IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-02287-CNS-TPO

JOSE ALBERTO SANCHEZ,

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General, in her official capacity,
ROBERT HAGAN[1], 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
JUAN BALTAZAR[2], Warden of GEO Group Aurora Inc, in his official capacity,

Respondents.

RESPONSE TO PETITIONER'S AMENDED PETITION
FOR A WRIT OF HABEAS CORPUS (ECF No. 26)

Petitioner Sanchez has entered this country unlawfully several times, has committed a serious crime here, and is removable under a valid final removal order. He currently is detained by U.S. Immigration & Customs Enforcement (ICE) pending his removal from the United States. ICE cannot remove him to his country of origin (Mexico), so it is seeking to remove him to a third country under the statutory provisions

---

[1] Pursuant to Fed. R. Civ. P. 25(d), Robert Hagan, in his official capacity as Director, Denver Field Office, U.S. Immigration & Customs Enforcement, has automatically been substituted as a party to this action.

[2] Pursuant to Fed. R. Civ. P. 25(d), Juan Baltazar, in his official capacity as Warden of GEO Group Aurora Incl, has automatically been substituted as a party to this action.

permitting such removals. Because Sanchez's detention pending his removal is not unlawful, the Court should deny his petition and dismiss this case.

BACKGROUND

I. Sanchez's immigration history.

Sanchez is a native and citizen of Mexico. ECF No. 26-1 at 2[3] (Immigration Judge's decision and order, dated July 23, 2019). In the 1990s, he twice entered the United States without inspection, returning to Mexico when he was not in the United States. *Id.* In 2000, he was removed to Mexico under a final removal order. *Id.*; *see also* Ex. A ¶¶ 4–6 (Decl. of Deportation Officer (DO) Gary Zolock) (explaining the circumstances of Sanchez's removal in 2000); Ex. A, Attach. 1 (removal order). He returned in 2006, again unlawfully. ECF No. 26-1 at 2. In 2009, police confiscated drugs from his home in Virginia—drugs that Sanchez claims were obtained from [redacted] by someone else. *Id.* at 4. Sanchez has claimed that [redacted] *Id.*

In 2015, Sanchez was convicted in Virginia of possessing cocaine with the intent to distribute. *Id.* at 8–9. He went to prison in Virginia. Ex. A ¶¶ 9–10 (Zolock Decl.). In August 2018, while serving his sentence, Sanchez's final removal order from 2000 was reinstated. *Id.*; *see also* Ex. A, Attach 2 (decision reinstating removal order).

In November 2018, upon his release from prison, ICE took Sanchez into custody. *Id.* ¶ 11. Sanchez then sought protection from removal to Mexico under the Convention

[3] Citations herein to ECF 26-1 are to the ECF pagination.

Against Torture (CAT), claiming he feared returning to Mexico. Ex. A ¶ 12 (Zolock Decl.). An asylum officer determined that his fear was not reasonable. *Id.* ¶ 14. Sanchez then sought review from an Immigration Judge. *Id*

In July 2019, after a hearing, the Immigration Judge found it more likely than not that Sanchez would face torture or death [redacted] if removed to Mexico. ECF No. 26-1 at 16. Due to his criminal conviction, Sanchez was ineligible for withholding of removal under the CAT, but the Immigration Judge granted him deferral of removal under the CAT. *Id.* ICE then sought to remove him to a third country, without success. Ex. A ¶ 23 (Zolock Decl.). A few months later, in November 2019, Sanchez was released from detention under an Order of Supervision. *Id.* ¶ 24. He had been in ICE detention for about one year. *See id.* He remained in the United States and checked in annually. *Id.* ¶ 25.

On July 7, 2025, at his annual check-in, Sanchez was detained pending his removal to a third country. *Id.* ¶ 27. He was provided with information and materials about his re-detention. *See id.* ¶¶ 28–29; *see also* Ex. A Attach. 4 (Form I-213 describing the encounter). The Department of Homeland Security (DHS), of which ICE is a component, has solicited three possible countries for removal. Ex. A ¶ 33 (Zolock Decl.). It has not yet determined if one of those countries will accept Sanchez. Ex. A ¶ 33.

On August 5, 2025, ICE provided Sanchez with notice that it planned to conduct a custody review as to his custody status in early October. *Id.* ¶ 34; *see also* Ex. 2

Attach. 5 (notice of custody review). ICE initiated the custody review on October 14, 2025, and a final decision from the Denver Field Office is pending. *Id.* ¶ 35.

II. This action

Sanchez filed his original habeas petition on July 24, 2025. ECF No. 1. He claimed that his detention "contravene[d] the protections afforded under the CAT" because "[t]here has been no change in country conditions" in Mexico. *Id.* at 2. Further, he assert[ed] that "he ha[d] not been notified of a 3rd country of removal in order to object to or claim a fear if removal to a 3rd country is imminent or contemplated." *Id.*

On July 31, Sanchez filed a motion seeking preliminary relief. ECF Nos. 7 to 7-2. He sought "temporary injunctive relief enjoining Defendants from effecting [his] removal . . . without first providing written notice and an opportunity to apply for statutory withholding and CAT protection before an I[mmigration] J[udge]." ECF No. 7-2 at 12.

On August 20, 2025, the Court denied the motion for preliminary relief. ECF No. 16. The Court concluded that Sanchez was unlikely to succeed on the merits of the claim asserted in his original petition because he was a member of a certified class that sought the same relief in a different forum. *Id.* at 3–5 (discussing *D.V.D. v. DHS*, No. 25-cv-10676-BEM (D. Mass.)).

Nonetheless, in a response to the government's brief filed after the Court issued its ruling, Sanchez raised new contentions about the purported unlawfulness of his detention. *See* ECF No. 17 at 6–13. Per the parties' agreement, on September 24, 2025, Sanchez filed an amended habeas petition containing his new contentions. ECF No. 26. Sanchez does not contest that he is removable under a valid final order of

removal. *Id.* at 4. He claims, however, that his detention is unlawful for two reasons: first, because when ICE took him back into custody in July 2025, it purportedly did not comply with "applicable regulations"; and second, because his removal to a third country is not "reasonably foreseeable." *Id.* at 5.

III. Statutory and regulatory framework: removal.

A. Removal proceedings and expedited removal.

The Immigration & Naturalization Act (INA) authorizes the removal of classes of aliens from the United States—specifically, aliens who are "inadmissible." 8 U.S.C. §§ 1182, 1227. An inadmissible alien who has never previously been removed may attempt to show that they should not be removed via removal proceedings under 8 U.S.C. § 1229a.

Congress has established a streamlined process for removing aliens who have reentered the country unlawfully after previously being removed from the United States under a final order of removal. For these aliens, "the prior order of removal is reinstated from its original date," and DHS[4] may "at any time" effectuate removal "under the prior order." 8 U.S.C. § 1231(a)(5). The reinstated order "is not subject to being reopened or reviewed," and the alien "is not eligible and may not apply for any relief" from that order. *Id.*

[4] Congress has transferred enforcement of certain INA provisions from the Attorney General to the Secretary of DHS. *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019).

B. Withholding-only proceedings for aliens previously removed under a final removal order.

In ordinary removal proceedings, one reason removal may be "withheld" or "deferred" is to uphold the United States's obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). 8 U.S.C. § 1231 note; 8 C.F.R. §§ 1208.16–1208.18.

An alien with a reinstated removal order does not undergo removal proceedings a second time. The alien may, however, still seek withholding or deferral of removal under the CAT through a regulatory process. 8 C.F.R. §§ 208.31, 1208.31. In particular, when the reinstated removal order is issued, the alien is referred to an asylum officer for a reasonable fear determination. 8 C.F.R. § 208.31(b). The asylum officer assesses the facts and determines whether torture in the removal country is more likely than not. *Id.*

The regulations also provide for review of that determination by an Immigration Judge and the Board of Immigration Appeals. *Id.* §§ 208.31(c)–(g), 1208.31(e), (g). This review is known as "withholding-only proceedings." *Zolock v. Guzman Chavez*, 594 U.S. 523, 531 (2021). An order issued by the Immigration Judge or the Board of Immigration Appeals in withholding-only proceedings is separate from the alien's removal order. *Id. at* 539 (2021) (observing that "removal orders and withholding-only proceedings address two distinct questions," and, "[a]s a result, they end in two separate orders"); *see also Riley v. Bondi*, 606 U.S. 259, 267 (2025) (same).

C. Third country removal.

Congress has provided a framework for determining where aliens may be removed. 8 U.S.C. § 1231(b). An alien ordered removed "may designate one country to

which the alien wants to be removed." *Id.* § 1231(b)(2)(A). In certain circumstances, however, DHS need not remove the alien to their designated country, including where "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). The next preference is "a country of which the alien is a subject, national, or citizen," *id.* § 1231(b)(2)(D); followed, if that country is not an option, by a country that has a connection to the alien, *id.* § 1231(b)(2)(E)(i)–(vi). But if removal to each of those countries is "impracticable, inadvisable, or impossible," the alien may be removed to "another country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii). This is known as "third country removal."

A grant of withholding or deferral of removal under the CAT as to one country does not bar removal to a different country. The implementing regulations expressly provide that "[n]othing in [the regulations] shall prevent [DHS] from removing an alien to a third country other than the country to which removal has been withheld or deferred." 8 C.F.R. § 1208.16(f). Thus, "[i]f an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States." *Guzman Chavez*, 594 U.S. at 536 (emphasis in original).

ARGUMENT

Sanchez's detention pending his removal to a third country is lawful. First, even if ICE did not comply with its regulations when it took him back into custody in July, that would not render his detention unlawful. Second, he is lawfully detained pending his removal to a third country, and has not met his burden to provide good reason to

believe that there is no significant likelihood of his removal to a third country in the reasonably foreseeable future.

I. Sanchez is not entitled to immediate release based on claimed deficiencies in the process by which ICE re-detained him.

Sanchez seeks immediate release on the ground that the process by which ICE re-detained him in July 2025 was deficient. ECF No. 26 at 9. Specifically, he contends that, because ICE purportedly "failed to comply with the regulations governing" re-detention of an alien released under an order of supervision, his detention "violates his Fifth Amendment right to due process." *Id.* He points to 8 C.F.R. §§ 241.4(l)(1)–(2) and 241.13(i) as setting forth the procedure ICE should have followed to revoke his supervised release. *Id.* at 9. He also briefly asserts that his re-detention violates the Administrative Procedure Act (APA), but he does not develop this argument. *Id.* at 3.[5]

Petitioner is not entitled to habeas relief based upon alleged violations of procedural due process rights, DHS regulations, or the APA in connection with the revocation of his order of supervision and his re-detention. Even if established, such violations would not warrant immediate release. A procedural due process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. The proper remedy for lack of procedural due process or a violation of the APA should be additional process, not immediate release.

---

[5] To the extent that Petitioner argues in his APA claim that Petitioner's ongoing detention is arbitrary, capricious, an abuse of discretion, or unsupported by substantial evidence, that is addressed through the *Zadvydas* analysis below. *See infra* Section II.

In asserting that his re-detention did not comply with "applicable regulations," Petitioner cites to *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). ECF No. 26 at 3. But in *Accardi*, the Supreme Court did not order substantive relief (there, the suspension of deportation) but rather ordered the agency to afford the process provided in its regulations. *See* 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeal's failure to comply with its regulations, "he should receive a new hearing before the Board"). Thus, even under *Accardi*, Petitioner should at most be given what the text of the relevant regulations—here, 8 C.F.R. §§ 241.4(l)(1)–(2) and 241.13(i)—requires.

Consistent with this reasoning, various district courts have declined to grant release as a remedy for a procedural violation of immigration regulations. *See, e.g.*, *Olmedo v. ICE*, No. 25-3159-JWL, 2025 WL 2821860, at *3 (D. Kan. Oct. 3, 2025) (concluding that where a 90-day custody redetermination was not performed, "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation"); *Bahadorani v. Bondi*, No. CIV-25-1091-PRW, 2025 WL 3048932, at *3 (W.D. Okla. Oct. 31, 2025) ("Even if the government failed to comply with 8 CFR § 241.13(i)(2)–(3), and such noncompliance were prejudicial, the [c]ourt would not be able to issue a writ of habeas corpus as an appropriate remedy."); *see also Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *11 (D. Md. Aug. 11, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7–8 (D. Md. Aug. 27, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025

WL 2062181, at *6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025).

Moreover, Sanchez has also not shown prejudice, as required to show a violation of due process in the immigration context. *See Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) ("In order to prevail on his due process challenge, Petitioner must show he was prejudiced by the actions he claims violated his Fifth Amendment rights."). Upon his re-detention, ICE gave Sanchez information about why he was being taken back into custody. *See* Ex. A ¶¶ 28–29 (Zolock Decl.); Ex. A Attach. 4 at 2–3 (Form I-213). In August 2025, ICE also provided Sanchez with notice about his upcoming custody review, informing him that he could "submit any documentation [he] wish[ed] to be reviewed in support of [his] release." Ex. A Attach. 5 at 1. The custody review process thus effectively provideded Sanchez with an opportunity to respond to ICE's reasons for re-detaining him, as contemplated by DHS's regulations on revoking an order of supervision. *See id.* § 241.4(l)(1), (l)(3).

Accordingly, the Court should decline to grant Sanchez's request for immediate release based on alleged deficiencies in the process by which he was re-detained.[6]

---

[6] Should the Court order Sanchez released, this release would be subject to conditions imposed by ICE. 8 U.S.C. § 1231(a)(3) provides the Attorney General with the authority to issue regulations on terms of supervision for an alien released pending removal. ICE has issued those regulations governing the release of aliens pending removal. *See* 8 C.F.R. § 241.13(h). Thus, an "alien'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. Accordingly, if Petitioner is released, ICE may impose conditions to supervise his release pursuant to the regulations, even if the Court does not expressly describe such conditions as attaching to an order for his release.

II. Sanchez has not met his burden to provide good reason to believe that there is no significant likelihood of his removal to a third country in the reasonably foreseeable future.

In a single line in his amended petition, Sanchez states that "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)." ECF No. 26 at 5–6.

In *Zadvydas*, the Supreme Court held that the detention of a noncitizen with a final order of removal for up to six months to effectuate removal is "presumptively reasonable" under 8 U.S.C. § 1231. 533 U.S. at 700–01. Further, the Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, the Court held that after six months, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.*; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("The onus is on the alien to 'provide good reason to believe that there is no such likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'" (cleaned up) (quoting *Zadvydas*, 533 U.S. at 701)).

Sanchez has been detained for less than six months. Therefore, the six-month presumptively reasonable detention period under *Zadvydas* has not yet elapsed, the presumption that the detention is lawful applies, and the *Zadvydas* claim should be denied. *See Aguina-Arreola v. Holder*, No. 13-cv-02942-RM-KMT, 2014 WL 128559, at *3 (D. Colo. Jan. 10, 2014) (finding that the petitioner's claim challenging the

constitutionality of his detention under § 1231(a) was premature because he had not yet been detained for six months and noting that the petitioner could "file a new application after expiration of the six month period").[7]

This approach is consistent with the Supreme Court's recognition in *Zadvydas* of several factors: that one purpose of detention is to ensure the alien's presence at the time of removal, 533 U.S. at 690 (citing the goals of "ensuring the appearance of aliens at future immigration proceedings" and "preventing flight" (quotation omitted)); that arranging removal may take more than a few months, *id.* at 701 ("[W]e doubt that when Congress shortened the removal period to 90 days . . . it believed that all reasonably foreseeable removals could be accomplished in that time."); and that a six-month period is a standard that allows for consistent application in law in lower courts, *id.* (recognizing that it is "practically necessary to recognize some presumptively reasonable period of detention" and that six months is an appropriate period "for the sake of uniform administration in the federal courts").

---

[7] Sanchez does not argue that, in evaluating whether the six-month period authorized by *Zadvydas* has expired, the Court should look not just to his current period of detention, but also to his detention from November 2018 through November 2019. As a district court within the Tenth Circuit recently observed, however, "[c]ourts are mixed on whether . . . aggregation [of previous detention with current detention] is appropriate, but most appear to disfavor aggregation." *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *9 n.9 (W.D. Okla. Oct. 15, 2025) (collecting cases); *see also Meskini v. Att'y Gen. of U.S.*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, *3 (M.D. Ga. 2018) ("This [c]ourt does not read *Zadvydas* to be a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past. The [c]ourt's focus is on *today* . . . ." (emphasis in original)). The Court thus should not aggregate the different detention periods here.

However, even if the six-month presumptively reasonable period had expired, Sanchez still fails to establish a due process violation under *Zadvydas*, as he has not met his initial burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *See id.* Sanchez's only argument on this point appears to be that ICE still cannot remove him to Mexico. ECF No. 26 at 14 (asserting that Sanchez's detention is unlawful because "[t]here has been no change in country conditions that would warrant a reevaluation of [his] CAT relief status"). But, as explained above, DHS has solicited three possible third countries for removal. Petitioner does not dispute that he may be removed to a third country, or discuss the chance of his removal to a third country. He thus has not met his initial burden under *Zadvydas*. Accordingly, his current detention does not violate his substantive due process rights under *Zadvydas*.

CONCLUSION

For the reasons discussed above, Sanchez's amended habeas petition should be denied, and this case should be dismissed.

Dated: November 20, 2025

PETER MCNEILLY
United States Attorney

s/ Brad Leneis
Brad Leneis
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: 303-454-0100
Fax: 303-454-0411
E-mail: brad.leneis2@usdoj.gov

Attorney for Respondents

CERTIFICATE OF SERVICE

I certify that on November 20, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will cause notice to be delivered electronically to the following individual:

Lisa Guerra, Esq.
Lisaguerra@theguerralawoffice.com

Inga Bergel, Esq.
ingabergel@theguerralawoffice.com

Attorneys for Petitioner

s/ Brad Leneis
Brad Leneis
Assistant U.S. Attorney