IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-02287-CNS

JOSE ALBERTO SANCHEZ,

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General, in her official capacity,
ERNESTO SANTACRUZ, U.S. Immigration & Customs Enforcement Field Office Director for the Colorado Field Office, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity, and
JOHNNY CHOATE, Warden of GEO Group Aurora Inc, in his official capacity,

Respondents.

PETITIONER'S RESPONSE TO RESPONDENT'S ANSWER
REPLY MEMORANDUM IN SUPPORT OF PETITION FOR
WRITOF HABEAS CORPUS

INTRODUCTION

This response is submitted on behalf of Petitioner Jose Alberto Sanchez, also known as ("AKA") J. Concepcion Flores Ramirez, in support of his Habeas Petition as ordered by this Court on July 28, 2025, requesting Petitioner to file a response to Petitioner's answer on or before September 2, 2025. Contrary to the Respondents' assertions, Mr. Sanchez's detention is not lawful, and his release is presently warranted. This response will demonstrate that Mr. Sanchez is likely to succeed on the merits of his habeas claim, that he faces irreparable harm if not released, and that the balance of equities and public interest favor his release. In a nutshell, there have been no change in circumstances from the Respondent's Grant of Convention Against Torture relief on July 23, 2019 by Immigration Judge Perlman in Arlington, Virginia which would allow for Petitioner's current re-detention and deportation to a third country. In his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, Petitioner seeks release from ICE detention. As relevant here, § 2241 provides that a district court may grant a writ of habeas corpus if a prisoner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 224l(c)(3). Petitioner should be released because his detention violates his due process rights under the Fifth Amendment to the Constitution, the APA, the INA, and the INA's implementing regulations. Specifically, he asserts a violation of due process on the grounds that (1) the revocation of his release was effected without compliance with applicable regulations, in violation of principles set forth in *United States ex rel. Accardi v. Shaughnessy ("Accardi"),* 347 U.S. 260 (1954); and (2) it is not reasonably foreseeable that he will be removed to Mexico or any other country, in violation of due process rights articulated in *Zadvydas v. Davis,* 533 U.S. 678 (2001).

BACKGROUND

Mr. Sanchez ("Petitioner") is a native and citizen of Mexico. He first entered the United States without inspection on May 21, 1993. Petitioner testified he returned to Mexico in 1994 for approximately three months before re-entering the United States on June 10, 1994. He remained in the United States until he was removed by the Department of Homeland Security ("DHS") on January 8, 2000. Petitioner testified he last entered the United States in April 2006. On December 28, 2018, the OHS referred the matter to the Immigration Court for withholding-only proceedings. On March 7, 2019, the Petitioner, through counsel, filed an Application for Asylum and for Withholding of Removal (Form I-589), seeking withholding of removal under the Act and protection under the CAT. On May 20, 2019, the Immigration Court conducted an individual hearing regarding the Petitioner's applications. The Immigration Court granted the Petitioner's application for deferral of removal under the CAT. Mr. Sanchez asserts that at no time after he was granted CAT did he commit any crimes, miss any check-in appointments, or disobey any instructions from ICE. DHS then sought to remove him to a third country, without success. A few months later, in November 2019, Sanchez was released from detention under an Order of Supervision. He remained in the United States and checked in annually with DHS. On July 7, 2025, at his annual check-in, Mr. Sanchez was detained pending his removal to a country other than Mexico. DHS has solicited three possible countries for removal. ECF No. 7-1 (July 24, 2025, email from Aaron Johnson to Petitioner's counsel). It has not yet determined if one of those countries will accept Sanchez.

ARGUMENT

In the Respondents' Response to Order to Show Cause (ECF 15) the Respondent seems to place an undue emphasis on several facts which the Petitioner is not contesting, and which were all in place at the time of Respondent's Grant of Convention Against Torture relief on July 23, 2019. ECF 15. First, the Respondent cites to the fact that Petitioner has entered the country several times. Id. at p. 1. Then, the Respondent cites to the uncontested fact that Respondent has a criminal record which again Petitioner is in no way contesting and that same criminal record was in place at the time of Petitioner's 2019 grant. Petitioner is also not contesting that he was removable under a valid final order of removal, however, that same order of removal is a grant of CAT which allows the Applicant's application for deferral of removal under CAT to be granted as of July 23, 2019 and there have been absolutely no changes in circumstances with neither the Respondents criminal record, removal orders, or additional unlawful entries which would have disturbed the July 2019 CAT Grant by IJ Perlman in Arlington, Virginia.

The Petitioner currently seeks immediate release on the grounds that his detention would violate the Due Process Clause of the Fifth Amendment to the United States Constitution, the Administrative Procedure Act ("APA"), 5 USC Sections 551-559, 701-706, Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101-1537, and the INA's implementing Regulations.

I. Mr. Sanchez is Likely to Succeed on the Merits of His Habeas Claim

1. **Unlawful Detention & Due Process Violations**: Mr. Sanchez's detention is not justified under 8 U.S.C. § 1231(a)(6) as he does not pose a risk to the community or

a flight risk. In his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, Petitioner seeks release from ICE detention. As relevant here, § 2241 provides that a district court may grant a writ of habeas corpus if a prisoner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 224l(c)(3). Petitioner argues that he should be released because his detention violated his due process rights under the Fifth Amendment to the Constitution, the APA, the INA, and the INA's implementing regulations. Specifically, he asserts a violation of due process on the grounds that (1) the revocation of his release was effected without compliance with applicable regulations, in violation of principles set forth in *United States ex rel. Accardi v. Shaughnessy ("Accardi"),* 347 U.S. 260 (1954); and (2) it is not reasonably foreseeable that he will be removed to Mexico or any other country, in violation of due process rights articulated in *Zadvydas v. Davis,* 533 U.S. 678 (2001). See below for further arguments on Lack of Adequate Process-Mr. Sanchez's Detention is Unlawful.

Membership in the D.V.D. Class: While Mr. Sanchez is a member of the D.V.D. class, the Supreme Court's stay of the preliminary injunction does not preclude this Court from granting individual relief based on the unique facts of his case. The Respondents' argument that this Court lacks jurisdiction is unfounded, as habeas corpus remains a viable remedy for unlawful detention. Moreover, even if Petitioner is a member of the certified class in *D.VD,* in the Petition, he is not only seeking relief relating to the execution of his removal to a third country but also seeks relief only from his present detention.

II. Mr. Sanchez Faces Irreparable Harm

2. **Risk of Torture**: Mr. Sanchez has a well-founded fear of torture if removed to Mexico, as established by the Immigration Judge's decision in 2019. The Respondents have not identified any third country willing to accept Mr. Sanchez, nor have they provided assurances that he will not face torture in any such country.

3. **Lack of Adequate Process-Mr. Sanchez's Detention is Unlawful.**

The Respondents' failure to provide Mr. Sanchez with meaningful notice and an opportunity to present a fear-based claim before removal constitutes irreparable harm. The potential for removal without due process exacerbates the risk of torture and violates Mr. Sanchez's rights.

Regulations promulgated pursuant to the INA govern the "authority to continue an alien in custody or grant release or parole under" 8 U.S.C. § 1231 (a)(6). 8 C.F.R. § 241.4(a). Under these regulations, certain ICE officials are authorized to make determinations on whether to "continue an alien in custody beyond the removal period" based on certain factors enumerated in the regulations. 8 C.F.R. § 241.4(a), (c), (t). Alternatively, ICE could determine that an alien should be released upon consideration of certain criteria and factors set forth in the regulations. *See* 8 C.F.R. § 241.4(e), (t). Under the regulations, a copy of any decision by the "Executive Associate Commissioner," the "district director," or the "Director of the Detention and Removal Field Office" "to release or to detain an alien shall be provided to the detained alien," and any such detention decision must "briefly set forth the reasons for the continued detention." 8 C.F.R. § 241.4(d). A noncitizen who

is ultimately released pursuant to these provisions "must abide" by "conditions or special conditions on release" imposed by ICE. 8 C.F.R. § 241.4(l)(1).

Such release may be revoked. Specifically, a noncitizen "who has been released under an order of supervision or other conditions of release" who then "violates the conditions of release may be returned to custody." 8 C.F.R. § 241.4(*l*)(1). Under this provision, "[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release," after which "[t]he alien will be afforded an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.*

Furthermore, even absent a violation of conditions of release, the Executive Associate Director of ICE, and in limited instances, a district director of ICE, has the "authority, in the exercise of discretion, to revoke release and return to [ICE] custody an alien previously approved for release under the procedures in this section." 8 C.F.R. § 241.4(*l*)(2); *see Ceesay v. Kurzdorfer, No. 25-0267-LN, 2025 WL 1284720, at *16 (W.D.N.Y. May 2, 2025) (noting that the reference in 8 C.F.R. § 241.4(l)(2) to the "Executive Associate Commissioner" now refers to the "Executive Associate Director of ICE"). Specifically:*

> *Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:*
>
> *(i) The purposes of release have been served;*
> *(ii) The alien violates any condition of release;*
> *(iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or*
> *(iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.*

8 C.F.R. § 241.4(/)(2).

Finally, the regulations provide "special review procedures" for "aliens who are subject to a final order of removal and are detained under the custody review procedures provided at [8 C.F.R.] § 241.4 after the expiration of the removal period, where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). This regulation applies when ICE has made "a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future." 8 C.F.R. § 241.1 3(b)(1). Once that determination has been made, the noncitizen is released subject to certain conditions of release. See 8 C.F.R. § 241.13(h). ICE may revoke that release upon a violation of conditions of release or if "changed circumstances" have led to a determination "that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.1 3(i)(l), (2). To revoke such release, ICE must follow specific revocation procedures, including that (1) "[u]pon revocation, the alien will be notified of the reasons for revocation"; (2) ICE "will conduct an initial informal interview promptly after ... return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification"; and (3) "[t]he alien may submit any evidence or information" to show that there is no "significant likelihood" of removal in the "reasonably foreseeable future," or that the alien "has not violated the order of supervision." 8 C.F.R. § 241.13(i)(3).

Mr. Sanchez's re-detention violates his Fifth Amendment right to due process because Respondents failed to comply with the regulations governing "[continued

detention of inadmissible…and other aliens beyond the removal period" set forth in 8 C.F.R.§ 241.4. Specifically, Mr. Sanchez asserts that, in re-detaining him ICE failed to provide him with any "prior notice or opportunity to respond," consisting of notification of the reasons for revocation and an "initial informal interview promptly" after he was detained to provide an opportunity for him to '·'respond to" those stated reasons, in violation of 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13.

He also argues that there was a failure to comply with the requirement that a discretionary revocation of release must be made either by the "Executive Associate Commissioner" or by a district director when "circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(*l*)(2). These regulations are designed to protect noncitizens' " liberty and property interests," so the failure to follow them "constitutes a per se violation of procedural due process. Petitioner's Counsel reached out to ICE on July 14, 2025, and inquired regarding the authority behind Petitoner's re-detention. ICE in turn responded, without citing further authority, "Your client Jose Sanchez has a final order of removal. The case has been sent to HQRIO, who is currently soliciting 3 alternate countries for removal." ECF 7-1.

The Supreme Court has recognized that a federal agency's failure to comply with its own regulations generally renders the associated agency action unlawful. *See Accardi,* 347 U.S. at 268. The principle that "an agency's failure to afford an individual procedural safeguards required under its own regulations may result in the invalidation of the ultimate administrative determination" has come to be known as the *"Accardi* doctrine." *United States v. Morgan,* 193 F.3d 252,266 (4th Cir. 1999). Since *Accardi,* the Supreme Court has added a further requirement that

"claimants demonstrate prejudice resulting from the violation" in order to establish a due process violation. *Id.* at 267 (citing *Am. Farm Lines v. Black Ball Freight Serv.,* 397 U.S. 532, 538- 39 (I 970)). Prejudice, however, "might still be presumed under certain specific circumstances," *id.,* including where "compliance with the regulation is mandated by the Constitution" and "where an entire procedural framework, designed to insure the fair processing of an action affecting an individual is created but then not followed by an agency." *DelgadoCorea v. Immigr. & Naturalization Serv.,* 804 F .2d 261 , 263 (4th Cir. 1986).

Here, because Petitioner was inadmissible he was likely released pursuant to the authority set forth in 8 U.S.C. § 1231(a)(6) and was therefore subject to the requirements of 8 C.F.R. § 241.4, which on their face apply to decisions to release and to revoke release, regardless of whether the release was based on a formal order of supervision. *See, e.g.* , 8 C.F.R. § 241.4(d) (applying to any decision "to release or detain"); *id.* § 241.4(*l*)(1) (applying to individuals "released under an order of supervision or other conditions of release"); *id.* § 241.4(l)(2) (applying to discretionary decisions "to revoke release").

If the Petitioner's release was subject to 8 C.F.R. § 241.4 those provisions are intended to provide due process to individuals in Petitioner's position. These regulations plainly provide due process protections to aliens following the removal period as they are considered for continued detention, release, and then possible revocation of release by, among other things, requiring that only certain designated officials make custody determinations; mandating that a noncitizen receive a copy of any decision to release or detain that individual; establishing criteria and factors

applicable to detention, release, and revocation determinations; and requiring certain procedural safeguards upon revocation to allow a non citizen to have an opportunity to be heard to contest the reasons for revocation, including informal interviews and custody reviews. *See* 8 C.F.R. § 241.4. *See Mathews v. Eldridge,* 424 U.S. 319, 348 (1976) ("The essence of due process is the requirement that 'a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.'" (citation omitted)); *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.").

In turn, Petitioner's re-detention on July 7, 2025 violated several provisions within 8 C.F.R. § 241.4 that are designed to provide procedural due process. First, to Counsel's best knowledge, and following her own inquiry with ICE starting on July 14, 2025, at no point, whether at the time of his re-detention on July 7, 2025 or at any point thereafter, has Petitioner received notification of the reasons for his re-detention, in violation of the requirements within 8 C.F.R. § 241.4 that "[a] copy of any decision ... to detain an alien shall be provided to the detained alien," and that the decision "set forth the reasons" for that detention. 8 C.F .R. § 241.4(d). Such a failure to inform Petitioner of the basis for the revocation of his release necessarily violates due process because it thwarts his ability to contest that action.

Second, the revocation of Petitioner's release also, to Counsel's best knowledge following an inquiry on July 14, 2025, most likely violated the requirement that such a decision must be made either by an "Executive Associat Commissioner" or by a "district director." 8 C.F.R. § 241.4(*l*)(2). Section 241.4(*l*)(2),

which permits revocation "in the exercise of discretion when, in the opinion of the revoking official ... it is appropriate to enforce a removal order," *id.* § 24 I .4(/)(2)(iii), requires that such a determination be made only by an "Executive Associate Commissioner" or, if "the public interest and circumstances do not reasonably permit referral of the case" to that official, by a "di strict director." 8 C.F. R. § 241.4(/)(2).

Third, if the revocation of Petitioner's release was instead based on 8 C.F.R. § 241.4(/)(1) due to a failure to comply with conditions of release, it runs afoul of the requirements in that provision that upon such revocation "the alien will be notified of the reasons for revocation" and that "the alien will be afforded an initial informal interview promptly after" the return to custody "to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(/)(1). To the best of counsel's knowledge, Petitioner received no such notification or informal interview, whether at the time of his re-detention or at any point since.

Fourth, to the extent if any, that the Petitioner was subject to 8 C.F.R. § 241.13, the revocation of his release violated those regulations as well. 8 C.F.R. § 241.13 arguably could apply to Petitioner because, where he had a final order of removal, the removal period had expired, and he was released after he received CAT Withholding, it could be reasonable to infer that ICE must have made a determination that, at the time of his release, "there was no significant likelihood of removal in the reasonably foreseeable future." 8 C.F.R. § 241.13(a), (b)(l). Under such circumstances, however, upon any revocation of release, the regulation requires that "the alien will be notified of the reasons for revocation" and that ICE

"will conduct an initial informal interview promptly ... to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 24 l.13(i)(3). Again, to the best of Counsel's knowledge, no such notification or informal interview was ever provided to Petitioner. Thus, under any of the potential bases for revocation, Petitioner's re-detention and revoked release violated regulations designed to provide due process.

III. The Balance of Equities and Public Interest Favor Mr. Sanchez's Release

1. **Humanitarian Considerations**: The humanitarian implications of Mr. Sanchez's potential removal to a country where he faces torture outweigh any governmental interest in his continued detention. The public interest is served by upholding human rights and ensuring that individuals are not subjected to torture. Respondent is attaching here a letter from his physician stating he is a current patient at Tepeyac Community Health Center since October 2023 and has a diagnosis of type 2 diabetes mellitus. Mr. Sanchez is also a father to a US Citizen child whose birth certificate is attached with this response. In all, the balance of humanitarian equities favors Mr. Sanchez's immediate release from detention.

2. **Compliance with International Obligations**: The United States has obligations under the United Nations Convention Against Torture to prevent the removal of individuals to countries where they are likely to face torture. Granting Mr. Sanchez's release aligns with these international commitments and reflects the values of justice and human dignity.

CONCLUSION

For the foregoing reasons, Mr. Sanchez respectfully requests that this Court order his immediate release from detention.

Dated: August 29, 2025

Respectfully submitted,
/s/ Lisa Guerra
LISA GUERRA, ESQ.
Attorney for the Petitioner The
Guerra Law Firm LLC
3600 S Yosemite St. Ste 520
Denver CO 80237
Lisaguerra@theguerralawoffice.com
(303)347-0900

CERTIFICATE OF SERVICE

I certify that on September 1, 2025, I filed the foregoing with the Clerk of the Court for the District of Colorado using the CM/ECF system. All Participants in the case are registered with the CM/ECF and will be served by the CM/ECF system.

Respectfully submitted,

/s/ Lisa Guerra

LISA GUERRA, ESQ.
Attorney for the Petitioner The
Guerra Law Firm LLC
3600 S Yosemite St. Ste 520
Denver CO 80237
Lisaguerra@theguerralawoffice.com
(303)347-0900