UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Newark Division

ANGEL LENIN SERVELLON GIRON, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	HON. JULIEN X. NEALS Civil Action No. 2:25-cv-6301-JXN

REPLY IN SUPPORT OF WRIT OF HABEAS CORPUS

Table of Contents

Introduction

The U.S. government cannot merely throw a person on a removal flight and so avoid their constitutional obligations. While Respondents have thus attempted to summarily remove Petitioner, as recently as last week, such removal must necessarily be lawful. It was unlawful last week, and remains so today, so long as Respondents continue to flout the protections afforded to Petitioner and deprive him of the right to have his fear of removal to Mexico duly considered by an appropriate adjudicator. Because Respondents continue to refuse Petitioner this basic process, there is no discernible timeframe for Petitioner's lawful removal. As such, his continued detention is likewise unlawful, and he should be released from detention until he has been afforded all process required under our laws and Constitution.

Facts

On June 4, 2014, an immigration court found that Petitioner was more likely than not to face persecution in Honduras and granted Petitioner withholding of removal under 8 U.S.C. § 1231(b)(3). ECF No. 1 ¶¶ 17-18. *See also* Immigration Judge Order, ECF No. 1-1. This order has never been reopened or set aside and therefore remains in effect. *See* ECF No. 1-2.

On May 21, 2025, Respondents revoked Petitioner's Order of Supervision without forewarning and re-detained him, stating an intent to remove him to Mexico. *See* ICE records dated May 21, 2025, ECF Nos. 9-2 through 9-4.

On May 28, 2025, pursuant to the (now stayed) *D.V.D.* Injunction, Petitioner expressed a fear of being removed to Mexico. See Request for Reasonable Fear Interview dated May 28, 2025, ECF No. 1-5. *See also D.V.D. v. DHS*, Civ. No. 25-10676-BEM, 2025 WL 1142968 (D. Md. April 18, 2025), *pending appeal*; *stayed by DHS v. D.V.D.*, 606 U.S. __, 145 S. Ct. 2153, 2153 (June 23, 2025).

On May 30, 2025, Petitioner filed his Petition for Writ of Habeas Corpus to seek redress of his unlawful rearrest and his continued detention. ECF No. 1. On July 6, 2025, Respondents requested a 7-day extension on their time to answer the petition (ECF No. 6), which this Court granted (ECF No. 8).

On or about July 10, 2025, Respondents transferred Petitioner to the Port Isabel Service Processing Center, in Los Fresnos, TX (Port Isabel), which is a staging area for removal flights. *See* ICE Detainee Locator printout, dated July 10, 2025, ECF No. 9-1. On July 11, 2025, Petitioner filed an emergency TRO to prevent his unlawful removal from the United States (ECF No. 9), which was granted that day (ECF No. 12). Respondents also filed their Answer and Motion to Dismiss on July 11, 2025 (ECF No. 10).

As of today's date, Petitioner has yet to have his reasonable fear of removal to Mexico reviewed by any arbiter under any process.

Argument

I. This Court Maintains Jurisdiction Over Petitioner's Petition for a Writ of Habeas Corpus.

As an initial matter, Respondents' jurisdictional arguments are inapposite to a habeas corpus petition challenging detention, not removal. *Zadvydas v. Davis* 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. 678, 688 (2001). 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).

Despite Respondents' arguments to the contrary, the Court maintains jurisdiction over Petitioner's habeas. First, Petitioner is not challenging the execution of or asking the Court to set aside his 2014 removal order. Rather, Petitioner seeks release from detention and asks this Court to ensure that the four corners of that order – both the removal *and* the protections granted – are *upheld*. As such, 8 U.S.C. § 1252(g) does not strip this court of jurisdiction over his habeas.

Petitioner's 2014 order from immigration court orders his removal to Honduras and then grants relief from that order under § 1231(b)(1) withholding of removal. Respondents now seek to remove him to Mexico, and Petitioner has raised concerns as to that new action, which in no way challenges the underlying order. Petitioner does not contest the execution of his order of removal order at all, but rather seeks the constitutionally required consideration of his fears of removal to Mexico in light of Respondents' recent intention to remove him there. ECF No. 1-5.

Moreover, under his 2014 immigration court order, Respondents have ongoing, mandatory legal obligations per § 1231(b)(3), which would be eviscerated by removing Petitioner to a third country without process. The government is aware of its obligation to provide an RFI, and conceded as much in a separate oral argument concerning withholding protections under CAT. *See* Oral Argument Tr., *Riley v. Bondi*, No. 23-1270 (S. Ct., March 24, 2025), *32-33[1] ("We do think we have the legal authority to do [a third country removal], with the following caveat: We would have to give the person notice of the third country and give them the opportunity to raise a reasonable fear of torture or persecution in that third country.")

Mexico has afforded Petitioner no legal status, nor provided Petitioner or Respondents any assurances that his humanitarian protections will be honored there. Accordingly, Mexico is likely to re-deport him to Honduras where he is more likely than not to face persecution, as it has done to others. *See, e.g.*, *D.V.D. v. DHS*, 2025 WL 1142968 at *4 (Plaintiff O.G.C. was removed to Mexico and re-deported to Guatemala in the face of his withholding of removal). Without more, removal of Petitioner to Mexico would render his mandatory protections meaningless.

Respondents argue that § 1252(g) strips this Court of jurisdiction, but their reliance on *Tazu v. Atty. Gen.*, 975 F.3d 292 (3d Cir. 2020), is misplaced. This is not

[1] *Available at* https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1270_c0n2.pdf. (last visited on July 18, 2025).

a case like *Tazu*, in which ICE had already obtained a usable travel document (a valid passport allowing the petitioner to be removed to his native country, from which removal had not been withheld) and detained him three days thereafter in what the court described as "a brief door-to-plane detention[.]" *Id.* at 298. Further, while before the immigration court, Mr. Tazu had received review of his fears of removal and had been afforded no relief from removal. *Id.* Petitioner here does not seek to disturb the final removal order. This action commenced only because Respondents recently announced their intention of removal to Mexico. Thereafter, Petitioner stated his fear of removal there and requested an RFI – 51 days ago – to no avail. Unlike Mr. Tazu, Petitioner has had no due process regarding removal to Mexico.

Nor does the zipper clause at 8 U.S.C. § 1252(b)(9) apply, because Petitioner is not challenging his final order. Petitioner seeks redress of recent actions by Respondents, none of which could be considered by the circuit court on a petition for review, as envisioned by § 1252(b)(9). A petition for review would evaluate only the legality and process of a final order of removal (which Petitioner does not challenge), but not revocation of an order of supervision, post-order detention, deprivation of an RFI, or other unlawful acts (which Petitioner does challenge here).

Accordingly, no provision of law strips this Court of jurisdiction to hear and decide this habeas action. Indeed, habeas is Petitioner's only avenue for relief.

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

A. This habeas petition, filed eleven years after 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 over a decade ago in 2014, as did the 180-day presumptively reasonable period under 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas*, 533 U.S. at 688. ICE never chose to detain Petitioner during that period, instead allowing him to continue living in the community on supervised release. 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). Having recognized that most removals could not be effectuated in 90 days, the Supreme Court further clarified detention could only continue for "a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. But this decision does not curtail the rights of those already released under supervision.

As the District of New Jersey recently held in a similar case, *Tadros v. Noem*, No. 25-cv-4108 (EP), 2025 WL 1678501, *3 (D.N.J. June 13, 2025):

> 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. *Tadros* is instructive as it considered the context of a post-order release and re-detention and agreed with petitioner that his *Zadvydas* six-month detention period had "lapsed long ago." *Id.* Tadros went on to demonstrate that his removal was unlikely. *Id.* The District of Maryland agreed in *Cordon-Salguero v. Noem*, Civ. No. 1:25-cv-1626-GLR, Dkt. No. 20 (D. Md. June 18, 2025), Order attached hereto as Ex. 1. *See also Alam v. Nielsen*, 312 F. Supp. 574, 581-82 (S.D. Tex. 2018) (rejecting the argument that the § 1231(a)(1)(A) removal period is restarted when a noncitizen is re-detained for the purposes of removal).

Of course, the government is entitled to 180 days to try to effectuate removal, but Respondents' argument that each of those 180 days only counts if 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 demonstrable travel documents were in hand, it is certainly not the *law*. Respondents have had nearly eleven years to work on removal, with Petitioner on an Order of Supervision throughout. The Court should not restart the *Zadvydas* clock on Petitioner now.

The basic responsibility of the habeas court is then 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.

Respondents' cited cases, Dkt. No. 10 at 19-20, none of which are controlling on this Court, do not militate to the contrary. Luma improperly filed his claim while he was still detained under 8 U.S.C. § 1226(a). *Luma v. Aviles*, No. 13–6292 (ES), 2014 WL 5503260 (D.N.J. Oct. 29, 2014). Kevin had remained in detention when he raised his challenge under *Zadvydas*, unlike Petitioner has been out on supervised release for over a decade. *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212, 2021 WL 4772130, at *2 (D.N.J. Oct. 21, 2021)). Here, Petitioner is more akin to *Tadros* in that respect, both having been released on supervision and their *Zadvydas* periods of detention having lapsed long ago. 2025 WL 1678501 at *3.

Moreover, even if the *Zadvydas* six-month presumptively reasonable period only counts those days in detention, that presumption of reasonableness would still

be nonetheless rebuttable prior to the period's expiration. *See* ECF 10 at 19-20, *citing Munoz-Saucedo v. Pittman*, No. 1:25-cv-2258-CPO, Dkt. No. 24 at *10 (Jun. 24, 2025). *Zadvydas* did not announce a bright-line prohibition on challenges prior to the six-month mark. *Id.* at *10 (citing *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018); and *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008)). Rather, "the presumption scheme merely suggests that the burden the detainee must carry within the first six months . . . is a heavier one than after six months has elapsed." *Cesar*, 542 F. Supp. 2d at 903-04.

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

Respondents do not present any admissible evidence that Mexico has accepted Petitioner for removal, nor any articulable basis to believe that they will. As Petitioner explains, he does not have any claim to legal immigration status in anywhere else in the world, including Mexico. ECF No. 10-4 at ¶ 4. Even if Mexico were to accept Petitioner for removal, it would only be as a deportation waystation to Honduras, the one country on earth where Petitioner legally may not be removed, thus violating the humanitarian protections under § 1231(b)(3). *Id.* at ¶ 5; *see also D.V.D.*, 2025 WL 1487238, at *2 (Plaintiff O.G.C. who was subjected to refoulement to Guatemala despite his prior protections).

Accordingly, Petitioner has 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 U.S. at 701. Respondents provide no evidence that Mexico has issued, or will issue, travel documents to Petitioner. *See* Notice of Removal, dated May 21, 2025, ECF No. 10-3 ("This letter is to inform you that U.S Citizenship and Immigration Customs Enforcement (ICE) intends to remove you to Mexico.") In its Notice of Revocation, also dated May 21, 2025, ICE averred that "The Mexico has issued a travel document to facilitate your removal…" ECF No. 9-4. However, ICE has presented this court with no more than a record of *intent*, and nothing whatsoever from Mexico stating that they will receive him, provide him status, or honor his humanitarian protections afforded by the United States. Even in his deposition, Mr. Burki, Assistant Field Office Director, makes no representations as to the status of travel documents for Petitioner, from Mexico or any other country. ECF No. 10-1. Surely if Respondents had valid travel documents for Petitioner, they would file them before this Court, as powerful evidence against Petitioner's claim.

In addition, pursuant to the Convention Against Torture, before Respondents can remove Petitioner to Mexico, they must establish not only that Mexico will *accept* Petitioner onto its territory (travel documents), but also that Mexico will allow Petitioner to *remain* in that country (a lawful immigration status) and not immediately re-deport him to Honduras (which occurred last time Petitioner was apprehended by Mexican authorities). *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v.*

Ashcroft, 378 F.3d 932, 938 (9th Cir. 2004); cf. *Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (per curiam) (permitting removal to third country only where individuals received "ample notice and an opportunity to be heard"). The government has conceded they must afford individuals an opportunity to raise concerns in the context of third country removals. *See* Oral Argument Tr., *Riley v. Bondi,* at *32-33. The government's failure to afford Petitioner such an opportunity to date makes the likelihood of Petitioner's lawful removal even more remote.

In sum: Eleven years ago, after Petitioner was ordered removed and his removal order was withheld as to Honduras, the government concluded that Petitioner could not be removed from the United States, and therefore did not detain him during the removal period. Today, nothing has changed other than the government's *desire* to remove him, but a desire does not create a *significant likelihood*. 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 over ten years prior, Respondents lacked legal basis to re-detain Petitioner absent newly obtained means 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 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 *Zadvydas* burden 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, and the writ of habeas corpus should issue.

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

Respondents furthermore violated their own regulations as well as the statute. After the 90-day removal period ended and Petitioner was not removed from the United States, he was released on supervision pursuant to 8 U.S.C. § 1231(a)(3).

Limited circumstances permit revocation of a supervised release and only by those with authority to order it. The regulation provides that "[t]he 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." 8 C.F.R. § 241.4(*l*)(2). Other than 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, no finding has been made that circumstances do not reasonably permit referral to that agency official (nor could such a finding be made, as Petitioner was adequately supervised on release, and indeed was detained at a regularly scheduled check-in), and the revocation notice was signed by a low-level ICE officer. *See* ECF No. 9-4 (signed "For M" at 1).

Additionally, for those detained, the regulation promises critical due process: "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, nearly two months thereafter, no such interview has been scheduled.

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*) (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). Petitioner is not required to show prejudice if the regulation was designed to protect fundamental or constitutional rights. *Leslie v. Atty. Gen. of U.S.*, 611 F.3d 171, 179 (3d Cir. 2010). 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 due process and must be set aside.

Several federal district courts have held that where ICE revokes release and rearrests a noncitizen without following the procedures set forth in Section 241.4(*l*), such revocation violates due process and the post-removal-period statute. *See Ceesay v. Kurzdorfer*, No. 25-cv-267-LJV, 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). 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 due process and warranted release. *Ceesay,* 2025 WL 1284720 at *20-*21. As Petitioner has been similarly deprived, the same result should apply.

For the foregoing reasons, Respondents' violations of the re-detention provisions of 8 C.F.R. § 241.4(*l*) violated the *Accardi* doctrine, as well as Petitioner's due process rights.

Conclusion

WHEREFORE, Petitioner, by counsel, respectfully requests that this Court issue a writ of habeas corpus, ordering his immediate release from custody, and the restoration of his prior Order of Supervision.

Respectfully submitted,

Date: July 18, 2025

/s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Senior Litigation Attorney
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915, Ext. 1168
Email: sgibbs@murrayosorio.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

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

Respectfully submitted,

Date: July 18, 2025

/s/ Stephanie E. Gibbs

STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Senior Litigation Attorney
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915
Email: sgibbs@murrayosorio.com

Counsel for Petitioner