

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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CINDY ROSARIO RIVERA CALDERON,

Petitioner,

v.

KRISTEN SULLIVAN, Field Office  
Director, Atlanta Field Office,  
Enforcement and Removal  
Operations, U.S. Immigration and  
Customs Enforcement, *et al.*,

Respondents.

Civil Action No.  
1:26-CV-04768-MLB

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**RESPONSE TO PETITION**

Respondents respectfully ask this Court to deny Petitioner Cindy Rosario Rivera Calderon's petition seeking a writ of habeas corpus. Rivera Calderon is subject to an order of removal from the country, and no basis in law exists to prevent that order from being executed.

**Facts**

Petitioner Cindy Rosario Rivera Calderon is a native and citizen of Honduras. (Declaration of Keith Williams (Doc. 8) ¶ 4.) On March 14, 2022, U.S. Border Patrol encountered Rivera Calderon after she unlawfully entered the United States without having been admitted or paroled after inspection by an

immigration officer. (*Id.*) The encountering officer determined that Rivera Calderon was inadmissible pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) and issued her a Notice and Order of Expedited Removal pursuant to 8 U.S.C. § 1225(b)(1). (*Id.*)

Rivera Calderon claimed that she was entitled to relief from removal. (*Id.* ¶ 5.) Her claim was referred to U.S. Citizenship and Immigration Services (USCIS) to make an initial determination. (*Id.*) Her claim was denied, and that denial was affirmed by an Immigration Judge on April 27, 2022. (*Id.* ¶¶ 7-8.) Rivera Calderon's case was thereafter returned to DHS so that her removal order could be executed. (*Id.* ¶ 8.)

Meanwhile, while her proceedings before USCIS were ongoing, ICE paroled Rivera Calderon from custody under 8 U.S.C. 1182(d)(5)(A) for a period of one year, beginning April 14, 2022. (*Id.* ¶ 6.) Per the terms of that statute, upon the expiration of her parole, she "shall forthwith return or be returned to the custody from which he was paroled."

On January 16, 2023, Petitioner filed ICE Form I-246, Application for a Stay of Deportation or Removal with ICE. (*Id.* ¶ 9.) ICE deemed her application moot because she had already been given a future report date of one year, on February 21, 2024. (*Id.*) That is to say, ICE had already told her they weren't going to act on her removal order for a year.

On April 25, 2024, Rivera Calderon filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with USCIS. (*Id.* ¶ 11.) On March 17, 2026, Petitioner filed a second ICE Form I-246, Application for a Stay of Deportation or Removal with ICE. (*Id.* ¶ 12.) Either of these, if granted, would prevent her removal (at least temporarily), but neither has been granted.

USCIS scheduled Rivera Calderon for an interview in Atlanta on August 21, 2026 relating to her Form I-485. (*Id.* ¶ 13.) At that interview, USCIS notified Rivera Calderon that her Form I-485 application was being held for further review and was not being granted at that time. (*Id.* ¶ 14.) On that same day, ICE took Rivera Calderon into custody for the purpose of executing her removal order. (*Id.* ¶ 15.) She filed her habeas petition shortly afterwards, while she was still in this judicial District.

Rivera Calderon is currently being held in the Stewart Detention Center in Lumpkin, Georgia. (*Id.* ¶ 19.) She is scheduled for removal to Honduras within the coming weeks. (*Id.* ¶ 18.)

### **Argument**

The basic reason Rivera Calderon's petition should be denied is because she is subject to an order of removal. She does not challenge the validity of that order (nor could she do so here), and she offers the Court no valid reason why the executive branch should not detain her for the purpose of executing the

removal order. This response will address each of the arguments she raises in her petition to explain why each one fails.

**Count 1** of the petition argues that Respondents are violating their own regulations by taking Rivera Calderon into custody without affording her sufficient procedure. Specifically, she argues that 8 C.F.R. § 241.4(l)(1) requires that she be “notified of the reasons” her release is being revoked and that she be afforded “an opportunity to respond to the reasons for revocation stated in the notification.”

Respondents agree that Rivera Calderon was not given this procedure, but that is because she is not entitled to receive it. Per the same paragraph, the above procedure is given to an alien who “has been released under an order of supervision or other conditions of release who violates the conditions of release.” In other words, the procedure applies to aliens who are conditionally released and who are taken back into custody *because* they violated a condition of release. In that event, the alien is given a chance to explain away the apparent violation. But the above procedure does not apply to an alien like Rivera Calderon, who was not conditionally released and who was not rearrested for violating a condition of release. Rather, she was arrested because ICE is now ready to execute her long outstanding removal order. Under these circumstances, the

regulation does not require that she be given an opportunity to explain away her “violation” because there is no violation to explain.<sup>1</sup>

**Count 2** of the petition argues that Rivera Calderon’s petition is inconsistent with the due process clause of the Fifth Amendment. For the most part, the argument simply restates the argument from Count 1 – that she did not receive the procedure that the regulations afforded to her. That argument has already been addressed. However, in Paragraph 72, she seems to suggest that even if 8 C.F.R. § 241.4(l) does not apply to her, the due process clause itself requires some sort of notice and opportunity to respond.

If that is her argument, it lacks legal support. Rivera Calderon was already given the procedure to which she was entitled when she was interviewed by a border patrol officer at the time she entered the country. The officer ordered her expedited removal, and that decision was ultimately upheld by an immigration

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<sup>1</sup> In the event the Court disagrees, Respondents ask that they be given two business days to afford Rivera Calderon the procedure she requests, which would cure the issue. See *Betancourt v. Warden*, No. 2:26-CV-307, 2026 WL 914792, at \*5 (M.D. Fla. Apr. 3, 2026) (“[T]he natural remedy for a procedural shortcoming is a procedural fix. When an agency skips a step in its own rulebook, the typical judicial response is to force the agency to go back and do its job right – not to throw open the jailhouse doors.”); *Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 382 (D. Md. 2025) (“As to this component of Petitioner’s Accardi claim, Mr. Cruz Medina has not pointed to authority showing that the remedy for a violation of this regulation (if such a violation has occurred) is release from detention.”).

judge. Rivera Calderon is not entitled to additional procedure on top of that which she has already been given. As one court put it in a different but related context, the circumstance in which Rivera Calderon finds herself is “the direct consequence of the [] deportation proceedings that resulted in the issuance of [her] order of removal. All of the subsequent statutory and regulatory control that ICE has exercised over [Petitioner] has flowed from that proceeding.”

*Lawrence v. Gonzales*, No. 12-cv-4076, 2013 WL 1736529, at \*2 (S.D.N.Y. Apr. 19, 2013).

**Count 3** is difficult to follow. The argument begins by noting that an alien cannot be detained for the purpose of removal if the alien cannot, in fact, be removed; for example, if the alien’s home country will not accept their return. That is true, but Rivera Calderon can be removed to Honduras, and she does not argue otherwise. Rivera Calderon then argues that she was detained for 28 days in 2022, and that these days should count against the six-month “presumptively reasonable” period for detention. But even so, she admits that the six-month period has not run, so it is not clear what her point is here. Finally, she states that her detention “is unlawful from its inception because it was imposed without the authority and process the statute’s implementing regulations require.” (Pet. ¶ 79.) She cites no statutes or regulations here, and it appears that she is not referring to any such sources beyond those already addressed above.

**Count 4** argues that an unspecified agency (maybe ICE, but maybe USCIS) acted arbitrarily and capriciously by revoking her release based on the erroneous belief that she had been ordered removed by an immigration judge when, in fact, she was ordered removed by an officer whose decision was merely upheld by an immigration judge. But the premise of this count is incorrect. Rivera Calderon was not detained because of a mistaken belief about who signed her removal order. She was detained simply because she is subject to a final order of removal.

**Count 5** argues that she cannot be removed because she recently filed a petition with USCIS to adjust her status — that is, to grant her permission to stay here legally. She does not cite any law, regulation, or court case stating that the mere filing of a petition to adjust status cancels or pauses a removal order. If that were the case, aliens subject to removal could always interrupt their removal simply by filing such a petition, regardless of its merits. (And, here, Rivera Calderon's petition is unlikely to succeed because she is subject to a final order of removal.) Without any legal authority to support it, this argument fails.

### **Conclusion**

Rivera Calderon has not provided a reason why her removal order cannot be executed, and her petition should be denied.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to Local Rule 7.1(D), that the above memorandum was prepared in 13-point, Book Antiqua font.

*s/ Anthony C. DeCinque*

ANTHONY C. DECINQUE

*Assistant United States Attorney*

**CERTIFICATE OF SERVICE**

I hereby certify that the above document was filed using the Court's CM/ECF system, which will provide notice to all counsel of record.

This 1st day of September, 2026.

s/ Anthony C. DeCinque  
ANTHONY C. DECINQUE