

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SADIEL VISET-KINET

Petitioner,

Case No.: 2:26-cv-00820-JES-NPM

v.

SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY, et al.

Respondents.

_____/

**PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION
FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

COMES NOW, the Petitioner, Sadiel Viset-Kinet, by and through undersigned counsel and hereby submits this Reply to the Respondents' opposition to the Writ of Habeas Corpus. For arguments not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus.

I. There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future (SLRRFF) thus the burden shifts to Respondents.

"Once a noncitizen's order of removal becomes administratively final, the Government 'shall' remove the person within 90 days." *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310, 1313 (11th Cir. 2019) (quoting 8 U.S.C. § 1231(a)(1)(A)). The government must detain the noncitizen during the 90-

day removal period, which begins when the removal order becomes administratively final. *Id.* Detention may continue after the removal period, but not indefinitely.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” 533 U.S. at 700-01 (2001). If removal is not practically attainable, detention no longer serves its statutory purpose of “assuring the alien's presence at the moment of removal.” *Id.* at 699. The 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.* Courts use a burden-shifting framework to judge the constitutionality of additional post-removal detention:

After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut the showing.

Id.

The respondents argue the petition is premature because the Petitioner has not been detained for longer than six months. Their argument assumes the six-month clock started on January 11, 2026, when his current detention began. That assumption is inconsistent with *Zadvydas*. It would effectively allow DHS to detain noncitizens indefinitely and avoid judicial scrutiny by releasing and re-detaining them every six months. As the Eleventh Circuit recognized, “[t]he Supreme Court’s stated rationale for establishing a presumptively reasonable ‘6-month period’ for detention pending removal supports our conclusion that this period commences at the beginning of the removal period.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002).

Because the six-month period for presumptively reasonable detention has expired, *Zadvydas*’s burden-shifting framework applies. Petitioner has easily met his initial burden. Nothing in the record suggests any change since 2021 that would make removal more likely today. ICE has not identified a receiving country, shown that any country has agreed to accept Petitioner, or provided evidence that a travel document has even been requested. Instead, Respondents rely solely on a Notice stating ICE “intends” to remove Petitioner to Mexico, unsupported by any diplomatic communication or acceptance.

Courts in this District have consistently granted habeas relief where DHS fails to show concrete evidence of removability. In *Godinez Perez v. Noem*, DHS likewise claimed it was “exploring third-country options,” but provided no actual evidence; the court found SLRRFF unmet and ordered release. 2025 WL 8030032, at *2–3 (M.D. Fla. Dec. 4, 2025). In *Beltran v. Ripa*, DHS asserted “continuing removal efforts” and noted possible removal to Mexico but provided no acceptance; the court held intent alone does not establish SLRRFF and ordered release. 2026 WL 21252, at *3–4 (M.D. Fla. Jan. 5, 2026). And most recently, this Court granted release in *Pineda v. Warden, Glades Cnty. Det. Ctr.*, where “Respondents make no real attempt at rebuttal. They do not allege that Cuba or any other country has actually agreed to accept [petitioner]. Nor do they allege that U.S. officials have contacted any country about accepting [petitioner] specifically. Under, *Zadvydas* this is insufficient to show a realistic likelihood of removal.” No. 2:26-CV-335-JES-FNF, 2026 WL 672941, at *3 (M.D. Fla. Mar. 10, 2026). The same result followed in *Vaquero Bechara v. Mordant*, *Maryanovsky v. Ripa*, and *Banega v. Warden of Soft Side South Facility* granting release shortly after detention because DHS lacked evidence of removability and failed to follow required procedures. No. 2:26-CV-00292-SPC-DNF, 2026 WL 538438, at *3 (M.D. Fla.

Feb. 26, 2026); No. 3:25-CV-1599-MMH-SJH, 2026 WL 496778, at *4 (M.D. Fla. Feb. 23, 2026); and No. 2:25-CV-1152-JES-DNF, 2026 WL 234042, at *4 (M.D. Fla. Jan. 29, 2026).

These decisions reflect the core holding of *Zadvydas*: the six-month mark is a presumption, not a jurisdictional bar, and detention becomes unlawful where DHS presents only speculative assertions, especially when the detention itself is procedurally defective. As *Beltran* explains, when DHS cannot meet its burden, it may supervise the individual under reasonable conditions while continuing removal efforts and may re-detain only if removal later becomes likely. 2026 WL 21252, at *3. That is the case here. Petitioner has met his burden in showing removal is not significantly likely in the reasonably foreseeable future, and Respondents have offered nothing to rebut that showing. Because the Government has produced no evidence, only stated intent, continued detention is unlawful, and habeas relief is warranted.

II. ICE failed to provide Petitioner with meaningful opportunity to respond at an informal interview in violation of 8 C.F.R. § 241.4(l) and the Due Process Clause.

Petitioner was taken into custody on January 11, 2026. That same day, after he had already been detained and informed that his Order of Supervision had been

revoked, ICE purported to conduct an “informal interview.” This interview was not preceded by notice, was conducted without counsel, and did not afford Petitioner any meaningful opportunity to gather evidence, present witnesses, or otherwise respond. Petitioner was unaware before reporting that ICE intended to revoke his supervision or conduct any revocation interview at all.

This procedure flatly violates ICE’s regulations. Under 8 C.F.R. § 241.4(l)(1), when ICE revokes supervised release, the noncitizen must be notified of the reasons for revocation and “afforded an initial informal interview promptly after return to Service custody” to respond to those reasons. Section 241.13(i)(3) likewise requires a post-revocation informal interview conducted under the *Zadvydas* framework, including the opportunity to submit evidence showing that removal is not significantly likely in the reasonably foreseeable future or that revocation is otherwise unwarranted. The regulatory scheme presumes a meaningful opportunity to respond, not a perfunctory same-day formality following detention.

Here, ICE collapsed notice, revocation, detention, and the purported “informal interview” into a single, same-day event. That sequence defeats the very purpose of the regulations. An interview conducted after detention, without advance notice, counsel, or the ability to prepare, is not an interview at all within the meaning of §§ 241.4 or 241.13.

Courts in this District have rejected this exact practice. In *Maryanovsky*, the court held that where ICE detained the petitioner and failed to provide a meaningful informal interview compliant with §§ 241.4 and 241.13, continued detention was unlawful and habeas relief was required. 2026 WL 496778, at *8–10. Likewise, in *Banega*, this Court ordered release where ICE nominally conducted an interview but failed to afford a genuine opportunity to contest revocation. 2026 WL 234042, at *4.

The Southern District has reached the same conclusion on near-identical facts. In *Grigorian v. Bondi*, the court emphasized that the informal interview “is not a minor procedural step” and that failure to provide it in a meaningful and timely manner violates both ICE’s regulations and the Due Process Clause. 2025 WL 2604573, at *9–10. Critically, courts have rejected the notion that these violations can be cured by a belated interview after unlawful detention has already occurred. See *Maryanovsky*, 2026 WL 496778, at *4; *Banega*, 2026 WL 234042, at *4.

Because ICE failed to provide the process required at the time of revocation, Petitioner’s detention is procedurally defective under the **Accardi doctrine** and the Fifth Amendment. The proper remedy under binding precedent is release, not a retroactive attempt to comply while detention continues nor continued detention.

III. Respondents’ Disproportionate Focus on the I-485 Mischaracterizes

This Habeas Action

Respondents devote the overwhelming majority of their opposition to challenging Count I of the Petition, the APA claim alleging unreasonable delay in adjudication of Petitioner's Form I-485, while largely ignoring the claims that go to the heart of this habeas action: the unlawful revocation of Petitioner's Order of Supervision, the failure to provide required process, and the absence of any lawful basis for continued civil detention. That framing mischaracterizes both the Petition and Respondents' own detention authority. Respondents failed to address a majority of Petitioner's claims and thus have abandoned any defense those claims.

Count I was pled to explain why Petitioner's prolonged detention serves no legitimate purpose, not because habeas relief depends on approval of adjustment of status. Petitioner does not ask this Court to grant adjustment, to review the merits of the I-485 denial, or to compel USCIS to exercise discretion in his favor. Rather, Petitioner challenges the legality of his custody, custody that must independently comply with statute, regulation, and the Due Process Clause regardless of the pendency or outcome of any discretionary immigration benefit. *See Zadvydas v. Davis*, 533 U.S. at 690–92; *Kurapati v. USCIS*, 775 F.3d 1255, 1262 (11th Cir. 2014).

Even assuming *arguendo* that Count I were dismissed in its entirety, Respondents would still be required to justify: (1) their revocation of Petitioner's

Order of Supervision under 8 C.F.R. §§ 241.4 and 241.13; (2) their failure to provide a meaningful opportunity to contest revocation and third-country removal; and (3) their continued detention absent any showing that removal is significantly likely in the reasonably foreseeable future. Respondents do not meaningfully address any of those defects.

Nor does the denial of the Form I-485 render Petitioner's claims moot. Petitioner retains the ability to seek reopening or reconsideration through Form I-290B, and in any event, the existence of a removal order does not foreclose statutory eligibility for relief under the Cuban Adjustment Act. The Eleventh Circuit has made clear that Cuban Adjustment Act eligibility is legally distinct from removal proceedings and may be adjudicated by USCIS notwithstanding a final order of removal. *Perez v. USCIS*, 774 F.3d 960, 966–67 (11th Cir. 2014) (explaining that the CAA operates independently of INA § 245 and that IJ findings have no preclusive effect on USCIS eligibility determinations).

Respondents' fixation on USCIS discretion thus sidesteps the dispositive issues before the Court. This proceeding turns on whether ICE lawfully revoked Petitioner's release and whether continued detention complies with governing regulations and due process. Respondents' failure to meaningfully defend those actions warrants relief.

CONCLUSION

For the reasons above, Petitioner's continued detention is unlawful. Respondents have not shown that removal is significantly likely in the reasonably foreseeable future, and ICE failed to follow the mandatory procedures governing OSUP revocation rendering the detention invalid. Because Respondents offer only a bare intent to remove Petitioner without any evidence of acceptance or progress, Petitioner respectfully requests that the Court grant the Petition and order his immediate release under the conditions of his prior OSUP.

Respectfully submitted,

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