

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03475-RMR

IRENE FLORES-MENDOZA,

Petitioner,

v.

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

ROBERT HAGAN, in his official capacity as Field Office Director, Denver, U.S. Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement,

PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

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**RESPONSE TO MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR  
PRELIMINARY INJUNCTION, ECF No. 5**

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Pursuant to the Court's November 3, 2025, Order, ECF No. 10, Respondents respond to Petitioner Irene Flores-Mendoza's Motion for Temporary Restraining Order and/or Preliminary Injunction (ECF No. 5, the "PI Motion") and address why the Petition for Writ of Habeas Corpus (ECF No. 1, the "Petition") should not be granted.

In the Petition and PI Motion, Petitioner, a noncitizen who has been ordered removed, asserts that Petitioner's continued detention by Immigration and Customs Enforcement ("ICE") violates 8 U.S.C. § 1231 and due process under the standards set forth in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner also challenges the

detention based on purported deficiencies in post-order custody reviews (“POCRs”) that Petitioner has received during the detention under Section 1231, arguing that those deficiencies have violated procedural due process and the Administrative Procedure Act (“APA”). Finally, Petitioner challenges the detention based on potential removal to a third country and the processes associated with such a removal, arguing that the third-country removal processes violate procedural due process and the APA.

The PI Motion should be denied. First, Petitioner has not established that the detention violates 8 U.S.C. § 1231 or due process under *Zadvydas*. Petitioner’s *Zadvydas* challenge is premised on the premise that more process is needed before potential removal to a third country. Because Petitioner believes such process would be lengthy and would result in orders preventing removal to *any* third country, Petitioner argues that any removal is not reasonably foreseeable. But Petitioner’s argument seeking further process before removal to a third country is not properly presented here. The extent of such process is an issue encompassed within a non-opt-out nationwide class action, *D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025). Instead, Petitioner’s *Zadvydas* challenge must be evaluated under the current process for third-country removal. Here, where ICE has been actively pursuing steps to effectuate Petitioner’s removal, Petitioner’s burden under *Zadvydas* has not been met.

Second, Petitioner has not shown that purported deficiencies stemming from the POCR process violate procedural due process or the APA or that any such violation warrants immediate release.

Third, Petitioner has not shown that this habeas case is an appropriate forum for

any challenge to third-country removal processes, or that those current processes warrant Petitioner's immediate release.

## BACKGROUND

### I. Legal Background

**Detention under 8 U.S.C. § 1231.** The Immigration and Nationality Act ("INA") authorizes the detention of noncitizens who are subject to removal orders. 8 U.S.C. § 1231. In general, the Department of Homeland Security ("DHS") must remove noncitizens who have been ordered removed "within a period of 90 days," also known as the "removal period." *Id.* § 1231(a)(1)(A). During the removal period, detention of the noncitizen is mandatory until removal occurs. *Id.* § 1231(a)(2). Once the removal period is up, DHS may continue to detain noncitizens who are inadmissible under 8 U.S.C. § 1182 or who are determined to be "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6).

DHS has adopted an administrative process for evaluating whether continued detention is warranted. POCRs, performed to determine whether the noncitizen will be released or remain detained, are conducted at 90-days and 180-days following the issuance of a final order of removal. 8 C.F.R. § 241.4(k). Reviews prior to the end of the 90-day removal period are conducted by the district director or Director of the Detention and Removal Field Office. *Id.* "The district director or Director of the Detention and Removal Field Office will provide written notice to the detainee approximately 30 days in advance of the pending records review" performed for the 90-day review "so that the alien may submit information in writing in support of his or her

release.” 8 C.F.R. § 241.4(h)(2). The noncitizen will be notified “in writing that he or she is to be released from custody, or that he or she will be continued in detention pending removal or further review of his or her custody status.” *Id.* § 241.4(h)(4).

If a noncitizen is not released or removed within 90 days of the Field Office Director’s decision, subsequent custody decisions are made by the Headquarters Post-Order Detention Unit (“HQPDU”). 8 C.F.R. § 241.4(c)(2). The regulations provide for POCRs every 90 days by HQPDU until the noncitizen is released from detention or removed from the United States. *Id.* § 241.4(k)(2)(iii). As part of the 180-day review, if a review panel does not recommend a noncitizen for release or a recommendation of release is not granted after a records review, a review panel “shall personally interview the detainee.” *Id.* § 241.4(i)(3)(i). “Following completion of the interview and its deliberations, the Review Panel shall issue a written recommendation that the alien be released or remain in custody pending removal or further review.” *Id.* § 241.4(i)(5). An Executive Associate Commissioner then considers the recommendation and issues a custody determination. *Id.* § 241.4(i)(6).

For both the 90-day and subsequent reviews, the regulations provide that “[a] copy of any decision . . . to release or to detain an alien . . . shall be provided to the detained alien.” 8 C.F.R. § 241.4(d). “A decision to retain custody shall briefly set forth the reasons for the continued detention.” *Id.*

**Third-country removal.** Congress has provided a framework for determining the country to which a noncitizen may be removed. 8 U.S.C. § 1231(b). A noncitizen ordered removed “may designate one country to which the alien wants to be removed.”

*Id.* § 1231(b)(2)(A). But in certain circumstances, DHS will not remove the noncitizen to their designated country—for example, if the country is unwilling to accept them. See *id.* § 1231(b)(2)(C)(iii). The next preference is “a country of which the alien is a subject, national, or citizen,” *id.* § 1231(b)(2)(D); followed, if that country is not an option, by a country that has a connection to the noncitizen, *id.* § 1231(b)(2)(E)(i)-(vi). But if removal to each of those countries is “impracticable, inadvisable, or impossible,” the noncitizen may be removed to “another country whose government will accept the alien into that country.” *Id.* § 1231(b)(2)(E)(vii). This is known as “third-country removal.”

In removal proceedings, a noncitizen’s removal to a particular country may be “withheld” or “deferred” based on the United States’ obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”). 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 1208.16–1208.18. The noncitizen seeking withholding or deferral of removal must “establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” *Id.* § 1208.16(c)(2) (withholding of removal); see also *id.* § 1208.17(a) (deferral of removal).

A grant of withholding or deferral of removal as to one country does not bar removal to a different country. The implementing regulations expressly provide that “[n]othing in [the regulations] shall prevent [DHS] from removing an alien to a third country other than the country to which removal has been withheld or deferred.” 8 C.F.R. § 1208.16(f). Thus, “[i]f an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien to that particular

country, not *from* the United States.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021) (emphases in original).

On March 30, 2025, DHS issued guidance to clarify the process it follows in removing noncitizens who have an outstanding removal order and withholding to a specific third country. Respondents’ App’x, p. 7 – Kinsey Declaration. Before a noncitizen’s removal to a country that had not previously been designated as the country of removal, the guidance establishes a two-step process. *Id.* First, DHS must determine whether that country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured. *Id.* If it has, and if the Department of State believes those assurances to be credible, then the alien may be removed without the need for further procedures. *Id.*

Second, if assurances have not been provided (or are not believed credible), DHS will inform the alien of removal to that country. *Id.* If the noncitizen then affirmatively states a fear of removal to that country, DHS will refer them to USCIS for a screening to determine if they are eligible for protection from removal to that country under “withholding of removal” (8 U.S.C. § 1231(b)(3)) and under the CAT. *Id.*

Challenges to the procedures that apply to third-country removal are currently presented in a certified non-opt-out nationwide class action pending in the District of Massachusetts. *See D.V.D.*, 778 F. Supp. 3d 355.

## **II. Factual Background**

**Petitioner’s immigration history.** Petitioner is a citizen of El Salvador and a transgender woman. ECF No. 1 ¶ 25. Petitioner entered the United States without

inspection on September 26, 2019. Respondents' App'x, p. 2 – Kinsey Declaration. Petitioner was apprehended shortly after entry by Customs and Border Patrol ("CBP"). *Id.* At that time, CBP placed Petitioner in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1). *Id.* Petitioner claimed fear of persecution if returned to El Salvador. *Id.* CBP then 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.* In October 2019, USCIS conducted a credible fear interview and determined Petitioner had established a credible fear of persecution if returned to El Salvador. *Id.* Also in October 2019, USCIS issued Petitioner a notice to appear, initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* at 3. Petitioner appeared before an immigration judge ("IJ") on November 18, 2019, admitted the allegations and charges in the notice to appear, and was granted bond. *Id.* Petitioner filed a petition for asylum in February 2020. *Id.*

In October 2022, Petitioner was convicted in Texas for evading arrest with a vehicle in violation of Texas law. *Id.* at 4. Petitioner was sentenced to ten years of probation, but later violated probation, which the criminal court then revoked. *Id.* Petitioner was subsequently sentenced to three years in prison. *Id.* In January 2023, Petitioner was convicted in Texas of theft of property. *Id.* In April 2024, Petitioner was transferred from criminal custody to ICE custody. *Id.* In May 2024, Petitioner was transferred to the Denver Contract Detention Facility in Aurora, Colorado ("Denver CDF"). *Id.*

On February 26, 2025, an IJ issued a decision ordering Petitioner's removal from

the United States, but granting Petitioner withholding of removal to El Salvador. *Id.*

**Petitioner's detention under 8 U.S.C. § 1231.** Petitioner has been detained under 8 U.S.C. § 1231 following the IJ's entry of an order of removal in February 2025. *Id.* at 2, 5. Petitioner is presently detained at the Denver CDF. *Id.*

Petitioner had a 90-day POCR in May 2025. *Id.* at 5. Petitioner was provided notice before the POCR and was able to submit documentation for consideration as part of that review. *Id.* at 5. On June 26, 2025, Petitioner was issued a letter stating that "ICE has determined to maintain your custody because . . . [y]ou have not demonstrated that, if released you will not . . . [p]ose a significant risk of flight pending your removal from the United States." Respondent's App'x, p. 10 – June 26, 2025 Continue to Detain Letter. The letter went on to explain that "ICE has made such determination based upon your removal order." *Id.*

Petitioner then was provided an interview for the 180-day POCR on July 30, 2025. Respondent's App'x, p. 6 – Kinsey Declaration. Petitioner's counsel submitted documentation in support of that review. *Id.*

**Efforts to remove Petitioner to a third country.** On March 29, 2025, ICE asked Panama, Guatemala, and Mexico to accept Petitioner once removed. *Id.* at 5. On June 1, 2025, ICE requested the same from Costa Rica, Nicaragua, and Honduras. *Id.* On July 2, 2025, ICE asked the same of Columbia, Belize, and Panama. *Id.* at 6.

On November 3, 2025, Petitioner was presented with a notice of removal, stating that Petitioner would be removed to Mexico. *Id.* At the time of the notification, Petitioner did not affirmatively inform ICE personnel of a fear of removal to Mexico. *Id.*

Once Enforcement and Removal Operations, a subcomponent of ICE, learned of the emergency motion in this case requesting an order enjoining Petitioner's transfer from the District of Colorado or removal from the United States and the underlying Petition, ICE cancelled Petitioner's scheduled removal to Mexico. *Id.* at 6-7. ICE continues to seek a third country to which Petitioner can be removed. *Id.* at 7.

**The Petition and PI Motion.** On October 31, 2025, Petitioner filed the Petition, challenging Petitioner's detention as violating due process under *Zadvydas* on the ground that Petitioner has been detained under 8 U.S.C. § 1231 for longer than six months and there is no likelihood of removal in the reasonably foreseeable future. ECF No. 1 at 26-31. In addition, Petitioner argues that the detention is improper on the ground that the process afforded to Petitioner through the POCRs was deficient and thus violated procedural due process and the APA. *Id.* at 31-35. Finally, Petitioner argues that the detention is improper on the ground that the processes for notifying Petitioner of potential removal to a third country and then for providing an opportunity to challenge such a removal are deficient and thus violate procedural due process and the APA. *Id.* at 36-44. Petitioner seeks a court order granting immediate release and "enjoining Respondents from removing or attempting to remove [Petitioner] to a third country . . . in violation of the Constitution as well as statutory and regulatory procedures." *Id.* at 46-47.

Also on October 31, 2025, Petitioner filed the PI Motion, ECF No. 5, seeking

immediate release on the same grounds as identified in the Petition.<sup>1</sup>

## ARGUMENT

### I. Petitioner faces an elevated burden to obtain the requested relief.

A court may grant preliminary injunctive relief only after the moving party proves “(1) that she’s substantially likely to succeed on the merits, (2) that she’ll suffer irreparable injury if the court denies the injunction, (3) that her threatened injury (without the injunction) outweighs the opposing party’s under the injunction, and (4) that the injunction isn’t adverse to the public interest.” *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (internal quotation marks omitted).

When a movant seeks a “disfavored injunction,” she must meet a heightened standard. *Id.* An injunction is disfavored when “(1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win.” *Id.* The moving party must make a “strong showing” as to the likelihood-of-success-on-the-merits and the balance-of-harms factors to be granted a disfavored injunction. *Id.*

The PI Motion seeks a disfavored injunction, as it requests an order that Petitioner be immediately released from detention—a request to change the status quo and for all the relief that could be expected from a final judgment. Petitioner thus must make a strong showing on both the likelihood-of-success and balance-of-harms factors.

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<sup>1</sup> In the PI Motion, Petitioner also seeks an order “enjoining Respondents from transferring her from the District of Colorado.” ECF No. 5 at 25. Petitioner has already been granted this relief. ECF No. 14.

**II. Petitioner has not established a likelihood of success on the merits.**

**a. Petitioner is not entitled to immediate release under *Zadvydas*.**

Petitioner argues in the PI Motion that Petitioner's continued detention violates due process because it has extended beyond a six-month period after the final order of removal and that removal is not reasonably foreseeable. See ECF No. 5 at 11-13.

This argument is based on the Supreme Court's ruling in *Zadvydas* that 8 U.S.C. § 1231(a)(6) authorizes detention of a noncitizen who has been ordered removed, but only so long as the detention does not violate due process. 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." 533 U.S. 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. The Court stated that after six months, "once the [noncitizen] 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.* at 701; see also *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("the onus is on the [noncitizen] to 'provide[ ] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that showing'" (quoting *Zadvydas*, 533 U.S. at 701)).

Petitioner has been detained for roughly eight and a half months since the removal order became final on February 26, 2025. See Respondents' App'x, pp. 5 – Kinsey Declaration. Petitioner thus has the burden to "provide[] good reason to believe that there is *no significant likelihood of removal in the reasonably foreseeable future*["]

See *Zadvydas*, 533 U.S. at 701 (emphasis added).

Petitioner's apparent basis for arguing that removal is not reasonably foreseeable is that Petitioner believes that additional process must be provided to permit Petitioner to make a fear-based claim before removal to any country other than El Salvador. ECF No. 5 at 13 (arguing that "[e]ven if DHS could establish that it received diplomatic assurances that Ms. Flores-Mendoza would not be tortured or persecuted in one of the aspirational countries it identified for removal, she is nevertheless due additional process before such removal could be effectuated"); *id.* at 4 (arguing that the detention is unlawful because Petitioner "cannot be lawfully removed to a third country in the reasonably foreseeable future because she first must receive notice and a meaningful opportunity to present a claim for fear-based protection"). In other words, Petitioner's *Zadvydas* challenge is premised on the argument that removal in the reasonably foreseeable future is not likely because, Petitioner believes, certain processes must occur before removal to a third country, those processes would take time, and removal to any third country would be not be allowed under those processes.

But how much process noncitizens, like Petitioner, are due before removal to a third country is not properly raised in this case. That issue is part of a certified class action pending in the District of Massachusetts. See *D.V.D.*, 778 F. Supp. 3d 355. The *D.V.D.* court certified a non-opt-out class, which includes:

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

*Id.* at 378, 394. In the same order in which it certified the non-opt-out class, the *D.V.D.* court entered a preliminary injunction requiring DHS, before removing a class member to a third country, to provide written notice of the third country identified for removal, an opportunity to raise the issue of fear of removal to that country, and other process. *Id.* at 392-93. But on June 23, 2025, the Supreme Court stayed the preliminary injunction pending appeal in the First Circuit Court of Appeals. *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025) (per curiam). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay of the preliminary injunction.

Because Petitioner (who has a final removal order) is a member of the non-opt-out *D.V.D.* class, Petitioner cannot challenge the adequacy of the process for third-country removal in this case. To the extent Petitioner's *Zadvydas* challenge is predicated on an argument that Petitioner is entitled to additional procedures related to third-country removal—an issue now being litigated through that non-opt-out class—Petitioner has not established that Petitioner is likely to prevail on the merits of such a challenge. *Cf. Sanchez v. Bondi*, 25-cv-02287-CNS, 2025 WL 2550646, at \*2-3 (D. Colo. Aug. 20, 2025) (concluding where a petitioner's habeas application "was premised on the absence of any notice or opportunity to apply for protection from removal" to a third country, that he had failed to show a likelihood of success on the merits of a temporary restraining order based on that application).

Because this Court cannot speculate about any potential change in third-country removal process that might result from the *D.V.D.* litigation, the question thus is whether Petitioner's removal is likely to be effected in the reasonably foreseeable future in light

of the procedures ICE *currently* provides for third-country removals. Here, as explained above, ICE initiated the process to identify a third country for Petitioner's removal, and did so soon after the removal order became administratively final. See Respondents' App'x, p. 5 – Kinsey Declaration. On March 29, 2025, ICE solicited acceptances for Petitioner's removal from the United States to Mexico, Guatemala, and Panama. *Id.* Petitioner argues that removal to those countries is not permitted because Petitioner has expressed fear of potential persecution or torture based on transgender status. ECF No. 5 at 12-13. But ICE continues working to remove Petitioner to a third country. See Respondents' App'x, p. 7 – Kinsey Declaration. Petitioner fails to establish that there is no significant likelihood of removal in the reasonably foreseeable future, and so has not established a strong likelihood of entitlement to relief under *Zadvydas*.

**b. Petitioner is not entitled to immediate release based on claimed deficiencies in the PO CR process.**

Petitioner also seeks immediate release on the ground that the PO CRs Petitioner has received during detention have been deficient. See ECF No. 5 at 13-19. Specifically, Petitioner contends that Petitioner has not received "meaningful notice as to the individualized reasons for her ongoing detention." *Id.* at 15. Petitioner also argues that the PO CRs were arbitrary and capricious under the APA, and, in support, points out that the decision to continue detention after 90 days did not provide a lengthier explanation and that Petitioner has yet to receive a written recommendation from the 180-day review. *Id.* at 20-21.

Petitioner is not entitled to habeas relief based upon the alleged deprivation of procedural due process or the APA in connection with the PO CRs.

First, Petitioner has not shown that the process provided in the POCRs violated procedural due process or the APA. Petitioner has been provided adequate process, which satisfies due process and the APA. *Cf. Moses v. Lynch*, 15-cv-4168 (PAM/JJK), 2016 WL 2636352, at \*4 (D. Minn. Apr. 12, 2016) (“When immigration officials reach continued-custody decisions for aliens who have been ordered removed according to the custody-review procedures established in the Code of Federal Regulations, [they] receive the process that is constitutionally required.”).<sup>2</sup>

Petitioner has not shown that the process here violated the regulations. Petitioner was provided notice of both the 90-day and 180-day POCRs, Respondents’ App’x, pp. 5-6 – Kinsey Declaration, was able to present evidence supporting release for both of those reviews, *id.*, and after the 90-day POOCR was provided a letter that explained that Petitioner was considered a flight risk based on the facts contained in the removal order, *id.* The fact that the letter provided after the 90-day review did not contain a lengthier explanation does not render it arbitrary and capricious under the APA, given that 8 C.F.R. § 241.4(d) simply requires that the decision “shall briefly set for the reasons for the continued detention,” and does not prescribe how much detail is required. Nor does the fact that Petitioner has yet to receive a decision from the 180-day POOCR make it arbitrary and capricious. Section 241.4(d) does not prescribe when a decision on the 180-day review must be rendered and sent to a detainee.

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<sup>2</sup> To the extent Petitioner contends that the POOCR process did not account for whether removal was likely in the reasonably foreseeable future, there are avenues to inform ICE of such a concern. See 8 C.F.R. § 241.13(d).

Petitioner has also not shown prejudice, as required to show a violation of due process in the immigration context. *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.”). Petitioner argues that Petitioner “has been denied any meaningful notice as to the individualized reasons for her ongoing detention” and thus “has been deprived of the opportunity to challenge it.” ECF No. 5 at 15. But Petitioner has been afforded the opportunity, on two occasions, to present documentation demonstrating why Petitioner believes release is warranted. Respondents’ App’x, pp. 5-6 – Kinsey Declaration. And Petitioner has been given a personal interview as part of the 180-day PO CR. *Id.* at 6. Petitioner has not identified any prejudice from any purported deficiency in the process given the opportunities afforded Petitioner to provide evidence in support of release.

Second, Petitioner has not shown that any procedural due process or APA violation, even if established, would warrant immediate release. The proper remedy for lack of procedural due process or a violation of the APA should be additional process, not immediate release. Petitioner relies on *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 31. 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 regulation governing POCRs requires.

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*, 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”); see *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). This Court, too, should decline to grant such relief.

**c. Petitioner is not entitled to immediate release based on any alleged deficiencies in the third-country removal process.**

Finally, Petitioner seeks immediate release on the ground that ICE’s current procedures for removing a noncitizen to a third country violate procedural due process and the APA. ECF No. 5 at 15-19, 21-22. Petitioner argues that those current procedures do not afford adequate notice and opportunity to present fear-based claims regarding potential third countries to which removal might occur. *Id.* at 15-19. Petitioner also argues that those current processes violate the APA because they do not comport with regulations implementing CAT. *Id.* at 21-22.

The Court should not grant Petitioner immediate release based on purported violations of due process and the APA related to the current procedures for removal of a

noncitizen to a third country for several reasons.

First, Petitioner has not explained how any procedural due process or APA violations stemming from ICE's current third-country removal process entitle Petitioner to release. In the portions of the PI Motion regarding third-country removal procedures, Petitioner does not cite any cases in which the adequacy of such procedures served as the basis for immediate release. Indeed, in those portions of the PI Motion, Petitioner makes clear—in multiple statements—that the relief sought is for Respondents to follow Petitioner's desired process before removal to a third country, not immediate release. See ECF No. 5 at 16 ("Prior to removal to a third country, Ms. Flores-Mendoza must . . . be given these same protections."); *id.* at 19 ("[D]ue process requires the procedural protections Ms. Flores-Mendoza seeks prior to being unlawfully removed.").

Second, Petitioner cannot present issues here that must be presented in another case. Petitioner is a member of the *D.V.D.* non-opt-out class, which is litigating the same issue regarding the procedures related to third country removal for the entire class. In the PI Motion and the Petition, Petitioner seeks the same relief as to Petitioner that the plaintiffs in *D.V.D.* seek for the class—an order enjoining DHS from removing noncitizens to a third country without adequate notice and an opportunity to be heard. ECF No. 5 at 16; *see also* ECF No. 1 at 26 ("The Court should grant Ms. Flores-Mendoza's petition and order her immediate release, and also require she receive notice and an opportunity to be heard prior to any removal to a third country."); *D.V.D. v. DHS*, No. 25-cv-10676, ECF No. 7, at 20 (D. Mass. Mar. 23, 2020) ("Plaintiffs request that the court . . . enjoin[] Defendants from removing . . . class members to a third

country without first providing them and their counsel, if any, with written notice and an opportunity to apply for CAT protection before an IJ.”). The Rule 23(b)(2) non-opt-out class certification in *D.V.D.* bars Petitioner from requesting further process related to third-country removal in this forum. See *Sanchez*, 2025 WL 2550646, at \*2 (concluding that “in light of *D.V.D.*’s class certification, it would be contrary to comity and judicial economy principles for the Court to assert jurisdiction over virtually identical claims between essentially the same parties” (citation modified)). If Petitioner wishes to seek such relief, Petitioner must do so as a member of the *D.V.D.* class.

Third, the relief that Petitioner seeks—further process before potential removal to a third country—is beyond the scope of what is available via a habeas petition. A habeas proceeding is “at its core a remedy for unlawful executive detention” and cannot be used to bring other challenges. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (quotation omitted). The “fundamental purpose of a § 2241 habeas proceeding” is to “attack” the legality of a detainee’s custody and “the traditional function of the writ is 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). Thus, a habeas proceeding is not a vehicle for a petitioner to challenge something other than the underlying detention, like the process associated with the petitioner’s removal. Cf. *Thuraissigiam*, 591 U.S. at 117-18 (concluding that where a petitioner sought “vacatur of his removal order and an order directing [the Department] to provide him with a new . . . opportunity to apply for asylum and other relief from removal” his requested relief fell “outside the scope of the common-law habeas writ” (internal quotation marks and citation omitted)).

**III. Petitioner has not established irreparable harm absent an injunction.**

“To constitute irreparable harm, an injury must be certain, great, actual, and not theoretical.” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (internal quotation marks omitted). Petitioner claims to face two types of irreparable harm absent an injunction: (1) the possibility of imminent removal to a country where Petitioner’s freedom would be threatened, and (2) the injury suffered from ongoing detention, particularly as a transgender woman. ECF No. 5 at 9-11.

Regarding the first harm Petitioner identifies, the Court has already granted the request that Petitioner not be removed from the District of Colorado or the United States until the Court or the Tenth Circuit vacates such an order. ECF No. 14. Thus, Petitioner does not face any potential irreparable harm of removal to a country where Petitioner’s freedom would be threatened absent a court order.

Regarding the second harm Petitioner identifies, Petitioner has not demonstrated that the ongoing detention presents an irreparable harm. Petitioner argues that each day of continued detention “in violation of her constitutional rights, she faces irreparable harm.” ECF No. 5 at 9. But, as explained above, Petitioner has not established that particular harm here—that the continued detention under 8 U.S.C. § 1231 violates Petitioner’s constitutional rights. Petitioner also argues that Petitioner’s detention is in prison-like conditions, leading to irreparable harm, and that as a transgender woman Petitioner is particularly vulnerable to harm in detention. *Id.* at 9-11. But Petitioner does not face irreparable harm from continued detention at the Denver CDF. Indeed, Petitioner’s counsel for the immigration proceedings has previously expressed a

preference for being located at the Denver CDF over other detention facilities, claiming it is better for Petitioner's medical care given Petitioner's transgender status. See, e.g., ECF No. 1-1 at 31, 112.

**IV. Petitioner has not established that the balance of the equities weigh in in favor of immediate release.**

The third and fourth factors—regarding the balance of the equities and whether a preliminary injunction would be in the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has recognized that the public interest in the enforcement of the United States’ immigration laws is significant. See, e.g., *id.* at 436. Here, Petitioner's interest in freedom from detention should be weighed against the fact that Petitioner is “subject to an order of removal from the United States.” Cf. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (explaining that the *Matthews v. Eldridge*, 424 U.S. 319 (1976), factor for evaluating a plaintiff's private interest is diminished in due process analysis when the noncitizen was subject to a removal order). Respondents have a valid statutory and constitutional basis for detention, see 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 701, and Petitioner is being detained for “a period reasonably necessary to secure” removal. *Zadvydas*, 533 U.S. at 699.

Petitioner argues that the government cannot allege harm arising from having to comply with the Constitution, INA, or regulations. ECF No. 5 at 23. But, as explained above, Petitioner's detention is lawful. Petitioner has a criminal history (including a conviction for evading arrest) and is subject to a removal order. See *supra* at 7. And on the other side of the ledger, as the Supreme Court recently indicated, any time that the

Government is “enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation omitted). Enjoining Respondents from carrying out their statutory obligations would harm the Government and, thus, these factors weigh against the Court granting an injunction.<sup>3</sup>

#### **V. Conditions of release**

To the extent that the Court determines that Petitioner is entitled to release, the Court should specify in any order that such release must be under conditions identified by ICE. Petitioner acknowledges that any release “may be ‘conditioned on any of the various forms of supervised release that are appropriate in the circumstances.’” ECF No. 5 at 12 (citing *Zadvydas*, 533 U.S. at 700). And *Zadvydas* recognizes that a noncitizen “may no doubt be returned to custody upon a violation of those conditions.” 533 U.S. at 700.

#### **CONCLUSION**

The Court should not grant Petitioner’s request for immediate release. Petitioner has not demonstrated that Petitioner’s removal is not reasonably foreseeable and thereby violates due process under *Zadvydas*. And Petitioner has not established an entitlement to immediate released based on any purported deficiencies related to the POCR process or third-country removal process.

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<sup>3</sup> Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” If the Court grants Petitioner’s request for a preliminary injunction, Respondents request that the Court require appropriate security.

Dated November 10, 2025

PETER MCNEILLY  
United States Attorney

s/ Benjamin Gibson

Benjamin Gibson  
Assistant United States Attorney  
1801 California Street, Suite 1600  
Denver, Colorado 80202  
Telephone: (303) 454-0181  
benjamin.gibson@usdoj.gov

Counsel for Respondents Juan Baltazar,  
Robert Guadian, Kristi Noem, Todd  
Lyons, and Pamela Bondi in their official  
capacities

**CERTIFICATE OF SERVICE**

I hereby certify that on November 10, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

llunn@rmian.org

Anji.Hamilton@gmail.com

Shereld@rmian.Org

s/ Benjamin Gibson  
U.S. Attorney's Office