

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

NURBOLOT MISIRBEKOV,

Petitioner,

v.

FRANK VENEGAS, in his official capacity as the Facility Administrator of the El Valle Detention Facility; **ROBERT CERNA**, in his official capacity as acting Harlingen Field Office Director for U.S. Immigration and Customs Enforcement; **TODD LYONS**, in his official capacity as Acting Director of U.S. Customs and Immigration Enforcement; **KRISTI NOEM**, in her official capacity as Secretary of the Department of Homeland Security; and **PAMELA BONDI**, in her official capacity as Attorney General of the United States,

Respondents.

Case No. 25-cv-168

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Nurbolot Misirbekov, a Kyrgyz political dissident who was arrested, repeatedly and severely beaten, and otherwise persecuted for his opposition to the authoritarian Kyrgyz regime, fled to this country as a refugee and was granted withholding of removal by an immigration judge on December 31, 2024 because he had established a probability of future persecution in his homeland based on his political opinion. DHS did not appeal that decision, and it became final on January 30, 2025. Six months later, he remains detained by ICE at the El Valle Detention Facility. DHS cannot legally remove him to Kyrgyzstan and has been unsuccessful in its attempts to find a

third country where it can remove him. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that noncitizens cannot be detained indefinitely on the off chance that DHS might someday be able to remove them. His continuing and prolonged detention has become unlawful under *Zadvydas*, and his procedural due process rights have further been eroded by ICE's failure to follow its own custody review regulations, as detailed more fully herein.

2. The Supreme Court made clear in *Zadvydas* that the only permissible bases for prolonged detention are an individual's dangerousness and/or a flight risk posed by the person. Here, Mr. Misirbekov has no criminal history in Kyrgyzstan or the United States, and there has been no allegation at any time that he poses a danger to anyone. *See* ECF No. 1-2 (certification of no criminal record in Kyrgyzstan). Furthermore, as the Court noted in *Zadvydas*, detaining a noncitizen indefinitely based on flight risk cannot be justified because such justification "is weak or nonexistent where removal seems a remote possibility at best." *Zadvydas*, 533 U.S. at 690. Mr. Misirbekov is not a flight risk in any event: he has submitted declarations from his U.S.-citizen sponsor, Dr. Rudy Alvarez, who has promised to ensure Mr. Misirbekov has food and housing and has further promised to guarantee his appearance at any necessary ICE appointments. *See* ECF No. 1-3 (letter from sponsor).

3. Mr. Misirbekov's continued detention violates his procedural due process rights and furthermore serves no legitimate purpose. As detailed herein, the violation of Mr. Misirbekov's procedural due process rights is only underscored by ICE's failure even to follow its own custody regulations in his case. This Court should grant habeas relief and order his immediate release.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, since this Petition arises under the Constitution and laws of the United States, namely the detention

provisions of the Immigration and Nationality Act, 8 U.S.C. § 1231; the accompanying regulations codified at 8 C.F.R. § 241.4, *et seq*; the habeas corpus statute, 28 U.S.C. § 2241; and the Due Process Clause of the Fifth Amendment..

5. This Court may grant relief pursuant to the Habeas Corpus Act, 28 U.S.C. § 2241, *et seq*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq*; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

6. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687 (2001).

7. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable via habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. ICE's continued detention of Mr. Misirbekov has adversely and severely affected his liberty.

8. Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because at the time of filing Petitioner was detained in the El Valle Detention Facility in Raymondville, Texas, within the jurisdiction of the Southern District of Texas; a substantial part of the events and omissions giving rise to the claim occurred in this district; Respondents Cerna and Venegas reside in this district; and Respondents are officers of the United States acting in their official capacity.

9. Exhaustion of administrative remedies is not required because it would be futile.

PARTIES

10. Mr. Misirbekov is a 29-year-old citizen of Kyrgyzstan who is being detained by Respondents at the El Valle Detention Facility in Raymondville, Texas.

11. Respondent Frank Venegas is the Facility Administrator of the El Valle Detention Facility, which detains individuals suspected of civil immigration violations pursuant to a contract with Immigration and Customs Enforcement (ICE). Respondent Venegas is the immediate physical custodian responsible for the detention of Petitioner. He is named in his official capacity.

12. Respondent Robert Cerna is the acting director of ICE's Harlingen Field Office, which is responsible for ICE activities in an area encompassing fifteen South Texas counties and is responsible for six detention facilities, including El Valle. Respondent Cerna's place of business is in the Southern District of Texas, and he is an immediate legal custodian responsible for Petitioner's detention. He is named in his official capacity.

13. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to detention of immigrants during the removal process. Respondent Lyons is a legal custodian of Petitioner. He is named in his official capacity.

14. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. She is named in her official capacity. In that capacity, Respondent Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

15. Respondent Pamela J. Bondi is the Attorney General of the United States. She is named in her official capacity.

FACTUAL BACKGROUND

16. Mr. Misirbekov was arrested, imprisoned, and beaten for his opposition to the autocratic and authoritarian Japarov regime in Kyrgyzstan, and now there is a criminal case pending against him in Kyrgyzstan on trumped-up political charges of “planning riots.”

17. Mr. Misirbekov participated in about six protests against the Japarov government and its controversial actions, including unlawful arrests of activists, changes to the constitution, and the change of the flag. In three of those protests, Mr. Misirbekov was arrested, identified, and locked in a cell. During these detentions he was brutally beaten and tased. As a result of this torture, he was on one occasion hospitalized for five days and diagnosed with a closed craniocerebral injury, a concussion, and a right kidney contusion.

18. Mr. Misirbekov also created and led a Telegram channel with about 300 people, where he spoke out against the government. Information about this involvement was stored in his phone and police obtained the phone, which led the government to initiate a criminal case against him under Article 278 of the Kyrgyz criminal code.

19. Mr. Misirbekov fled Kyrgyzstan to the United States as a refugee and was taken into ICE custody on or about June 27, 2024. He has remained in ICE detention ever since, a period now exceeding 13 months.

20. At an immigration court merits hearing on December 31, 2024, Mr. Misirbekov proved by a preponderance of the evidence that he faced future persecution based on his political opinion if returned to Kyrgyzstan. Accordingly, an immigration judge granted him withholding of removal under INA § 241(b)(3) [8 U.S.C. § 1231(b)(3)], which provides that “the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom

would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.” ECF No. 1-4 (immigration court order).

21. Neither Mr. Misirbekov nor DHS appealed the immigration judge’s decision, meaning it became final on January 30, 2025, and the United States is now prohibited by law from sending Mr. Misirbekov to Kyrgyzstan. The immigration court’s order did not name any other country to which Mr. Misirbekov could be legally removed.

22. Since he won his immigration case, Mr. Misirbekov has repeatedly written to ICE to request his release. ECF No. 1-5 (communications with ICE).

23. On February 5, 2025, Mr. Misirbekov wrote, “Hello! Decision of my court is final now: Please tell me when can I be expecting to be released? Thank you.” ICE responded simply, “No release date at this time.”

24. On February 18, 2025, Mr. Misirbekov again wrote, in relevant part, “Hello! I get Withdrawal [*sic*] of Removal. I pass all of my hearings and all of my immigration proceeding. How long time I need to be detained?” ICE responded irrelevantly, “Case in [*sic*] being reviewed as per BIA website no appeal has been made.”

25. On March 16, 2025, Mr. Misirbekov wrote, “Dear Case Officer, could you please tell me when I will be able to leave the detention facility? At the moment, I am waiting without knowing what for – my entire process has been completed. I kindly ask you to release me and give me the opportunity to leave this place.” ICE responded only with, “Pending deportation, no date yet.”

26. A month later, on April 15, 2025, Mr. Misirbekov wrote, “Hello. It has been 105 days since the judge granted me protection from deportation. Could you please tell me when I will

be released? DHS has not filed an appeal. Please tell me when I will be released from detention.”

ICE responded, “Your case is still under review. We will inform you once there is an update.”

27. On April 29, 2025, Mr. Misirbekov asked, “What is happening [with] my case, I don’t see results. Can you please release me?” A week later, on May 6, 2025, ICE responded puzzlingly that “You need to see an immigration judge,” although there was no explanation why Mr. Misirbekov would need to do this, since his case was final several months earlier.

28. On June 11, 2025, Mr. Misirbekov wrote, “What is happening with my case, I don’t see results. Can you please release me? My court has been over for more than 150 days and the result is positive for me. I don’t know why I’m still here. If anyone could help me to check about the status and release me please, I will appreciate it.” To this plea, he finally received a response thirteen days later, which said only, “Your case in [sic] under review.”

29. On June 20, 2025, Mr. Misirbekov again pleaded for release, noting that “Because staying here [i.e., in detention] I have developed various illnesses. I recently had surgery on my ear. How much longer will I remain here?” On June 24, ICE replied succinctly with, “Your case is under review”.

30. Separately, Mr. Misirbekov has been aided by a pro bono attorney at the American Bar Association’s ProBAR project, who made numerous attempts to plead for her client’s release, including several voicemails and emails in February, March, and April 2025, none of which received a response. One of her communications, a letter sent April 10, 2025, is attached hereto as an exhibit. ECF No. 1-6 (letter from Katie Gonzalez, Esq.)

31. Mr. Misirbekov has been detained pursuant to 8 U.S.C. § 1231(a) since January 30, 2025, for a total period that now exceeds six months. His continuing detention at El Valle violates his due process rights as articulated by the Supreme Court in *Zadvydas*.

32. Following the Court's decision in *Zadvydas*, "DHS promulgated regulations to implement the newly established constitutional constraints." *Bonitto v. Bureau of Immigration and Customs Enforcement*, 547 F. Supp. 2d 747, 752 (S.D. Tex. 2008). Those regulations are codified at 8 C.F.R. § 241.4 and provide for reviews of a noncitizen's continuing detention after 90 days and again after 180 days. *See Bonitto*, 547 F. Supp. 2d at 752-53 (describing procedures).

33. The provisions for the 90-day review are set out in 8 C.F.R. § 241.4(h), which provides that the district director or Director of the Detention and Removal Field Office will conduct "a review of the alien's records and any written information submitted in English to the district director by or on behalf of the alien." In considering whether to release the noncitizen, the district director is required to consider the factors set out in § 241.4(f), which include the noncitizen's criminal record, mental health reports, evidence of rehabilitation, prior immigration violations and history, and other factors.

34. Mr. Misirbekov has no criminal history of any kind, nor are any of the other negative factors listed in § 241.4(f) relevant to his case. Furthermore, he submitted documentation from his friend, Dr. Rudy Alvarez, a U.S. citizen, who has agreed to act as Mr. Misirbekov's sponsor if he is released from custody.

35. ICE apparently never conducted the 90-day custody review, or if it did, no written notice was ever served upon Mr. Misirbekov, as required by 8 C.F.R. § 241.4(h)(4). Additionally, no pre-review notice was served upon him as required by 8 C.F.R. § 241.4(h)(2).

36. If the district director decides to continue detention after the 90-day removal period, another review is mandated at the 180-day mark, the procedures for which are set out in § 241.4(i). Under these procedures, a "Review Panel" of two members is supposed to review the noncitizen's records and make a recommendation on release; if the Director of the Headquarters Post-Order

Detention Unit (HQPDU) does not accept their recommendation, or if the panel does not recommend release, the Review Panel “shall personally interview the detainee.” § 241.4(i)(3)(i). Following the interview, the Review Panel “shall issue a written recommendation that the alien be released or remain in custody.” § 241.4(i)(5).

37. Mr. Misirbekov was served with a “Decision to Continue Detention”, whose proof of service section is blank, but which is digitally signed by “Carlos D. Cisneros Jr.” and digitally stamped July 2, 2025. ECF No. 1-7 (Decision to Continue Detention). This document states that “ICE has determined to maintain your custody because: Currently pending removal to third country,” and states that this “determination [is] based upon: You have been order [sic] removed by an Immigration Judge and are pending removal. You pose a significant flight risk if released.”

38. Based on the timing of the Decision to Continue Detention, it appears to be the 180-day review, although the language in the letter confusingly indicates instead that it is the 90-day review: “If you have not been released or removed from the United States at the expiration of the three-month period after this 90-day review....” ECF No. 1-7 at 1.

39. If the Decision to Continue Detention is in fact the 90-day review, it is nearly four months late, and this would also mean that no 180-day review was ever conducted, in violation of regulations.

40. 8 C.F.R. § 241.4(f) sets out the factors that may be considered when assessing whether a detainee should be released, including, “[t]he likelihood that the alien is a significant flight risk or may abscond to avoid removal, including history of escapes, failures to appear for immigration or other proceedings, absence without leave from any halfway house or sponsorship program, and other defaults.” 8 C.F.R. § 241.4(f)(7). None of the factors listed in § 241.4(f) supports continued detention in Mr. Misirbekov’s case, nor does ICE’s proffered justification that

he is “currently pending removal to third country,” given the facts that (1) he has already been detained in excess of the time permitted by *Zadvydas*, and (2) there is no indication that his removal to a third country is imminent.

41. Although Mr. Misirbekov has now been detained under § 1231(a) for more than 180 days, ICE has never conducted a custody review at the 90-day or 180-day marks that comports with the regulatory requirements.

42. In short, the 90-day custody review determination was either not conducted at all or was conducted instead at the 180-day mark, and the 180-day custody review either was not conducted at all or was not conducted in accordance with the regulatory requirements in 8 C.F.R. § 241.4. *See, e.g., Bonitto*, 547 F. Supp. 2d at 757-58 (“Bonitto’s procedural due process rights have been violated by DHS’s complete failure to provide the required 180-day review [...] [T]he Court notes the shortcomings in the 90-day POCR ... at present it appears to lack a reasoned basis.... Conclusory statements that removal is ‘expected in the reasonably foreseeable future’ or that an alien would ‘pose a danger to society’ if released, with no factual basis or explanation, teeters dangerously close to a perfunctory and superficial pretense instead of a meaningful review sufficient to comport with due process standards.”)

ARGUMENT

A. Mr. Misirbekov has been detained for an unreasonably long period and has shown that his removal is not reasonably foreseeable.

43. 8 U.S.C. § 1231(a) permits ICE to detain noncitizens during the “removal period,” which is defined as the 90-day period during which “the Attorney General shall remove the alien from the United States.” 8 U.S.C. § 1231(a)(1)(A).

44. The statute provides that “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." 8 U.S.C. § 1231(a)(1)(B).

45. In this case, Mr. Misirbekov had an administratively final removal order as of January 30, 2025, thirty days after the immigration judge's decision in his case became final. The 90-day removal period therefore ended on April 30, 2025.

46. After the expiration of the 90-day removal period, 8 U.S.C. § 1231(a)(3) provides that ICE may release noncitizens on an order of supervision. Alternatively, a noncitizen "may be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6). Mr. Misirbekov does not fall into any of these categories.

47. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas*, 533 U.S. at 701. "[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Given that there has been no allegation of any dangerousness in Mr. Misirbekov's case, and no neutral adjudicator has determined that Mr. Misirbekov poses a flight risk – indeed, he has provided evidence from his sponsor showing that he will be safely housed with Dr. Alvarez – all constitutional justification for his prolonged detention has now evaporated.

48. The purpose of detention during and beyond the removal period is to "secure[] the alien's removal." *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court "read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time

as is reasonably necessary to secure the alien's removal." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

49. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents due process concerns because the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *See id.* at 689.

50. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months' detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

51. Here, Mr. Misirbekov has been detained for longer than the presumptively reasonable six-month period. His removal period began on January 30, 2025, when the immigration judge's removal order became final, and he passed six months of post-removal order custody on July 30, 2025.

52. Mr. Misirbekov has "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* By law, he cannot be removed to Kyrgyzstan, and he does not have citizenship in any other country, nor any ties to any other country. DHS has made efforts to remove Mr. Misirbekov to random "third countries," but these efforts have been unsuccessful. DHS cannot keep Mr. Misirbekov incarcerated indefinitely simply on the off chance that it might one day find a country where it can send him.

53. Furthermore, Mr. Misirbekov would be able to assert a credible fear of removal to a third country, since many countries have extradition treaties with Kyrgyzstan. As one district court recently noted, the U.S. has been violating the principle of non-refoulement by deporting refugees to third countries who are not bound by U.S. immigration court orders and which then immediately return the refugees to their homelands, where they face persecution. *See Abrego Garcia v. Noem*, 2025 WL 2062203 (D. Md. July 23, 2025), at *9, n. 15 (citing removal of Guatemalan refugee to Mexico, which then immediately sent him to Guatemala, and case of Venezuelans with pending asylum claims who were sent to El Salvador, which then returned them to Venezuela in a prisoner swap). Similarly, it has been reported in the media that refugees removed to Eswatini will be refouled to their home countries. *See* “5 immigrants deported by the US to Eswatini in Africa are held in solitary confinement,” (July 17, 2025), available at: <https://www.politico.com/news/2025/07/17/5-immigrants-deported-by-the-us-to-eswatini-in-africa-are-held-in-solitary-confinement-00461712>. Because any third country to which Respondents might send Mr. Misirbekov could return him to Kyrgyzstan in violation of the U.S.’s obligations of non-refoulement, Mr. Misirbekov would assert a credible fear to such removal and would be entitled to a credible fear hearing before an immigration judge. *See D.V.D. v. U.S. Dep’t of Homeland Security*, -- F. Supp.3d --, 2025 WL 1142968 (D. Mass. April 18, 2025) at *25, n.48.

54. Respondents have been legally entitled to remove Mr. Misirbekov to a safe third country for more than six months, but have for whatever reason been unable or unwilling to do so; therefore, it appears that there is no “*significant* likelihood” of his removal “in the *reasonably* foreseeable future” (emphasis added). At this point, the Government “must respond with evidence sufficient” to indicate that it is significantly likely that Mr. Misirbekov will, in fact, be removed in a reasonable period of time. *Zadvydas*, 533 U.S. at 701.

B. The Government must be required to rebut Mr. Misirbekov's showing.

55. Some deference is owed to the government's assessment of the likelihood of removal and the time it will take to execute removal. *Id.* at 700. However, just as pro forma findings of dangerousness do not suffice to justify indefinite detention, pro forma statements that removal is likely should not satisfy the government's burden. The government must rebut a detainee's showing that there is no significant likelihood of removal in the reasonably foreseeable future with "evidence of progress . . . in negotiating a petitioner's repatriation." *Gebrelibanos v. Wolf*, 2020 WL 5909487 at *3 (S.D. Cal., Oct. 6, 2020); *Hassoun v. Sessions*, 2019 WL 78984 at *4 (W.D.N.Y. Jan. 2, 2019) ("[A]s time passes, the mere existence of possible avenues for removal becomes insufficient to justify further detention; some evidence of progress is required") (collecting cases).

56. The longer a noncitizen is detained, the more evidence the Government needs to put forward to justify continued detention. Specifically, "for detention to remain reasonable [once six months of detention have passed], as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701; see also *Alexander v. Att'y Gen. U.S.*, 495 F. App'x 274, 275 (3d Cir. 2012) ("[T]he longer an alien is detained, the less he must put forward to obtain relief"); *Hassoun*, 2019 WL 78984 at *4 ("[T]he government's burden becomes more onerous the longer an alien is detained, because it must show that removal will be effectuated sooner in the future.").

57. Even if ICE is engaged in ongoing efforts to secure removal, such efforts alone do not mitigate already-prolonged detention, nor do they render removal reasonably foreseeable. See *Shefqet v. Ashcroft*, 2003 WL 1964290 at *5 (N.D. Ill. April 28, 2003) ("Even if [ICE] has been making regular efforts to secure Petitioner's travel document . . . at this time there must be some concrete evidence of progress. [ICE] cannot rely on good faith efforts alone"). The likelihood of

removal “does not turn on the degree of the government’s good faith efforts,” but rather “on whether and to what extent the government’s efforts are likely to bear fruit.” *Hassoun*, 2019 WL 78984 at *5. Indeed, the Supreme Court specifically rejected the notion that removal is reasonably foreseeable as long as “good faith efforts” continue, holding that such a standard “would seem to require an alien seeking release to show the absence of any prospect of removal—no matter how unlikely or unforeseeable—which demands more than our reading of the statute can bear.” *Zadvydas*, 533 U.S. at 701.

58. Given ICE’s total failure to take any meaningful step toward removing Mr. Misirbekov in more than six months, this Court should order Mr. Misirbekov’s immediate release subject to whatever conditions this Court deems appropriate. *See, e.g., Manson v. Barr*, 2020 WL 3962235 (M.D. Fla. July 13, 2020) at *3 (ordering immediate release on conditions of supervision pursuant to 8 U.S.C. § 1231(a)(3)).

C. ICE has failed to comply with its own regulations with respect to Mr. Misirbekov’s custody.

59. ICE’s regulations provide that, by the end of the 90-day removal period that begins upon a noncitizen’s removal order becoming final, the local ICE field office with jurisdiction over the noncitizen’s detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (“ICE HQ”), § 241.4(c)(2), which must conduct a custody review before or at 180 days. § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the noncitizen is likely to pose a danger to the community or will be a flight risk if released. § 241.4(e).

60. Here, as alleged more fully above, ICE apparently conducted no 90-day custody review at all, and the 180-day custody review denied Mr. Misirbekov release based on pretextual

or boilerplate reasons, while also failing to provide him with the required interview by a Review Panel.

61. ICE's failure to review Mr. Misirbekov's custody appropriately is prejudicial. Prejudice can be presumed because the custody review regulations implicate fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [noncitizen]" and the violation affected "interests of the [noncitizen] which were protected by the regulation") (internal quotations omitted). The regulations provide noncitizens with a discrete opportunity to obtain freedom from detention, and that opportunity has thus far been withheld from Mr. Misirbekov. *See Zadvydas*, 533 U.S. at 690 ("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.").

62. At least one court in this district has dealt with a factually similar scenario, in *Bonitto v. Bureau of Immigration and Customs Enforcement*, 547 F. Supp. 2d 747 (S.D. Tex. 2008) (Tagle, J.) Relevant to this case, the *Bonitto* court found that the "Respondent's failure to comply with the review procedures outlined in the applicable regulations violates Petitioner's procedural due process rights." *Id.* at 755. As the court pointed out, "The Fifth Circuit has held that it is a denial of procedural due process for any government agency to fail to follow its own regulations providing procedural safeguards to persons involved in adjudicative processes before it." *Id.* (citing *Government of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970)). The *Bonitto* court went on to note that, "Where individual interests are implicated, the Due Process clause requires that an executive agency adhere to the standards by which it professes its actions to be judged. The regulations involved here do not merely facilitate internal agency housekeeping, but rather afford

important and imperative procedural safeguards to detainees. This Court must insist on DHS's compliance with the post-order custody regulations if Bonitto's detention is to remain constitutional." *Id.* at 756 (internal citations omitted). The court in that case granted habeas relief and ordered DHS to conduct a "meaningful post-removal custody review."

63. For the reasons set out above and discussed at length in *Bonitto*, ICE's non-compliance with its own regulations violates the APA and Mr. Misirbekov's due process rights. As a remedy, this Court should review Mr. Misirbekov's custody under 8 C.F.R. § 241.4 and/or § 241.13, and it should order his release if appropriate under those standards. See *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released.")

CLAIMS FOR RELIEF

Count I – Violation of 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*

64. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

65. Mr. Misirbekov's prolonged and open-ended detention by Respondents violates 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*. Mr. Misirbekov's 90-day statutory removal period and six-month presumptively reasonable removal period for continued removal efforts have passed.

66. Respondents' failure to remove to Mr. Misirbekov over a six-month span, indicates that Respondents either cannot or will not remove him in the reasonably foreseeable future, particularly given that Respondents are not legally allowed to send him to Kyrgyzstan and he has no citizenship or ties to any other country.

67. Under *Zadvydas*, Mr. Misirbekov's continued detention is unreasonable and not authorized by 8 U.S.C. § 1231.

Count II – Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (D)

68. Petitioner realleges and incorporates by reference all preceding paragraphs.

69. A “reviewing court shall (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (D) without observance of procedure required by law.” 5 U.S.C. § 706.

70. ICE's actions and omissions, including, but not limited to: (1) its failure to provide Mr. Misirbekov a 90-day custody review; (2) its arbitrary and capricious decision to continue his detention after 180 days based on spurious, pretextual, or boilerplate reasons; and (3) its failure to follow the notice, interview, and other provisions of the custody review process, constitute unlawful agency action that is subject to being set aside by this Court.

71. Respondents' continued detention of Mr. Misirbekov violates his due process rights by denying him an individualized and meaningful custody review, to which he is entitled under 8 C.F.R. § 241.4.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (a) Assume jurisdiction over this matter;
- (b) Declare that Petitioner's continued detention violates 8 U.S.C. § 1231, as interpreted by the Supreme Court in *Zadvydas*;
- (c) Alternatively, declare that Respondent's continued detention of Petitioner without strict compliance with the procedural requirements of 8 C.F.R. § 241.4 violates the

Administrative Procedure Act, 5 U.S.C. § 706 and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

- (d) Grant a writ of habeas corpus and order Respondents to release Petitioner from detention forthwith, on an order of supervision pursuant to 8 U.S.C. § 1231(a)(3);
- (e) Alternatively, review Petitioner's custody under the standards articulated in 8 C.F.R. § 241.4 and order his release under that standard, if appropriate;
- (f) Award Petitioner the costs of this action;
- (g) Grant any other relief that this Court deems just and proper.

Dated: August 1, 2025

Respectfully submitted,

/s/ James D. Jenkins

James D. Jenkins (attorney-in-charge)

State Bar #57258 (MO); 96044 (VA); 63234 (WA)

SDTX Bar #3887585

P.O. Box 6373

Richmond, VA 23230

Tel.: (804) 873-8528

jjenkins@valancourtbooks.com

Counsel for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: August 1, 2025

Respectfully submitted,

/s/ James D. Jenkins

James D. Jenkins

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 1st day of August, 2025, and that a true copy of the foregoing was served pursuant to Fed. R. Civ. P. 4(i) via certified United States mail, sent this 1st day of August, 2025 to the Respondents at the following addresses, and a courtesy copy was sent via electronic mail to the U.S. Attorney's Office for the Southern District of Texas at USATXS.CivilNotice@usdoj.gov and daniel.hu@usdoj.gov

United States Attorney's Office
Civil Process Clerk
1000 Louisiana St., Suite 2300
Houston, TX 77002

Frank Venegas
El Valle Detention Center
1800 Industrial Dr.
Raymondville, TX 78580

Ms. Pamela Bondi
Attorney General of the United States
950 Pennsylvania Avenue NW
Washington, DC 20530

Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528

Robert Cerna
Harlingen ICE Field Office
1717 Zoy Street
Harlingen, TX 78552

/s/ James D. Jenkins
Attorney for Petitioner