IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03463-NYW

YUNIER SABORIT AGUILAR,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;
PAMELA BONDI, in her official capacity as Attorney General of the United States;
TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;
ROBERT HAGAN,[1] in his official capacity as Field Office Director of the Denver Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and
JUAN BALTAZAR, in his official capacity as Warden of the Aurora Contract Detention Center,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 13)

Pursuant to the Court's October 31, 2025 Order, ECF No. 13, Respondents respond to Petitioner Yunier Saborit Aguilar's Verified Petition for a Writ of Habeas Corpus ("Petition"), ECF No. 1 (filed October 30, 2025). In the Petition, Petitioner alleges that his ongoing detention lacks any legitimate, non-punitive purpose and therefore violates his substantive due process rights per the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001). ECF No. 1 at 2, 16–17. Petitioner further

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[1] Pursuant to Fed. R. Civ. P. 25(d), Robert Hagan is substituted as Field Office Director of the Denver Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations.

alleges that Respondents' revocation of Petitioner's release under an Order of Supervision ("OSUP") and re-detention, without notice or an opportunity to contest the revocation, violated his procedural due process rights, binding Department of Homeland Security ("DHS") regulations under the *Accardi* doctrine, and the Administrative Procedure Act ("APA"). *Id.* at 2, 14–16, 17–18.

The Court should deny the Petition. First, Petitioner has not shown that his detention is unreasonable under the presumptively reasonable six-month detention period established in *Zadvydas* for detention of noncitizens who have been ordered removed. Second, Petitioner has not shown that any purported deficiency in the process by which Respondents revoked his release under an OSUP would entitle him to habeas relief.

FACTUAL BACKGROUND

I. Petitioner's background

Petitioner is a native and citizen of Cuba. Ex. A ¶ 4 (Decl. of Egidio Fantauzzi-Perez). On June 5, 2019, U.S. Customs and Border Protection ("CBP") encountered Petitioner after he illegally entered the United States. *Id.* ¶ 5. CBP placed Petitioner in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). *Id.* Petitioner then claimed fear of persecution if returned to Cuba, so CBP referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii). *Id.*

On June 18, 2019, Petitioner was convicted in the U.S. District Court for the Western District of Texas of Improper Entry by an Alien in violation of 8 U.S.C.

§ 1325(a)(1) and was sentenced to time served plus one day. *Id.* ¶ 6. On July 9, 2019, USCIS conducted a credible fear interview; at the conclusion of the interview, USCIS determined that Petitioner had established a credible fear of persecution. *Id.* ¶ 7.

On July 16, 2019, USCIS issued Petitioner a Notice to Appear ("NTA"), initiating removal proceedings under 8 U.S.C. § 1229a before the Executive Office for Immigration Review ("EOIR"). *Id.* ¶ 8. The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document) and 8 U.S.C. § 1182(a)(6)(A)(i) (an alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated). *Id.*

Before EOIR, Petitioner pursued an application for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* ¶ 9. On December 19, 2019, the Immigration Judge ("IJ") denied Petitioner's applications and ordered him removed to Cuba; Petitioner did not appeal the IJ's order. *Id.* On March 12, 2020, Immigration and Customs Enforcement ("ICE") removed Petitioner from the United States to Cuba. *Id.* ¶ 10.

Petitioner subsequently illegally reentered the United States, and CBP encountered him on February 19, 2022. *Id.* ¶ 11. On February 20, 2022, ICE reinstated Petitioner's prior removal order pursuant to 8 U.S.C. § 1231(a)(5). *Id.* ¶ 12. Petitioner claimed fear of persecution if returned to Cuba. *Id.* Pursuant to 8 C.F.R. § 241.8(e),

ICE referred Petitioner to USCIS for a reasonable fear interview. *Id.* USCIS interviewed Petitioner on his claim of fear and determined that he had established a reasonable fear of persecution or torture. *Id.* ¶ 13. On April 14, 2022, pursuant to 8 C.F.R. § 208.31(e), USCIS issued a Form I-863, Notice of Referral to Immigration Judge, for the IJ to consider Petitioner's claim for "withholding-only" relief from removal to Cuba under 8 U.S.C. § 1231(b)(3). *See id.*

On May 17, 2022, ICE conducted a custody redetermination for Petitioner pursuant to an injunction issued in *Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. 2020). *Id.* ¶ 14. Because of Petitioner's comorbidity with the COVID-19 virus, ICE released Petitioner from custody on an OSUP on May 18, 2022. *Id.* EOIR then transferred Petitioner's case to the non-detained docket. *Id.* ¶ 15. On July 11, 2022, Petitioner filed his withholding-only application with EOIR, seeking withholding of removal to Cuba. *Id.* ¶ 16.

According to the Centers for Disease Control and Prevention, the COVID-19 public health emergency ended on May 11, 2023. *Id.* ¶ 17.

On June 16, 2025, ICE encountered Petitioner, revoked his release, and returned him to custody. *Id.* ¶ 18. On July 30, 2025, Petitioner appeared before the IJ for a master calendar hearing, and the IJ scheduled Petitioner for an individual hearing on the merits of his withholding-only application. *Id.* ¶ 19. On September 18, 2025, Petitioner appeared before the IJ for a merits hearing. *Id.* ¶ 20. At the conclusion of the hearing, the IJ granted Petitioner's application for withholding of removal to Cuba, and both parties waived appeal. *Id.*

ICE then began the process of pursuing Petitioner's removal to an alternative country pursuant to 8 U.S.C. § 1231(b). *Id.* ¶ 21.

On October 15, 2025, ICE served Petitioner with a Notice to Alien of File Custody Review. *Id.* ¶ 22. The notice informed Petitioner of the approximate date of a Post Order Custody Review ("POCR") that would be conducted for him. *Id.* A POCR is a process by which DHS considers whether continued detention is warranted for a noncitizen who has been ordered removed, including whether there is a significant likelihood of the individual's removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.4. The notice of the POCR also informed Petitioner that he would be able to submit documentation for consideration as part of that review. Ex. A ¶ 22.

ICE continues to pursue third country removal options for Petitioner. *Id.* ¶ 23.

II. Petitioner's habeas petition

After Petitioner had been detained for about four and a half months, on October 30, 2025, he filed this habeas proceeding, claiming that he is currently subject to unlawful civil detention. ECF No. 1 at 1. He alleges that the revocation of his release under the OSUP without notice or an opportunity to contest the revolution violated his Fifth Amendment procedural due process rights (Count I); that Respondents failed to follow their own regulations in revoking Petitioner's release and thus violated his Fifth Amendment rights under the *Accardi* doctrine (Count II); that Petitioner's ongoing detention violates his substantive due process rights, under the standards discussed in *Zadvydas* (Count III); and that the revocation of release and subsequent detention was arbitrary, capricious, and an abuse of discretion and thus violated the APA (Count IV).

Id. at 14–18. He seeks, as relevant here, a declaration that Petitioner's arrest and continued detention are unlawful and an order for his immediate release from ICE custody or, in the alternative, an order for an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers less restrictive alternatives to detention. *Id.* at 18–19.

The same day Petitioner filed his Petition, he filed a Motion for Order to Show Cause, requesting that the Court issue an order to show cause to Respondents, ECF No. 8, and a Motion for Temporary Restraining Order, seeking a Temporary Restraining Order preventing immigration officials from transferring Petitioner outside the District of Colorado or unlawfully removing him from the United States during the pendency of this proceeding, ECF No. 11.

On October 31, 2025, the Court denied the Motion for Temporary Restraining Order but found good cause under the All Writs Act, 28 U.S.C. § 1651, to order Respondents not to remove Petitioner from the District of Colorado or the United States unless or until the Court or the Tenth Circuit vacates the order. ECF No. 13 at 2–4. The Court further directed Petitioner to serve Respondents with a copy of the Petition, any accompanying papers, and the Court's Order by e-mail and overnight mail by November 3, 2025; instructed Petitioner to file proof of such service by November 6, 2025; and ordered Respondents to show cause, within seven days of service, why the Petition should not be granted. *Id.* at 4. Service was completed on November 10, 2025. *See* ECF No. 19.

ARGUMENT

I. Petitioner's current detention does not violate his substantive due process rights under *Zadvydas*.

In Count III, Petitioner asserts that his ongoing detention serves no legitimate, nonpunitive purpose because DHS is unable to remove him to his home country, Cuba, nor has DHS identified, at this point, any viable third-country option for removal, and thus his detention violates his substantive due process rights under the framework set forth in *Zadvydas*. ECF No. 1 at 16–17. The Court should find that Petitioner's substantive due process rights have not been violated by his ongoing detention.

Petitioner's detention is authorized by 8 U.S.C. § 1231. *See* Ex. A ¶¶ 9, 12 (noting that Petitioner is subject to a final order of deportation); 8 U.S.C. § 1231 (providing for the detention and removal of aliens[2] ordered removed). Under § 1231(a), DHS "shall detain" a noncitizen "[d]uring the removal period." 8 U.S.C. § 1231(a)(2). The removal period is the 90-day period during which DHS "shall remove the alien from the United States." *Id.* § 1231(a)(1)(A). This 90-day period begins on the latest of the following:

> (i) The date the order of removal becomes administratively final[;]
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order[; or]
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. § 1231(a)(1)(B).

[2] Respondents use the terms "alien" and "noncitizen" interchangeably in this brief.

Then, upon expiration of the 90-day period, during which detention is mandatory, the government may continue to detain a noncitizen in limited circumstances, which are present here. *See id.* § 1231(a)(6) (providing that an "alien ordered removed who is inadmissible under section 1182 of this title . . . or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period"); Ex. A ¶¶ 8–9 (Petitioner was charged with being inadmissible to the United States pursuant to 8 U.S.C. §§ 1182(a)(7)(A)(i)(I) and 1182(a)(6)(A)(i) and ordered removed on that basis). The Supreme Court has recognized that § 1231(a) authorizes continued detention after the initial 90 days:

> In addition to setting out a 90-day removal period, § 1231 expressly authorizes DHS to release under supervision or continue the detention of aliens if removal cannot be effectuated within the 90 days. . . . DHS routinely holds aliens under these provisions when geopolitical or practical problems prevent it from removing an alien within the 90-day period. . . . [§ 1231] provides for post-removal detention and supervised release in the event an alien cannot be removed within the 90-day removal period.

Johnson v. Guzman Chavez, 594 U.S. 523, 546–47 (2021) (citations omitted). If detained, the noncitizen receives periodic custody reviews. *See* 8 C.F.R. § 241.4.

A noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory right to release or a bond hearing. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–83 (2022). But despite the lack of a statutory right to release or a bond hearing, the Supreme Court has held that a noncitizen detained under this provision may still claim that the detention is so extended that it violates due process. *See Zadvydas*, 533 U.S. at 682, 690.

In *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is "presumptively reasonable." *Id.* at 700–01. The Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, the Court held that after six months, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.*; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("The onus is on the alien to 'provide good reason to believe that there is no such likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'" (cleaned up) (quoting *Zadvydas*, 533 U.S. at 701)).

Petitioner's detention has not yet exceeded six months. He was taken into custody on June 16, 2025, Ex. A ¶ 18, and so he had been in detention for approximately four and a half months at the time the Petition was filed on October 30, 2025, *see* ECF No. 1, and has been in detention for approximately five months to date. Because the six-month presumptively reasonable detention period under *Zadvydas* has not yet elapsed, the Petition is premature, the presumption that the detention is lawful applies, and the *Zadvydas* claim should be denied. *See Aguina-Arreola v. Holder*, No. 13-cv-02942-RM-KMT, 2014 WL 128559, at *3 (D. Colo. Jan. 10, 2014) (finding that the petitioner's claim challenging the constitutionality of his detention under § 1231(a) was premature because he had not yet been detained for six months and noting that the petitioner could "file a new application after expiration of the six month period").

Petitioner argues that, in evaluating whether the six-month period authorized by *Zadvydas* has expired, the Court should look not just to his current period of detention but to the approximately two months he was detained in 2022 before being released on the OSUP and add these two periods together, the cumulative duration of which exceeds six months. ECF No. 1 at 9–10. In support, he cites several district court cases which held that "the *Zadvydas* period is cumulative, not reset by re-detention, to prevent indefinite imprisonment through cycles of release and re-arrest." *Id.* at 9 (citing *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025); *Siguenza v. Moniz*, No. 25-CV-11914-ADB, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); *Diaz-Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019); *Hamama v. Adducci*, No. 17-cv-11910, 2019 WL 2118784, at *3 (E.D. Mich. May 15, 2019); *Sied v. Nielsen*, No. 17-cv-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *Chen v. Holder*, No. 6:14-2530, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015)).

While some district courts have considered the six-month *Zadvydas* period to be cumulative, other district courts have held the opposite, including district courts in the Tenth Circuit. *See, e.g.*, *Qui v. Carter*, No. 25-3131-JWL, 2025 WL 2770502, at *1 (D. Kan. Sept. 26, 2025) (noting that "the [c]ourt has previously rejected the argument that the Supreme Court's six-month presumptively-reasonable period of detention under *Zadvydas* does not restart upon detention of an alien previously released on an OSUP"); *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25,

2025) (finding the petitioner's *Zadvydas* claim premature because "courts have agreed that [where ICE has previously detained and released an individual] the removal-period clock restarts when an alien subject to a removal order is again detained by ICE"); *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *9 n.9 (W.D. Okla. Oct. 15, 2025) ("Courts are mixed on whether . . . aggregation [of previous detention with current detention] is appropriate, but most appear to disfavor aggregation."); *see also Thai v. Hyde*, 788 F. Supp. 3d 57, 61 (D. Mass. 2025) (considering the length of the petitioner's current period of detention only); *Meskini v. Att'y Gen. of U.S.*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, *3 (M.D. Ga. 2018) ("This [c]ourt does not read *Zadvydas* to be a permanent "Get Out of Jail Free Card" that may be redeemed at any time just because an alien was detained too long in the past. The [c]ourt's focus is on *today* . . . ." (emphasis in original)).

This Court should follow the example of its fellow Tenth Circuit district courts and find that the period in 2022 during which Petitioner was detained—prior to filing his withholding-only application—should not count towards the *Zadvydas* period now. *See* Ex. A ¶¶ 11, 14, 16. This approach is consistent with the Supreme Court's recognition in *Zadvydas* that one purpose of detention is to ensure the alien's presence at the time of removal, 533 U.S. at 690 (citing the goals of "ensuring the appearance of aliens at future immigration proceedings" and "preventing flight" (quotation omitted)); that arranging removal may take more than a few months, *id.* at 701 ("[W]e doubt that when Congress shortened the removal period to 90 days . . . it believed that all reasonably foreseeable removals could be accomplished in that time."), and that a six-month period

is a standard that allows for consistent application in law in lower courts, *id.* (recognizing that it is "practically necessary to recognize some presumptively reasonable period of detention" and that six months is an appropriate period "for the sake of uniform administration in the federal courts").

However, even if the six-month presumptively reasonable period had expired, Petitioner still fails to establish a due process violation under *Zadvydas*, as he has not met his initial burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *See id.* In the Petition, he asserts that he cannot be removed to Cuba, and DHS has not identified any viable third-country option for removal, so his "removal is legally foreclosed." ECF No. 1 at 11, 17. But Petitioner's withholding of removal to Cuba was only granted approximately two months ago, on September 18, 2025, Ex. A ¶ 20, and it was only at that time that ICE began the process of pursuing Petitioner's removal to an alternative country, *id.* ¶ 21. ICE has been pursuing third country removal options since then, *id.* ¶ 23.

Given the recency of ICE's commencement of its search into third country options for Petitioner's removal, Petitioner has not met his burden under *Zadvydas* to show that there is no significant likelihood of his removal in the reasonably foreseeable future (and certainly cannot show that "removal is legally foreclosed," ECF No. 1 at 17). *Cf. Nkwanga v. Maurer*, No. 06-cv-00262-MSK-MEH, 2006 WL 2475261, at *1 (D. Colo. Aug. 24, 2006) (finding that the petitioner failed to demonstrate that he was entitled to relief under *Zadvydas* where he failed to provide evidence indicating that his continued detention in the foreseeable future was likely).

Moreover, even if Petitioner had met his burden, the Court should find that Respondents' evidence is sufficient to rebut that showing. Specifically, the attached Declaration of ICE Deportation Officer Egidio Fantauzzi-Perez shows that Petitioner's removal in the reasonably foreseeable future is significantly likely, as, since Petitioner's withholding of removal to Cuba was granted approximately two months ago, ICE has been diligently pursuing third country removal options for Petitioner. Ex. A ¶¶ 20–21, 23. Thus, his removal is reasonably foreseeable, and his current detention does not violate his substantive due process rights under *Zadvydas*.

II. Petitioner is not entitled to immediate release based on claimed deficiencies in the process by which Respondents revoked his OSUP and re-detained him.

Petitioner also seeks immediate release on the ground that the process by which Respondents revoked his OSUP and re-detained him was deficient. ECF No. 1 at 2. Specifically, Petitioner contends that, because the revocation occurred "without notice, without findings by an authorized official, and without any hearing," it violated his Fifth Amendment procedural due process rights and "binding DHS regulations under the *Accardi* doctrine at the moment revocation occurred." *Id.* at 2, 14–16. He points to 8 C.F.R. §§ 241.4(l)(1)–(2) and 241.13(i) as setting forth the procedure ICE should have followed to revoke his supervised release. *Id.* at 8, 10–11. Based on these alleged violations, he requests his immediate release. *Id.* at 2, 19. Petitioner also argues that the revocation and re-detainment was arbitrary, capricious, and an abuse of discretion under the APA, citing 8 C.F.R. § 241.13(i). *Id.* at 17–18.[3]

[3] To the extent that Petitioner argues in his APA claim that Petitioner's ongoing

Petitioner is not entitled to habeas relief based upon alleged violations of procedural due process rights, DHS regulations, or the APA in connection with the revocation of his OSUP. He has not shown that any procedural due process violation, violation of DHS regulations, or APA violation, even if established, would warrant immediate release. A procedural due process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. The proper remedy for lack of procedural due process or a violation of the APA should be additional process, not immediate release. Petitioner points to *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954), for the principle that "agencies must follow their own procedures, rules, and instructions. ECF No. 1 at 7. But, in *Accardi*, the Supreme Court did not order substantive relief (there, the suspension of deportation) but rather ordered the agency to afford the process provided in its regulations. *See* 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeal's failure to comply with its regulations, "he should receive a new hearing before the Board"). Thus, even under *Accardi*, Petitioner should at most be given what the text of the relevant regulations—here, 8 C.F.R. §§ 241.4(l)(1)–(2) and 241.13(i)—requires. And ICE is in the process of doing just that—it is scheduling Petitioner for an upcoming POCR and notified Petitioner that he can submit documentation as part of that review. *See* Ex. A ¶ 22.

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detention is arbitrary, capricious, an abuse of discretion, or unsupported by substantial evidence, *see* ECF No. 1 at 18, that is addressed through the *Zadvydas* analysis above. *See supra* Section I.

Consistent with this reasoning, various district courts have declined to grant release as a remedy for a procedural violation of immigration regulations. *See, e.g.*, *Olmedo v. ICE*, No. 25-3159-JWL, 2025 WL 2821860, at *3 (D. Kan. Oct. 3, 2025) (concluding that where a 90-day POCR was not performed, "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation"); *Bahadorani v. Bondi*, No. CIV-25-1091-PRW, 2025 WL 3048932, at *3 (W.D. Okla. Oct. 31, 2025) ("Even if the government failed to comply with 8 CFR § 241.13(i)(2)–(3), and such noncompliance were prejudicial, the [c]ourt would not be able to issue a writ of habeas corpus as an appropriate remedy."); *see also Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *11 (D. Md. Aug. 11, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7–8 (D. Md. Aug. 27, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025 WL 2062181, at *6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025).

Moreover, Petitioner has also not shown prejudice, as required to show a violation of due process in the immigration context. *See Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) ("In order to prevail on his due process challenge, Petitioner must show he was prejudiced by the actions he claims violated his Fifth Amendment rights."). A review of Petitioner's detention is being scheduled now, at which he will be able to present documentation, Ex. A ¶ 22, which will provide him the opportunity to contest the revocation of his release.

Accordingly, the Court should decline to grant Petitioner's request for immediate release based on alleged deficiencies in the process by which Petitioner's OSUP was revoked.[4]

III. To the extent that Petitioner's request in the alternative for an order directing an immediate custody determination exceeds the requirements of 8 C.F.R. §§ 241.4 and 241.13, the Court should deny that request.

In the Petition, Petitioner requests that, should the Court decline to grant the Petition and order Petitioner's immediate release from ICE custody, the Court in the alternative "order an immediate, constitutionally adequate individualized custody determination at which the government bears the burden to justify continued detention and the Court considers less restrictive alternatives to detention." ECF No. 1 at 2, 19.

It is unclear whether this request seeks only the procedure provided by 8 C.F.R. §§ 241.4 and 241.13 or whether it seeks process beyond the requirements established by these regulations. To the extent that Petitioner seeks additional process beyond that provided by DHS regulations, he does not provide a legal basis for that request or argument that these regulations do not provide him the procedural due process required by law, and so the Court should decline to grant that request.

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[4] Should the Court order Petitioner released on an order of supervision, this release would be subject to conditions. 8 U.S.C. § 1231(a)(3) provides the Attorney General with the authority to issue regulations on terms of supervision for an alien released pending removal. ICE has issued those regulations governing the release of aliens pending removal. *See* 8 C.F.R. § 241.13(h). Thus, an "alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas*, 533 U.S. at 700. Accordingly, if Petitioner is released, his release may be governed by conditions of supervised release set pursuant to the regulations.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition, ECF No. 1.

Dated: November 17, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Alicia Alvero Koski
Alicia Alvero Koski
Assistant United States Attorney
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