UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

Nelson Ariel Umanzor-Chavez, *Petitioner*, v. Kristi Noem, *el al.*, *Respondents.*	)	Civ. No. 8:25-cv-01634-SAG

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS
AND
REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

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Introduction

Respondents' memorandum, and the evidence filed in support thereof, establish that they are currently detaining Petitioner for no reason whatsoever. In 2019, Petitioner was granted withholding of removal to El Salvador under the Convention Against Torture (CAT). He had been at liberty on an Order of Supervision ever since, with no violations and no further criminal arrests, before Respondents arrested him by surprise at a routine supervision appointment three weeks ago. Respondents disclaim any effort to commence legal proceedings to lift that order of withholding of removal so that Petitioner can be removed to El Salvador. They have designated Mexico for possible third-country removal, but without any articulable facts that the government of Mexico will accept Petitioner for removal and allow him to remain there without re-deporting him to El Salvador (a necessary condition since chain refoulment is prohibited by the CAT).

In sum, Respondents have yet to identify any factual basis for Petitioner's arrest and detention; a full three weeks after arresting Petitioner, they are still in the process of determining *whether* he might be removable to Mexico, which determination they were required to make *before* arresting and placing him behind bars. Petitioner's detention violates the law, and the writ of habeas corpus should issue.

Facts

Petitioner Nelson Ariel Umanzor-Chavez is a native and citizen of El Salvador; he has no basis for any immigration status in any other country. *See* Ex. A (Declaration of Nelson Ariel Umanzor-Chavez) at ¶ 1. He lives in District Heights, Md. with his U.S.-citizen wife and U.S.-citizen stepson. *Id.* ¶ 2.

On May 16, 2019, Petitioner was ordered removed from the United States, but granted an order of withholding of removal to his native El Salvador. Dkt. 1-1. At that time, an order of withholding of removal practically guaranteed that the recipient would be allowed to remain in the

United States indefinitely. *Johnson v. Guzman Chavez*, 594 U.S. 523, 552-53 (2021) ("Studies have also found that, once withholding-only relief is granted, the alien is ordinarily not sent to another, less dangerous country. Rather, the alien typically remains in the United States for the foreseeable future. . . . only 1.6% of noncitizens granted withholding-only relief were ever actually removed to an alternative country." (Breyer, J., dissenting)).[1]

18 days later, on June 3, 2019, Petitioner was released from ICE custody. Ex. B (Release Notification and Order of Supervision). The Order of Supervision required him to check in with ICE annually, and Petitioner complied without fail. *Id.*; Ex. A at ¶ 6. As a condition of his Order of Supervision, Petitioner was also given an employment authorization document pursuant to 8 C.F.R. § 274a.2(a)(10), with which he works legally in the United States. At no time did ICE ask Petitioner to take any specific steps to facilitate third-country removal, *see* Ex. A at ¶ 7.

On May 21, 2025, Petitioner presented at the Baltimore ICE office for a routine check-in, when his Order of Supervision was canceled and he was arrested without any forewarning; he

[1] This Court has recently seen a raft of habeas corpus petitions filed by individuals previously granted orders of withholding of removal now redetained by ICE, precisely because such re-detentions were previously almost unheard-of. The first such individual was Kilmer Abrego Garcia, who was granted withholding of removal in 2019, then re-detained in 2025 without prior warning and erroneously deported to the country from which he had been granted withholding. *See Abrego Garcia v. Noem*, 2025 WL 1024654 (D. Md., April 4, 2025). After the Abrego Garcia affair, no others have been erroneously removed, but large numbers have been re-detained without prior warning under identical circumstances, supposedly for removal to a third country but in fact without any travel documents issued by any third country. *See, e.g.*, *Hernandez-Campos v. Noem*, Civ. No. 1:25-cv-1020 (D. Md., filed March 27, 2025) (withholding of removal granted Jan. 30, 2023; re-detained without prior warning on March 27, 2025); *Cordon-Salguero v. Noem*, Civ. No. 1:25-cv-1626 (D. Md., filed May 20, 2025) (order of withholding of removal granted May 8, 2018; re-detained without prior warning on May 20, 2025); *Servellon Giron v. Noem*, Civ. No. 2:25-cv-6301 (D.N.J., filed May 30, 2025) (withholding of removal granted June 4, 2014; re-detained in Baltimore without prior warning on May 21, 2025); *Cruz-Medina v. Noem*, Civ. No. 1:25-cv-1768 (D. Md., filed June 3, 2025) (withholding of removal granted March 6, 2019; re-detained without prior warning on June 3, 2025); *Santamaria Orellana v. Baker*, Civ. No. 1:25-cv-1788 (D. Md., filed June 6, 2025) (withholding of removal granted April 17, 2023; re-detained without prior warning on June 4, 2025).

remains detained today. Dkt. 7-2; Ex. A at ¶ 8. Petitioner was also served with a notice that ICE would intend to remove him to Mexico. Dkt. 7-1.[2] That same day, Petitioner, by immigration counsel, expressed a fear of return to Mexico and requested a Reasonable Fear Interview, *see* Dkt. 1-3 at ¶ 4; Ex. C (Reasonable Fear Interview request). Over three weeks later, no such interview has been scheduled—indeed, ICE has not even referred the matter to USCIS to schedule an interview. *See* Ex. A at ¶ 8, Ex. D (June 9, 2025 email from USCIS Asylum Office, District 3).

Legal Background

"Jurisdiction over an action under [28 U.S.C.] § 2241 lies in the federal district court where the petitioner is incarcerated or in the federal district court where the petitioner's custodian is located. The district of incarceration is the only district that has jurisdiction to entertain a § 2241 petition. This requirement is determined *at the time the petition is filed.*" *Ihezie v. Holder*, 2010 WL 358763, at *1-2 (D. Md. Jan. 25, 2010) (emphasis in original, internal citations omitted).

An individual granted withholding of removal under the CAT is ordered removed from the United States, but cannot be removed to the country from which removal has been withheld, 8 C.F.R. § 1208.16(c), unless such withholding is subsequently terminated by means of further legal proceedings, 8 C.F.R. § 1208.24(f). Such individual may also be removed to any third country, even one with which they have no connection, but only if the government of such country "will accept the alien into that country[.]" 8 U.S.C. § 1231(b)(2)(E)(vi). Before such removal can take

[2] It is inaccurate to state that Petitioner "was served with a notice that he *would be* removed to a third country—Mexico." Dkt. No. 7 at 3. The "Notice of Removal," Dkt. No. 7-1, states that ICE "*intends* to remove you to Mexico" emphasis added), and the Notice of Revocation of Release, Dkt. No. 7-2, states, "Your case is under current review by the Government of Mexico for issuance of a travel document." In other words, the evidence establishes that Respondents *would like* to remove Petitioner to Mexico, but does not purport to advise Petitioner that they *are presently able* to remove him to Mexico, or even that they *expect that they will be able to* remove him to Mexico by any particular date. Certainly, Respondents must concede that no travel documents have issued.

place, the government must provide the individual with an opportunity to apply for protection from torture or persecution as to that third country as well. *D.V.D. v. DHS*, 2025 WL 1142968 (D. Mass., Apr. 18, 2025).[3] These procedures begin with written notice of the third country designated for removal, after which the noncitizen may request a Reasonable Fear Interview. *Id.* at *24. By regulations, a Reasonable Fear Interview must take place within ten days. 8 C.F.R. § 208.31(b); *D.V.D. v. DHS*, 2025 WL 1453640, at *1 (D. Mass., May 21, 2025).

When an individual is ordered removed, 8 U.S.C. §1231(a) permits the government to detain them during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). With two exceptions not relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). The 90-day removal period is tolled and extended only if "the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). The statute contains no other provision for pausing, re-initiating or refreshing the removal period after the 90-day clock to zero.

After the removal period expires, the government may continue to detain certain noncitizens, including noncitizens with aggravated felony convictions. 8 U.S.C. § 1231(a)(6). However, this broad authority is subject to an important constitutional limitation, which the Supreme Court has read into the statute: detention beyond the removal period is permissible only where reasonably related to a legitimate government purpose, namely, securing the noncitizen's physical removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).[4] Where

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[3] *D.V.D.* recognizes "chain refoulement, whereby the third country proceeds to return an individual to his country of origin," as equally impermissible under the CAT. 2025 WL 1142968, at *22.

[4] Respondents agree that *Zadvydas* sets out the governing legal framework for Petitioner's

there is no possibility of removal, detention presents due process concerns because "the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Id.* at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *Id.* at 689. Because the *Zadvydas* Court understood Congress to have recognized that not all removals can be accomplished in 90 days, the Court established a rebuttable presumption that six months could be deemed a "presumptively reasonable period," after which the burden shifts to the government to justify continued detention by means of evidence if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Argument

I. Since Petitioner challenges his detention, not removal, relief requested herein is not covered by the *D.V.D.* class action.

Respondents' argument that this action should be dismissed due to Petitioner's membership in the *D.V.D.* class is not well-taken. The *D.V.D.* preliminary injunction only covers removal and the procedures by which the government must give notice and opportunity to seek relief therefrom; it does not cover issues related to detention pending such procedures. *D.V.D.*, 2025 WL 1142968; *D.V.D. v. DHS*, 2025 WL 1323697 (D. Mass., May 7, 2025); *D.V.D.*, 2025 WL 1453640. *See also E.D.Q.C. v. Warden, Stewart Det. Ctr.*, 2025 WL 1575609, at *5 (M.D. Ga. June 3, 2025) ("The Court disagrees that a stay of the case or of discovery is appropriate pending resolution of *D.V.D.* While there is some overlap of the legal issues involved, *D.V.D.* is not a habeas action and release from custody is not one of the remedies requested . . . . In contrast, Petitioner's habeas petition is—at its core—a request for relief from prolonged post-final order of

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challenge to his present detention. Dkt. No. 7 at 11.

removal detention pursuant to *Zadvydas*[.]").

Respondents' jurisdictional arguments are equally inapposite to a habeas corpus petition challenging detention, not removal. *Zadvydas* held that notwithstanding 8 U.S.C. § 1252(g), "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." 533 U.S. at 688.[5] Likewise, the Supreme Court subsequently held that 8 U.S.C. § 1252(b) does not strip habeas jurisdiction over challenges to detention. *Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018).

For this reason, the Court should reject Respondents' request to dismiss or stay this action.

II. Respondents' detention of Petitioner violates *Zadvydas*, as removal is not reasonably foreseeable.

a. This habeas petition, filed nearly six years after the expiration of the removal period, is not premature.

Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) expired on August 14, 2019, and the 180-day presumptively reasonable period under 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas*, expired on November 12, 2019—nearly six years ago. Petitioner was placed on an Order of Supervision on June 3, 2019, *see* Ex. B. Respondents' contention that Petitioner's habeas claim is premature because he has not spent a cumulative 180 days behind bars in ICE detention since his removal order misreads *Zadvydas*.

As *Zadvydas* explained, after the 90-day removal period ends, the government "'may' *continue to detain* an alien who still remains here or release that alien under supervision." 533 U.S. at 683 (emphasis added). The Supreme Court's decision put limits on the option of continuing to detain—the detention could only *continue* for "a period reasonably necessary to bring about that

[5] With regards to removal, 8 U.S.C. § 1252 does not strip jurisdiction over a challenge to a removal that is explicitly barred by the statute. *Abrego Garcia v. Noem*, 2025 WL 1021113 (4th Cir., Apr. 7, 2025), aff'd, *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025).

alien's removal from the United States." *Id.* at 689. But the decision does not curtail the rights of those already previously subjected to the latter option, having been released under supervision.

The basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. In so doing, the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700. This is a present-tense analysis looking forward to what is likely to happen in the reasonably foreseeable future, not a past-tense analysis as to how long the detention has lasted and for what reasons. *Contra Jarpa v. Mumford*, 211 F. Supp. 23d 706 (D. Md. 2016) (for noncitizens yet to receive an order of removal, the length of past detention and the reasons that detention has become prolonged are dispositive to the due process analysis). Under *Zadvydas*, after 180 days have elapsed since the start of the removal period, even just one additional day of post-removal-period detention could be found unreasonable if not justifiable by the statute's basic purpose of assuring the noncitizen's presence at the moment of removal.

Because the *Zadvydas* Court understood Congress to have recognized that not all removals can be accomplished in 90 days, the Court established that six months could be deemed a "*presumptively* reasonable period," *id.* at 701 (emphasis added). But a presumption is just that, and this does not mean that a habeas petitioner *must* be detained for a total of six months, spread over five years, as if it were a matter of punching enough holes on a punchcard to earn a free sandwich. Of course, the government is entitled to 180 days to try to effectuate removal, but Respondents' argument that each one of those 180 days only counts if it was spent behind bars presupposes that removal efforts can take place only while a noncitizen is detained. Although this may well be

current ICE *practice*, thus explaining why Respondents arrested Petitioner *before* determining whether Mexico might issue travel documents, it is certainly not the law. Respondents have had more than five years to work on removal, with Petitioner on an Order of Supervision throughout.

As the District of New Jersey recently held in a nearly identical case, *Tadros v. Noem*, No. 25cv4108 (EP), Dkt. No. 9 (June 13, 2025), attached hereto as Ex. E:

> Tadros has the better argument under *Zadvydas*. The 90-day removal period under 8 U.S.C. § 1231(a)(1)(B) was triggered [when the grant of relief under the CAT became administratively final]. Tadros was released two days later. Tadros's release suggests he was determined not to present a flight risk, and that the Government was unlikely to find a third country to accept him in the reasonably foreseeable future. Further, Tadros has demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing a third country for his removal. Respondents' sole statement that "ICE has been making efforts to facilitate Petitioner's removal to a country other than Egypt" is insufficient to rebut the presumption established by Tadros.

Slip Op. at 7. *See also Alam v. Nielsen*, 312 F. Supp. 574, 581-82 (S.D. Tex. 2018) (rejecting the argument that the Section 1231(a)(1)(A) removal period is restarted when an Order of Supervision is revoked for the purposes of removal).

Respondents' cited cases, Dkt. No. 7 at 12, none of which are controlling on this Court, do not militate to the contrary. *See Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331 (D. Mass. 2017) (removal period extended by four years due to noncitizen seeking and obtaining stays of removal, through March 2017; habeas petition filed only three and a half months after expiration of removal period, on July 13, 2017); *Julce v. Smith*, 2018 WL 1083734, at *5 (D. Mass., Feb. 27, 2018) (court's *ipse dixit* that "[b]ecause only three months have elapsed, a claim under *Zadvydas* is premature at best," but without any analysis); *Farah v. Atty' Gen.*, 12 F.4th 1312, 1332 (11th Cir. 2021) (applying 8 U.S.C. § 1231(a)(1)(B)(ii), holding limited to "the detention of an alien whose removal has been stayed pending a final order from the reviewing court").

For the foregoing reasons, this Court should not credit Respondents' argument that this petition was filed prematurely, and should find jurisdiction over the matter and determine the merits of the habeas petition under *Zadvydas*.

b. The evidence in the record establishes no significant likelihood that Petitioner will be removed in the reasonably foreseeable future.

Respondents do not claim that Petitioner *will* be removed from the United States in the reasonably foreseeable future, but rather that Petitioner's "case is under current review by the Government of Mexico for issuance of a travel document." Dkt. 7-2. In other words, Mexico has not yet determined whether to accept Petitioner for removal. As Petitioner explains, he does not have any claim to legal immigration status in Mexico, Ex. A at ¶¶ 1, 9; Respondents provide no articulable facts to show that Mexico will accept Petitioner for removal.

In the alternative, even if Mexico were to accept Petitioner for removal, it would only be as a deportation waystation to El Salvador, the one country on earth where Petitioner legally may not be removed. Ex. A at ¶ 9 *see D.V.D.*, 2025 WL 1487238, at *2 (petitioner granted withholding of removal to Guatemala was removed to Mexico, which in turn promptly removed him to Guatemala).[6] Accordingly, Petitioner is highly likely to prevail in his *D.V.D.* proceedings seeking protection from removal to Mexico, and therefore will not be removed from the United States.

Petitioner has therefore met his burden of proof to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533

[6] *See also* Jennifer Sinco Kelleher, "Guatemalan man deported to Mexico returns to US after court orders Trump administration to do so," AP News (June 4, 2025), *available at* https://apnews.com/article/immigration-deportation-guatemala-trump-return-64602344d97ef93529ef5f21b4fd5807 ("The man, who is gay, was protected from being returned to his home country under a U.S. immigration judge's order at the time. But the U.S. put him on a bus and sent him to Mexico instead . . . . Mexico later returned him to Guatemala, where he was in hiding, according to court documents.").

U.S. at 701. Respondents' only response to this is that Petitioner's "case is under current review by the Government of Mexico for issuance of a travel document." Dkt. No. 7-2. Such conclusory statement gives no indication of what such review consists of, nor whether or when such review might conclude, nor why Respondents believe such review would conclude with the issuance of said travel documents. In addition, under *D.V.D.*, before Respondents can remove Petitioner to Mexico, they must establish not only that Mexico will *accept* Petitioner onto its territory (travel documents) for immediate re-deportation to El Salvador, but that Mexico will allow Petitioner to *remain* at liberty in that country (a lawful immigration status); Respondents do not even claim to be seeking a lawful immigration status for Petitioner in Mexico.

In other words, three weeks after arresting a man by surprise, Respondents are still determining *whether* they may lawfully remove Petitioner to Mexico; they don't have any specific reason to believe they *will* be able to, but they haven't given up hope that they *might* be able to. This does not suffice to meet the government's burden to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. *See also Singh v. Whittaker*, 362 F. Supp. 3d 93, 101-102 (W.D.N.Y. 2019) (finding petitioner's continued detention unreasonable where the court was left to guess "whether deportation might occur in ten days, ten months, or ten years.").

Since the 90-day removal period and the 180-day presumptively reasonable post-removal-period detention elapsed more than five years prior, Respondents lacked legal basis to re-detain Petitioner absent evidence that he was a danger to the community or a flight risk, or that they had newly obtained means by which to actually remove him from the United States, which, again, they do not claim. *See You v. Nielsen*, 321 F. Supp. 3d 451, 462 (S.D.N.Y. 2018) (after the removal period, where a noncitizen is released on an Order of Supervision, he cannot be re-detained except upon a finding of danger to the community or flight risk); *Farez-Espinoza v. Chertoff*, 600 F. Supp.

2d 488, 502 (S.D.N.Y. 2009) ("because the removal period and any presumptively reasonable detention period has expired, and the removal period was not tolled pursuant to § 1231(a)(1)(C), this Court finds that the Respondents are without statutory authority to detain Farez-Espinoza."). Petitioner has met his burden under *Zadvydas* to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and Respondents have failed to "respond with evidence sufficient to rebut that showing." 533 U.S. at 701. Continued detention is impermissible under the statute, and the writ of habeas corpus should issue.

c. Five years of successful supervision creates a constitutionally protected presumption against re-detention.

This Court should recognize that when the government has already determined through five years of actual experience that supervised release adequately serves its interests, a powerful constitutional presumption arises against re-detention absent extraordinary circumstances not present here. *Zadvydas* established that after six months, detention becomes presumptively unreasonable because extended detention without removal prospects serves no legitimate government purpose. 533 U.S. at 701. But *Zadvydas* addressed only initial detention immediately following a removal order; it did not contemplate the government's attempt to re-imprison someone after years of demonstrably successful supervised release. This case presents that precise issue.

The logic is compelling: If six months of detention creates a presumption that further detention is unreasonable, then five years of successful supervision must create an even more powerful presumption that detention is unnecessary. The government has conducted a real-world experiment proving that Petitioner poses no flight risk or danger while on supervision. He appeared at every check-in, maintained employment, married a U.S. citizen, raised his U.S.-citizen stepchild, and built deep community ties. *See* Ex. A at ¶ 2. This empirical evidence gathered by the government itself over five years definitively rebuts any theoretical justification for detention.

Zadvydas, 533 U.S. at 690 (detention not permissible where it "no longer bears a reasonable relation to the purpose for which the individual was committed," quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972))

The government has successfully monitored Petitioner for five years while having the option to explore removal options; nothing has changed except ICE's sudden desire to detain first and justify later—precisely the arbitrary government action the Due Process Clause forbids. Having induced Petitioner's reliance through five years of supervised release—during which he built a life, career, and family—the government cannot now claim detention is suddenly "necessary" without extraordinary justification, which it utterly lacks.

Constitutional principles demand heightened scrutiny when the government reverses course after extended periods. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (requiring "more substantial justification" when "new policy rests upon factual findings that contradict those which underlay its prior policy"). Likewise, in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), the Court recognized that the "degree of potential deprivation" affects what process is due. Here, the deprivation is severe: not merely liberty, but the destruction of five years of authorized community integration. Similarly, in *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), the Court noted that revocation of conditional liberty requires heightened procedural protections precisely because the individual has demonstrated successful reintegration.

The government claims unfettered discretion to oscillate between release and detention indefinitely, turning liberty into a cruel game of catch-and-release. But the Constitution does not permit the government to treat human beings as yo-yos, jerked between freedom and captivity at bureaucratic whim. Once the government determines through extended experience that supervision adequately protects its interests, re-detention requires justification proportional to the liberty

interest created: here, five years' worth. This Court should therefore hold that where an individual has been successfully supervised for years following a removal order, the government bears an extraordinary burden to justify re-detention. It must show either a fundamental change in circumstances making removal imminent (not merely speculative), or new evidence of dangerousness or flight risk that was not previously known. Respondents have shown neither.

III. Respondents' arrest of Petitioner violated regulations designed to ensure Petitioner's right to due process, thus violating the *Accardi* doctrine.

Respondents furthermore violated regulations as well as the statute. 8 C.F.R. § 241.4(l)(1)[7] allows an Order of Supervision to be revoked only where the noncitizen "violates the conditions of release." No such violation is found on the evidence here. *See* Dkt. Nos. 7-1, 7-2; Exs. A, B. That regulation goes on to provide, "Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole." This did not happen here: again, the Notice of Revocation of Release (Dkt. No. 7-2) does not specify any violations of the Order of Supervision, it merely states that "[y]our case is under current review by the Government of Mexico for issuance of a travel document." The only arguable regulatory basis for revocation is 8 C.F.R. § 241.4(l)(2)(iii), which allows re-detention when "[i]t is appropriate to enforce a removal order";

[7] 8 C.F.R. § 241.13(i) does not apply to this Petitioner, because that subsection of regulation only applies to noncitizens who were released "under this section." Section 241.13 applies to individuals detained past the 90-day removal period whose detention status is reviewed by the Headquarters Post-order Detention Unit. 8 C.F.R. §§ 241.13(a), (b)(2). Here, before his recent re-arrest and revocation of his Order of Supervision, Petitioner was never previously detained past the 90-day removal period, and his Order of Supervision was issued by a low-level ICE official in the Baltimore Field Office pursuant to Section 241.4, not a headquarters-level officer pursuant to Section 241.13. Section 241.13 simply never applied to his case. In any event, the Section 241.13 revocation of release provisions also require that "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release," and that "[t]he 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," neither of which happened here. 8 C.F.R. § 241.13(i)(3).

but, as explained above, the removal order was not executable at the time the Notice of Revocation of Release was issued, and now three weeks later still remains unexecutable.

The regulation furthermore only allows an Order of Supervision to be revoked by "the Executive Associate Commissioner"; a district director may revoke release only when certain findings are made, specifically, "revocation is in the public interest ***and*** circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(l)(2) (emphasis added). Here, the Notice of Revocation of Release does not contain either finding—that revocation is in the public interest, nor that circumstances do not reasonably permit referral to the Executive Associate Commissioner. Dkt. No. 7-2. Making matters worse, here the Notice of Revocation of Release *was not even signed by* the District Director, it was signed by a deportation officer "for" Respondent Baker. *Id.* By listing out specific officials entitled to revoke release, the regulation excludes other individuals from revoking release. In other words, if *any* ICE official could revoke release by doing it "for" a designated official, the entire subsection of regulation authorizing only specific senior-level ICE officials to revoke release is nugatory. *See United States v. Menasche*, 348 U.S. 528, 538–39 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute,' … rather than to emasculate an entire section, as the Government's interpretation requires.").

Finally, and of critical importance to the due process analysis, the regulation provides, "The alien will be afforded 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." 8 C.F.R. § 241.4(l)(1). Here, the Notice of Revocation of Release states that such interview "will promptly be afforded," *id.*; but three weeks thereafter, no such interview has been scheduled. Ex. A at ¶ 8. Although the regulation does not proscribe a specific number of days to

schedule the interview, three weeks is well outside the bounds permitted under the Due Process Clause for post-arrest due process review. *See, e.g.*, *Vasquez Perez v. Decker*, 2020 WL 7028637, at *18 (S.D.N.Y. Nov. 30, 2020) (requiring hearings "within 10 days of an individual's arrest by ICE"); *Cancino Castellar v. McAleenan*, 388 F. Supp. 3d 1218, 1240-41 (7 days); *Padilla v. ICE*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (7 days). *See generally Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.").

Likewise, 8 C.F.R. § 208.31(b), which requires Petitioner's Reasonable Fear Interview to explain his fear of removal to Mexico to be scheduled within ten days, has been violated here: three and a half weeks after the date of detention, no interview has even been *requested* by ICE, much less scheduled by USCIS.[8] *See* Ex. D. Indeed, in *each and every case* pending before this Court cited *supra* in n.1, the government has violated this regulation by failing to schedule a Reasonable Fear Interview, several weeks after the petitioner stated reasonable fear. *See, e.g.*, *Hernandez-Campos v. Noem*, Civ. No. 1:25-cv-1020, Dkt. No. 24 at ¶¶ 13, 18 (habeas corpus petition filed on March 27, 2025; Mexico designated as third country on May 8, 2025; petitioner requested Reasonable Fear Interview on May 8, 2025, still not scheduled as of June 5, 2025).

The Supreme Court has stressed the importance of the government following these very regulations. "Federal law governing detention and removal of immigrants continues, of course, to be binding as well." *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Sotomayor, J., concurring), *citing* 8 U.S.C. § 1226(a) (requiring a warrant before a noncitizen "may be arrested

[8] A noncitizen may not directly request that USCIS schedule a Reasonable Fear Interview, ICE must request that USCIS schedule one. *See* https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-reasonable-fear-screenings ("Q. When do reasonable fear interviews take place? A. Within 10 days after ICE refers your case to the asylum office.").

and detained pending a decision" on removal); 8 C.F.R. § 287.8(c)(2)(ii) (2024) (requiring same); 8 C.F.R. § 241.4(*l*) (in order to revoke conditional release, the Government must provide adequate notice and "promptly" arrange an "initial informal interview . . . to afford the alien an opportunity to respond to the reasons for the revocation stated in the notification").

Under the *Accardi* doctrine, "when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid." *Nader v. Blair*, 549 F.3d 953, 962 (4th Cir. 2008), citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). This Court applied the *Accardi* principle to ICE detention in *Sanchez v. McAleenan*, 2024 WL 1256264, at *7 (D. Md., Mar. 25, 2024), holding:

> Defendants' violation of their own regulations violates the *Accardi* doctrine and, in turn, due process. . . . The *Accardi* opinion implies that any violation by an agency of its own regulations, at least one that results in prejudice to a particular individual, offends due process even where the Court engaged in no independent analysis of the nature of Accardi's interest. The *Accardi* doctrine provides that when an agency fails to follow its own procedures and regulations, that agency's actions are generally invalid. The *Accardi* doctrine applies with particular force where the rights of individuals are affected. The doctrine's purpose is to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures. The Due Process Cause is implicated where an individual has reasonably relied on agency regulations promulgated for his guidance or benefit and has suffered substantially because of their violation by the agency.

(Internal citations and quotation marks omitted.) Here, Respondents violated regulations that were clearly put in place to protect the due process rights of individuals like Petitioner, and this violation prejudiced Petitioner as set forth herein. The *ultra vires* re-arrest of Petitioner violated his due process rights and must be set aside under *Accardi*.

Several federal district courts have held that where ICE revokes an Order of Supervision without following the procedures set forth in these regulations, such revocation violates due process and the post-removal-period statute. *See Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025) (finding violations of statute, regulations, and due process

where ICE revoked Order of Supervision and detained noncitizen without advance notice and opportunity to be heard); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (same). In *Ceesay*, the court explained, "This case raises the question of whether a noncitizen subject to a final order of removal and released on an order of supervision is entitled to due process when the government decides—in its discretion—to revoke that release. The Court answers that question simply and forcefully: Yes." 2025 WL 1284720, at *1. Although ICE possessed an *executable* travel document for Mr. Ceesay (unlike Petitioner here), the Western District of New York still concluded that the failure to follow the Section 241.4(l)(1) requirements prior to and immediately after revoking his release violated warranted release. *Id.* at *20-*21. Likewise, in *Rombot*, the District of Massachusetts explained, "If ICE intended to revoke Rombot's release, it was required to follow the procedures set out in 8 C.F.R. § 241.4. It did not." 296 F. Supp. 3d at 387. As a result, the court found, "[b]ased on ICE's violations of its own regulations, the Court concludes Rombot's detention was unlawful," and that "ICE also violated the Due Process Clause of the Fifth Amendment when it detained Rombot[.]" *Id.* at 388. The same result should apply here.

For the foregoing reasons, Petitioner has established that Respondents' violations of the re-detention provisions of 8 C.F.R. § 241.4(l) violated the *Accardi* doctrine, as well as his due process rights. The Notice of Revocation should be vacated, and the Order of Supervision restored.

* * *

To get down to brass tacks: Respondents want to remove Petitioner to Mexico, Petitioner intends to contest such removal through available legal processes, the outcome is unknown but likely to favor Petitioner, and even if Respondents prevail in those legal processes it is doubtful that Mexico will actually accept Petitioner for removal. The law does not require Petitioner to be detained while such matters play out, and Respondents have not justified detention under *Zadvydas*

or under the regulations. The fundamental principle of *Zadvydas* is that while the government may detain a noncitizen to actually remove him, the government may not detain a noncitizen in order to do nothing at all with him; this is what is happening here, nothing at all. The re-arrest was unlawful, as is continued detention, and the writ of habeas corpus should issue.

Conclusion

For the foregoing reasons, Petitioner has met his burden of showing that his detention lacks any factual basis, since Respondents have not shown a significant likelihood of removal in the reasonably foreseeable future. Petitioner has furthermore shown that his arrest was carried out in an unlawful manner, violating required procedures and due process. The writ of habeas corpus should issue, and this Court should order that Respondents be released from detention forthwith and restored to his Order of Supervision.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: June 16, 2025

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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: June 16, 2025

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