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

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Designation as EMERGENCY is warranted. Each day of custody inflicts irreparable harm: Petitioner's physical liberty is restrained; health is disrupted; and the Government has threatened removal steps without affording the country-specific protections and procedures required by law. No adequate remedy exists absent immediate intervention. Petitioner therefore respectfully requests that the Court: (1) enjoin removal and any transfer from this Division pending resolution; (2) restore Petitioner to supervised release; (3) set the matter for an expedited hearing at the Court's earliest availability; and (4) under Rule 65(c), waive security or set a nominal bond given the constitutional claims asserted against the Government. Mr. Puertas Mendoza has been held in ICE custody for 93 days – since July 17, 2025. He filed his Petition for Writ of Habeas Corpus on July 25, 2025.

Petitioner Juan Puertas-Mendoza ("Petitioner"), through undersigned counsel, respectfully moves this Court for a temporary restraining order and preliminary injunction ordering

Respondents to immediately release Petitioner from custody and restore him to his Order of Supervision. This Motion seeks emergency relief to halt an ongoing deprivation of liberty that violates federal regulations, exceeds statutory authority, and contravenes constitutional guarantees of due process.

For over nine years (2016–2025), Petitioner lived in Austin, Texas, under an Order of Supervision without incident—attending every government mandated check-in, committing no crimes, after in 2016 the Pearsall immigration judge ("IJ") grant of Withholding of Removal protection under 8 U.S.C. §1231(b)(3) (which remains in force and bars removal to Mexico). On September 12, 2025, Immigration and Customs Enforcement detained him at a scheduled office visit—without written notice of revocation, without the mandatory informal interview, and without any individualized finding or signature by an official with delegated revocation authority—and has provided no country-specific reasonable-fear process for any third-country removal. *See* 8 C.F.R. §§ 241.4(l)(1)–(2), 241.13, 208.31, 1208.31(g), and 1241.8(e). These facts and the supporting record are set out in the habeas petition, which is incorporated here.

FACTUAL BACKGROUND

Petitioner incorporates by reference all factual allegations set forth in his Petition for Writ of Habeas Corpus filed on July 17, 2025.

LEGAL STANDARD

1. The purpose of a TRO is to preserve the status quo and prevent irreparable harm until the court makes a final decision on injunctive relief.4 To obtain a TRO, an applicant must establish four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of

irreparable harm; (3) the threatened injury outweighs any harm the order might cause the defendant and (4) the injunction will not disserve the public interest.[1]

2. A preliminary injunction is appropriate when: (1) the movant has shown a substantial likelihood of success on the merits; (2) there is a substantial threat that the movant will suffer irreparable harm if the injunction is denied; (3) the threatened injury to the movant outweighs the threatened harm to the opposing party; and (4) granting the injunction will not disserve the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008); *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012).

3. When the government is the opposing party, the third and fourth factors merge because "the Government's interest in enforcing its laws is always substantial." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

4. All four elements must be demonstrated to obtain injunctive relief. *Lakey*, 667 F.3d at 574.

ARGUMENT

I. Likelihood of Success on the Merits

5. Petitioner has demonstrated a substantial—indeed overwhelming—likelihood of success on multiple independent grounds: (1) ICE violated mandatory procedural requirements for revoking supervised release; (2) Petitioner's detention violates *Zadvydas* because removal is not reasonably foreseeable; and (3) ICE exceeded its authority by attempting to nullify judicially-granted Withholding of Removal protection. Each ground independently warrants granting the requested relief.

ICE Violated Mandatory Procedural Requirements for Revoking Supervised Release

[1] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

The record shows a wholesale failure to comply: no revocation signed by an official with proper delegated authority; no contemporaneous written notice stating that supervision was revoked or why (only after three weeks— well after the habeas petition was filed—did Respondents conduct a cursory post hoc revocation, without his counsel present, see Dkt. 7 at 10-12. The post hoc "revocation documents" provided by Respondents in their Response, Dkt. 6-1, do not indicate any reasons why they decided to revoke his order of supervision. They refer (on August 7, 2025, over three weeks after they detained him) to "a significant likelihood of removal in the reasonably foreseeable future in your case" but did not provide evidence of it, and still to date, after three months, have provided no evidence of it.

> **This letter is to inform you that your case has been reviewed and it has been determined that you will be kept in the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview on account of changed circumstances in your case. ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case.**
>
> **Based on the above and pursuant to 8 CFR 241.13, you are to remain in ICE custody at this time. You will promptly be afforded an informal interview at which you will be given the opportunity to respond to the reasons for the revocation and to provide any evidence to demonstrate that your removal is unlikely. If you are not released following the informal interview, you will receive notification of a new review, which will occur within approximately three months from the date of this notice.**

6. Rather, removal is no more likely now after more than nine years on supervision and nine years after his final removal order. Nor has ICE identified any violation of supervision conditions. He has shown evidence that Respondents have tried to browbeat and threaten him with lengthy detention in order to try to coerce him to sign stating he is no longer in fear of Mexico, which he has refused to do. Dkt. 1 at 4, 12; Dkt. 7 at 10-11.

7. Revocation authority is vested by 8 C.F.R. § 241.4(l)(2) in the Executive Associate Director for ERO, and—only if referral is not reasonably possible—the Field Office Director. Here, the plain language requires a "District Director," where here, Daniel Subia is a Deputy

Field Office Director, not a named official in the regulation. Naming the decisionmakers excludes others; a notice or decision issued by a deportation officer (or signed "for" a superior) is ultra vires under Accardi (*United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954)).

> (l) Revocation of release—
> (1) Violation of conditions of release. Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such alien who violates the conditions of an order of supervision is subject to the penalties described in section 243(b) of the Act. Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.
> (2) Determination by the Service. The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. 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.
> (3) Timing of review when release is revoked. If the alien is not released from custody following the informal interview provided for in paragraph (l)(1) of this section, the HQPDU Director shall schedule the review process in the case of an alien whose previous release or parole from immigration custody pursuant to a decision of either the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner under the procedures in this section has been or is subject to being revoked. The normal review process will commence with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked. 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. Thereafter, custody reviews will be conducted annually under the provisions of paragraphs (i), (j), and (k) of this section.

§ 241.4 Continued detention of inadmissible, criminal, and other aliens beyond the removal period.

The regulation specifically requires notification of "the reasons for the revocation . ." and an opportunity to respond to "the reasons for the notification stated in the notification." Respondents do not argue in their Response that the provided adequate reasons. Dkt. 6 at 8 ("The record shows that ICE timely served Petitioner with written notice of the reasons for his OSUP revocation and provided him an interview where he could respond orally or in writing to the allegations. *See* Ex. A (Notice of Revocation); 8 C.F.R. § 241.4(l) (requiring notice and an interview be given to the alien "promptly" upon return to custody").

Moreover, the ICE revocation 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 Respondents action is ultra vires under *Accardi.* Also, simply reciting the regulatory language is not enough –An agency must also show that it actually considered the relevant factor—simply "[s]tating that a factor was considered ... is not a substitute for considering it.[2] These are not technicalities; they are the core safeguards that prevent arbitrary detention. Federal agencies are bound by their own regulations, which have the force and effect of law, and disregard renders decisions invalid. *Gulf States Mfrs., Inc. v. NLRB*, 579 F.2d 1298, 1308 (5th Cir. 1978); *see Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (per curiam).

8. ICE's failure to comply with these self-imposed procedural safeguards renders Petitioner's detention unlawful and void. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954)

Detention Violates Zadvydas Because Removal Is Not Reasonably Foreseeable

[2] *Getty v. Fed. Sav. & Loan Ins. Corp.*, 805 F.2d 1050, 1055 (D.C. Cir. 1986).

9. The Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), that due process prohibits indefinite post-removal-order detention. The Court established that detention is limited to the period reasonably necessary to bring about the removal. *Id.* at 699.

10. The Court specifically stated: "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700.

11. After a presumptively reasonable six-month period, the burden shifts to the Government to prove that removal is reasonably foreseeable. *Id.* at 701.

12. However, even within the six-month period, whether detention is constitutional hinges on whether removal is reasonably likely in the foreseeable future. *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (the "six-month presumption is not a bright line" and *Zadvydas* "did not require a detainee to remain in detention for six months . . . before a habeas court could find that the detention is unconstitutional").

13. Petitioner's judicially-granted Withholding protection, which remains in full force and effect, bars his removal to Mexico—the country specified in his removal order and the only country to which he has any claim of citizenship or legal status.

14. ICE cannot lawfully remove Petitioner to Mexico without first formally terminating his withholding of removal protection through proceedings before an Immigration Judge. ICE has not initiated any such proceedings and has given no indication that it intends to do so.

This legal barrier to removal has existed for **over nine years** since the Immigration Judge granted withholding protection in March 2016. ICE has suggested possible removal to a third country but has taken no lawful steps toward such removal. ICE has not initiated proceedings to terminate Petitioner's withholding protection through an IJ; ICE has not provided the required reasonable fear screening under 8 C.F.R. §1208.31; ICE has not obtained cooperation from any other third

country; ICE has not requested Petitioner's assistance in obtaining travel documents; ICE has provided no evidence that any country has agreed to accept Petitioner or that travel documents are being processed; ICE has not even officially informed Petitioner which country it intends to remove him to.

15. The government's track record demonstrates that removal is not foreseeable: Petitioner's removal order dates to **March 24, 2016—over nine years ago**. For **over nine years**, the government has been unable to identify any third country willing to accept Petitioner. Considering all of these factors—the insurmountable withholding protection barrier, the procedural requirements that must be satisfied, the government's nine-year failure to identify a willing third country, the lack of any current removal efforts, and his own health issues—there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.

16. Petitioner has demonstrated good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. The Government cannot meet its burden to prove otherwise. Petitioner therefore has a substantial likelihood of success on his *Zadvydas* claim.

17. Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020); *see also Gulf States Mfrs., Inc. v. Nat'l Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); *Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (per curiam) ("It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative

processes before it."). Multiple courts have held that the government's failure to follow its own immigration regulations may warrant the release of a detained noncitizen. *See, e.g., Bonitto*, 547 F. Supp. 2d at 756; *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, —— F.Supp.3d ——, 2025 WL 1983677 (N.D. Cal. July 17, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) ("While ICE does have significant discretion to detain, release, or revoke aliens, the agency must still follow its own regulations, procedures, and prior written commitments."). The government's position that it can choose, based on a change in administration, not to comply with its own regulations is unprecedented. *Villanueva v. Tate*, 2025 WL 2774610, at *7 (S.D.Tex., 2025).

II. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

1. The loss of physical liberty—the most fundamental of all freedoms—constitutes irreparable harm per se. "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." *Zadvydas*, 533 U.S. at 690.

2. Each day Petitioner remains detained without due process constitutes a continuing violation of his constitutional rights. These violations cannot be remedied by money damages after the fact.

3. Petitioner has health needs that require physical rehabilitation medication after a back injury.

4. For nine years, Petitioner maintained stability through supervised release: Living with family who provide support; Accessing health care and medications; Maintaining employment authorization; Complying with all requirements.

5. His unlawful detention destroys this stability and causes regression in his health progress. This harm cannot be undone. And because § 241.4(l) safeguards are liberty-protective, continued custody imposed without those safeguards is itself an ongoing constitutional injury not compensable by damages.

6. He will suffer irreparable harm were he to remain detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.,* 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day). *See also* "*Concerns Grow Over Dire*

Conditions in Immigrant Detention: Mass immigration arrests have led to overcrowding in detention facilities, with reports of unsanitary and inhumane conditions," Miriam Jordan and Jazmine Ulloa, New York Times, July 1, 2025, available at https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html (visitor reported that several detainees complained that they had been given few opportunities to shower, had been limited to two bottles of drinking water per day and were unable to flush their toilets for days at a time.) *See also "Under Trump Policy, Bonds for Immigrants Facing Deportation Are Vanishing,"* Miriam Jordan, New York Times, September 24, 2025, https://www.nytimes.com/2025/09/24/us/immigrants-trump-detention.html ("[D]enying bonds is just the latest move by this administration to pressure people into giving up and leaving the United States, including many who would likely win their case to stay," said Madeline Lohman, a director at the Advocates for Human Rights, a nonprofit in Minneapolis that monitors the immigration court that covers Minnesota, North Dakota and South Dakota.")

III. The Balance of Hardships Tips Sharply in Favor of Petitioner

7. Petitioner suffers the most severe hardship possible under our constitutional system—deprivation of physical liberty—in violation of constitutional and regulatory requirements. He experiences:

A. Ongoing violation of fundamental constitutional rights;

B. Separation from family and established support systems;

C. Destruction of the stability maintained for nine years;

D. Loss of access to necessary health care;

E. Indefinite detention with no foreseeable end date.

8. Ordering Petitioner's release or providing a bond hearing imposes minimal burden on the Government.

9. Restoring Petitioner to supervised release returns him to the very status he maintained without incident for six years (2016–2025). The Government already determined in 2016 that he was neither dangerous nor a flight risk; nothing since suggests otherwise. He has no criminal record since release, never absconded, appeared for every check-in, lives with his wife and children in Austin, and has community health care there.

10. The Government's legitimate interest is in lawful detention only—not detention procured in defiance of statute or rule. It may not detain where removal is not reasonably foreseeable, may not ignore its own liberty-protective regulations, and may not swap process for a policy slogan. *Villanueva v. Tate*, No. H-25-3364 2025 WL 2774610 *5 (S.D. Tex. Sept. 26, 2025).

11. The equities are lopsided. Physical freedom is a core constitutional value; its loss is a "grievous" harm that weighs heavily in any balance. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Against Petitioner's continued unlawful confinement, health deterioration, and ongoing constitutional injury, the Government can claim only a minimal administrative burden from restoring lawful supervision. The balance tips sharply—indeed, overwhelmingly—in Petitioner's favor.

IV. Granting the Injunction Serves the Public Interest

12. The public has a profound interest in ensuring that government agencies comply with constitutional requirements and respect fundamental rights. Allowing ICE to detain individuals without following mandatory procedural requirements undermines the rule of law.

13. Federal agencies must follow their own regulations. The public interest is served by compelling ICE to comply with mandatory procedural requirements in 8 C.F.R. §§ 241.4(1) and

241.13. Agencies cannot be permitted to ignore regulatory safeguards designed to protect individual liberty simply because enforcement priorities have changed.

14. For nine years, Petitioner successfully complied with supervised release—attending every check-in, committing no crimes, maintaining stable residence, and cooperating fully with ICE. This demonstrates that supervised release can be an effective alternative to detention.

15. The public interest is served by using the least restrictive means necessary to achieve immigration enforcement objectives. Unnecessary detention: Imposes significant costs on taxpayers; Causes unnecessary hardship to individuals and families; Strains detention resources that could be used for individuals who actually pose dangers or flight risks; and Undermines public confidence in the fairness of the immigration system.

16. The public interest strongly—indeed overwhelmingly—favors granting the injunction: Every relevant public interest consideration supports granting injunctive relief. There is no legitimate public interest in maintaining unlawful detention.

PROPOSED INJUNCTIVE RELIEF

Petitioner respectfully asks the Court to grant the following preliminary relief:

1. Order immediate release to the prior Order of Supervision (or substantively equivalent conditions), consistent with 8 U.S.C. § 1231(a)(3) and ICE's nine-year course of supervised compliance
2. Declare that ICE's revocation and detention violated binding regulations—8 C.F.R. §§ 241.4(l), 241.13, and the country-specific protections in §§ 1208.31 & 1241.8(e)—and violated due process

3. DHS may not attempt third-country removal without first providing country-specific notice and the reasonable-fear process (including de novo IJ review upon request) mandated by 8 C.F.R. § 1208.31(g).
4. Enjoin any transfer from the current facility during the pendency of this case and require 48-hours' written notice to counsel before any attempted removal action.

Respectfully submitted, this 17 October 2025.

By counsel,

s/ Stephen O'Connor
Stephen O'Connor
Counsel for Petitioner
O'Connor & Associates
7703 N. Lamar Blvd, Ste 300
Austin, Tx 78752
Tel: (512) 617-9600
Steve@oconnorimmigration.com

VERIFICATION OF COUNSEL

I, Stephen O'Connor, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

October 17, 2025.

s/ Stephen O'Connor
Stephen O'Connor
Counsel for Petitioner
O'Connor & Associates
7703 N. Lamar Blvd, Ste 300
Austin, Tx 78752
Tel: (512) 617-9600
Steve@oconnorimmigration.com

CERTIFICATE OF SERVICE

I certify, in accordance with the rules of this Court, I filed the foregoing via the Court's CM/ECF system, which will send notice to all registered counsel of record.

October 17, 2025.

s/ Stephen O'Connor
Stephen O'Connor
Counsel for Petitioner
O'Connor & Associates
7703 N. Lamar Blvd, Ste 300
Austin, Tx 78752
Tel: (512) 617-9600
Steve@oconnorimmigration.com

CERTIFICATE REGARDING CONFERENCE (IMPRACTICABILITY STATEMENT)
CERTIFICATE REGARDING CONFERENCE (L.R. CV-7(I))

Undersigned counsel states that a conference under Local Rule CV-7(i) is **impracticable**. This motion seeks **emergency relief** concerning Petitioner's ongoing detention and potential removal; immediate filing is necessary to prevent irreparable harm.

October 17, 2025

s/ Stephen O'Connor
Stephen O'Connor
Counsel for Petitioner
O'Connor & Associates
7703 N. Lamar Blvd, Ste 300
Austin, Tx 78752
Tel: (512) 617-9600
Steve@oconnorimmigration.com