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

Reply Memorandum in Support of Amended Petition for Writ of Habeas Corpus

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Introduction

Over two months after taking Petitioner into custody, and more than two weeks after the habeas corpus hearing on this matter, Respondents are no closer to obtaining travel documents to Mexico than they were on the day they arrested him by surprise at a routine ICE check-in. Petitioner is currently detained on a wish, but not an expectation, that Respondents might one day be able to remove him to Mexico. Meanwhile, a recent government filing in another litigation shows that Mexico has now entirely stopped giving out travel documents to Central Americans in cases of this nature. Petitioner has proven that there is no significant likelihood of removal in the reasonably foreseeable future, and continued detention is impermissible.

Respondents also have no good answer to Petitioner's argument that his Order of Supervision was revoked by a low-level ICE agent who lacked authority to do so. The regulations give the authority to revoke an Order of Supervision specifically to one headquarters-level ICE official; revocation authority may also be exercised by a field office director only upon certain findings, none of which were actually made in this case. Respondents point to a broad and generalized delegation of immigration enforcement authority within ICE, but this document does not purport to delegate *this particular* revocation authority to line-level ICE agents; even if it did purport to delegate this authority on a blanket basis, such delegation would be *ultra vires* to the regulation, which, again, requires certain findings to be made in order for delegation to occur. Petitioner's *Accardi* claim prevails, and the revocation of his Order of Supervision should be set aside.

Procedural History

This matter was filed on May 21, 2025, the same day Petitioner was taken into custody. Dkt. No. 1. After briefing and argument, this Court allowed Petitioner to file an Amended Petition for Writ of Habeas Corpus, in order to adequately plead claims relating to regulatory violations

under the *Accardi* doctrine. Dkt. No. 12-2 (Amended Petition); Dkt. No. 15 (docketing the Amended Petition). As ordered by this Court, Respondents have now filed their Response to the Amended Petition. Dkt. No. 18.

Pursuant to this Court's Order, Dkt. No. 17, Petitioner hereby files his reply memorandum and evidence in support thereof. "Whereupon, the matter [is now] fully briefed and ready to be decided by the Court without further briefing, argument, or hearing." *Id.*

Argument

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

As argued in Petitioner's first reply brief, Dkt. No. 8 at 5-6, 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.

Even the unpublished cases provided by Respondents agree. *See* Dkt. 18-1, *Ghamelian v. Baker*, Civ. No. SAG-25-02106, 2025 WL 2049981, slip op. at 5 (finding that *D.V.D.* class membership prevents review only of "claims relating to [] potential third country removal"); *Tanha v. Warden*, Civ. No. 1:25-cv-2121-JRR, slip op. at 8 (finding detention-related claims to "fall outside those subject to the *D.V.D.* class claims" and to be "properly before the court regardless of such class membership.").

For the foregoing reasons, Petitioner's *D.V.D.* class membership does not bar this Court from reviewing claims related to the lawfulness of his continued detention or the lawfulness of the revocation of his Order of Supervision.

II. Respondents' detention of Petitioner violates *Zadvydas*, as there is no significant likelihood of removal in the reasonably foreseeable future.

The government absolutely has the right to detain a noncitizen with a final order of removal in order to remove that noncitizen, no matter how long ago the removal order was entered. This much is not in doubt. Petitioner's contention in this litigation is a modest one: once the initial 180-day *Zadvydas* period has passed, the government must have some objective reason (not just a subjective desire) to believe that removal is *at all possible* before it can lock up a human being, by surprise, without any due process review, for six months.

Here, the government has not bothered to put forward one shred of evidence that it actually *expects* to be able to remove Petitioner. To the contrary, the government has not contested Petitioner's repeated factual showings that he is not removable to Mexico.[1] Respondent makes no argument on the facts regarding likelihood of removal, their sole argument is a jurisdictional one: that a Zadvydas analysis is premature since 180 days have not yet elapsed since Petitioner was re-detained.

Petitioner's prior factual showings are now bolstered by a government filing in another similar litigation confirming that Mexico is no longer issuing travel documents to Central Americans. *See* Supplemental Filing, *Sanchez-Hernandez v. Figueroa*, Dkt. No. 20 (D. Ariz., July 15, 2025), attached hereto as Ex. B. In that pleading, the government explains, "[T]he Government was informed by counsel for U.S. Immigration and Customs Enforcement that Mexico had indicated it would no longer agree to third country removals, despite its prior agreement to do so.

[1] Why, then, did the government arrest Petitioner? Sworn testimony from a high-level ICE official in another case before this court shows that ICE's practice in cases of this nature is to arrest first and come up with a reason thereafter: third-country removal plans are determined only after a noncitizen is taken into custody. *Abrego Garcia v. Noem*, No. 8:25-CV-00951-PX, 2025 WL 2062203, at *5-*6 (D. Md., July 23, 2025).

. . . **As of today's date, Mexico is still generally declining to accept third country removals**." *Id.* at ¶¶ 2, 4 (emphasis added).

As Petitioner argued before this Court, Dkt. 12-1 at 20-22, *Zadvydas* does not prohibit the filing of a habeas petition for 180 days, it merely gives the government a *presumption* that 180 days' worth of detention is reasonable. 533 U.S. 678, 701 (recognizing a "presumptively reasonable period of detention"). The District of New Jersey agreed in *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *5 (D.N.J. June 24, 2025): "Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from challenging the reasonableness of his detention before such time." The *Munoz-Saucedo* court went on to explain, "Although some courts have read *Zadvydas* as creating a bright-line rule—one that effectively allows the government to detain a person for at least six months without judicial review, even if there was no possibility of removal—a close reading of *Zadvydas* does not support that interpretation. . . . The Court described the six-month mark as a 'guide,' not a rigid threshold. The Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption that requires it to be irrebuttable." *Id.* (internal citations omitted). The *Munoz-Saucedo* court concluded, "Thus, the *Zadvydas* presumption . . . is rebuttable. The presumption of reasonableness is the default, but if a person 'can prove' that his removal is not reasonably foreseeable, then he can overcome that presumption. In practical terms, before the six-month period elapses, the government bears no burden to justify detention, and the petitioner must claim and prove, that his removal is not reasonably foreseeable." *Id.* at *6 (internal citations omitted). *See also Ali v. DHS*, 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, . . . and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits."); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) ("The

six-month *Zadvydas* presumption is just that—a presumption . . . not a prohibition on claims challenging detention less than six months." (internal quotation marks omitted)); *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008) ("The *Zadvydas* Court did not say that the presumption is irrebuttable."); *Cordon-Salguero v. Noem*, Civ. No. 1:25-cv-1626-GLR, slip op. at 32-35 (D. Md., June 18, 2025), attached hereto as Ex. A; *Ortega v. Kaiser*, 2025 WL 1771438, at *4 (N.D. Cal., June 26, 2025).

If anyone can rebut the six-month presumption and "prove" that removal is not reasonably foreseeable, it is Petitioner here: this is a case in which the government does not claim to be able to remove Petitioner at all, and Petitioner has now provided concrete evidence that the one country named for possible removal will not issue him travel documents. This distinguishes *Ghamelian v. Baker*, 2025 WL 2049981 (Dkt. 18-1).

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*.

III. Respondents' revocation of Petitioner's Order of Supervision violated a regulation designed to ensure Petitioner's right to due process, thus violating the Accardi doctrine.

Respondents' revocation of Petitioner's Order of Supervision violated a regulation. 8 C.F.R. § 241.4(*l*)(2)[2] could not be more specific about who is empowered to revoke an Order of

[2] 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.

Supervision: "The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest **and** circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." (Emphasis added.)

Contrast this subsection with another subsection in the same regulation, 8 C.F.R. § 241.4(h)(5), regarding periodic custody reviews of detained noncitizens. That subsection allows high-level ICE officials to designate custody review authority to a long list of other officials with other job titles, including the catch-all ". . . or such other persons as the district director or the Director of the Detention and Removal Field Office may designate from the professional staff of the Service." The absence of such a catch-all provision in subsection (*l*)(2) is no less meaningful than its presence in subsection (h)(5). Put another way, if the Executive Associate Commissioner could delegate their subsection (l)(2) authority to revoke an Order of Supervision to any ICE officer at any time for any reason, just like the subsection (h)(5) authority to carry out custody reviews, then the (l)(2) language and the (h)(5) language are entirely surplusage. *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."); *United States v. Young*, 989 F.3d 253, 259 (4th Cir. 2021) ("[T]he 'canon against surplusage' is at its 'strongest' in cases like this one, where one party's interpretation 'would render superfluous another part of the same statutory scheme . . . In such cases, we favor 'competing interpretations' that give 'effect to every clause and word of a statute.'").

The evidence indisputably shows that the Notice of Revocation of Release was actually signed by a low-level ICE Deportation Officer, "for" the Field Office Director (the contemporary equivalent of the district director). *See* Dkt. No. 7-2; *see also* Dkt. No. 18 at 16 (Respondents' memorandum concedes that "a deportation officer . . . signed the Petitioner's Revocation of Order of Supervised Release"). This was impermissible, as the regulation does not allow deportation officers to revoke Orders of Supervision. But even if this Court were to credit Respondents' argument that a deportation officer may sign a Notice of Revocation "for" the Field Office Director, in this case not even the Field Office Director had authority to revoke the Order of Supervision where neither of the required findings were made. Respondents do not contend, and have provided no evidence, that any finding was made by the Field Office Director regarding whether "circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner": no evidence on the face of the Notice of Revocation, Dkt. 7-2, and no evidence by means of a declaration in this litigation. (It would be hard to imagine what such circumstances could be, given that Petitioner was arrested at an ICE check-in appointment that had been scheduled a year in advance.)

As their sole source of authority that Petitioner's Order of Supervision was revoked by an official with authority to do so, Respondents point to an ICE memo from November 13, 2004, at Dkt. 14-1, which generally re-designates immigration enforcement authority from the Secretary of Homeland Security to ICE officials and officers. But this delegation does not purport to effectuate a blanket re-designation of Section 241.4(*l*)(2) authority to revoke an Order of Supervision; indeed, the 2004 memo does not even specifically mention that regulation, or the revocation of Orders of Supervision, at all. Nor, as explained above, could it permissibly do so pursuant to the plain terms

of the regulation, which has two case-specific findings that must be met "in the district director's opinion" for even the district director to have authority to revoke an Order of Supervision.

To be clear, Petitioner does not seek this Court to engage in a substantive review of the decision as to whether circumstances did or did not reasonably permit referral to the Executive Associate Commissioner. If the district director had made such findings, this Court may well lack jurisdiction to second-guess the "opinion" of the district director. But this Court surely does have jurisdiction to determine *whether* such findings were made, and here can quickly conclude that they were not. This distinguishes the instant case from *Tanha v. Warden* (Dkt. No. 18-2), in which the petitioner sought substantive review of the reasons for the revocation of the Order of Supervision. *Id.* at 9-10. The *Tanha* petitioner did not challenge the regulatory authority of the individual who revoked his Order of Supervision.

In the end, Respondents cannot come up with a justification for the Notice of Revocation of Release having been signed by an ICE Deportation Officer, "for" the Field Office Director, where no specific findings of "revocation is in the public interest **and** circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner" were made, that does not read Subsection (*l*)(2) out of the regulation entirely. The Notice of Revocation of Release was signed by an official without authority to revoke the Order of Supervision, in clear violation of 8 C.F.R. § 241.4(*l*)(2). Since that regulation serves to vindicate Petitioner's due process rights (a contention which Respondents do not dispute), its violation violates *Accardi*, and the Notice of Revocation of Release must be vacated. *See also Cordon-Salguero v. Noem*, Civ. No. 1:25-cv-1626-GLR, slip op. at 36 (D. Md., June 18, 2025), attached hereto as Ex. A.

Finally, contrary to Respondents' argument regarding the Administrative Procedure Act (Dkt. No. 18 at 18), habeas corpus is the proper vehicle for this *Accardi* claim challenging the

lawfulness of Petitioner's arrest. *See Trump v. JGG*, 145 S. Ct. 1003, 1005 (April 7, 2025) ("Regardless of whether the detainees formally request release from confinement, because their claims for relief necessarily imply the invalidity of their confinement . . . their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas. And immediate physical release is not the only remedy under the federal writ of habeas corpus." (Internal citations omitted.)).

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*. *See also Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017). The Supreme Court has stressed the importance of the government following this

very regulation. "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 C.F.R. § 241.4(*l*).

For the foregoing reasons, Petitioner has established that Respondents' violation of 8 C.F.R. § 241.4(*l*)(2) violated the *Accardi* doctrine. The Notice of Revocation should be vacated, and the Order of Supervision restored.

Conclusion

For the foregoing reasons, Petitioner has shown that his detention lacks any factual basis, since he has proven that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner has furthermore shown that his Order of Supervision was revoked by an officer who lacked authority to do so, "for" another officer who only possessed authority to do so upon the precondition of factual findings that were not made here, thus violating an important regulation. The writ of habeas corpus should issue, and this Court should order that Petitioner be released from detention forthwith and restored to his Order of Supervision.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: July 25, 2025

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Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: July 25, 2025

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