UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSE ERALAND JIMENEZ CHACON,

Petitioner,

v.

TODD LYONS, *Acting Director Immigration and Customs Enforcement,* DORA CASTRO, *Warden of the Otero Processing Center*, MARY DE ANDA-YBARRA, *in her official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office*; KRISTI NOEM *in her official capacity as Secretary of the Department of Homeland Security*; PAM BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 25-977

INTRODUCTION

1. Petitioner Jose Eraland Jimenez Chacon ("Mr. Chacon") is currently in the custody of the United States Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) at the Otero Processing Center in Chaparral, New Mexico. On November 2, 2016, the immigration court issued an order of removal Mr. Chacon but simultaneously granted and deferred Mr. Chacon's removal under the United Nations Convention Against Torture (CAT) pursuant to 8 C.F.R. 1208.17. This was based on testimony, which the immigration court found credible, and evidence on record, that Mr. Chacon's life would be in danger in Mexico if removed from the United States. The government did not appeal the order of CAT deferral of Mr. Chacon's removal to Mexico. Because of the order of deferral of removal to Mexico, the government must relocate to a third country that would be willing to

accept him. Mr. Chacon was initially detained while the government attempted to find a third country that would accept him. When the government was unable to remove Mr. Chacon, it released him in March of 2017, under an Order of Supervision pursuant to 8 C.F.R. §241.4. Mr. Chacon has been living in El Paso, Texas under his Order of Supervision since March 2017. On February 14, 2025, ICE officials arrested Mr. Chacon without notice, and he has been detained ever since. ICE refuses to release Mr. Chacon, claiming that it is looking for alternative countries for removal despite knowing that he lacks citizenship in or a connection to any other country. Mr. Chacon's continued detention is arbitrary and unlawful, and he requests that this Court order his immediate release from ICE custody, that it restores his Order of Supervision, and orders the government to comply with its rules and regulations regarding notice and removal.

2. Mr. Chacon is detained pursuant to 8 U.S.C. § 1231, which governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an IJ due to the substantial risk of persecution or torture in their home country. 8 U.S.C. § 1231(a)(1)(B)(i). Mr. Chacon's removal order and accompanying relief grant became final on April 3, 2025, when ICE waived the right to appeal the relief grant. 8 C.F.R. § 1241.1.

3. Mr. Chacon's continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his home country of Mexico because he was granted withholding of removal under CAT with respect to that country. ICE's attempts to remove Mr. Chacon to a third country are speculative and futile.

4. Respondents attempt to remove Mr. Chacon to a third country in accordance with the Department of Homeland's Security adopted policy memorandum[1] stating that it would remove non-citizens to third countries with only 24 hours or less notice and no meaningful

[1] July 9, 2025, Third Country Removals Memo.

opportunity to assert a fear-based claim- just as Mr. Chacon successfully did with respect to his home country- would be a brazen violation of his statutory, regulatory, and due process rights. Respondents have not given Mr. Chacon notice and an opportunity to contest removal to a third country.

JURISDICTION & VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

6. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See*, *e.g.*, *Zadvydas*, 533 U.S. at 687-88 (holding that a § 2241 petition is the proper vehicle for a petitioner to use to challenge the legality and constitutionality of post-removal period detention)

7. Federal district courts have jurisdiction to review claims that the government has violated his statutory and constitutional rights to due process. *See Demore v. Kim,* 538 U.S. 510, 516-17 (2003) (citing 28 U.S.C. §2241(c)(3); *Baez v. Bureau of Immigr. & Customs Enf't*, 159 F. App'x 311, 312 (5th Cir. 2005) (per curium) (courts retain the power to hear statutory and constitutional challenges to immigration detention when those claims do not challenge the final order of removal).

8. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Chacon is detained within this district at the Otero Processing Center in Chaparral, New Mexico. Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continue to occur at ICE's El Paso Field Office/Otero Processing Center in Chaparral, New Mexico, within this division.

PARTIES

9. Mr. Chacon is a native and citizen of Mexico who was granted CAT deferral of removal on November 2, 2016. He is currently detained at the Otero Processing Center in Chaparral, New Mexico.

10. Todd Lyons is the Acting Director of Immigration and Customs Enforcement and Removal Operations, which is responsible for administering and enforcing the immigration laws.

11. Dora Castro is the Warden of the Otero County Processing Center ("Otero"), a private facility that contracts with ICE to detain non-citizens. She is responsible for overseeing Otero's administration and management. Ms. Castro is Mr. Chacon's immediate custodian. She is sued in her official capacity.

12. Mary De Anda-Ybarra is the Field Office Director of the ICE Enforcement and Removal Operations (ERO) El Paso Field Office ("ELP ICE") and is the federal agent charged with overseeing all ICE detention centers in New Mexico, including Otero. Ms. De Anda-Ybarra is a legal custodian of Mr. Chacon. She is sued in her official capacity.

13. Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Mr. Chacon. She is sued in her official capacity.

14. Pam Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review (EOIR) and includes all IJs and the Board of Immigration Appeals (BIA). She is sued in her official capacity.

LEGAL FRAMEWORK

I. WITHHOLDING OF REMOVAL AND RELIEF UNDER THE CONVENTION AGAINST TORTURE

15. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Non-citizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States. *See* 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal, *id.* § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16.

16. To be granted CAT relief, a non-citizen must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. §1208.16(c)(2). An applicant for CAT relief must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. *See id.*

17. When an IJ grants a non-citizen withholding or CAT, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once withholding or CAT relief is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the withholding or CAT relief grant and the accompanying removal order become administratively final. *See id.* § 1241.1.

18. When a non-citizen has a final withholding or CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). While ICE is authorized to remove non-citizens who were granted withholding or CAT relief to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive

criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the [non-citizen] is a citizen, subject, or national," the country "in which the [non-citizen] was born," or the country "in which the [non-citizen] resided" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E).

19. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that country. *See Jama v. ICE*,543 U.S. 335, 348 (2005) ("If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, *see* 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . ."); *Romero v. Evans,* 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims."), *rev'd on other grounds, Guzman Chavez*, 141 S. Ct. 2271.

II. DETENTION OF NON-CITIZENS GRANTED WITHHOLDING OF REMOVAL OR RELIEF UNDER THE CONVENTION AGAINST TORTURE.

a. Statutory Framework

20. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it conducts the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "*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) (emphasis added).

21. To avoid "indefinite detention" that would raise "serious constitutional concerns,"

the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [non-citizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701.

22. But the "*Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). "Within the six-month window," the non-citizen bears the burden of "prov[ing] the unreasonableness of detention." *Id.* After six months of detention, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701; *see also Cesar*, 542 F. Supp. 2d at 903 ("[T]he presumption scheme merely suggests that the burden the detainee must carry within the first six months of [post-order] detention is a heavier one than after six months has elapsed"). In *Zadvydas*, the Supreme Court rejected the argument that the government can detain a removable noncitizen indefinitely. *Zadvydas*, 533 U.S. at 682. The Supreme Court held that, despite the apparently clear language of 8 U.S.C. §1231(a)(6), due process prohibits the government from detaining an individual indefinitely after the 90-day removal period has expired. *Id.* At 689. (specifically stating that §1231(a)(6) "does not permit indefinitely detention"). Instead, detention is limited to the period reasonably necessary to bring about the removal. *Id.* Therefore, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized." *Id.* at 699.

b. Regulations and ICE Third-Country Removals Policy

23. DHS regulations provide that, before the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the non-citizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the non-citizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must conduct a custody review before or at 180 days. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizens under conditions of supervision. *Id.* § 241.4(j)(2). Once the non-citizen is released from detention, the revocation of that release is subject to the provisions of 8 C.F.R. § 241.4(l)(2). This subsection limits which government officials have the authority to revoke an Order of Supervision and limits the exercise of the discretion to revoke an Order of Supervision.

24. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [non-citizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7).

25. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing

factors such as the history of ICE's removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "especially dangerous." *Id.* § 241.14(f).

26. On July 9, 2025, Respondent Acting Director Todd Lyons issued a policy memo that states some non-citizens will be deported to third countries with no notice whatsoever. "If the United States has received diplomatic assurances from the country of removal that [noncitizens] removed from the United States will not be persecuted or tortured, and if the Department of States believes those assurances to be credible, the [noncitizen] may be removed without the need for further proceedings. Pursuant to *D.V.D. v. U.S. Department of Homeland Security,* No. 25-10676-BEM, 2025 WL 1142968 (D. Mass. Apr. 18, 2025); *Dep't of Homeland Security v. D.V.D.*, 145 S.Ct. 2153, 2153 (2025), Respondents are directed to provide the individual with notice and an opportunity to contest removal to a third country on the basis of a fear or likelihood of persecution in such a third country. The Government is enjoined from removing noncitizens to third-party countries without providing various procedural safeguards, including a "meaningful opportunity for the [noncitizen] to raise a fear of return for eligibility for [Convention Against Torture ("CAT") protections"). *D.V.D.*, 2025 WL 1142968, at *24.

STATEMENT OF FACTS

27. Jose Eraland Jimenez Chacon was born in Ciudad Juarez, Chihuahua, Mexico on [redacted] He is not a citizen from any country other than Mexico. Mr. Chacon first entered the United States in 2003 on a B1/B2 non-immigrant visa and adjusted to that of a lawful

permanent resident of the United States on May 2, 2006. On April 12, 2012, Mr. Chacon pled guilty to several charges in the District Court of Jefferson County, Colorado involving criminal conspiracy involving over one hundred pounds of marijuana. Mr. Chacon was sentenced to a term of imprisonment of twenty years, reduced to four years based on Mr. Chacon's cooperation with law enforcement.

28. On February 16, 2016, the United States Department of Homeland Security (DHS) detained Mr. Chacon and issued a Notice to Appear (NTA), charging Mr. Chacon as removable under INA § 237(a)(2)(A)(iii) as an [noncitizen] who has been convicted of a drug trafficking/aggravated felony as defined in INA § 101 (a)(43)(B). Mr. Chacon applied for asylum, withholding of removal, and protection under the CAT.

29. Immigration Judge Donn Livingston granted Mr. Chacon's application for CAT/deferral and denied asylum and withholding of removal. The DHS appealed and the Board remanded for the Immigration Judge to provide specific evidence on which he relied in granting Mr. Chacon's application. On November 3, 2016, Judge Livingston issued a new decision identifying the specific evidence and once more granted Mr. Chacon's CAT/deferral application. DHS did not appeal the Immigration Judge's decision. On November 15, 2016, Guatemala declined to accept Mr. Chacon; Honduras and El Salvador declined to accept him on December 9, 2016. Mr. Chacon was released in March 2017 on an Order of Supervision.

30. Despite of having a grant of CAT/deferral, Mr. Chacon was detained by immigration officials at a checkpoint on February 14, 2025 and issued an NTA charging Mr. Chacon as removable under INA §237(a)(2)(A)(iii) as an [noncitizen] who has been convicted of a drug trafficking/aggravated felony as defined under INA §101(a)(43)(B). The NTA alleged identical facts and grounds for removal as stated in Mr. Chacon's 2016 NTA that Judge Livingston granted Mr. Chacon's application for CAT/deferral. Considering the grant of

CAT/deferral, Immigration Judge Jessica K. Miles terminated Mr. Chacon's removal proceedings on March 7, 2025. Instead of releasing Mr. Chacon, DHS transferred Mr. Chacon to the Otero Processing Center and issued a second NTA on June 9, 2025. On June 23, 2025, both Mr. Chacon and DHS filed a joint motion to dismiss the proceedings. The motion to dismiss was granted by Immigration Judge Jacinto Palomino. FOIA results do not show any revocation notice of Mr. Chacon's Order of Supervision. Upon information and believe, Mr. Chacon was never served with a copy, given notice, or an opportunity to be heard as to why his Order of Supervision should not be revoked.

31. On May 13, 2025, ICE conducted a custody review and determined that he would not be released from custody because he posed a significant risk of flight pending his removal from the United States. The decision also states, "on March 10, 2025, Immigration officials started looking for a third country of acceptance.". In August of 2025, Mr. Chacon was again interviewed for his 90-day custody review, and it was again determined that he would not be released from custody.

32. On April 25, 2025, prior counsel sent a release request to ELP ICE/Otero Processing Center, explaining that Mr. Chacon qualified for post-order release and requesting reinstatement of his order of supervision. Counsel explained that Mr. Chacon does not pose a flight risk nor a danger to the community. Mr. Chacon is married to a United States citizen and is the father of three United States citizen children. His mother and brother are also United States citizens. Mr. Chacon is the owner and operator of a successful business- Eraland's Custom Pools, LLC- based in El Paso, Texas, which employs over thirty individuals. Counsel provided documentation regarding Mr. Chacon's strong family and community ties. Upon information and belief, the request for release was denied.

33. ICE has not identified any exceptional circumstances for wanting Mr. Chacon's continued detention, nor that removal to a third country is foreseeable or that it has charged Mr.

Chacon as "especially dangerous" under 8 C.F.R. § 241.14. ICE informed Mr. Chacon that it was seeking to remove him to El Salvador, Honduras, Guatemala, and to an African country but it has not designated any country for removal. FOIA results show that at least one of these countries, Honduras, refused to accept Mr. Chacon. For any of these countries, Mr. Chacon has not been given opportunity to contest removal to a third country based on fear or likelihood of persecution in the third country.

34. If released, Mr. Chacon will return to his home with his wife and children at [redacted]

[redacted]

ARGUMENT

I. PETITIONER'S DETENTION IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT HAS FAILED TO COMPLY WITH BOTH APPLICATION STATUTORY PROVISIONS AND ITS OWN REGULATIONS.

35. Once Mr. Chacon was released from detention on an Order of Supervision, the revocation of that release was subject to provisions of 8 C.F.R. §241.4(l)(2). That subsection specifically limits which government officials have the authority to revoke an Order of Supervision:

> The Executive Associate [Director] shall have authority, in the exercise of discretion, to revoke release and return to [ICE] custody a [noncitizen] previously approved for release under the procedures in this section. A district director may also revoke release of a "noncitizen] when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].

8 C.F.R. §241.4 (l)(2). The same subjection limits the exercise of the discretion to revoke an Order of Supervision:

> Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:
>
> (i) The purposes of release have been served;
> (ii) The [noncitizen] violates any condition of release;
> (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a[noncitizen]; or

> (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.

8 C.F.R. § 241.4(1)(2). In Mr. Chacon's case, the government did not comply with either of these binding regulations in revoking his Order of Supervision. Mr. Chacon was encountered at a checkpoint and processed as a lawful permanent resident, despite his 2016 order of removal, grant of CAT/deferral by an immigration judge, and despite Mr. Chacon's full compliance with the requirements of his Order of Supervision. There is no indication in the FOIA results that Mr. Chacon's Order of Supervision has ever been revoked and much less whether it has been legally revoked for a permission reason by order signed by the Executive Associate Director of ICE, someone to whom the Executive Associate Director has legally delegated authority, or a district director who has made specific findings that the circumstances "do not reasonably permit referral of the case to the Executive [Director]. 8 C.F.R. §241.4(l)(2). There is no evidence that Mr. Chacon's Order of Supervision was lawfully revoked by someone with the authority to do so and for a reason lawfully permitted. Mr. Chacon has not been afforded due process in connection with the revocation in his Order of Supervision. Mr. Chacon was arrested and re-detained in violation of statutes and regulations that govern the revocation of a lawful Order of Supervision.

36. Furthermore, 8 C.F.R. §241.4 (l)(1) provides:

> Any [noncitizen] . . . who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. . . . *Upon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release or parole. The [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.*

8 C.F.R. § 241.4 (l)(1). Mr. Chacon was never provided with a notification of the revocation of his Order of Supervision; he was never advised of the reasons for the revocation

and has never been provided with the informal interview required by §241.4(l)(1). "Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Fed. Deft. of New York, Inc. v. Fed. Bureau of Prisons,* 954 F.3d 118, 130 (2d Cir. 2020); *see also Gulf States Mfrs., Inc. v. Nat'/ Labor Relations Bd.,* 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); *Gov't of Canal Zone* v. *Brooks,* 427 F.2d 346, 347 (5th Cir. 1970) (per curium) ("It is equally well established that it is · a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it."). Multiple courts have held that the government's failure to follow its own immigration regulations may warrant the release of a detained noncitizen. *See, e.g., Bonitto,* 547 F. Supp. 2d at 756; *Zhu* v. *Genalo,* No. 1 :25-cv-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Guillermo MR.* v. *Kaiser,* No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025); *Ceesay* v. *Kurzdorfer,* 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Rombot* v. *Souza,* 296 F. Supp. 3d 383, 389 (D. Mass. 2017). ("While ICE does have significant discretion to detain, release, or revoke aliens, the agency must still follow its own regulations, procedures, and prior written commitments."). The government has violated Mr. Chacon's due process rights by failing to comply with its own regulations. The regulations were promulgated to safeguard due process rights of noncitizens, and Respondents' violations severely prejudiced Mr. Chacon had these regulations been followed, Mr. Chacon would have had a meaningful opportunity to contest the revocation of his supervised released, demonstrate his compliance with the Order of Supervision, and prevent his unlawful detention.

37. Under the well-established Accardi doctrine, when an agency fails to follow its own procedures

or regulations, that agency's actions are invalid. *United States ex rel. Accardi v. Shaughmessy*, 347 U.S. 260, 268 (1954). As relief, Mr. Chacon asks the Court to immediately order Respondents to release him from custody and restore his Order of Supervision on the same conditions as before his February 2025 arrest.

II. PETITIONER'S CONTINUED DETENTION IS UNLAWFUL UNDER *ZADVYDAS* BECAUSE HIS REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT SHOULD ACCORDINGLY ORDER HIS IMMEDIATE RELEASE.

A. Mr. Chacon's removal is not reasonably foreseeable under *Zadvydas* and continued detention violates due process.

38. Mr. Chacon's detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since he received a final grant of withholding of removal relief. The 90-day removal period began for Mr. Chacon December 3, 2016, when the appeal period expired without either party filing a timely appeal. *See* 8 U.S.C. § 1231(a)(1)(B) (i); 8 C.F.R. §1241.1(c). Therefore, the *Zadvydas* framework applies to Mr. Chacon's detention, and he has been detained for more than six months since his removal order became final.

39. Mr. Chacon was initially released from custody in March of 2017 because he could not be removed from the United States due to his grant of CAT/deferral of removal to Mexico. His removal order became final on December 3, 2016, when his 90-day removal period ended on March 3, 2017. His 180-day *Zadvydas* presumptively reasonable period expired June 1, 2017. More than eight years later, Mr. Chacon remains unremovable to Mexico due to his still-valid order of CAT/deferral of removal.

40. Mr. Chacon will likely *never* be deported from the United States, let alone in the reasonably foreseeable future. He cannot be deported to his home country of Mexico because he has a final grant of CAT/deferral of removal. *See* 8 C.F.R. § 1208.16. Mr. Chacon is not a citizen of, has never lived in, and has no connection to *any* country besides his home country, let alone the countries to which ICE has attempted to remove individuals in the past. Unlike in

Zadvydas itself, in which the petitioners were subject to final orders of removal and had no pending legal bar to removal, Mr. Chacon has been granted CAT/deferral of removal as to Mexico, the only country to which Mr. Chacon has a claim to citizenship or legal immigration status. Accordingly, Mr. Chacon cannot be removed to Mexico without the lifting of the order providing for CAT/deferral of removal protection. 8 C.F.R. § 1208.24(f). A grant of withholding of removal "substantially increases the difficulty of removal" an individual. *Muñoz-Saucedo v. Pittman*, No. 25-2258-CPO, 2025 WL 1750346, at *6 (D.N.J. June 24, 2025).

41. Even in the highly unlikely scenario that an alternative country notifies ICE of its willingness to accept the deportation of Mr. Chacon, ICE would still be required to obtain travel documents and afford him a Reasonable Fear Interview (RFI) at which he would have the opportunity to articulate a fear of return to the country willing to accept him. *See* 8 C.F.R.§ 241.8(e). If an Asylum Officer (AO) were to find that Mr. Chacon demonstrated a reasonable possibility of persecution or torture at the RFI, or an IJ subsequently vacated a negative finding by the AO, he would enter withholding-only proceedings before an IJ in which he would again seek to demonstrate his eligibility for withholding or CAT relief with respect to that country, thereby restarting the process that took several months to complete the first time. The fact that Mr. Chacon will have the opportunity to seek further review from the Immigration Court, and then potentially file appeals from any adverse rulings, further demonstrates that removal is not likely in the reasonably foreseeable future. *Munoz-Saucedo*, WL 1750346, at *7 (finding relevant to the reasonably foreseeable analysis the fact that "even if ICE identified a third country, Petitioner…. would be entitled to "seek fear-based relief from removal to that country,' which would require 'additional, lengthy proceedings").

42. Therefore, Mr. Chacon has been detained for more than six months since receiving a final removal order, and his removal is not reasonably foreseeable because he cannot be deported

to his home country due to his CAT/deferral relief grant and because he does not have any ties to any other country. Furthermore, deporting Mr. Chacon to a third country would require additional, lengthy proceedings. *See Hassoun v. Sessions*, No. 18-cv-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (finding removal not reasonably foreseeable where several countries had declined to issue travel documents and several others had provided no response or timeline for response); *Kacanic v. Elwood*, No. 02-cv-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002) (finding removal not reasonably foreseeable where the country of origin had "been in possession of all the information [ICE] is capable of providing to it" but had "never stated that the Petitioner is likely to be granted travel papers" and was "unable to tell the [ICE] when a decision will be reached").

43. Mr. Chacon has demonstrated that his continued detention is unreasonable under *Zadvydas*. He has established far more than a "good reason to believe' that there is no significant likelihood of his removal in the reasonably foreseeable future as 1) he cannot legally be removed to Mexico; 2) no other country has agree to accept him; and 3) even if such a country were identified, Mr. Chacon will be entitled to apply for protection from removal to that country, including on the basis that the country would send him to Mexico, a process that would take my months if not years to complete. Post-removal order detention for less than six months may still be unreasonable in unique circumstances where he can meet his burden of demonstrating that removal is not reasonably foreseeable. *See Cesar*, 542 F. Supp. 2d at 904 ("The burden might be on the detainee within the first six months to overcome the presumptive legality of his detention, but where a[] [non-citizen] can carry that burden, even while giving appropriate deference to any Executive Branch expertise, his detention would be unlawful."); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months."); *Ali v. DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) ("Whereas the *Zadvydas* Court established

a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.").

44. For the reasons stated above, Mr. Chacon has clearly met any burden of proof that this Court may place on him. Unlike *Zadvydas* and the vast majority of its progeny, which analyzed whether ICE will foreseeably remove non-citizens to their home country or country of citizenship, *see, e.g., Zadvydas*, 533 U.S. at 684-85, the question here is whether ICE will be able to deport Mr. Chacon to a third country to which he has no connection whatsoever. The answer to that question has been no from the moment Mr. Chacon's relief grant became final, and the likelihood of third-country removal has only decreased since then. Mr. Chacon has been detained for more than 6 months after his re-detention in February 2025 in violation of his due process. And although agreements have been reached with foreign nations to accept third-country removals, Respondents have not designated any third country in Mr. Chacon's case or that it plans to remove him to a third country were such agreements are in place.

45. Under *Zadvydas,* Respondents cannot detain Mr. Chacon indefinitely while they search for a country that might accept him or while they pursue lengthy legal proceedings to try to overcome his withholding/CAT protection. Such detention violates both the statutory limitations of 8 U.S.C. §1231(a)(3).

B. This Court should order Mr. Chacon's immediate release.

46. Because Mr. Chacon's removal is not reasonably foreseeable, *Zadvydas* requires that h e be immediately released. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision"). To order his immediate release, this Court need only determine that Mr. Chacon's removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a

danger to the community or a flight risk. *See* 533 U.S. at 699-700 ("[I]f removal is not reasonably foreseeable; the court should hold continued detention unreasonable and no longer authorized by statute.").

47. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, *see id.* at 690 (observing that the "justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best"), and that dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the non-citizen being a "suspected terrorist[]" but do not include the non-citizen's "removable status itself." *Id.* at 691. *See also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention]."). With respect to Mr. Chacon's detention, ICE has not invoked the regulations governing these "special circumstances" determinations. *See* 8 C.F.R. § 241.14.

48. To the extent this Court considers any factors outside of the foreseeability of Mr. Chacon's removal, which it need not do, Mr. Chacon has significant equities that warrant release. Since his release on Order of Supervision in 2017, Mr. Chacon has not engaged in any criminal activity. He is a successful business owner and owns his home in El Paso, Texas. He is married to a United States citizen and has three United States citizen children. Mr. Chacon does not pose any risk or danger to the community. Due to his strong community and family ties, Mr. Chacon also does not pose a flight risk.

49. Additionally, this Court or ICE is free to impose conditions on release to mitigate any potential concerns regarding flight risk or danger. *See Zadvydas*, 533 U.S. at 700 ("[T]he [non-citizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.").

III. THIRD COUNTRY REMOVAL WITHOUT OPPORTUNITY TO SEEK PROTECTION

50. The Convention Against Torture, as implemented in U.S. law, prohibits Respondents from removing an individual to any country where such individual is more likely than not to face torture by or at the acquiescence of the government. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. §§ 1208.16(c), 1208.18. This prohibition extends to chain refoulement— the practice of deporting someone to a country which will in turn deport that person to be tortured elsewhere. *See* 8 C.F.R. § 1208.18(a)(1).

51. For an individual with an order of CAT/deferral to a particular country, like Mr. Chacon, Respondents can only remove him to another country if he first receives notice and an opportunity to apply for protection from removal to that third country. *See* 8 U.S.C. § 1231(b)(3)(A); *See, e.g.., Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101, at *2 (Apr. 10, 2025) (Sotomayor, J. concurring).

52. Mr. Chacon has no claim to citizenship or permanent residence in any country other than Mexico. Accordingly, any third country to which he might be deported would, in turn, deport him to Mexico, where it has already been held that he faces a substantial risk of persecution. Respondents communicated to Mr. Chacon's counsel that they intend to remove him to a third country but have not yet determined which country.

53. Mr. Chacon could face persecution or torture if removed directly to various other countries, including but not limited to countries with notorious human rights abuses like Libya, South Sudan, and Eritrea. Without knowing which country Respondents intend to try to remove him to, Mr. Chacon cannot prepare or file an application for protection.

54. As relief, Mr. Chacon request an order from this Court that Respondents may not remove Mr. Chacon from the continental United States without first providing him and his counsel with written notice of the specific country they intend to remove him to, and a reasonable period of time—which Mr. Chacon respectfully suggests is at least fifteen days—to file an application for relief under, among other things, the withholding of removal statute and the Convention Against Torture with respect to such country. Additionally, access to counsel is critical to preparing any potential application for relief. Mr. Chacon asks that such order be further narrowed to prohibiting Respondents from removing him or relocating him to a detention facility outside the District of New Mexico.

CLAIM FOR RELIEF

COUNT I

1. Mr. Chacon realleges and incorporates by reference the paragraphs above.

2. When ICE arrested Mr. Chacon on February 14, 2025, the violated 8 C.F.R. §241.4(l). Mr. Chacon was never notified of the reasons for revocation or an opportunity to respond to the reasons for revocation stated in the notification. The regulations enacted by the government itself are intended to ensure that noncitizens who have been released to supervision do not arbitrarily have that supervision revoked. By failing to follow its own regulations, the government has denied Mr. Chacon notice of its intent to revoke his supervision, notice of the reasons for the revocation, and an opportunity to challenge those reasons.

3. Mr. Chacon asks the Court to immediately order Respondents to release Mr. Chacon from custody and restore his Order of Supervision.

COUNT II

4. Mr. Chacon realleges and incorporates by reference the paragraphs above.

5. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the [noncitizen's] removal from the United States." 533 U.S. at 689, 701.

6. Mr. Chacon's continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, Mr. Chacon's continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released and placing him under an order of supervision pursuant to 8 U.S.C. §1231(a)(3).

7. Mr. Chacon has established that there is no significant likelihood that he will be removed in the foreseeable future and thus also violates due process under the U.S. Constitution.

COUNT III

8. Mr. Chacon alleges and incorporates by reference the paragraphs above.

9. On information and belief, Mr. Chacon is currently being detained by federal agents without cause and in violation of his constitutional rights to due process of law. Mr. Chacon has a liberty interest in his continued release under his Order of Supervision. He has been free under that Order for over eight years. He has a job and a family. He has complied with all the terms of his Order of Supervision. The government violated Mr. Chacon's due process rights by re-detaining him without complying with its own regulations and the law. Mr. Chacon's continued detention also violates due process because it is not likely that he will be removed in the foreseeable future. The only way to vindicate Mr. Chacon's due process rights is to order his release from custody.

COUNT IV

10. For an individual with an order of CAT/deferral of removal to a particular country, like Mr. Chacon, Respondents can only remove him to another country if he first receives notice and an opportunity to apply for protection from removal to that third country. *See* 8 U.S.C. § 1231(b)(3)(A).

11. Mr. Chacon requests an order from this Court that Respondents may not remove Mr. Chacon from the continental United States without first providing him and his counsel with written notice of the specific country they intend to removal him to, and a reasonable period of time- which Mr. Chacon respectfully suggests is at least fifteen days- to file an application for relief under, among other things, the withholding of removal statute and the Convention Against Torture with respect to such country. Mr. Chacon further requests that the order be further narrowed to prohibiting Respondents from removing him or relocating him to a detention facility outside Otero County, New Mexico.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order that Petitioner shall not be transferred outside of the District of New Mexico, specifically Otero County, New Mexico.
3. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within seven days;
4. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

6. Issue an order that Petitioner's Order of Supervision be restored and that he continues supervision under the same terms as in place prior to February 14, 2025.
7. Issue an order that Petitioner be provided notice and an opportunity to request protection from removal to any third country that the Respondents may identify.
8. Grant any other further relief this Court deems just and proper.

Respectfully submitted,

/s/ Brenda M. Villalpando
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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 the attorney for Petitioner. 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: October 2, 2025

Respectfully submitted,

/s/Brenda M. Villalpando
Brenda M. Villalpando
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

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Otero Processing Center
26 McGregor Range Rd.
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U.S. Department of Homeland Security
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Pam Bondi, Attorney General
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Ryan Ellison
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Dated: October 7, 2025

Respectfully submitted,

/s/Brenda M. Villalpando
Brenda M. Villalpando
Counsel for Petitioner