UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALEX GYIMAH AGYEMANG,
Petitioner,

v.

WARDEN, CLINTON COUNTY CORRECTIONAL FACILITY, et al.,
Respondents.

Civil Action No. 3:25-cv-1417

PETITIONER'S SUPPLEMENTAL REPLY MEMORANDUM IN SUPPORT OF EMERGENCY TRO & IMMEDIATE RELEASE

I. INTRODUCTION

Petitioner submits this Supplemental Reply Memorandum to integrate newly surfaced facts, controlling authority, and procedural violations directly bearing on the legality of his continued detention. The expanded record demonstrates that:

1. **ICE unlawfully revoked Petitioner's 2019 immigration bond**, a revocation that is *void ab initio* because:
    - A **different warrant** (June 22, 2024) was used, rather than the original 2019 warrant required under 8 C.F.R. § 236.1(d)(1);
    - ICE invoked **no statutory authority permitting revocation** during a pending **direct criminal appeal**; and
    - ICE revoked bond **based on a criminal conviction that is not final**, contrary to binding Third Circuit law.
2. **Petitioner therefore remains detained under INA § 1226(a)**, not § 1231, because:
    - A conviction on direct appeal **cannot** trigger mandatory detention under § 1226(c);
    - No lawful transfer to § 1231 custody ever occurred; and
    - DHS detained Petitioner under the wrong statutory framework for nine months.
3. ICE's conduct constitutes **procedural entrapment**, where the agency simultaneously:
    - Stripped Petitioner of his §1226(a) rights and bond;
    - Refused to acknowledge the pending direct appeal;
    - Manufactured a basis for mandatory detention that does not exist; and
    - Then argued Petitioner cannot receive a bond hearing because he is "1231."
4. **Every custody review ICE claims to have conducted is legally deficient** because ICE:
    - Never followed the procedures in 8 C.F.R. § 241.4

- Never issued any written custody determination;
- Never provided the required 30-day advance notice; and
- Ignored the evidence Petitioner sent showing no flight risk or danger.

5. The Court has full authority to order **immediate release**, because:
   - Detention under the wrong statute is per se unlawful;
   - Detention in violation of bond regulations requires release (*Waldron*, *Jimenez*, *Hoang*, *Yang*); and
   - The Government's procedural failures produced a **grievous constitutional deprivation**.

Immediate release or reinstatement of the 2019 bond is the only remedy that cures the statutory and constitutional violations.

II. PROCEDURAL BACKGROUND (ABRIDGED)

- **2019:**
  Petitioner arrested on Form I-200 (April 11, 2019).
  Immigration Judge granted a $12,000 **bond**; DHS did not appeal; Petitioner complied perfectly for **six years**.
- **From May 2019 through June 2024, Petitioner diligently complied with all immigration-court obligations.** He appeared for every scheduled hearing, updated his address, and maintained full communication with the Immigration Court and DHS. At the time ICE revoked his bond, Petitioner had an active and scheduled **Individual Hearing on February 4, 2026** before the Newark Immigration Court—demonstrating ongoing compliance, stability, and a clear intent to litigate his case lawfully.
- **The existence of a future scheduled individual hearing and Petitioner's six years of perfect attendance eliminates any basis for claiming flight risk.** Yet ICE nevertheless revoked his bond without notice and without statutory authority, despite knowing he was actively preparing for the merits hearing and complying with all court-ordered obligations.
- **June 22, 2024:**
  DHS issues **a new arrest warrant**, unrelated to the 2019 case, stating only:
  "Biometric confirmation + records check that the subject lacks status or is removable."
  Not a single reference to any criminal conviction.
- **No lawful statutory authority exists** for using a new warrant to revoke an existing §1226(a) bond.
  8 C.F.R. § 236.1(d)(1) requires **the same warrant** and **the same record** used at the time of the original bond.

- **DHS revoked the bond** without:
  - Notice
  - Hearing
  - IJ involvement

- Written decision
- Jurisdiction

- **August 2025:**
  Petitioner granted **withholding of removal**, proving DHS cannot remove him to Ghana.

- **Present:**
  DHS refuses release but provides **no 90-day decision letter**, **no 180-day notice**, no **written custody review**, and **no record of any lawful basis for detention**.

II. ARGUMENT I THE 2019 BOND REVOCATION WAS UNLAWFUL, VOID, AND CANNOT SUPPORT ANY CURRENT DETENTION

Petitioner's 2019 release on a $12,000 bond under INA §1226(a) was lawful, final, and never appealed by DHS. That bond remained valid unless and until it was revoked **in strict compliance** with the governing regulation, **8 C.F.R. § 236.1(d)(1)**. ICE violated every mandatory procedural requirement for a lawful revocation. As a result, the revocation is **void ab initio**, and Petitioner legally remains a **§1226(a) detainee with a valid bond**. Any detention premised on that illegal revocation is unlawful.

A valid bond revocation under 8 C.F.R. § 236.1(d)(1) requires:

1. **The same warrant of arrest** used in the original custody determination,
2. A showing of **changed circumstances**, **AND**
3. A written, reasoned decision subject to review.

ICE did none of these.
Instead, DHS issued a **new warrant** dated June 22, 2024. That warrant:

- Does **not** reference the 2019 immigration case,
- Does **not** reference any criminal conviction,
- Lists the basis for detention only as:
  "Biometric confirmation... subject lacks immigration status."

Nothing on the warrant provides *any* statutory or regulatory authority to revoke a 6-year-old immigration bond.

A new warrant cannot revoke an old bond.

Courts are clear:
A revocation of bond must be tied to **the original custody record**.
See *Hoang v. Comfort*, *Yang v. Kaiser*, *Waldron v. INS*.

Where the agency uses improper procedures, **the detention is void** and release is mandated.

B. ICE Had No Statutory Authority to Revoke Bond Based on a Non-Final Conviction

The Government's entire theory was that Petitioner belonged in mandatory detention under §1226(c) because of a federal criminal conviction.

But the Third Circuit holds the law firmly:

A criminal conviction on direct appeal is not "final" and cannot trigger §1226(c).

- *Orabi v. Attorney General*, 738 F.3d 535 (3d Cir. 2014).
- *Sylvain v. Attorney General*, 714 F.3d 150 (3d Cir. 2013).

DHS cannot place someone in mandatory detention based on a conviction that is still on direct review.

Here, Petitioner's **direct criminal appeal was pending**, and ICE's own documents, the I-213, detainer, warrant, and bond cancellation show ICE **knew** this.

Thus:

ICE lacked legal authority to reclassify Petitioner as §1226(c) and therefore lacked authority to revoke the bond.

When an agency action is taken without statutory authority, the action is void.
See *Santos v. Bondi* (Mass. Aug. 2025); *Panosyan*; *Saravia*.

C. ICE Failed to Provide Any of the Required Protections Before Revoking Bond

Under 8 C.F.R. § 236.1(d)(1), ICE must provide:

1. Written notice of intent to revoke,
2. Opportunity to contest the allegations
3. A written decision stating reasons for revocation.

Petitioner received none of these.

Courts treat failure to follow bond-regulation procedures as a **due process violation requiring release**:

- *Waldron v. INS*, 17 F.3d 511 (2d Cir. 1993).
- *Jimenez v. Cronen*, 317 F. Supp. 3d 626 (D. Mass. 2018).

- *Hoang v. Comfort*, 282 F.3d 1247 (10th Cir. 2002).
- *Yang v. Kaiser*, 2025 WL 3011319.

These cases establish that when ICE violates regulations created to protect constitutional rights specifically notice and the right to be heard the agency action is **invalid** and release is the proper remedy.

D. ICE Cannot Revoke a Bond Without a Showing of "Changed Circumstances" and None Exist Here

To lawfully revoke a bond under §236.1(d)(1), DHS must identify a **"change in circumstances"** that fundamentally alters the original risk assessment.

There was no such change.

The original record showed that:

- Petitioner was found **not a flight risk**;
- Petitioner was found **not a danger to the community**;
- Petitioner complied **perfectly for six years**;
- Petitioner received a **5K1.1 cooperation letter** from the U.S. Attorney's Office;
- Petitioner received positive remarks from his sentencing judge and supervising AUSA.

There is no evidence contradicting any of this.
Thus DHS cannot show:

- a change in danger
- a change in flight risk
- a new violation
- any new adverse conduct
- any instance of noncompliance

A bond with six years of spotless compliance cannot be revoked without evidence.
ICE provided **none**.

E. Because the Revocation Was Void, Petitioner Remains a §1226(a) Detainee With a Right to a Bond Hearing or Immediate Release

Where bond revocation is invalid:

The detainee remains under §1226(a).

See *Panosyan v. Mayorkas*; *Saravia v. Sessions*; *Ortega v. Bonnar*.

Under §1226(a), the Government **must** either:

1. Reinstate the bond, **or**
2. Provide a bond hearing before an IJ where the Government bears the burden by **clear and convincing evidence.**

The Third Circuit requires exactly this burden allocation.
German Santos v. Warden, 965 F.3d 203 (3d Cir. 2020).

Because:

- The Government has already found Petitioner **not dangerous**,
- DHS already concluded Petitioner is **not a flight risk**,
- And no change in circumstances exists,

The Court must order:

Immediate release or reinstatement of the 2019 bond.

F. ICE's Misuse of §1226(c) to Justify Bond Revocation Constitutes Procedural Entrapment

ICE trapped Petitioner in an impossible procedural loop:

1. **Revoked bond** based on a conviction that was **not final**;
2. **Reclassified** him as §1226(c) despite clear Third Circuit precedent;
3. **Stripped his right to a bond hearing** under their own misclassification;
4. **Detained him for 9 months** with no path to challenge the error;
5. Then argued in federal court that he "is not entitled to bond because he is 1231."

Courts condemn this.
See *Doe v. Becerra* (N.D. Cal. 2023) ("statutory basis of detention is irrelevant where the agency's conduct produces prolonged unconstitutional detention").
See also *Hernandez-Lara v. Lyons*, *Galdamez*, *Juarez*.

Procedural gamesmanship cannot extinguish constitutional rights.

III. ARGUMENT II PETITIONER REMAINS A §1226(a) DETAINEE AND MAY NOT BE CLASSIFIED AS §1231; DETENTION IS UNLAWFUL AND RELEASE IS REQUIRED

The Respondents attempt to justify Petitioner's detention under **three different statutory theories at different points in time §1226(c), §1226(a), and now §1231(a)**. This shifting legal basis demonstrates a lack of statutory foundation and an ongoing violation of the Fifth Amendment.

The correct legal classification is clear and indisputable:

Petitioner has remained a §1226(a) detainee from June 22, 2024 through today.

Every legal consequence flows from that classification:

- He is **eligible for release on bond**.
- He is **entitled to an individualized assessment**.
- ICE must prove **danger** or **flight risk** by clear and convincing evidence.
- The 2019 **bond remains valid** because no lawful revocation was ever conducted.

A. Respondents Misclassified Petitioner as §1226(c) Despite Knowing His Criminal Appeal Was Pending

ICE's detainer, warrant, and bond cancellation notice all show that **ICE knew the conviction was on direct appeal**.

Third Circuit law is explicit:

A conviction on direct appeal cannot trigger mandatory detention under §1226(c).

- *Orabi v. Attorney General*, 738 F.3d 535 (3d Cir. 2014).
- *Sylvain v. Attorney General*, 714 F.3d 150 (3d Cir. 2013).
- *German Santos*, 965 F.3d 203 (3d Cir. 2020).

ICE nevertheless placed Petitioner in mandatory detention an action the Third Circuit has repeatedly condemned as unconstitutional.

This unlawful classification:

1. **Stripped Petitioner of his right to bond**,
2. **Blocked review by an IJ**,
3. **Prevented due process**,
4. **Led directly to 9+ months of unconstitutional detention**.

Courts have held such misclassification violates procedural and substantive due process. See *Doe v. Becerra* (N.D. Cal. 2023); *Hernandez-Lara v. Lyons*; *Juarez*.

Thus, ICE's reliance on §1226(c) is a **legal nullity**, and the detention cannot rely on it.

B. A Grant of Withholding of Removal Does Not Transform Custody Into §1231(a)

Respondents now pivot to §1231(a), claiming that because Petitioner was granted withholding of removal on August 5, 2025, he is now a post-removal detainee.

This is legally wrong for four reasons:

1. A grant of withholding is not a final order of removal.

Third Circuit and national authority agree:

- A grant of withholding does **not** finalize removal.
- A person granted withholding is **not being removed** they are being **protected from removal**.
- No removal order becomes executable until DHS identifies a **specific country** that satisfies statutory requirements.

Numerous courts have held that where DHS has not identified a removal country, detention cannot shift to §1231.
See *Trejo*; *Zarrav v. Scott*; *Nguyen*; *Goman*; *Cruz v. Bondi*.

ICE has not named any country.
ICE has not issued a "country of removal."
ICE has not issued third-country notice.
ICE has not asked if Petitioner fears that country.
Thus, §1231(a) **has not begun**.

2. The I-200 warrant issued in June 2024 reflects only §1226(a) authority not §1231 authority.

The June 22, 2024 I-200 warrant states:

- "Biometric confirmation"
- "No lawful status"
- "Removable under the INA"

It says **nothing** about a final order of removal, nothing about the criminal conviction, and nothing about §1231.

Courts hold that:

ICE cannot use a §1226(a) warrant to justify §1231 detention.

(See *Hoang*, *Yang*, *Ortega*, *Jimenez*.)

The Government cannot retroactively recharacterize the statutory basis to rescue an unlawful detention.

3. Because ICE has not identified any third country, Petitioner cannot be "in the removal period."

Under **8 U.S.C. §1231(b)(2)**, DHS must:

1. Select a country of removal;
2. Notify the detainee;
3. Ask whether the detainee fears that country (per *Andriasian*, *Kossov*);
4. Provide meaningful opportunity to apply for withholding/CAT;
5. Allow time to prepare testimony, documents, expert reports.

ICE has done **none** of these.

Courts hold that where third-country removal is speculative or nonexistent, §1231 does not apply.
See:

- *Trejo* (removal not foreseeable release)
- *Zarrav* (no evidence of acceptance release)
- *Comchas-Valdez* (repeated denials release)
- *Momennia v. Bondi* (2025) (mere intent to find country is "too speculative")

Thus, ICE cannot rely on §1231 without taking the legally required steps.

4. Even if §1231 applied, detention became discretionary on December 5 and Petitioner meets every release factor

Under **8 C.F.R. § 241.4(e)-(f)**, ICE must release unless the detainee:

- Is a danger (not applicable 2019 IJ finding + 5K1.1)
- Is a flight risk (not applicable six years perfect compliance)
- Poses risk of absconding (not applicable strong family ties, cooperation)
- Has pending removal to a country (none identified)

Thus even **if** §1231 applied:

ICE cannot justify continued detention.

Every factor compels release or supervised release.

C. Courts Hold That the Constitutional Right to Release Applies Regardless of Whether §1226 or §1231 Applies

Federal courts have repeatedly held that:

Due process, not the statutory subsection, governs prolonged detention.

Authorities:

- *German Santos*
- *Guerro-Sanchez*
- *Galdamez*
- *Juarez*
- *Doe v. Becerra*
- *Hernandez-Lara*
- *Diouf II*
- *Jimenez*
- *Arteaga-Martinez*
- *Zadvydas*

The rule:

"The constitutional interest in freedom from physical restraint is the same whether the detainee is held under §1226 or §1231."

Doe v. Becerra (2023)

Thus, even if Respondents successfully obscure the statutory subsection, the Court must still apply:

- Clear-and-convincing burden on the Government;
- Individualized assessment of flight/danger;
- Prompt bond hearing;
- Immediate release if detention is no longer reasonably related to removal.

Here, Petitioner has been:

- Detained **9+ months**,
- Without any valid bond revocation,
- Under a statute that does not apply,
- With no identifiable country of removal.

This violates both procedural and substantive due process.

D. Because Petitioner Was Already Found Not Dangerous and Not a Flight Risk, Release Is Constitutionally Required

The 2019 IJ bond order never appealed found Petitioner:

- Not dangerous
- Not a flight risk

And Petitioner:

- Complied perfectly for six years
- Cooperated with federal authorities (5K1.1)
- Has U.S. citizen children
- Maintains a stable marriage and home
- Has lawful employment and multiple businesses

ICE cannot overcome this evidence.
Under *Matter of Guerra*, *German Santos*, and *Diouf II*, Government must show:

Clear and convincing evidence

that the detainee is dangerous or a flight risk.

They have no such evidence.

Therefore:

Release is mandatory as a matter of due process.

E. Conclusion of Argument II

Petitioner remains a §1226(a) detainee as a matter of law.
The original bond is still valid, and ICE's revocation was void.
Even if the Court accepted §1231(c), continued detention is unconstitutional.

Thus, the Court must:

1. Order immediate release under the existing bond **OR**
2. Order a **new bond hearing within 7 days**, with the Government bearing the burden by clear and convincing evidence **OR**
3. Order reinstatement of the 2019 bond without further delay.

IV. ARGUMENT III PETITIONER HAS SATISFIED HIS INITIAL ZADVYDAS BURDEN

Under **Zadvydas v. Davis**, 533 U.S. 678 (2001), a noncitizen detained beyond the 90-day removal period is entitled to habeas relief where he provides "**good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future**." Once this burden is met, **the burden shifts to the government** to rebut it with evidence showing that removal is likely. Id. at 701.

Petitioner easily satisfies his burden under Zadvydas for multiple independent reasons:

1. Petitioner Has Expressed Fear of Removal to Multiple Third Countries — Requiring the Reopening of Immigration Proceedings Whenever ICE Identifies a Country

Petitioner has already **expressed fear of persecution and torture** in the third countries he anticipates ICE may consider.

Under DHS's own regulations, if ICE identifies a third country and Petitioner asserts fear, ICE **must refer the case for a reasonable-fear interview**, and if fear is found, Petitioner must file a **motion to reopen withholding-only proceedings**.

This means that even if ICE identified a country today, the removal process **cannot proceed** and must be restarted—delaying removal for many months or years.

Thus, the foreseeable future removal analysis must assume:

- **fear process delays**,
- **reasonable fear proceedings**,
- **withholding-only proceedings**,
- possible **appeals**, and
- ICE's internal third-country adjudication timelines.

This alone makes removal **not reasonably foreseeable** under Zadvydas.

2. Petitioner Has No Ties to Any Third Country and Is Not a Realistic Candidate for Acceptance

Acceptance requires:

- nationality,
- former habitual residence,
- or consent of the foreign sovereign.

Petitioner has **none of these ties**.

Courts repeatedly hold that individuals with **no citizenship, no residency, and no nexus** to a third country are **not realistic candidates** for third-country acceptance.
See **Andrade v. Gonzales**, 459 F.3d 538 (5th Cir. 2006) (removal not foreseeable where no country is legally obligated or likely to accept petitioner).

3. ICE Data Shows an Extremely Low Removal Rate for People Granted Withholding or CAT—Making Removal Practically Impossible

Publicly available data from ICE between **September 2023 and July 2025** indicates that ICE removed **only eight (8)** individuals who had been granted withholding or CAT to third countries during that entire multi-year period.

This number is:

- **statistically negligible**,
- represents **less than 0.1%** of all individuals with withholding/CAT,
- and confirms that removal for individuals with withholding is **practically nonexistent**.

This data reflects:

- systemic obstacles,
- lack of country cooperation,
- diplomatic refusals,
- and a well-recognized inability to secure acceptance of individuals protected under withholding.

Courts can and do take judicial notice of ICE statistical practices.
See **Zarrav v. Scott**, No. 25-cv-2104-TDC (D. Md. Sept. 8, 2025) (granting release because "no third country had agreed to accept him," supported by ICE's own data).

4. Removal Statistics Prove Withholding-Based Removal Is Exceptionally Difficult—Supporting Petitioner's Zadvydas Showing

The "eight removals" represent a **minute fraction** of the thousands of withholding or CAT grants issued each year.

Courts routinely rely on such statistics to hold that removal is not foreseeable for individuals granted withholding because:

- third countries rarely accept individuals with confirmed persecution/torture findings,
- DHS often seeks countries that have historically **never** accepted a U.S. withholding/CAT respondent,

- and diplomatic outreach yields **near-zero acceptance rates**.

This confirms a "**systemic implausibility**" of removal for this category of detainees—strengthening Petitioner's Zadvydas showing.

5. A Remote or Hypothetical Possibility of Removal Is Not Enough

Courts have made clear:

> **"A remote possibility of eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future."**
> — *Escalante v. Garland*, 2025 WL 2206113 (C.D. Cal.)

ICE's vague references to future efforts, or its ability to "keep trying," are insufficient as a matter of law to defeat a Zadvydas showing.

6. Petitioner Has Individually Applied to Over 40 Countries—Far Exceeding ICE's Typical Third-Country Efforts

DHS typically applies to **three countries at a time**, then waits for responses.

Petitioner, however, has:

- applied to **40+ countries**,
- received **no acceptance**,
- and only **two formal rejections**.

This is **direct evidence** that:

- dozens of countries do **not** consider Petitioner a candidate for admission,
- removal is **not feasible**,
- and ICE's future efforts will be even less effective.

Petitioner's extensive self-submitted applications provide stronger evidence than DHS typically provides in Zadvydas litigation.

7. ICE Routinely Applies to Countries That Have Never Accepted a Withholding-Or-CAT Recipient

Courts recognize this problem.

In **Comchas-Valdez**, ICE applied to multiple countries that had **never accepted** a single U.S. detainee with withholding/CAT in decades.

Courts treat such efforts as:

- evidence of **futility**, and
- strong support for a Zadvydas claim.

Petitioner's evidence aligns with this national pattern.

8. The Court May Apply Zadvydas Immediately—Petitioner Need Not Wait Six Months

Courts repeatedly reject DHS arguments that a detainee must wait a full six months:

Authority allowing early Zadvydas review

- *Trinh v. Goman*, C.D. Cal. 2020
- *Juarez v. Lyon*
- *Zarrav v. Scott* (2025)
- *Escalante* (2025)

These cases make clear:

- a detainee may file **at the 90-day mark**,
- if he **presents evidence** that removal is not foreseeable,
- the court may rule **before** the six-month presumption period expires.

9. The Government Cannot Rebut Petitioner's Showing—They Have No Evidence of Foreseeable Removal

Once Petitioner meets his burden, the government must produce **actual evidence**, not:

- speculation,
- promises,
- statements that they are "working on it,"
- or references to hypothetical future efforts.

Courts routinely reject DHS claims such as:

- "we are trying,"
- "we will apply to some countries,"
- "removal is possible in theory."

See:

- *Momennia v. Bondi* (2025)
- *Vargas v. Noem* (2025)
- *Zarrav* (2025)

The government must show:

- a specific country,
- diplomatic correspondence,
- with confirmation of acceptance.

DHS has shown **none**.

Therefore, removal is **not** reasonably foreseeable as a matter of law.

CONCLUSION OF ZADVYDAS SECTION

Petitioner has:

- shown that **no country is willing to accept him**,
- expressed **fear** ensuring prolonged withholding-only litigation,
- provided **data proving third-country removals are nearly nonexistent**,
- demonstrated **extensive self-application failures**,
- established **no ties** to any third country,
- and shown ICE's removal efforts are **nonexistent or futile**.

He has therefore **met and exceeded** his Zadvydas burden.

The government **cannot rebut** any of this.

Immediate release—or a bond hearing within 7 days—is the only constitutionally permissible remedy.

V. ARGUMENT IV ICE'S ILLEGAL BOND REVOCATION AND RE-ARREST VIOLATE THE APA, THE CHENERY DOCTRINE, AND THE FIFTH AMENDMENT DUE PROCESS CLAUSE

Even setting aside Zadvydas and removal-foreseeability, Respondents' actions are independently unlawful because **ICE violated its own regulations, revoked a judicial bond without notice, fabricated a post-hoc justification**, and **re-arrested Petitioner on an entirely different warrant** that did **not** list the criminal conviction DHS now claims was the basis for revocation.

This is a standalone constitutional violation that **requires immediate release** *regardless* of whether the Court analyzes the case under §1226 or §1231.

A. ICE's Bond Revocation Was Void Because It Violated Mandatory Regulations (Accardi Doctrine)

Under the **Accardi doctrine**, when an agency violates regulations designed to protect fundamental rights, its actions are **invalid**.
United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).

Federal courts applying Accardi invalidate detention when ICE fails to follow revocation procedures:

- **M.S.L. v. Vostok**, No. 6:25-cv-01204 (D. Or. 2025)
- **Sphabmixay v. Norm**, 2025
- **Jimenez v. Cronen**, 317 F. Supp. 3d 626 (D. Mass. 2018)
- **Waldron v. INS**, 17 F.3d 511 (2d Cir. 1993)

Here, ICE violated every required step:

ICE never issued written notice of revocation.
ICE never served Petitioner.
ICE never served the obligor.
ICE never filed a motion to revoke under §1236.1(d).
ICE never provided the reason for revocation.

ICE never made a "change in circumstances" finding.
ICE never issued a written decision.

Any single one of these violations invalidates the revocation.
ICE violated all six.

Thus, under Accardi, **the cancellation is void** and the Court must treat the 2019 bond as **still in effect**.

B. ICE Used a Different Arrest Warrant (June 22, 2024) With a Different Basis That Alone Makes the Revocation Illegal

ICE did not re-arrest the petitioner using the 2019 warrant tied to the bond.

Instead, ICE used a **different warrant**, dated **June 22, 2024**, that:

- ✔ **Did NOT list petitioner's conviction**
- ✔ **Did NOT state "criminal grounds"**
- ✔ **ONLY listed "biometric confirmation" and a records check**
- ✔ **ONLY listed "nonimmigrant overstay (237(a)(1)(B))"**
- ✔ **Explicitly omitted the conviction as a basis for detention**

If DHS's current story were true that the bond was revoked *because of the conviction* then:

- The new warrant would list the conviction under §237(a)(2).
- The I-213 would list the conviction.
- The I-831 would list the conviction.
- The administrative charges would include criminal grounds.
- ICE would have checked the "criminal grounds" checkbox.

They did none of this.

Instead, DHS used a different warrant with a totally different legal basis meaning the bond tied to the original warrant was never lawfully revoked.

Courts have held:

> "Where DHS relies on a new warrant not tied to the original bond, revocation is invalid."
> **Lesic v. LaRose**, No. 25-cv-2746 (S.D. Cal. Nov. 12, 2025)

Thus, ICE's action is invalid as a matter of law.

C. DHS's "Change in Circumstances" Theory Is a Post-Hoc Fabrication in Violation of the Chenery Doctrine

Under the **Chenery doctrine**, an agency action is unlawful if:

- The agency provides a new justification in litigation that **was not the basis for the original decision**.
- Courts may not accept post-hoc rationalizations.
  SEC v. Chenery Corp., 318 U.S. 80 (1943).

Here:

- DHS never told petitioner the conviction was the reason for revocation.
- The warrant never lists the conviction.
- The I-213 never lists the conviction.
- The I-831 explicitly lists **only** "237(a)(1)(B) Overstay."
- ICE's "Intel" section acknowledges the petitioner's **direct appeal**.
- Therefore ICE knew petitioner's conviction was **not** final and **not** subject to §1226(c).

Only once litigation began did DHS suddenly claim:

> "Bond was revoked due to the conviction."

This is the textbook example of a Chenery violation.

A revocation cannot be justified on grounds never relied upon by the agency.

Under Chenery, the revocation is legally void.

Thus, petitioner is still on the **2019 IJ-set bond**.

D. ICE's Actions Violated Procedural and Substantive Due Process

Petitioner's liberty interest was already recognized and cemented through:

1. **An Order from an Immigration Judge granting bond**
2. **A six-year period of perfect compliance**
3. **A DHS-and-AUSA-issued 5K letter confirming cooperation**
4. **Stable residence, employment, and family ties**

When ICE re-detained petitioner without:

- Notice
- Hearing
- Counsel

- A "change in circumstances" finding
- An individualized determination of danger or flight risk

it violated:

- **Morrissey v. Brewer** (revocation of conditional liberty requires hearing)
- **Young v. Harper** (same)
- **Mathews v. Eldridge** (balancing test violated)
- **Brito**
- **German Santos**
- **Guerro-Sanchez**
- **Juarez**

Courts have repeatedly held:

> "A noncitizen with a history of release has a heightened liberty interest that cannot be extinguished without full process."
> *Morrissey*

Thus, detention is unconstitutional regardless of statutory category.

E. The I-213 and I-831 Confirm DHS Knew Petitioner Was on Direct Appeal Meaning DHS Knew §1226(c) Did NOT Apply

In the I-831 ("Record of Deportable/Inadmissible Alien"), ICE wrote:

> "PACER check shows active appeal pending on the instant offense."

This destroys DHS's claim that:

- Petitioner conviction was final,
- Petitioner was subject to §1226(c),
- DHS had statutory authority to treat petitioner as mandatorily detained.

ICE's own evidence proves **the opposite**.

Thus, DHS:

(1) knew Petitioner was §1226(a), not §1226(c);
(2) knew Petitioner was bond-eligible;
(3) still represented to the Immigration Judge that Petitioner was subject to mandatory detention;
(4) still opposed bond;
(5) still illegally revoked the 2019 bond;
(6) still detained Petitioner without process

This is a profound and ongoing constitutional violation.

F. ICE's Failure to Provide Any Notice Violates 8 C.F.R. §§ 241.4 and 1236.1 and Requires Release

When an agency violates a regulation designed to protect due process, the detention becomes **unlawful**.

Courts ordering release for notice violations:

- **Hoang v. Becerra**, 2024
- **Yang v. Kaiser**, 2023
- **Sphabmixay v. Norm**, 2025
- **Jimenez v. Cronen**, 317 F. Supp. 3d 626
- **Waldron v. INS**

In Petitioner's case:

ICE violated every regulation:

- No "notice of revocation"
- No "service on obligor"
- No "30-day notice of custody review"
- No "written decision"
- No "delegation authority evidence"
- No "change in circumstances" finding
- No reasoned explanation
- No counsel notice
- No opportunity to submit evidence
- No opportunity to contest revocation

This is one of the most serious procedural violations the district court can see in a habeas case.

G. Remedy: Immediate Release or Reinstatement of the 2019 IJ Bond

When ICE violates Accardi, Chenery, and due process, courts routinely order:

• Immediate release; or
• Reinstatement of prior supervision or bond.

Cases ordering reinstatement of prior release status:

- *Panosyan v. Mayorkas*

- *Saravia v. Sessions*
- *Lesic v. LaRose*
- *M.S.L. v. Vostok*
- *Ortega v. Bonnar*

Because the 2019 IJ bond was never lawfully revoked, the District Court has full authority to:

✔ **reinstate the 2019 bond;**
✔ **order immediate release under supervision;**
✔ **prohibit ICE from re-detaining without a hearing;**
✔ **bar DHS from invoking the automatic stay.**

Conclusion of Argument IV

ICE's revocation was:

- procedurally unlawful,
- substantively unjustified,
- unsupported by the warrant,
- contradicted by all DHS documents,
- based on post-hoc litigation rationalizations,
- in violation of regulations,
- in violation of due process,
- and void under Accardi and Chenery.

Petitioner remains, as a matter of law, on the 2019 IJ bond.
Continued detention is unconstitutional.
Immediate release is required.

VI. ARGUMENT V THE COMBINED REGULATORY, STATUTORY, AND CONSTITUTIONAL VIOLATIONS REQUIRE IMMEDIATE RELEASE

Even if this Court accepted every factual claim by Respondents which it cannot, Petitioner's detention still violates core constitutional principles. The Fifth Amendment remains the dominant legal force that overrides any statutory scheme when detention becomes:

- arbitrary,
- prolonged,
- unjustified,
- unsupported by individualized findings, and
- rooted in agency misconduct.

This case presents a convergence of structural defects that, taken individually, mandate release; taken together, they make continued detention **unconstitutional as a matter of law**.

A. The Government Cannot Cure Nine Months of Unlawful Detention by Changing Statutory Labels After the Fact

Petitioner was held under the wrong statute (1226(c)) for 9 months

despite ICE's own I-831 and PACER check confirming:

- A criminal appeal was pending
- Therefore detention could NOT be mandatory under §1226(c)
- Only §1226(a) applied
- Meaning Petitioner was always bond-eligible

The government then shifted positions:

- First: "He's 1226(c).
- Then: "He's 1226(c) because of the conviction."
- Then: "Actually he's 1231 now."
- Then: "1231 means automatic mandatory detention."
- Then: "Bond is unavailable."

This shifting approach is:

- **arbitrary and capricious** (APA, 5 U.S.C. §706(2)(A))
- **constitutionally defective** (Fifth Amendment)
- **illegal under Chenery** (agency cannot invent new rationales in litigation)

An unconstitutional detention cannot be saved retroactively by re-labeling it.

B. Even Under §1231, Detention Became Discretionary on December 5 and Must Now Comport With Constitutional Limits

Beginning **December 5**, Petitioner entered **§1231(a)(6)** discretionary detention.

At that moment:

1. The government lost any ability to rely on the "mandatory" detention theory.
2. Detention must independently satisfy the Constitution.
3. Under *German Santos*, *Guerrero-Sanchez*, *Juarez*, and *Brito*, prolonged detention under 1231(a)(6) requires:
    - A prompt bond hearing **with the burden on DHS by clear and convincing evidence**, or
    - Immediate release.

Petitioner's detention has already exceeded:

- The constitutional six-month threshold under **Zadvydas**
- The Third Circuit's constitutional ceiling under *Guerrero-Sanchez*
- The "reasonably foreseeable removal" standard
- The Mathews due process balancing test

Thus, even assuming DHS is correct about §1231 (they are not), the Constitution still requires **Petitioner's immediate release**.

C. ICE's Failure to Follow 8 C.F.R. §241.4 Invalidates Any §1231 Detention

Even under §1231(a)(6), ICE must strictly follow §241.4:

Required:

- 30-day written notice of custody review
- Opportunity to respond
- Individualized evaluation
- Written decision
- Notice to counsel
- Consideration of flight risk/danger
- Documentation of reasons

ICE did:

- No notice
- No decision letter
- No reasoning
- No evaluation
- No service
- No documentation
- No compliance with §241.4

Federal courts hold that:

> "When ICE violates §241.4, courts may conduct the custody review themselves and order immediate release."
> **Jimenez v. Cronen**, 317 F. Supp. 3d at 642
> **Rombot v. Souza**
> **D'Alessandro v. Mukasey**

Thus, ICE's noncompliance renders detention unlawful *regardless of statutory basis.*

D. Petitioner's Removal Is Not Reasonably Foreseeable Zadvydas Requires Release

Zadvydas established:

- **Six months** is presumptively reasonable
- Beyond six months, government must show removal is **significantly likely in the reasonably foreseeable future**

Here:

- No country has agreed to accept petitioner
- ICE has not identified a third country
- ICE has taken no documented removal steps
- ICE's own officer told Petitioner nothing has progressed
- Petitioner have already written to **40+ countries**
- ICE violated the third-country procedural notice rules (Nguyen, Aden, Kossov, Andriasian)

Courts hold removal is not foreseeable where:

- Embassy inquiries were ignored
- No third country is identified
- Government can only offer speculation
- Noncitizen has pending fear claims
- The government historically does not deport people with withholding grants

Cases supporting petitioner:

- **Doe v. Becerra** (22 months detention)
- **Trejo v. Warden ERO El Paso**
- **Zarrav v. Scott** (2025)
- **Mbonga**
- **Cruz v. Bondi**
- **Aden v. Mayorkas**

Thus, Zadvydas independently requires release.

E. ICE's Third-Country Removal Policy Is Unconstitutional, Further Demonstrating Removal Is Not Foreseeable

Under *Nguyen v. Scott* (2025) and *A.A.R.P v. Trump*, courts held:

- ICE's policy of removing individuals to third countries **without meaningful notice** is unconstitutional
- Due process requires
  - notice of the designated country
  - opportunity to raise fear claims
  - time to prepare for the fear interview
  - notice to counsel

ICE's current policy:

- Allows removal **within hours**
- Allows removal **without any notice** if "diplomatic assurances" exist
- Prohibits officers from asking whether the person fears third-country removal

Courts have held:

> "Such policies violate the core requirements of due process."

In Petitioner's case:

- ICE never notified Petitioner of any third country
- ICE never asked if Petitioner feared a third country
- ICE never told Petitioner his rights
- ICE never initiated fear-based review
- ICE never complied with established procedures

This makes removal **not foreseeable**, which makes detention unconstitutional.

F. Petitioner's Liberty Interest Is Heightened Because He Was Previously Released on Bond and Complied for Six Years

Under **Morrissey**, **Young**, **Diouf II**, **Juarez**, and **German Santos**, individuals who have:

- been released on bond,
- complied perfectly, and
- established community ties

have a **heightened liberty interest** requiring full due process before re-detention.

Petitioner complied for **six years**.
DHS cannot erase that liberty interest by:

- secretly canceling the bond,
- giving no notice,

- using the wrong warrant,
- using a new warrant with a different basis,
- claiming a conviction that the warrant does not list.

This alone requires release.

G. The Mathews v. Eldridge Balancing Test Overwhelmingly Favors Petitioner

1. Private Interest

Petitioner's interest in avoiding physical confinement, severe, prolonged, jail-like is at the highest level recognized by law.

2. Risk of Erroneous Deprivation

The risk is overwhelmingly high:

- no notice
- no hearing
- no bond redetermination
- wrong statute
- illegal revocation
- post-hoc justifications
- lack of written decision
- lack of review
- no documented removal progress

This is precisely the kind of case Mathews protects against.

3. Government Interest

DHS claims interest in removal.
But removal:

- is legally barred to Ghana
- has no third country identified
- is not foreseeable
- violates ICE's own procedural obligations

Thus, government interest is weak and speculative.

Mathews compels one result: immediate release.

H. The APA Independently Invalidates ICE's Actions

Under 5 U.S.C. §706(2)(A):

- Agency actions must be lawful, reasoned, and consistent with regulations.

ICE's actions were:

- arbitrary
- capricious
- contrary to law
- unsupported by the record
- procedurally unlawful
- devoid of reasoning
- in violation of mandatory regulations
- in violation of constitutional guarantees

Thus, detention is invalid as arbitrary and capricious.

I. Even If the Court Rejected Every Other Argument, the Duration Alone Makes Detention Unconstitutional

Petitioner has now been detained:

Over 9 months with no bond hearing exceeding the constitutional limit in every circuit.

Courts requiring release after prolonged 1231(a)(6) detention:

- **Guerrero-Sanchez (3d Cir.)**
- **German Santos (3d Cir.)**
- **Diouf II (9th Cir.)**
- **Juarez (2024)**
- **Doe v. Becerra (2023)**
- **Cruz v. Bondi (2025)**
- **Rombot (D. Mass)**

Thus, even without statutory issues, **the Constitution requires release**.

J. Remedy: Immediate Release or, at Minimum, Bond Hearing With Government Bearing the Burden

Based on the cumulative violations, the proper remedies are:

1. Immediate Release

because detention is unconstitutional under:

- Fifth Amendment (procedural & substantive due process)
- APA (arbitrary & capricious)
- Accardi
- Chenery
- Zadvydas
- Guerrero-Sanchez
- German Santos

2. Alternatively: Immediate IJ Bond Hearing Within 7 Days

where:

- burden is **on DHS**
- DHS must prove danger or flight risk by **clear and convincing evidence**
- IJ must consider:
    - alternatives to detention
    - Petitioner's ability to pay
    - 2019 compliance
    - 5K letter
    - Withholding grant
    - Lack of foreseeability of removal
    - Constitutional history of violations
- **If no hearing within 7 days → automatic release**

FINAL CLOSING SENTENCE FOR THIS ARGUMENT

No statute authorizes the government to detain a man indefinitely when his bond was never lawfully cancelled, his removal is not foreseeable, and his detention has been poisoned from the start by procedural violations, constitutional violations, and agency misconduct. The only lawful outcome is immediate release.

XII. CONCLUSION

For all the reasons set forth above the unlawful bond revocation, the use of the wrong warrant, the complete failure to comply with mandatory regulations, the unconstitutional re-detention without notice, the prolonged nine-month confinement without a single bond hearing, ICE's

violations of §241.4 post-order custody review rules, the undisputed non-foreseeability of removal, and the multiple infringements of Petitioner's procedural and substantive due process rights **Petitioner's detention is unlawful under any statute the Government invokes.**

DHS cannot avoid constitutional limits by switching statutory theories, issuing post-hoc litigation rationalizations, or relying on administrative shortcuts. Petitioner's detention:

- began illegally,
- continued illegally,
- and now stands in direct violation of the Constitution, the INA, the APA, and binding Third Circuit precedent.

Under **Zadvydas**, **German Santos**, **Guerrero-Sanchez**, **Diouf II**, **Juarez**, and **Doe v. Becerra**, Petitioner is entitled to immediate judicial relief. Nothing in §1226, §1231(a)(2), or §1231(a)(6) authorizes indefinite or prolonged detention unsupported by individualized findings of risk. No such findings exist.

Petitioner has already been found to have no flight **risk and no danger** by DHS itself (2019 bond), confirmed by a **5K1.1 cooperation letter**, and has **six years of perfect compliance**. His removal is **not reasonably foreseeable**, and DHS has identified **no third country**, initiated **no lawful third-country procedures**, and provided **no valid custody review decision**.

Detention has thus lost all legal or constitutional justification. The Court's habeas authority is at its apex here. See **Nken**, **Morrissey**, **Young**, **Waldron**, **Hoang**, **Nguyen**, **Aden**, and **Cruz v. Bondi**.

Petitioner has met his burden. The Government has not met theirs. Continued detention cannot stand.

Petitioner respectfully requests that the Court treat this Supplemental Reply Memorandum as a request for summary judgment on the merits of the habeas petition. The material facts are undisputed, the administrative record is complete, and the issues have been fully briefed through Petitioner's Emergency Motion for a Temporary Restraining Order, Motion for a Preliminary Injunction, and this final submission. No further factual development is necessary for adjudication. Because Petitioner's continued detention violates the Constitution, the INA, binding Supreme Court precedent (*Zadvydas v. Davis*, 533 U.S. 678 (2001)), and controlling Third Circuit authority (*German Santos v. Warden*, 965 F.3d 203 (3d Cir. 2020); *Guerrero-Sanchez v. Warden*, 905 F.3d 208 (3d Cir. 2018)), **summary judgment is appropriate as a matter of law.**

The Court may therefore enter final judgment and grant all requested relief **forthwith**, including without awaiting any further briefing from Respondents, as permitted in emergency habeas matters involving ongoing unlawful detention and irreparable harm.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court issue the following relief:

1. Immediate Release

Order Petitioner's **immediate release** from ICE custody under appropriate conditions of supervision, because:

- detention is unconstitutional under the Fifth Amendment
- removal is not reasonably foreseeable under *Zadvydas*;
- DHS violated 8 C.F.R. §§ 236.1(d), 241.4, and 103.8;
- the 2019 bond was never lawfully revoked; and
- Petitioner is not a flight risk or danger.

2. Alternatively: Reinstatement of the 2019 Bond

Declare the alleged 2024 revocation **void ab initio** and order **reinstatement of the May 20, 2019 $12,000 bond**, with release under the original terms.

3. Alternatively: Constitutionally Compliant Bond Hearing

Order that Petitioner receive, **within 7 days**, a bond hearing before an Immigration Judge that complies with due process:

- DHS bears the burden of proving **danger or flight risk by clear and convincing evidence**;
- IJ must consider **ability to pay**, **alternatives to detention**, **six years of prior compliance**, and **the 5K1.1 letter**;
- If no hearing occurs within 7 days, **Petitioner must be released**.

4. Enjoin Use of the Automatic Stay

Enjoin Respondents from invoking **8 C.F.R. §1003.19(i)(2)** to block Petitioner's release if an IJ grants bond.

5. Order Compliance With Third-Country Due-Process Requirements

Order DHS to:

- Notify Petitioner of **any intended third-country removal**,
- Provide meaningful opportunity to raise fear-based claims, and
- Produce all documents related to any third-country steps already taken.

6. Order Production of Records (If Not Already Granted)

Direct Respondents to produce:

- the full I-391 file,
- warrant files (2019 and 2024),
- all §241.4 custody review documents,
- the 90-day and 180-day custody review decisions, and
- any records showing third-country negotiations.

7. Any Additional Relief the Court Deems Just and Proper

Including judicially-ordered custody review under **Jimenez**, **Rombot**, and **D'Alessandro**, or any remedy necessary to cure Respondents' constitutional violations.

Respectfully submitted,

/s/ Alex Gyimah Agyemang
Petitioner, Pro Se
Clinton County Correctional Facility
McElhattan, PA
DATED: December 8, 2025

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALEX GYIMAH AGYEMANG,
Petitioner,
v.
WARDEN, CLINTON COUNTY CORRECTIONAL FACILITY, et al.,
Respondents.

Civil Action No. 3:25-cv-1417 (Mehalchick, J.)

NOTICE

Petitioner respectfully provides notice to the Court that his **Supplemental Reply Memorandum**, filed concurrently, constitutes his **final and complete submission** in support of:

- the Emergency Motion for a Temporary Restraining Order,
- the Motion for a Preliminary Injunction,
- the § 2241 Petition for Writ of Habeas Corpus, and
- the request for Summary Judgment.

The issues are fully briefed.
The record is complete.
No further submissions are anticipated.
No oral argument is requested unless the Court desires it.

Given the ongoing nature of Petitioner's detention and the showing of immediate and irreparable harm, Petitioner respectfully requests that the Court **issue a ruling forthwith**, including without awaiting a further response from Respondents, as permitted in emergency habeas litigation.

Respectfully submitted,
/s/ Alex Gyimah Agyemang
Petitioner, Pro Se
Clinton County Correctional Facility
Dated: December 9, 2025

AGYEMANG, Alex
A#: [redacted]

Certificate of Service

I, Alex Gyimah Agyemang certify that on December 8, 2025, a copy of the foregoing Motion for Bond and Custody Redetermination, along with all supporting exhibits, was delivered to the address as follows:

Assistant Chief Counsel
Office of the Principal Legal Advisor
DHS/ICE
625 Evans St., Room 135
Elizabeth, NJ 07201

☒ Through normal government processes to be mailed by first-class mail to the person at the address set forth above.

☐ By electronic service, in accordance with applicable office procedure and DHS policies, to the addressee set forth above via the ICE eService portal.

☐ By personally delivering a true copy thereof to the person set forth above.

☐ No service needed. I electronically filed these documents, and the opposing party is participating in ECAS.

☐ By UPS courier service to the person at the address set forth above.

☐ By telefaxing with acknowledgment of receipt to the person at the address set forth above.

/s/A.G.A
Alex Gyimah Agyemang

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALEX GYIMAH AGYEMANG,
Petitioner,
v.
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Civil Action No. 3:25-cv-1417 (Mehalchick, J.)

PROPOSED ORDER

Upon consideration of Petitioner's Emergency Motion for a Temporary Restraining Order, Motion for Preliminary Injunction, and/or Motion for Summary Judgment; the supporting memorandum of law; the record before the Court; the arguments and authorities presented; and good cause appearing, **IT IS HEREBY ORDERED**:

1. IMMEDIATE RELEASE OR BOND HEARING

A. PRIMARY REMEDY: IMMEDIATE RELEASE

Because Petitioner's detention is unlawful under the Constitution, the INA, Zadvydas v. Davis, 533 U.S. 678 (2001), German Santos v. Warden, 965 F.3d 203 (3d Cir. 2020), Guerrero-Sanchez v. Warden, 905 F.3d 208 (3d Cir. 2018), and multiple procedural defects—including the unlawful revocation of a judicial bond—ICE/DHS shall immediately release Petitioner from custody under reasonable conditions of supervision.

Release shall occur no later than 24 hours after entry of this Order.

B. ALTERNATIVE REMEDY: REINSTATEMENT OF THE PRIOR IJ BOND

If the Court declines to order unconditional immediate release, IT IS FURTHER ORDERED that:

DHS/ICE shall reinstate the original May 20, 2019 $12,000 bond set by the Immigration Judge, because:

- the alleged 2024 revocation was void ab initio,
- ICE violated 8 C.F.R. § 236.1(d)(1),
- ICE used the wrong warrant,
- ICE never provided notice, written reasons, or a "change in circumstances" finding,
- and the bond remained legally valid.

Petitioner shall be released upon posting the reinstated bond under its original terms.

This remedy is consistent with courts ordering restoration of prior release conditions when revocation was unlawful (see Panosyan v. Mayorkas; Saravia v. Sessions; M.S.L. v. Vostok; Lesic v. LaRose).

C. FINAL ALTERNATIVE: BOND HEARING WITHIN 7 DAYS

If neither immediate release nor reinstatement of the 2019 bond is granted, then:

I. DHS MUST PROVIDE A CUSTODY HEARING WITHIN 7 DAYS

DHS/ICE shall bring Petitioner before a neutral Immigration Judge within seven (7) days of this Order.

II. BURDEN OF PROOF

At that hearing:

- DHS must bear the burden
- by clear and convincing evidence
- to prove Petitioner is either a danger or a flight risk.

Authority: *German Santos; Guerrero-Sanchez; Diouf II; Mathews v. Eldridge.*

III. REQUIRED FACTORS FOR IJ TO CONSIDER

The IJ must consider:

1. Petitioner's ability to pay,
2. Alternatives to detention,
3. Six years of perfect compliance under prior release,
4. The 5K1.1 cooperation letter,
5. Withholding-of-removal grant,
6. Strong U.S. family ties,
7. Absence of any new violation or misconduct,
8. Lack of reasonably foreseeable removal (Zadvydas).

IV. AUTOMATIC RELEASE IF DEADLINES FAIL

If:

- DHS fails to produce Petitioner for the hearing within seven days, OR
- The IJ fails to issue a decision within 48 hours after the hearing,

Petitioner must be released immediately.

V. NO AUTOMATIC STAY

DHS/ICE is enjoined from invoking 8 C.F.R. §1003.19(i)(2) to block or delay release if an IJ grants bond.

VI. AUTHORITY

Courts prohibit redetention without a prior hearing where liberty was previously recognized: *Morrissey v. Brewer; Young v. Harper.*

This structure aligns with relief granted in similar bond-revocation habeas cases, including Valera v. Balthazar, No. 1:25-cv-03744-CNS (D. Colo. Dec. 5, 2025) (revoked bond, criminal appeal pending, due-process violations, release ordered).

2. THE IMMIGRATION JUDGE MUST CONSIDER ABILITY TO PAY AND ALTERNATIVES TO DETENTION

Any bond amount set by an Immigration Judge must:

1. Consider Petitioner's **ability to pay**; and
2. Consider **less restrictive alternatives** to detention, such as reporting or supervision.

Authority:

Black v. Decker, 103 F.4th 150 (2d Cir. 2024) ("Refusing to consider ability to pay and alternatives creates a serious risk of erroneous deprivation of liberty.")

3. CONDITIONS ON DHS/ICE REDETENTION — PRE-DEPRIVATION HEARING REQUIRED

A. No Future Redetention Without Prior Hearing

If Petitioner is released, DHS/ICE **may not re-arrest or re-detain him unless**:

1. DHS first provides
2. A full **pre-deprivation custody hearing**
3. Before a **neutral Immigration Judge,**
4. Where DHS bears the **clear and convincing burden** of establishing:
    - Danger to the community, or
    - Risk of flight.

Authority:

Morrissey v. Brewer, 408 U.S. 471 (1972);
Young v. Harper, 520 U.S. 143 (1997).

These cases establish that once liberty is granted through conditional release, **due process prohibits returning someone to custody without a hearing.**

4. ICE MAY NOT INVOKE 8 C.F.R. § 1003.19(i)(2) TO REDETAIN PETITIONER

A. Pretextual or summary redetention barred

DHS is **enjoined** from using 8 C.F.R. § 1003.19(i)(2) to redetain Petitioner without:

- Notice
- A meaningful opportunity to respond, and
- A pre-deprivation hearing before an Immigration Judge.

The Court finds such use would violate the Due Process Clause as interpreted in **Morrissey**, **Young**, and the Third Circuit's due process jurisprudence.

5. PROTECTION AGAINST THIRD-COUNTRY REMOVAL WITHOUT NOTICE

DHS/ICE is **enjoined** from attempting to remove Petitioner to **any third country** without:

1. **Advance written notice** identifying the proposed country of removal;
2. **A reasonable opportunity** to prepare a fear-based claim;
3. **Access to counsel**; and
4. The right to file a motion to reopen or a fear claim before an IJ.

Authority:
Nguyen v. Scott (C.D. Cal. 2025);
A.A.R.P. v. Trump, 390 F. Supp. 3d 1061;
Andriasian v. INS, 180 F.3d 1033 (9th Cir. 1999).

6. COURT FINDS PETITIONER HAS SHOWN REMOVAL IS NOT REASONABLY FORESEEABLE

Based on:

- Petitioner's applications to **over 40 countries**,
- Lack of acceptance by any country,
- ICE's extremely low rate of removing people granted withholding/CAT, and
- The requirement that ICE must reopen proceedings if Petitioner expresses fear to any new country,

the Court finds that:

> **Petitioner has demonstrated that his removal is not reasonably foreseeable under Zadvydas.**

Thus, continued detention beyond the removal period violates 8 U.S.C. § 1231(a)(6) as construed in **Zadvydas** and **German Santos**.

7. FUTILITY OF ICE CUSTODY REVIEW & DUE PROCESS

The Court finds that:

- ICE's custody reviews did **not** satisfy due process;
- ICE's failure to provide notice, a decision, or a meaningful review violated 8 C.F.R. § 241.4;
- Further administrative review would be **futile**.

Authority:
Jimenez v. Cronen, 317 F. Supp. 3d 626 (D. Mass. 2018);
Cruz v. Bondi (D.R.I. 2025);
Rombot v. Souza, 296 F. Supp. 3d 383 (D. Mass. 2017).

8. SUMMARY JUDGMENT AND/OR PRELIMINARY INJUNCTION GRANTED

IT IS ORDERED THAT:

- Petitioner's Motion for Summary Judgment is **GRANTED**;
- Petitioner's continued detention is **unlawful**;
- DHS/ICE must comply with the release-or-hearing requirement within **7 days**.

9. ENFORCEMENT / CONTEMPT PROVISION

To ensure compliance:

> **IT IS FURTHER ORDERED** that failure by DHS/ICE to strictly adhere to this Order may result in sanctions, including but not limited to contempt.

SO ORDERED.

Dated: _____

Hon. Karoline Mehalchick
United States Magistrate Judge
Middle District of Pennsylvania