

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARIO HERNANDEZ ESCALANTE,

Petitioner,

v.

KRISTI NOEM,
In her official capacity as Secretary of
Homeland Security,

TODD M. LYONS,
In his official capacity as Acting Director,
Immigration and Customs Enforcement,

NIKITA BAKER,
In his official capacity as Field Director of
ICE Baltimore Field Office,

Respondents.

Case No: 1:25-CV-1799-PX

SUPPLEMENTAL FILING

Mr. Hernandez writes to provide two important updates subsequent to the hearing yesterday. During the hearing, the Court inquired whether there were cases similar to Mr. Hernandez's that have already been decided, and counsel stated that such cases are relatively new and he is not aware of any decisions yet. After the Court recessed from the hearing yesterday afternoon, June 23, 2025, last night undersigned counsel received the attached transcript from a nearly identical case within this district, *Cordon-Salguero v. Noem, et al.*, 1:25-cv-1626-GLR. While *Cordon-Salguero* does not involve the jurisdictional question presented in this case, Mr. Hernandez reiterates the unique circumstances of this case warrant this Court's exercise of jurisdiction under exceptions to traditional venue rules. If the Court agrees that it has jurisdiction, as it should, the Court should then look to *Cordon-Salguero* and reach a similar conclusion on the

merits.

Contrary to the government's request here, the Court in *Cordon-Salguero* ruled that dismissal or an abeyance pursuant to the *DVD* litigation in a different court is improper. "The *DVD* preliminary injunction only covers removal and the procedures by which the government must give notice and an opportunity to seek relief therefrom, [it] does not cover issues relating to detention pending such procedures." *Cordon-Salguero*, p. 31.¹ Additionally, as the Court in *Cordon-Salguero* determined on similar facts, the 90-day removal period in this case began at the time when Mr. Hernandez was found removable and thus expired in early 2020, as did the six-month period of presumptively reasonable detention. *Id.* at p. 32. The Court agreed that "the Government then cannot detain Petitioner without finding he is a risk to the community or unlikely to comply with the order of removal." *Id.* p. 33-34. On that, Mr. Hernandez continues to rely on the many contradictions and general unreliability of any of the government's evidence. Compare ECF 12-1, 12-2, 14-1, 14-2, 15-1, and 15-2. And because the evidence cannot establish that "the Petitioner will indeed be removed from the United States within any reasonable foreseeable future," but, at best, that "the case is under current review by the Government of Mexico for issuance of a travel document[,]" it has not met its burden under *Zadvydas*. *Cordon-Salguero* transcript, p. 33-35. Moreover, for the same reasons as in *Cordon-Salguero*, the Court should similarly conclude that the Government did not follow the proper procedures to terminate Mr. Hernandez's order of supervisions. *Id.* p. 35-37; accord ECF 14 at 16 (citing *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1945)).

Finally, Mr. Hernandez must inform the Court, though it is no doubt already aware, of the

¹ The page numbers to the transcript refer to the pages printed at the top right corner of the document.

Supreme Court's decision yesterday afternoon vacating the injunction in *D.V.D. v. DHS*. See *DHS v. D.V.D.*, 606 U.S. ___, Slip Op. at 1 (June 23, 2025). But given the assurances of government counsel that Mr. Hernandez would receive protective process before a swift removal to a country where he may be persecuted or tortured, the Supreme Court's vacatur seems to remove that hurdle absent this Court's intervention. As Justice Sotomayor stated in her dissent:

The Government has made clear in word and deed that it feels itself unconstrained by law, free to deport anyone anywhere without notice or an opportunity to be heard. The episodes of noncompliance in this very case illustrate the risks. Thirteen noncitizens narrowly escaped being the target of extraordinary violence in Libya; O. C. G. spent months in hiding in Guatemala; others face release in South Sudan, which the State Department says is in the midst of “armed conflict” between “ethnic groups.” N. 2, *supra*. Only the District Court's careful attention to this case prevented worse outcomes. Yet today the Court obstructs those proceedings, exposing thousands to the risk of torture or death.

D.V.D., 606 U.S. ___, Slip Op. at 12-13 (Sotomayor, J., dissenting).

As noted in *Cordon-Salguero*, relief here is not dependent on the outcome of *D.V.D.*, as Mr. Hernandez challenges his detention pending the protections offered in that case, rather than only seeking an order that the government comply with them.² And in any case, the government has provided no evidence to this Court that it is or has ever complied with them regarding Mr. Hernandez anyway. Rather, the Court should consider the question raised by Mr. Hernandez: whether he can be detained in the meantime. And because the government can provide no reliable evidence that he is substantially likely to be removed in the reasonably foreseeable future, Mr. Hernandez maintains that the Court should order his release.

² Undersigned counsel has reached out to class counsel in *D.V.D.* for any additional guidance on how that case, which includes other injunction orders from the District Court which were not vacated in yesterday's opinion, may continue to impact Mr. Hernandez.

Respectfully submitted,

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