IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SANTOS SANTIAGO JIMENEZ,

Petitioner,

v.

JEFFREY CRAWFORD, *in his official capacity as Detention Director of Farmville Detention Center*; RUSSELL HOTT, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security;* and PAM BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No.

INTRODUCTION

1. In July 2021, Petitioner Santos Santiago Jimenez ("Mr. Santiago Jimenez" or "Petitioner"), a 35-year-old citizen of El Salvador, was granted final protection from deportation in the form of deferral of removal under the Convention Against Torture ("CAT"). He was released from Immigration and Customs Enforcement ("ICE") custody on an order of supervision ("OSUP") within the next few days. More than three and a half years later, on or around March 11, 2025, ICE apprehended Mr. Santiago Jimenez without explanation at his probation appointment, eventually transferring him to Farmville Detention Center ("Farmville"). During his release, Mr. Santiago Jimenez had complied with all legal requirements, including attending regular ICE check-ins and criminal probation appointments, holding steady employment, and

avoiding criminal activity. His re-detention served no purpose other than to fill ICE's arbitrary arrest quotas.

2. While he was previously healthy, Mr. Santiago Jimenez is now experiencing life-threatening kidney failure in detention, with alarming side effects like facial bleeding, difficulty breathing, mental impairment, swollen limbs, and severe fatigue. ICE has held him for over four months at Farmville despite his final grant of immigration relief and the serious risk of death and permanent harm to his health.

3. While it previously did not deem his removal to a third country reasonably foreseeable, ICE recently handed Mr Santiago Jimenez a piece of paper saying that it intends to remove him to Mexico—a country to which he has no connection However, there is no indication that ICE has any concrete plan for such removal, or that Mexico has agreed to accept Mr. Santiago Jimenez, who is not their citizen or resident. ICE further alleges that Mr. Santiago Jimenez is a public safety and flight risk despite its prior decision to release him in 2021, his perfect record of attendance at ICE check-ins and probation appointments, and his lack of post-release criminal history.

4. Mr. Santiago Jimenez is detained pursuant to 8 U.S.C § 1231, which governs the detention of noncitizens with a final order of removal that has been deferred by an IJ due to a substantial risk of torture in their home country. 8 U S C § 1231(a)(1)(B)(i). Mr. Santiago Jimenez's continued detention violates 8 U S C. § 1231(a) because his removal is not reasonably foreseeable. *See Zadvydas v. Davis*, 533 U.S 678 (2001). He cannot be deported to his native country—El Salvador—because he was granted CAT protection by an IJ. 8 C.F R. § 1208 17. ICE waived appeal of this grant of relief, rendering it final in 2021. To the extent ICE is pursuing Mr. Santiago Jimenez's removal to Mexico or another third country, it has failed to demonstrate that

such removal is reasonably foreseeable There has been no indication that Mexico or another country would accept him, and, in any case, Mr Santiago Jimenez would be entitled to notice and the opportunity to seek fear-based relief with respect to any new possible country of removal. Accordingly, Mr Santiago Jimenez is entitled to immediate release from ICE custody

5 Mr. Santiago Jimenez's re-detention further violated ICE's own regulations and his Fifth Amendment due process rights. ICE re-detained him despite his strict compliance with the terms of his OSUP during the three and a half years he was out of detention, including attending his most recent ICE check-in in January 2025 Three months after re-detaining him, pursuant to its internal custody review, ICE summarily labeled Mr Santiago Jimenez a flight risk and danger without accounting for any current circumstances, most importantly, his most recent behavior while he was out of detention. ICE has failed to comply with its own regulations for revocation of release and review of detention, in violation of the Administrative Procedure Act ("APA") and due process, pursuant to *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Independent of such violations, Mr. Santiago Jimenez's re-detention without notice and an opportunity to be heard runs afoul of his Fifth Amendment due process rights under the test in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). ICE offers no potential end date to detention while Mr. Santiago Jimenez faces serious risk of bodily harm or death from his ongoing kidney failure. For these procedural violations, Mr. Santiago Jimenez requests that he be placed back on the terms of supervision with which he was consistently complying.

JURISDICTION & VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art I § 9, cl. 2 of the U S. Constitution ("Suspension Clause"); and 28 U.S.C. § 1331 (federal question jurisdiction).

7. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention *See, e.g., Zadvydas*, 533 U S at 687.

8. This action is also brought under the APA. Jurisdiction is proper under the judicial review provisions of the APA, 5 U.S C. § 702.

9. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr Santiago Jimenez is detained in Farmville, Virginia

PARTIES

10 Mr. Santiago Jimenez is a native and citizen of El Salvador who was granted final immigration relief—deferral of removal under CAT based on his risk of torture in El Salvador—and released from ICE custody in 2021 He was re-detained by ICE on or around March 11, 2025, after attending a criminal probation appointment During the more than three and a half years he was out of detention, he strictly complied with the terms of his OSUP and probation, held a steady job, and had no criminal activity. Mr. Santiago Jimenez is currently experiencing severe kidney failure in detention that interferes with his speaking, breathing, and cognitive abilities He fears dying in immigration detention.

11. Respondent Jeffrey Crawford is the Detention Director of Farmville. Respondent Crawford is responsible for overseeing the administration and management of Farmville. Though Respondent Crawford does not have the legal authority to release Mr. Santiago Jimenez without ICE's permission, he is nominally considered Mr. Santiago Jimenez's immediate custodian. Respondent Crawford is sued in his official capacity.

12. Respondent Russell Hott is the Field Office Director of the ICE Enforcement and Removal Operations ("ERO") Washington Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Virginia, including Farmville, and has the authority to make

custody determinations regarding individuals detained there. Respondent Crawford is a legal custodian of Mr. Santiago Jimenez Respondent Crawford is sued in his official capacity

13. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS") She supervises ICE, an agency within DHS that is responsible for the administration and enforcement of immigration laws. She has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Mr. Santiago Jimenez. Respondent Noem is sued in her official capacity.

14. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office for Immigration Review ("EOIR"), including the Immigration Judges ("IJs") and the Board of Immigration Appeals ("BIA") Respondent Bondi is sued in her official capacity.

STATEMENT OF FACTS

15. Mr. Santiago Jimenez was born in El Salvador in 1990. He is not a native or citizen of any country besides El Salvador. In El Salvador, Mr. Santiago Jimenez dropped out of school when he was just eight years old due to bullying from other children for being gay and having an effeminate appearance. He further suffered from numerous attacks and death threats at a young age from MS-13 gang members on account of his sexual orientation. These attacks culminated in an incident in 2007 where gang members beat him and slashed his throat, face, and shoulder with a machete. Mr. Santiago Jimenez nearly died from the attack; he had to be hospitalized for days and still has physical scars. MS-13 also murdered and tortured multiple family members of Mr. Santiago Jimenez. Mr. Santiago Jimenez fled to the U.S. in 2008 but later returned to El Salvador

in 2016 to care for his critically ill mother, only to face additional beatings and threats from the gang.

16. Mr. Santiago Jimenez fled to the U S a second and final time in September 2017. He often turned to alcohol to self-medicate for his anxiety and past trauma, drinking to the point of blacking out. In December 2018, Mr Santiago Jimenez was convicted of Maryland sexual abuse of a minor and sentenced to 25 years' imprisonment with all but six years suspended. He does not recall the incident due to being intoxicated. After Mr. Santiago Jimenez's release from prison, DHS took him into immigration custody and issued a Notice to Appear ("NTA") on March 24, 2021, charging him with being in the country without being admitted or paroled Mr. Santiago Jimenez was subject to mandatory immigration detention because of his conviction and remained detained throughout the course of his immigration proceedings.

17. On July 13, 2021, an IJ at the Baltimore Immigration Court ordered Mr. Santiago Jimenez removed but granted him deferral of removal under the CAT from El Salvador, finding that he would more likely than not be tortured with the acquiescence of the Salvadoran government. DHS waived appeal, making the IJ's decision final Exhibit A, IJ Decision Granting Deferral of Removal Under CAT. Mr. Santiago Jimenez was released from ICE custody within the next few days on an OSUP. Exhibit B, Declaration of Mr. Santiago Jimenez at ¶ 4.

18. After his release, Mr. Santiago Jimenez resided in Gaithersburg, Maryland; he held a steady job at a local cleaning service and frequently spent time with his siblings. Exh. B at ¶¶ 7–9. He regularly played soccer with friends, finding ways to play year-round for his health and for social community. *Id.* at ¶¶ 9–10. During the over three and a half years Mr. Santiago Jimenez was free, he complied with all terms of his criminal probation and ICE OSUP and avoided criminal activity *Id.* at ¶ 9; Exhibit C, June 18 Email from Juan Salguero. He attended probation

appointments every three months and most recently attended his annual ICE check-in on or around January 8, 2025 without incident

19 ICE abruptly apprehended and arrested Mr. Santiago Jimenez in a parking lot as he was leaving a previously-scheduled probation appointment on or around March 11, 2025 The ICE officers refused to respond to Mr. Santiago Jimenez's questions regarding the reasons for his arrest. ICE transferred him to Farmville, where he remains detained as of this filing At no point did ICE officers provide Mr Santiago Jimenez with any paperwork explaining their reasons for revoking his prior OSUP

20. On April 11, Mr Santiago Jimenez's counsel Katharine Gordon from the Amica Center for Immigrant Rights ("Amica Center") emailed ICE Deportation Officer Diozey Mathos and AFOD James Mullan, informing them that because of his CAT protection grant, Mr. Santiago Jimenez could not be removed to El Salvador and was further entitled to additional procedures should ICE attempt removal to a third country. Exhibit D, April 11 Email to ICE. ICE did not respond.

21. Despite previously being healthy and having no signs of physical illness, Mr. Santiago Jimenez began suffering from kidney failure around the end of April requiring emergency care at Farmville Centra Southside Community Hospital on April 24, 2025. Exh. B at ¶¶ 12–16. He has also had inconsistent access to his hypertension medication. *Id* at ¶ 14. Since entering ICE Custody, his condition has drastically deteriorated.

22. ICE first raised the prospect of third country removal to Mr. Santiago Jimenez on April 26, 2025, stating that they were looking for countries to accept him and that the process could take a long time. They failed to provide any additional information as to which countries were

being considered, the status of any outreach, or how long they planned on detaining him while pursuing such removal.

23. On April 30, 2025, Ms. Gordon emailed Ian Gallagher, ICE Chief Counsel, Office of the Principal Legal Advisor, requesting Mr. Santiago Jimenez's release so that he could obtain proper treatment for his kidney failure. She shared a release plan that addressed Mr. Santiago Jimenez's medical care, housing, family and friend support, and employment Exhibit E, April 30 Release Request She further requested his medical records from Farmville. Mr Gallagher did not respond.

24. On June 3, ICE issued a Decision to Continue Detention, checking boxes on the form indicating that Mr Santiago Jimenez failed to show that he was not a danger or flight risk. Exhibit F, Decision to Continue Detention. The only explanation provided for the danger determination was a general reference to Mr. Santiago Jimenez's "prior criminal history" without further details. *Id.* The form did not provide any reasoning for the flight risk determination. The form did not acknowledge his multiple years of compliance with the OSUP or any of the evidence presented by Ms Gordon in the April release request. Although the form provides an option for ICE to indicate that it "is in receipt of or expects to receive the necessary travel documents to effectuate [his] removal, and removal is practicable, likely to occur in the foreseeable future," this box was not checked *Id.* As reflected in the Decision to Continue Detention's designation of "N/A" with regard to "information [Mr. Santiago Jimenez] submitted to ICE's reviewing officials," ICE did not provide advance notice of the review to Mr. Santiago Jimenez or his counsel or consider any supporting evidence, including the release request Ms. Gordon submitted on April 30. *Id.* There is no mention of the release request or any of the evidence or points raised in the

request. ICE served Mr Santiago Jimenez with the Decision to Continue Detention on June 3, 2025. Exh. B at ¶ 29.

25 On June 5, 2025, Genesis Guerra, Immigrant Justice Corps Fellow at Amica Center, visited Mr Santiago Jimenez at Farmville and observed that he struggled to walk, was gasping for air, and was unable to speak at a normal volume or without long pauses. Exhibit G, Genesis Guerra Declaration at ¶¶ 3–4. He stated that he suffered from body aches, a fever, and swollen legs. *Id.* at ¶¶ 5–6. Mr. Santiago Jimenez attempted to show Ms. Guerra his swollen ankles but was unable to do so because he was so out of breath and exhausted. *Id.* at ¶ 5. He further stated that he feared dying in immigration detention. *Id.* at ¶ 7; *see also* Exh. B at ¶ 27 ("I am afraid that I will die if I remain in ICE detention without getting adequate treatment ")

26. On June 10 at 11:13 am, Ms. Gordon submitted a second release request based on the observed significant decline in Mr. Santiago Jimenez's health. Exhibit H, June 10 Release Request. A little over two hours later, at 1:20 pm, Supervisory Detention and Deportation Officer Justin Richardson informed her that ICE had already conducted a 90-day custody review and decided to continue detention while it attempted to find a third country to which to remove him. He did not provide Ms Gordon with a copy of the June 3 Decision to Continue Detention. *Id* As of this filing, ICE has never served a copy of the June 3 Decision to Continue Detention on Ms Gordon; Mr Santiago Jimenez sent Ms. Gordon a copy for her review.

27. On July 9, 2025, after almost four months of detaining him with no progress toward removal, ICE served a Notice of Removal on Mr. Santiago Jimenez, stating that it "intends to remove [him] to Mexico." The ICE officer who provided the Notice refused to give Mr. Santiago Jimenez further explanation. Exh. B at ¶¶ 30–34. This was the first time that a specific third country of removal was mentioned to Mr. Santiago Jimenez *Id.* This paper was not served on Ms. Gordon.

Upon discovering it, Ms Gordon emailed ICE officials on July 11, 2025, stating that Mr. Santiago Jimenez fears removal to Mexico and requested a reasonable fear interview ("RFI"). She did not receive a response Exhibit I, Mexico Notice of Removal and July 11 Email to ICE.

28. ICE has not asked Mr. Santiago Jimenez to take any steps to assist in his own removal to Mexico. Exh. B at ¶ 34. Numerous other individuals detained with Mr Santiago Jimenez at Farmville have also received the same notice of removal to Mexico. *Id.* at ¶ 30. Upon information and belief, ICE has been indiscriminately serving individuals with such notices without concrete plans for their removal to Mexico or actual agreement from Mexico to accept these individuals.

29 Meanwhile, Mr Santiago Jimenez's health continues to deteriorate to the point where he faces serious risk of death or irreversible injury from his severe kidney failure. Exhibit J, Letter from Dr. Kate Sugarman at ¶ 7 (noting diagnosis of renal failure). Given that he was healthy prior to detention, he is concerned that detention conditions are triggering and exacerbating his kidney failure. Without treatment through dialysis or a kidney transplant, Mr. Santiago Jimenez faces end-stage renal disease ("ESRD") with "life-threatening complications like fluid overload, heart failure, or severe infection, especially in unsanitary conditions." *Id.* at ¶¶ 8–9. Furthermore, patients with ESRD are at a heightened risk for complications, such as electrolyte imbalances; these imbalances must be closely monitored and treated, typically with weekly bloodwork by a nephrologist. *Id* at ¶¶ 14–15. There is already evidence that Mr Santiago Jimenez is experiencing such electrolyte imbalances, including a calcium imbalance that can "rapidly be fatal as [it] can cause immediate and deadly consequences to the heart and brain " *Id.* at ¶ 14.

30. At the same time, Mr. Santiago Jimenez is apprehensive regarding receiving dialysis treatment in detention. Exh. B ¶¶13, 18–26. Dialysis would require a permanent port (a

fistula) in his arm and given his compromised immune system and detention conditions, his chances of an infection are high. It takes "at least six weeks" for a fistula to become fully functional, and "extreme caution" must be taken to avoid any infection of the fistula during that period. Exh. J at ¶ 12. Any infection at the fistula site has the potential to quickly cause sepsis—an infection of the bloodstream—because the fistula feeds directly into an individual's arteries and veins *Id.* Contracting an infection while in undergoing dialysis in detention could lead to sepsis and death within days or even hours. *Id.* at ¶ 13 (noting that "even a short delay of a few hours at the first sign of infection at the site of the fistula . . . can rapidly become fatal.") During the four months Mr. Santiago Jimenez has been in immigration detention, he has been held in a dorm with around 100 men Due to the close quarters and sanitation problems, people are frequently sick. Thus, the risk of infection at a fistula site is incredible high, which exposes Mr. Santiago Jimenez to a significant risk of sepsis and death, especially since ICE cannot provide him with "immediate access, night and day, to specialized medical care." *Id.*

31. If released, Mr. Santiago Jimenez plans to return to reside in Gaithersburg, Maryland, close to his siblings, and continue working for his prior employer. Exh B at ¶ 28. His immigration counsel has made arrangements for him to obtain continued treatment for his kidney failure at a local hospital in Gaithersburg. *Id.* at ¶ 27. Mr. Santiago Jimenez would further continue to attend his regular probation appointments and any ICE check-ins as he was doing prior to his re-detention. *Id* at ¶ 28.

LEGAL BACKGROUND

I. Deferral of Removal Under the Convention Against Torture

32. To be granted "deferral of removal" under the Convention Against Torture, a noncitizen must show that "it is more likely than not that he or she would be tortured if removed

to the proposed country of removal " 8 C F.R. § 1208.16(c); *see also* 8 C.F.R § 1208 17(a). When an IJ grants a noncitizen deferral under CAT, the IJ issues a removal order and simultaneously defers removal with respect to the country or countries for which the noncitizen demonstrated a sufficient risk of torture. *See Johnson v. Guzman Chavez*, 594 U.S. __, 141 S Ct. 2271, 2283 (2021). When an IJ grants a noncitizen CAT protection, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003 38(b) If both parties waive appeal or neither party appeals within the 30-day period, the relief grant and the accompanying removal order becomes administratively final. *See id* § 1241 1.

33 When a noncitizen has a final CAT grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F R. § 1208.17(b)(2). While ICE is authorized to remove noncitizens who were granted CAT to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Noncitizens can be removed, for instance, to the country "of which the [noncitizen] is a citizen, subject, or national," the country "in which the [noncitizen] was born," or the country "in which the [noncitizen] resided" immediately before entering the United States. 8 U.S C. § 1231(b)(2)(D)-(E).

34. If ICE identifies an appropriate alternative country of removal, the noncitizen must have notice and an opportunity to seek relief from removal to that country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) ("If [noncitizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 CFR §§ 208.16(c)(4), 208 17(a) (2004) . ."); *Andriasian v*

INS, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *Romero v Evans,* 280 F. Supp. 3d 835, 848 n.24 (E.D. Va 2017) ("DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims."), *rev'd on other grounds, Guzman Chavez*, 141 S Ct. 2271

35 The Government itself has repeatedly acknowledged this right to notice and opportunity to seek relief, including recently before the U.S. Supreme Court. Transcript of Oral Argument at 33, *Riley v. Bondi*, 23-1270 (2025) ("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 "); *see also* Transcript of Oral Argument at 20–21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). Specifically, if ICE were to attempt to remove a noncitizen to a country not designated on their removal order and the noncitizen demonstrated a reasonable fear of torture or persecution in that country, the noncitizen's removal proceedings would have to be reopened for the IJ to designate the alternative country of removal and for the noncitizen to apply for any fear-based relief in withholding-only proceedings. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006–10 (W.D. Wash. 2019); *accord* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1240.10(f); 8 C.F.R § 1240 11(c)(1)(i).

II. Third Country Removal Procedures

36. As a result of the aforementioned restrictions and procedures, "only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country" in FY 2017. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting) And from FY 2020 to FY 2023, according to publicly available data, ICE removed a total of only *five* noncitizens granted

withholding or CAT relief to alternative countries. Exhibit K, ICE Removal Data[1]; *see also Munoz Saucedo v. Pittman*, Civ Action No. 25-2258, 2025 WL 1750346 (D N.J. June 24, 2025)

37. When a noncitizen in ICE custody obtains a final grant of CAT, the noncitizen's assigned Deportation Officer ("DO") typically sends requests for removal to a random collection of three or more alternative countries The request typically consists of an email to the country's embassy, with an attached form entitled ICE Form I-241, "Request for Acceptance of Alien." In nearly every case, the embassies either do not respond or they decline the request. Indeed, ICE previously released Mr. Santiago Jimenez within day of his final grant of CAT protection on July 13, 2021, ostensibly because it could not remove him to a third country and did not deem him a danger or flight risk.

III. Detention of Noncitizens Granted CAT Protection.

A. Statutory Framework

38. 8 U.S.C. § 1231 governs the detention of noncitizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)–(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S C § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [noncitizen] from the United States" and "shall detain the [noncitizen]" as it carries out the removal. 8 U.S C § 1231(a)(1)–(2). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "*may* be detained

[1] For the complete raw data for FY 2020 through FY 2023, visit https://deportationdata.org/data.html and select "Removals (deportations)." Exhibit K excerpts each removal classified under "[5C] Relief Granted - Withholding of Deportation / Removal" or "[5D] Final Order of Deportation / Removal – Deferred Action Granted." It highlights the five individuals in those categories who were removed to countries other than their country of origin. The rest of the deported individuals presumably won withholding or CAT relief with respect to a country different than their country of origin or their withholding or CAT relief was later terminated, neither of which situation applies to Mr Santiago Jimenez

beyond the removal period" if he meets certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U S.C. § 1231(a)(6) (emphasis added). Further the 90-day removal period is extended where the noncitizen interferes with his removal in bad faith. *Id.* § 1231(a)(1)(C). If the removal period is not extended under § 1231(a)(1)(C) or 8 U.S.C. § 1231(a)(6), the noncitizen is released on an OSUP, subject to conditions of release 8 U.S.C. § 1231(a)(3); 8 C.F R. § 241.5(a)–(b).

39. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit time limit. 533 U.S at 682 *Zadvydas* dealt with two noncitizens with final removal orders who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231 authorizes detention only for "a period reasonably necessary to bring about the [noncitizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701. After that point, when the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

40. But the Supreme "Court 'did not say that the six-month presumption is irrebuttable, and there is nothing inherent in the operation of the presumption . that requires it to be irrebuttable '" *Munoz-Saucedo*, 2025 WL 1750346, at *7–*8 (citing *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D Wis. 2008)). Rather, "the presumption scheme merely suggests that the burden the detainee must carry within the first six months of post-order detention is a heavier one than after six months has elapsed." *Id.*; *see also Trinh v Homan*, 466 F. Supp. 3d 1077, 1093 (C D. Cal. 2020) ("*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical

prohibition on claims challenging detention less than six months."); *Ali v. DHS*, 451 F. Supp 3d 703, 708 (S.D. Tex. 2020) ("Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.").

B. Regulations on Post-Removal Order Detention

41. DHS regulations provide that, by the end of the 90-day removal period, the local ICE field office with jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C F.R. § 241.4(c)(1), (k)(1)(i) ("Prior to the expiration of the removal period, the district director . . . shall conduct a custody review . . .") ICE is required to provide the noncitizen and, if applicable, their counsel with approximately 30 days' notice prior to such custody reviews, to allow an opportunity to submit evidence in support of release. *Id.* § 241.4(d)(3), (h)(2). The regulations further require that custody decisions be provided to counsel. *Id* § 241.4(d)(3).

42 The Field Office Director, or their delegate, makes the final custody decision based on recommendations offered by lower-level officers. In making this custody determination, ICE considers several factors, including the availability of travel documents for removal. *Id.* § 241.4(e). The removal period can be extended, and the noncitizen may remain in detention during such extended period if he fails or refuses to make timely application in good faith for travel or other documents necessary for departure. 8 U.S.C. § 1231(a)(1)(C); 8 C.F R. § 241.5. If the factors in § 241.4 are met, ICE releases the noncitizen on an OSUP 8 C.F.R. § 241.4(j)(2).

43. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained noncitizens with final

removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

44. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to the countries in question. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)–(d), or by demonstrating by clear and convincing evidence before an IJ that the noncitizen is "specially dangerous." *Id.* § 241.14(f).

C. Regulations on Revocation of Release

45. ICE may revoke the release of certain noncitizens released on an OSUP under two categories of circumstances. First, a noncitizen's release can be revoked if they violate the conditions of release. 8 C.F.R. § 241.4(l)(1). Alternately, the Executive Associate Commissioner (or a District Director) can revoke release on conditions and re-detain a noncitizen when (1) the purposes of release have been served, (2) the noncitizen violated any condition of release, (3) "it is appropriate to enforce a removal order or to commence removal proceedings," or (4) "release would no longer be appropriate" due to the noncitizen's conduct. 8 C.F.R. § 241.4(l)(2).

46. In either case, the noncitizen is entitled to receive notice of the reasons for revocation and a "prompt" informal interview to respond to the reasons for revocation. If the noncitizen demonstrate that they did not violate the conditions of release, they can be released following the interview. 8 C.F.R § 241.4(l)(3).

47. However, any individual whose release has been revoked (under either subsection) is entitled to the regular custody review procedures in 8 C F.R. § 241.4, "which will ordinarily be expected to occur within approximately three months after release is revoked." 8 C.F R. § 241.4(l)(3). "That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.*

ARGUMENT

48. Mr. Santiago Jimenez's continued detention violates § 1231(a)(6) as interpreted by *Zadvydas* because his removal is not reasonably foreseeable given his grant of CAT protection and the unlikelihood of removal to a third country. Under *Zadvydas* and the regulations implementing it, this Court should order his immediate release under conditions of supervision

49. Alternatively, ICE's failure to comply with its regulations on re-detention and post-removal order detention violated Mr. Santiago Jimenez's Fifth Amendment due process rights and the APA, pursuant to *Accardi*. Mr. Santiago Jimenez's re-detention without proper procedures violated his due process rights in light of ICE's prior decision to release him for over three and a half years, his compliance while on release, and his severe health issues

I. Mr. Santiago Jimenez's Detention Violates § 1231(a)(6) Under *Zadvydas* and He Is Entitled to Immediate Release.

50. Mr. Santiago Jimenez's continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, 533 U.S. 678 His removal order has been final

since 2021 and his removal is not reasonably foreseeable given his CAT grant to El Salvador and the unlikelihood of third country removal.

51. 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States." 533 U.S. at 689. Mr. Santiago Jimenez cannot be deported to El Salvador, the only country of which he is a citizen, because he has a final grant of protection from removal there. While ICE, recently and for the first time, identified a third country, Mexico, to which it allegedly seeks Mr. Santiago Jimenez's removal, there is no indication that he can be feasibly removed there. Indeed, ICE previously indicated that his removal to a third country was not reasonably foreseeable in its June 3 Decision to Continue Detention. ICE further released Mr. Santiago Jimenez a day after he obtained CAT protection in 2021, presumably based on the unlikelihood of finding a third country. Based on the data mentioned *supra*, there is less than a 2% chance of deportation to a third country for a noncitizen like Mr. Santiago Jimenez, who was granted CAT relief. Even if ICE does identify such a country, ICE would be legally obligated to inform Mr. Santiago Jimenez and his counsel of the identified country Mr. Santiago Jimenez would then be given the opportunity to seek fear-based relief from removal to that country, further prolonging his proceedings and detention. *See Munoz-Saucedo*, 2025 WL 1750346, at *7 (noting that third country removals have "been historically rare" and that petitioner was entitled to further proceedings to seek fear-based relief, even if a third country for removal were to be found).

52. Accordingly, Mr. Santiago Jimenez will not be removed from the United States in the "reasonably foreseeable future" because (1) he cannot be deported to his home country due to his CAT relief grant; (2) ICE has historically managed to remove only a tiny fraction of noncitizens granted withholding or CAT to alternative countries; (3) to his knowledge, ICE has not been able

to secure travel documents to a third country currently or during Mr. Santiago Jimenez's initial removal period; and (4) removing Mr Santiago Jimenez to any alternative country would require additional, lengthy proceedings. As such, Mr. Santiago Jimenez's continued detention violates 8 U.S.C. § 1231(a).

53. Although Mr. Santiago Jimenez has currently been detained for four months, it has been over three and a half years since his removal order was rendered final. ICE had that entire duration to attempt to find third countries to which to remove Mr Santiago Jimenez. Where the time periods differ, courts have analyzed the reasonableness of post-removal order detention based on the date of the final removal order triggering the removal period rather than the date of (re)detention. *See Tadros v. Noem*, No. 2:25-cv-04108-EP, ECF No. 9 at 6–7, (D N.J. June 13, 2025) (ruling that for petitioner re-detained years after his final removal order, his "final order of removal [had] triggered the six-month detention period under *Zadyvdas*"), *habeas granted* ECF No. 17 (D. N.J June 17, 2025); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 502 (S.D.N.Y. 2009) (ruling that for petitioner with two and half year-old *in absentia* removal order "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"); *see also Ulysse v. DHS*, 291 F. Supp. 2d 1318, 1325 (M.D. Fla. 2003) (in analyzing legality of detention, focusing on the start of the 90-day removal period rather than when noncitizen was taken into custody); *Yiu Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 462 (S.D.N.Y. 2018) (holding that ICE had no authority to detain noncitizen after the 90-day removal period without a finding of dangerousness or flight risk).

54. Accordingly, because it has been years since Mr Santiago Jimenez's final removal order was issued, the Government bears the burden of demonstrating that there is a "significant

likelihood of removal in the reasonably foreseeable future," a showing it cannot make. *See Zadvydas*, 533 U S. at 701; *Cordon-Salguero v. Noem et al*, No 25-cv-1626 at 32 (D Md. June 18, 2025) (noting that the 90-day removal period and presumptively reasonable 6-month detention period expired years prior to re-detention and that 8 U.S.C § 1231(a)(1)(C) "contains no provisions for pausing, reinitiating, or refreshing the removal period.").[2]

55. Even if this Court were to conclude based on Mr. Santiago Jimenez's four-month post-removal order detention that he bears the initial burden of showing that his removal is not reasonably foreseeable, he would still prevail. While six months of post-removal order detention is considered "presumptively reasonable," *see Zadvydas*, 533 U.S at 701, Mr. Santiago Jimenez has rebutted that presumption by demonstrating that his detention is unreasonable due to his grant of CAT protection and the unlikelihood of third country removal *See Munoz-Saucedo,* 2025 WL 1750346, at *7–*8 (holding that petitioner with final withholding of removal grant had shown that his under six-month detention was unreasonable because his removal was not reasonably foreseeable). His case for release is even stronger than the petitioners in *Zadvydas*, who had a final removal order and no immigration relief. *See Zadvydas* at 684, 710

56. Release is the most common and appropriate remedy for a *Zadvydas* violation. *See, e.g., Munoz-Saucedo,* 2025 WL 1750346, at *9 (ordering release under appropriate conditions where re-detained noncitizen's removal was not reasonably foreseeable); *Cordon-Salguero*, No. 25-cv-1626 at 38 (ordering release where re-detained noncitizen's removal was not reasonably foreseeable); *Tadros*, 2:25-cv-4108 at 7 (order to show cause why noncitizen should not be released when there was no likelihood of reasonably foreseeable removal); *Ali v DHS*, 451 F. Supp. 3d 703, 710 (S.D. Tex 2020) (ordering release under appropriate conditions pursuant to

[2] Transcript of the oral decision granting petition for habeas corpus attached as Exhibit L.

Zadvydas); *Manson v. Barr*, No. 3:20-cv-133, 2020 WL 3962235, at *3 (M D. Fla. July 13, 2020) (same); *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *8 (W.D.N.Y Jan 2, 2019) (same). To order Mr Santiago Jimenez's immediate release, this Court need only determine that his removal is not reasonably foreseeable under *Zadvydas*. It need not analyze whether Mr. Santiago Jimenez is a danger to the community or flight risk. *Zadvydas*, 533 U.S. at 699–700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute."); *Munoz-Saucedo,* 2025 WL 1750346, at *8 ("[N]othing supports the argument that danger to the community is a relevant factor to consider in conducting a *Zadvydas* analysis.").

57. To the extent that this Court considers the risk of danger or flight, Mr. Santiago Jimenez does not pose either risk as he has a final grant of relief; familial and community support; demonstrated rehabilitation efforts, including perfect compliance with ICE check-ins and probation appointments; and steady employment. ICE further chose to release him at the beginning of his 90-day removal period in 2021. *See Munoz-Saucedo,* 2025 WL 1750346, at *8 (ruling that Government's argument that continued detention was warranted because of petitioner's endangering welfare of child conviction and dangerousness "lacks credibility considering that ICE voluntarily released Petitioner in 2023 . . . when it had no obligation to do so"); *Ulysse*, 291 F. Supp. at 1326 n.13 ("Obviously, Respondents have no concern that Ulysse is a flight risk or a danger to society because they made no effort to remove or detain her sooner."). In any case, "the [noncitizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances " *Zadvydas*, 533 U.S. at 700.

II. ICE's Re-Detention and Continued Detention of Mr. Santiago Jimenez Without Sufficient Process Violates the Due Process Clause and the APA.

58. Further, the lack of procedures afforded to Mr. Santiago Jimenez to challenge his re-detention after three and a half years of freedom and compliance with all his terms of his supervised release violates the Due Process Clause of the Fifth Amendment and the APA.

A. ICE's Failure to Comply with Its Own Regulations Violates the Due Process Clause and the APA Pursuant to *Accardi*.

59. First, pursuant to *Accardi v Shaughnessy*, 347 U.S. 260 (1954), ICE's failure to follow its regulations on revocation of release at 8 C F R. § 241 4(l) and post-order custody reviews at 8 C.F.R. § 241.4(d), (h), (k) violates the APA and the Due Process Clause of the Fifth Amendment.

60. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration case law, agencies are bound to follow their own policies that affect the fundamental rights of individuals, including self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . even where the internal procedures are possibly more rigorous than otherwise would be required.").

61. When agencies fail to adhere to their own policies as required by *Accardi*, courts frame the violation as a due process violation or as arbitrary, capricious, and contrary to law under the APA *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA").

62. Prejudice is generally presumed when an agency violates its own policy. *See Montilla v. INS,* 926 F 2d 162, 167 (2d Cir 1991) ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them.")

63. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, or a court may apply the policy itself and order relief consistent with the policy. *Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

64. Here, ICE has violated the requirements of 8 C.F R. § 241.4(l) for revocation of release in violation of *Accardi*. ICE has not provided Mr. Santiago Jimenez with any notice of its revocation of release or any explanation of its basis for revocation If ICE alleged that he had violated his conditions of release (which Mr Santiago Jimenez wholeheartedly contests), it was required to "notif[y] [him] of the reasons for revocation" and "afford[] [him] an initial informal interview promptly" to allow him to contest these reasons. 8 C.F.R. § 241.4(l)(1). He has not received any such notification or interview.

65. Similarly, to the extent that ICE revoked Mr. Santiago Jimenez's release pursuant to 8 C.F.R. § 241.4(l)(2), based on a determination of an "Executive Association Commissioner" or "district director," Mr. Santiago Jimenez has received no notice of such determination or a prompt informal interview at which he could contest any such determination. Indeed, he has not received *any* written notice that his release was in fact revoked, much less one signed by an

individual with the authority to do so. *See Ceesay v. Kurzdorfer*, No. 25-cv-267, 2025 WL 1284720, at *16 (noting that the "Executive Associate Commissioner [of] INS is equivalent to the Executive Associate Director [of] ICE."); *Cordon-Salguero*, No. 25-cv-1626 at 36 (noting that petitioners' revocation notice was signed by an unknown individual "with no proof of any delegated authority to do so.") Failure to provide notice of revocation that is signed by an individual with authority to do so means that the "release was not lawfully revoked, and . . . [Petitioner] is entitled to release on that basis alone." *Ceesay*, 2025 WL 1284720, at *17 (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 386–89 (D. Mass. 2017)).

66. ICE has further failed to comply with 8 C.F R. § 241.4(l)(3)'s provisions for additional post-revocation custody review, which require "notification to the [noncitizen] of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked." Such "review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.* Despite his over four months of detention, ICE never interviewed Mr Santiago Jimenez or gave him notice of a review and an opportunity to submit records. The June 3 Decision to Continue Detention is insufficient because neither Mr. Santiago Jimenez nor his counsel received prior notice and the notice does not provide the reasons for revocation of release and does not engage with any of Mr. Santiago Jimenez's positive equities, including his final grant of CAT relief and compliance with all terms of release during the over three and a half years he was out of detention.

67. ICE Respondents' failure to comply with its regulations is prejudicial. Prejudice can be presumed because the regulations implicate fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a

regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [noncitizen]" and the violation affected "interests of the [noncitizen] which were protected by the regulation") (internal quotations omitted). The regulations provide re-detained noncitizens like Mr Santiago Jimenez with a discrete opportunity to obtain freedom from detention, an opportunity that has been withheld from him. *See Damus*, 313 F. Supp. 3d at 337–38; *Zadvydas*, 533 U S at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.")

68. Accordingly, this Court should order Mr. Santiago Jimenez's release on the conditions with which he was previously complying. *See Jimenez*, 317 F. Supp. at 657 (ordering petitioners' release because "it would not be appropriate to allow ICE to decide again whether [petitioners'] detention should continue" and "[i]t would be particularly unfair to require that petitioners remain detained for another 30 days while ICE attempts to remedy its failure to follow its regulations and to provide each of them due process").

B. ICE's Re-Detention of Mr. Santiago Jimenez Without Sufficient Process After Three and a Half Years of Compliance with His Order of Supervision Independently Violates His Due Process Rights.

69. Regardless of whether ICE complied with its regulations, the lack of process afforded Mr. Santiago Jimenez to challenge his re-detention violates his procedural due process rights under the test in *Mathews v Eldridge*, 424 U.S 319. 333 (1976); *see also Morrissey v. Brewer*, 408 U.S. 471, 480–82 (1972) (holding that revocation of parole involves significant values within the protection of Due Process and termination of that liberty requires, among other

protections, written notice of the claimed violations and an informal hearing to ensure that revocation is based on verified facts).[3]

70. To determine whether a noncitizen's detention violates due process, the Fourth Circuit has considered the three-part balancing test set forth in *Mathews*:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335; *see Miranda v. Garland,* 34 F.4th 338, 358-39 (4th Cir. 2022).

71. Here, application of the *Mathews* test shows that Mr. Santiago Jimenez's re-detention without any meaningful review is unconstitutional First, "the private interest at stake is freedom from detention, a liberty interest which 'lies at the heart of the liberty that [the Due Process] Clause protects.'" *Miranda,* 34 F.4th at 359 (citing *Zadvydas*, 533 U.S. at 690). Thus, the first *Mathews* factor undoubtedly favors Mr. Santiago Jimenez.

72. The second *Mathews* factor, the risk of erroneous deprivation and value of additional safeguards, also heavily favors Mr. Santiago Jimenez As discussed above, ICE failed to comply with its already minimal requirements for re-detention and post-order custody reviews under the regulations. Mr. Santiago Jimenez has received no explanation of the reasons for revocation of his supervised release, no signed notice of revocation, and no opportunity to present evidence in opposition of re-detention The one custody review Mr Santiago Jimenez received,

[3] Given his final grant of CAT protection and release from ICE detention shortly after, over three and a half years of being on supervised release with perfect compliance, and serious medical issues, Mr. Santiago Jimenez has further shown "exceptional circumstances" warranting due process review *See Castaneda*, 95 F.4th at 762.

reflected in the June 3 Decision to Continue Detention, was conducted without notice to him or his counsel and makes no mention of his specific equities or even the revocation of his prior OSUP

73 This Court has recognized the shortcomings of the parole process, which like the re-detention and post-order custody review procedures, consists solely of ICE's own internal, discretionary review of detention. *See Mbalivoto v. Holt*, 527 F. Supp 3d 838, 848 (E D Va. 2020) (ruling that parole procedures were insufficient because "parole . . . has highly restrictive criteria and limited transparency, is subject to the unreviewable discretion of the Attorney General, and has no opportunity for an actual hearing before a neutral decisionmaker."); *Leke v. Hott*, 521 F. Supp. 3d 597, 605 (E.D. Va. 2021) (rejecting respondents' argument that "seek[ing] parole at the unreviewable discretion of the [Government]" is sufficient process for prolonged detention as "both unrealistic and unpersuasive" given "highly restrictive" criteria).

74. The fact that Mr. Santiago Jimenez was released almost immediately after he obtained CAT protection in 2021 and was out of detention for over three and a half years, during which he did not engage in criminal activity and complied with all probation and OSUP requirements, makes his re-detention particularly problematic *See Perera v Jennings*, 598 F Supp. 3d 736, 746 (N.D Cal. 2022) (ruling that petitioner's detention without bond pursuant to 8 U.S.C § 1226(c) was unconstitutional under *Mathews* where ICE first detained him years after his release from criminal custody and petitioner kept a clean record while released). ICE's conclusory findings that he is both a flight risk and danger are simply not supported by the record given his strict compliance while he was out of detention and the fact that there have been no material changes to Mr. Santiago Jimenez's situation since ICE previously released him shortly after his grant of CAT protection. *See Munoz-Saucedo,* 2025 WL 1750346, at *8 (Government's argument that petitioner was dangerous "lacks credibility considering that ICE voluntarily released Petitioner

in 2023 . . . when it had no obligation to do so"); *Ulysse*, 291 F Supp. at 1326 n.13 ("Obviously, Respondents have no concern that Ulysse is a flight risk or a danger to society because they made no effort to remove or detain her sooner.").

75 ICE's barebones reference to Mr. Santiago Jimenez's "prior criminal history" as demonstrating dangerousness with no reference to positive equities is insufficient *See* Exh. F, Decision to Continue Detention. ICE further has given no explanation for its flight risk determination, which is belied by Mr. Santiago Jimenez's perfect compliance with his OSUP. The risk of erroneous deprivation is further heighted by Mr. Santiago Jimenez's severe kidney failure that has resulted from his detention, which is currently causing alarming side effects like extreme fatigue, shortness of breath, swelling, confusion, and bleeding from the face. *See Gutierrez v. Hott*, 475 F. Supp. 3d 492, 498 n.8 (E.D. Va. 2020) (considering risk of infection from COVID-19 pandemic as additional factor weighing in favor of finding petitioner's § 1226(c) detention without bond unconstitutional). There is a very real risk that Mr. Santiago Jimenez will die if he remains in ICE detention

76. Third, the Government's interest and the administrative burden of additional procedures further favors Mr. Santiago Jimenez. The procedures set forth in the relevant regulations regarding revocation of release are minimal and impose a negligible burden on the Government. And while the Government may have a legitimate interest in ensuring Mr. Santiago Jimenez's appearance for any additional third country removal proceedings and protecting the community from danger, it "has not articulated an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight." *Black*, 103 F 4th at 155 (citing *Velasco Lopez*, 978 F.3d at 854)) As ICE has made only a cursory finding of dangerousness or flight risk that did not acknowledge Mr. Santiago Jimenez's OSUP compliance, his severe health risks, and his other

community ties, any interest the Government may allege for continuing to detain Mr. Santiago Jimenez is insufficient.

77. Mr. Santiago Jimenez has received only a cursory denial of release from ICE, the same entity that detains him. He previously attended all of his ICE check-ins, most recently in January 2025, and stayed out of trouble during the three and a half years he was out of detention. However, ICE failed to acknowledge or weigh any of those facts in its unjustified revocation of Mr Santiago Jimenez's release and its decision to re-detain him Accordingly, Mr. Santiago Jimenez's re-detention and continued detention is also unreasonable under the *Mathews* Test, which requires a release on conditions of release.

CLAIMS FOR RELIEF

COUNT I
VIOLATION OF 8 U.S.C. § 1231(a)(6)

78. Mr. Santiago Jimenez realleges and incorporates by reference the paragraphs above.

79 8 U.S.C § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689, 701.

80. Mr. Santiago Jimenez's removal is not reasonably foreseeable given his final grant of CAT protection and the unlikelihood of third country removal. Therefore, his continued detention violates 8 U.S.C § 1231(a)(6) and requires his immediate release.

COUNT II

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

Failure to Follow Revocation of Release and Post-Order Custody Review Regulations

Against ICE Respondents

81. Mr. Santiago Jimenez realleges and incorporates by reference the paragraphs above.

82. ICE Respondents have violated their own binding regulations at 8 C.F.R. § 241.4(l) regarding the procedures for revocation of release by failing to notify him of the reasons for revocation, provide him with notice of revocation signed by anyone with authority to revoke his release, provide him with an interview, or provide a custody review with prior notice and an opportunity to submit evidence.

83. ICE Respondents have further failed to comply with the post-order custody review procedures at 8 C F.R. § 241 4(d), (h), and (k) by failing to provide Mr. Santiago Jimenez and his counsel with 30 days' notice and an opportunity to submit evidence prior to his custody review, failing to conduct the custody review soon after his re-detention, and failing to provide counsel with a copy of his Decision to Continue Detention. Such omissions violate Mr. Santiago Jimenez's due process rights under the Fifth Amendment.

COUNT III

ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

Failure to Follow Revocation of Release and Post-Order Custody Review Regulations

Against ICE Respondents

84 Mr. Santiago Jimenez realleges and incorporates by reference the paragraphs above.

85 Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

86. As discussed above, ICE Respondents have violated their own binding regulations at 8 C.F.R § 241.4(d), (h), (k), and (l) regarding the procedures for revocation of release and post-order custody reviews. This is arbitrary, capricious, and contrary to law in violation of the APA.

COUNT IV

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

87. Mr. Santiago Jimenez realleges and incorporates by reference the paragraphs above.

88. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S Const. Amend. V.

PRAYER FOR RELIEF

WHEREFORE, Mr. Santiago Jimenez prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Grant a writ of habeas corpus pursuant to 28 U.S.C. § 2241;

c. Declare that his detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v Davis*, 533 U.S. 678 (2001);

d. Order his immediate release, subject to any appropriate conditions;

e. Declare that ICE Respondents' failure to follow the binding revocation and custody review provisions at 8 C.F R. § 241.4 violates the Administrative Procedure Act and the Due Process Clause of the Fifth Amendment;

f Prohibit ICE Respondents from revoking Mr. Santiago Jimenez's Order of Supervision or re-detaining him in the future without complying with 8 C.F.R § 241.4;

g. Grant such further relief as this Court deems just and proper

Dated: July 18, 2025

Respectfully submitted,

/s/ Adina Appelbaum
Adina Appelbaum

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VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney I or my colleagues have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: July 18, 2025

Respectfully submitted,

/s/ Adina Appelbaum
Adina Appelbaum
Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system My co-counsel will furthermore mail a copy by USPS Certified Priority Mail with electronic return receipts to each of the following individuals:

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Dated: July 18, 2025

Respectfully submitted,

/s/ Adina Appelbaum
Adina Appelbaum
Pro Bono Counsel for Petitioner

EXHIBIT LIST

Exhibit A	July 13, 2021 Order of Immigration Judge Granting Deferral Under the Convention Against Torture
Exhibit B	Declaration of Santos Santiago Jimenez
Exhibit C	June 18, 2025 Email from Juan Salguero re: Criminal Probation Compliance
Exhibit D	April 11, 2025 Email to ICE re: Advisal of Fear of Third Country Removal
Exhibit E	April 30, 2025 Email to ICE re: First Release Request
Exhibit F	June 3, 2025 Decision to Continue Detention
Exhibit G	Declaration of Genesis Aguirre Guerra
Exhibit H	June 10–12, 2025 Emails with ICE re: Second Release Request
Exhibit I	July 11, 2025 Email to ICE re: Mexico Removal Notice
Exhibit J	Letter from Dr. Kate Sugarman
Exhibit K	Third Country Removal Data
Exhibit L	Transcript of Oral Decision in Cordon-Salguero v. Noem, 1:25-cv-1626 (D. Md. June 18, 2025)