MURRAY OSORIO PLLC

September 17, 2025

Via Electronic Filing
Honorable Esther Salas
United States District Judge
Martin Luther King Bldg. & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: ***Muntean v. Noem,*** **Docket No. 2:25-cv-14868-ES**

PETITIONER'S REQUEST FOR EXTENSION OF PAGE LIMIT

Dear Judge Salas,

As the Court will recall, we represent Petitioner, Ioan Muntean, in this habeas petition. With the gracious consent of Respondents, we respectfully request the Court's acceptance of the attached overlength reply brief. The extra pages were necessary to address new evidence made available by Respondents in their Response. ECF No. 6.

Petitioner thanks the Court for its consideration of this matter.

Respectfully submitted,

Date: September 17, 2025

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Counsel for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Newark Division

IOAN MUNTEAN, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	)	HON. ESTHER SALAS Civil Action No. 2:25-cv-14868-ES

REPLY IN SUPPORT OF WRIT OF HABEAS CORPUS

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INTRODUCTION

There is no question that Petitioner has a final order of removal, and that Respondents have the authority to execute that order, including detaining Petitioner to do so. But there are regulations that govern how and when Petitioner's order of supervision could be revoked to re-detain him. Respondents blatantly ignored those rules and have attempted to cure them after the fact. Moreover, Respondents have newly justified their detention of Petitioner by finally providing information about their very recent attempts at removal to Germany. But Petitioner was previously considered for removal to Germany, who necessarily refused to accept him (because he was subsequently released on an order of supervision). No facts since that prior attempt have changed. Respondents' recent efforts rely entirely an alleged marriage to a German national, but do not so much as provide her name to substantiate this allegation, let alone provide any proof of marriage. Rather, Petitioner disavows any marriage to a German national. Without more, Respondents have failed to rebut that there is still no significant likelihood of removal in the reasonably foreseeable future to Germany or anywhere else. Petitioner's immediate release is warranted.

FACTS AND PROCEDURAL HISTORY

Petitioner Ioan Muntean is a citizen of Romania, born there on [redacted] and upon information and belief holds no status or citizenship to any other

country. *See* Ex. 1, signed Declaration of Ioan Muntean (hereinafter "Ioan's Decl.") at ¶ 1. Petitioner resides in Flushing, New York. Ioan's Decl. ¶ 2.

Petitioner was granted immigration relief, in the form of an order of withholding of removal as to his native Romania, on February 28, 2020. *See* Immigration Court Order, ECF. No. 1-4. *See also* Dkt. No. 1-7, EOIR Automated Case Information (which reflects that no appeals were taken and no motions to reopen or reconsider have been filed). During his detention, Petitioner requested removal to France, Germany and Canada, none of which were willing to accept him. Ioan's Decl. ¶ 29.

Petitioner was issued an order of supervision and released from ICE custody on or about May 15, 2020. *See* ECF. No. 1-6, ICE Release Notification, dated May 14, 2020; *see also* ECF. No. 1-5, excerpt from ICE Form I-220B. Since then, he has not been convicted of any crimes, nor has he violated the terms of his Order of Supervision with ICE. ECF. No. 1 at ¶ 35. Nor do Respondents allege as much.

Petitioner has had serious medical conditions arise, attributable largely to his type 1 and type 2 diabetes. *See* Ioan's Decl. ¶¶ 5-8. Prior to detention, Petitioner underwent several serious medical procedures in 2025, including the placement of coronary stents in February 2025 (*id.* ¶ 37; February 2025 medical records, ECF. No. 1-9); emergency triple bypass surgery in April 2025 (*id.* ¶ 38; April 2025

medical records, ECF. No. 1-10); and emergency hospitalization in June 2025 (*id.* ¶ 39; June 2025 medical records, ECF. No. 1-11).

Five years later, on July 12, 2025, Petitioner was detained without forewarning in front of his daughter's home. Ioan's Decl. ¶ 40. Petitioner was not provided any explanation as to the factual or legal basis for his detention, in writing or by an officer. *Id.* ¶¶ 47-48. He was taken to the ICE Field Office in Baltimore, MD and held there for two days. *Id.* ¶ 11. Petitioner was without his medications for the duration of this time. *Id.* Petitioner was transferred to the Elizabeth Detention Facility in Elizabeth, NJ, (Ioan's Decl. ¶¶ 12) and remains there today (*id.* ¶ 25). When Petitioner would ask the detention officers why he was being detained, "the ICE officers always tell me they won't give me any information or paperwork until 90 days have passed." *Id.* at ¶ 30. They would also indicate that they had yet even decided what to do with Ioan or what would happen to him. *Id.* at ¶ 31.

Since his arrest, Petitioner has continued to experience life threatening symptoms which has resulted in his hospitalization at least three times. *See* Ioan's Decl. ¶¶ 10, 12, 16, 23. On August 17, 2025, Petitioner experienced a stroke, which left him hospitalized – unable to speak and unaware of himself of his surroundings – for four days. Ioan Decl. ¶¶ 44-45. ECF No. 1-14, Trinitas Regional Medical Center medical record, dated August 17, 2025.

The verified Petition for Writ of Habeas Corpus (ECF No. 1) was filed on Friday, August 22, 2025. On September 5, 2025, the Court ordered Respondents to respond to the Petition. ECF No. 1-4.

Five days later, on September 10, 2025, Ruben Perez, Acting Field Office Director for ICE issued a Notice of Revocation of Release. ECF No. 6-3.

Two days later, Respondents filed their response. ECF No. 6. Respondents also include two declarations, both of which describe efforts to obtain travel documents to Germany, based on Petitioner's alleged marriage to "a German national." *See* ECF No. 6-1 at ¶¶ 10-12; *see also* ECF No. 6-2 at ¶¶ 8-13.

At the time of his ICE arrest, he was in the presence of his daughter's boyfriend, and "C.E.," who is a German national. However, upon information and belief, Petitioner is not now and has never been married to C.E. *See* Ex. 2, Declaration of Pabai Muntean, dated September 15, 2025 ("Pabai's Decl.") at ¶ 4. Petitioner had a prior relationship with C.E., but no current relationship of any kind. *Id.* C.E. was only present at Petitioner's daughter's home visiting while Petitioner was recovering from multiple surgeries. *Id.* ¶ 8. Upon information and belief, Petitioner has no other ties to Germany.

ARGUMENT

I. This Court Maintains Jurisdiction Over Petitioner's Petition for a Writ of Habeas Corpus.

As an initial matter, Respondents' jurisdictional arguments are inapposite to a habeas corpus petition challenging detention, not removal. *Zadvydas v. Davis* held that notwithstanding 8 U.S.C. § 1252(g), "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." 533 U.S. 678, 688 (2001). Likewise, the Supreme Court subsequently held that 8 U.S.C. § 1252(b) does not strip habeas jurisdiction over challenges to detention. *Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018).

Despite Respondents' arguments to the contrary, the Court maintains jurisdiction over Petitioner's habeas. First, Petitioner is not challenging the execution of or asking the Court to set aside his 2020 removal order. Rather, Petitioner seeks release from detention and asks this Court to ensure that the four corners of that order – both the removal *and* the protections granted – are *upheld*. As such, 8 U.S.C. § 1252(g) does not strip this court of jurisdiction over his habeas.

Respondents argue that § 1252(g) strips this Court of jurisdiction, but their reliance on *Tazu v. Atty. Gen.*, 975 F.3d 292 (3d Cir. 2020), is misplaced. This is not a case like *Tazu*, in which ICE had already obtained a usable travel document (a valid passport allowing the petitioner to be removed to his native country, from which removal had not been withheld) and detained him three days thereafter in what the court described as "a brief door-to-plane detention[.]" *Id.* at 298. There is no travel document for Petitioner in this case, nor is one likely for reasons stated below.

Nor does the zipper clause at 8 U.S.C. § 1252(b)(9) apply, because Petitioner is not challenging his final order. Petitioner seeks redress of Respondents' recent actions (his re-arrest without notice of revocation of his supervision or opportunity to respond, and his ongoing detention), none of which could be considered by the circuit court on a petition for review, as envisioned by § 1252(b)(9). A petition for review evaluates only the legality of a final order of removal (which Petitioner does not challenge), but not revocation of an order of supervision, post-order detention or other unlawful acts (which Petitioner does challenge here).

Accordingly, no provision of law strips this Court of jurisdiction to hear and decide this habeas action. Indeed, habeas is Petitioner's only avenue for relief.

II. Respondent's detention of Petitioner violates *Zadvydas*, as lawful removal is not reasonably foreseeable.

A. This habeas petition, filed nearly five years after the expiration of the presumptively reasonable period, is not premature.

The government absolutely has the right to detain a noncitizen with a final order of removal in order to remove that noncitizen, no matter how long ago the removal order was entered. This much is not in doubt. Petitioner's contention in this litigation is a modest one: once the initial 180-day *Zadvydas* period has passed, the government must have some objective reason (not just a subjective desire) to believe that removal is at all possible before it can lock up a human being, by surprise, without any due process review, at the time that it detains that person anew.

As an initial matter, the parties do not dispute that the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) expired in 2020. Respondents are correct that the order of removal became administrative final on March 31, 2020. Response at 9, FN2. The statutory removal period expired on June 29, 2020, and Respondent's do not allege that § 1231(a)(1)(A) mandatory detention applies. *See* Response 9-12.

1. The *Zadvydas* presumptively reasonable period expired in 2020.

At issue is whether *Zadvydas* precludes Petitioner's habeas claim at this time. *Zadvydas* does not primarily because 180-day presumptively reasonable period under 8 U.S.C. § 1231(a)(6) has also expired – on September 27, 2020 in this case – as it must run continuously from the statutory period. *Zadvydas*, 533 U.S. at 688. As *Zadvydas* explained, after the 90-day removal period ends, the government "'may' *continue to detain* an alien who still remains here or release that alien under supervision." 533 U.S. at 683 (emphasis added). Having recognized that most removals could not be effectuated in 90 days, the Supreme Court further clarified detention could only continue for "a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. Respondents' contention that Petitioner's habeas claim is premature because he has not spent a cumulative 180 days in ICE detention since his removal order misreads *Zadvydas* and the statute.

The basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*,

533 U.S. at 699. In so doing, the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700. Under *Zadvydas*, after 180 days have elapsed since the start of the removal period, even just one additional day of post-removal-period detention could be found unreasonable if not justifiable by the statute's basic purpose of assuring the noncitizen's presence at the moment of removal.

A recent spate of cases have interpreted the *Zadvydas* presumptively reasonable period for detention, specifically in the context of re-arrests following a period of supervised release. The District of New Jersey recently held in *Tadros v. Noem*, No. 25-cv-4108 (EP), 2025 WL 1678501, *3 (D.N.J. June 13, 2025):

> Tadros has the better argument under *Zadvydas*. The 90-day removal period under 8 U.S.C. § 1231(a)(1)(B) was triggered [when the grant of relief under the CAT became administratively final]. Tadros was released two days later. Tadros's release suggests he was determined not to present a flight risk, and that the Government was unlikely to find a third country to accept him in the reasonably foreseeable future. Further, Tadros has demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing a third country for his removal. Respondents' sole statement that "ICE has been making efforts to facilitate Petitioner's removal to a country other than Egypt" is insufficient to rebut the presumption established by Tadros.

Slip Op. at 7. *Tadros* is instructive as it considered the context of a post-order release and re-detention and agreed with petitioner that his *Zadvydas* six-month detention

period had "lapsed long ago." *Id.* The District of Maryland agreed in *Cordon-Salguero v. Noem*, Civ. No. 1:25-cv-1626-GLR, Dkt. No. 20 (D. Md. June 18, 2025). *See also Alam v. Nielsen*, 312 F. Supp. 574, 581-82 (S.D. Tex. 2018) (rejecting the argument that the Section 1231(a)(1)(A) removal period is restarted when a noncitizen is re-detained for the purposes of removal); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025), citing *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025).

Respondents' cited cases, ECF. No. 6 at 10-11, none of which are controlling on this Court, do not militate to the contrary. *Callender v. Shanahan* was a matter that involved continuous detention, including numerous custody reviews and repeated attempts to obtain travel documents – none of which applies here. 281 F. Supp 3d 428 (S.D.N.Y. 2017). *Rodriguez-Guardado v. Smith*, did not address a matter where someone had been previously released on supervision. 271 F. Supp 3d 331 (D. Mass 2017). Luma improperly filed his claim while he was still detained under 8 U.S.C. § 1226(a). *Luma v. Aviles*, No. 13–6292 (ES), 2014 WL 5503260 (D.N.J. Oct. 29, 2014). Kevin had continuously remained in detention when he raised his challenge under *Zadvydas*, unlike Petitioner has been out on supervised release for years. *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212, 2021 WL 4772130, at *2 (D.N.J. Oct. 21, 2021)).

2. <u>The *Zadvydas* presumption is rebuttable.</u>

Moreover, even if the *Zadvydas* six-month presumptively reasonable period only counts those days in detention, that presumption of reasonableness would still be nonetheless rebuttable prior to the period's expiration. *Zadvydas* did not announce a bright-line prohibition on challenges prior to the six-month mark. *Id.* at *10 (citing *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018); and *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008)). Rather, "the presumption scheme merely suggests that the burden the detainee must carry within the first six months . . . is a heavier one than after six months has elapsed." *Cesar*, 542 F. Supp. 2d at 903-04. *See also Ortega v. Kaiser*, 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025) (holding the presumption is rebuttable); and *Ali v. DHS*, 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020) (same).

Recently, the District of Maryland agreed that the *Zadvydas* presumption was rebuttable. *Cruz-Medina*, 2025 WL 2306274, at *6 ("But regardless of which type of presumption applies to a *Zadvydas* claim, which this Court need not decide, what *Zadvydas* did make clear was that it was adopting a presumption—not a conclusive bar to adjudication of whether continued detention is authorized that lifts only after six months have elapsed."). The District of New Jersey held the same in *Munoz-Saucedo*: "Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from challenging the reasonableness of his detention before such time." 2025 WL 1750346, at *5. The

Munoz-Saucedo court rejected an interpretation of *Zadvydas* as creating a bright-line rule, but rather that "the six-month mark as a 'guide,' not a rigid threshold." *Id.* The *Munoz-Saucedo* court concluded, "The presumption of reasonableness is the default, but if a person 'can prove' that his removal is not reasonably foreseeable, then he can overcome that presumption." *Id.* at *6 (internal citations omitted).

B. The evidence establishes no significant likelihood that Petitioner will be lawfully removed in the reasonably foreseeable future.

Through the filing of the instant Petition, on August 28, 2025, Respondents had refused provided any information or explanation to Petitioner as to the reason for his arrest or continued detention. Ioan's Decl. ¶¶ 30-31. Respondents aver that Petitioner improperly "shifts the burden to the Respondents" or "relies on the conclusory assertions" (Response at 12). Any lack of evidence is not because Petitioner has overlooked existing records duly provided to him, but because of Respondents' refusal to provide *any* information (until very recently, and only upon court order) to justify their actions. Ioan's Decl. ¶¶ 30-31. However, the evidence Respondents have provided, two declarations and a Notice of Revocation of Release, dated September 10, 2025, is not nearly enough to rebut the showing that there is no likelihood of removal in the reasonably foreseeable future.

Respondents rely heavily on the fact of a supposed "family tie" to Germany, "specifically the individual who Mr. Muntean claims to be his wife is a German citizen." Adams Decl. ¶ 10. This alleged family tie is the basis for any consideration

by German officials to review Petitioner's case for acceptance. *Id.* However, neither her identity nor nationality are corroborated. *Id.* Nor do Respondents demonstrate that Petitioner claimed this woman to be his wife. *Id.* Accordingly, it is impossible to meaningfully respond to the basis of this claim.

Without any identifiable information, Petitioner and his family have been left to surmise who the government may be referring to, and have deduced that it is likely an individual named "C.E." Pabai's Decl. ¶ 2. Upon information and belief, Petitioner and his family deny any claim of marital relationship between Petitioner and C.E. *Id.* ¶ 4. Petitioner did briefly date a German woman, C.E., but that relationship ended prior to his traveling to the United States. *Id.* ¶ 3. Years later, Petitioner and C.E. reconnected online as friends, and she later visited him while he was recovering from surgery. *Id.* ¶¶ 6-8. She was arrested along with Petitioner, outside Petitioner's daughter's home, following this visit. *Id.* However, there is "no current relationship of any kind with [C.E.]," nor was there ever one. *Id.* ¶ 9.

In short, Petitioner has no German wife and no other ties to Germany. Rather, Petitioner specifically requested during his original detention period to be removed to Germany (among other countries), but was ultimately released from detention – necessarily because no country (including Germany) would accept him. Ioan's Decl. ¶¶ 29. Respondents have not given this Court any reliable reason to believe that this conclusion would different today.

Respondents do not present evidence that Germany has accepted Petitioner for removal, nor any other reliable basis to believe that they will. The entirety of Germany's consideration of accepting Petitioner is predicated on a marital relationship for which there is no evidence. On the contrary, Petitioner and his family deny it. Respondents offer no other evidence support the likelihood of his removal, to Germany or any other country.

Petitioner was previously released from detention because there was not a significant likelihood of his removal in the reasonably foreseeable future, including to Germany. 8 C.F.R. § 241.4. Today, nothing has changed other than the government's *desire* to remove him, but a desire does not create a *significant likelihood.* This does not suffice to meet the government's burden to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. *See also Singh v. Whittaker*, 362 F. Supp. 3d 93, 101-102 (W.D.N.Y. 2019) (finding petitioner's continued detention unreasonable where the court was left to guess "whether deportation might occur in ten days, ten months, or ten years.").

Since the 90-day removal period and the 180-day presumptively reasonable detention period elapsed over five years prior, Respondents lacked legal basis to re-detain Petitioner absent newly obtained means to actually remove him from the United States. *See Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 502 (S.D.N.Y. 2009) ("because the removal period and any presumptively reasonable detention

period has expired, and the removal period was not tolled pursuant to § 1231(a)(1)(C), this Court finds that the Respondents are without statutory authority to detain Farez-Espinoza."). Petitioner has met his *Zadvydas* burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and Respondents have failed to "respond with evidence sufficient to rebut that showing." 533 U.S. at 701. Continued detention is impermissible, and the writ of habeas corpus should issue.

III. Respondents' arrest of Petitioner violated regulations designed to ensure Petitioner's right to due process, thus violating the *Accardi* doctrine.

Under the *Accardi* doctrine, "when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid." *Nader v. Blair*, 549 F.3d 953, 962 (4th Cir. 2008), citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Petitioner is not required to show prejudice if the regulation was designed to protect fundamental or constitutional rights. *Leslie v. Atty. Gen. of U.S.*, 611 F.3d 171, 179 (3d Cir. 2010). Here, Respondents violated regulations that were clearly put in place to protect the due process rights of individuals like Petitioner, as they pertain to how, when and by whom his order of supervision may be revoked and he may be re-detained. Petitioner's re-arrest of Petitioner violated the regulations and due process and must be set aside.

A. Petitioner was re-arrested without notice or an opportunity to respond, a violation of the regulation which cannot be cured by a Notice of Revocation of Release issued two months later.

An after-the-fact Notice of Revocation cannot cure the fact that Petitioner was arrested without his order of supervision having been duly revoked on notice and with an opportunity to respond. After the 90-day removal period ended and Petitioner was not removed from the United States, he was released on supervision. 8 U.S.C. § 1231(a)(3); *see also* 8 C.F.R. § 241.4. Years later, Petitioner was detained on July 12, 2025 and provided exactly no information, explanation, or documentation to explain why. Ioan's Decl. ¶¶ 30-31. The Notice of Revocation of Release – finally rescinding his order of supervision and providing Respondents' reasons for his detention – was not issued until September 10, 2025. ECF. No. 6-3. This is a clear violation of the regulation, which requires that the notice be provided to the individual "upon revocation" of the supervised release and that the individual be afforded a prompt opportunity to respond. *See* § 241.4.

The Western District of Kentucky recently considered a similar case, where the habeas petitioner had been re-detained after years of reporting on an order of supervision, and was not provided documentation or explanation for the rearrest or continued detention. *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394 (W.D. Ky. Sept. 4, 2025). The court found that failure to issue notice or afford an opportunity to be heard was a clear violation of the regulation. *Id* at *5 ("The plain text necessitates that any re-detention under Section 241.4 requires notice and informal interview, because courts should give every clause and word of a statute ...

meaning," (internal quotations omitted) (citing *United States v. Giraud*, No. 1:24-cv-00768, No. 2:25-cv-00436, 2025 WL 2416737, at *10 (D. N.J. August 21, 2025). *See also Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *7 (D. Md. August 25, 2025) (holding that failure to provide notice and an informal interview violated the regulation and thus due process); *and Zhu v. Genalo*, 1:25-cv-06523 (S.D. N.Y. August 26, 2025) (holding the same).

Moreover, after the initiation of proceedings in *K.E.O.,* the government similarly attempted to "cure" its regulatory violation by issuing a Notice of Revocation after the fact. As the *K.E.O.* argued, Petitioner submits that a two-month gap to issue the Notice is not "upon revocation" as required by the regulation. *Id.* at *6. Rather, "upon revocation" would have been at the time Petitioner was detained, on July 12, 2025.

Respondents concede that Petitioner is entitled to Notice. Response 22. Respondents assert that it is "ICE's position that providing the notice eight weeks after the redetention meets the 'upon revocation' requirement." *Id.* However, this position stretches the meaning of "upon revocation" past the breaking point. By ICE's logic, any moment they issue the notice (whether it is at the time of arrest or at any indeterminate point in time thereafter) is necessarily issued "upon revocation," – thereby rendering the language of the regulation meaningless. Numerous courts have rejected this argument. *See K.E.O.,* 2025 WL 2553394, at *6;

and Zhu, 2025 WL 2452352, at *9. *See also Bonilla v. City of Allentown*, 359 F. Supp. 3d 281, 297 (E.D. Pa. Feb. 13, 2019) (QUOTE).

In particular, the *K.E.O.* court considered whether an after the fact Notice could "cure" the regulatory violation, and found that it failed to do so. *See K.E.O.*, 2025 WL 2553394, at *6. Rather, the violation of the regulation has been held to constitute a violation of due process, warranting immediate release from detention. *Id.* at *7 ("As a remedy, courts across the country have ordered the release of individuals stemming from ICE's illegal detention." (collecting cases)). The same remedy is warranted here, and the Court should reject Respondents' argument.

B. The Notice of Revocation of Release is defective on its face, as it was issued by an officer without authority to do so, also in violation of the regulations.

Limited circumstances permit revocation of a supervised release and only by those with authority to order it. Petitioner's Notice of Revocation of Release was executed by Ruben Perez, Acting Field Office Director for ICE. ECF No. 6-3. However, Mr. Perez is not an Executive Associate Commissioner, and there is no evidence of findings of fact (as required by the regulation to permit delegation of authority to the district director).

The regulation provides that "[t]he Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this

section." 8 C.F.R. § 241.4(*l*)(2). Other than the Executive Associate Commissioner, a district director may revoke release only when certain findings are made, specifically, "revocation is in the public interest ***and*** circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(*l*)(2) (emphasis added). Moreover, any blanket re-designation of authority cannot apply here, as the regulation requires specific findings of fact to be made before any delegation of authority is permitted, even to a district director.

Contrast this subsection with another subsection in the same regulation, 8 C.F.R. § 241.4(h)(5), regarding periodic custody reviews of detained noncitizens. That subsection allows high-level ICE officials to designate custody review authority to a long list of other officials with other job titles, including the catch-all ". . . or such other persons as the district director or the Director of the Detention and Removal Field Office may designate from the professional staff of the Service." The absence of such a catch-all provision in subsection (*l*)(2) is no less meaningful than its presence in subsection (h)(5). Put another way, if the Executive Associate Commissioner could delegate their subsection (*l*)(2) authority to revoke an Order of Supervision to any ICE officer at any time for any reason, just like the subsection (h)(5) authority to carry out custody reviews, then the (*l*)(2) language and the (h)(5) language are entirely surplusage. *United States v. Menasche*, 348 U.S. 528, 538–39 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a

statute,' . . . rather than to emasculate an entire section, as the Government's interpretation requires.").

Here, the Order of Supervision was not revoked by the Executive Associate Commissioner, but the Acting Field Office Director. ECF No. 6-3. Yet no finding has been made that circumstances do not reasonably permit referral to the Executive Associate Commissioner. Nor could such a finding be made, as Petitioner was dutifully reporting for years on supervised on release, and, even after his re-arrest, ICE waited two months to issue this Notice to Petitioner at all. ECF No. 6-3.

To be clear, Petitioner does not seek this Court to engage in a substantive review of the decision as to whether circumstances did or did not reasonably permit referral to the Executive Associate Commissioner. If the district director had made such findings, this Court may well lack jurisdiction to second-guess the "opinion" of the district director. But this Court surely does have jurisdiction to determine *whether* such findings were made, and here can quickly conclude that they were not. Contrast this with *Tanha v. Warden*, 2025 WL 2062181 (D. Md. July 22, 2025), in which the petitioner sought substantive review of the reasons for the revocation of the Order of Supervision. *Id.* at 9-10. The *Tanha* petitioner did not challenge the regulatory authority of the individual who revoked his Order of Supervision.

The Supreme Court has stressed the importance of the government following this very regulation. *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025)

(Sotomayor, J., concurring), *citing* 8 C.F.R. § 241.4(*l*) (in order to revoke conditional release, the Government must provide adequate notice and "promptly" arrange an "initial informal interview . . . to afford the alien an opportunity to respond to the reasons for the revocation stated in the notification").

Several federal district courts have held that where ICE revokes release and rearrests a noncitizen without following the procedures set forth in Section 241.4(*l*), such revocation violates due process and the post-removal-period statute. *See Ceesay v. Kurzdorfer*, No. 25-cv-267-LJV, 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025) (finding violations of statute, regulations, and due process where ICE revoked Order of Supervision and detained noncitizen without advance notice and opportunity to be heard); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (same). Moreover, such a violation warranted release, even when a valid travel document was already on hand. *Ceesay,* 2025 WL 1284720 at *20-*21. As Petitioner has been similarly deprived, the same result should apply.

For the foregoing reasons, Respondents' violations of the re-detention provisions of 8 C.F.R. § 241.4(*l*) violated the *Accardi* doctrine and due process.

CONCLUSION

WHEREFORE, Petitioner, by counsel, respectfully requests that this Court issue a writ of habeas corpus, ordering his immediate release from custody, and the restoration of his prior Order of Supervision.

Respectfully submitted,

Date: September 17, 2025

/s/ Stephanie E. Gibbs

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded a copy of the foregoing, with all attachments thereto, to this Court's CM/CEF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

Date: September 17, 2025

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