

**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

INTRODUCTION

This response is submitted on behalf of Petitioner Jose Alberto Sanchez in support of his Habeas Petition. Petitioner, Jose Alberto Sanchez, through undersigned counsel, submits this Reply in response to the Government's Answer (ECF No. 31). The Answer fails to rebut Petitioner's central arguments that (1) ICE's July 2025 re-detention violated the mandatory procedures in 8 C.F.R. §§ 241.4(l)(1)–(2) and 241.13(i), and (2) Petitioner's continued post-order detention violates *Zadvydas v. Davis*, because ICE has not shown any significant likelihood of removal to a third country in the reasonably foreseeable future. Respondents' arguments rely heavily on conclusory assertions and a selective description of the administrative record. The Zolock Declaration attached by the Government confirms—rather than refutes—Petitioner's claims that ICE failed to comply with mandatory regulatory protections and has no viable plan for third-country removal. For these reasons, and those previously presented, the Court should grant the writ or, at minimum, order immediate release under supervision.

I. ICE's Failure to Comply With Mandatory Regulatory Procedures Renders Petitioner's Re-Detention Unlawful.

The Government asserts that even if ICE violated 8 C.F.R. §§ 241.4(l) and 241.13(i) when it revoked the Order of Supervision, the only possible remedy would be “additional process” rather than release. ECF 31 at 8–11. This argument misstates the law, misunderstands *Accardi*, and ignores the due-process protections that attach when an individual is taken back into custody after years of stable supervised release. The Zolock Declaration confirms that ICE did not provide Petitioner with prior written notice of the basis for revocation of his *Order of Supervision*, and did not give him an opportunity to present

evidence or respond before being taken into custody. According to ICE's own account, Petitioner was simply detained at his July 7, 2025 check-in, without any advance notice or opportunity to contest detention. ECF 31-1 ¶¶ 27–30.

ICE did not comply with the mandatory requirements of 8 C.F.R. § 241.4(l)(1), which requires written notice before revocation of supervision, or § 241.4(l)(2), which requires an opportunity to respond before custody is imposed. Nor did ICE comply with 8 C.F.R. § 241.13(i), which sets out the process required when ICE seeks to revoke an Order of Supervision in circumstances involving potential barriers to removal. These are mandatory procedures, not optional guidelines, and the agency's failure to follow them renders the arrest and detention unlawful.

The Government misreads *Accardi* by suggesting the only consequence of a regulatory violation is additional process at some later point. *Accardi* and its progeny require that agencies follow their own rules when liberty is at stake, and where the violation itself results in an unlawful deprivation of liberty—as it did here—habeas relief is appropriate. Several courts have ordered release where ICE failed to follow the pre-revocation steps that protect against arbitrary detention. The Government's cited cases are distinguishable because they did not involve prolonged supervision, a reinstated removal order, prior findings of removal impossibility, or a detainee with CAT protection and no viable country of removal. In these circumstances, post-hoc custody review months after the fact cannot cure an unlawful arrest.

Petitioner also plainly suffered prejudice. Respondents argue he cannot show any. ECF 31 at 10. But prejudice is inherent when an individual who complied with supervision

for nearly six years is taken into custody without the notice and opportunity to submit evidence that the regulations are specifically designed to guarantee. Had ICE followed the required procedures, Petitioner would have been able to gather evidence, present information from counsel, and meaningfully contest ICE's determination. ICE's failure to comply directly resulted in his detention, satisfying the prejudice requirement under *Berrum-Garcia*.

II. Respondents Have Not Rebutted Petitioner's Showing Under *Zadvydas*

Respondents assert that Petitioner's detention has not yet surpassed the six-month presumption described in *Zadvydas*. ECF 31 at 11–13. This argument overlooks both the factual record and the governing legal standard. Petitioner was previously detained by ICE from November 2018 to November 2019 under the same reinstated order of removal, during which ICE attempted—and failed—to remove him to Mexico or any third country. ICE released him in 2019 specifically because it found that removal was not reasonably foreseeable. ECF 31-1 ¶ 24. This history cannot be ignored when evaluating whether removal is likely now. Where a petitioner has already been detained for a significant period under the same final order and where the obstacles to removal remain unchanged, courts consider this history in assessing foreseeability. This prevents the Government from evading *Zadvydas* by cycling a non-removable individual in and out of custody, restarting the clock each time. The Government's claim that removal is "reasonably foreseeable" is not supported by the record.

Respondents represent that DHS has "solicited three possible countries for removal," but the Zolock Declaration shows that one of those countries, El Salvador,

already rejected Petitioner in 2019, and the other two, Honduras and Guatemala, never responded then and have not accepted him now. ECF 31-1 ¶¶ 23, 33. ICE admits that it has no confirmation from any country willing to take him. The Government therefore offers no concrete evidence of progress toward actual removal, and its assertion of reasonable foreseeability is speculative. Furthermore, the March 30, 2025 DHS memorandum submitted by the Government outlines complex requirements for third-country removal, including diplomatic assurances and screening procedures when the individual expresses fear. ECF 31-1 at 15–17. There is no evidence that DHS has taken any steps required under this policy, nor has it secured assurances from any country. The memorandum underscores the difficulty of third-country removal and confirms that ICE has not begun the procedures necessary to make that removal possible. Because Petitioner has demonstrated that there is no significant likelihood of removal in the reasonably foreseeable future, and because the Government has failed to rebut this showing, continued detention violates *Zadvydas*.

III. Respondents' Additional Assertions Lack Support

Respondents' reliance on Petitioner's decade-old convictions to justify detention is contradicted by the record. ICE acknowledges that Petitioner complied with all supervision requirements for nearly six years with no violations. ECF 31-1 ¶ 25. ICE identified no new criminal conduct, safety concerns, or supervision issues during the July 2025 check-in that triggered re-detention. ECF 31-1 ¶¶ 27–30. The Government's reliance on old convictions does not justify detention where ICE itself repeatedly found no flight risk and released him for years. Finally, ICE's delayed custody review, initiated only on October 14, 2025 and still pending, ECF 31-1 ¶ 35, does not satisfy the requirements of due process or the

regulations. A review that occurs months after an unlawful arrest cannot remedy the violation or convert the detention into a lawful one.

CONCLUSION

For all of the reasons stated above and in the Amended Petition, Petitioner respectfully requests that the Court grant the writ, order his immediate release under appropriate conditions of supervision, or, at minimum, order an expedited evidentiary hearing on the legality of his detention.

Dated: November 24, 2025

Respectfully submitted,
/s/ Lisa Guerra
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CERTIFICATE OF SERVICE

I certify that on November 24, 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

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