

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:25-cv-25866-RKA

JOSE TOMAS FLORES-VERA,
A# [REDACTED],
Petitioner,

v.

PAM BONDI, U.S. Attorney General, et.al.,
Respondents.

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS AND IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

Petitioner, Jose Tomas Flores-Vera ("Petitioner" and/or "Mr. Flores"), through undersigned counsel, respectfully submits this Reply in further support of his petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and in opposition to Respondents' Motion to Dismiss for Lack of Jurisdiction (DE 5).

INTRODUCTION AND BACKGROUND

Petitioner has been in the United States now for over forty-five (45) years since his initial arrival as a Mariel Cuban in May of 1980. For the past forty-five (45) years, Mr. Flores has made the United States his home, living peacefully with his family and working hard to provide for them. Mr. Flores has been a law-abiding member of his community, complying with all asks and requirements imposed on him by ICE. For over eleven (11) years Mr. Flores has been under an Order of Supervision ("OSUP") and has complied with all tasks and requirements without fail. He has fought a long battle with cancer and provides for his ninety-four (94) year old mother that suffers from severe medical conditions.

Without justification and without proper notice, on November 15, 2025, Mr. Flores was detained by ICE during his routine OSUP check-in. ICE has failed to comply with regulations regarding revocations of OSUP and regulations regarding Mariel Cubans. Mr. Flores has not violated his OSUP, nor is there a significant likelihood of removal in the reasonably foreseeable future that would justify Mr. Flores' detention. Thus, Mr. Flores' detention is unlawful and in violation of his right to due process. This Court should grant the instant Petition for Habeas Corpus.

I. THE COURT HAS JURISDICTION AND THE RESPONDENT'S MOTION TO DISMISS MUST BE DENIED.

i. The Court Does Not Lack Jurisdiction Based on Petitioner's Confinement at Florida Soft Sided Facility South.

In determining whether a court has jurisdiction to consider a habeas petition, the Supreme Court has held that a district court must consider who the proper respondent is and if the Court has jurisdiction over that respondent. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004). While normally in a habeas petition, the proper respondent, as Respondents' allege, is the "immediate custodian" and thus jurisdiction would only be in the "district of confinement", several courts, including courts in this judicial district, have held that the blanket rule established in *Padilla*, does not apply when the petitioner is a federal immigration detainee housed in a contract facility. *Masingene v. Martin*, 424 F.Supp. 1298 (S.D. Fla. 2020); *Rodriguez Sanchez v. Decker*, No. 18-CV-8798 (AJN), 2019 WL 3840977, at *2-3 (S.D.N.Y. Aug. 15, 2019) (citation omitted); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1186 (N.D. Cal. 2017); *Krechmar v. Parra*, No. 25-CV-01095 (SPC-DNF), 2025 WL 3620802, at *2 (M.D. Fla. 2025) (holding that while Alligator Alcatraz is a state-run facility, ICE controls who is admitted, detained, and released and the warden of Alligator Alcatraz would be ill-equipped to respond to the merits of the case and as such, the proper respondent was the ICE Miami Field Office Director); *Gayle v. Meade*, No. 20-21553-Civ-COOKE/GOODMAN

2020 WL 2086482 (S.D. Fla. 2020); *E.D.Q.C. v. Warden, Stewart Detention Center*, 789 F. Supp.3d 1234 (M.D. Ga. 2025). District courts have continuously reasoned that when an immigration detainee is housed in a contract facility, such as Florida Soft Sided Facility South, the proper respondent is not the warden of the facility, but instead the federal official most directly responsible for overseeing the contract facility.

Here, the Petitioner is housed at Florida Soft Sided Facility South, which is under the authority and direct control of the ICE Miami Field Office. Similar to *Masingene*, where the Southern District of Florida held that they maintained jurisdiction and the proper respondent, over an immigration detainee in Baker County (the Middle District of Florida), was the Miami ICE-ERO Field Office Director, so is Kelei Walker (“Mr. Walker”), the Miami ICE-ERO Field Office Director, the proper respondent here¹; thus providing this Court with jurisdiction. Mr. Walker oversees all detainees at Florida Soft Sided Facility South and has the authority to direct Petitioner’s release. *See Exh. A*, ICE-ERO Printout confirming Florida Soft Sided Facility South falls within the Miami Field Office’s jurisdiction and control. Because the Miami Field Office for ICE is located in the Southern District of Florida and subjects the Respondents to service of process, the Court maintains jurisdiction over this petition and the Respondents’ motion to dismiss must be denied.

ii. The Court Maintains Subject Matter Jurisdiction.

Respondents argue that this Court lacks jurisdiction under 8 U.S.C. § 1252(g). This is incorrect and has been expressly rejected in this district. Federal district courts retain authority

¹ Notwithstanding the above, Respondent maintains all parties are proper respondents in the case and the proceedings should not be terminated as to each individual party. Various courts have recognized that national-level policy making officials, such as the U.S. Attorney General, are proper respondents. *See, e.g., Santos v. Smith*, 260 F. Supp. 3d 598, 607-08 (W.D. Va. 2017); *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 723-25 (D. Md. 2016); *Somir v. United States*, 354 F. Supp. 2d 215, 217-18 (E.D.N.Y. 2005); *S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 407 (S.D.N.Y. 2018). Additionally, this Court need only find that one named respondent is proper in order to exercise jurisdiction. *Dunn v. U.S. Parole Commission*, 818 F.2d 742, 744 (10th Cir. 1987).

under 28 U.S.C. § 2241 to review the legality of immigration-related detention. Congress has expressly authorized review of unlawful detention through 28 U.S.C. § 2241. Petitioner does not seek to challenge the validity of his removal order, its existence, or the execution of the removal order. Instead, Petitioner is challenging the manner in which ICE is executing the removal order and the underlying legal bases of the decision and actions to detain him.

The U.S. Supreme Court has routinely heard habeas petitions filed by individuals who are in the removal process. *See generally Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court has continuously given 8 U.S.C. § 1252(g) a narrow reading, emphasizing that it does not impose a “general jurisdictional limitation” or prevent all claims arising from deportation proceedings. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–87 (1999); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1272 (11th Cir. 2021). The Supreme Court is clear that the 8 U.S.C. § 1252(g) bar applies only to the three delineated actions: actions to 1) commence proceedings 2) adjudicate cases, and 3) execute removal orders. Despite Respondents’ preposterous allegations, Petitioner is not challenging the legality of the removal order or the execution of the removal order but is rather challenging the improper revocation of his Order of Supervision (“OSUP”) and the legality of his detention. This is the exact purpose of habeas corpus and a basic right afforded to Mr. Flores under the U.S. Constitution. *Zavydas* makes explicitly clear that habeas petitions are the appropriate forum to challenge post removal period detention. *Zadvydas*, 533 U.S. at 688. Similarly, Mr. Flores’ request for a temporary restraining order, enjoining Respondents from continuing to detain Mr. Flores unlawfully and removing him from this jurisdiction does not bar this Court from jurisdiction as such relief is necessary to preserve irreparable harm and mootness while the Court adjudicates the legality of Mr. Flores’ detention. It does not seek to restrain any

protected discretionary decision under 8 U.S.C. § 1252(g). The typical remedy for unlawful detention is release and the core of a habeas corpus petition. *Munaf v. Geren*, 553 U.S. 674 (2008).

In addition to the U.S. Supreme Court, the Eleventh Circuit has distinguished between claims directly attacking a decision to commence, adjudicate, or execute removal, and claims challenging the underlying legal bases of those actions. *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006); *accord Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (finding that § 1252(g) does not bar “judicial consideration of collateral challenges to the legality of a petitioner’s detention”). Furthermore, previous courts have found jurisdiction to review the improper revocation of an individual’s order of supervision. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. May 2, 2025); *Grigorian v. Bondi*, 2025 WL 2604573 (S.D. Fla. Sep. 9, 2025); *Ahmed v. Freden*, 744 F. Supp. 3d 259 (W.D.N.Y. 2024); *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362 (11th Cir. 2006). Because Petitioner challenges ICE’s failure to comply with the statutory and regulatory prerequisites governing revocation of an OSUP under § 241.4(l)(2) and § 212.2 and his continued unlawful detention. Such a claim targets the “underlying legal bases” of ICE’s actions and thus fall squarely within the subject matter jurisdiction of this Court. Therefore, Respondents’ Motion to Dismiss must be denied.

II. PETITIONER’S DETENTION IS NOT LAWFUL UNDER 8 U.S.C. § 1231(a)(6) AND VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENMENT.

Respondents erroneously argue that Mr. Flores’ detention is lawful under 8 U.S.C. § 1231(a)(6) as Mr. Flores is allegedly in the United States unlawfully. Mr. Flores was paroled upon his initial arrival into the United States on May 17, 1980. Subsequent to his order of removal, Mr. Flores has been on an Order of Supervision now for over a decade. An individual is placed on an Order of Supervision when ICE and DHS have determined that removal cannot be effectuated. An

individual is authorized to obtain work authorization and remain in the United States. Moreover, when an individual is on OSUP, there are strict travel restrictions that prohibit someone's departure from the United States without prior authorization from ICE. Mr. Flores has been complying with his Order of Supervision without fail. Mr. Flores' detention is not lawful under § 1231(a)(6) as this is a post-order of removal case of an unremovable Mariel Cuban that is beyond the removal period and has already been released on OSUP. Moreover, Mr. Flores is not a risk to the community as his sole arrest occurred more than forty (40) years ago. He has never absconded or failed to appear to his supervision appointments and has lived a peaceful life. He is a cancer survivor that underwent eighteen (18) rounds of radiotherapy and requires ongoing medical attention. His family, including his 94-year-old U.S. citizen mother and U.S. citizen partner of over eleven (11) years, depend on him for care and support.

Furthermore, by alleging Mr. Flores is being detained lawfully under 8 U.S.C. § 1231(a)(6), Respondents concede Mr. Flores's detention is beyond the statutory removal period. Mr. Flores has had a final order of removal since June 1, 1991, when the Board of Immigration Appeals rendered his removal order administratively final. For the last thirty-four (34) years, ICE-ERO has been unable to effectuate Mr. Flores' removal. The ninety (90) day removal period established by 8 U.S.C. § 1231(a) has long passed, along with the 180-day period established as reasonable under *Zadvydas*, and thus even if Mr. Flores' detention were lawful under 8 U.S.C. § 1231(a)(6), which it is not, Mr. Flores must be released as his continued detention is unlawful.

8 U.S.C. § 1231(a)(1)(B) establishes that the removal period begins on the latest of the following: (i) the date the order of removal becomes administratively final; (ii) if the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order; or (iii) if the alien is detained or confined (except under an immigration process), the

date the alien is released from detention or confinement. As stated above, Mr. Flores has had a final order of removal since 1991. Thus, Mr. Flores' removal period has concluded, and any further detention is unlawful. To determine otherwise, would allow ICE-ERO to detain an individual for 180-days, release the individual, and then pick them up again the following day, commencing a new removal period. This interpretation of the law would be nonsensical and a violation of an individual's right to due process under the Fifth Amendment.

III. PETITIONER'S CLAIM UNDER ZADVYDAS IS NOT PREMATURE AS THERE IS NO SIGNIFICANT LIKELIHOOD OF REMOVAL AND HIS DETENTION IS NOT REASONABLE.

Respondents' argument that Petitioner's *Zadvydas* claim is premature ignores thirty-four (34) years of failed removal efforts. The six (6) month period established by *Zadvydas* has long passed as it has been thirty-four (34) years since the commencement of his removal period. The government cannot legally or factually state that Mr. Flores falls within the removal period now or that his *Zadvydas* claim is premature when it has been over 34 years since Mr. Flores' removal period began, and when Respondents' have stated Mr. Flores' removal falls under 8 U.S.C. § 1231(a)(6), expressly requiring the removal period to have passed. (D.E. 5, pg. 8).

Notwithstanding the above, even if the six (6) month removal period had not expired, Mr. Flores's continued detention remains unlawful. The U.S. Supreme Court in *Zadvydas* does not authorize detention for six (6) months regardless of circumstances. The decision expressly contemplates earlier judicial intervention where detention is unlawful from the outset or where removal lacks a realistic prospect. *Zadvydas*, 533 at 688–90. Courts have routinely granted habeas relief before six (6) months where detention is not meaningfully tied to removal or where procedural safeguards have been ignored. When there is no good-faith plan to effectuate removal, it become a *Zadvydas* case of "indefinite detention in disguise". See *Clark v. Martinez*, 543 U.S.

371, 384 (2005); *see generally Jennings*, 583 U.S. at 289–90. Mr. Flores has lived under a final order of removal for more than three decades. During that time, ICE repeatedly determined that removal was not reasonably foreseeable and released him under OSUP. Respondents identify no change in circumstances, no receiving country, no travel document, and no concrete steps toward effectuating removal. In fact, ICE attempted to do the same thing in 2017 when they unlawfully detained Mr. Flores for 90-days just to be released due to no possibility of removal. To allow for Respondents to detain Mr. Flores on a whim, and without any assurances of actual removal being foreseeable is unconstitutional and a violation of his due process. An individual's life and liberty are at stake and Respondents cannot take such actions on mere intangible possibilities. This sort of detention, detention that is imposed "by chance" in the hope that removal might someday become possible, is precisely what *Zadvydas* forbids. 533 U.S. at 699.

Moreover, Respondents' incorrectly attempt to shift the burden to Mr. Flores to establish there is no significant likelihood of removal. However, that burden falls squarely with Respondents. When a non-citizen released pursuant to an OSUP is re-detained for the purposes of removal, the government immediately bears the burden to show a substantial likelihood of removal in the now foreseeable future. 8 C.F.R. § 241.13(i)(2); *Escalante v. Noem*, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025); *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Tadros v. Noem*, 2025 WL 1678501 (D.N.J. June 13, 2025); *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025). Respondents have not done so in this case and cannot do so as no changed circumstances exist and Mr. Flores' removal is not reasonably foreseeable. Respondents have made no showing that there is a significant likelihood of removal. Moreover, Respondents have not even alleged that there is a significant likelihood that removal will occur in the future. They have not even raised a theoretical possibility that Petitioner

will eventually be removed. It is unlawful to detain Mr. Flores on the premise that Respondents are executing his removal order when there has been no information provided that steps have been taken or will be taken to effectuate removal. *See generally, Losada Diaz v. Parra*, No. 25-22624-CV-WILLIAMS (S.D. Fla. Jan. 25, 2026). Mr. Flores' continued detention is a violation of the Fifth Amendment right to due process.

IV. ICE FAILED TO COMPLY WITH ITS OWN REGULATION AND THE CONSTITUTION.

Furthermore, ICE has failed to follow its own procedure, regulations, and Constitution in their detention of Mr. Flores. ICE's revocation of Petitioner's OSUP violated both the letter and the spirit of 8 C.F.R. § 241.4(l). 8 C.F.R. § 241.4(l) explicitly requires that an alien be notified of the reasons for revocation of his release and afforded a prompt initial informal interview after his return to custody. These safeguards ensure that ICE affords individuals an opportunity to contest the basis for detention in a fair and timely manner. Despite Respondents' allegations, Mr. Flores was not provided an informal interview. In his declaration, Officer Cuevas states Mr. Flores was provided an informal interview. (D.E. 5-6). At no point does Officer Cuevas state when that informal interview occurred or who conducted the informal interview. Petitioner maintains he has not been provided an informal interview or an opportunity to contest his removal. Notably, Officer Cuevas' declaration is dated in the future, December 13, 2026. (D.E. 5-6). This conclusory assertion that an informal interview occurred is not sufficient to satisfy Mr. Flores' rights to due process. To date, Mr. Flores has not been provided with an informal interview and a meaningful opportunity to contest the revocation of his OSUP or the reasons behind his detention.

Furthermore, 8 C.F.R. § 241.4(b)(2) and 8 C.F.R. § 212.2 provide specific provisions regarding the revocation of release and parole of Mariel Cubans. Pursuant to the regulations, the decision to detain a Mariel Cuban lies with the Associate Commissioner of Enforcement

("Commissioner") which appoints a Director of the Cuban Review Plan. The Director must then designate a panel to make recommendations to the Commissioner. Neither in Officer Cuevas declaration, nor in the Notice of Revocation, does it state that Respondents complies with the proper regulations and review procedures provided to Mariel Cubans, nor that his detention was reviewed by a panel or the Associate Commission of Enforcement. Mr. Flores, as a Mariel Cuban, who arrived on May 17, 1980, is entitled to further protections. Not only was Mr. Flores not afforded basic constitutional due process, nor notice and an opportunity to be heard, but ICE has violated its own regulations in their detention of Mr. Flores. For over seventy-five (75) days Mr. Flores has not been provided with an opportunity to respond to the reasons for his revocation or provided the appropriate due process under the regulations. Rules must be followed to guarantee protection, and it simply has not occurred in this case. Mr. Flores' re-detention and revocation of OSUP was unlawful and a violation of his due process rights under the Fifth Amendment. Thus, Mr. Flores is likely to succeed on all counts of his habeas and he must be released.

CONCLUSION

For the foregoing reasons stated above and in the original petition, Petitioner respectfully requests this Court deny Respondents' Motion to Dismiss, grant the Petition for Writ of Habeas Corpus, and order Mr. Flores' immediate release from ICE custody. In the alternative, Petitioner requests this Court hold a hearing on Petitioner's request for a Temporary Restraining Order and Petition for Writ of Habeas Corpus.

Respectfully submitted,

/s/Linda Osberg-Braun, Esq.
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of January 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send notice of such filing to all counsel of record.

Respectfully submitted,

//s/Linda Osberg-Braun, Esq.
Counsel for Petitioner