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, in his official capacity as
Field Office Director of the Denver Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations,

JUAN BALTAZAR, in his official capacity as
Warden of the Aurora Contract Detention Center,

Respondents.

PETITIONER'S TRAVERSE AND REPLY IN SUPPORT OF HIS PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

This case tests a principle at the core of our constitutional structure: when the Executive deprives a person of physical liberty, it must act within the limits Congress has imposed and the procedures the Constitution demands. Petitioner was released under an Order of Supervision ("OSUP") because Immigration and Customs Enforcement ("ICE") itself determined—after applying the exact regulatory criteria designed to safeguard against arbitrary confinement—that he was non-violent, compliant, not a flight risk, and not removable in the reasonably foreseeable future. Those determinations carried legal consequences. They created a status the government could disturb only through the narrow revocation framework Congress and DHS established after *Zadvydas v. Davis*, 533 U.S. 678 (2001) to prevent precisely the sort of unbounded civil confinement at issue here.

Nothing of legal significance changed between Petitioner's release in 2022 and ICE's decision in June 2025 to seize him from his home. He did not violate a single condition of supervision. His immigration proceedings remained pending, as ICE knew they would. His case remained on the non-detained docket. He attended his check-ins. The government does not identify a single new fact—let alone the "changed circumstances" the regulations demand—that could transform a previously non-removable individual into one whose removal is now significantly likely.

Instead, ICE revoked Petitioner's liberty in the most summary fashion: without advance notice, without stated grounds, without an opportunity to respond, without the required revocation interview, without any contemporaneous finding that removal

prospects had improved, and without any neutral adjudicator assessing whether continued confinement was justified. Respondents now attempt to defend that action with abstractions: a vague suggestion that Petitioner's 2022 release was somehow temporary because it coincided with the COVID-19 pandemic; an assertion that a future Post-Order Custody Review will cure past violations; and a claim that ICE is "pursuing" unidentified "third-country options." None of these assertions satisfies the legal predicates for revoking supervised release, and none is supported by concrete facts.

The contrast between what the law requires and what the government did could not be starker. The post-order detention regulations do not authorize custody based on conjecture, convenience, or hindsight. They require procedural rigor and evidentiary substance before the government may re-detain a person it has already determined to be safe for supervised release. Those requirements are not optional. They are the structural safeguards that prevent civil detention from becoming indefinite, standardless, and untethered from any realistic prospect of removal.

This case is therefore about more than the government's failure to follow its own regulations. It is about ensuring that the Executive remains bound by the constitutional and statutory constraints that distinguish lawful civil confinement from arbitrary detention. Respondents offer no lawful basis for Petitioner's re-detention. Under 28 U.S.C. § 2241, this Court has both the authority and the duty to end it.

FACTS

Petitioner is a Cuban national with a final order of removal. In 2022, ICE reinstated that order but could not execute it because Petitioner expressed a fear of persecution,

placing him in "withholding-only" proceedings. ICE then released him on an OSUP after concluding that he met all six mandatory regulatory predicates for supervised release.

Respondents portray the 2022 release as compelled by the pandemic under *Fraihat*. The record contradicts that framing. The OSUP is a standard post-order supervision document. It does not contain any condition linking Petitioner's liberty to the existence of a public-health emergency, nor does Respondents' declaration attach any such language. *Fraihat* provided a framework for heightened custody review during the pandemic; it did not override § 241.4(e)'s substantive release criteria, and ICE does not claim that it bypassed those criteria.

Petitioner complied with his OSUP. He attended his January 7, 2025 ICE check-in, remained on the non-detained docket before the Denver Immigration Court, and had a future check-in with ICE scheduled for July 8, 2025. Respondents do not allege any violation of OSUP conditions.

Despite Petitioner's compliance and the absence of any changed circumstances, ICE officers arrived at Petitioner's home on June 16, 2025 and arrested him. Respondents' own account notes only that "ICE encountered Petitioner, revoked his release, and returned him to custody." No explanation was given at the time. No notice of revocation has ever been provided. No informal interview has ever been conducted. No documentation exists showing any contemporaneous determination that removal had become significantly likely.

Respondents now assert that ICE is "pursuing" third-country removal but identify no country, no negotiations, no progress, and no timeline. The Immigration Judge has

since granted withholding of removal to Cuba, and DHS waived appeal. Respondents concede that Petitioner cannot be removed to Cuba. They do not dispute he has no other country of nationality. They do not identify any receiving state willing to accept him.

Respondents' factual narrative does not describe any OSUP violation, any changed circumstance, or any credible basis to conclude removal is reasonably foreseeable.

ARGUMENT

I. FAILURE TO COMPLY WITH THE REGULATIONS GOVERNMENT ORDER OF SUPERVISION

A. The Regulatory Scheme Strictly Conditions When ICE May Release and Then Re-Detain

The regulations governing release of a person subject to a final order of removal impose concrete predicates before ICE may place that person on an Order of Supervision ("OSUP"). Before deciding to release a detainee, the reviewing officials must conclude that:

1. Travel documents are not available or immediate removal is otherwise not practicable or not in the public interest;
2. The detainee is presently non-violent;
3. The detainee is likely to remain non-violent if released;
4. The detainee is not likely to pose a threat to the community;
5. The detainee is not likely to violate the conditions of release; and
6. The detainee does not pose a significant flight risk.

8 C.F.R. § 241.4(e); *see also* 8 C.F.R. §§ 241.4(h)(3), (i)(6) (Executive Associate Commissioner and district director "must [also] be able to reach the conclusions set forth in paragraph (e)" "[b]efore making any decision to release a detainee").

Once a noncitizen has been released on an OSUP, a substantial, legally protectable liberty interest is created by his reliance on his OSUP and the government's related assurances. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972). The regulations tightly channel ICE's authority to revoke that liberty interest. ICE may revoke release either because of a violation of conditions, 8 C.F.R. § 241.13(i)(1), or "on account of changed circumstances" showing "a significant likelihood that the alien may be removed in the reasonably foreseeable future," 8 C.F.R. §§ 241.13(i)(2), 241.4(b)(4). These provisions implement *Zadvydas* and are designed to protect the core liberty interest at stake in post-order civil confinement.

B. Petitioner Did Not Violate His OSUP and ICE Did Not Invoke § 241.13(i)(1)

Under 8 C.F.R. § 241.13(i)(1), Respondents may revoke an OSUP where the noncitizen violates conditions of release. Here, Respondents do not allege—and cannot allege—that Petitioner violated any condition of his OSUP. The record is silent on any claimed infraction. *See* ECF No. 20-1 at 4–5 (Fantauzzi-Perez Decl. ¶¶ 18–19).

Petitioner complied with his supervision. He attended his January 7, 2025, check-in as required and had his next check-in scheduled for July 8, 2025. His immigration case remained in the Denver Immigration Court's "trial ready" queue awaiting an individual hearing date. Nothing in Respondents' filings suggests any deviation from those conditions.

Because Respondents do not contend that Petitioner violated his OSUP, revocation cannot be justified under § 241.13(i)(1).

C. Respondents Identified No "Changed Circumstances" Justifying Revocation Under 8 C.F.R. § 241.13(i)(2)

When ICE revokes release to effectuate removal, § 241.13(i)(2) governs:

> The Service may revoke an alien's release under this section and return the alien to custody if, *on account of changed circumstances*, *the Service determines* that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.

8 C.F.R. § 241.13(i)(2) (emphasis added); *see also* 8 C.F.R. § 241.4(b)(4) (after supervised release under § 241.13, "if the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," the alien again becomes subject to custody review).

Respondents offer no "changed circumstances" in June 2025 that could satisfy this standard. At the time ICE re-detained Petitioner, his immigration case was still pending in the Denver Immigration Court, he remained on the non-detained docket, and he was complying with his OSUP. *See* ECF No. 20-1 at 3–4, ¶¶ 14–18. As Officer Fantauzzi-Perez explains in his declaration: on June 16, 2025, ICE officers "encountered Petitioner, revoked his release, and returned him to custody" with no articulated explanation. *Id.* ¶ 18.

Respondents' own narrative confirms that the only "change" between release in 2022 and re-detention in 2025 was the passage of time and ordinary progress of Petitioner's immigration court proceedings, culminating in a grant of withholding of removal protecting him from deportation to Cuba. ECF No. 20 at 3–5; ECF No. 20-1 ¶¶ 14–20. That is not the sort of "changed circumstances" § 241.13(i)(2) contemplates.

Officer Fantauzzi-Perez seems to attempt to attribute Petitioner's release to the *Fraihat* injunction. *See* ECF No. 20-1 ¶ 14 (ICE conducted a custody redetermination "pursuant to an injunction issued in *Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. 2020)" and released Petitioner "due to Petitioner's comorbidity with the COVID-19 virus"). Officer Fantauzzi-Perez then notes that the COVID-19 public health emergency ended in May 2023. *Id.* ¶ 17. But *Fraihat* did not convert OSUPs into pandemic-contingent privileges. It provided a framework for how ICE had to evaluate custody and consider less restrictive alternatives during the pandemic. It did not relieve ICE of its independent statutory and regulatory obligation to release individuals under OSUPs only when the § 241.4(e) factors were satisfied, nor did it allow ICE later to revoke an OSUP without satisfying § 241.13(i)(2) and (i)(3).

Nothing in Petitioner's OSUP conditions ties his liberty to the continued existence of a federal public-health emergency. The OSUP is a stand-alone order under the post-order detention regulations. The cessation of the COVID-19 emergency in 2023 therefore cannot retroactively convert the basis for his 2022 release into a "changed circumstance" in June 2025 sufficient to justify revocation under § 241.13(i)(2).

D. ICE Ignored the Mandatory Procedures for Revocation in § 241.13(i)(3) and § 241.4(l)

Once ICE elects to revoke an OSUP, specific procedures apply:

> Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will

> include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3).

Respondents do not contest that they failed to provide any of this process. *See* ECF No. 20-1 at 4, ¶ 18; ECF No. 20 at 13–14. Their account is limited to the bare statement that "[o]n June 16, 2025, ICE encountered Petitioner, revoked his release, and returned him to custody." ECF No. 20-1 ¶ 18. There is no notice of reasons for revocation, no documentation of an interview, no indication that Petitioner was told he could submit evidence to show the absence of a significant likelihood of removal or to contest any alleged OSUP violation, and no revocation custody review.

This is not a technical or harmless defect. As courts applying these regulations have recognized, when ICE revokes supervised release in order to effectuate removal, it "is [ICE's] burden to show a significant likelihood that the alien may be removed." *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 150 (D. Mass. 2025); *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *8 (S.D. Tex. Oct. 16, 2025). Those decisions emphasize that §§ 241.13(i) and 241.4(l) were promulgated to implement *Zadvydas* and protect fundamental due process interests in liberty. *See also Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017).

Here, Respondents never invoked the regulatory standard, never found "changed circumstances," and never documented any determination that removal is significantly

likely in the reasonably foreseeable future. They simply removed Petitioner from his home and placed him back in detention. That is precisely the "detain now, justify later" approach the regulatory framework was designed to prevent.

E. Immediate Release Is the Proper Habeas Remedy for the Regulatory and Due Process Violations

Habeas is the historic vehicle for testing executive detention and securing release from unlawful confinement. The Suspension Clause, 28 U.S.C. § 2241(c)(3), and longstanding precedent unequivocally state that the "essence of habeas corpus" is to attack the legality of custody and "secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004); *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).

Respondents argue that, even if ICE violated 8 C.F.R. §§ 241.4(l)(1)–(2) and 241.13(i), Petitioner is entitled only to "additional process," not release. ECF No. 20 at 14. That mischaracterizes the claim and the remedy. Petitioner's core contention is that Respondents' revocation of his OSUP in violation of those regulations invalidates the revocation itself and leaves him in the position he occupied before his liberty was unlawfully taken—released under supervision.

In this posture, "additional process" going forward does not prohibit Respondents' unlawful actions. It would ratify the unlawful deprivation and allow ICE to convert an invalid revocation into a *fait accompli* so long as it offers some later review. That is not what habeas provides. Habeas "has traditionally been a means to secure release from unlawful

detention," not merely to obtain extra layers of administrative process while custody continues. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

Equity reinforces that result. Federal courts have the authority to "return the parties to their last uncontested status" before an unlawful change. *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974); *United States v. FDIC*, 881 F.2d 207, 210 (5th Cir. 1989). For Petitioner, that "last peaceable" status was liberty under his OSUP. Vacating the unlawful revocation and ordering his release is the only remedy that restores that status and prevents Respondents from papering over their violation. A purely forward-looking directive that ICE comply with its own regulations in the future would leave Petitioner in custody under a revocation that is void under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) and the Fifth Amendment.

Courts confronting similar violations of §§ 241.4 and 241.13 have ordered release for precisely this reason. *Yee S. v. Bondi*, 2025 WL 2879479, at *6 (D. Minn. Oct. 9, 2025) (ordering release where ICE's re-detention "violated the law because ICE did not comply with its own regulations under section 241.13(i)(2)"); *Roble v. Bondi*, 2025 WL 2443453, at *5 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (same); *McSweeney v. Warden of Otay Mesa Det. Facility*, 2025 WL 2998376, at *7 (S.D. Cal. Oct. 24, 2025); *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025).

Because ICE's failure to follow 8 C.F.R. §§ 241.4(l)(1)–(2) and 241.13(i)(3) rendered the revocation unlawful, Petitioner's current custody is "in violation of the

Constitution or laws or treaties of the United States," 28 U.S.C. § 2241(c)(3), and immediate release is the appropriate remedy.

II. A POST-ORDER CUSTODY REVIEW CANNOT RETROACTIVELY CURE THE UNLAWFUL REVOCATION

Respondents contend that, "even under *Accardi*," Petitioner is entitled at most to what the regulations require and that ICE is "in the process of doing just that" by scheduling a Post-Order Custody Review ("POCR") and notifying Petitioner that he may submit documentation. ECF No. 20 at 14; ECF No. 20-1 ¶ 22. That argument fails on its own terms.

First, the POCR now scheduled is not a § 241.13(i)(3) revocation interview at all. It is a separate review required once the 90-day removal period has expired. 8 C.F.R. § 241.4(k)(2)(ii). ICE cannot satisfy § 241.13(i)(3)'s "upon revocation" and "promptly" requirements by pointing to a different, later-in-time procedure that is triggered for a different reason.

Second, § 241.13(i)(3) speaks in temporal and procedural terms that Respondents have already violated. Notice of the reasons for revocation must be given "[u]pon revocation." 8 C.F.R. § 241.13(i)(3). The "initial informal interview" must occur "promptly after" return to custody. *Id.* Courts applying these provisions have rejected attempts to stretch them to cover delayed, post-hoc reviews. *See M.S.L. v. Bostock*, 2025 WL 2430267, at *10–11 (D. Or. Aug. 21, 2025) (notice two days after revocation violated regulation; interview twenty-seven days later was not "prompt"). Here, ICE provided

neither notice nor any informal interview in the months following Petitioner's June 16, 2025, arrest, and the POCR Respondents now invoke still has not occurred.

Third, Respondents never explain—because they cannot—how a future POCR conducted by the detaining agency itself can substitute for the pre-deprivation protections that § 241.13(i)(3), § 241.4(l), and the Due Process Clause require. Those regulations were "promulgated to protect a fundamental right derived from the Constitution," namely meaningful notice and an opportunity to be heard before the government extinguishes a liberty interest. *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017); *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993). As *Perez-Escobar* explains, revocation of conditional release requires "adequate notice" and a chance to respond "at a meaningful time and in a meaningful manner." *Perez-Escobar v. Moniz*, 2025 WL 2084102, at *2 (D. Mass. July 24, 2025) (quoting *Aponte-Rosario v. Acevedo-Vila*, 617 F.3d 1, 9 (1st Cir. 2010)); *see also Jimenez v. Cronen*, 317 F. Supp. 3d 626, 634 (D. Mass. 2018); *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) (quoting 8 C.F.R. § 241.4(l)(1)).

ICE's failure to give Petitioner any notice of the basis for revocation or any opportunity to contest that revocation at the time it occurred has already deprived him of that meaningful process. A later POCR does not retroactively supply the "meaningful time" due process demands. *M.S.L. v. Bostock*, 2025 WL 2430267, at *10-11 (D. Or. Aug. 21, 2025); *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (re-detention unlawful where no informal interview provided).

Finally, Respondents' own filings underscore why the regulations matter. Because ICE never complied with § 241.13(i)(3), there is no contemporaneous record of why Petitioner was re-detained, what "changed circumstances" were identified, or what facts ICE relied on to conclude that removal is significantly likely. The Court, and the parties, are left to speculate about the government's rationale. That is the antithesis of the orderly, rule-bound process these regulations and the *Accardi* doctrine require.

This Court could grant the habeas petition on ICE's regulatory violation alone, and order his immediate release

III. ON THESE FACTS, THE ZADVYDAS SIX-MONTH PRESUMPTION RUNS CUMULATIVELY

Respondents also rely on *Zadvydas*'s six-month presumption to argue that Petitioner's current detention is still "presumptively reasonable." ECF No. 20 at 8-10. Their argument rests on an artificial slicing of detention into disconnected segments. The better reading of *Zadvydas*, and the one adopted by most courts, treats the six-month period as cumulative in re-detention cases like this one, where there has been no intervening violation or meaningful change in circumstances.

As Petitioner explained, "[m]ost courts hold the *Zadvydas* period is cumulative, not reset by re-detention, to prevent indefinite imprisonment through cycles of release and re-arrest." ECF No. 1 at 9-10 (citing *Nguyen v. Scott*, 2025 WL 2419288, at *13 (W.D. Wash.); *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass.); *Escalante v. Noem*, 2025 WL 2206113, at *3(E.D. Tex. Aug. 2, 2025); *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La.); *Hamama v. Adducci*, 2019 WL 2118784, at *3 (E.D. Mich.); *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal.); *Chen v. Holder*, 2015 WL 13236635, at *2

(W.D. La.)). Those courts recognize that if the government could restart the clock each time it re-detained an individual, it could circumvent *Zadvydas* entirely by cycling between release and renewed six-month detentions.

That concern is acute here. Petitioner was detained for approximately two months in 2022 following reinstatement of his prior removal order, then released on an OSUP. He was re-detained on June 16, 2025, and had been in custody about four and a half months when he filed this Petition. ECF No. 20 at 10; ECF No. 1 at 9-10. On a cumulative basis, his total post-order detention now exceeds *Zadvydas*'s six-month benchmark. And unlike the hypothetical decades-old detention sometimes invoked to question cumulative counting, the two periods here are separated by only a few years and by the same, continuous effort to remove Petitioner to Cuba—or, now, to some unidentified third country.

Respondents' reading would give ICE a perverse incentive: it could revoke an OSUP with no explanation, detain for up to six months, release briefly, and then start a fresh six-month cycle whenever it chose to re-detain. That is exactly the indefinite detention regime *Zadvydas* construed § 1231(a)(6) to avoid. 533 U.S. at 699-701.

Courts applying *Zadvydas* in re-detention settings have therefore aggregated detention periods for purposes of the presumption. *See*, *e.g.*, *Tran v. Scott*, 2025 WL 2898638, at *4 (W.D. Wash. Oct. 12, 2025) (combining 2.5-month detention in 2004 with 5-month detention in 2025); *Nguyen v. Scott*, 2025 WL 2419288 at *13 (W.D. Wash. Aug. 21, 2025) (combining year-long detention in 2000-2001 with 5-month detention in 2003-2004 and a 2025 detention); *Tang v. Bondi*, 2025 WL 2637750, at *4 (W.D. Wash. Sept.

11, 2025); *Huang v. Albarran*, 2025 WL 2986885, at *4 (E.D. Cal. Oct. 23, 2025) (collecting cases); *Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *S.F. v. Bostock*, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025) ("Respondents concede that Petitioner's detention should be measured cumulatively.").

Looking at different circuits, "[m]ost courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the federal government could otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them." *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025); *Abuelhawa v. Noem*, 2025 WL 2937692, at *4 (S.D. Tex. Oct. 16, 2025); *Nhean v. Brott*, 2017 WL 2437268, at *2 n.1 (D. Minn. May 2, 2017) (no authority that the six-month period "would start over after [petitioner] was placed back into ICE custody following revocation of supervised release").

To be sure, some decisions have treated the clock as restarting upon re-detention in very different factual settings, often involving long temporal gaps or markedly changed removal prospects. *See Guerra-Castro v. Parra*, 2025 WL 1984300, at *4 (S.D. Fla.); *Thai v. Hyde*, 2025 WL 1655489, at *3 (D. Mass.); *Liu v. Carter*, 2025 WL 1207089, at *2 (D. Kan.); *Barrios v. Ripa*, 2025 WL 2280485, at *8 (S.D. Fla.). Those cases do not involve a situation like Petitioner's, where ICE re-detained him while his case was pending, without any articulated violation or change, and now seeks to hold him indefinitely while it searches for a hypothetical third country willing to accept a Cuban national who has been granted withholding of removal.

Under the cumulative approach applied in the Petition and in the bulk of decisions addressing re-detention, the *Zadvydas* presumption has run. The burden has shifted to Respondents to "respond with evidence sufficient to rebut" Petitioner's showing that there is no significant likelihood of removal in the reasonably foreseeable future. 533 U.S. at 701. As discussed next, they have not done so.

IV. THERE IS NO SIGNIFICANT LIKELIHOOD OF REMOVAL IN THE REASONABLY FORESEEABLE FUTURE

The parties agree that 8 C.F.R. § 241.13(i)(2) governs in this re-detention context. They disagree about the burdens. Petitioner has already made the threshold showing that triggers § 241.13: he has provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Under the regulation and the decisions interpreting it, the burden now rests on the Government to demonstrate "changed circumstances" establishing a significant likelihood of removal, particularly where ICE has revoked supervised release to pursue that end. *Escalante*, 2025 WL 2206113, at *3; *Balouch v. Bondi*, 2025 WL 2871914, at *2-3 (E.D. Tex.); *Roble*, 2025 WL 2443453, at *4; *Nguyen*, 788 F. Supp. 3d at 150.

Petitioner's showing is straightforward and undisputed. He cannot be removed to Cuba because an Immigration Judge has granted withholding of removal to that country, and DHS waived appeal. ECF No. 1 at 2, 14-17; ECF No. 20-1 ¶ 20. Withholding relief bars removal to the designated country because of the likelihood of persecution there. Li *Wu Lin v. INS*, 238 F.3d 239, 244 (3d Cir. 2001); *Perez-Escobar*, 2025 WL 2084102, at *2; 8 C.F.R. § 241.8(e). Petitioner has no other country of citizenship or nationality.

Respondents have not identified any specific third country willing to accept him, nor have they offered any concrete information about negotiations, timelines, or conditions for such a transfer.

Under § 241.13(a), this combination of facts—the legal bar to removal to Cuba, the absence of any other country of nationality, and the lack of any identified receiving state—constitutes "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." Courts have recognized that where there is "virtually no hope of repatriating" a detainee, institutional barriers satisfy *Zadvydas*' standard. *Apau v. Ashcroft*, 2003 WL 21801154, at *3 (N.D. Tex.). Petitioner's situation is squarely within that category.

By contrast, the only evidence Respondents offer is a pair of conclusory statements in Officer Fantauzzi-Perez declaration: that "ICE began the process of pursuing Petitioner's removal to an alternative country pursuant to 8 U.S.C. § 1231(b)" and that "ICE continues to pursue third country removal options." ECF No. 20-1 ¶¶ 21, 23. There is no identification of a potential receiving country, no description of diplomatic outreach, and no articulation of any concrete prospect for removal.

Courts applying § 241.13(i)(2) have rejected such bare assertions. In *Escalante*, the government failed to meet its burden where it offered only "conclusory statements that they [had taken] steps to remove [the petitioner] to Mexico or perhaps Canada." 2025 WL 2206113, at *4, explaining that "[a] remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Balouch* reached the same conclusion where the government offered only

conclusory declarations that it was "taking steps" to remove the petitioner to Iran. 2025 WL 2871914, at *3. *Roble* likewise held that "the bare fact that ICE officials . . . requested third-country removal assistance" did not satisfy the "changed circumstances" and "significant likelihood" requirements. 2025 WL 2443453, at *4.

Respondents' showing here is even thinner. They have not even identified a candidate country, let alone described any concrete steps or realistic prospects of acceptance. Suggesting that Petitioner might someday be removed to some unnamed state that has not yet agreed to accept him does not establish a "significant likelihood" of removal in the reasonably foreseeable future; it underscores the absence of such a prospect.

Zadvydas confirms that this sort of speculation is insufficient. The standard is not satisfied by "good faith efforts to effectuate" removal in the abstract, nor does it require Petitioner to prove that removal is impossible. 533 U.S. at 702. Otherwise, an individual would have to show "the absence of any prospect of removal—no matter how unlikely or unforeseeable"—a reading the Court rejected. *Id.* Respondents' reliance on the mere possibility of future agreements with currently unidentified nations is exactly the conjectural showing *Zadvydas* forbids.

Because Petitioner has provided good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, and because Respondents have not carried their regulatory and constitutional burden to show otherwise, continued detention violates § 241.13, § 1231(a)(6) as construed in *Zadvydas*, and the Fifth Amendment.

Petitioner is entitled to habeas relief and immediate release under appropriate conditions of supervision.

V. RESPONDENTS DO NOT MEANINGFULLY DISPUTE THAT DUE PROCESS REQUIRES A PRE-DEPRIVATION HEARING BEFORE A NEUTRAL DECISIONMAKER, WITH THE GOVERNMENT BEARING A HEIGHTENED BURDEN AND CONSIDERING ALTERNATIVES TO DETENTION

Petitioner's habeas petition squarely asserted that ICE could not revoke his OSUP and re-detain him "without prior notice, stated grounds, or any opportunity to contest the action before a neutral arbiter," and that "later file reviews do not retroactively supply pre-deprivation process." ECF No. 1 at 2, 27–28 (citing *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976)). That framing rests on bedrock due-process principles: before the government deprives a person of liberty, it must provide notice and a meaningful opportunity to be heard before a neutral decisionmaker. *Mathews*, 424 U.S. at 332–33. ICE did the opposite here. It revoked Petitioner's OSUP and seized him in his home with no stated reason, no notice, and no forum in which to contest the deprivation. The constitutional violation was complete at the moment of revocation.

Respondents' brief does not meet that argument on its own terms. They do not contend that unilateral revocation and arrest, without any prior hearing before a neutral arbiter, satisfies *Mathews* in a case involving prolonged civil confinement. They do not attempt to explain how a unilateral field-office decision to revoke supervised release, unsupported by contemporaneous findings, could substitute for a neutral adjudication. Instead, they recast Petitioner's request: they describe his alternative request 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" as an effort to obtain "process beyond the requirements established by [the] regulations," and argue simply that he "does not provide a legal basis" for that request. ECF No. 20 at 16 (quoting ECF No. 1 at 2, 19). That assertion sidesteps the underlying constitutional rule rather than grappling with it.

When the government seeks to impose or continue severe civil confinement, due process requires a heightened burden of proof on the government. In *Addington v. Texas*, the Supreme Court held that the Fourteenth Amendment demands proof by "clear and convincing" evidence to justify involuntary, indefinite civil commitment. 441 U.S. 418, 425–33 (1979). The Court emphasized that the liberty at stake in non-punitive confinement is too weighty to be withdrawn on a mere preponderance standard. That reasoning applies with full force where DHS seeks to incarcerate a noncitizen for months or years under a civil removal statute.

Federal courts applying due process principles in the immigration detention context have likewise required that, where a custody hearing is constitutionally compelled, the government must justify continued confinement by clear and convincing evidence and that adjudicators must consider less restrictive alternatives to detention. *See*, *e.g.*, *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011) (holding that due process requires the government to bear the burden of proof at a prolonged detention bond hearing and that "the government must prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond"); *Hernandez v. Sessions*, 872 F.3d 976, 990–95 (9th Cir. 2017) (affirming injunction requiring immigration officials, when

making bond determinations, to consider non-custodial conditions and the ability to pay, recognizing the "fundamental" liberty interest at stake). Those decisions reflect the unambiguous constitutional principle that, where the government seeks to continue civil confinement, it must carry a heightened burden and must consider concrete alternatives to incarceration.

Petitioner's alternative request for relief fits squarely within these due-process parameters: if this Court declines to order immediate release, he asks, at a minimum, for "an immediate, constitutionally adequate individualized custody determination" held before a neutral decisionmaker, at which Respondents bear the burden to justify detention by at least clear and convincing evidence and the adjudicator considers all less restrictive alternatives to detention, including continued supervision under conditions comparable to his prior OSUP. ECF No. 1 at 2, 19, 27–28. Respondents do not cite any authority holding that prolonged deprivation of liberty following revocation of supervised release may rest solely on unreviewed ICE file decisions, without any adversarial hearing, without a neutral arbiter, without a heightened burden on the government, and without consideration of alternatives to detention. Their only response is that Petitioner has not "provided a legal basis" for additional process beyond what their own regulations already require. ECF No. 20 at 16. That is not a substantive answer to the constitutional claim; it is an insistence that internal regulations are sufficient per se.

On this record, the due-process theory stands essentially unrebutted: Respondents do not offer any reason why *Mathews*, *Addington*, and the immigration-detention cases recognizing heightened procedures in custody hearings would not apply

here. They do not explain why a person who was previously released on an OSUP, complied with all conditions, and was later granted withholding of removal can be re-detained for months without any pre-deprivation hearing before a neutral decisionmaker. Nor do they attempt to justify continued confinement under any standard approaching clear and convincing evidence, or to show that ICE evaluated—and rejected—less restrictive alternatives to detention before seizing Petitioner from his home.

The Court should treat Respondents' silence on these core constitutional elements as confirmation that they have not meaningfully contested them. At a minimum, if the Court determines that immediate release is not yet required, due process demands that Petitioner receive a prompt, pre-deprivation–equivalent hearing before a neutral decisionmaker at which Respondents bear the burden, by clear and convincing evidence, to establish that detention—rather than any available alternative—is justified.

CONCLUSION

Petitioner's liberty was revoked through a process forbidden by law. Respondents did not identify a violation on the conditions of relase. They did not identify any changed circumstances demonstrating a significantly increased likelihood of removal. They did not provide the notice, informal interview, or revocation review that §§ 241.4(l) and 241.13(i)(3) require. They did not provide, or even attempt to defend the absence of, a pre-deprivation hearing before a neutral decisionmaker at which the government bears a heightened burden to justify civil confinement and alternative conditions of supervision are considered. And they did not produce evidence—beyond speculation—that removal is significantly likely in the reasonably foreseeable future.

Under 28 U.S. § 2241(c)(3), Petitioner's continued confinement is unlawful. The appropriate remedy is immediate release, restoring Petitioner to the last lawful, uncontested status: release under supervision pursuant to his 2022 OSUP. If the Court determines that immediate release is not yet warranted, due process requires at minimum an immediate custody hearing before a neutral arbiter at which Respondents bear the burden, by clear and convincing evidence, to justify any continued detention after full consideration of less restrictive alternatives.

The Court should grant the petition and order Petitioner's immediate release under appropriate conditions of supervision.

Dated: November 26, 2025.

Respectfully submitted,

s/ Luis Cortes Romero
NOVO LEGAL GROUP, LLC
19309 68th Ave S., Ste R102
Kent, WA 98032
(206) 212-0260
Luis@novo-legal.com

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Luis Cortes Romero
NOVO LEGAL GROUP, LLC
19309 68th Ave S., Ste R102
Kent, WA 98032
(206) 212-0260
Luis@novo-legal.com