

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANTONIO DELGADO JAIMES

(b) County of Residence of First Listed Plaintiff Travis (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Georgia S Laurent 13785 research Blvd, Ste 125 SanLaurent Law Group Austin, TX 78750 512-693-9343

DEFENDANTS

Reynaldo Castro, Sylvester Ortega, Pamela J. Bondi, Todd M. Lvons, Kristi Noem

County of Residence of First Listed Defendant Frio County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 2241
Brief description of cause: Unlawful Detention of Alien Having Granted Relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Xavier Rodriguez DOCKET NUMBER 5:25-cv-1434-XR

DATE 11/19/2025

SIGNATURE OF ATTORNEY OF RECORD [Signature]

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RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

4 Antonio Delgado-Jaimes, §  
5 Petitioner, § No.5:25-cv-01434-XR  
6 V. §  
7 Pamela J. Bondi, Attorney General of the United States §  
8 Reynaldo Castro, Warden, South Texas Ice Processing Center; §  
9 Sylvester Ortega, Field Office Director, ICE; §  
10 Todd M. Lyons, Director, Ice; §  
11 Kristi Noem, Secretary, Department of Homeland Security. §

12 **PETITIONER’S REPLY TO FEDERAL RESPONDENTS’ RESPONSE TO**  
13 **PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR**  
14 **TEMPORARY RESTRAINING ORDER**

15 Petitioner Antonio Delgado-Jaimes, through undersigned counsel, submits this Reply in support  
16 of his Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order.

17 **I. INTRODUCTION**

18 Respondents’ filing avoids the central issue in this case. Petitioner is a CAT-protected individual  
19 whom the United States has been legally barred from removing to Mexico since 2017. ICE has  
20 had eight years under a final order of removal and a grant of CAT protection to pursue lawful  
21 third-country removal and has never succeeded. After years of full compliance with an Order of  
22 Supervision, ICE abruptly re-detained him in 2025 and now claims it may hold him indefinitely  
23 until it finds a country willing to accept him, no matter how long that takes.

24 Many recent federal decisions squarely address this pattern of conduct and reject it as unlawful.  
25 For example, Judge Xavier Rodriguez’s order granting habeas relief in Juan Azamy  
26 *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR (W.D. Tex. Oct. 22, 2025), and Judge  
27 David Hittner’s Memorandum Opinion and Order granting habeas relief in *Villanueva Herrera v.*

1 *Tate*, No. 4:25-cv-03364 (S.D. Tex. Sept. 26, 2025).<sup>1</sup> See *Exhibits 1 and 2*. Both cases involve  
2 Mexican nationals with final orders of removal and longstanding withholding/CAT protection,  
3 whom ICE attempted to re-detain years later under vague “third-country” removal rationales,  
4 without complying with the Order of Supervision regulations or demonstrating that removal was  
5 reasonably foreseeable. Notably, Judge Xavier Rodriguez is the same judge presiding over Mr.  
6 Delgado-Jaimes’s habeas petition, and he has already found this detention model unlawful in  
7 *Puertas-Mendoza* under virtually identical facts.

8 In *Puertas-Mendoza*, Judge Rodriguez granted habeas, held that removal was not reasonably  
9 foreseeable, found that ICE had failed to comply with its own revocation and review regulations,  
10 and ordered immediate release under supervision. In *Villanueva*, Judge Hittner from Houston.  
11 denied the government’s motion for summary judgment, granted the habeas petition, rejected  
12 the government’s attempt to “reset” Zadvydas by re-detaining a CAT recipient years later,  
13 held that ICE had violated 8 C.F.R. § 241.4(l) and related regulations in revoking  
14 supervised release, and ordered release subject to the original Order of Supervision.

15 The facts and legal defects in those cases are materially identical to Petitioner’s case here.  
16 Respondents offer no coherent basis to distinguish either decision. They provide no evidence of  
17 lawful revocation of Petitioner’s Order of Supervision, no meaningful evidence that removal to  
18 any third country is reasonably foreseeable, and only a hearsay-based, file-review declaration  
19 that does not establish compliance with the detailed procedural protections in 8 C.F.R. §§ 241.4  
20 and 241.13.

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<sup>1</sup>There are numerous additional decisions directly on point, but for the sake of brevity, counsel focuses on  
21 these two recent Texas rulings. Notably, the very judge presiding over this matter has already granted  
22 habeas relief on this exact fact pattern.

**1 II. THE COURT HAS JURISDICTION**

2 Respondents contend this Court lacks jurisdiction because decisions about revocation of  
3 supervised release and detention are “discretionary.” That argument was rejected in substance in  
4 both *Puertas-Mendoza* and *Villanueva*.

5 In *Puertas-Mendoza*, Judge Xavier Rodriguez exercised jurisdiction under 28 U.S.C. § 2241 to  
6 review the legality of post-order detention for a CAT recipient, including whether removal was  
7 reasonably foreseeable under *Zadvydas* and whether ICE complied with its own regulations. The  
8 Court explicitly framed the question as whether the petitioner was “in custody in violation of the  
9 Constitution or laws of the United States” and granted habeas relief on that basis.

10 In *Villanueva*, Judge Hittner likewise confirmed that while courts may not review the  
11 discretionary decision to grant or deny supervision in the abstract, they do retain jurisdiction over  
12 procedural and constitutional challenges to the manner in which detention is carried out. The  
13 court emphasized that 8 U.S.C. § 1252(a)(2)(B)(ii) does not bar review of whether ICE followed  
14 binding regulations in revoking an Order of Supervision and re-detaining a noncitizen. The court  
15 held that a § 2241 petition is the proper vehicle to challenge unlawful post-order detention (citing  
16 *Zadvydas* and related Fifth Circuit cases) and rejected the idea that the statute strips jurisdiction  
17 over procedural due-process challenges.

18 Here, Petitioner does not challenge his removal order. He challenges only (1) his continued civil  
19 detention under *Zadvydas* when removal is not reasonably foreseeable, and (2) ICE’s failure to  
20 comply with its own regulations in revoking his Order of Supervision and conducting custody  
21 review. Under *Puertas-Mendoza*, *Villanueva*, *Zadvydas*, and long-standing Fifth Circuit  
22 precedent, this Court has jurisdiction to adjudicate those claims.

1 **III. PETITIONER'S DETENTION VIOLATES ZADVYDAS**

2 A. Zadvydas and the six-month "presumption"

3 Both *Puertas-Mendoza* and *Villanueva* apply the same governing framework from *Zadvydas v.*  
4 *Davis*, 533 U.S. 678 (2001). The Supreme Court held that detention beyond the 90-day removal  
5 period is permissible only for as long as reasonably necessary to secure removal, and that "once  
6 removal is no longer reasonably foreseeable, continued detention is no longer authorized."  
7 *Zadvydas* also recognized a six-month "presumptively reasonable" period of post-order  
8 detention, but both courts correctly emphasized that this is a presumption, not a jurisdictional bar  
9 or safe harbor for indefinite manipulation.

10 In *Villanueva*, Judge Hittner made clear that the six-month presumption is rebuttable, that a  
11 detainee may challenge detention before that period has elapsed, and that the central question is  
12 whether removal is reasonably foreseeable in light of actual evidence. The court rejected the  
13 government's suggestion that the six-month clock "resets" every time ICE re-detains someone  
14 under the same final order, noting that such a reading would allow ICE to circumvent *Zadvydas*  
15 entirely by cycling people through repeated detention episodes. The court cited cases rejecting  
16 the idea that the government can manufacture perpetual six-month periods through serial release  
17 and re-detention.

18 Judge Xavier Rodriguez similarly recognized in *Puertas-Mendoza* that the inquiry is whether  
19 removal is reasonably foreseeable under the specific circumstances, not whether a mechanical  
20 six-month period has passed. He expressly acknowledged that where a CAT recipient has  
21 already spent years under a final order without being removed and the government has never  
22 identified a viable third country, the presumption is easily overcome.

1 Here, Respondents again rely on the argument that Petitioner has been detained for “only”  
2 approximately four months. Under *Puertas-Mendoza* and *Villanueva*, that is irrelevant.  
3 Petitioner’s removal order has been final since 2017; ICE has been barred from sending him to  
4 Mexico since his CAT grant; and in eight years, ICE has never secured acceptance from any third  
5 country. The government’s attempt to reframe this as a short, fresh detention window mirrors the  
6 rejected argument in *Villanueva*. *Zadvydas* does not permit ICE to create de facto indefinite  
7 detention through administrative gamesmanship. In addition, detention under 8 U.S.C. § 1231  
8 must be tethered to the purpose of effectuating removal; where that purpose is illusory or  
9 nonexistent, continued detention violates substantive due process.

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10 B. Removal is not reasonably foreseeable

11 Both *Puertas-Mendoza* and *Villanueva* granted habeas relief because the government failed to  
12 show that removal was reasonably foreseeable.

13 In *Puertas-Mendoza*, Judge Rodriguez emphasized several key facts:

- 14 1) The petitioner was a CAT recipient whose removal to Mexico was legally barred.
- 15 2) Third-country removals for individuals granted withholding/CAT are extremely rare.
- 16 3) ICE had not pursued or secured viable third-country options in the many years after the  
17 final order.
- 18 4) ICE attempted to pressure the petitioner into “consenting” to removal to Mexico.
- 19 5) ICE provided only a conclusory statement that removal was “significantly likely in the  
20 reasonably foreseeable future,” without evidentiary support.

1 Taken together, Judge Rodriguez held that those facts showed removal was not reasonably  
2 foreseeable and ordered release.

3 In *Villanueva*, Judge Hittner likewise found:

4 1) The government had attempted third-country removal several times over the years but  
5 failed.

6 2) The government refused to identify specific third countries or present concrete evidence  
7 of ongoing diplomatic progress.

8 3) The only support was a generic declaration stating that ICE had contacted “several” or  
9 “other” countries who refused to accept the petitioner.

10 4) There was no evidence that circumstances had changed such that removal had become  
11 more likely now than in the prior eight-year period.

12 Judge Hittner concluded that in this posture, removal was not reasonably foreseeable, and  
13 continued detention violated due process under *Zadvydas*.

14 Petitioner’s situation is the same:

15 1) He is a CAT recipient whose removal to Mexico is barred.

16 2) ICE admits that multiple countries have already refused to accept him. Other countries  
17 have merely received “requests for acceptance,” with no positive response, no diplomatic  
18 assurances, and no timeline.

19 3) The government identifies no country that has expressed willingness to accept him, and  
20 no evidence that circumstances have changed to make removal suddenly realistic now,  
21 after eight years of failure.

1 As in *Puertas-Mendoza* and *Villanueva*, Respondents' vague references to pending "requests"  
2 are not enough. There must be a significant likelihood of removal in the reasonably foreseeable  
3 future. On this record, there is not.

4 **IV. RESPONDENTS HAVE NOT SHOWN COMPLIANCE WITH REVOCATION OR**  
5 **CUSTODY-REVIEW REGULATIONS**

6 A. 8 C.F.R. § 241.4(l) and who may revoke an Order of Supervision<sup>2</sup>

7 Both *Puertas-Mendoza* and *Villanueva* underscore that ICE's authority to revoke an Order of  
8 Supervision is strictly constrained by regulation. In *Villanueva*, Judge Hittner discussed 8 C.F.R.  
9 § 241.4(l)(2) in detail, explaining that:

- 10 1) Only the Executive Associate Director of ICE (or a lawfully delegated official) may  
11 revoke an Order of Supervision, except in narrow circumstances where a district director  
12 may act if circumstances do not reasonably permit referral.
- 13 2) Revocation must be based on specific permissible grounds, such as violation of  
14 conditions, the need to enforce removal, or new information showing that release is no  
15 longer appropriate.
- 16 3) Once revocation occurs, ICE must notify the noncitizen of the reasons and promptly  
17 conduct an informal interview to allow the person to contest the reasons.

18 Judge Hittner found that the government provided no evidence of a valid revocation order, no  
19 documentation signed by a proper official, no showing of lawful grounds for revocation, and no

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<sup>2</sup> See Sample of Notice of Revocation that would comply with the regulations. *Exhibit 3*.

1 proof that the petitioner was notified of the reasons. The court held that, absent such evidence,  
2 the re-detention was unlawful and violated due process.

3 Judge Rodriguez in *Puertas-Mendoza* likewise recognized that ICE failed to comply with the  
4 regulatory requirements at the moment of revocation and during the custody-review process, and  
5 treated those failures as part of the basis for granting habeas relief.

6 Here:

- 7 1) Petitioner has never been supplied a reason for any alleged violation, has not been  
8 afforded an opportunity to respond, and has received no notification of ICE's reasons. In  
9 fact, approximately two months after his detention, around the end of August 2025, Mr.  
10 Delgado-Jaimes was informed that his Order of Supervision (OSUP) had been revoked.  
11 Furthermore, given the fact that counsel has never received a copy of said notice of  
12 revocation, based on prior experience, that notice was not signed by the competent  
13 authority. Revocation authority is vested by 8 C.F.R. § 241.4(l)(2) in the Executive  
14 Associate Director for ERO, and—only if referral is not reasonably possible—the Field  
15 Office Director. Here, the plain language requires a “District Director” to issue the  
16 revocation. The government has not provided proof that the officer who issued said  
17 document has the authority to do so. A Deputy Field Office Director is not a named  
18 official in the regulation. Naming the decisionmakers excludes others; a notice or  
19 decision issued by a deportation officer (or signed “for” a superior) is *ultra vires* under  
20 *Accardi* (United States ex rel. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954)).
- 21 2) The government has not identified any specific regulatory ground invoked to revoke his  
22 supervision.

- 1 3) They have not shown that Petitioner was served “upon revocation” with a written notice
- 2 explaining the reasons. Under both *Puertas-Mendoza* and *Villanueva*, that absence of
- 3 proof is fatal.
- 4 4) No informal interview EVER took place.
- 5 5) Petitioner’s counsel was never informed that such an interview would ever happen.

6 B. The informal interview and counsel’s role

7 Section 241.4(l)(1) requires that, upon revocation, the noncitizen be notified of the reasons and  
8 “afforded an initial informal interview promptly after his or her return to Service custody” to  
9 respond to those reasons. In *Villanueva*, Judge Hittner stressed that this requirement is  
10 **substantive, not cosmetic**: it is intended to provide a meaningful opportunity to contest  
11 revocation and continued detention.

12 Both *Villanueva* and *Puertas-Mendoza* treat the failure to provide an actual, timely, meaningful  
13 interview as a **due process problem**, especially where the noncitizen is represented and counsel  
14 is not notified or allowed to participate.

15 In Petitioner’s case:

- 16 1) No such interview occurred.
- 17 2) Petitioner was never advised of a specific revocation interview, never given a chance to
- 18 respond to stated reasons, and counsel was never notified or invited to attend.
- 19 3) The only suggestion of any interview comes from a hearsay declaration, discussed below,
- 20 which conflicts with Petitioner’s experience and with counsel’s complete lack of notice.

1 Under the regulations and the reasoning in *Villanueva* and *Puertas-Mendoza*, that is not  
2 compliance.

3 C. The Peña declaration is hearsay-based, conclusory, and inadequate

4 The only evidence the government offers to prove compliance is the “DECLARATION OF  
5 SUPERVISORY DETENTION AND DEPORTATION OFFICER CELESTINA PENA.”

6 Officer Peña states that:

- 7 1) She is an SDDO at the San Antonio Field Office, duty station South Texas ICE  
8 Processing Center.
- 9 2) She has “experience utilizing ICE record systems” and routinely reviews EARM and  
10 other databases.
- 11 3) Her declaration is based on her review of electronic records, the A-file, and information  
12 from “other DHS employees” and “employees of DHS contract facilities.”
- 13 4) She reviewed Petitioner’s file and records.
- 14 5) She then offers a series of historical facts about Petitioner’s entry, convictions, CAT  
15 grant, OSUP, and later re-detention.
- 16 6) She concludes, in one sentence, that Petitioner “was served with a ‘Notice of Revocation  
17 of Release.’ An informal interview was conducted.”

18 This is textbook hearsay and second-hand information. Officer Peña does not claim to have  
19 personally served any revocation notice, to have personally conducted or attended any informal  
20 interview, or to have any direct knowledge of what actually occurred when Petitioner was taken  
21 back into custody. She is simply relaying what ICE’s internal notes and codes allegedly say.

1 In *Villanueva*, the government attempted the same approach, relying on a declaration from the  
2 local ICE officer (Scroggins) who recited file history and asserted in general terms that ICE had  
3 contacted “several countries” and re-detained the petitioner due to a *new enforcement emphasis*.  
4 Judge Hittner held that such a declaration was insufficient where it:

- 5 1) Did not attach any revocation order.
- 6 2) Did not show that a proper official had signed the revocation.
- 7 3) Did not show that the detainee was notified of reasons.
- 8 4) Did not show that the informal interview requirement was met.
- 9 5) Contained only conclusory statements about removal efforts to unnamed countries.

10 **Here, the Peña declaration is even weaker.** It provides no documentation of revocation, no  
11 copy of any notice, no transcript or notes of any interview, no identification of the officer who  
12 allegedly conducted it, and no description of when, where, or how the interview took place. It  
13 merely states, in a single line, that an informal interview was conducted. That assertion is  
14 directly contradicted by Petitioner, who denies having any such revocation interview, and it is  
15 irreconcilable with the fact that counsel was never informed or given an opportunity to attend or  
16 advise.

17 Moreover, because Peña is not the officer who supposedly conducted the interview and has based  
18 her statement entirely on database entries and other employees’ reports, **her declaration is pure**  
19 **file-review hearsay.** It is precisely the kind of after-the-fact, records-based narrative that both  
20 *Puertas-Mendoza* and *Villanueva* reject as insufficient to establish compliance with binding  
21 regulations.

1 Under *Accardi* and Fifth Circuit law, an agency must follow its own regulations when those  
2 regulations confer procedural protections. Both *Puertas-Mendoza* and *Villanueva* applied that  
3 principle and found that failures to comply with 8 C.F.R. § 241.4(l) and related provisions  
4 warranted habeas relief. The Peña declaration does not change that conclusion here; it confirms  
5 that ICE is trying to paper over non-compliance with a bare, hearsay assertion.

6 **V. THE MARCH 30, 2025 THIRD-COUNTRY REMOVAL GUIDANCE DOES NOT**  
7 **AUTHORIZE INDEFINITE DETENTION**

8 Respondents rely heavily on a March 30, 2025 DHS Memorandum on third-country removals.  
9 Both *Puertas-Mendoza* and *Villanueva* implicitly or explicitly reject the idea that internal policy  
10 memoranda can override *Zadvydas*, the CAT regulations, or the Constitution.

11 Those decisions recognize that:

- 12 1) The memo governs internal procedures and does not itself grant new statutory detention  
13 authority.
- 14 2) The memo assumes some level of real progress and diplomatic assurances with a  
15 receiving country. However, **nothing in the memo permits ICE to detain CAT**  
16 **recipients indefinitely while “searching” for hypothetical countries that might**  
17 **accept them someday.**

18 In *Villanueva*, Judge Hittner explained that while DHS may prioritize certain types of removals  
19 under a “renewed emphasis,” that enforcement priority cannot be used to ignore procedural  
20 safeguards or to justify indefinite detention when removal is not reasonably foreseeable. Judge  
21 Rodriguez in *Puertas-Mendoza* likewise rejected the notion that vague references to policy

1 guidance or to future third-country arrangements could substitute for real evidence that removal  
2 will actually occur.

3 Munaf and Kiyemba do not change that analysis. As both decisions recognize, those cases  
4 involved fundamentally different contexts (e.g., war-time or national-security detentions) and do  
5 not authorize indefinite civil immigration detention where *Zadvydas* and the CAT regulations  
6 clearly apply. See *Munaf v. Geren*, 553 U.S. 674 (2008) and *Kiyemba v. Obama* (*Kiyemba II*),  
7 605 F.3d 1046 (D.C. Cir. 2010).

#### 8 **VI. THE TRO STANDARD IS SATISFIED**

9 Under *Puertas-Mendoza* and *Villanueva*, Petitioner meets each element for a temporary  
10 restraining order.

11 Likelihood of success on the merits: Petitioner has shown, as did the petitioners in  
12 *Puertas-Mendoza* and *Villanueva*, that:

13 (1) removal is not reasonably foreseeable and his detention violates *Zadvydas*, and

14 (2) ICE failed to comply with 8 C.F.R. § 241.4(l) and related regulations when revoking his  
15 OSUP and re-detaining him. The government's only "proof" of compliance is a hearsay  
16 declaration that lacks personal knowledge and conflicts with Petitioner's lived experience and  
17 counsel's lack of notice.

#### 18 **Irreparable harm:**

19 Both decisions recognize that unlawful physical detention is quintessential irreparable harm.  
20 Every day Petitioner remains detained in violation of *Zadvydas* and the regulations is a day of

1 liberty arbitrarily taken from a person whom the government has already found would face  
2 torture if returned to his home country.

3 **Balance of equities and public interest:**

4 In *Villanueva*, the court applied the *Mathews v. Eldridge* balancing test and found that the  
5 petitioner's liberty interest and risk of erroneous deprivation far outweighed the administrative  
6 burden of complying with existing regulations and releasing him under supervision. Judge  
7 Rodriguez (again, the same judge presiding over this case) in *Puertas-Mendoza* reached the same  
8 practical conclusion: requiring ICE to follow its own rules and respect constitutional limits does  
9 not impair legitimate enforcement interests, but it does protect fundamental rights. The same is  
10 true here.

11 **VII. THE GOVERNMENT'S CONTENTION THAT THE TRO MUST BE DISMISSED**  
12 **BECAUSE IT SEEKS THE "SAME RELIEF" AS THE HABEAS PETITION IS**  
13 **INCORRECT AND MISSTATES THE PURPOSE OF INTERIM RELIEF.**

14 The Government argues that the Temporary Restraining Order ("TRO") should be denied  
15 because it seeks "the same ultimate relief" as the habeas petition. That is *not* accurate. The TRO  
16 is a narrow, interim remedy designed to **preserve the status quo** while the Court adjudicates the  
17 habeas petition on the merits. The distinction between interim injunctive relief and ultimate  
18 habeas relief is well-established and fatal to the Government's argument.

19 First, the Government itself cites the proper TRO standard: interim relief is "ordinarily aimed at  
20 temporarily preserving the status quo." *Foreman v. Dallas Cty.*, 193 F.3d 314, 323 (5th Cir.  
21 1999). Petitioner's TRO does exactly that. For more than eight years—2017 through  
22 2025—Petitioner lived on supervised release, complied with every condition, maintained

1 stability, worked, and presented himself when required. The TRO merely restores that  
2 long-standing status quo while the Court resolves the merits.

3 Second, longstanding federal precedent holds that **interim release does not moot habeas and is**  
4 **not the same as final relief.** See *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (habeas  
5 jurisdiction fixed at filing; subsequent release does not moot). See also *Hensley v. Municipal*  
6 *Court*, 411 U.S. 345, 351–53 (1973) (release under conditions is “custody” for habeas purposes).  
7 Thus, releasing Petitioner under supervision pending adjudication is **not final relief**—it maintains  
8 jurisdiction and protects the Court’s ability to adjudicate the petition.

9 Third—and critically—the Supreme Court in *Zadvydas* makes clear that when continued  
10 detention under § 1231(a)(6) becomes “unreasonable and no longer authorized,” the proper  
11 remedy is **supervised release**, not prolonged detention. 533 U.S. at 699–702. Petitioner’s TRO  
12 seeks that interim posture because the record to date shows that removal is not reasonably  
13 foreseeable and the Government failed to comply with mandatory procedural protections.

14 Fourth, the Government’s argument ignores that a TRO exists precisely to prevent the irreparable  
15 harm of unlawful detention while the Court reviews the petition on the merits. Courts routinely  
16 grant TROs or preliminary injunctions to maintain supervised release while evaluating *Zadvydas*  
17 claims. This is especially appropriate where, as here, the same judge—Judge Xavier  
18 Rodriguez—is already familiar with identical legal issues and DHS procedural failures through  
19 his resolution of *Juan Azamy Puertas-Mendoza*.

20 The Government’s position also conflicts with authorities directly addressing TROs issued in  
21 conjunction with § 2241 petitions, including *Munaf v. Geren*, 553 U.S. 674 (2008), and *Kiyemba*  
22 *v. Obama*, 561 F.3d 509 (D.C. Cir. 2009). Far from prohibiting interim injunctive relief in the

1 habeas context, these cases simply recognize limits relating to *extraterritorial* release. They do  
2 not bar a district court from restoring supervised release within the United States pending  
3 resolution of a lawful habeas petition. Courts throughout the Fifth Circuit and nationwide  
4 routinely issue such interim relief in immigration habeas cases.

5 Accordingly, the Government's claim that the TRO must be denied because it "seeks the same  
6 ultimate relief" is contrary to binding precedent, mischaracterizes the nature of TROs, and  
7 ignores the very purpose of interim judicial protection. The TRO does not seek final adjudication  
8 of Petitioner's claims; it preserves the long-established *status quo* and prevents irreparable harm  
9 from unlawful detention while this Court adjudicates the habeas petition.

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10 **VIII. CONCLUSION**

11 *Puertas-Mendoza* and *Villanueva* are directly on point and highly persuasive. They involve the  
12 same type of petitioner (a Mexican national with CAT protection), the same pattern of long-term  
13 supervision followed by sudden re-detention years later, the same failure to comply with 8 C.F.R.  
14 § 241.4(l) and related regulations, the same reliance on vague, hearsay-based declarations instead  
15 of real evidence, and the same speculative assertions about third-country removal.

16 For all the reasons above, and those previously stated in the Habeas Petition and TRO, Petitioner  
17 respectfully requests that the Court:

18 Petitioner respectfully requests that the Court:

19 (1) declare that his ongoing prolonged detention violates the Due Process Clause of the Fifth  
20 Amendment and 8 U.S.C. § 1231(a);

1 (2) grant the Petition for Writ of Habeas Corpus and order his immediate release under  
2 appropriate conditions of supervision, consistent with the relief granted in *Puertas-Mendoza* and  
3 *Villanueva*;

4 (3) order Respondents to produce a complete copy of the administrative file from the Department  
5 of Justice and the Department of Homeland Security;

6 (4) grant the requested temporary restraining order and/or preliminary injunction preventing  
7 Respondents from continuing to detain him unlawfully while pursuing speculative third-country  
8 options;

9 (5) award attorney's fees and costs under the Equal Access to Justice Act or any other legal  
10 basis; and

11 (6) grant any further relief the Court deems just and proper.

12 Respectfully submitted on November 19, 2025.

13 /s/Georgia Santos Laurent  
14 SanLaurent Law Group, PLLC

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24  
25  
26  
27

1  
2

**INDEX OF DOCUMENTS**

<b>EXHIBIT TAB No.</b>	<b>DESCRIPTION - File Name - Format</b>	<b>PAGE</b>
<b>1</b>	<b>Judge Xavier Rodriguez’s order granting habeas relief in Juan Azamy Puertas-Mendoza v. Bondi, No. SA-25-CA-00890-XR (W.D. Tex. Oct. 22, 2025)</b>	<b>19</b>
<b>2</b>	<b>Judge David Hittner’s Memorandum Opinion and Order granting habeas relief in Villanueva Herrera v. Tate, No. 4:25-cv-03364 (S.D. Tex. Sept. 26, 2025)</b>	<b>29</b>
<b>3</b>	<b>Sample Notice of Revocation Complying With Applicable Regulations — Provided solely as an illustrative example prepared by Petitioner’s counsel. The undersigned has never seen a regulation-compliant notice issued by the government.</b>	<b>60</b>
<b>4</b>	<b>Excerpted provision from 8 C.F.R. § 241.4(l)</b>	<b>62</b>

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JUAN AZAMY PUERTAS-MENDOZA, §  
*Plaintiff* §

v. §

Case No. SA-25-CA-00890-XR

§  
PAMELA JO BONDI, UNITED STATES §  
ATTORNEY GENERAL; KRISTI LYNN §  
NOEM, DIRECTOR OF UNITED §  
STATES IMMIGRATION AND §  
CUSTOMS ENFORCEMENT; TODD M. §  
LYONS, DIRECTOR OF UNITED §  
STATES IMMIGRATION AND §  
CUSTOMS ENFORCEMENT; §  
SYLVESTER ORTEGA, FIELD OFFICE §  
DIRECTOR FOR DETENTION AND §  
REMOVAL, U.S. IMMIGRATION AND §  
CUSTOMS ENFORCEMENT; AND §  
WARDEN REYNALDO CASTRO, §  
SOUTH TEXAS DETENTION §  
COMPLEX; §  
*Defendant* §

**ORDER GRANTING PETITION FOR HABEAS CORPUS**

On this date, the Court considered the status of this case. After careful consideration, the Petition for Habeas Corpus (ECF No. 1) is **GRANTED**.

**BACKGROUND**

On March 24, 2016, Petitioner Juan Azamy Puertas-Mendoza (“Puertas”)—a citizen of Mexico—was ordered removed from the United States. On the same date, however, he was granted withholding of removal and relief under the Convention Against Torture (“CAT”). As a result, while he may not be removed to Mexico, 8 U.S.C. § 1231(b)(3), he can be removed to a third country. *Johnson v. Guzman Chavez*, 594 U.S. 523, 531–32 (2021).

Also on March 24, 2016, Immigration and Customs Enforcement (“ICE”) released Puertas subject to an Order of Supervision requiring him to, among other things, attend annual check-ins with ICE. Puertas has complied with the Order of Supervision.

At Puertas’s most recent check in, on July 17, 2025, ICE revoked his Order of Supervision and detained him in Pearsall, Texas. The Government has purportedly tried to get Petitioner to consent to removal to Mexico, including by threatening to send him to Syria if he refused. ECF No. 1 at 2.

ICE did not initially provide a reason for Puertas’s detention but, about three weeks after it began, provided a “notice of revocation” claiming he was detained because “there [was] a significant likelihood of removal in the reasonably foreseeable future.” ECF No. 6-1. The notice also said Puertas would “promptly be afforded an informal interview at which [he would] be given the opportunity to respond to the reasons for the revocation and to provide any evidence to demonstrate that [his] removal [was] unlikely.” *Id.* ICE interviewed Puertas on August 7, 2025, and Puertas responded that any questions should be posed to his attorney. ECF No. 6-1 at 3.

Puertas filed this petition for a writ of habeas corpus, challenging his detention. ECF No. 1. The Government filed a Response, ECF No. 6, and Puertas filed a Reply, ECF No. 8. Later, Puertas filed a Motion for a Temporary Restraining Order, which largely restated his arguments for habeas relief. ECF No. 8.

## DISCUSSION

### I. Legal Standard

A habeas petitioner must show they are “in custody in violation of the Constitution or laws or treaties of the United States.” *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at \*4 (S.D. Tex. Sept. 26, 2025) (quoting 28 U.S.C. § 2241(c)(3)). The petitioner “bears the burden of

proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence.” *Id.* (quoting *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011); also citing *Bruce v. Estelle*, 536 F.2d 1051, 1058 (5th Cir. 1976)). “A court considering a habeas petition must ‘determine the facts, and dispose of the matter as law and justice require.’” *Id.* (quoting 28 U.S.C. § 2243).

## II. Analysis

Puertas argues he is entitled to relief for two reasons: First, he argues his detention is illegal under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. Second, he argues Respondents have failed to comply with their own regulations, in violation of procedural due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The Court will address each point in turn.

### a. Petitioner’s removal is not reasonably foreseeable.

“[T]he Government ordinarily secures [a noncitizen]’s removal during” the ninety days following a final order for the person to be removed. *Zadvydas*, 533 U.S. at 682; 8 U.S.C. § 1231(a)(1). During that ninety-day “removal period,” the person subject to removal is typically detained. *Zadvydas*, 533 U.S. at 682. Beyond that point, the Government may in some situations continue detaining them for as long as is “reasonably necessary” to secure their removal. *Id.*; 8 U.S.C. § 1231(a)(6). But, under *Zadvydas*, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized.” 533 U.S. at 699.

The Supreme Court has recognized a “presumptively reasonable period of detention” of six months following the removal period. *Id.* at 701. The parties have two primary disputes about this six-month period. First, they dispute whether a detained person can challenge their detention under *Zadvydas* at all if the period has not passed. Second, they disagree about whether the six-

month period begins running (1) when a petitioner's removal period ends (here, in 2016) or (2) when a petitioner is actually confined (here, in 2025).

*1. A detained person may challenge their detention during the six-month period.*

Respondents argue that a person detained by ICE may not challenge their detention on the basis that their removal is not "reasonably foreseeable" unless they have been detained for at least six months. ECF No. 6 at 6. That is incorrect.

*Zadvydas* recognized a "presumptively"—not categorically—reasonable period of detention. 533 U.S. at 699 (emphasis added); *Villanueva*, 2025 WL 2774610, at \*10 ("[T]he presumption of constitutionality during that six-month period is rebuttable."); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at \*5–6 (D. Md. Sept. 8, 2025) (collecting cases). It did so merely to "guide" lower court determinations of whether removal is reasonably foreseeable. *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at \*6 (D.N.J. June 24, 2025) (quoting *Zadvydas*, 533 at 700–01). And *Zadvydas* unequivocally held that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized." 533 U.S. at 699–700.

"Some courts have held that until the six-month *Zadvydas* period concludes, detention is *conclusively* reasonable—in other words, that during that period courts are precluded from inquiring at all into whether removal is reasonably foreseeable." *Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at \*5 (D. Md. Aug. 11, 2025) (collecting cases); *see also Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 (5th Cir. 2011) (non-precedential opinion affirming a district court's finding that a challenge to post-removal detention was premature where *Zadvydas*'s six-month period had not passed); *Agvei-Kodie v. Holder*, 418 F. App'x 317, 2011 WL 891071, at \*1 (5th Cir. Mar. 15, 2011) (same). But, again, *Zadvydas*'s creation of a *presumption*

and the case’s actual rule—“if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute”—command against that understanding. *Zadvydas*, 533 U.S. at 699–700.

That said, a detained person who brings a *Zadvydas* claim before the presumptively reasonable six-month period has run will have a harder time establishing a right to relief. To make out a *Zadvydas* claim *after* the six months have run, a detained noncitizen need only “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If they do so, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* But *before* the six-month period has run, a Petitioner must do something more. *Id.* They must *prove* “that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*; *Medina*, 2025 WL 2306274, at \*6 (quoting *Munoz-Saucedo*, 2025 WL 1750346, at \*6).

2. *It is unclear when the six-month period starts to run.*

It is unclear which standard applies here. Puertas argues he need only provide “good reason to believe” that removal is not foreseeable because the six-month period started running in 2016, immediately after his removal period ended. Respondents, on the other hand, argue that the six-month period did not begin running until Petitioner was actually confined. If that is correct, Petitioner would need to satisfy the more difficult standard. The question, then, is whether *Zadvydas*’s presumptively reasonable six-month period of confinement begins to run as soon as the removal period ends or only once the noncitizen is actually confined.

*Zadvydas* is not clear on this point. The petitioners there were not released after their removal period. 533 U.S. at 684–86. And *Zadvydas* spoke of “continued” detention, which could refer to detention “continu[ing]” without release from the removal period. *E.g., id.* at 699 (“[O]nce

removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”). Those points might suggest the presumptively reasonable six-month period starts immediately after the removal period ends, regardless of when a noncitizen is physically detained. *Zavvar*, 2025 WL 2592543, at \*4 (“[T]here is, at a minimum, a reasonable argument that the six-month period runs continuously from the beginning of the removal period, even if the noncitizen is not detained throughout that period.”) (collecting cases).

On the other hand, *Zadydas* was, at base, about ensuring people are not *confined* for an unreasonable period of time. See 533 U.S. at 682, 699–700. It speaks in terms of post-removal *confinement*, e.g., *id.* at 701. (“[A]s the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”), and contrasted “detention” with “releas[ing]” someone “under supervision.” *Id.* at 683 (“[A]s the post-removal-period statute provides, the Government ‘may’ continue to detain an alien who still remains here or release that alien under supervision.”). Further, because detention’s basic purpose in this context is to ensure one’s presence at the time of removal, limiting the presumption of reasonableness to the six months immediately following the removal period might undermine “necessary Executive leeway” to determine when to begin the removal process. See *id.* at 700–701.

Given these competing arguments, it is unclear whether *Zadydas*’s six-month period begins immediately when the removal period ends or when the challenging party is physically detained. But the Court need not decide that issue because Puertas is entitled to relief under either standard.

### 3. Application

Puertas has proven that there is no significant likelihood of his removal in the reasonably foreseeable future. Because he has satisfied this more demanding standard, he would also satisfy the “good reason” standard imposed if the six-month *Zadvydas* period has expired.

Very few people subject to withholding of removal or CAT relief are removed from the United States. ECF No. 7 at 18, 32. In fiscal year 2017, less than two percent of those granted withholding of removal were deported to a third country. *Id.* at 32. And that is not simply a matter of United States policy—foreign governments “routinely deny” requests to receive people who lack a connection to the would-be receiving country. ECF No. 7 at 18. The fact that removal to a third country is unusual is not necessarily decisive, but it is important context. *See Munoz-Saucedo*, 2025 WL 1750346, at \*7; *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021) (“[T]he fact that alternative-country removal is rare does not make it statutorily unauthorized.”).

Beyond the rarity (and difficulty) of removing a noncitizen to a third country, ICE has attempted to convince Puertas to agree to go to Mexico—a country to which he cannot legally be removed. ECF No. 1 at 2; *see generally* ECF No. 6 (failing to deny these allegations). It has allegedly even threatened to send him to Syria if he refuses to return to Mexico. Such attempts to force Puertas to give up his withholding of removal and CAT relief strongly suggest the Government has no reason to believe it will be able to remove him to a third country. That is, if the Government believed that a third country would accept him, it would have no reason to insist upon his removal to Mexico. Further, there is no indication that the Government attempted to remove Petitioner during the *nine years* between his order of removal and his detention in 2025 or that the Government has found a country to take him.

Finally, ICE did not initially provide Puertas with any justification for his detention. *See* ECF No. 6-1 (dated August 7, 2025). Indeed, ICE did not offer any explanation until the day it filed its response in this case—about three weeks after detaining Puertas. *Id.*; ECF No. 6; ECF No. 1 at 2. And the explanation it eventually provided was cursory (and conclusory) at best, stating simply, “ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case.” ECF No. 6-1.

Taken together, the rareness of removal to a third country, ICE’s attempts to convince Puertas to consent to removal to a country where he cannot legally be removed, the long period of time between Puertas’s removal order and his detention, the initial lack of any explanation for Puertas’s detention in 2025, and the cursory explanation ultimately provided show that Puertas’s removal is not reasonably foreseeable. *See Villanueva*, 2025 WL 2774610, at \*10 (granting petition for writ of habeas corpus based on *Zadvydas* where detainee had withholding of removal, the Government had not initiated proceedings to lift the order to withhold removal, the Government had failed to remove him for eight years following his order of removal, and there was no evidence that circumstances had changed to make removal reasonably foreseeable). Thus, Puertas must be released. *Zadvydas*, 533 U.S. at 699.

b. The Court need not decide the procedural due process issue.

Puertas also argues he is entitled to habeas relief because ICE deprived him of procedural due process by failing to comply with their own regulations.

“Upon” revoking someone’s release, ICE must notify the person “of the reasons for revocation.” 8 C.F.R. 241.13(i)(3). ICE also must “conduct an initial informal interview promptly after” the detained person’s return to custody “to afford [them] an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* Here, ICE did not comply with at least the

first of these requirements—it did not provide Puertas any reason for his detention “upon” his being detained. Instead, it took three weeks to provide a reason—assuming the reason it eventually gave was even sufficient to satisfy the requirement.

In the Fifth Circuit, “[f]ailure to adhere to regulations can constitute a denial of due process of law.” *Francois v. Garland*, 120 F.4th 459, 465 (5th Cir. 2024) (quoting *Arzanipour v. I.N.S.*, 866 F.2d 743, 746 (5th Cir. 1989)); see *Accardi*, 347 U.S. 260. “The failure of an agency to follow its own regulations is not, however, a per se denial of due process unless the regulation is required by the constitution or a statute.” *Arzanipour*, 866 F.2d at 746. Violation of a regulation not required by the Constitution or a statute constitutes a denial of procedural due process if the claimant shows “substantial prejudice” arising from the violation. *Francois*, 120 F.4th at 466. The parties have not meaningfully briefed either (1) whether the relevant regulations are required by the Constitution or a statute or (2) whether Petitioner has shown substantial prejudice. Because Puertas is entitled to relief in any event, the Court will not address these issues here.

c. Attorney’s Fees

Puertas requests attorney’s fees under the Equal Access to Justice Act (“EAJA”). 28 U.S.C. § 2412(d)(1)(A). Because fees under the EAJA are not available in habeas corpus proceedings like this one, that request is denied. *Barco v. Witte*, 65 F.4th 782. (5th Cir. 2023).

**CONCLUSION**

For the foregoing reasons, the Petition for Habeas Corpus (ECF No. 1) is **GRANTED**. It is **ORDERED** that:

1. Respondents are **DIRECTED** to **RELEASE** Petitioner Juan Azamy Puertas-Mendoza from custody, under appropriate conditions of release, to a public place by **no later than 12:00 p.m. on October 23, 2025**;

2. Respondents must **NOTIFY** Petitioner's counsel of the exact location and exact time of Petitioner's release as soon as practicable and **no less than two hours before his release.**

3. Puertas's Motion for a Temporary Restraining Order (ECF No. 8) is **DENIED AS MOOT**, and the hearing scheduled for October 27, 2025, at 11:00 a.m. is **VACATED.**

4. A final judgment will issue separately.

It is so **ORDERED.**

**SIGNED** this 22nd day of October, 2025.



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XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE

**ENTERED**

September 26, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**EXHIBIT 2**

JAIME EDUARDO VILLANUEVA  
HERRERA,

*Petitioner,*

vs.

RANDALL TATE, Warden, *et al.*,

*Respondents.*

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CIVIL ACTION NO. H-25-3364

**MEMORANDUM OPINION AND ORDER**

The petitioner, Jaime Eduardo Villanueva Herrera, is currently in the custody of the United States Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE), at the Montgomery Processing Center in Conroe, Texas. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging the procedures used to re-detain him and his continued detention as being in violation of the applicable statutes, regulations, and his due process rights. (Dkt. 1). The respondents<sup>1</sup> answered the petition with a motion for summary judgment. (Dkt. 12). Villanueva has filed a response. (Dkt. 13). Having reviewed the petition, the motion and its attached exhibit, the response, all matters of record,

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<sup>1</sup>The named respondents are Warden Randall Tate of the Montgomery County Processing Center, Department of Homeland Security Secretary Kristi Noem, Acting Director of ICE Todd Lyons, and Houston ICE Field Office Director Bret Bradford. (Dkt. 1, p. 1).

and the law, the Court denies the respondents' motion for summary judgment, grants Villanueva's habeas petition, and orders his immediate release. The reasons for this ruling are explained below.

## I. BACKGROUND

Villanueva is a Mexican national who first came to the United States as a child. (Dkt. 1, p. 16). He has committed a number of crimes here—mainly drug offenses—and he has been removed to Mexico several times in the past. (*Id.* at 16-17). He has snuck back into the United States after each removal. (*Id.*)

On January 20, 2017, the immigration court issued an Order of Removal for Villanueva, but it simultaneously granted a withhold of his removal to Mexico. (*Id.* at 18-26). This was based on testimony, which the immigration court found credible, that Villanueva's life would be in danger in Mexico because of certain family connections and prior threats made against him by gang members and the Mexican federal police. (*Id.*) The government did not appeal the order withholding Villanueva's removal to Mexico. (*Id.* at 5). Because of the order withholding removal to Mexico, the government must locate a third country that would be willing to accept Villanueva to be able to effect his removal from the United States.

Villanueva was initially detained while the government attempted to find a third country that would accept him. (*Id.*) When the government was unable to do so, it released Villanueva on March 23, 2017, under an Order of Supervision. (*Id.* 2/31

at 5, 29-31). Implicit in this decision was a finding that Villanueva was nonviolent and would remain so if released, that he was not likely to pose a threat to the community if released, that he was not likely to violate the conditions of his release, and that he did not pose a flight risk. *See* 8 C.F.R. § 241.4(d)(1) (permitting the release of a noncitizen “if the [noncitizen] demonstrates to the satisfaction of the Attorney General or her designee that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such [noncitizen]’s removal from the United States.”); 8 C.F.R. § 241.4(e) (listing the criteria for release as including a determination that the noncitizen “is not likely to pose a threat to the community following release” and “does not pose a significant risk of flight if released”). The Order of Supervision required Villanueva to maintain contact with an assigned ICE official and report in person when requested, not commit any new crimes, cooperate with ICE in locating a third country to accept him, complete an application for any travel documents that ICE requested, and cooperate with his removal once a third country is identified. (Dkt. 1, pp. 29-31).

Once a noncitizen subject to an Order of Removal has been released from detention under an Order of Supervision, there are detailed regulations concerning when and how that Order of Supervision may be revoked. *See* 8 C.F.R. § 241.4(l). Generally speaking, the Order of Supervision may be revoked if the noncitizen

3/31

violates any of its conditions. *See* 8 C.F.R. § 241.4(l)(1); § 241.4(l)(2)(ii). In addition, an Order of Supervision may be revoked when it is appropriate to enforce a removal order or when “[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2)(iii), § 241.4(l)(2)(iv). Regardless of the reason for the revocation, only two officials have the authority to revoke an Order of Supervision: the Executive Associate Director of ICE or a district director of ICE if the “circumstances do not reasonably permit referral of the case to the Executive Associate [Director].” 8 C.F.R. § 241.4(l)(2). When an Order of Supervision is revoked, the noncitizen must “be notified of the reasons for revocation of his or her release” and must be afforded a prompt “initial informal interview” to allow the noncitizen an opportunity to respond to and contest the reasons for revocation. 8 C.F.R. § 241.4(l)(1).

In addition, there are specific regulations pertaining to noncitizens whose removal to a particular country has been withheld. *See* 8 C.F.R. § 1208.16(b). To address any concerns that a noncitizen could be removed to a third country that would simply, in turn, send the citizen back to his home country, a noncitizen with an order withholding removal to a particular country must be given notice of the country to which the government intends to remove him and an opportunity to apply for protection from removal to that country. *See* 28 C.F.R. § 200.1; *see also* *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., 4/31

dissenting) (describing the provisions of the Convention Against Torture and its limits on third country removals).

Moreover, the length of time that a noncitizen under an Order of Removal may be held in detention is governed by statutes, regulations, and case law. After an Order of Removal is entered, the government must detain the noncitizen for 90 days, during which the government must attempt to remove the noncitizen. *See* 8 U.S.C. § 1231(a)(1); 8 C.F.R. § 241.4(g)(1)(ii). This 90-day removal period runs from the latest of the date the Order of Removal becomes final, the date on which a court-ordered stay of removal expires, or the date the noncitizen is released from detention. *See* 8 U.S.C. § 1231(a)(1)(B); 8 C.F.R. § 241.4(g)(1)(i). Detention may be extended beyond the 90-day removal period if the noncitizen fails or refuses to apply in good faith for travel documents as directed by ICE. *See* 8 C.F.R. § 241.4(g)(1)(i). Detention may also be extended if the noncitizen is inadmissible under 8 U.S.C. § 1182, if the noncitizen has committed certain crimes, and if the government determines that the noncitizen poses a risk to the community or is a flight risk. *See* 8 U.S.C. § 1231(a)(6). But the Supreme Court has held that a noncitizen may not, consistent with the Due Process Clause, be detained indefinitely. *See Zadvydas v. Davis*, 533 U.S. 678, 697 (2001). Instead, due process requires that a noncitizen be detained for no longer than the time “reasonably necessary to secure removal.” *Id.* at 699. Therefore, “if removal is not reasonably foreseeable, the court

should hold continued detention unreasonable and no longer authorized by statutes.” *Id.* at 699-700. The Court also held that 180 days is a “presumptively reasonable” period for removing a noncitizen. *Id.* at 701. But if there is no reasonably likelihood that the noncitizen will be removed in the foreseeable future, the government may not continue to detain him. *Id.*

Villanueva has been living in the Houston area under his Order of Supervision since March 2017. (Dkt. 1, p. 5). He alleges that he has reported to ICE as required. (*Id.*). He has not been arrested, charged with, or convicted of any criminal offense since his release. (*Id.* at 5-6). The government has never requested Villanueva to take any actions to obtain travel documents from any third country. (*Id.* at 5).

On July 20, 2025, ICE officials arrested Villanueva without notice, and he has been detained ever since. (*Id.* at 6). Villanueva alleges that he has not been given a copy of any order revoking his Order of Supervision. (*Id.*). He has not been given notice of the reasons why his Order of Supervision was revoked, assuming that it even legally was revoked. (*Id.*). He has not been given the informal interview required by the regulations and statutes. (*Id.*). He has been told that he will be detained until ICE can find a third country that is willing accept him—however long that takes. (*Id.*). And the government has refused to identify the countries to which it is trying to remove him. (*Id.*).

On July 21, 2025, Villanueva filed this petition for writ of habeas corpus. In  
6/31

that petition, he does not challenge his removal or the government's right to effect his removal. Instead, contends that the *process* the government is using to attempt to remove him violates his Fifth Amendment due process rights, the provisions of the Immigration and Nationality Act and its implementing regulations, and his due process rights under *Zadvydas*. As relief, he asks the Court to order his immediate release, restore his Order of Supervision, and order the government to comply with its rules and regulations regarding notice and removal. (*Id.* at 11).

The Court ordered the government to respond to Villanueva's petition, and it responded with a motion for summary judgment. (Dkt. 12). The motion is supported by the declaration of a Charles Scroggins, who is the local ICE agent in charge of Villanueva's case. (Dkt. 12-1). In his declaration, Scroggins sets out Villanueva's criminal history and the history of his removal proceedings. (*Id.* at 4-6, 7-8). All of these events occurred before January 2017, when the Order of Removal was entered. (*Id.*). The declaration also sets out all of the process that Villanueva received before the Order of Removal was entered. (*Id.*).

The declaration further states that on March 12, 2017, ICE contacted three separate countries, requesting permission to remove Villanueva to those countries. (*Id.* at 6). The declaration does not identify the countries that ICE contacted, but Scroggins attests that all of the countries refused to issue travel documents for Villanueva. (*Id.*). The declaration also states that on October 12, 2023, ICE again

contacted “other countries” about obtaining travel documents for Villanueva. (*Id.*) The declaration does not identify what “other countries” the government contacted or how many countries it contacted, but it does state that these unidentified countries refused to accept Villanueva. (*Id.*) The declaration does not state that ICE has ever requested that Villanueva apply for travel documents to any of the unidentified countries ICE contacted, nor does it identify any other reason for Villanueva’s re-detention.

Scroggins’s declaration states that the government arrested Villanueva “due to the current administration’s renewed emphasis on removing criminal aliens.” (*Id.*) The declaration states that Villanueva has now “been found to be a danger to the community.” (*Id.*) But it does not contain any facts showing that the government has complied with any of statutes or regulations that apply to noncitizens who are subject to an Order of Removal and who have been released under an Order of Supervision. It does not contain any facts showing that an order revoking Villanueva’s Order of Supervision was validly signed by anyone authorized to do so, that notice was provided to Villanueva of the reasons for the revocation, or that he has been provided with the required informal interview. The declaration also contains no facts concerning the government’s efforts to identify a third country willing to accept Villanueva, other than a conclusory statement that the government has contacted “serval [sic] countries” without success. (*Id.*)

In its motion for summary judgment, the government contends that it has lawfully detained Villanueva under his Order of Removal because he is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), because he is a threat to the community, and because ICE is actively working to effect his removal. (Dkt. 12, pp. 2, 6). It contends that the Court does not have jurisdiction to review its decision to revoke Villanueva's Order of Supervision. (*Id.* at 7-8). And it contends that Villanueva's *Zadvydas* claim is premature because he has not yet been detained for six months. (*Id.* at 8-9). The government does not address any of Villanueva's claims that he has been denied due process due to the government's failure to comply with the governing statutes and regulations.

In his response, Villanueva contends that the government's evidence is insufficient to show that he is lawfully detained. (Dkt. 13). He also contends that the government has failed to show that his removal is likely in the foreseeable future given that it has not even identified a proposed country for removal. (*Id.* at 2). Villanueva requests that the Court either order his immediate release or schedule a hearing on the matter. (*Id.* at 11).

## **II. LEGAL STANDARDS**

### **A. Petitions for a Writ of Habeas Corpus**

Villanueva seeks release through a petition for writ of habeas corpus under 28 U.S.C. § 2241. To be entitled to the issuance of a writ of habeas corpus, the  
9/31

petitioner must show that he is “in custody in violation of the Constitution or laws or treaties of the United States[.]” 28 U.S.C. § 2241(c)(3); *see Orellana v. Kyle*, 65 F.3d 29, 31 (5th Cir. 1995) (per curiam) (“[N]either habeas nor civil rights relief can be had absent the allegation by a plaintiff that he or she has been deprived of some right secured to him or her by the United States Constitution or the laws of the United States.” (quoting *Hilliard v. Bd. of Pardons & Paroles*, 759 F.2d 1190, 1192 (5th Cir. 1985) (per curiam))). The habeas petitioner “bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence.” *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011) (citing *Parke v. Raley*, 506 U.S. 20, 31 (1992)); *see also Bruce v. Estelle*, 536 F.2d 1051, 1058 (5th Cir. 1976). A court considering a habeas petition must “determine the facts, and dispose of the matter as law and justice require.” 28 U.S.C. § 2243. When the Court finds that a petitioner’s constitutional rights have been violated, the petitioner is entitled to the issuance of the requested writ.

#### **B. Motions for Summary Judgment**

The government has moved for entry of summary judgment. “As a general principle, Rule 56 of the Federal Rules of Civil Procedure, relating to summary judgment, applies with equal force in the context of habeas corpus cases.” *Clark v. Johnson*, 202 F.3d 760, 764 (5th Cir. 2000). Under Rule 56, the moving party is

10/31

entitled to summary judgment if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). The moving party bears the initial burden of providing the Court with a legal basis for its motion, and it must identify those portions of the record that it contends demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is “material” if its resolution in favor of one party might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is “genuine” if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party. *Id.* This standard “mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict.” *Id.* at 250. To meet this burden, the moving party must inform the Court of the basis for the motion and identify those portions of the record which demonstrate the absence of a genuine dispute of material fact *and* the appropriateness of judgment as a matter of law. *See Celotex Corp.*, 477 U.S. at 323. If the moving party fails to meet its initial burden, the motion for summary judgment must be denied. *See Pioneer Expl., L.L.C. v. Steadfast Ins. Co.*, 767 F.3d 503, 511 (5th Cir. 2014).

### III. DISCUSSION

Noncitizens, even those subject to a final Order of Removal, have

constitutional rights just like everyone else in the United States. *See Zadvydas*, 533 U.S. at 693. And while the new administration may have changed how it prioritizes the removals of noncitizens, it may not do so at the expense of fairness and due process. *See Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at \*2 (Apr. 7, 2025) (per curiam) (“It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.”). It also may not do so in violation of its own regulations. *See Gulf States Mfrs., Inc. v. Nat’l Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978) (“It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid.”); *see also Bonitto v. Bureau of Immigr. & Customs Enf’t*, 547 F. Supp. 2d 747, 755 (S.D. Tex. 2008) (“Where individual interests are implicated, the Due Process clause requires than an executive agency adhere to the standards by which it professes its action to be judged.” (citing *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959))). With these principles in mind, the Court will consider whether the government is entitled to summary judgment and, if not, what relief is due to Villanueva.

**A. Jurisdiction**

The government does not challenge the Court’s jurisdiction to entertain Villanueva’s petition, but it does contend that the Court may not review its

discretionary decision to revoke Villanueva's Order of Supervision. Under 8 U.S.C. § 1252(a)(2)(B)(ii), federal courts have no jurisdiction to review a "decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." *See also* 8 C.F.R. § 241.4. (permitting ICE officials to decide to revoke supervised release "in the exercise of discretion"). Therefore, the Court agrees that it cannot review the discretionary decision to revoke Villanueva's Order of Supervision.

But Villanueva does not challenge the purported decision to revoke his Order of Supervision.<sup>2</sup> Instead, he challenges the manner in which the government has re-detained him under this purported order. The Court unquestionably has jurisdiction to review Villanueva's claims that the government has violated his statutory and constitutional rights to due process by re-detaining him. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (citing 28 U.S.C. § 2241(c)(3)); *Baez v. Bureau of Immigr. & Customs Enf't*, 150 F. App'x 311, 312 (5th Cir. 2005) (per curiam) (courts retain the power to hear statutory and constitutional challenges to immigration detention when those claims do not challenge the final order of removal). Nothing in 8 U.S.C.

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<sup>2</sup>The Court refers to this as a "purported" revocation because the government has not provided a copy of an order revoking supervision to either Villanueva or the Court. Absent this, nothing before the Court demonstrates that such an order exists.

§ 1252(a)(2)(B)(ii) prevents the Court from considering Villanueva's challenge to the manner in which the government revoked his Order of Supervision or considering whether the government followed its own regulations in doing so. *See Zadvydas*, 533 U.S. at 687-88 (holding that a § 2241 petition is the proper vehicle for a petitioner to use to challenge the legality and constitutionality of post-removal-period detention); *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (courts have jurisdiction to review detention "insofar as that detention presents constitutional issues, such as those raised in a habeas petition"); *Mantena v. Johnson*, 809 F.3d 721, 728-29 (2d Cir. 2015) (even when a "statute strips jurisdiction over a substantive discretionary decision, [it] does not strip jurisdiction over procedural challenges" and when procedural requirements bind an official's exercise of discretion, "courts retain jurisdiction to review whether those requirements have been met").

Villanueva's petition does not challenge his removal; he challenges the manner in which the government revoked his release, which he contends was done without due process and in violation of ICE's own regulations. Similarly, Villanueva does not challenge the government's ability detain him for the time necessary to effect his removal. Instead, he challenges the government's authority to hold him in detention indefinitely while it tries to find a third country that will accept him. These types of claims not barred by 8 U.S.C. § 1252(g). To the extent

14/31

that the government's motion for summary judgment can be read to challenge the Court's jurisdiction to entertain Villanueva's due process and statutory claims, the motion is denied.

**B. Violation of the INA and its Regulations**

The statutes and regulations governing immigration and removal proceedings afford important procedural safeguards to detainees. *See United States v. Caceres*, 440 U.S. 741, 760 (1979). For Villanueva's detention to be constitutional, the government must have complied with both the applicable statutory provisions and its own regulations. *Id.* (when federal regulations afford individual rights and protections, the Supreme Court has insisted on requiring an agency's compliance with its own regulations). Villanueva alleges three claims based on alleged violations of the statutes and regulations applicable to the proceedings against him: (1) his rights were violated in connection with the purported revocation of his Order of Supervision; (2) his rights have been violated in connection with his right to challenge the revocation; and (3) his rights have been violated in connection with his potential removal to a third country. The Court considers each of these challenges in turn.

**1. The Revocation of the Order of Supervision**

Villanueva first contends that the government violated his due process rights by purporting to revoke his Order of Supervision without complying with the

regulations governing such revocations. As explained above, once Villanueva was released from detention under an Order of Supervision, the revocation of that release was subject to the provisions of 8 C.F.R. § 241.4(l)(2). That subsection specifically limits which government officials have the authority to revoke an Order of Supervision:

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

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

Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

- (i) The purposes of release have been served;
- (ii) The [noncitizen] violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a [noncitizen]; or
- (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.

8 CFR § 241.4(l)(2). Villanueva asserts that the government did not comply with either of these binding regulations in revoking his Order of Supervision.

Scroggins’s declaration contains no facts concerning whether Villanueva’s Order of Supervision has ever been revoked—much less whether it has been legally revoked for a permissible reason by an order signed by the Executive Associate Director of ICE, someone to whom the Executive Associate Director has legally delegated authority, or a district director who has made specific findings that the circumstances “do not reasonably permit referral of the case to the Executive Associate [Director]. 8 C.F.R. § 241.4(I)(2). Instead, it states only that Villanueva was arrested and re-detained “due to the current administration’s renewed emphasis on removing criminal aliens.” (Dkt. 12-1, p. 6). In the absence of some evidence showing that Villanueva’s Order of Supervision was lawfully revoked by someone with the authority to do so and for a reason lawfully permitted, the government has failed to show that it afforded Villanueva with due process in connection with the purported revocation of his Order of Supervision.

The record before the Court shows that Villanueva was arrested and re-detained in violation the statutes and regulations that govern the revocation of a lawful Order of Supervision. The government’s motion does not show that genuine issues of fact exist material to the question of whether Villanueva’s has been lawfully re-detained under a valid revocation of his Order of Supervision. The government’s motion for summary judgment on this issue is denied.

**2. The Right to Challenge the Purported Revocation**

Villanueva also contends that the government violated his due process rights by failing to comply with the requirements of 8 C.F.R. § 241.4(D)(1). That section provides:

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

8 C.F.R. § 241.4(D)(1) (emphasis added).

Villanueva asserts that he has never been provided with a notification of the revocation of his Order of Supervision, has never been advised of the reasons for the purported revocation, and has never been provided with the informal interview required by § 241.4(D)(1). In neither its motion for summary judgment nor the Scroggins' declaration does the government allege, much less offer evidence to show, that it has complied with these requirements, which are contained in its own regulations.

“Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations.” *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020); *see also Gulf States Mfrs., Inc. v. Nat’l Labor Relations Bd.*, 579

F.2d 1298, 1308 (5th Cir. 1978) (“It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid.”); *Gov’t of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (per curiam) (“It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it.”). Multiple courts have held that the government’s failure to follow its own immigration regulations may warrant the release of a detained noncitizen. *See, e.g., Bonitto*, 547 F. Supp. 2d at 756; *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) (“While ICE does have significant discretion to detain, release, or revoke aliens, the agency must still follow its own regulations, procedures, and prior written commitments.”). The government’s position that it can choose, based on a change in administration, not to comply with its own regulations is unprecedented.

The government does not address Villanueva’s claim that it violated his due process rights by failing to comply with its own regulations, much less point to evidence to show that genuine issues of fact exist material to his claim. The

19/31

government's motion for summary judgment on these claims is denied.

### 3. Notice of Removal to a Third Country

Villanueva also contends that the government has violated his due process rights by failing or refusing to tell him what third country it intends to send him to so that he will have an opportunity to object and be heard on any objections, if necessary.

Removal proceedings determine not only *whether* a noncitizen may be removed from the United States but also to *where* he may be removed. In determining the location of removal, the law entitles the noncitizen to first voluntarily select a country of removal. *See* 8 U.S.C. § 1231(b)(2)(A)(i); 8 C.F.R. § 1240.10(f). If the noncitizen does not do so, the immigration judge will designate the country of removal and may also designate alternate countries to which the noncitizen may be removed. *See* 8 C.F.R. § 1240.10(f). In addition, the immigration judge may designate a country or countries to which the noncitizen *may not* be removed if the noncitizen proves to the court's satisfaction that the noncitizen is likely to be tortured or persecuted if removed to that country. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(b). In that circumstance, the government may remove the noncitizen to any third "country whose government will accept the [noncitizen] into that country." 8 U.S.C. § 1231(b)(2)(E)(vii). But the noncitizen may not be removed to any country in which there is reason to believe that he would

20/31

be tortured or persecuted. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16-208.18; 8 C.F.R. §§ 1208.16-1208.18. Therefore, when the government intends to remove a noncitizen to a third country, the government must provide notice of the intended removal that is sufficient to enable the noncitizen to challenge that removal either as violating an order of withholding or as removing him to a country that will subject him to torture or persecution. *See, e.g., Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101, at \*2 (Apr. 10, 2025) (Sotomayor, J., concurring); *Andriasian v. Immigr. & Naturalization Serv.*, 180 F.3d 1033, 1041 (9th Cir. 1999). The “notice must be afforded within a reasonable time and in such a manner as will allow [the noncitizen] to actually seek . . . relief in the proper venue before removal occurs.” *J.G.G.*, 2025 WL 1024097, at 2.

Villanueva contends that the government has violated his due process rights by failing to notify him of what country it intends to remove him to so that he will have an opportunity to object, if necessary. In response, the government indicates that it has not yet found a country willing to accept Villanueva, so no right to any process has yet been triggered. Villanueva points to no authority that requires the government to provide him with notice of the countries to which it has applied when those countries have not yet agreed to accept him. At this stage of the proceedings, then, Villanueva has not established that his due process rights have been violated in this context.

Nevertheless, Scroggins's declaration does not address this claim, and neither he nor the government offer any assurances that Villanueva will be afforded the required notice once it identifies a third county that will accept him. So while the government is not entitled to summary judgment on this claim, Villanueva's claim for relief on this issue is premature.

**C. The Fifth Amendment Violation**

In addition to his claims based on the violation of various immigration statutes and regulations, Villanueva contends that his re-detention violates due process because his removal from the United States is not reasonably likely to occur in the foreseeable future. In response, the government contends that it may detain Villanueva indefinitely because he is inadmissible under 8 U.S.C. § 1182(a)(6). Alternatively, the government contends that Villanueva's current detention is presumptively valid under *Zadvydas*. The government's positions are not well taken.

To the extent that the government contends that it can detain Villanueva indefinitely, it is incorrect. In *Zadvydas*, the Supreme Court specifically rejected the argument that the government could detain a removable noncitizen indefinitely. *Zadvydas*, 533 U.S. at 682. The Supreme Court held that, despite the apparently clear language of 8 U.S.C. § 1231(a)(6), due process prohibits the government from detaining an individual indefinitely after the 90-day removal period has expired. *Id.*

at 689 (specifically stating that § 1231(a)(6) “does not permit indefinite detention”). Instead, detention is limited to the period reasonably necessary to bring about the removal. *Id.* Therefore, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized.” *Id.* at 699.

In this case, Villanueva contends that his removal is not reasonably foreseeable and therefore his re-detention violates *Zadvydas*. He points out that the government has been unsuccessful in finding a country willing to accept him, and it has not identified any country that it is currently in contact with about Villanueva’s removal. Neither the government’s motion nor Scroggins’s declaration identify any country that the government has recently contacted about Villanueva’s removal. Considering the government’s past failure to identify a country willing to accept Villanueva and its current refusal to identify any possible third country for Villanueva’s removal, the Court cannot say that his removal is reasonably foreseeable. Villanueva’s current detention therefore violates the Due Process Clause, as explained in *Zadvydas*.

In the alternative, the government contends that Villanueva’s detention does not violate *Zadvydas* because he has not yet been detained for more than six months. The government contends that because it re-detained Villanueva on July 20, 2025, it may hold him for six months from that date before running afoul of *Zadvydas*.

But nothing in *Zadvydas* precludes a challenge to detention before the

presumptively constitutional time period has elapsed. *Zadvydas* specifically holds that continued detention is proper only when the noncitizen's removal is reasonably foreseeable. "[I]f removal is not reasonably foreseeable, the court should hold continued detention is unreasonable and no longer authorized by statute." *Id.* at 699-700. The government's contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself. *See, e.g., Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at \*13 (W.D. Wash. Aug. 21, 2025) (rejecting the government's argument that the six-month period resets when the government re-detains a noncitizen); *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 132366635, at \*2 (W.D. La. Nov. 20, 2015) (rejecting the government's argument that a petition was premature under *Zadvydas* and noting that "[s]urely, under the reasoning of *Zadvydas*, a series of releases and re-detentions by the government, while technically not in violation of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention, albeit executed in successive six month intervals.") (cleaned up). The Court recognizes that at least one court has allowed the government to engage in this type of gamesmanship. *See, e.g., Guerra-Castro v. Parra*, No. 1:25-cv-22487, 2025 WL 1984300, at \*4 (S.D. 24/31

Fla. July 17, 2025). Two other courts appear to have accepted this argument but have based their rejection of the petitioners' *Zadvydas* claims on facts showing that the petitioners' removals were reasonably foreseeable. *See Thai v. Hyde*, No. 25-11499-NMG, 2025 WL 1655489, at \*3 (D. Mass. June 11, 2025); *Meskini v. Att'y Gen. of the United States*, No. 4:14-cv-42, 2018 WL 1321576, at \*4 (M.D. Ga. Mar. 14, 2018). Despite this split of authority, the Court does not read *Zadvydas* to permit the government to indefinitely detain a noncitizen by the simple expedient of releasing and then re-detaining him in a series of "presumptively constitutional" six-month increments. The Court therefore rejects the government's contention that Villanueva must remain in detention for six months before the Court may consider whether his continued detention violates his due process rights.

However, even if the government can "reset" the six-month presumptively constitutional detention period by releasing the noncitizen and then re-detaining him, that would not require dismissal of Villanueva's habeas petition because the presumption of constitutionality during that six-month period is rebuttable. *See, e.g., Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (the "six-month presumption is not a bright line" and *Zadvydas* "did not require a detainee to remain in detention for six months . . . before a habeas court could find that the detention is unconstitutional"); *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543, at \*5 (D. Md. Sept. 8, 2025) (collecting cases). Even within the

presumptively constitutional detention period, whether a noncitizen's detention is constitutional hinges on whether his removal from the United States is reasonably likely in the foreseeable future, not on how long the noncitizen has been detained. *See Zadvydas*, 533 U.S. at 699.

The undisputed facts in this case show that Villanueva has been granted a withhold of his removal to Mexico, which is the only country to which he has a claim to citizenship or legal immigration status. The government cannot remove him to Mexico without returning to the immigration court to seek an order lifting the order for a withhold of removal, *see* 8 C.F.R. § 1208.24(f), but the government has not initiated such proceedings and the Scroggins declaration does not state that any such proceedings are anticipated. Further, the Scroggins declaration demonstrates that during the 8-year period since Villanueva was ordered removed, the government's efforts to remove him—sparse and sporadic as they may have been—have been unsuccessful. The declaration contains no information tending to show that circumstances have changed to the point that Villanueva's removal is now reasonably foreseeable when it was not before. Further, any efforts to remove Villanueva to a third country would likely be delayed by proceedings contesting his removal to the third country finally identified. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528, 530-31 (2021); *Zavvar*, 2025 WL 2592543, at \*8 (“The fact that *Zavvar* likely will have the opportunity to seek further relief from the Immigration

26/31

Court, and then potentially file appeals from any adverse rulings, further demonstrates that removal is not likely in the reasonably foreseeable future.”); *Munoz-Saucedo v. Pittman*, No. 25-2258 (CPO), 2025 WL 1750346, at \*7 (D.N.J. June 24, 2025) (finding relevant to the reasonably foreseeable analysis the fact that “even if ICE identified a third country, Petitioner . . . would be entitled ‘to seek fear-based relief from removal to that country,’ which would require ‘additional, lengthy proceedings’”).

The Court is mindful that the government has the right to enforce Villanueva’s Order of Removal. But the government may not detain Villanueva for an indefinite and undetermined period of time while it tries to effect that removal when the circumstances are such that his removal is not reasonably likely in the foreseeable future. Such an action violates the Due Process Clause, as explained in *Zadvydas*. The government points to no evidence showing that disputed issues of fact exist material to this determination. The government’s motion for summary judgment on this basis is denied.

**D. Scope of Relief**

Having determined that the government is not entitled to summary judgment in its favor and that Villanueva’s petition is well taken, the question remains as to what relief to afford Villanueva. In resolving that question, the Court must consider the three factors set out by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 27/31

334-35 (1976):

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Here, even if the government has the discretion to revoke Villanueva's supervision, his constitutionally protected liberty interests are implicated by his re-detention. The Supreme Court has stated that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Moreover, individuals who have been conditionally released from detention have a protected interest in their "continued liberty." *Young v. Harper*, 520 U.S. 143, 147 (1997). This is true even when the released individual is subject to extensive conditions of release. *Id.* at 148; *see also Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

Villanueva has a liberty interest in his continued release under his Order of Supervision. He has been free under that Order for over eight years. He has a job and a family. He has complied with all of the terms of his Order of Supervision. There is no principled reason to find that Villanueva does not have an overwhelming liberty interest in his continued release that may not be removed without due process.

Second, the risk of an erroneous deprivation of Villanueva's rights is high. The regulations enacted by the government itself are intended to ensure that noncitizens who have been released to supervision do not arbitrarily have that supervision revoked. By failing to follow its own regulations, the government has denied Villanueva notice of its intent to revoke his supervision, notice of the reasons for the revocation, and an opportunity to challenge those reasons. The government's only explanation for its failure to comply with its own regulations is a change in emphasis by the new administration. While the administration is free to change its areas of enforcement emphasis, it may not do so at the expense of individuals' due process rights. The risk of an arbitrary and erroneous deprivation under these circumstances is undeniably significant.

Third, the burden imposed on the government does not outweigh Villanueva's interests. To be sure, the government has a weighty interest in removing deportable noncitizens, ensuring compliance with Orders of Supervision, and protecting the public. But in this case, those interests will not be impaired by requiring the government to comply with its own regulations in determining whether to revoke Villanueva's supervision and whether to re-detain him. As explained above, the government can have no legitimate interest in ignoring its own regulations, which are intended to ensure that the discretion afforded to the government's agents is not exercised arbitrarily.

The government does not allege in its motion, and Scroggins does not attest in his declaration, that Villanueva failed to comply with his Order of Supervision or that his removal is imminent. Further, the government identifies no factual basis to believe that Villanueva poses a danger to the public. While the government recounts Villanueva's criminal history, those events predated the government's initial decision to release Villanueva on an Order of Supervision, and the government does not identify any changed circumstances that would appear to warrant the revocation of Villanueva's supervision and his re-detention without even the barest hint of due process.

Having considered Villanueva's petition and its attachments, the government's response and attachments, and the law, the Court finds that the balance of the factors establishes that the government violated Villanueva's due process rights by re-detaining him without complying with its own regulations and the law. The Court also finds that Villanueva's continued detention violates due process because it is not reasonably likely that he will be removed in the foreseeable future. The only way to vindicate Villanueva's due process rights is to order his release from custody. The Court therefore grants Villanueva's petition and orders his release subject to the conditions set forth below.

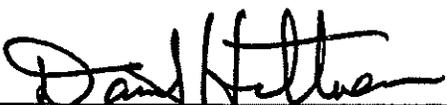
#### **IV. CONCLUSION**

Based on the foregoing, the Court **ORDERS** as follows:

1. The respondents' motion for summary judgment, (Dkt. 12), is **DENIED**.
2. Villanueva's petition for writ of habeas corpus, (Dkt. 1), is **GRANTED**.
3. **Within three hours of the issuance of this Order**, the respondents must **RELEASE** Villanueva from custody to a public place pursuant the original conditions of the Order of Supervision of March 23, 2017.
4. The respondents must **NOTIFY** Villanueva's counsel of the exact location and exact time of Villanueva's release **no less than two hours** before his release.
5. Once the respondents identify a country that is willing to accept Villanueva, the respondents must **NOTIFY** Villanueva and his counsel of the country to which it intends to remove Villanueva with sufficient time for him to object, if necessary.
6. Final judgment will be separately entered.

**The Clerk of Court will provide a copy of this Order to the parties.**

SIGNED at Houston, Texas on Sept 26, 2025.

  
\_\_\_\_\_  
DAVID HITTNER  
UNITED STATES DISTRICT JUDGE

Document Created by the Petitioner's Counsel for Illustrative Purposes

**DEPARTMENT OF HOMELAND SECURITY  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**  
*(Official Notice)*

**EXHIBIT 3**

**NOTICE OF REVOCATION OF ORDER OF SUPERVISION**

**1. Respondent Information**

Name: \_\_\_\_\_

A-Number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

**2. Authority for Revocation**

This Notice is issued pursuant to 8 C.F.R. § 241.4(l). The revocation is authorized by the District Director or the Executive Associate Director of ERO as required by 8 C.F.R. § 241.4(l)(2).

**3. Reasons for Revocation**

ICE alleges that you have violated the following condition(s) of your Order of Supervision, or that circumstances now indicate continued release is no longer appropriate under 8 C.F.R. § 241.4(l)(2)(iv):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. Notice of Intended Removal to Third Country**

ICE has secured acceptance for your removal to the following country pursuant to 8 U.S.C. § 1231(b)(2)(E)(vii):

Country: \_\_\_\_\_

You are hereby notified that DHS intends to remove you to this country. If you fear torture or persecution in that country, you may request protection. You will be scheduled for the appropriate reasonable fear screening consistent with 8 C.F.R. §§ 208.31 & 1208.31.

**5. Informal Interview**

In accordance with 8 C.F.R. § 241.4(l)(1), you will receive an informal interview promptly after this Notice. You may contest the grounds for revocation and present information. You may be represented by counsel at your own expense.

**6. Revocation and Detention**

Effective immediately, your Order of Supervision is revoked and you are ordered to return to ICE custody. This Notice satisfies all procedural requirements of 8 C.F.R. § 241.4(l).

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**SIGNED BY: Executive Associate Director for ERO, and—only if referral is not reasonably possible—the Field Office Director.**

Date: \_\_\_\_\_

Excerpt from 8 C.F.R. § 241.4(l)

**EXHIBIT 4**

“(l) *Revocation of release* —

(1) *Violation of conditions of release.* Any alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such alien who violates the conditions of an order of supervision is subject to the penalties described in section 243(b) of the Act. **Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded 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.**

(2) *Determination by the Service.* The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. **A district director** may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

(3) *Timing of review when release is revoked.* If the alien is not released from custody following the informal interview provided for in paragraph (l)(1) of this section, the HQPDU Director shall schedule the review process in the case of an alien whose previous release or parole from immigration custody pursuant to a decision of either the district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner under the procedures in this section has been or is subject to being revoked. The normal review process will commence

with notification to the alien of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked. That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release. Thereafter, custody reviews will be conducted annually under the provisions of paragraphs (i), (j), and (k) of this section.

**VERIFICATION OF COUNSEL**

I, Georgia Santos Laurent, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

November 19, 2025.

*/s/ Georgia Santos Laurent*

Georgia Santos Laurent

Attorney for Petitioner

SanLaurent Law Group

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FL Bar No. 0289377

Admitted and Qualified to Practice as an Attorney in the Western District of Texas

georgia@sanlaurentlaw.com

512-693-9343

**CERTIFICATE OF SERVICE**

I certify, in accordance with the rules of this Court, I filed the foregoing via the Court's CM/ECF system, which will send notice to all registered counsel of record.

November 19, 2025.

*/s/ Georgia Santos Laurent*

Georgia Santos Laurent

Attorney for Petitioner

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**CERTIFICATE REGARDING CONFERENCE (IMPRACTICABILITY STATEMENT)  
CERTIFICATE REGARDING CONFERENCE (L.R. CV-7(I))**

Undersigned counsel states that a conference under Local Rule CV-7(i) is impracticable. This motion seeks emergency relief concerning Petitioner's ongoing detention and potential removal; immediate filing is necessary to prevent irreparable harm.

November 19, 2025.

*/s/ Georgia Santos Laurent*

Georgia Santos Laurent

Attorney for Petitioner

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