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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 MEHDI ROKHFIROOZ,

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, et al,

15 Respondents.

Case No.: 25-cv-2053-RSH-VET

**PETITIONER'S TRAVERSE  
SUPPORTING PETITION FOR  
WRIT OF HABEAS CORPUS**

Date: September 3, 2025  
Time: 2:00 p.m.  
Courtroom: 3B (Schwartz)

Hon. Robert S. Huie

1       Petitioner Mehdi Rokhfirooz replies to Respondents' Return in Opposition to  
2       Petition for Writ of Habeas Corpus, stating as follows:

3       A. In its return, the government declares that an unidentified U.S. Immigration and  
4       Customs Enforcement officer decided on June 23, 2025—based on “optimism”—that  
5       Rokhfirooz faced a significant likelihood of removal in the reasonably foreseeable future.  
6       Ret. at 4, 9; Ceja Declaration ¶ 15.<sup>1</sup> It further contends that, whether or not Rokhfirooz  
7       indeed faced such a likelihood of removal, the officer's purported determination  
8       authorized ICE officers to detain Rokhfirooz on June 23, 2025, without additional  
9       process, and now authorizes Rokhfirooz's continued detention, and that this Court cannot  
10      test whether ICE acted lawfully in detaining Rokhfirooz on June 23, 2025. Ret. at 6-9.

11      But the Due Process Clause—and ICE's own regulations—required process before  
12      seizing Rokhfirooz, who was living peacefully under the United States' protection.  
13      *See infra* at 1-4. On the likelihood of removal, at the time of detention, as now, no  
14      individualized facts had changed that made removing Rokhfirooz to a third country more  
15      likely, making the decision to detain and the detention unlawful under *Zadvydas v. Davis*,  
16      533 U.S. 678, 690 (2001). *See infra* at 5-8. And the government's additional contentions  
17      are unavailing. *See infra* at 8-10. Rokhfirooz asks that this Court order his immediate  
18      release or direct a bond hearing and exercise authority under the All Writs Act, 28 U.S.C.  
19      § 1651, to preserve its jurisdiction during these habeas proceedings. *See infra* at 10.

20      B. Rokhfirooz's redetention violated his Fifth Amendment right to due process—  
21      and violated *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954),  
22      principles—because Respondents failed to comply with the regulations governing  
23      “[c]ontinued detention of inadmissible . . . and other aliens beyond the removal period” in  
24      8 C.F.R. § 241.4 and § 241.13.

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27  
28      <sup>1</sup> Rokhfirooz cites to the ECF-generated page numbers throughout.

1 ICE previously released Rokhfirooz subject to 8 C.F.R. § 241.4 and § 241.13,  
2 provisions intended to provide due process to those in his position. As a district judge in  
3 Maryland held earlier this week,

4 These regulations plainly provide due process protections to  
5 aliens following the removal period as they are considered for  
6 continued detention, release, and then possible revocation of  
7 release by, among other things, requiring that only certain  
8 designated officials make custody determinations; mandating  
9 that a noncitizen receive a copy of any decision to release or  
10 detain that individual; establishing criteria and factors  
11 applicable to detention, release, and revocation determinations;  
and requiring certain procedural safeguards upon revocation to  
allow a noncitizen to have an opportunity to be heard to contest  
the reasons for revocation, including informal interviews and  
custody reviews. *See* 8 C.F.R. § 241.4. This conclusion is  
particularly true where the detention or re-detention of  
noncitizens is necessarily an action that results in the loss of  
personal liberty that requires due process protections.

12 *Orellana v. Baker*, Civil Action No. 25-1788-TDC, 2025 U.S. Dist. LEXIS 164986, at  
13 \*18 (D. Md. Aug. 25, 2025) (citing *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (“The  
14 essence of due process is the requirement that ‘a person in jeopardy of serious loss (be  
15 given) notice of the case against him and opportunity to meet it.’” (citation omitted));  
16 *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody,  
17 detention, or other forms of physical restraint—lies at the heart of the liberty that [the  
18 Due Process] Clause protects.”)).

19 On similar facts, that court determined the petitioner’s redetention violated  
20 8 C.F.R. § 241.4(d) and due process because ICE never provided a written custody  
21 decision stating sufficient reasons, a process courts have deemed constitutionally required  
22 for § 1231(a)(6) detentions (*Primero v. Mattivelo*, Civil Action No. 1:25-cv-11442-IT,  
23 2025 U.S. Dist. LEXIS 130195, at \*16 (D. Mass. July 9, 2025)); there was no evidence  
24 the Executive Associate Director or a district director made the revocation decision, as  
25 § 241.4(l)(2) requires, and the circumstances suggested local officers effected the  
26 detention; if the revocation was based on an alleged violation of release conditions, ICE  
27 still violated § 241.4(l)(1) by failing to give notice of reasons and a prompt informal  
28 interview; and if § 241.13 governed because removal was not reasonably foreseeable,

1 ICE failed to provide the required notice and prompt interview under § 241.13(i)(3), so  
2 the re-detention violated the governing regulations under any theory. *Orellana*, 2025 U.S.  
3 Dist. LEXIS 164986, at \*19-23 (collecting cases holding that revocation of post-order  
4 release must be approved by an authorized official and must include written notice and a  
5 prompt informal interview under 8 C.F.R. § 241.4 and § 241.13, and that failure to do so  
6 violates due process: *Rombot v. Souza*, 296 F. Supp. 3d 383, 385, 387–88 (D. Mass.  
7 2017); *Sering Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258  
8 (W.D.N.Y. May 2, 2025); *Cordon-Salguero v. Noem*, No. 25-1626-GLR, Mot. Hr’g Tr.  
9 at 35–37 (D. Md. June 18, 2025) (attached as Exhibit A)).

10 Here, the government admits it released Rokhfirooz on an Order of Supervision  
11 under 8 U.S.C. § 1231(a)(6), and ICE was thus subject to the requirements of 8 C.F.R.  
12 § 241.4 and § 241.13, which on their face apply to decisions to release and to revoke  
13 release. *See* 8 C.F.R. § 241.4(d) (applying to any decision “to release or detain”); *id.*  
14 § 241.4(l)(1) (applying to individuals “released under an order of supervision or other  
15 conditions of release”); *id.* § 241.4(l)(2) (applying to discretionary decisions “to revoke  
16 release”); *id.* § 241.13(i)(1) (applying to a noncitizen previously released after a no  
17 likelihood determination who later violates a condition of release); *id.* § 241.13(i)(2)  
18 (applying to a noncitizen previously released after a no likelihood determination “if, on  
19 account of changed circumstances, the Service determines that there is a significant  
20 likelihood that the alien may be removed in the reasonably foreseeable future”).

21 Yet in detaining him on June 23, 2025, ICE failed to provide him with notice of the  
22 reasons for revocation and an “initial informal interview promptly” to “respond to” those  
23 stated reasons, in violation of 8 C.F.R. § 241.4 and § 241.13. Respondents also failed to  
24 meet the requirement that, if ICE did not previously release him after a no likelihood  
25 determination, a discretionary revocation of release must be made either by the  
26 “Executive Associate Commissioner” or by a district director when “circumstances do  
27 not reasonably permit referral of the case to the Executive Associate Commissioner.”  
28 8 C.F.R. § 241.4(l)(2). These regulations are designed to protect noncitizens’ liberty and

1 property interests, so the failure to follow them constitutes a per se violation of  
2 procedural due process. *See Accardi*, 347 U.S. at 266-68.

3 The government contends that the ICE officer sent to detain Rokhfirooz provided  
4 the required notice by orally “inform[ing] him of the status of his case[, that they] were  
5 taking him into custody for review of removal and [a] further withholding determination”  
6 (ECF No. 5-2 at 3); and it contends that Deportation Officer Bergman subsequently  
7 offered a chance to be heard on the likelihood of removal in the reasonably foreseeable  
8 future by speaking with counsel. *Ret.* at 6.

9 But that cannot be so. The government did not actually revoke Rokhfirooz’s  
10 release until after he filed this action.<sup>2</sup> ECF No. 5-2 at 7. And in proffering a revocation  
11 signed by Officer Bergman—not the Executive Associate Director or a district director—  
12 and which the officer signed on August 15, 2025—nearly two months after the alleged  
13 revocation decision—the government essentially admits that ICE did not conduct the  
14 required likelihood analysis and issue the required revocation notice under § 241.13(i)(2)  
15 and (3) or the appropriate ICE officer did not make a revocation decision under 8 C.F.R.  
16 § 241.4(l)(2) before detaining Rokhfirooz. And the revocation notice that Officer  
17 Bergman issued to Rokhfirooz did not include a meaningful explanation of the reasons  
18 for the revocation.<sup>3</sup> And neither Deportation Officer Diaz (who never visited Rokhfirooz)  
19 nor Officer Bergman conducted the interview under 8 C.F.R. § 241.13(i)(3). And the  
20 government simply does not explain why ICE did not follow its own regulations.

21  
22  
23 <sup>2</sup> Thus, it is not “undisputed that ICE revoked Petitioner’s Order of Supervision for  
the purpose of executing his warrant of removal.” *Ret.* at 6.

24  
25 <sup>3</sup> The only reason the Notice of Revocation of Release provides for determining  
26 that Rokhfirooz could be “expeditiously removed” is this: “Your case is under current  
27 review for removal to an alternate country.” ECF No. 5-2 at 7. That the government only  
28 later began looking for “an alternate country” cannot support the likelihood determination  
that an unidentified ICE officer purportedly made on June 23, 2025. And such a vague  
statement did not put Rokhfirooz on notice to rebut the government’s likelihood claims.

1 C. And on the individualized nature of the purported likelihood determination, the  
2 government admits in its return that it did not even begin contacting third countries until  
3 July 3, 2025,<sup>4</sup> still more than a week after it seized Rokhfirooz from his home. Ret. at 5,  
4 7-9; Ceja Declaration ¶ 16. But “ICE’s optimism about the likelihood of resettling  
5 Petitioner . . . based on a new policy that has met with proven success” (Ret. at 9) does  
6 not increase the Rokhfirooz’s likelihood of removal in the reasonably foreseeable  
7 future—obtaining a travel authorization does. *See, e.g., Tadros v. Noem*, No. 25cv4108  
8 (EP), 2025 U.S. Dist. LEXIS 113198, at \*9 (D.N.J. June 13, 2025) (Respondents’ sole  
9 statement that “ICE has been making efforts to facilitate Petitioner’s removal to a country  
10 other than Egypt” was insufficient to rebut the presumption established by Tadros’s  
11 release and fifteen years of reporting under an Order of Supervision.); *cf. Ghamelian v.*  
12 *Baker*, No. SAG-25-02106, 2025 U.S. Dist. LEXIS 139238, at \*4 (D. Md. July 22, 2025)  
13 (noting that ICE served the petitioner with a Notice of Revocation of Release when it  
14 detained him and identified Mexico as the country of proposed removal, and that the  
15 petition did not allege any specific violations of the regulation allowing for revocation).

16 And this cart-before-the-horse practice of detaining and then gathering the facts  
17 necessary for an individualized likelihood determination is consistent with recent  
18 testimony from Thomas Giles, Assistant Director, Enforcement and Removal Operations,  
19 U.S. Immigration and Customs Enforcement, admitting that, following the Memorandum  
20 from Kristi Noem, Sec’y of Homeland Sec., to Kika Scott et al., Guidance Regarding  
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22 <sup>4</sup> This date contradicts Officer Bergman’s statements to counsel on July 8, 2025,  
23 that Rokhfirooz’s removal was not imminent and he would soon begin contacting third  
24 countries, and on July 16, 2025, that he sent three requests on July 12, 2025, to Canada,  
25 the United Kingdom, and Ireland. Pet. ¶¶ 37, 38. And given that the government did not  
26 produce the deposition of anyone with firsthand knowledge of the third-country requests,  
27 the decision to detain, and the decision to deny release, this Court should hold an in-  
28 person evidentiary hearing for the government to produce a witness who can testify to  
their firsthand knowledge on those determinations and whether Rokhfirooz’s removal to  
a third country is reasonably foreseeable. Absent such a hearing, Rokhfirooz reserves his  
right to propound written interrogatories on Officer Marielle Ceja. *See* 28 U.S.C. § 2246.

1 Third Country Removals (Mar. 30, 2025), ICE officers do not begin working on  
2 identifying a third country under after taking someone into custody:

3 Q: And so when does the docket officer begin working to  
4 identify a third country?

5 A: If there's a final order of removal that has a grant of  
6 withholding or Convention Against Torture, then the docket  
7 officer will work on trying to identify a third country of  
8 removal to remove that person, since there is a final order of  
9 removal on that individual.

10 Q: To what extent, if at all, does that work begin prior to ICE  
11 taking custody of the alien?

12 A: That does not happen until the individual is in ICE custody.  
13 We don't work these cases that are in other jurisdictions. They  
14 are not worked until they arrive in ICE custody.

15 Evid. Hr'g Tr. at 26–27, *Abrego Garcia v. Noem*, No. 8:25-cv-00951-PX (D. Md.  
16 July 10, 2025) (direct examination of Assistant Director Giles) (attached as Exhibit B).  
17 And that ICE has since begun to look for a country and has been unable to find one  
18 undermines ICE's ability to show a sufficient likelihood of removal in the reasonably  
19 foreseeable future.

20 And although some out-of-circuit district courts have held otherwise, under the  
21 plain text and most plausible reading of 8 U.S.C. § 1231(a)(1) and § 1231(a)(2), detaining  
22 Rokhfirooz in that context did not trigger a new 90-day removal period and authorize his  
23 detention. *See, e.g., Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 U.S. Dist. LEXIS  
24 152600, at \*18 (N.D. Cal. Aug. 6, 2025) (“[T]here currently exists no country to which  
25 the Government could remove Ortega without his first receiving the opportunity to  
26 present a fear-based claim as to that country. Ortega has offered sufficient facts at this  
27 preliminary stage to show that his detention until the start of that process and during its  
28 pendency would be ‘indefinite’—i.e., that “there is no significant likelihood of removal in  
the reasonably foreseeable future”—and that, even if his removal were likely in the  
reasonably foreseeable future, his detention would not be ‘reasonably necessary’ to  
effectuate his removal.); *Tadros*, 2025 U.S. Dist. LEXIS 113198, at \*9 (reasoning that  
the 90-day removal period was triggered by the BIA's 2009 order, that the petitioner's  
release in 2009 suggests ICE determined he did not present a flight risk and it was

1 unlikely to find a third country to accept him in the reasonably foreseeable future, and  
2 Respondents' sole statement that "ICE has been making efforts to facilitate Petitioner's  
3 removal to a country other than Egypt" was insufficient to rebut the presumption  
4 established by Tadros's release and fifteen years of reporting under an Order of  
5 Supervision); *Sied v. Nielsen*, No. 17-cv-06785-LB, 2018 U.S. Dist. LEXIS 66374, at  
6 \*15-17 (N.D. Cal. Apr. 19, 2018) (collecting cases); *see also Tadros v. Noem*, No. 2:25-  
7 cv-04108-EP, Order (D.N.J. June 17, 2025), ECF No. 17 (granting habeas petition).

8 The government also claims that Rokhfirooz provided no evidence demonstrating  
9 that he faces no significant likelihood of removal in the reasonably foreseeable future.  
10 Ret. at 4-5, 6-7. But as in *Ortega* and *Tadros*, the status quo for the last twenty-one years  
11 has been and demonstrates that Rokhfirooz faces no significant likelihood of removal in  
12 the reasonably foreseeable future. And the undersigned provided Rokhfirooz with a letter  
13 for his assigned deportation officer on June 24, 2025, i.e., one day after ICE detained  
14 Rokhfirooz, and Rokhfirooz would have provided it to Deportation Officer Diaz at the  
15 first opportunity, but Officer Diaz never appeared. ECF No. 1-2 at 13-20. Nor did he ever  
16 return counsel's calls or counsel's emails to the local ERO office's inbox. Pet. ¶¶ 35-36;  
17 ECF No. 1-2 at 22-23. And as soon as Officer Bergman contacted the undersigned, he  
18 emailed that letter and evidence of Rokhfirooz's pending visa petition and fear of  
19 removal to third countries to Officer Bergman. Pet. ¶ 37; ECF No. 1-2 at 30-34.

20 The government contends that counsel's correspondence with Officer Bergman  
21 provided enough opportunity for Rokhfirooz to be heard. Ret. at 4-5, 6-7. Yet the  
22 government addresses none of the facts that counsel adduced in his letter, emails, and  
23 colloquies. Nor does Supervisory Detention and Deportation Officer Marielle Ceja's  
24 declaration even acknowledge Officer Bergman's release recommendation or suggest that  
25 any ICE officer apprised the unidentified decisionmaker at ERO Headquarters' Removal  
26 and International Operations office of those factual bases.

27 That letter and additional evidence sent to Officer Bergman of Rokhfirooz's  
28 pending visa petition and fear of removal to third countries constituted "evidence or

1 information that . . . shows there is no significant likelihood [Rokhfirooz will] be  
2 removed in the reasonably foreseeable future,” triggering ICE’s obligation to consider  
3 those facts in a revocation custody review. 8 C.F.R. § 241.13(i)(3). And otherwise, it  
4 constituted a written request under § 241.13(d)(1), requiring ICE’s Headquarters Post-  
5 order Detention Unit to respond in writing within ten days under § 241.13(e)(1).

6 **D.** Contrary to the government’s contention (at Ret. at 6-7), the Administrative  
7 Procedure Act authorizes review “by any applicable form of legal action, including . . .  
8 writs of . . . habeas corpus,” permitting APA claims to proceed in a habeas vehicle when  
9 they seek relief from unlawful custody. 5 U.S.C. § 703. And courts have granted relief  
10 from detention where ICE failed to follow binding detention policies, holding those  
11 *Accardi* violations unlawful and ordering compliance, confirming that APA violations  
12 can render detention unlawful. *See Damus v. Nielsen*, 313 F. Supp. 3d 317, 335-39  
13 (D.D.C. 2018); *Aracely R. v. Nielsen*, 319 F. Supp. 3d 110, 139-43 (D.D.C. 2018)).

14 And a habeas court can apply agency-compliance principles derived from *Accardi*  
15 to invalidate revocations or custody determinations made contrary to 8 C.F.R. § 241.4  
16 and § 241.13. *See, e.g., Rombot*, 296 F. Supp. 3d at 388-89 (“ICE claims that the Field  
17 Office Director has unfettered discretion to incarcerate Rombot. While ICE does have  
18 significant discretion to detain, release, or revoke aliens, the agency still must follow its  
19 own regulations, procedures, and prior written commitments in the Release Notification.  
20 As described above, ICE failed to follow its own regulations in at least three ways. The  
21 Supreme Court has recognized that an ‘alien may no doubt be returned to custody upon a  
22 violation of supervision] conditions,’” *Zadvydas*, 533 U.S. at 700, but it has never given  
23 ICE a carte blanche to re-incarcerate someone without basic due process protection.”).

24 The government also suggests (at Ret. at 6-7) this Court should dismiss<sup>5</sup>  
25 Rokhfirooz’s claims or stay this matter in light of *D.V.D. v. United States Dep’t of*  
26

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27 <sup>5</sup> A judge in the Northern District of California recently rejected a similar claim  
28 about *D.V.D.*’s effect, holding that “a request for affirmative relief is not proper when  
raised for the first time in an opposition.” *Ortega*, 2025 U.S. Dist. LEXIS 152600, at \*11.

1 *Homeland Sec.*, 778 F. Supp. 3d 355, 2025 U.S. Dist. LEXIS 74197 (D. Mass. 2025), a  
2 case in which a district court granted a preliminary injunction relating to a certified class  
3 of individuals who are subject to a final notice of removal and whom DHS “has deported  
4 or will deport on or after February 18, 2025, to a country (a) not previously designated as  
5 the country or alternative country of removal, and (b) not identified in writing in the prior  
6 proceedings as a country to which the individual would be removed.” *Id.* at \*27-28.

7 Rokhfirooz concedes that he is a member of a class in *D.V.D.* But his habeas  
8 issues—seeking immediate release from custody—will not be addressed there and are  
9 appropriate for resolution in this Court. *See Pride v. Correa*, 719 F.3d 1130, 1133 (9th  
10 Cir. 2013) (Although a district court may have discretion to “dismiss those portions of [a]  
11 complaint which duplicate [a class action’s] allegations and prayer for relief,” it may not  
12 dismiss allegations that go beyond those in the class action.) (citing *Crawford v. Bell*, 599  
13 F.2d 890, 892-93 (9th Cir. 1979)); *see also Brewer v. Swinson*, 837 F.2d 802, 804 (8th  
14 Cir. 1988) (“While the general principle is to avoid duplicative litigation, the determining  
15 factors should be equitable in nature, giving regard to wise judicial administration.”);  
16 *see Orellana v. Baker*, Civil Action No. 25-1788-TDC, 2025 U.S. Dist. LEXIS 164986,  
17 at \*8 (D. Md. Aug. 25, 2025) (“The Court will therefore not address Respondents’  
18 arguments based on *D.V.D.*”).

19 Moreover, Rokhfirooz cannot currently obtain injunctive relief through *D.V.D.*  
20 because the Supreme Court’s has stayed the preliminary injunction; thus, he could be  
21 removed before a decision in *D.V.D.* *See Dep’t of Homeland Security v. D.V.D.*, 145 S.Ct.  
22 2153 (2025). And because the Supreme Court’s order did not resolve the merits and  
23 simply altered interim relief, it has no preclusive or precedential effect on the underlying  
24 legal questions and does not bar case-specific relief. And 8 U.S.C. § 1252(f)(1) permits  
25 courts to enter injunctions “with respect to the application” of the INA to an individual,  
26 so class members may still seek and obtain tailored individual injunctions if they satisfy  
27 Rule 65 and jurisdictional limits. *Nken v. Holder*, 556 U.S. 418, 425-36 (2009).

1 And on the government's contention that this Court cannot order a custody hearing  
2 before a neutral adjudicator because the only available relief is release (Ret. at 10-11),  
3 Rokhfirooz would welcome an order directing his immediate release. He raises the  
4 prospect of a custody hearing complying with *Singh v. Holder*, 638 F.3d 1196 (9th Cir.  
5 2011), because "due process is flexible and calls for such procedural protections as the  
6 particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

7 E. Finally, if this Court declines to order his immediate release, Rokhfirooz  
8 respectfully asks that it order a custody hearing and issue a narrow order under the All  
9 Writs Act barring Respondents from transferring him outside this District (or requiring  
10 advance notice and leave of court) until this Court adjudicates the § 2241 petition,  
11 because such relief is "necessary or appropriate in aid of" this Court's jurisdiction and to  
12 prevent frustration of effective habeas relief. 28 U.S.C. § 1651(a). The Supreme Court  
13 has long recognized that post-filing transfers cannot be used to defeat habeas jurisdiction  
14 and that courts may act to ensure the writ remains effective. *Ex parte Mitsuye Endo*, 323  
15 U.S. 283, 304-07 (1944). And issuing a status quo order here preserves jurisdiction,  
16 which the All Writs Act permits. *See, e.g., Belbacha v. Bush*, 520 F.3d 452, 455-56 (D.C.  
17 Cir. 2008) (collecting cases). This Court should thus enjoin any transfer absent advance  
18 notice and leave of court for the period necessary to decide the petition, consistent with  
19 longstanding habeas practice. *Cf. Fed. R. App. P. 23(a)*.

20 For these reasons, Rokhfirooz urges this Court to order his immediate release, or a  
21 custody hearing complying with *Singh* and an injunction against transferring him.

22  
23 Dated: August 29, 2025

Respectfully submitted,

24  
25 By: /s/ Joshua A. Altman  
Joshua A. Altman

26 Attorney for Petitioner  
27  
28

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MEHDI ROKHFIROOZ,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al,

Respondents.

Case No.: 25-cv-2053-RSH-VET

**EXHIBITS**

<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
A	Mot. Hr'g Tr., <i>Cordon-Salguero v. Noem</i> , No. 25-1626-GLR (D. Md. June 18, 2025).....	1-12
B	Excerpt from Evid. Hr'g Tr., <i>Abrego Garcia v. Noem</i> , No. 8:25-cv-00951-PX (D. Md. July 10, 2025).....	13-18

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

ANNER ARIEL CORDON-SALGUERO, )  
Petitioner, )

vs. )

KRISTI NOEM, et al, )  
Respondents. )

CIVIL CASE NO. 1:25-cv-01626-GLR

WEDNESDAY, JUNE 18, 2025  
Courtroom 7A  
Baltimore, Maryland

MOTIONS HEARING

BEFORE: THE HONORABLE GEORGE L. RUSSELL, III, Chief Judge

On Behalf of the Petitioners:

SIMON SANDOVAL-MOSHENBERG, ESQUIRE  
4103 Chain Bridge Road, Suite 300  
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On Behalf of the Respondents:

TOM CORCORAN, ESQUIRE  
REBECCA ANN KOCH, ESQUIRE  
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(Computer-aided Transcript of Stenotype Notes.)

Reported by: Kassandra L. McPherson, RPR  
Federal Official Court Reporter  
101 W. Lombard Street, 4th Floor  
Baltimore, MD 21201  
(410) 962-4544

1 Mr. Corcoran, anything else from you, sir?

2 MR. CORCORAN: Nothing.

3 THE COURT: Hold on one second.

4 (Off the record.)

5 THE COURT: Yes. Mr. Corcoran?

6 MR. CORCORAN: Nothing further, Your Honor.

7 THE COURT: All right. Pending before the Court is  
8 Petitioner Anner Ariel Cordon-Salguero's petition for release  
9 from detention via writ of habeas corpus under 28 USC § 2241.  
10 The petition is ripe for review.

11 From a procedural history standpoint, Petitioner initially  
12 brought four claims on May 20, 2025. Habeas corpus under 28 USC  
13 § 2241, violation of the withholding of removal statute; 8 USC  
14 1231(b)(3)(A), and three procedural due process violations under  
15 the Fifth Amendment, and four substantive due process violations  
16 under the Fifth Amendment.

17 Based upon the Government's statement that the Petitioner  
18 will not be removed to Guatemala, rather will be removed to  
19 Mexico, the third country pursuant to DVD procedures.  
20 Petitioner voluntarily dismissed, and this Court will grant,  
21 without prejudice, all claims except as claimed for habeas  
22 corpus.

23 Petitioner requests the Court issue a writ of habeas corpus  
24 and order the Petitioner released from physical custody.

25 On June 4, 2025, the Respondents filed a response in

1 opposition to Petitioner's application for writ of habeas  
2 corpus, motion to dismiss, or alternatively to state  
3 proceedings, that's ECF Number 8, which the Court construes as  
4 an answer to the Petitioner's application for writ of habeas  
5 corpus.

6 Petitioner filed a reply in support of the petition on June  
7 12, 2025, ECF Number 12. And Respondent's filed a surreply on  
8 June 16 of 2025, ECF Number 17.

9 The Court finds the Petitioner is a native and citizen of  
10 Guatemala. He has no basis for immigration status in any other  
11 country.

12 Petitioner entered the United States on July 11, 2015. On  
13 May 7, 2018, Petitioner was ordered removed from the United  
14 States and granted an Order of Withholding of Removal to his  
15 native country of Guatemala.

16 Five months later, on October 9, 2018, Petitioner was  
17 placed on an Order of Supervision that ordered him released  
18 under certain conditions, including checking in with ICE  
19 annually, which he did without fail.

20 As a condition of his Order of Supervision, Petitioner was  
21 also given Employment Authorization Document pursuant to 8 CFR §  
22 274(a)(2)(C)(18) with which he was able to work legally in the  
23 United States.

24 At no time did ICE ask Petitioner to take any specific  
25 steps to facilitate third-party removal. Petitioner currently

1 lives, and the Court finds, in Cockeysville, Maryland with his  
2 partner and U.S. citizen child. He has become imbedded in the  
3 community and has been law-abiding ever since his release.

4 On May 20, 2025, this Court finds Petitioner presented to  
5 the Baltimore ICE office for a routine check-in, or what he  
6 believed to be a routine check-in, when his Order of Supervision  
7 was canceled and he was arrested without any forewarning and  
8 detained at the Baltimore ICE office.

9 The Government revoked the Petitioner's Order of Supervised  
10 Release without any notice or opportunity for a hearing.

11 The Petitioner was served with a notice that ICE intended  
12 to remove him to Mexico, and that he reasonably requested a  
13 reasonable fear interview from removal to Mexico. To date, no  
14 such referral for such an interview has been scheduled by ICE,  
15 nor has a date been set.

16 The petitioner is currently detained in Kay County  
17 Detention Center in Newkirk, Oklahoma.

18 Section 28 USC -- I'm sorry. 28 USC § 2241 authorizes a  
19 district court to grant a writ of habeas corpus whenever a  
20 petitioner is in custody in violation of the constitutional laws  
21 or treaties of the United States.

22 This court has jurisdiction to hear this matter.

23 In *Zadvydas*, the Supreme Court held § 2241 habeas corpus  
24 proceedings remain viable as a form for statutory and  
25 constitutional challenges to post-removal period detention. 53

1 U.S. 678, 688, 2001.

2 8 USC § 1252(b) does not restrict habeas jurisdiction over  
3 challenges to detention. *Jennings v. Rodriguez*, 583 U.S. 281,  
4 292-293, 2018.

5 The Court finds that the District of Maryland, and  
6 concludes that the District of Maryland is the appropriate venue  
7 to hear this case. Jurisdiction over an action under 28 USC  
8 2241 lies in the federal district court where the petitioner was  
9 confined at the time his petition was filed.

10 Here, Mr. Cardon-Salguero was detained in the Baltimore ICE  
11 office when he filed his habeas petition. As such, this court  
12 shall retain jurisdiction over this matter despite his  
13 subsequent detention in Newkirk, Oklahoma.

14 Turning to the merits, and in light of the Petitioner's  
15 voluntary dismissal of Counts Two through Four, the Government's  
16 argument that this action should be dismissed and stayed due to  
17 Petitioner's membership in the DVD class is moot. The DVD  
18 preliminary injunction only covers removal and the procedures by  
19 which the government must give notice and an opportunity to seek  
20 relief therefrom, does not cover issues related to detention  
21 pending such procedures.

22 To the extent that the Government seeks to dismiss or stay  
23 this action on the basis of the DVD action, their request is  
24 denied.

25 The Court concludes, as for the remaining habeas corpus

1 claim, 8 USC § 1231(a) permits the Government to detain an  
2 individual who is ordered removed during the removal period,  
3 which is defined as the 90-day period during which the Attorney  
4 General shall remove the alien from the United States, 8 USC §  
5 1231(a)(1)(A), with two exceptions not relevant here.

6 The removal period begins on the date the Order of Removal  
7 becomes administrative final, 8 USC § 1231(a)(1)(B)(i).

8 The Government does concede, or at least believes it  
9 concedes, and if not, the Court concludes that the Petitioner's  
10 Order of Removal was final in 2018. The 90-day removal period  
11 is tolled and extended only if the alien fails to or refuses to  
12 make timely application in good faith for travel, or other  
13 documents necessary for the alien's departure, or conspires or  
14 acts to prevent the alien's removal subject to an order of  
15 removal, 8 USC § 1231(a)(1)(C). The statute contains no  
16 provisions for pausing, reinitiating, or refreshing the removal  
17 period after the 90-day clock runs to zero. Or to zero.

18 The Court finds that under the clear language of the  
19 statute, and based upon the Government's arguments, Petitioner's  
20 90-day removal period began to run on May 7, 2018, and expired  
21 on August 2018. May 7, 2018, and expired on August -- in August  
22 2018.

23 Under § 1231(a)(6) the Court concludes ICE may only  
24 continue to detain beyond the removal period for three  
25 categories of individuals:

1 Those who are inadmissible to the United States pursuant to  
2 8 USC § 1182;

3 Those who are subject to certain grounds of removability  
4 from the United States pursuant to 8 USC § 1227, including  
5 felony convictions; or

6 3. Those who immigration authorities have determined to be  
7 a risk to the community or unlikely to comply with the order of  
8 removal.

9 *Zadvydas*, the Supreme Court established a rebuttal  
10 presumption that six months could be deemed a presumptively  
11 reasonable period, after which the burden shifts to the  
12 government to justify continued detention. Any presumptively  
13 reasonable sentence -- reasonable six months extended detention  
14 to which the government may have been entitled to expire -- may  
15 have been entitled, expired, at the latest, October 2018 since  
16 Petitioner was placed on the Order of Supervision on October 9,  
17 2018.

18 Petitioner has complied with all the required ICE  
19 check-ins. The Government has shown no reason why it did not  
20 pursue removal of Petitioner until more than seven years after  
21 his Order of Removal was entered. The Court cannot accept the  
22 Government's contention that it could arbitrarily trigger the  
23 removal period. And the Court does not conclude the removal  
24 period tolled because the 90-day removal period and the 180-day  
25 presumptively reasonable post-removal detention lapsed seven

1 years ago, or elapsed seven years ago, the Government then  
2 cannot detain Petitioner without finding he is a risk to the  
3 community or unlikely to comply with the order of removal. 8  
4 USC § 1231(a)(6).

5 There is no reason to believe Petitioner is a flight risk  
6 or danger to the community. The Government has already released  
7 Petitioner previously because they determined, at least in part,  
8 he was not a flight risk or danger to the community. They  
9 allowed him to be imbedded in the community and indeed allowed  
10 him to work in the community, which he has done so. And it  
11 turns out the Government was correct. For seven years  
12 Petitioner has complied with his Order of Supervised Release in  
13 every aspect and indeed was detained while complying with the  
14 order.

15 The Supreme Court has made clear that continued detention  
16 is allowed only where the detention is reasonably related to a  
17 legitimate government purpose. Mainly securing noncitizens  
18 removal from the United States.

19 The Court finds that Petitioner has met his burden under  
20 *Zadvydas* to provide good reason to believe that there is no  
21 significant likelihood of removal in the reasonable, foreseeable  
22 future.

23 The Government has failed to respond with any evidence  
24 sufficient to rebut that showing. The Government does not claim  
25 the Petitioner will indeed be removed from the United States

1 within any reasonable foreseeable future, but rather the case is  
2 under current review by the Government of Mexico for issuance of  
3 a travel document.

4 There is no information, and the government cannot present  
5 any information today as to who sent the request for travel  
6 document, who received the request for a travel document, where  
7 the Petitioner is in the queue related to the travel document.  
8 And even if the claim for a travel document would be made by the  
9 Mexican government.

10 The Petitioner does not have a claim to immigration status  
11 in Mexico, and the Government has provided no articulable facts  
12 to show that Mexico will accept the Petitioner for removal.  
13 There's no evidence that relevant travel documents, as  
14 indicated, can or have been obtained.

15 Even if Petitioner's accepted in Mexico, the Government has  
16 presented no evidence that he would be allowed to remain there.  
17 Continued detention is therefore not reasonably related to a  
18 legitimate government purpose and is unlawful.

19 Under 8 CFR § 2414(1)(2), only an Executive Associate  
20 Commissioner for a district director may revoke release. 8 CFR  
21 § 241.4(1)(1)(7), allows an Order of Supervision to be revoked  
22 by the, quote, Executive Associate Commissioner where the  
23 noncitizen violates conditions of release.

24 A district director may revoke release only when certain  
25 findings are made specifically. Revocation is in the public

1 interest and circumstances do not reasonably permit referral of  
2 the case to the Executive Associate Commissioner. 8 CFR §  
3 241.4(1)(2).

4 The statute states that upon revocation the alien will be  
5 notified of the reasons for the revocation of his or her release  
6 or parole. Here, the Court concludes no such findings were  
7 made, and that the Notice of Revocation of Release was not  
8 signed by the Executive Associate Commission, nor even the  
9 district director. It was someone who is unknown to the officer  
10 in the court at this time, signed this with no proof of any  
11 delegated authority to do so.

12 It was signed by a deportation officer for Respondent  
13 Nikita Baker, the ICE Baltimore field office director. And as  
14 indicated, there was no evidence that was presented to this  
15 Court regarding an expressed delegation of authority.

16 The Court also concludes that the Government did not  
17 provide a permissible basis for the Petitioner's Order of  
18 Supervision to be terminated, and did not provide the necessary  
19 informal interview which must be conducted promptly after  
20 supervision is revoked. Both 8 CFR § 241.4(1)(2) and 8 CFR §  
21 241.13(i)(3) require that upon revocation of supervised release  
22 the noncitizen must be notified of the reasons for revocation of  
23 his or her release and require ICE to conduct an informal  
24 interview promptly after their return to ICE custody to afford  
25 the noncitizen an opportunity to respond to and dispute the

1 reasons underlying the revocation.

2 After one month in detention, or approximately one month in  
3 detention, Petitioner's not been afforded an initial interview  
4 to challenge the reasons for his detention, nor has he been  
5 given adequate reasons for his detention. Indeed, the Notice of  
6 Revocation merely states that a review of his alien file has  
7 been conducted and a determination that there are changed  
8 circumstances in your case. That is it. That is all that was  
9 provided. Nothing else.

10 Likewise, 8 CFR § 208.31(b) which requires Petitioner's  
11 reasonable fear interview, to explain his fear of removal to  
12 Mexico, is to be scheduled within 10 days. This has not been  
13 done. ICE has not referred his case for such an interview in  
14 compliance with the particular regulation. No interview has  
15 even been scheduled.

16 Under the Accardi doctrine, when an agency fails to follow  
17 its own procedures or regulations the agency's actions are  
18 generally invalid.

19 The Court concludes that the Government has failed to  
20 follow the procedures as set out in the appropriate CFR, and its  
21 revocation of Petitioner's release is unlawful for reasons cited  
22 above.

23 The Court finds and concludes that the Petitioner is  
24 entitled to a writ of habeas corpus and his petition will be  
25 granted.

1       The removal period set forth has expired. The Petitioner  
2 has met his burden of providing good reason to believe that  
3 there is no significant likelihood of removal in the reasonable,  
4 foreseeable future, which the Government has not rebutted  
5 because the Government has not demonstrated that there is any  
6 country which the Petitioner can be eminently removed.

7       Finally, the Government's revocation of the Petitioner's  
8 Order of Supervision contravenes the INA in the applicable  
9 regulations. The writ of habeas corpus will issue and the  
10 Petitioner shall be released from detention and restored to his  
11 Order of Supervision previously imposed before his detention.

12       The Government's motion to dismiss and motion to stay are  
13 denied as moot in light of the Petitioner's voluntarily  
14 dismissal, without prejudice, of his violation of the  
15 withholding of removal statute and due process claims.

16       I will issue an order forthwith, consistent with this  
17 Court's memorandum opinion.

18       I will mandate that the Petitioner be released from the  
19 Baltimore ICE office where he was taken from custody, and from  
20 which this Court had jurisdiction, by Friday at 5 p.m.

21       Counsel, is there anything else that we can productively  
22 handle before we conclude?

23               MR. SANDOVAL-MOSHENBERG: Nothing from the Petitioner.  
24 Thank you, Your Honor.

25               THE COURT: Mr. Corcoran?

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
GREENBELT DIVISION

KILMAR ARMANDO ABREGO GARCIA,  
et al.,

Plaintiffs,

vs.

KRISTI NOEM, et al.,

Defendants.

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) Docket Number  
) 8:25-cv-00951-PX  
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TRANSCRIPT OF EVIDENTIARY HEARING  
BEFORE THE HONORABLE PAULA XINIS  
UNITED STATES DISTRICT COURT JUDGE  
THURSDAY, JULY 10 2025, AT 1:05 P.M.

APPEARANCES:

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\*\*\*COMPUTER-AIDED TRANSCRIPTION OF STENOTYPED NOTES\*\*\*

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*DIRECT OF THOMAS GILES BY MR. KHOJASTEH*

1 To what extent, if at all, are aliens removed to third  
2 countries that are not an alien's country of origin?

3 **A.** I'm sorry. Can you repeat the first part of the question?

4 **Q.** To what extent, if at all, are aliens removed to third  
5 countries that are not an alien's country of origin?

6 **A.** It's -- if -- for us removing people to a third country,  
7 there's a process that we have to follow.

8 **Q.** So under what conditions are aliens deported to a country  
9 that's not their country of origin?

10 **A.** The conditions would be if they are -- if they have a  
11 removal order to their country of citizenship, they have a  
12 withholding of removal that's been granted by the judge or a  
13 Convention Against Torture to that country, those individuals  
14 should not be removed to their country of citizenship if they  
15 have those forms of protection granted by the immigration  
16 judge.

17 **Q.** Mr. Giles, to what extent, if at all, are there procedures  
18 at the Department of Homeland Security or ICE setting forth  
19 guidance for the removal of aliens to third countries?

20 **A.** There's a -- there is guidance issued by a memorandum by  
21 the secretary of Homeland Security back in March of 2025.

22 **MR. KHOJASTEH:** Permission to approach the witness,  
23 Your Honor.

24 **THE COURT:** Sure. And are you giving the plaintiff a  
25 copy of whatever --

**DIRECT OF THOMAS GILES BY MR. KHOJASTEH**

1           **MR. KHOJASTEH:** Yes, and I'm going to give you a copy  
2 as well.

3           **THE COURT:** Thank you. I appreciate it.

4           **THE WITNESS:** Thank you.

5           **THE COURT:** Great. Are you marking this as an  
6 exhibit?

7           **MR. KHOJASTEH:** Yes, Your Honor. We're marking this  
8 as Defendants' Exhibit 1.

9           **THE COURT:** Okay.

10 **BY MR. KHOJASTEH:**

11 **Q.** Mr. Giles, do you recognize this document?

12 **A.** Yes.

13 **Q.** What is this document?

14 **A.** This document is the guidance regarding third-country  
15 removals.

16 **Q.** Is this the memorandum or document you were referring to a  
17 moment ago?

18 **A.** Yes.

19 **Q.** I want you to take a brief moment and review the memo.  
20 It's about a page, page and a half.

21 To what extent, if at all, are the procedures set forth in  
22 this memorandum followed by ICE in connection with removals of  
23 aliens to third parties -- third countries?

24 **A.** They are followed.

25 **Q.** When does ICE learn of a -- learn whether an alien has

*DIRECT OF THOMAS GILES BY MR. KHOJASTEH*

1 some restriction on the removal to their country of origin?

2 **A.** ICE would learn if that individual has a grant of  
3 withholding or a grant of Convention Against Torture where we  
4 can't remove those aliens to their country of citizenship but  
5 they do still have a removal order; so we will work on doing a  
6 third-country removal.

7 **Q.** Mr. Giles, I'd like you to walk through -- walk the Court  
8 through the steps that are taken and by whom when ICE deports  
9 an alien to a third country.

10 **A.** So the steps that are taken are by the docket officer or  
11 deportation officer. They would serve a document, notice of  
12 removal, on the alien indicating that you will be removed to  
13 country X. And if that -- and we would serve that document on  
14 the alien.

15 If the alien expresses fear of return to go to that third  
16 country, we would refer that individual to the United States  
17 Citizenship and Immigration Services for a credible fear  
18 interview that's done by an immigration officer.

19 **Q.** And if there is a credible -- if the immigration officer  
20 deems that there is a credible fear of removal -- to the alien  
21 for removal to that third country, what happens then?

22 **A.** If the alien expresses fear and the credible fear officer  
23 finds fear, that case will be referred to an immigration judge  
24 for final decision.

25 **Q.** And what is the immigration judge -- what -- if the

*DIRECT OF THOMAS GILES BY MR. KHOJASTEH*

1 immigration judge credits the immigration officer's findings  
2 and credits the credible fears of the alien, what can the  
3 immigration judge do?

4 **A.** The immigration judge in that case could grant a  
5 withholding of removal to that country as well; and if that's  
6 the case, then we would go back to start the process over again  
7 and identify another country for the alien to be removed to.

8 **Q.** Generally speaking, Mr. Giles, when does the -- strike  
9 that.

10 When an alien comes into ICE custody, who at ICE takes  
11 responsibility for that alien's file?

12 **A.** The responsibility will fall on the docket officer or case  
13 officer at the facility he or she is detained at.

14 **Q.** And so when does the docket officer begin working to  
15 identify a third country?

16 **A.** If there's a -- if there's a final order of removal that  
17 has a grant of withholding or Convention Against Torture, then  
18 the docket officer will work on trying to identify a third  
19 country of removal to remove that person since there is a final  
20 order of removal on that individual.

21 **Q.** To what extent, if at all, does that work begin prior to  
22 ICE taking custody of the alien?

23 **A.** That does not happen until the individual is in ICE  
24 custody. We don't work these cases that are in other  
25 jurisdictions. They are not worked until they are arrived in

**DIRECT OF THOMAS GILES BY MR. KHOJASTEH**

1 ICE custody.

2 **Q.** Mr. Giles, I want to speak with you about Mr. Abrego  
3 Garcia.

4 Are you aware that the Court has ordered that the  
5 government designate one or more individuals to testify today  
6 on certain topics?

7 **A.** Yes.

8 **MR. KHOJASTEH:** I'm going to mark this as Defendants'  
9 Exhibit 2.

10 Permission to approach the witness, Your Honor?

11 **THE COURT:** Sure.

12 **THE WITNESS:** Thank you.

13 **BY MR. KHOJASTEH:**

14 **Q.** Mr. Giles, I want to refer you to a list of topics on  
15 the -- in the first paragraph of the -- of the Court's order.

16 Do you see that?

17 **A.** Yes.

18 **Q.** The topics include the legal bases for defendants'  
19 intended detention of Abrego Garcia; anticipated efforts to  
20 remove him to a third country or seek termination of his  
21 withholding of removal to El Salvador if he's released from the  
22 U.S. Marshal custody; the nature and timing of any notice to be  
23 provided to Abrego Garcia; the location of any proposed custody  
24 or transfer; and the procedural steps defendants intend to  
25 pursue.