

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Case No. 2:26-cv-833-KCD-NPM

MAURICIO CASTELLANOS

Petitioner,

v.

WARDEN OF ALLIGATOR ALCATRAZ,

et al.

Respondents.

PETITIONER'S TRAVERSE

Petitioner respectfully submits this traverse in response to Respondents' Return [ECF No. 7]. This case concerns whether Petitioner's removal is reasonably foreseeable and whether ICE's revocation of Petitioner's decades-old Order of Supervision ("OSUP") (and resulting detention) violated due process and binding federal regulations. The government has exceeded its constitutional and regulatory authority by arbitrarily detaining Petitioner. *See Perez v. Warden, et al.*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026). As of the date of this traverse, Petitioner has been detained for more than six (6) months, exceeding the presumptively reasonable period according to Supreme Court precedent. Respondents misstate the applicable standard by saying that "[t]here are no allegations—much less evidentiary support—to rebut ICE's SLRRFF determination." [ECF No. 7] at p. 8. But the proper standard requires that the *government* rebut a habeas petitioner's showing:

"...[i]t is practically necessary to recognize a presumptively reasonable period of detention, which period, for the sake of uniform administration in the federal courts, will be recognized by the United States Supreme Court to be 6 months; and (7) after such a 6-month period, once an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must furnish evidence sufficient to rebut that showing."

See Zadvydas v. Davis, 533 U.S. 678, 682 (2001).

Petitioner, a recipient of deferral of removal under the Convention Against Torture, by virtue of his legal protection from removal to Cuba alone has made a showing as to the non-likelihood of his removal. And the Supreme Court's presumptively reasonable period is not an irrebuttable and unconditionally reasonable period when there is a legal impediment to removal to a habeas petitioner's country of origin: irrebuttable factual presumptions violate the Fifth Amendment, because standards of due process require that an individual have a good faith opportunity to present evidence to counter an asserted fact. *See Vlandis v. Kline*, 412 U.S. 441, 452, 93 S. Ct. 2230, 2236, 37 L. Ed. 2d 63 (1973) (holding that university students in Connecticut could not be irrebuttably presumed to be out-of-state residents due to their residence at the time of application or admission.) *Andrews v. Drew Municipal Separate Sch. Dist.*, 507 F.2d 611, 614 (5th Cir. 1975). ("Due process interdicts the adoption of an irrebuttable presumption, as to which the presumed fact does not necessarily follow from the proven fact.") Respondents' attempted rebuttal fails because, other than issuance of a "notice" of removal to Mexico, they have not shown any evidence of Mexico's willingness to accept Petitioner. *See Yosvanis Castillo Paneque v. Matthew Mordant, et al.*, No. 2:25-cv-1179-JES-NPM (M.D. Fla. Jan. 30, 2026). (ordering habeas relief where Respondents do not "allege that Mexico has agreed to accept [petitioner] or that Mexico routinely accepts Cuban nationals removed from the United States.") Given that Petitioner has already surpassed the six-month mark with no identifiable progress towards his removal, Petitioner requests that this Court order his release.

Argument

a. Jurisdiction and Venue

Petitioner filed his habeas corpus petition while in custody in the Middle District of Florida, therefore, venue is proper. *See Ex Parte Endo* 323 U.S. 283 (1944). Respondents purport to strip

the court of jurisdiction by invoking 8 U.S.C. §§ 1252(b)(9) and 1252(g), but Petitioner does not challenge his removal order or its execution; he challenges the lawfulness of his detention. §§1252(b)(9) and 1252(g) therefore do not apply. *See Perez v. Warden, et al.*, No. 2:26-CV-0009-SPC-DNF (M.D. Fla. Jan. 19, 2026). §1252(b)(9) is entirely inapposite because Petitioner does not challenge the underlying validity of his order of removal. Similarly, “[t]he provision [1252(g)] applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). None of those discrete actions are at issue here. §1252(g) also does not apply because to determine whether a claim “arise[s] from” one of the covered actions in 1252(g), “courts must focus on the action being challenged,” *Canal A Media Holding, LLC v. U.S. Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1258 (11th Cir. 2020), namely, whether one of the three actions forms the “basis of the claim,” *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). But Petitioner challenges the government’s failure to abide by its own regulations and the lawfulness of his detention without any real prospects for removal. Therefore, the immigration statutes do not strip the Court of jurisdiction over this action.

b. Legality of Detention

i. *The INA does not authorize Petitioner’s detention.*

Petitioner’s order of removal became final in 2004, thus the 90-day removal period expired more than twenty years ago. The six-month period for detention pending removal “commences at the beginning of the removal period.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.3 (11th Cir. 2002). Courts have found that when a non-citizen “was previously detained, then released on supervised release . . . his 90-day removal period has long expired.” *See Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025 WL 2871914, at *2 (E.D. Tex. Oct. 9, 2025). That is, courts “broadly agree that ‘the

six-month period does not reset when the government detains an alien under 8 U.S.C. § 1231(a), releases him from detention, and then re-detains him again.”” *Diaz-Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485, at *7 n.6 (W.D.La. Oct. 15, 2019) (quoting *Sied v. Nielsen*, 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D.Cal. Apr. 19, 2018)), *report and recommendation adopted*, No. 1:19-CV-670-P, 2019 WL 6037220 (W.D.La. Nov. 13, 2019); *accord Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D.Tex. Sept. 26, 2025) (“The government’s contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself.”); *accord Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (finding that “re-detention after release on an Order of Supervision “is not your typical first round detainment of an alien awaiting removal.”); *see also Solis Nolasco v. Noem*, No. CV GLR-25-3847, 2026 WL 25002, at *4 (D. Md. Jan. 5, 2026). Likewise, the Eleventh Circuit speaks in terms of a “removal period,” not “periods,” immediately following the finality of the order of removal. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). One recent Southern District court opinion forthrightly rejected the Government’s position:

In this case, the Government has had over thirteen years to make such arrangements for Petitioner’s removal. Petitioner’s period of detention did not restart on December 3, 2025: it has been running since December 17, 2013. Most of these arrangements could have “likely be[en] pursued even while the noncitizen [was] on release.” The Government may not sit on its hands for thirteen years before deciding to implement an order of removal and then hold the non-resident in detention while it figures out how to effectuate removal. Such conduct runs afoul of the very danger outlined in *Zadvydas*.

Pierre v. Field Office Director, No. 0:25-cv-62475-WPD (S.D. Fla. Jan. 29, 2026).

In the Middle District of Florida, the assumption “that the six-month presumptively reasonable period of detention resets each time a noncitizen is detained” has similarly been held to be incorrect. *Yosvanis Castillo Paneque v. Matthew Mordant, et al.*, No. 2:25-cv-1179-JES-NPM (M.D. Fla. Jan. 30, 2026). Accordingly, ICE cannot restart the removal ‘clock’ by releasing and re-detaining Petitioner at will. This is particularly so when we know that the government already found his removal to be unforeseeable during issuance of his OSUP in 2006. As the Court in *Grigorian* explained: “Revocation under §241.13(i) [which is the governing regulation here by Respondents’ own admission] applies only to aliens released under § 241.13(g)—where ICE has [already] formally determined that there is no significant likelihood that the alien will be removed in the reasonably foreseeable future.” *See Grigorian v. U.S. Atty. Gen.*, No. 1:25-cv-22914 (S.D. Fla. Sept. 9, 2025) at *9. (internal citations omitted). Therefore, this Court is already in a position to conclude that Petitioner’s detention exceeds the statutory authority of the post-order detention statute, 8 U.S.C. §1231, and violates due process as prolonged and inherently unreasonable. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner’s removal period has already run.

ii. Revocation of Petitioner’s OSUP violated federal regulations.

Petitioner has been detained since on or around October 25, 2025, for more than six months, and he remains in ICE custody to this day. [ECF No. 7-1]. This very fact shows that there could not have been any meaningful new fact or circumstance that could have precipitated his re-detention. Federal regulations require that an informal interview take place before re-detention, but there is no record of any meaningful opportunity for him to respond to the grounds close in time to his re-detention. The revocation procedures in 8 CFR 241.13 are more demanding than the generic ones under 241.4:

“Revocation procedures. Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview

promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.” 241.13(i)(3)

Yet his arrest record indicates only that Petitioner was notified that he was being detained “to effect his removal from the United States” without indicating what had changed since his release from custody on an Order of Supervision two decades ago. Nor was he notified of his right to question assertions of fact during an interview process.

iii. Petitioner’s detention violates due process

The Supreme Court has long recognized that “due process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1976). Courts look to three factors when considering what process is due in a given situation: (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

All three factors weigh heavily in Petitioner’s favor. Petitioner’s liberty interest is significant as “[t]he interest in being free from physical detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Detained noncitizens also have a significant interest in family integrity, including, as here, with his spouse and children who reside in the U.S. *See Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (“[T]he right to rejoin...immediate family...ranks high among the interests of the individual.”);

Landon v. Plasencia, 459 U.S. 21, 34 (1982). Civilly detained persons also have an interest in non-punitive conditions of confinement. *Peregrino Guevara v. Witte*, No. 6:20-CV-01200, 2020 WL 6940814, at *6 (W.D. La. Nov. 17, 2020), *report and recommendation adopted*, No. 6:20-CV-01200, 2020 WL 6929700 (W.D. La. Nov. 24, 2020). Furthermore, the risk of erroneous deprivation of that interest is substantial here. Since his release more than two decades ago, Petitioner has complied with all terms of supervision, and he proved he is not a flight risk by attending his reporting to ICE as required. There is no indication ICE considered these facts when revoking release. “Absent a pre-detention hearing [or meaningful opportunity to be heard] in front of a neutral arbiter, the risk of erroneous deprivation is high.” *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26, 2025); *see also Hernandez Fernandez v. Vergara*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025). Also, execution of the removal order appears unlikely, especially in light of the prior release decision to release him decades ago and the more than six months he has spent in detention with neither Cuba, Mexico, or any other country accepting him for removal. *Yosvanis Castillo Paneque v. Matthew Mordant, et al.*, No. 2:25-cv-1179-JES-NPM (M.D. Fla. Jan. 30, 2026). (ordering habeas relief where Respondents do not “allege that Mexico has agreed to accept [petitioner] or that Mexico routinely accepts Cuban nationals removed from the United States.”) The government’s interest in public safety and immigration enforcement is safeguarded by placing him again under appropriate conditions of supervision.

II. Conclusion

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

Respectfully submitted,

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