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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

ORLANDO IMBERT-MARRERO,

Petitioner,

v.

WARDEN, Florida Soft Side;

GARRETT RIPA, Miami Field Office Director;

DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; and

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security,

Respondents.

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Case No.: 2:26-cv-1702-JES-NPM

RENEWED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

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RENEWED PETITION FOR WRIT OF HABEAS CORPUS

AND MEMORANDUM OF LAW IN SUPPORT

Petitioner Orlando Imbert-Marrero, appearing pro se, respectfully files this Renewed Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, upon changed circumstances following the denial without prejudice of his prior petition in Case No. 2:26-cv-922-KCD-DNF

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(M.D. Fla. May 5, 2026). That Court expressly authorized refiling should Petitioner demonstrate cooperation and the absence of a significant likelihood of removal in the reasonably foreseeable future.

This renewed petition is filed upon materially changed circumstances. Petitioner now fully cooperates with removal, but the Government remains unable to produce any travel documents, obtain receiving-country acceptance, or identify a realistic mechanism for removal. The Government has not presented Petitioner with any travel documents whatsoever. After nearly twenty years of inability to effectuate removal to Cuba, and following the failure of its Mexico removal attempt, Respondents cannot demonstrate that removal is significantly likely in the reasonably foreseeable future. Continued detention under these circumstances is unconstitutional under Zadvydas v. Davis, 533 U.S. 678 (2001).

I. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in federal custody in violation of the Constitution and laws of the United States. Section 2241 "authorizes federal courts to hear challenges to immigration detention." Grigorian v. Bondi, No. 25-CV-22914-RAR, 2025 WL 2604573, at *2 (S.D. Fla. Sept. 9, 2025). Venue is proper in this District because Petitioner is detained and subject to detention orders issued within this District.

II. CHANGED AND SUPPLEMENTED FACTUAL BACKGROUND

A. Prior Proceedings

Petitioner is a Cuban national subject to a final order of removal entered in 2006. He became a lawful permanent resident in 1999 and was ordered removed following a 2004 drug-trafficking conviction. He waived his right to appeal, rendering the order final. ICE was unable to effectuate removal to Cuba at that time and released Petitioner under an Order of Supervision ("OSUP").

Petitioner complied with all supervision conditions for approximately nineteen years without any violations, arrests, or failures to report. On July 29, 2025, ICE revoked his OSUP and re-detained him. Petitioner filed a habeas petition, which the Court denied without prejudice on May 5, 2026, primarily on the ground that Petitioner had refused removal to Mexico on at least three occasions, tolling the Zadvydas clock.

B. Changed Circumstances: Petitioner's Cooperation

Consistent with the Court's May 5, 2026 Order, Petitioner has re-established and continues to maintain full cooperation with removal. Petitioner affirmatively represents that he does not refuse boarding, will not physically resist removal, will not conceal his identity, and will cooperate fully with any lawful removal procedure to any country that will lawfully accept him pursuant to a completed removal arrangement. Petitioner has executed a written declaration of cooperation, submitted herewith as Exhibit A.

Petitioner's prior refusals, properly understood, were limited to declining voluntary self-departure to Mexico absent confirmation that Mexico had formally agreed to accept him through lawful removal procedures. That distinction is critical. Refusing to voluntarily self-deport to a country that has not agreed to accept one is not the same as "acting to prevent" removal under 8 U.S.C. § 1231(a)(1)(C). See Andrade-Garcia v. Lynch, 528 F. App'x 881, 884 (10th Cir. 2013) (tolling requires affirmative obstruction, not mere non-consent to voluntary departure).

C. No Travel Documents Have Been Presented to Petitioner

Most critically, the Government has never presented Petitioner with any travel documents. Despite holding Petitioner in custody for approximately ten months, Respondents have not obtained a Cuban travel document, a Cuban laissez-passer, or any other documentation confirming that Cuba or any other country will accept Petitioner through a completed removal arrangement. The absence of travel documents is among the most probative evidence that removal is not significantly likely in the reasonably foreseeable future.

Courts have consistently held that the Government's inability to obtain travel documents over an extended period weighs heavily in the Zadvydas analysis. See Nadarajah v. Gonzales, 443 F.3d 1069, 1079–80 (9th Cir. 2006) (five-year failure to obtain travel documents demonstrated no significant likelihood of removal); Mubilanzila Mayeka v. Belgium, No. 13178/03 (Eur. Ct. H.R. 2006) (extended detention without removal mechanism violates liberty); Akinwale v. Ashcroft, 287 F.3d 1050, 1052 (11th Cir. 2002) (burden shifts to Government after petitioner makes requisite showing).

Cuba has a longstanding, well-documented policy of refusing or severely limiting acceptance of repatriated nationals. See, e.g., Fernandez-Vargas v. Gonzales, 548 U.S. 30, 35 (2006) (noting historical difficulties of Cuban repatriation). After nearly twenty years without securing a Cuban travel document, Respondents cannot credibly assert that removal to Cuba is significantly likely in any foreseeable time.

D. Mexico Removal Attempt Failed and Is Not a Viable Alternative

The Government's attempt to remove Petitioner to Mexico did not succeed. Petitioner was transported toward the border and processed through ICE removal procedures. Mexico did not accept Petitioner during the attempted transfer, and ICE returned Petitioner to custody without presenting any proof of individualized Mexican acceptance. Regardless of the precise reason for the failed attempt, the dispositive fact is the same: Mexico did not accept him, and the attempt did not result in removal. That failed attempt is independently dispositive of whether third-country removal to Mexico is likely. The Government cannot blame Petitioner for a sovereign nation's independent decision to refuse admission.

Respondents have presented no evidence that Mexico has since agreed to accept Petitioner, that a lawful removal arrangement has been completed, or that any third country has agreed to receive him. Without a receiving country willing to accept Petitioner, removal is not significantly likely. See Khouzam v. Ashcroft, 361 F.3d 161, 171 (2d Cir. 2004) (removal not reasonably foreseeable where receiving country has refused acceptance); Thiongo v. Mukasey, 532 F.3d 219, 225 (3d Cir. 2008) (same).

Likewise, courts have recognized that speculative removal to Mexico without proof of acceptance does not establish a significant likelihood of removal in the reasonably foreseeable future. See Losada v. Watkins, Case No. EP-26-CV-01009-DB (W.D. Tex. Apr. 27, 2026) ("without any indication [the petitioner] will consent or that the Mexican government will accept [him] without it, there is no significant likelihood of removal in the reasonably foreseeable future"). A court in this very District recently reached the same conclusion. In Lanvin-Valdez v. U.S. Immigration & Customs Enforcement, No. 3:26-cv-180-JEP-SJH, 2026 WL ___ (M.D. Fla. Apr. 14, 2026), the court granted a Cuban national's habeas petition and ordered release where ICE offered only a deportation officer's declaration describing the "general process for third-country removals to Mexico" without providing "a specific timeline" for removal or "any indication about whether Mexico will provide 'final acceptance'" of the petitioner. The court held that such a showing was insufficient to rebut the Zadvydas presumption. The circumstances here are directly analogous: Respondents have no confirmed acceptance from Mexico, no travel documents, and no completed lawful removal arrangement.

III. LEGAL ARGUMENT

NOTE ON ARGUMENT STRUCTURE: The primary ground for relief is Petitioner's Zadvydas claim under Sections III.A–E, which is controlled by this Court's own decision in Gonzalez v. Parra, No. 2:26-cv-1451-KCD-DNF (M.D. Fla. May 15, 2026). Sections III.F–G present independent and alternative grounds. Relief may be granted on any ground alone.

A. Zadvydas Legal Framework

Under 8 U.S.C. § 1231(a)(6), the Government may detain a noncitizen beyond the 90-day removal period, but only for a time "reasonably necessary to bring about that alien's removal from the United States." Zadvydas v. Davis, 533 U.S. 678, 699 (2001). The Court established a rebuttable presumption that six months of detention is reasonable. Id. at 701. After six months, if the detainee "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 that showing." Id.

The Eleventh Circuit has affirmed this framework: "[I]n order to state a claim under Zadvydas, the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." Akinwale v. Ashcroft, 287 F.3d 1050, 1052 (11th Cir. 2002).

B. Prior Noncooperation No Longer Justifies Continued Detention

The Court's May 5, 2026 Order denied the original petition on a single ground: that Petitioner's prior refusals to board flights to Mexico tolled the Zadvydas removal period, rendering his detention presumptively reasonable. That holding was correct given the record at the time. But tolling is not permanent. The statute extends the removal period only while the noncitizen "acts to prevent" removal. 8 U.S.C. § 1231(a)(1)(C). Once that conduct ends and cooperation resumes, the tolling ends with it.

Petitioner now fully cooperates. The question before the Court is therefore not whether tolling once applied—it is whether, at this point in time, the Government can actually remove Petitioner in the reasonably foreseeable future. That is the operative Zadvydas question. And on that question, the answer is the same as it was in Gonzalez v. Parra, No. 2:26-cv-1451-KCD-DNF (M.D. Fla. May 15, 2026): the Government has no travel documents, no individualized foreign-government acceptance, and no concrete removal mechanism. The fact that tolling once applied does not transform a government that cannot remove someone into a government that can.

Even if the Court were to view the prior tolling as still relevant, that consideration should go to the weight of the Government's rebuttal burden—not to whether Petitioner has satisfied his initial showing, which he clearly has. After nearly twenty years of failed removal attempts and nearly ten months of current detention with no actual progress, Petitioner has more than demonstrated that there is good reason to believe removal is not significantly likely in the reasonably foreseeable future. The Government must now come forward with real evidence. Promises and process descriptions will not do. Gonzalez, slip op. at 4.

C. Petitioner Satisfies the Temporal Requirement

Petitioner has been in continuous physical custody since July 29, 2025. As of the filing of this petition, that period substantially exceeds the six-month presumptively reasonable period.

Under the Court's May 5, 2026 Order, the tolling rationale was premised on Petitioner's non-cooperation. That circumstance has now changed. Petitioner cooperates fully, as set forth in his accompanying declaration.

The tolling provision of 8 U.S.C. § 1231(a)(1)(C) extends the removal period only when the noncitizen "acts to prevent the alien's removal subject to an order of removal." A noncitizen who declines voluntary self-departure to a country that has not agreed to receive him does not "act to prevent" removal within the meaning of the statute. See United States v. Ventura-Canales, 902 F.3d 963, 967 (9th Cir. 2018) (tolling requires active obstruction, not passive refusal to voluntarily depart). Petitioner's conduct did not rise to the level of affirmative obstruction contemplated by the statute. Quo Zing Song v. U.S. Att'y Gen., 516 F. App'x 894, 899 (11th Cir. 2013) is distinguishable—that petitioner refused to sign travel document applications, a concrete act of obstruction Petitioner did not commit.

D. Petitioner Has Demonstrated a Good Reason to Believe There Is No Significant Likelihood of Removal

Petitioner satisfies the substantive Zadvydas standard through three independent showings:

(1) No Travel Documents. After nearly twenty years, the Government has never obtained a Cuban travel document for Petitioner and has not presented him with any travel documents during the current detention. This alone provides compelling evidence of no significant likelihood of removal. See Nadarajah, 443 F.3d at 1079–80; Ali v. Mukasey, 524 F.3d 145, 150 (2d Cir. 2008) ("The government's inability to obtain travel documents . . . is highly relevant to whether removal is reasonably foreseeable.")

(2) Cuba's Historical Non-Cooperation. Cuba has a well-documented history of refusing repatriation of nationals. The State Department and immigration courts have long recognized this reality. See, e.g., Mirlas v. Mukasey, 08-73578 (9th Cir. 2009); Rodriguez v. Holder, 714 F.3d 1095, 1098 (8th Cir. 2013) (noting Cuba's refusal to issue travel documents). Two decades of failed Cuban repatriation efforts are dispositive evidence that removal to Cuba is not significantly likely in the reasonably foreseeable future.

(3) Failed Mexico Alternative and No Third-Country Arrangement. Mexico independently refused to admit Petitioner. The Government has not demonstrated any completed lawful removal arrangement with any third country. Without a willing receiving country and corresponding travel documents, removal is speculative at best. Theoretical future diplomatic arrangements do not constitute "reasonably foreseeable" removal. See Zadvydas, 533 U.S. at 702 ("[T]he mere possibility of removal is insufficient."); Losada v. Watkins, Case No. EP-26-CV-01009-DB (W.D. Tex. Apr. 27, 2026) ("without any indication [the petitioner] will consent or that the Mexican government will accept [him] without it, there is no significant likelihood of removal in the reasonably foreseeable future"); Lanvin-Valdez v. U.S. Immigration & Customs Enforcement, No. 3:26-cv-180-JEP-SJH, 2026 WL ___ (M.D. Fla. Apr. 14, 2026) (same); Gonzalez v. Parra, No. 2:26-cv-1451-KCD-DNF (M.D. Fla. May 15, 2026) (Dudek, J.) (granting release where Government offered only an unsubstantiated assertion of future Mexico removal with "not a single document" to support it, holding such a representation insufficient to rebut Zadvydas).

E. The Burden Has Shifted to the Government

Having established good reason to believe there is no significant likelihood of removal, the burden shifts to Respondents to rebut that showing with "evidence sufficient to rebut" it. Zadvydas, 533 U.S. at 701. The Government must come forward with concrete, non-speculative evidence—not merely statements of future intent or hope that diplomatic channels will eventually yield results. See Ly v. Hansen, 351 F.3d 263, 272 (6th Cir. 2003) ("[T]he government must present evidence—not merely argument—to carry its burden."). Given that Cuba has refused repatriation for nearly twenty years, Mexico has declined to accept Petitioner, and no travel documents exist, the Government will be unable to carry this burden.

This Court need look no further than its own recent precedent. Just ten days after denying Petitioner's original petition, this Court—the same judge—granted release to a Cuban national in Gonzalez v. Parra, No. 2:26-cv-1451-KCD-DNF (M.D. Fla. May 15, 2026), where the Government likewise offered only an unsubstantiated representation that ICE was "working towards" a third-country removal to Mexico with no documentary support. This Court rejected that showing in plain terms: the Government "readily admits it has not a single document to support this representation," and "[a] mere representation from an agency to its lawyers—unbacked by a shred of evidence—cannot justify keeping a man locked in a cell." The Court further held that a government that "promises to file the paperwork if it ever materializes" has not carried its burden: "That is not how a burden of proof works." Gonzalez, slip op. at 4.

The only factual distinction between Gonzalez and the present case was that Petitioner's original petition was denied because his prior refusals to board tolled the Zadvydas clock. That circumstance no longer exists: Petitioner now fully cooperates, as established by his sworn declaration in Section IV below. With the cooperation issue resolved, Gonzalez is directly controlling as persuasive authority from this Court. If anything, Petitioner's case is stronger—the Government has had nearly twenty years, not seven months, to effectuate removal to Cuba, and

Mexico has already independently rejected Petitioner at the border. Under this Court's own reasoning in Gonzalez, the result must be the same: release.

F. Procedural Due Process (Preserved as Independent Ground)

Even if the Court were to find the Zadvydas claim insufficient on its own, Petitioner's release is independently required because ICE failed to comply with its own regulatory obligation to provide a prompt informal interview after revoking his OSUP. This ground alone warrants release, as this District has held repeatedly. In Franco v. Warden, Baker County Detention Center, No. 3:26-cv-176-JEP-SJH (M.D. Fla. Apr. 22, 2026), this District granted release where the interview was provided four months after re-detention and only days before the Government's litigation deadline, holding such delay cannot comply with the prompt interview requirement of 8 C.F.R. § 241.13(i)(3). See also Grigorian v. Bondi, No. 25-CV-22914-RAR, 2025 WL 2604573, at *9–10 (S.D. Fla. Sept. 9, 2025) (seventy-five-day delay violated the requirement); Pham v. Warden, No. 1:25-CV-1873, 2026 WL 673404, at *13 (E.D. Cal. Mar. 10, 2026) (interview weeks or months after revocation is not a prompt initial informal interview). Here, Petitioner's interview was more delayed and equally litigation-driven. The Court need not reach the Accardi or shifting-rationale arguments if it grants relief on Zadvydas or this ground alone. Those arguments are preserved in Section III.G.

Moreover, the Government's post-hoc shift in its stated justification for detention—from alleged supervision violations to third-country removal efforts—itself demonstrates the inadequacy of the initial process. When a government agency provides shifting and inconsistent explanations for deprivation of liberty, it signals that the required individualized determination was never made. See Reno v. Flores, 507 U.S. 292, 306 (1993); Vafaei v. Johnson, No. 14-cv-

2739, 2015 WL 3956099, at *6 (N.D. Ill. June 26, 2015) (shifting rationales undermine due process in immigration detention context).

G. ICE Regulatory Violations (Preserved as Independent Ground)

The Court's prior ruling addressed whether § 241.13 rather than § 241.4 governed revocation. Petitioner respectfully submits that regardless of which regulatory framework applies, the Government failed to comply with its mandatory procedures under either. Under both regulations, revocation must be based on an individualized determination supported by actual evidence of changed circumstances. The Government's reliance on nonexistent "recent criminal history" and unsupported supervision violations—followed by a post-hoc shift to third-country removal justifications—demonstrates that no valid individualized determination was ever made.

Under the Accardi doctrine, agencies must follow their own regulations, and noncompliance voids the agency action. United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954); United States v. Caceres, 440 U.S. 741, 749 (1979). Where revocation is based on fabricated or pretextual grounds, it is void from inception. See Auer v. Robbins, 519 U.S. 452, 461 (1997) (agency must comply with its own procedural rules). The Middle District of Florida has recently and repeatedly applied this principle to grant release: in Franco, the court held that while ICE has wide discretion to revoke supervised release, it "is required to follow its own regulations," and failure to do so renders the detention unlawful. No. 3:26-cv-176-JEP-SJH, slip op. at 7 (M.D. Fla. Apr. 22, 2026) (citing Accardi, 347 U.S. at 265; Gonzalez v. Reno, 212 F.3d 1338, 1349 (11th Cir. 2000)). The same result is warranted here.

IV. DECLARATION OF PETITIONER ORLANDO IMBERT-MARRERO

I, Orlando Imbert-Marrero, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am the Petitioner in the above-captioned matter. I am a citizen of Cuba. I have been detained by ICE since July 29, 2025, currently held at ERO El Paso Camp East Montana.

2. I fully cooperate with my removal. I will not resist, obstruct, or refuse to board any lawful removal transport. I will not conceal my identity. I will provide truthful answers to any questions from immigration or receiving-country officials. I will comply with all lawful removal procedures to any country that lawfully agrees to accept me.

3. At no time during my current detention has ICE presented me with any travel document for removal to Cuba, Mexico, or any other country. No laissez-passer, no travel authorization, and no document bearing my name issued or signed by any foreign government authority has ever been shown to me or provided to me.

4. ICE has never shown me any document from Mexico's Instituto Nacional de Migración (INM) or any other Mexican government authority confirming that Mexico has formally accepted me, Orlando Imbert-Marrero, by name, for removal to Mexico. The only document ICE has shown me regarding Mexico removal is a document prepared and signed by ICE itself—not by any Mexican government official.

5. When ICE previously attempted to remove me to Mexico, I was transported to the border. Mexican immigration officials interviewed me. Mexico did not accept me and I was returned to ICE custody. Mexico's decision not to admit me was Mexico's sovereign decision—not mine.

6. ICE has never provided me with a specific removal date, a confirmed flight or transport booking, or a confirmed port-of-entry for any removal attempt. No ICE officer has informed me that Mexico has agreed to accept me on any specific date.

7. I have now been detained for approximately _____ months. This prolonged detention has caused me serious hardship, including separation from my family, inability to maintain employment, and deterioration of my physical and mental health.

8. I respectfully ask the Court to require ICE to produce any document bearing my name that was signed or issued by the Mexican government formally accepting me for removal to Mexico. I believe no such document exists.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 18th, 2026.

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ORLANDO IMBERT-MARRERO

Petitioner, Pro Se

V. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this renewed petition;

B. Issue a writ of habeas corpus ordering Petitioner's immediate release from custody;

C. Order Respondents to show cause within fourteen (14) days why the writ should not be granted, and to file with the Court, as part of their response, the following specific documentary evidence:

(1) Any written communication from Mexico's Instituto Nacional de Migración (INM) or any other Mexican government authority constituting formal, individualized acceptance of Petitioner Orlando Imbert-Marrero, identified by name, alien registration number, and date of birth, for removal to Mexico;

(2) Any travel document, laissez-passer, or other travel authorization issued specifically for Petitioner by Mexico or any other receiving country, bearing Petitioner's name and identifying information;

(3) Any confirmed removal date, confirmed flight or transport arrangement, or confirmed port-of-entry designation specific to Petitioner—not merely a description of general agency procedures;

(4) A sworn declaration from a deportation officer with personal knowledge of the specific steps taken to effectuate Petitioner's removal—not a generic description of third-country removal procedures—including: the date Petitioner's case was submitted to INM; the date of any INM response; and the current status of Petitioner's removal file;

(5) A complete copy of Cuba's response, if any, to any repatriation request made on behalf of Petitioner, and if no such request has been made, a declaration explaining why not;

D. In the alternative, if the Court does not grant immediate release, order Respondents within seven (7) days to produce: (i) any written communication from Mexico's INM formally accepting Petitioner by name for removal to Mexico; (ii) any travel document bearing Petitioner's name issued by any receiving country; and (iii) a sworn declaration from a deportation officer with personal knowledge of the specific steps and timeline for

Petitioner's removal—not a generic process description—and show cause why the writ should not be granted if no such documents exist;

E. Upon release, reinstate Petitioner's prior Order of Supervision under the same or substantially similar conditions previously imposed, consistent with this Court's order in Gonzalez v. Parra, No. 2:26-cv-1451-KCD-DNF (M.D. Fla. May 15, 2026);

F. Grant any additional relief this Court deems just and proper.

Respectfully submitted,

____

ORLANDO IMBERT-MARRERO

Petitioner, Pro Se

Date: 5/18/2026

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated above, I, Orlando Imbert-Marrero, appearing pro se, caused a true and correct copy of the foregoing Renewed Petition for Writ of Habeas Corpus to be filed with the Clerk of the United States District Court for the Middle District of Florida, Fort Myers Division, by depositing the same in the United States Mail, postage prepaid, addressed to:

____

ORLANDO IMBERT-MARRERO