UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Juan PUERTAS MENDOZA, Petitioner-Plaintiff, v. Kristi NOEM, Secretary, U.S. Department of Homeland Security et al., Respondents	No. 5:25-CV-00890-XR

REPLY OF PETITIONER TO RESPONDENTS' ANSWER

The Petitioner, Juan Puertas Mendoza ("Mr. Puertas) timely submits his reply per this Court's Order of July 30, 2025, not later than 7 days after the Respondents' answer.

Mr. Puertas seeks declaratory and injunctive relief to remedy his unlawful detention by Respondents.

Respondents state in their response that Petitioner is being detained pursuant to 8 U.S.C. §1231(a)(1). They do not assert that he is subject to detention under 8 U.S.C. §1231(a)(6). They state that they provided Petitioner a Notice of Revocation of Release on August 7, 2025. They assert without explanation that even though they gave such paper notice to him in person on August 7, "the record shows that ICE timely served Petitioner with written notice of the reasons for revocation and provided him an interview where he could respond orally or in writing ot the allegations." Respondents' Reply, 3, 8. "The letter explains that he will be given notice of a new custody review within approximately three months." This document, it should be noted, constitutes the only evidence in the

record on the foreseeability of Petitioner's removal, and contrary to the government's assertion, it did *not* provide him "the reasons for the revocation of his release" on an order of supervision since 2016.

In accordance with the United States Supreme Court opinion in *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), which holds that post-removal-period detention of six months is presumptively reasonable to allow the United States to effectuate removal.[1] Respondents here allege that his detainment since July 17, 2025, is well within that time frame and his "claim is premature at this time." The government also asserts there is a regulatory basis for detention under 8 C.F.R. §§ 241.4 and 241.13, due to its revocation of his conditions of release.

An immigration judge granted Petitioner withholding of removal on March 24, 2016, see 8 U.S.C. §1231(b)(3). The removal period started then, once the 30 day period for either party to appeal had elapsed, and the order was thus "administratively final." In the absence of an attempt by the government to remove Petitioner to a country other than Mexico, the order granting him withholding of removal—which the government did not appeal—entitles him to remain in the United States.

Petitioner argues herein that the presumptive six-month period in *Zadvydas* has expired thereby shifting the burden to the Government to establish a "significant likelihood that the petitioner will be removed within the reasonably foreseeable future." In order to satisfy the "in custody" requirement and obtain habeas relief, a petitioner need not be physically detained. *Rosales v. Bureau of Immigration & Customs Enforcement*, 426 F.3d 733, 735 (5th Cir. 2005). In addition, Petitioner here argues that the regulations for detention due to revocation were not complied with.

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[1] Zadvydas was subject to removal due to aggravated felony convictions and a controlled substance conviction. He was born in Germany at a displaced person camp. After ordering his removal to Germany, Germany informed INS that he was not a German citizen and it would not accept him, and Lithuania likewise refused to accept him becausehe was neither a citizen nor a permanent resident of Lithuania. *Zadvydas v. Davis*, 285 F.3d 398, 400 (5th Cir. 2002).

Petitioner is not asking this court to prevent his removal to a third country, but instead to release him from detention and put him back on supervised release pending resolution by the immigration court as to what third country he can be removed to without persecution or torture. Petitioner also alleges that the procedures for revoking his release were not properly followed, see *Cordon-Salguero v. Noem,* where the court found that the Respondents failed to follow the regulations in revoking the petitioner's immigration supervised release and therefore its actions were unlawful according to the Accardi doctrine. No. 1:25-CV-1799, ECF 17-1, at 11 (D. Md. June 24, 2025).

In *Accardi v. Shaughnessy*, the Supreme Court considered a deportation case in which the Board of Immigration and the DOJ failed to follow their own established procedures and therefore effectively denied due process to the petitioner. 347 U.S. 260, 268 (1954). The Fifth Circuit has likewise recognized that an agency's violation of its regulations may support a procedural due process claim. *Ayala Chapa v. Bondi*, 132 F.4th 796, 799 (5th Cir. 2025) (citing *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). The government has violated due process here, and it has resulted in Petitioner's unlawful detention.

1. Petitioner's removal period expired, meaning his Petition is not "premature" under 8 U.S.C. § 1231(a)(1)(A)-(B).

DHS/ICE is required to execute a removal order during the 90-day removal period. 8 U.S.C. § 1231(a)(1)(A). Section 1231 expressly lists the three events that trigger the removal period:

> (B) Beginning of period
> The removal period begins on the latest of the following:
> (i) The date the order of removal becomes administratively final.
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. § 1231(a)(1)(B). To correctly identify a removal period, then, a court must determine which of these "triggering events" occurred latest in a given case. *See Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).

In this case, only the first triggering event could apply. Petitioner's 2001 removal order—or his 2016 withholding of removal order, even if it qualified as an administratively final order of removal—was never reviewed by any court. And before July 17, 2025, he was not detained but rather released on an Order of Supervision (OSUP) after the Immigration Judge granted him Withholding of Removal on March 24, 2016. Thus, Petitioner's removal period began when his order of removal became administratively final, and the removal period has long expired. For over nine years, he reported to DHS/ICE under the OSUP. The regulations provide that "[T]he Service may release an alien under an order of supervision under § 241.4 if it determines that the alien would not pose a danger to the public or a risk of flight, without regard to the likelihood of the alien's removal in the reasonably foreseeable future." 8 C.F.R. 241.13(a). He was not removed during the removal period. He was not detained until July 17, 2025.

As to the many aliens "ordered removed years ago" but not yet detained or removed, "the 90-day period removal period has likely come and gone based on the date [an] order of removal became administratively final." *Hamama v. Adducci*, 17-CV-11910, 2019 WL 2118784, at *2 (E.D. Mich. May 15, 2019). The Respondents here cite no cases that have adopted the view that the *Zadvydas* six-month period should be restarted each time an individual enters and leaves ICE custody. The Respondents here have not explained why it could not work on Petitioner's removal over the previous nine years. Courts in similar contexts have found that the six-month *Zadvydas* period is cumulative.

Section 1231 references "[t]he" removal period, a single period triggered exclusively by the latest of three possible events. No other contingencies are provided. Absent a later triggering event –

which would, by definition, begin "the" removal period – § 1231(a)(1)(B) dictates that the removal period necessarily begins when a removal order becomes final, and necessarily ends 90 days later. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *8 (W.D.La., 2019).

The expiration approach avoids other conflicts as well. For instance, it eliminates the untenable possibility of detaining an alien for countless "conditional removal periods," each of less than 90 days, and then restarting countless "new removal periods" when the alien is detained again, all without any triggering event. It also comports with the settled "in custody requirement":

In order to satisfy the "in custody" requirement and obtain habeas relief, a petitioner need not be physically detained. *Rosales v. Bureau of Immigration & Customs Enforcement*, 426 F.3d 733, 735 (5th Cir. 2005), cert. denied, 546 U.S. 1106 (2006) (citing *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Jones v. Cunningham*, 371 U.S. 236, 239-40 (1963)). Rather, "other restraints on ... liberty ... not shared by the public generally" may constitute custody for habeas purposes. *Cunningham*, 371 U.S. at 240. In fact, the Fifth Circuit has joined other Circuits in determining that the issuance of a final deportation order against an alien subjects him to a restraint on liberty sufficient to place him "in custody." *Rosales*, 426 F.3d at 735 (citing cases). *Zamora-Garcia v. Moore*, CV M-09-73, 2010 WL 11545009, at *3 (S.D. Tex. Aug. 23, 2010). To afford "in custody" status for habeas purposes, but to deny similar status for removal period purposes, would again be incongruent. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *9 (W.D.La., 2019).

Section 1231 requires DHS/ICE to execute final orders of removal within 90 days, if possible. It then sets forth the rules to be applied when that does not occur. And it specifically accounts for delays caused by removable aliens themselves – including a "lengthy period of obstruction." The removal period undoubtedly *functions* to afford DHS/ICE time to effect removals. But its stated *pur-*

pose is to create an obligatory timeframe for removal, not a discretionary grace period for detention. *Id.* Another court has made the same observation:

> In enacting IIRIRA, Congress intended for inadmissible, excludable, or removable aliens to be deported within 90 days, if possible. This is evidenced not only by the clear language of the statute, but also by the change in statutory language in 1996. Section 305 of IIRIRA replaced former 8 U.S.C. § 1252(c) with new 8 U.S.C. § 1231. This change reduced the amount of time that the Attorney General has to deport an alien from six months to 90 days, but extended the removal period if the alien does not cooperate.

Ulysse v. Dep't of Homeland Sec., 291 F.Supp.2d 1318, 1325–26 (M.D. Fla. 2003). Here, the DHS has not alleged that Petitioner has failed to cooperate or obstructed his removal to a third country. The 90-day removal period has passed. This Court should reject Respondents' apparent argument that the removal period restarted when DHS rearrested him on July 17, 2025. Respondent's Reply, 3-6.

Here, there was no recurrence of a "triggering event" under 8 U.S.C. § 1231(a)(1)(B). *See Diaz-Ortega,* at *8 ("Absent a later triggering event – which would, by definition, begin "the" removal period – § 1231(a)(1)(B) dictates that the removal period necessarily begins when a removal order becomes final, and necessarily ends 90 days later.") Indeed, ICE has not identified any change in circumstances, see Respondents' Response, 1-9.

As the district court in *Diaz-Ortega v. Lund* noted, *Zadvydas* "concerned civil confinement that was 'not limited, but potentially permanent.' " *Andrade*, 459 F.3d at 543 (quoting Zadvydas, 533 U.S. at 691). Specifically, the petitioner in Zadvydas filed a habeas claim only after "the Government had thrice failed to secure the transfer of an alien subject to a final order of removal, and could offer no promise of future success." *Andrade*, 459 F.3d at 543 (citing Zadvydas, 533 U.S. at 691).

Against that backdrop, the Fifth Circuit has distinguished the Zadvydas petitioner from a removable petitioner detained for more than three years. *Id.* For much of that time, the petitioner pursued challenges to his removal in court. *See id.* Although his challenges were unsuccessful, the Fifth Circuit made no findings indicating that the petitioner was obstructing his removal or acting in bad faith. *See id.* Rather, the Fifth Circuit simply determined that the request for habeas relief was "meritless" under Zadvydas because the petitioner "offered nothing beyond his conclusory statements suggesting that he will not be immediately removed ... following the resolution of his appeals." *Id.* at 543-44. *Diaz-Ortega v. Lund,* at *11–12.

In response to *Zadvydas*, DHS promulgated 8 C.F.R. § 241.13, which "establishes special review procedures for those aliens" who have "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).

The governing legal standard asks whether there is "good reason to believe that there is no significant likelihood of removal *in the reasonably foreseeable future.*" *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (emphases added). Here, the Respondents in their Response do not contend that Petitioner has in any way delayed or interfered with their efforts to locate a third country that is willing to accept him. Respondents' Answer, 7. Indeed, it simply offers, ipse dixit, that "ICE simply avers that there is a significant likelihood of removal in the reasonably foreseeable future." But it has presented not one iota of proof of any efforts it has made or is currently making. The inquiry into significant likelihood is a fact-dependent inquiry which should take into account the status of ICE's efforts and delays it has encountered. *Diop v. ICE/Homeland Sec.,* 656 F.3d 221, 231 (3d Cir. 2011). Rule 6 of the rules governing habeas indicates that good cause exists where specific allegations show reason to believe that the petitioner may, if the facts are fully developed, be able to

demonstrate that [they are] entitled to relief. As a person granted withholding of removal from Mexico, for more than nine years the DHS has not located a third country to accept him.

This Court may conduct a hearing in which the parties may present evidence and testimony regarding the details of the likelihood in the reasonably foreseeable future of removal to a third country to justify detention, or a change in circumstances that makes likelihood more significantly likely than it has for the past nine years.

If the Court does not find that he has shown evidence that there is no significant likelihood of his removal in the reasonably foreseeable future, this Court may order a bond hearing. See *Sisiliano-Lopez v. Sabol*, 2017 WL 3613982, at *5 (M.D.Pa., 2017) ("While the respondents assert that granting withholding from removal protections to Sisiliano would only preclude his removal to El Salvador, and would not prevent his removal to some other third country, this fact does not change our analysis of the need for a hearing in a post-final order of removal setting.") Indeed, the Respondents in their nine page Response here have not explained why after nine years they believe his detention is necessary to effectuating his removal to a third country, nor have they explained why alternatives to detention, such as ankle monitoring or other supervision, would not ensure quick completion of removal to a third country should ICE be successful in locating one. Petitioner has no criminal record other than immigration violations. Indeed, he showed he has been the victim of robbery assault in Austin, and has cooperated with authorities in Austin to apprehend the perpetrators. Petition for Writ of Habeas, Exh B.

2. Change in Circumstances and Significant Likelihood of Removal

In *Zadvydas*, the Court held that section 1231(a)(6) authorizes detention only for a period reasonably necessary to bring about the noncitizen's removal from the US, and six months of

postremoval detention is considered "presumptively reasonable." 533 U.S. at 701. The Court outlined a process whereby the noncitizen bears the burden of proving unreasonableness of detention during the six-month window. *Id.* Thereafter, if there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the Government to justify continued detention. *Id.* The Supreme Court remanded the case back to Fifth Circuit to apply this new standard. *Id.*

On remand, the Fifth Circuit found that Zadvydas provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future and that INS had not rebutted that showing, so the district court's judgment ordering that Zadvydas be released was affirmed. *Zadvydas v. Davis*, 285 F.3d 398, 404 (5th Cir. 2002). The court noted that the order of release "shall not of itself preclude the ***INS from seeking to return Zadvydas to INS custody*** (if that be otherwise shown to be appropriate) ***upon a showing that, on the basis of matters transpiring after the decision of the court, there has then become a substantial likelihood of removal in the reasonably foreseeable future"*** or INS seeks a modification of the conditions of his release based upon some material change. *Id.* (emphasis added).

There is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner shows here several articles that cite Freedom of Information Act sources that show that removal to a third country is extremely unlikely. Exhibit B. For example in Fiscal Year 2017, "just 21 people in total granted withholding of removal were deported to a third country. Exhibit A; see *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (U.S., 2021) ("Respondents counter that, as a practical matter, the questions "whether" an alien may be removed and "where" he may be removed to are indistinguishable because DHS often does not remove an alien to an alternative country if withholding relief is granted. They point to one source claiming that in 2017, only

1.6% of aliens who were granted withholding of removal were actually removed to an alternative country.") A press release, Aug. 3, 2023, see Exhibit B, shows that "[wh]ile ICE is authorized to deport individuals to other countries, a number of factors make it extremely rare for a third country to willingly accept a U.S. deportee. For one, there are restrictive criteria for the countries to which the men can be removed. What's more, these individuals have the right to pursue relief from deportation with respect to the proposed alternative country. The government's own data shows that less than three percent of people granted withholding of removal or CAT relief are actually removed to an alternative country." The release cites government data and information from concrete clients. Therefore, he shows it is unlawful to remove to his native Mexico, due to the immigration judge's grant of Withholding of Removal, as well as Withholding under the Convention against Torture, March 24, 2016, Exhibit A.

1. Authority to Revoke Release

Respondents produced as an exhibit to their response a "Notice of Revocation of Release" that was given to the Petitioner and dated August 7, 2025. Respondents' Reply, Exhibit A. It stated that his release was being revoked because there were "changed circumstances" in your case. It tells him "you will promptly be afforded an informal interview at which you will be given an opportunity to respond to the reasons for the revocation and to provide any evidence to demonstrate that your removal is unlikely." Yet this Court will note the timeline: the Respondents began detaining Petitioner without any notice or reasoning at his annual check-in on his OSUP on July 17, 2025. The Petitioner filed the instant habeas petition on July 25, 2025. It gave the Respondents three days to respond from the date of service of the petition. On that day, which fell Thursday August 7, they claim to have met with Petitioner at the South Texas Detention Center and handed him the "Notice of Revocation of Release." The Respondents knew on August 7 that their Response to the instant habeas

petition was due the same day. They did not provide (and have not provided) the Notice of Revocation of Release to his counsel. On the proof of service, Officer Radjibou Agrignan certifies he handed him the document at "17:35 hours" on August 7. It does not contain Petitioner's signature, because Petitioner asked the officers who presented it to him to please call his attorney and provide it to his attorney, namely undersigned counsel. They did not provide it to counsel. Resp. Reply, Exhibit A. The notice contains no allegation that Petitioner violated a condition of supervision. The Notice simply informs him that "your case has been reviewed and it has been determined that you will be kept in the custody of the U.S. Immigration and Customs Enforcement (ICE) at this time."

The "alien informal interview upon revocation of release" page allows a "statement" of the detainee, it recites that the officer gave him the opportunity (apparently at 17:35 hours, without previous notice) "to respond to the reasons for the revocation of his or her order of supervision stated in the notification letter." This Court should note there were no "reasons" at all in the "notification letter" (the Notice of Revocation). The "statement" goes on to recite that "[A]t the interview, the alien made the following oral response regarding the reasons for revocation: [handwritten in English]: "Anything you have to ask, you can ask Attorney." Resp. Reply, Exh. A, p. 3. The Petitioner wrote this, as would any reasonable person, who was given no notice of the government's reasons. He asked that it be provided to his attorney for review. The government ignored his request The government attempts to defend its action by asserting that "the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met," citing "*Murphy v Collins*, 26 F.3d 541, 543 (5th Cir. 1994)." But due process is not an empty exercise in formalism. *Perrino v. S. Bell. Tel. & Tel. Co.*, 209 F.3d 1309, 1318 (11th Cir.2000). A functional analysis, not simple lip service, is required to comply with due process. The government has failed to comply

with its own regulations, see 8 C.F.R. §§ 241.4 and 241.13, and the government's allusion to "minima" should be discredited in the Court's analysis of the totality.

Respondents insist that he is a person "who should …be detained." Yet they have offered no justification for this assertion, and indeed, the record reflects that their actions in this matter are arbitrary and capricious, and not in accord with regulations, and violative of due process. The Court should grant the issuance of the writ, and order his release, and any other relief this Court deems just and proper.

Respectfully submitted on this 14th day of August, 2025.

/s/ Stephen O'Connor

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Attorney for Respondent
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EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
566 VETERAN DRIVE., SUITE 101
PEARSALL, TX 78061

Law Office of Bertha A. Zuniga
Zuniga, Bertha A.
4819 San Pedro Ave.
San Antonio, TX 78212

IN THE MATTER OF
PUERTAS MENDOZA, JUAN AZAMY

FILE A [redacted]

DATE: Apr 1, 2016

__ UNABLE TO FORWARD - NO ADDRESS PROVIDED

X ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
566 VETERAN DRIVE., SUITE 101
PEARSALL, TX 78061

__ OTHER: _____

COURT CLERK
IMMIGRATION COURT

CC: Chief Counsel
STOC

FF

IMMIGRATION COURT
566 VETERAN DRIVE., SUITE 101
PEARSALL, TX 78061

In the Matter of:

Case No: A [redacted]

PUERTAS MENDOZA, JUAN AZAMY

Applicant

IN WITHHOLDING-ONLY PROCEEDINGS

On Behalf of the Applicant

On Behalf of the DHS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Mar 1, 2016 and is issued solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

ORDER: It is hereby ordered that the applicant's request for:

[X] 1. Withholding of Removal under INA 241(b)(3) is:
- [X] Granted GRANTED
- [ ] Withdrawn
- [ ] Denied

[X] 2. Withholding of Removal under the Convention Against Torture is:
- [X] Granted GRANTED
- [ ] Withdrawn
- [ ] Denied

[ ] 3. Deferral of Removal under the Convention Against Torture is granted.

Date: Mar X 2016

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MARGARET KOLBE
Immigration Judge

APPEAL: ~~NO APPEAL~~ WAIVED
APPEAL DUE BY: BY BOTH PARTIES.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: (M) MAIL PERSONAL SERVICE (P) to Alex/Mario
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [X] ALIEN's ATT/REP [X] DHS
DATE: 7/25/16 BY: COURT STAFF VB
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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