Jesse Evans-Schroeder (Arizona State Bar #027434)
**GREEN EVANS-SCHROEDER, PLLC**
130 W. Cushing Street
Tucson, Arizona 85701
Phone: (520) 882-8852
Fax: (520) 882-8843
Email: Jesse@arizonaimmigration.net

*Attorney for Petitioner-Plaintiff*
Carlos Yaser Barakat

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Carlos Yaser Barakat,

Petitioner-Plaintiff,

v.

Unknown Party, *et al.*

Respondents-Defendants.

Case No.: 2:25-cv-04138-SMB-CDB

**PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

## I. INTRODUCTION

Petitioner, a Syrian national under a final order of removal since June 30, 2023, has been detained for five months despite Respondents' inability to remove him due to the lack of diplomatic relations between the United States and Syria. The statutory removal period expired years ago, yet Respondents unlawfully re-detained Petitioner in June after he lived freely and in compliance with release conditions for nearly two years. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), Respondents bear the burden of rebutting Petitioner's showing that removal is not significantly likely in the reasonably foreseeable future. They have failed to meet that burden. Respondents also misapply *Zadvydas* by attempting to reset the removal period through re-detention, disregard their own regulations and constitutional due process requirements by failing to provide required procedures to Petitioner, and cannot satisfy the *Mathews v. Eldridge* factors. Petitioner's unlawful detention constitutes irreparable harm, and he is entitled to immediate release.

## II. ARGUMENT

### A. The Court Should Strike Respondents' Untimely Declaration

The Court should strike the Declaration of Edmundo Galvan (Galvan Decl.), Doc. 15, filed November 21, 2025, as untimely submitted without leave of court. The Court ordered Respondents to file their response "no later than 5:00 p.m. on Wednesday, November 19, 2025." *See* Order, Doc. 8. After submitting their Response Brief, Respondents filed a supporting declaration two days later, without seeking an extension under Federal Rule of Civil Procedure 6(b), requesting leave for late filing, or offering any explanation for their delay.

Under Federal Rule of Civil Procedure 6(b), when an act "must be done within a specified time" a litigant must file a "motion . . . after the time has expired if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b). The Ninth Circuit has made clear that "it is never an abuse of discretion for a district court to exclude untimely evidence when a party fails to submit that evidence pursuant to a motion, as Rule 6(b) expressly requires." *Fleischer Studios v. A.V.E.L.A.*, 654 F.3d 958, 966 (9th Cir. 2011). Although a court is permitted to admit evidence and overlook a party's failure to file a motion demonstrating excusable neglect, it is not "compelled" to do so. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 898 (1990). Because the Declaration of Edmundo Galvan in support of Respondents' brief is untimely in violation of this Court's Order, and Respondents offered no explanation for their delay, Petitioner respectfully requests that the Court strike the evidence and decline to consider it.

**B. Even if Considered, Respondents' Evidence Fails to Rebut Petitioner's Showing That His Removal is Not Likely in the Reasonably Foreseeable Future**

To the extent that the Court considers Respondents' untimely declaration, it is insufficient to rebut Petitioner's showing that his removal is not significantly likely in the reasonable future. *See Zadvydas*, 533 U.S. at 701 (stating that once a noncitizen "provides good reason to believe" removal is unlikely, "the Government must respond with evidence sufficient to rebut that showing.") While Respondents submit that "the government has been able to schedule Petitioner's flight back to Syria," that assertion is not supported by their own evidence. *Compare* Resp. Br., Doc. 14 at 3–4 *with* Galvan Decl., Doc. 15 ¶ 12.

Petitioner cannot be removed to Syria due to the suspension of diplomatic relations between the U.S. and Syria from 2012 to present. *See* Habeas Pet. and Mot., Docs. 1, 3. Without more, the Galvan Declaration vaguely asserts that "Petitioner's scheduled removal is at the end of November 2025," but provides no concrete information establishing that removal to Syria is actually feasible. *See* Galvan Decl., Doc. 15 ¶ 12. Critically, the declaration fails to state whether Syria has agreed to accept Petitioner or whether there has been any change in the diplomatic relations between the United States and Syria that would make Petitioner's removal possible. *See generally* Galvan Decl., Doc. 15. In addition to this crucial failure, the declaration is conspicuously vague, offering no details about the purported, scheduled flight Respondents' reference in their Response Brief or any information about how, when, or under what circumstances Petitioner would actually be removed. *See id.* A mere assertion that removal is "scheduled" without supporting facts does not satisfy Respondents' burden under *Zadvydas*. 533 U.S. at 701. Thus, without specific, updated evidence regarding the availability of removals to Syria, the bare assertion of a "scheduled removal" is meaningless and fails to rebut Petitioner's showing.

Most telling, Respondents' evidence directly contradicts the government's own recent position before the Court. Just days ago, in a similarly situated case involving removal to Syria, the government withdrew the very argument Respondents make here, admitting "the government has no factual basis on which to proceed with its arguments regarding current, updated availability of removals to Syria." *See* Gov't Suppl. Br., Doc. 19, *Al Chair v. Cantu, et al.*, No. 2:25-cv-03704-KML-JFM (D. Ariz. Nov. 11, 2025). The

government cannot credibly claim removal to Syria is significantly likely here when it has conceded it lacks the factual basis to make such a representation in a parallel case. Respondents' vague and contradictory declaration fails to rebut Petitioner's showing, and his continued detention is unconstitutional.

**C. Petitioner Is Entitled to Immediate Release**

At the threshold, Respondents' failure to offer sufficient evidence to rebut Petitioner's showing that removal to Syria is not significantly likely in the reasonably foreseeable future warrants Petitioner's immediate release. Even setting aside this fatal deficiency, Respondents' remaining arguments fail on the merits.

First, Respondents' reliance on the six-month presumptively reasonable period under *Zadvydas* to claim Petitioner's detention is statutorily authorized is wrong. *See* Resp. Br., Doc. 14 at 2. *Zadvydas* does not create a mandatory six-month detention period; it identifies six months as presumptively reasonable. *See* 8 U.S.C. § 1231(a)(1)-(2); *Zadvydas*, 533 U.S. at 682. Here, that statutory period began when the order of removal became final—on June 30, 2023—and has long since expired. *See Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 13, 2025) (citing 8 U.S.C. § 1231(a)(1)(B)(i-iii)). Nothing in the statute or *Zadvydas* authorizes a new "removal period" every time Immigration and Customs Enforcement (ICE) re-detains someone years later. Moreover, the six-month presumption "is a presumption" and does not permit detention simply because less than six months has elapsed; to interpret it otherwise "would condone detention in cases where removal is not reasonably foreseeable . . . so long as it did not exceed six months." *Cruz Medina v. Noem*, No. 1:25-cv-01768-ABA, 2025 LEXIS

466326 at *11–12 (D. Md. Aug. 11, 2025). Having already exhausted the statutory removal period and offering no evidence that removal to Syria is actually feasible, Respondents cannot justify re-detaining Petitioner in the first place or his continued detention now.

Second, Respondents argue that Petitioner was not entitled to any due process before ICE unexpectedly detained him as he was complying with the terms of his Order of Supervision (OSUP). This misconstrues Petitioner's argument, ignores the well-established rule that noncitizens are entitled to due process, and contradicts Respondents' own regulations requiring them to adhere to certain procedures *before* revoking an OSUP and re-detaining a noncitizen. The Constitution requires due process before the government may deprive Petitioner of liberty, particularly here, where Respondents released him from custody over two years ago, authorized him to work, and allowed him to live in his community. Respondents ignore Supreme Court precedent repeatedly emphasizing that noncitizens living in the U.S. are entitled to due process protections, regardless of their immigration status. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 (collecting cases); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (holding that individuals subject to detention and removal under the Alien Enemies Act must be afforded due process).

Moreover, ICE failed to follow its own regulations requiring notice of the reasons of revocation and an interview "to afford [Petitioner] an opportunity to respond to the reasons for revocation." 8 C.F.R. § 241.4(l)(1). Separately, because removal to Syria has been futile for over two years, ICE was required to conduct a post-order custody review under 8 C.F.R. § 241.13, including the informal interview required by § 241.13(i)(3).

ICE's failure to comply with either regulatory scheme renders Petitioner's detention procedurally invalid and arbitrary and capricious under the Administrative Procedure Act. *See Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Courts have repeatedly held that when ICE fails to follow its own regulations in revoking release, the resulting detention is unlawful, and release must be ordered. *See, e.g., Perez-Escobar v. Moniz*, No. 25-CV-11781-PBS, 2025 U.S. Dist. LEXIS 141725, at *8 (D. Mass. July 24, 2025). As in *Perez-Escobar*, Petitioner here received no meaningful notice or opportunity to respond when his release was revoked. The government has not asserted any timeline for removal, any likelihood of obtaining travel documents, or any "changed circumstances" that could have justified revocation or continued detention. By re-detaining Petitioner without complying with their own regulations, let alone constitutional due process requirements, ICE's decision to detain Petitioner is procedurally invalid and his continued custody unlawful.

Third, Respondents' analysis under *Mathews v. Eldridge* is deeply flawed on all three factors. 424 U.S. 319 (1976). Petitioner's liberty interest is substantial—he has lived freely in the United States for two years, and as discussed above, he was entitled to due process protections before his liberty was suddenly stripped from him. Respondents claim "existing procedures" minimize erroneous deprivation, yet they failed to follow those very procedures. The risk of erroneous deprivation is not speculative; it has actually occurred. Petitioner has been detained for five months despite ICE's inability to establish that removal to Syria is likely. Respondents' claim that a pre-deprivation hearing would impose a "novel" burden is meritless, as the minimal burden of a hearing cannot justify indefinite detention without any process whatsoever when there is no realistic prospect of removal.

All three *Mathews* factors favor Petitioner. In any event, Petitioner is entitled to outright release because Respondents have not met their burden under *Zadvydas*.

Lastly, Petitioner is likely to succeed on the merits, as Respondents cannot meet their burden to rebut Petitioner's showing that removal to Syria is not reasonably foreseeable. Petitioner's unlawful detention in violation of his "constitutional rights unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (internal quotation and citation omitted). An injunction serves the public interest by requiring the government to adhere to the law, and Respondents cannot be injured by an order enjoining unlawful action. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

## III. CONCLUSION

For more than two years, the government has been unable to remove Petitioner to Syria. Respondents' brief confirms what Petitioner has shown—ICE has no realistic prospect of removing Petitioner in the reasonably foreseeable future. Respondents' untimely declaration, filed two days late without leave of court or explanation, should be stricken. Even if considered, it offers only vague unsupported assertions that fail to meet Respondents' burden under *Zadvydas*. Respondents' flawed *Mathews* analysis further underscores their inability to justify Petitioner's continued detention. ICE ignores the agency's own regulations, deprives Petitioner of constitutionally required process, and cannot demonstrate that his removal is significantly likely. Having exhausted the statutory removal period years ago and offering no evidence that circumstances have changed, Respondents cannot justify custody under 28 U.S.C. § 2241. Petitioner is likely to succeed

on the merits, and he suffers irreparable harm each day he remains detained in violation of his constitutional rights.

Accordingly, Petitioner respectfully requests that the Court grant his Motion for Temporary Restraining Order and Preliminary Injunction and order his immediate release.

Dated: November 24, 2025

Respectfully submitted,

s/ Jesse Evans-Schroeder
Attorney for Petitioner-Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on November 24, 2025, I electronically transmitted the attached documents by ECF to:

TIMOTHY COURCHAINE
United States Attorney
District of Arizona
Civil Division
Two Renaissance Square
40 N. Central Avenue, Suite 1800
Phoenix, AZ 85004-4449
Telephone: (602) 514-7500
Fax: (602) 514-7760

THEO NICKERSON
Assistant United States Attorney
Connecticut State Bar No. 429356
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Fax: (602) 514-7760
Email: theo.nickerson2@usdoj.gov

s/ Jesse Evans-Schroeder
Attorney for Petitioner-Plaintiff