UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

Rony Eduardo Santamaria Orellana, *Petitioner*, v. Nikita Baker, *el al.*, *Respondents.*	Civ. No. 1:25-cv-01788-TDC

REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

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Introduction

The heart of this case is whether Petitioner was properly re-detained and whether the government now has sufficient justification to continue to imprison him. Respondents do not deny (and therefore concede) that they failed follow their own regulations to revoke Petitioner's supervised release which is a per se violation of his rights. And Respondents' memorandum and the evidence filed in support thereof establish that they are currently detaining Petitioner for no reason whatsoever. Further, Respondents' arguments citing the *D.V.D.* preliminary injunction are not persuasive. Though now stayed, the *D.V.D.* preliminary injunction outlined a baseline process for removal to a third country, in order to afford that individual an opportunity to meaningfully respond. *D.V.D.* did not address the revocation of a supervised release and the class did not challenge the basis for their detention. Further, while the *D.V.D.* injunctive process is stayed, Petitioner is nonetheless entitled to an opportunity to be heard regarding a potential removal to a third country, not yet considered or ordered by an Immigration Judge. Petitioner does not ask this Court to outline or monitor such a process, but asks only for sufficient notice of the government's intentions and to afford Petitioner an opportunity to seek review.

Two years ago, Petitioner was granted withholding of removal to El Salvador pursuant to the Convention Against Torture (CAT). He had been at liberty under ICE supervision ever since, with no violations and no further criminal arrests, before Respondents arrested him by surprise at a routine check-in appointment on June 4, 2025. 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 allow Petitioner to remain there without re-deporting him to El Salvador, which would violate the CAT. Indeed, Mexico has already deported

Petitioner to El Salvador once before.

In sum, Respondents have yet to identify any changed factual basis for Petitioner's re-arrest and detention; nearly a month 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 Rony Eduardo Santamaria Orellana 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 Rony Eduardo Santamaria Orellana) at ¶ 2, 11, 12. He lives in Maryland with his partner and five children, three of whom are U.S. citizens. *Id.* ¶¶ 5-6.

Petitioner has a removal order dated June 6, 2006, and was removed to El Salvador shortly thereafter. He subsequently reentered the United States and was re-apprehended by ICE on November 5, 2019. Ex. A at ¶ 7. After passing a Reasonable Fear Interview ("RFI"), 8 C.F.R. § 208.31, he was placed in withholding-only proceedings, 8 C.F.R. § 208.31(e). On April 17, 2023, Petitioner granted an order of withholding of removal to his native El Salvador pursuant to the Convention Against Torture ("CAT"). Order of the Imm. Judge at 1, Dkt. 11-1.

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]

On June 5, 2023, Petitioner reported as scheduled to the Baltimore ICE field office, and was placed on a supervision program called Compliance Assistance Reporting Terminal ("CART"). Dkt. 11-2. Petitioner complied flawlessly with all ICE requirements under his supervision program. Ex. A at ¶¶ 9-11. Petitioner was also given an employment authorization document pursuant to 8 C.F.R. § 274a.12(a)(10), with which he has been able to work 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 ¶ 11.

On June 4, 2025, Petitioner presented at the Baltimore ICE office for a routine check-in, when his release under supervision was canceled and he was arrested without any forewarning, *id.* ¶ 10; he remains detained today. Petitioner was also served with a notice that ICE intends to remove him to Mexico. Dkt. 11-3. He expressed a fear of removal to Mexico, on the grounds that Mexico will re-deport him to El Salvador, where it has already been determined that he would face torture. Ex. A ¶ 12. Indeed, Mexico has already deported Petitioner to El Salvador once. *Id.* ¶¶ 3-4.

On June 6 and again on June 12, Petitioner's immigration counsel reiterated his expression of fear of return to Mexico and his request for a RFI, *see* Exs. B, C (RFI requests dated June 6 and

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[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 Kilmar 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); *Umanzor-Chavez v. Noem*, Civ. No. 8:25-cv-1634 (D. Md., filed May 21, 2025); *Servellon Giron v. Noem*, Civ. No. 2:25-cv-6301 (D.N.J., filed May 30, 2025); *Cruz-Medina v. Noem*, Civ. No. 1:25-cv-1768 (D. Md., filed June 3, 2025); *Cordon-Salguero v. Noem*, Civ. No. 1:25-cv-1626-GLA (D. Md., filed June 3, 2025).

June 12, 2025). Three weeks later, no such interview had been scheduled. *See* Ex. B. However, on June 23, 2025, the Supreme Court stayed the *D.V.D.* preliminary injunction which had directed the RFI process. *DHS v. D.V.D.*, 2025 WL 1732103, 606 U.S. __, 1 (June 23, 2025), *staying D.V.D. v. DHS*, Civ. No. 25-10676-BEM, 2025 WL 1142968 (D. Md. April 18, 2025), *pending appeal.*

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). The Convention Against Torture ("CAT") prohibits the government from removing a noncitizen to a country where he is more likely than not to face torture. 8 C.F.R. § 1208.16(c). This protection is usually referred to as "CAT withholding of removal." An individual granted CAT withholding of removal 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). Should the government wish to remove an individual with a grant of withholding of removal to some other country, it must first provide that individual with notice and an opportunity to apply for withholding of removal as to that country as well, if appropriate. 8 U.S.C. § 1231(b)(3)(A). *See also 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"[2]).

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

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[2] Indeed, the Solicitor General's office acknowledged this legal principle earlier this year in oral argument before the Supreme Court:

> JUSTICE KAGAN: So let me --let me make sure I understand that. You think you have the --the --the legal right -- . . . --to --to send the non-citizen to some other country, where he doesn't have a CAT --CAT claim, but, in fact, the U.S. government does not exercise that right?
>
> MR. McDOWELL: Under Title 8 we --we do not do that as a matter of practice. We do think we have the legal authority to do that, 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.
>
> If they raise that reasonable fear, the withholding-only proceedings would simply continue. They would just focus on the new country, rather than the original one.
>
> JUSTICE KAGAN: But you don't have the legal power to remove the person to the country for which there is a pending CAT claim?
>
> MR. McDOWELL: That's exactly right. The regulate --the regulations prohibit that.

Oral Argument Tr., *Riley v. Bondi*, No. 23-1270 (S. Ct., March 24, 2025), *32-33, *available at* https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-1270_c0n2.pdf.

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).[3] Where 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, Respondents' arguments for dismissal or a stay are inapposite.

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 is stayed

[3] Respondents agree that *Zadvydas* sets out the governing legal framework for Petitioner's challenge to his present detention. Answer at 12.

pending the disposition of the First Circuit appeal, therefore those protections do not apply. *DHS v. D.V.D.*, 2025 WL 1732103, 606 U.S. at *1. Moreover, *D.V.D.* concerns the authority to remove individuals to a third country, and Petitioner does not challenge such a removal here. *D.V.D. v. DHS*, 2025 WL 1142968, at *3. Rather, Petitioner seeks asks the Court to be afforded the opportunity to seek such a review elsewhere, whether through a process like the one outlined by the *D.V.D.* injunction (now stayed), or before an immigration judge or the agency. Because Petitioner raises separate claims (regarding his detention) and seeks separate relief (namely release), the Court maintains classic habeas jurisdiction.

Respondents' statutory 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.[4] 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 two 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 July 16, 2023, nearly two years ago; and the 180-day presumptively reasonable period under 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas*, expired on October 14, 2023, 20 months ago. ICE never

[4] 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).

chose to detain Petitioner during that period, instead allowing him to continue living in the community on supervision. 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 further clarified that the detention could only continue for "a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. But the decision does not curtail the rights of those already 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 two 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 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* determining whether Mexico might issue travel documents, it is certainly not the law. Respondents have had more than two years to work on removal, with Petitioner on close supervision throughout.

As the District of New Jersey recently held in a nearly identical case, *Tadros v. Noem*, No. 25-cv-4108 (EP), Dkt. No. 9 (D.N.J. June 13, 2025), attached hereto as Ex. D:

> 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. 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. E. *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 a noncitizen is re-detained for the purposes of

removal).

Respondents' cited cases, Dkt. No. 11 at 13, 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"). 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 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.

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 present any 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 Mexico, Ex. A at ¶¶ 9-10. 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, thus violating the CAT. Ex. A at ¶¶ 4, 10; *see also 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).[5]

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.

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 El Salvador (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 as much

[5] *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.").

in a similar matter. *See* Oral Argument Tr., *Riley v. Bondi*, No. 23-1270 (S. Ct., March 24, 2025), *32-33 ("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.") This remains true notwithstanding the stay of the *D.V.D.* preliminary injunction.[6] 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: Two years ago, after Petitioner was ordered removed and his removal order was withheld as to El Salvador, 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 two 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

[6] Beyond effect from staying the district court's preliminary injunction (which outlined a particular process due), the Supreme Court's decision offers no further guidance to the case at hand as the majority provides no reasoning for its decision. *See D.V.D,* 606 U.S. __, *generally*.

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

This Court should recognize that when the government has already determined through two 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 after 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 two 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, raised his U.S.-citizen children, and built deep community ties. Ex. A at ¶ 6. This empirical evidence gathered by the government itself over two

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 under the CART program for two 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 two 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 two 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, two 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. After the 90-day removal period ended and Petitioner was not removed from the United States, his liberty in the community was pursuant to 8 U.S.C. § 1231(a)(3), which provides, "If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." Likewise, certain categories of inadmissible noncitizens including Petitioner "*shall* be subject to the terms of supervision in paragraph (3)." (Emphasis added.) The statute does not require a document entitled "Order of Supervision," it merely requires "supervision" (with a lower-case S), and the fact that this Petitioner was supervised under the CART program rather than a formal Order of Supervision is of no import.

8 C.F.R. § 241.4(*l*)(1)[7] allows "an order of supervision or other conditions of release" to be revoked only where the noncitizen "violates the conditions of release." The regulation clearly applies to all conditions of release, not just a formal Order of Supervision. Here, no such violation

[7] 8 C.F.R. § 241.13(i)(3) also requires 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).

exists. *See* Ex. A. 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, where Petitioner received no notice (written or otherwise) of the reason why his release was revoked. 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"; but, as explained above, the removal order was not enforceable at the time of the arrest, and almost a month later remains unenforceable.

The regulation furthermore provides, "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." 8 C.F.R. § 241.4(*l*)(2). Again, the regulation does not apply only to a formal Order of Supervision, it applies to the revocation of release generally. 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 through the CART program, and indeed was detained at a regularly scheduled check-in.

Finally, 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 a month thereafter, no such interview has been scheduled. Ex. A at ¶ 11. Although the regulation does not proscribe a specific number of days to schedule the interview,

the time now elapsed is 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.").[8]

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). 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

[8] 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: to date no interview has even been scheduled. 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 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 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). 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 due process and 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. 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

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 supervision under the CART program.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: June 27, 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 27, 2025

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