IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Anner Ariel Cordon-Salguero, Petitioner, **v.** **Noem,** *et al.*, Respondents.	**Civil Case No. 1:25-cv-1626-GLR**

RESPONDENTS' SUR-REPLY TO PETITIONER'S APPLICATION FOR WRIT OF HABEAS CORPUS

Respondents, by and through their attorney, Thomas F. Corcoran, Assistant United States Attorney for the District of Maryland, respectfully submit this sur-reply pursuant to ECF 13 in response to Anner Ariel Cordon-Salgeuro's ("Petitioner") Petition for Writ of Habeas Corpus (the "Petition").

INTRODUCTION

Respondents will focus its sur-reply on new arguments raised by Petitioner's Reply in Support of his Petition for Writ of Habeas Corpus. ECF 12. The primary issue Respondents will address is the significant discretion afforded to Department of Homeland Security, Immigration and Customs Enforcement ("ICE") to revoke an order of supervised release.

In sum, Petitioner is a *D.V.D.* class member who is subject to the third country removal procedures ordered by the *D.V.D.* court; his claims that his detention are unlawful are premature since he has been detained for approximately one month under 8 U.S.C. §1231(a)(6) for the

purposes of effectuating his removal which is presumptively reasonable under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner's voluntary dismissal of his removal-related claims does not exclude him from the non-opt-out *D.V.D.* class.

ARGUMENT

I. The Post-Order Custody Regulations provide for revocation of release at ICE's discretion to effectuate a removal order.

While 8 U.S.C. § 1231(a)(3) is silent as to revocation procedures for an individual released pursuant to an Order of Supervision, ICE issued Post-Order Custody Regulations ("POCR") contained at 8 C.F.R. § 241.4 to set forth mechanisms concerning custody reviews, release from ICE custody, and revocation of release for individuals with final orders of removal.

The regulatory provisions concerning revocation of release are contained at 8 C.F.R. § 241.4(l) and provide significant discretion to ICE to revoke release. *See Leybinsky v. U.S. Immigration & Customs Enf't*, 553 F. Appx. 108, 110 (2d Cir. 2014) (remarking on the "broad discretionary authority the regulation grants ICE" to revoke release."); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (explaining that, while the revocation regulation "provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion . . ."). For example, they provide for revocation in additional circumstances such as when ICE's Field Office Director determines that "[t]he purposes of release have been served," or when "[i]t is appropriate to enforce a removal order . . . against an alien," or when "[t]he conduct of the alien, *or any other circumstance,* indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2)(i)-(iv) (emphasis added).

When ICE revokes release of an individual under 8 C.F.R. § 241.4(l), ICE must conduct an "informal interview" to advise the individual of the basis for revocation and must also serve the individual with a written notice of revocation. *See* Notice of Revocation of Release, ECF 8-3 at 2

(Notice to Alien of File Custody Review). If ICE determines revocation remains appropriate after conducting the informal interview, then ICE will provide notice to the individual of a further custody review that "will ordinarily be expected to occur within approximately three months after release is revoked." 8 C.F.R. § 241.4(l)(3); *see also* Notice of Revocation of Release, ECF 8-3. However, ICE is not required to "conduct a custody review under these procedures when [ICE] notifies the alien that it is ready to execute an order of removal." 8 C.F.R. § 241.4(g)(4); *Rodriguez-Guardado*, 271 F. Supp. 3d at 335. Further, if ICE determines in its "judgment [that] travel documents can be obtained, or such document is forthcoming, the alien will not be released unless immediate removal is not practicable or in the public interest." 8 C.F.R. § 241.4(g)(3).

ICE complied with the POCR regulations to arrest Petitioner.

Acting Baltimore ICE Field Office Director ("Baltimore's ICE AFOD") issued Petitioner a written Notice of Revocation of Release on May 20, 2025, explaining that ICE was revoking his release pursuant to 8 C.F.R. § 241.4 as it had determined that Petitioner could be removed from the United States pursuant to his final order of removal. *See* ECF 8-3. Baltimore's ICE AFOD determined the "[Petitioner] can be expeditiously removed from the United States pursuant to the outstanding order of removal against you.... [And] Your case is under current review by the Government of Mexico for issuance of a travel document." *Id.* The notice also provided the regulatory basis for detention (8 C.F.R. §§ 241.4 & 241.13) and notified Petitioner of the post-order custody review processes afforded him. *Id.* The Notice explained that Petitioner would be given an interview at which he could "respond to the reasons for the revocation" of supervised release and "may submit any evidence or information you wish to be reviewed." *Id.* It explained that ICE would provide notification "within approximately three months" of a new review if Petitioner was not released after his informal interview. *Id.* In making this determination,

Baltimore's ICE AFOD necessarily determined that revocation was in the public interest to effectuate a removal order. *See Nken v. Holder,* 556 U.S. 418, 435 (2009) (explaining that "[t]here is always a public interest in prompt execution of removal orders . . .").

In revoking release, ICE complied with the regulation that allows revocation when ICE determines that it "is appropriate to enforce a removal order . . . against an alien" and when ICE finds that the "purposes of release have been served." 8 C.F.R. § 241.4(l)(2). When ICE "determined that revocation was necessary to initiate [] removal … [n]o further justification was required." *Doe v. Smith*, No. 18-cv-11363-FDS, 2018 WL 4696748, at *11 (D. Mass. Oct. 1, 2018). The regulation does not require the (A)FOD "to make a formal determination that her revocation was in the public interest[,]" instead, the FOD has "discretion to determine when revocation is appropriate." *Id.* The regulation provides a "short and straight path for immigrants whom the government is ready and able to remove." *Alam v. Nielsen*, 312 F. Supp. 3d 574, 582 (S.D. Tex. 2018); *see also Ferrari v. Wilcox*, No. 19-cv-385-RSM-BAT, 2019 WL 13209736, at *5 (W.D. Wash. Sept. 24, 2019) (explaining that because ICE had "obtained a travel document[] and scheduled his removal, ICE properly revoked [petitioner's] release . . .").

Here, ICE has issued a Notice of Removal to a third country to Petitioner, ECF 8-2, and Mexico is currently reviewing Petitioner's case for the issuance of a travel document, ECF 8-3. As such, ICE has ample justification per its regulation to revoke release.

To the extent Petitioner believes ICE should have provided him with advance notice of its intent to revoke his release, such belief is not grounded in regulation or the Constitution. ICE is not required to provide advance notice of its intent to revoke release for the obvious reason that it could encourage flight or increase law enforcement safety concerns. *See Doe*, 2018 WL 4696748, at * 7 (explaining that the "regulation does not require that a petitioner or her counsel be given 30

days' notice prior to the initial informal interview."); *see also Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 929 (W.D. Tex. 2018) (finding no "due process right to not be snatched off the street without warning" when ICE revoked discretionary parole and returned individual to custody); *Reyes v. King,* No. 19-cv-8674 (KPF), 2021 WL 3727614, at *10 (S.D.N.Y. Aug. 20, 2021) (explaining that "the Due Process Clause of the Fifth Amendment does not entitle [p]etitioner to such a [pre-detetion] hearing at this specified time, and [p]etitioner cites no authority within this Circuit that counsels otherwise."); *Moran v. U.S. Dep't of Homeland Sec.*, No. 20-cv-696-DOC-JDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (expressing skepticism about "the source of any due process right to advance notice of revocation of supervised release or other removal-related detention.").

Courts routinely conclude that compliance with the POCR regulations protect an individual's constitutional rights while detained. *See, e.g.*, *Moses v. Lynch*, No. 15-cv-4168, 2016 WL 2636352, at *4 (D. Minn. Apr. 12, 2016) ("When immigration officials reach continued-custody decisions for aliens who have been ordered removed according to the custody-review procedures established in the Code of Federal Regulations, such aliens receive the process that is constitutionally required."); *Portillo v. Decker*, No. 21-cv-9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022) (collecting cases supporting the conclusion that the POCR framework has routinely been deemed constitutional and noting that petitioner had not "cite[d] legal authority in support of his generalized laments about the administrative process").

Because Petitioner does not demonstrate that ICE violated any specific procedures under the applicable regulation, his petition should be denied. *See, e.g.*, *Perez v. Berg*, No. 24-cv-3251 (PAM/SGE), 2025 WL 566884, at *7 (D. Minn. Jan. 6, 2025), *report and recommendation adopted,* No. 24-cv-3251 (PAM/ECW), 2025 WL 566321 (D. Minn. Feb. 20, 2025) (finding no

due process violation "[a]bsent an indication that ICE failed to comply with its regulatory obligations in some more specific way"); *Doe*, 2018 WL 4696748, at *7 (dismissing habeas claim where "there was no regulatory violation" in connection with custody reviews).

To the extent Petitioner asks this Court to conduct its own custody review or to analyze ICE's custody determinations, as explained by another court, "[s]uch arguments are not proper here. It is ICE's province under 8 U.S.C. 1231(a)(6) to determine whether a removable alien such as [petitioner] should be detained past the 90-day removal period" . . . as Congress has "eliminated judicial review of immigration-related matters for which ICE [] has discretion—such as flight-risk determinations." *Xie Deng Chen v. Barr*, No. 1:20-CV-7-SL, 2021 WL 2255873, at *4 (N.D. Ohio Feb. 5, 2021); *see also Tazu v. Att'y Gen. U.S.A.*, 975 F.3d 292, 297 (3d Cir. 2020) (finding that the district court lacked jurisdiction over petitioner's "challenge to his short re-detention for removal" concerning whether his release was revoked in accordance with regulation because of 8 U.S.C. § 1252(g)); *Portillo*, 2022 WL 826941, at * 7 n.9 (explaining that the court lacks jurisdiction to review ICE's POCR decisions).

As such, Petitioner's claim that ICE's arrest and detention of Petitioner violated its regulations or the Constitution fails as ICE properly exercised its ample discretion in revoking Petitioner's release.

II. ICE's Detention of Petitioner is Lawful under 8 U.S.C. § 1231(a)(6) & *Zadvydas*.

ICE has statutory authority to detain Petitioner, even outside the removal period, to effectuate his removal. As detailed in Respondents' Response, ICE may detain Petitioner under 8 U.S.C. § 1231(a)(6) because Petitioner is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as Petitioner was neither admitted nor paroled in the United States upon entry. *See* Resp. at 10-11. That ICE seeks to remove Petitioner to a third country does not alter the analysis because

§ 1231(b)(1)(C) authorizes Petitioner's removal to a third country and detention to carry out that removal is lawful under § 1231(a)(6).

Additionally, ICE's detention of Petitioner is consistent with *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner concedes, as he must, that *Zadvydas* sets forth the framework for analyzing Petitioner's challenge to his present detention. Opp. at 4 n.4. Petitioner further concedes that government may continue to detain noncitizens after expiration of the removal period where reasonably related to securing the noncitizen's removal from the United States. *See* Opp at 3-4, citing *Zadvydas*, 533 U.S. at 682. Petitioner further concedes that six months is a presumptively reasonable period, entitling Respondents at least 180 days to try to effectuate removal. Opp. at 7.

Petitioner has not provided by means of evidence "good reasons to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Instead, Petitioner surmises difficulty from language in the Notice of Revocation of Release, indicating that Petitioner's "case is under review by the Government of Mexico for issuance of a travel document." However, Petitioner conveniently overlooks language in the same Notice, stating "ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you." ECF 8-3. Further, the Notice of Removal (ECF 8-2) indicates that ICE intends to remove Petitioner to Mexico. Plaintiffs' speculation about the Government of Mexico's process for issuance of a travel document is not evidence capable of rebutting the six-month presumption under *Zadvydas*. As such, his claims of unconstitutional detention fail. *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established.").

CONCLUSION

For this additional reason, the Court should dismiss the Petition, stay consideration of the Petition, or deny relief.

Dated June 16, 2025

Respectfully Submitted,

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