

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03317

**IMAN MOHAMED ALI,**

*Petitioner-Plaintiff,*

v.

**JUAN BALTAZAR, et al.,**

*Respondents-Defendants.*

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REPLY TO RESPONSE, ECF No. 17, TO PETITION FOR WRIT OF HABEAS  
CORPUS, ECF No. 1, AND MOTION FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION, ECF No. 3

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Petitioner-Plaintiff ("Petitioner"), Iman Ali ("Mr. Ali"), files this Reply to the Respondents-Defendants' ("Respondents") Consolidated Response to Petition for Writ of Habeas[ ] Corpus [ECF No. 1] and Motion for Temporary Restraining Order and Preliminary Injunction [ECF No. 3].<sup>1</sup> Here, the record overwhelmingly establishes that Mr. Ali's detention is unconstitutional, warranting his immediate release.

**I. Mr. Ali's Indefinite Detention is Unlawful Because Respondents' Pursuit of His Removal is Aspirational, At Best, And Not Significantly Likely in the Reasonably Foreseeable Future.**

Respondents recognize that Mr. Ali cannot be removed to Somalia because he was awarded protection under the Convention Against Torture ("CAT"). ECF No. 17-1 ¶

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<sup>1</sup> The Response was filed on behalf of "Federal Respondents." ECF No. 17 at 1. Respondent-Defendant Juan Baltazar did not provide a Response and has waived his opportunity to do so. See, e.g., *Reed v. Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002).

29. They further state that he is *not* at risk for third country removal. Yet, in the same breath, they claim that his removal is reasonably foreseeable. ECF No. 17 at 2-3.

**Mr. Ali's *Zadvydas* claim is ripe.** Respondents ignore the fact that Mr. Ali's cumulative detention is greater than six months, creating a presumption that his current detention is unlawful. "The government's contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself." *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at \*9 (S.D. Tex. Sept. 26, 2025) (citing *Nguyen v. Scott*, No. 2:25-cv-01398, — F.Supp.3d —, —, 2025 WL 2419288, at \*13 (W.D. Wash. Aug. 21, 2025); *Chen v. Holder*, No. 6:14-2530, 2015 WL 13236635, at \*2 (W.D. La. Nov. 20, 2015)). Release and redetention does not reset the clock. *S.F. v. Bostock*, No. 3:25-CV-01084-MTK, 2025 WL 2841022, at \*4 (D. Or. Oct. 7, 2025).

Here, ICE has detained Mr. Ali pursuant to a March 28, 2019 order of removal for 204 days and counting. His initial detention post-final order lasted 90 days, until June 26, 2019. ECF No. 17-1 ¶¶ 29-30. ICE redetained Mr. Ali on July 23, 2025, ECF No. 17-1 ¶ 32, and 114 days later, he remains in custody. Therefore, Mr. Ali benefits from the presumption established in *Zadvydas* that his incarceration is unconstitutional.

Even if this Court does not consider the cumulative time of Mr. Ali's detention, it may nevertheless grant his claim prior to the six-month mark. *Zadvydas v. Davis*, 533 U.S. 678, 699-701 (2001); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020). "Even within the presumptively constitutional detention period, whether a noncitizen's detention is constitutional hinges on whether his removal from

the United States is reasonably likely in the foreseeable future, not on how long the noncitizen has been detained.” *Villanueva*, 2025 WL 2774610, at \*10 (citing *Zadvydas*, 533 U.S. at 699). Given Respondents have provided no evidence that removal is foreseeable, Mr. Ali’s claim of unconstitutional detention is ripe. See ECF No. 17-1 ¶ 35.

**Respondents cannot demonstrate that Mr. Ali’s removal is significantly likely in the reasonably foreseeable future.** As an initial matter, Mr. Ali has shown “good reason to believe” that there is no significant likelihood of removal. *Zadvydas*, 533 U.S. at 701. Therefore, Respondents bear the burden of demonstrating removal is likely in the reasonably foreseeable future. *Id.* They squarely fall short, as demonstrated by four key facts: (1) ICE was unable to deport Mr. Ali in 2019; (2) after detaining him, ICE attempted to strong-arm Mr. Ali into accepting removal to Somalia, ECF No 1-2 at 81 ¶ 5, because Respondents have identified no other alternative; (3) ICE has not attempted to reopen Mr. Ali’s immigration proceedings to seek termination of the immigration judge’s (“IJ”) grant of CAT protection, *see generally* ECF No. 17-1; and (4) Respondents have not provided *any evidence* of recent attempts to secure a third country for removal, ECF No. 17-1 ¶ 35 (indicating that ICE and the Department of States are pursuing avenues for removal without offering further detail). As such, Respondents have not met their burden. See *S.F.*, 2025 WL 2841022, at \*4 (finding the government’s assertion that Petitioner “could be a candidate” for a scheduled charter flight to Iran “speculative” and insufficient); *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at \*5 (D. Minn. Aug. 25, 2025) (finding ICE’s evidence of likelihood of removal fell “woefully short”). Based on this record, Mr. Ali’s detention is unconstitutional and this Court should order his immediate release.

**II. It is Unlawful for ICE to Remove Mr. Ali to a Third Country Without Sufficient Notice and Process**

Contrary to Respondents' arguments, the *risk* of Mr. Ali's removal is not speculative, though their claim that it provides a lawful basis for his detention is. Because the possibility of third country removal poses an acute threat,<sup>2</sup> Mr. Ali merits explicit protections, *prior* to being detained, if the government seeks to effectuate his removal to a third country.

ICE attempts to justify Mr. Ali's detention based on the premise that the agency can remove him to a third country. ECF No. 17 at 10. As a result, the question of third country removal is inextricably linked with the fact of detention under current ICE policy because, as exhibited in Mr. Ali's case, ICE first detained him and *then* began to contemplate the question of where they might send him. See ECF No. 17-1 ¶¶ 32-35. Thus, habeas is the most appropriate vehicle for Mr. Ali to raise his claim against the deficient third country removal process. See *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). The "fundamental purpose of a § 2241 habeas proceeding" is to "attack" the legality of detention and to "secure release from illegal custody." *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 811 (10th Cir. 1997) (quotation marks and citation omitted).

Despite Respondents' unsupported assertion, this Court is not barred from providing Mr. Ali with the relief he seeks by the pending litigation in *D.V.D. v. Department of Homeland Security*, No. CV 25-10676-BEM (D. Mass. Apr. 18, 2025). A court in this

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<sup>2</sup> Steven Groves, *Senate Democrat questions Trump administration's \$7.5M payment to Equatorial Guinea*, ASSOCIATED PRESS (Nov. 10, 2025), <https://apnews.com/article/equatorial-guinea-payment-marco-rubio-82335605d00326d59f9464d4e6c1c018>; @ICEFlightM, X (Nov. 6, 2025) <https://x.com/ICEFlightM/status/1986615169682718833> (confirming four third country removal flights to Ghana in the past two months).

District, as well as courts in other districts, have found no such preclusion. See *Arostegui-Maldonado*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at \*12 (D. Colo. Aug. 8, 2025); *Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 2987766, at \*2-3 (W.D. Wash. Oct. 23, 2025); *M.T.M. v. Andrews, et al.*, No. 2:25-CV-08208-SRM-PD, 2025 WL 2995053, at \*2 (C.D. Cal. Sept. 24, 2025).

Respondents must designate a country of removal before Mr. Ali can be deported. 8 U.S.C. §§ 1231(b)(2)(C)-(E); 8 C.F.R. §§ 1240.10(f), 11(c)(1)(i); *Villanueva*, 2025 WL 2774610, at \*8. Due process also requires Mr. Ali be given the opportunity to raise fear-based claims to defend against third country removal. ECF No. 1 ¶¶ 102-05; *Kuhai v. INS*, 199 F.3d 909, 913-14 (7th Cir. 1999); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). This legal framework is buttressed by the Administrative Procedure Act's ("APA") protections. ECF No. 1 ¶¶ 106-07. By failing to identify a country, Respondent also prevent Mr. Ali from being able to raise fear-based claims, a Kafkaesque maneuver. In a similar situation, a federal court in California found that ICE's clearly stated intention to remove the petitioner to an undisclosed third country was sufficient to establish a likelihood of success on the merits. *Nadari v. Bondi*, No. 2:25-CV-07893-JLS-BFM, 2025 WL 2934514, at \*3 (C.D. Cal. Sept. 3, 2025).

It is clear by ICE's own policy, ECF No. 1 ¶¶ 65-66, and statements specific to Mr. Ali's case, ECF No. 17-1 ¶ 35, that the agency intends to send him to a third country. However, given his serious medical and mental disabilities, Mr. Ali is likely to have a good faith basis to seek fear-based protection from removal to most countries that may be proposed. See ECF No. 1-2 at 83-84 (describing how Mr. Ali experiences the symptoms of his disabilities), 93 (detailing the risks posed to Mr. Ali should he be

deported given his diagnoses), 103-06 (summarizing the effects deportation is likely to have on Mr. Ali, including “extreme psychological suffering and functional decline”). Mr. Ali seeks this Court’s intervention requiring Respondents to adhere to their non-discretionary obligation to provide notice and an opportunity to seek fear-based protection before Respondents may effectuate his removal.

**III. Respondents’ Regulatory Interpretation is Unconstitutional and Violates the APA.**

Respondents’ redetention of Mr. Ali almost six years after he was released from custody, without a pre-deprivation hearing, violates due process, regulatory requirements, and the APA. Immediate release is the appropriate remedy.

**Violation of Procedural Due Process.** Based on the factors in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Mr. Ali has established that he was entitled to notice and a predeprivation hearing prior to his redetention. ECF No. 1 at ¶¶ 110-18; *Roble*, 2025 WL 2443453, at \*3 (granting habeas relief where ICE provided no notice of the reasons why petitioner was being detained); *Garcia Domingo v. Castro*, No. 1:25-CV-00979-DHU-GJF, 2025 WL 2941217, at \*4 (D.N.M. Oct. 15, 2025) (ordering petitioner’s immediate release and restraining respondents from redetention without first proving to a neutral arbiter, by clear and convincing evidence, that detention was justified). Respondents ineffectively seek to distinguish between due process principles applicable to criminal parole versus release from immigration custody. ECF No. 17 at 11-12. However, courts have long looked to such principles to determine how due process applies in the immigration setting. *Ramazan M. v. Andrews*, No. 1:25-CV-01356-KES-SKO (HC), 2025 WL 3145562, at \*5 (E.D. Cal. Nov. 10, 2025) (comparing the liberty interests); *Garcia Domingo*, 2025 WL 2941217, at \*4; *Villanueva*, 2025 WL 2774610, at

\*11. Respondents did not adhere to those requirements, in violation of procedural due process.

**Violation of Substantive Due Process.** Respondents have no legitimate, non-punitive objective in revoking Mr. Ali's order of supervision. See *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The substantive due process issue in *Zadvydas* focused on "whether the detention in question exceeds a period reasonably necessary to secure removal." 533 U.S. at 699. "[N]othing supports the argument that danger to the community is a relevant factor to consider in conducting a *Zadvydas* analysis." *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at \*8 (D.N.J. June 24, 2025). At least two circuit courts have agreed. *Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008); *Tuan Thai v. Ashcroft*, 366 F.3d 790 (9th Cir. 2004). Here, Respondents seek to justify detention based on criminal history that has no bearing on the *Zadvydas* analysis. Mr. Ali has deferral under CAT, which has no criminal bars and cannot be terminated based on criminal infractions. See 8 C.F.R. §§ 1208.17(d)-(f). Consequently, Mr. Ali's detention is purely punitive and unconstitutional. *Foucha*, 504 U.S. at 80-83.

**Violation of Regulatory Requirements and the APA.** Respondents mischaracterize Mr. Ali's APA claim, including his invocation of the *Accardi* doctrine, to avoid following agency regulations. ECF No. 17 at 12-14; see *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2841886, at \*6 (D. Md. Oct. 7, 2025) (finding revocation of release violated *both* the *Accardi* doctrine and Fifth Amendment due process). In revoking Mr. Ali's release status, ICE failed to follow agency procedures. ICE did not provide Mr. Ali with written notice of the reasons for his OSUP revocation or a prompt interview to respond, as required by 8 C.F.R. § 241.13(i)(3). See ECF No. 17-1

(omitting information related to these two requirements). Further, Respondents provided no direct evidence establishing that they adhered to their regulatory obligations, as delineated in Mr. Ali's Petition, ECF No. 1 ¶¶ 74-82.<sup>3</sup> Nor is the declaration<sup>4</sup> provided in support of Respondents' defense adequate to demonstrate that they have adhered to their regulatory duties. See Dale Nance, *The Best Evidence Principle*, 73 IOWA L. REV. 227, (1988). Accordingly, they have not defeated Mr. Ali's claim of a regulatory and APA violation. See *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017). Prejudice is presumed in an *Accardi* claim. See, e.g., *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991); see also *Nunez-Robles v. Garland*, No. 20-9629, 2021 WL 5710935, at \*4, FN 4 (10th Cir. Dec. 2, 2021). And, contrary to what Respondents suggest, the proper remedy for their violations is immediate release given the nature of the liberty interest at stake in Mr. Ali's case. See *Yang v. Kaiser, et al.*, No. 2:25-CV-02205-DAD-AC, 2025 WL 2791778, at \*5 (E.D. Cal. Aug. 20, 2025).

#### **IV. Respondents are Unlawfully Engaging in Disability Discrimination.**

**Mr. Ali's Section 504 of the Rehabilitation Act of 1973 ("Section 504") claim is *not* a conditions of confinement claim and cognizable within a habeas petition.**

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<sup>3</sup> Namely, Respondents have not provided: (1) Mr. Ali's June 26, 2019 Order of Supervision, ECF No. 17-1 ¶ 30; (2) notice of ICE's intention to re-detain Mr. Ali, including the basis for his detention; (3) "relevant documents" allegedly served on Mr. Ali on July 23, 2025, including "arrest warrant, departure order, and final order of removal, *id.* ¶¶ 32-33; and (4) POCR decision, allegedly issued on October 18, 2025, denying Mr. Ali release, *id.* ¶ 34. ICE *did not* provide counsel with a copy of the POCR decision the agency served on Mr. Ali. ECF No. 18-1. It is dated October 16, 2025, and was served on October 19, 2025, undermining the reliability of Ms. Quinones's declaration. Further, it provides no individualized analysis justifying Mr. Ali's continued detention.

<sup>4</sup> See *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, 2025 WL 2280357, at \*3 (D. Colo. Aug. 8, 2025) (describing the testimony of the declarant, Irma Quinones, "to be equivocal, uninformed, and unhelpful," as well as "extraordinarily deficient").

Because Mr. Ali is seeking release from detention as a reasonable accommodation, habeas is the appropriate vehicle. See *Fuentes v. Choate*, No. 24-CV-01377-NYW, 2024 WL 2978285, at \*12 (D. Colo. June 13, 2024) (“the Court has located no authority demonstrating that Petitioner can request release from custody under the Rehabilitation Act outside of the habeas context”); but see *Viruel Arias v. Choate*, No. 1:22-CV-02238-CNS, 2022 WL 4467245, at \*4 (D. Colo. Sept. 26, 2022). In the alternative, Mr. Ali also filed a joint habeas petition and civil complaint to ensure that this Court could rule on his Section 504 claim. See *Whitmore v. Parker*, 484 F. App’x 227, 240 (10th Cir. 2012).

**Mr. Ali’s claim may proceed under Section 504’s implied cause of action or directly under the APA.** Federal courts continue to recognize the existence of implied private rights of action when “a statute confers rights on a particular class of persons” and where Congress’s intent to create both a private right and a private remedy is clear. *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002). Even if that were not so, Mr. Ali’s Section 504 claim can proceed under the APA. See 5 U.S.C. § 702 (“A person suffering legal wrong because of agency action. . . is entitled to judicial review thereof”); 5 U.S.C. § 704 (limiting this cause of action to “final agency action for which there is no other adequate remedy in a court”). The APA’s express waiver of sovereign immunity for suits against federal agencies “seeking relief other than money damages” waives sovereign immunity in cases brought under causes of action other than the APA. *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225 (10th Cir. 2005).

**Compliance with Section 504 requires Mr. Ali’s release.** Release is the sole remedy that meets the meaningful access standard. See *Brooks v. Colorado Dep’t of Corr.*, 12 F.4th 1172 (10th Cir. 2021). Respondents are aware of Mr. Ali’s severe mental

disabilities and the necessity of heightened safeguards in his case. ECF No. 17-1 ¶ 28. As such, they must assess whether a reasonable accommodation is required to ensure Mr. Ali's meaningful participation in his proceedings. See *Punt v. Kelly Servs.*, 862 F.3d 1040, 1048 (10th Cir. 2017). Yet, they failed to engage in such an inquiry. See ECF No. 17 at 18-19. Here, Mr. Ali's detention impedes his access to the benefit sought, ECF No. 1 ¶¶ 132-33, 140-48, and Respondents raised no viable defenses. See, e.g., *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 662-63, 690 (2001). Consequently, Respondents' failure to provide Mr. Ali with a reasonable accommodation amounts to disability discrimination.

#### **V. Mr. Ali Merits Injunctive Relief**

Contrary to Respondents' contentions, ECF No. 17 at 19-21, Mr. Ali has satisfied the four elements for a TRO, ECF No. 3.

#### **VI. Conclusion**

For the forgoing reasons, Mr. Ali respectfully requests that the Court grant his Petition, ECF No. 1, and order his immediate release. In the alternative, the Court should grant a preliminary injunction, ECF No. 3, and order his immediate release.

Respectfully submitted,

/s/ Laura P. Lunn

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### **CERTIFICATE OF SERVICE**

I hereby certify that on November 14, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, pursuant to Fed. R. Civ. P. 5, which will send notification of such filing to the following recipients by email:

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/s/ Laura P. Lunn

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