argue that Delgado failed to “identify a single due process protection somehow offered [to] him by § 212.12 that is not otherwise provided by § 241.13.” ECF 12 at 16. However, ICE’s own 2006 Torres Memo, which details the process for Mariel Cuban parole revocations, diverges greatly from § 241.13, providing for required forms, method of representation, instructions to DHS ICE officers, worksheets, and more. See Ex. A; *supra* n. 3.

⁶ See *Ochoa Banega v. Warden of Soft Side S., 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).

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. Ex. A.

IV. Even If 8 C.F.R. § 241.13 or § 241.4 Apply, the Revocation Process Was Facially Defective and Violated Due Process.

Bewilderingly, Respondents state that they revoked Delgado’s OSUP pursuant to § 241.4(l) but maintain that § 241.13 governs the revocation. *Compare, e.g.*, ECF 12 at 2; ECF 12-3 (revoking “[p]ursuant to 8 C.F.R. § 241.4(l)(2)”), *with* ECF 12 at 14; 18 (“[e]ven if [§ 241.4] did apply, which it doesn’t, the procedure required by § 241.4 would not change the outcome.”). This distinction is critical; the procedural safeguards differ across the two regulations.

First, under § 241.4(l), the regulations only authorize the Executive Associate Commissioner to revoke release in limited circumstances. But someone else signed Delgado’s Notice of Revocation. ECF 12-3 (signed “for” Assistant Field Office Director Zoelle Rivera). Under § 241.4(l), an ICE Field Office Director—*not* the *Assistant* Field Office Director—may only exercise the district director’s revocation authority under § 241.4 if that power has been expressly delegated to such an official for a particular geographic district, region, or area. Respondents failed to demonstrate that a lawfully authorized official revoked Delgado’s release under § 241.4.⁷

⁷ See *e.g. Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160, 170 (W.D.N.Y. 2025) (ordering release where Assistant Field Office Director signed revocation notice and failed to make appropriate findings, including as to why circumstances did not reasonably permit referral to the Executive

Second, the Notice of Revocation of Release is facially deficient under both §§ 241.4 and 241.13. ICE checked that the “purposes of release have been served” and that “[i]t is appropriate to enforce your removal order,” but failed to identify any factual basis for its conclusion, save the bare statement that it “intends to remove” Delgado to Mexico. ECF 12-3 at 1-2. Such omissions deprive Delgado of notice of the actual grounds for revocation, making it impossible to respond meaningfully, in violation of 8 C.F.R. § 241.13(i)(3), which requires notice of the reasons for revocation. Furthermore, ICE’s “inten[t]” to remove Delgado to Mexico falls woefully short of a “significant likelihood” that he will be removed in the reasonably foreseeable future. *See* §§ 241.4(b)(4); 241.13(i)(2). Critically, Respondents omit the fact that they already unsuccessfully attempted to remove Delgado to Mexico on April 1, 2026 (Ex. C, ¶ 14), undermining any claim that removal to Mexico, the country to which the Government has indicated it is planning to remove Delgado (ECF 12-3 at 1-2), is reasonably foreseeable.

Third, Respondents appear to acknowledge that Delgado has not received the required informal interview, stating, “Respondents *discussed* with de Armas the revocation of his OSUP, *basically* offering him an informal interview to contest the revocation and decision to detain.” *See* ECF 12 at 2 (emphasis added). Respondents “poin[t] to no hearing, no informal interview, and no immediate forum where [Petitioner] could contest his sudden re-detention.” *See Francisco v.*

Associate Director); *Mejia v. ICE*, ___ F. Supp. 3d ___, 2026 WL 936066 *7 (D.N.H. Apr. 7, 2026) (same); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (same).

ICE, 2026 WL 746563, at *12 (M.D. Fla. Mar. 17, 2026) (“That is not how due process works. A belated review months after the jail cell door slams shut is cold comfort.”). Provision of an interview now does not constitute a meaningful opportunity to respond to an already-faulty revocation.

Respondents suggest that § 241.4(l)(2) may not require notice or an interview. ECF 12 at 20–21. However, “the notice and opportunity to respond requirements apply to both sections and apply regardless of the reason for revocation.” *Samhan v. Noem*, 2026 WL 911290, at *6 (S.D. Fla. Apr. 2, 2026) (citing *Ceesay*, 781 F. Supp. 3d at 163 (collecting cases)). Even if Respondents were correct, they themselves invoked § 241.13 as the applicable framework. Section 241.13(i) unambiguously requires an “informal interview” at which the noncitizen “may respond” and “submit any evidence.” § 241.13(i)(3). Respondents cannot rely on § 241.13 and deny its procedural requirements. Release is the proper remedy. Post-hoc formalities cannot cure an unlawful revocation because a “detain-first, justify-later” approach violates due process, which requires an opportunity to be heard *before* deprivation of liberty.⁸ Allowing Respondents to rectify violations after detention creates an unlawful incentive for agencies to bypass due process and cure defects only if challenged.

Delgado’s petition should be granted.

Dated: April 23, 2026

⁸ See *Banega v. Warden*, No. 2:25-cv-1152-JES-DNF, 2026 WL 234042, at *4 (M.D. Fla. Jan. 29, 2026); *Maryanovsky v. Ripa*, No. 3:25-cv-1599-MMH-SJH, 2026 WL 496778, at *4 (M.D. Fla. Feb. 23, 2026); *Fuentes v. Ripa*, 2026 WL 717982 (M.D. Fla. Mar. 16, 2026).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 23, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

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