UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

HAMID ZIAEI, *Petitioner,* v. MELISSA ORTIZ, Acting Warden, Torrance County Detention Facility; JOEL GARCIA, Field Office Director, El Paso Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General, *in their official capacities*, *Respondents.*	Civil Action No.: 1:25-cv-01111-MLG-KBM

PETITIONER'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS AND REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUTION

Petitioner Hamid Ziaei has followed the law, while Respondents have not. In 2024, Mr. Ziaei was granted of withholding of removal from Iran, was issued a removal order to Iran, and was released from U.S. Immigration and Customs enforcement ("ICE") custody on an order of supervision ("OSUP"). Despite Mr. Ziaei's compliance with his OSUP, Respondents re-detained Mr. Ziaei at his scheduled check-in in June 2025. Respondents re-detained Mr. Ziaei without considering the relevant individual facts of his case and without any plans to actually remove him to a third country. Petitioner was instead swept up in Respondents' dragnet of immigration enforcement meant to meet a quota of immigration arrests[1] and achieve "the single largest Mass Deportation Program in History[,]"[2] regardless of what the law requires of Respondents before depriving a person of their freedom. Since being re-detained, Respondents have not identified a single country to which they are seeking to remove Mr. Ziaei, even though the law requires that Respondents have a basis to continue detaining Mr. Ziaei. Petitioner has now been in Respondents' custody at the Torrance County Detention Facility ("TCDF") in Estancia, New Mexico for over five months, with no end in sight.

Respondents' position, as expressed in their papers, is that the law authorizes the Department of Homeland Security ("DHS") to detain noncitizens granted withholding of removal to execute a removal order. *See* ECF 12, Respondents' Motion to Dismiss Petition for Writ of

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[1] Jennie Taer, *Trump admin's 3,000 ICE arrests per day quota is taking focus off criminals and 'killing morale': insiders warn*, NY Post, June 17, 2025, https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/, https://perma.cc/DB9R-MJUC (last visited Oct. 15, 2025) ("The Trump administration's mandate to arrest 3,000 illegal migrants per day is forcing ICE agents to deprioritize going after dangerous criminals and targets with deportation orders, insiders warn. Instead, federal immigration officers are spending more time rounding up people off the streets, sources said. 'All that matters is numbers, pure numbers. Quantity over quality,' one Immigrations and Customs Enforcement insider told The Post.").

[2] Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) ("ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.").

Habeas Corpus (hereinafter, "MTD") at 6. But that is not the law. The Immigration and Nationality Act ("INA") and its implementing regulations provide no such basis for detention. The authority to execute a removal order is *distinct* from the authority to detain, but nevertheless the only country for which Mr. Ziaei has a removal order is the country to which the law *forbids* his removal. Rather than provide the legal authority for, or the evidence to substantiate, the "true cause" of Petitioner's detention, as required by 28 U.S.C. § 2243, Respondents instead raises jurisdictional arguments with respect to Mr. Ziaei's claims, none of which have merit. MTD at 5-8.

Respondents provide no lawful authority for Petitioner's re-detention or indefinite detention. This Court has the power to and should "dispose of the matter as law and justice require" by granting the writ and ordering Mr. Ziaei's release from detention. 28 U.S.C. § 2243.

II. BACKGROUND

Mr. Ziaei, a prominent athlete in Iran, fled the country after speaking out against and protesting the Iranian government and facing persecution as a result. Declaration of Hamid Ziaei (hereinafter, "Ziaei Decl.") ¶ 4. On approximately January 29, 2024, Mr. Ziaei came to the United States to seek protection, was detained by immigration officers, and placed in removal proceedings after passing a credible fear interview. *Id*. ¶¶ 4-5. On June 10, 2024, an immigration judge ("IJ") granted Mr. Ziaei withholding of removal from Iran and issued a removal order to Iran. *See* Ziaei Decl., Ex. A, Order of the Immigration Judge (hereinafter, "IJ Order"). Mr. Ziaei's request for asylum was simultaneously denied and the IJ's order stated that Mr. Ziaei waived appeal. *Id.* After 133 days in detention, Mr. Ziaei was released on an OSUP pursuant to 8 U.S.C. § 1231(a)(3). Ziaei Decl. ¶ 6; *id.*, Ex. B, Order of Supervision (hereinafter, "OSUP").

Over the next year, Mr. Ziaei complied with the terms of his OSUP and built his life in Irvine, California: He was living with his U.S.-citizen cousin, attended his scheduled ICE check-

in on June 26, 2024; applied for and received work authorization[3] valid through August 2029 based; studied English and took classes at a community college; and began working several jobs. Ziaei Decl. ¶¶ 6, 8; *id.*, Ex. C, Next Reporting Date; Ex. F, Form I-797C, Approval Notice. While the IJ later gave Mr. Ziaei until August 9, 2024 to appeal the decision denying asylum, *see* Ziaei Decl., Ex. D, Motion to Reissue Order of the Immigration Judge, Mr. Ziaei's notice of appeal was rejected for failure to properly serve the Department of Homeland Security ("DHS"), Ziaei Decl. ¶¶ 7, 12; *id*., Ex. E, Amended Order of the Immigration Judge (hereinafter, "Amended IJ Order").

On June 26, 2025, Mr. Ziaei was detained at his scheduled ICE check-in. Ziaei Decl. ¶ 9. He was detained despite telling officers that he had withholding of removal and despite the facts that he had complied with all conditions of his OSUP, he had no criminal activity, and ICE had not requested that Mr. Ziaei obtain travel documents to any country. *Id.* ¶¶ 9-11. ICE told Mr. Ziaei that they were trying to find a third country to deport him to, his withholding of removal status was "cancelled," and he needed to return to Iran. *Id.* ¶ 9. ICE officers took Mr. Ziaei's fingerprints and tried to get him to sign an English-language document that he did not understand while refusing to explain it or provide a Farsi interpreter. *Id.* ¶ 10. Mr. Ziaei refused to sign. *Id.*

Following his arrest, Mr. Ziaei was transferred to TCDF. *Id.* ¶ 11. In July 2025, officers brought Mr. Ziaei paperwork to fill out, saying that it was to create a travel document. *Id.* ¶ 13. They left the paperwork with Mr. Ziaei, and nobody came to collect it. *Id.* Mr. Ziaei has no ties to any country other than Iran, and ICE officials have not requested that Mr. Ziaei do anything to facilitate his deportation to any specific country. *Id*. ¶ 20. Since being detained, Mr. Ziaei has tried to seek his freedom. On August 7, 2025, a law firm helped Mr. Ziaei advocate for his release to the ICE El Paso Field Office over email, receiving an acknowledgement on August 8, 2025, that

[3] Petitioner's Petition for Writ of Habeas Corpus stated that Mr. Ziaei was granted work authorization under the (c)(18) category based on his release on an OSUP. ECF 1, Verified Petition for Writ of Habeas Corpus at ¶¶ 3, 51. Mr. Ziaei was actually granted work authorization under the (a)(10) category based on his grant of withholding of removal. *See* Ziaei Decl., Ex. F.

the request was "submitted to upper management," and upon follow up on September 25, 2025, confirmation that Deportation Officer Arispe was "going to . . . get you an answer as soon as I can." *Id.* ¶ 17. Mr. Ziaei is still awaiting the answer. Ziaei Decl. ¶¶ 14, 17; *id.*, Ex. G, Correspondence Between Law Firm and ICE. In September 2025, Mr. Ziaei applied for bond before the Otero Immigration Court, which was denied for want of jurisdiction on September 22, 2025. Ziaei Decl. ¶ 15, *id.*, Ex. H, Order of the Immigration Judge (denying bond). On September 22, 2025, and over the next two months, Mr. Ziaei sent messages via tablet to his deportation officers advocating for release. Ziaei Decl. ¶¶ 16, 18, 19. Mr. Ziaei did not receive any response to the first message and to the latter two messages received the same responses: "Your case is pending third country removal." *Id.* ¶¶ 18, 19

Mr. Ziaei has been in detention for over five months, during which time his health deteriorated. Ziaei Decl. ¶ 21. On November 7, 2025, Mr. Ziaei filed a petition for writ of habeas corpus before this Court. ECF 1, Verified Petition for Writ of Habeas Corpus (hereinafter, "Pet."). On November 17, 2025, the Court issued an Order for Service and to Show Cause (hereinafter, "Order"), ordering Respondents to "respond to the Petition and show cause why it should not be granted within three days of receipt of service." ECF 7, Order at 2. On November 28, 2025, Respondents filed an MTD, ECF 12, accompanied by an unsigned declaration, ECF 12-1, Declaration of William Shaw (hereinafter, "Unexecuted Shaw Decl."), and a copy of Form I-213, "Record of Deportable/Inadmissible Alien" (hereinafter "I-213"), ECF 12-2. On December 1, 2025, Respondents filed a signed copy of the declaration as a supplemental exhibit to their MTD. *See* ECF 13-1, Declaration of Willima Shaw (hereinafter, "Shaw Decl.").

III. ARGUMENT

A. This Court has jurisdiction over Mr. Ziaei's habeas petition, which he has sufficiently plead.

i. Mr. Ziaei has satisfied the pleading requirement.

Contrary to Respondents' assertion, MTD at 5-6, Petitioner's habeas petition contains sufficient "facts that, if assumed to be true, state a claim to relief that is plausible on its face." *Mink v. Knox*, 613 F.3d 995, 1000 (10th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

Far from "naked assertions," MTD at 6, the petition offers facts that *taken as true* support its claims. The assertion that Petitioner was arrested "without consideration of his individual facts or circumstances" is supported by factual allegations—that accepted as true—necessarily mean that Petitioner's OSUP could not have lawfully been revoked, *see infra* Section III.E: Petitioner (1) complied with the terms of his OSUP, Pet. ¶¶ 53, 63; (2) has no criminal record, Pet. ¶ 54; and (3) had not received any requests to obtain a travel document Pet. ¶ 55. Respondents' assertion that "an individualized assessment occurred," is neither relevant—where Petitioner's allegations must be taken as true in considering a 12(b)(6) motion—nor does Respondent provide actual evidence that it made the required assessment under 8 C.F.R. 241.4*(l)*. *See infra* Sections III.D, E.

ii. Administrative Procedure Act claims are not barred in habeas.

Respondents are incorrect that this Court cannot find Mr. Ziaei's detention unlawful based on a violation of the Administrative Procedure Act ("APA") in habeas. *See* MTD at 5. Claims under the APA are permitted in "any applicable form of legal action, including…habeas corpus." 5 U.S.C. § 703. Respondents cite to the U.S. Supreme Court's decision in *Trump v. J.G.G.*, 604 U.S. 670 (2025), MTD at 5, but *J.G.G.* is inapposite. In *J.G.G.*, petitioners challenged the use of the Alien Enemies Act to summarily deport them without process. 604 U.S. at 671. The Supreme Court found that venue was improper because petitioners did *not* bring a habeas petition in the district of confinement but directly challenged the use of a statute in the petitioners' summary removal in a district that was *not* where petitioners were confined. *Id*. at 672-73. Mr. Ziaei, on the

other hand, *does* bring a habeas corpus petition in the district of his confinement, not to challenge summary deportation, but rather to challenge unlawful detention. *See Orellana v. Francis*, No. 25-CV-04212 (OEM), 2025 WL 2822640 (E.D.N.Y. Oct. 3, 2025) (distinguishing *J.G.G.* from a habeas case challenging a parole revocation and citing to 5 U.S.C. § 703). Mr. Ziaei's APA claims are not barred in habeas, and courts have found as much. *See, e.g.*, *Y-Z-L-H- v. Bostock*, 792 F. Supp. 3d 1123, 1143-46 (D. Or. 2025) (finding purported termination of parole without following proper procedure a violation of the APA); *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1159-61 (D. Minn. 2025) (granting habeas based on APA violation).

iii. Mr. Ziaei's *Zadvydas* claim is not premature.

Mr. Ziaei's claims are also ripe for review. Respondents contend that the Court does not have subject matter jurisdiction to consider Counts Two, Three, or Four, Pet. at 18-23, solely because Mr. Ziaei has not yet been detained at TCDF for six months. *See* MTD at 6-8. First, Respondents ignore that Petitioner's due process claims (Counts 3 and 4) independently challenge Mr. Ziaei's *re-detention* in the first instance, for which the length of detention has no bearing.

Second, Respondents misread *Zadvydas v. Davis*. 533 U.S. 678, 701 (2001). Should the Court find that the six-month presumptively reasonable period restarted with Mr. Ziaei's re-detention—it does not, *see infra* Section III.F—even then, Mr. Ziaei's claims are ripe for review because the "presumptively reasonable period" is simply that: a *presumption*. *Id.* ("[W]e think it practically necessary to recognize some presumptively reasonable period[.]"). Courts across the country have found as much. *See, e.g.*, *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *6 (D.N.J. June 24, 2025) ("[i]f a person 'can prove' that his removal is not reasonably foreseeable, then he can overcome the presumption"); *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008) ("[T]here is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable."); *Trinh v. Homan*, F. Supp 3d 1077, 1092 (C.D. Cal. 2020) ("*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical prohibition on claims challenging

detention less than six months."); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 708-09 (S.D. Tex. Apr. 2, 2020) (similar). By contrast, Respondents fails to cite a single case that stands for the proposition that the six-month period is irrebuttable. *See* MTD at 6-8; *cf. Jiang v. Bondi, et al.*, No. 1:25-CV-00922-KG-GBW, 2025 WL 3281819, at *2 (D.N.M. Nov. 25, 2025) (*declining* to decide the issue of "whether *Zadvydas* permits challenges within the first six months of post-order detention"). The presumption is about *which party bears the burden*, *not* whether this Court is authorized to consider the claim. *Cesar*, 542 F. Supp. 2d at 903.

B. Respondents filing should be treated as their return to the habeas petition.

Respondents' filing, captioned as a "Motion to Dismiss," *see* MTD at 1, should be treated as their return to Mr. Ziaei's habeas petition for three reasons. First, the Court ordered a response to the petition consistent with the statutory requirements under 28 U.S.C. § 2241. *See* Order at 2 (ordering Respondents "to respond to the petition and show cause why it should not be granted within three days of receipt of service."); *see also* 28 U.S.C. § 2243 ("The person to whom the writ or order is directed shall make a return certifying the true cause of detention."). Nevertheless, the day the response was due, Respondents styled their filing as an MTD. *See* MTD at 1. Second, Respondents' papers make arguments and include evidence on the merits and attempt "show cause." *See* MTD at 2 ("Respondents' conduct, as a matter of law, was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law"), *id.* at 6 ("Respondents detained Petitioner to enforce a valid, final order of removal following a review of Petitioner's immigration history and interview."); *see also* Shaw Decl.; I-213. Respondents also request denial of the petition, with dismissal in the alternative. *Id.* at 1, 8 ("[T]he Court should deny or dismiss the Petition."). Finally, justice requires that Petitioner receives a ruling on his claims of unlawful detention expeditiously, where he has already been unlawfully detained for over five months and his health has deteriorated. Ziaei Decl. ¶ 20.

C. Mr. Ziaei's petition should be granted because Respondents' rationale for detaining Petitioner fails to provide a lawful basis for detention.

The Court may grant the petition and order Mr. Ziaei's immediate release because Respondents have failed to identify a lawful, statutory basis authorizing detention. *See* 28 U.S.C. § 2243 (requiring that a respondent "shall make a return certifying the true cause of detention"). Respondents state that "Petitioner was taken into custody to effectuate his final order removal order pursuant to INA § 241." MTD at 2-3. As evidence, Respondents provide a copy of a Form I-213, Record of Deportable/Inadmissible Alien, from the day of Mr. Ziaei's re-detention, *see* I-213, and a single sentence in William Shaw's declaration, Shaw Decl. ¶ 5. Neither Respondents' justification for detention, nor the evidence provided to ostensibly substantiate that justification, *see infra* Section III.D, authorizes Mr. Ziaei's detention.

Under Section 241 of the INA, Respondents Bondi and Noem "may not remove a[noncitizen] to a country if the Attorney General decides that the [noncitizen]'s life or freedom would be threatened in that country." 8 U.S.C. § 1231(b)(3)(A). Mr. Ziaei was granted withholding of removal from Iran on June 10, 2024, *see* IJ Order at 3, and this order became administratively final on August 9, 2024, *see* Amended IJ Order at 4. When an IJ grants withholding of removal, the IJ issues a removal order and simultaneously withholds that order with respect to the country for which the noncitizen has demonstrated the requisite risk of persecution. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021). Mr. Ziaei was simultaneously issued a removal order to Iran, IJ Order, a removal order which Respondents Bondi and Noem are prohibited from executing because of his grant of withholding. 8 U.S.C. § 1231(b)(3)(A). It cannot be that "Petitioner's detention … was authorized as a matter of law[,]" MTD at 6, when their justification for doing so—enforcing Mr. Ziaei's "valid, final order of removal," *id.*, is against the law.

What's more, the authority to *remove* a noncitizen, is distinct from the authority to *detain*. While Respondents broadly reference 8 U.S.C. § 1231, that statute itself does not provide the blanket authority Respondents suggest. MTD at 2-3. Indeed, 8 U.S.C. § 1231 and its implementing

regulations limit Respondents' authority to detain to certain circumstances and timeframes. Under 8 U.S.C. § 1231(a)(2)(B), DHS "shall detain" the noncitizen during the "removal period"—a period of 90 days that begins, as relevant here, once a noncitizen's removal order "becomes administratively final," 8 U.S.C. § 1231(a)(1)(B). While this provision authorized Mr. Ziaei's ongoing detention following his grant of withholding and simultaneous issuance of a removal order in June 2024, IJ Order, it plainly does not do so now. Respondents have the authority to release noncitizens on an OSUP during that removal period, as they did here, and consistent with 8 U.S.C. § 1231(a)(3). *See* OSUP at 1; Shaw Decl. ¶ 4. DHS may continue to detain noncitizens beyond that removal period only under certain circumstances, 8 U.S.C. § 1231(a)(6). Respondents too are constrained by the Fifth Amendment. *Zadvydas*, 533 U.S. at 699.

D. Mr. Ziaei's petition should be granted because there is no evidence that authorizes detention.

The Court may separately grant the Petition on any or all of the claims because there is no admissible evidence that gives rise to any lawful reason under the INA's detention provisions. 28 U.S.C. § 2243; 8 U.S.C. 1231(a)(6). Respondents' papers rely on an unexecuted Declaration of William Shaw, which has no evidentiary value without his signature. *See* Unexecuted Declaration of Willaim Shaw, ECF 13-1. To the extent that the Motion relies on the belatedly filed executed Declaration of William Shaw, *see* Shaw Decl., the Court should strike most of it as inadmissible.

i. The Federal Rules of Evidence apply in 28 U.S.C. § 2241 proceedings.

The Federal Rules of Evidence ("FRE") generally apply in proceedings under 28 U.S.C. § 2241. Federal Rule of Evidence 1101 states that the FRE govern "civil cases and proceedings," and lists exceptions, none of which includes habeas proceedings. Fed. R. Evid. 1101(b), (d). Subsection (e) then clarifies that another statute or set of rules "may provide for admitting or excluding evidence independently from these rules." Fed. R. Evid. 1101(e). That exception also does not apply, as federal habeas rules do not displace the FRE. Significantly, the comment to Rule 1101

clarifies that "[t]he rule does not exempt habeas corpus proceedings." Fed. R. Evid. 1101 advisory committee's note to subdivision (d). Consistent with this reading, the Supreme Court has applied the FRE to determine admissibility in a habeas proceeding. *See, e.g.*, *Amadeo v. Zant*, 486 U.S. 214, 227 n.5 (1988). By their plain text, the FRE apply in full force in the present case.

ii. Portions of the Shaw Declaration should be stricken as inadmissible hearsay and in violation of the best evidence rule.

Nearly the entire Shaw Declaration is inadmissible in this proceeding because it is almost entirely hearsay and violates the best evidence rule. Hearsay is defined as an out-of-court statement submitted for the truth of the matter asserted in that statement. *See* Fed. R. of Evid. 801(c); *see also United States v. Hinson*, 585 F. 3d 1328, 1336-37 (10th Cir. 2009) ("Where the government introduces evidence that bears on the ultimate issue in a case but that is not necessary to explain the background of a[n] … investigation, the only reasonable conclusion we can reach is that the evidence was offered … as support for the government's case against the defendant.").

The best evidence rule provides that "[a]n original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise." Fed. R. Evid. 1002. "The rule is the familiar one *requiring* production of the original of a document to prove its contents[.]" Fed. R. Evid. 1002 advisory committee's note (italics added). In other words, a declarant cannot simply assert what a document contains where that document itself can "prove its content." *Id.; accord, e.g.*, *United States v. Chavez*, 976 F. 3d 1178, 1196 (10th Cir. 2020) (affirming that a transcript of a recording cannot be admitted without the recording itself); *Gonzalez v. City of McFarland*, No. 1:13-CV-00086-JLT, 2014 WL 3940295, at *3 (E.D. Cal. Aug. 12, 2014) (concluding that city violated the best evidence rule in submitting a declaration summarizing the contents of an auditor's report instead of the report itself).

The Petitioner asks the Court to strike the following paragraphs from the Shaw Declaration because they are inadmissible under the hearsay and best evidence rules:

Paragraph 2 of the Shaw Declaration. Mr. Shaw disclaims personal knowledge of much of his sworn statement. He attests that "The following information is based on my personal knowledge and my review of information obtained from other individuals employed by DHS, information obtained from government databases maintained by DHS, and other documents related to the case of Ziaei." Nowhere does Mr. Shaw clarify which statements are based on personal knowledge. Nor does Mr. Shaw cite to any documents as exhibits to make clear which statements are based on review of documents as opposed to information obtained through hearsay. Everything that follows paragraph 2 is inadmissible hearsay or violates the best evidence rule.[4]

Paragraphs 5-6 of the Shaw Declaration. Mr. Shaw attests to the out-of-court determination of the vaguely identified "ERO in Santa Ana, California" that "there was significant likelihood of removal to a third country." He then attests that "ERO issued a Revocation of Order of Supervision letter" but does not provide any such letter. He also attests that "Ziaei refused to comply with his Travel Document Request Application." As the Assistant Field Office Director of the Albuquerque Office of DHS in New Mexico, Mr. Shaw does not provide any basis for how he has personal knowledge of the actions and decisions of unnamed and unidentified ERO officers two states away. Mr. Shaw does not offer the original letter nor the referenced application, and he does not assert that he heard or observed any of these facts, including that "Ziaei refused to comply." If he learned this information through out-of-court statements of unnamed and unidentified officers of ERO, it is hearsay; if he learned this information through documentation, an original of such documentation should be submitted under the best evidence rule. Accordingly, paragraphs 5 and 6 of the Shaw Declaration should be stricken in their entirety.

[4] If the Court does not strike the Shaw declaration, Petitioner requests an opportunity to issue interrogatories and conduct a deposition of Mr. Shaw and officers of "ERO in Santa Ana, California" and "ERO" referred to in the declaration. 28 U.S.C. § 2246; *E-M- v. Bostock*, 3:25-cv-1083-SI, ECF 28 (D.Or. 2025) (order granting discovery in habeas case).

Paragraphs 7-9 of the Shaw Declaration. Mr. Shaw again attests to the out-of-court statements of the vaguely identified "ERO" who "commenced vetting for removal", "reached out to Headquarters Removal and International Operations (HQ-RIO)" and is now waiting for HQ-RIO "to coordinate an interview with a foreign embassy that may accept him." Respondents submit these paragraphs for the truth of the matter although Mr. Shaw does not clarify that he heard or observed these communications. If he learned this information through out-of-court statements of unnamed and unidentified officers of ERO, it is hearsay; if he learned this information through documentation, an original of such documentation should be submitted under the best evidence rule. Mr. Shaw also states that "ERO forwarded Form I-241, Request for Acceptance of Alien[,]" implying the existence of e-mail communication. Mr. Shaw does not submit original documentation of such correspondence, nor does he submit the Form I-241 that is referenced, in violation of the best evidence rule. Paragraphs 7-9 should be stricken entirely.

E. The petition should be granted because Respondents' *re-detention* of Mr. Ziaei violates the Administrative Procedure Act, the Immigration and Nationality Act, and Federal Regulation.

Under the INA and its implementing regulations, after an individual is released on OSUP, that release may only be revoked subject to formal processes and for limited reasons. 8 C.F.R. § 241.4(*l*)(1)-(2); *see* 8 U.S.C. § 1231(a)(3) (directing that following the removal period, the noncitizen "shall be subject to supervision"). Respondents filing only supports the conclusion that they did not follow the requisite processes or make the necessary findings. *See* Shaw Decl.; I-213.

First, a noncitizen's release may be revoked "in the exercise of discretion" when "[t]he purposes of release have been served"; the noncitizen "violates any condition of release"; revocation "is appropriate to enforce a removal order or to commence removal proceedings against [the noncitizen]"; or "[t]he conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(*l*)(2). Here, ICE did not have a valid reason to revoke Mr. Ziaei's release. It is undisputed that Mr. Ziaei did not violate any terms of

his release, including not committing any crimes that could constitute a material change in circumstances. *See* Ziaei Decl. ¶ 11; *see also* Shaw Decl., I-213 at 2-3 (listing no violations of OSUP). As described *supra* Section III.C, Mr. Ziaei's re-detention was not "appropriate to enforce a removal order," *cf.* MTD at 6. Nor is "determining that there was significant likelihood of removal to a third country" one of the enumerated reasons justifying revocation. Shaw Decl. ¶ 5. While Mr. Ziaei's OSUP required that he assist ICE in "obtaining necessary travel documents," OSUP at 1, ICE made no such request before re-detaining Mr. Ziaei, Ziaei Decl. ¶ 11.

Second, the decision to revoke release can only be made by the Executive Associate Director unless in a "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]," in which case the district director can revoke release. *Id.* Respondents do not provide the "Revocation of Order of Supervision letter" referenced in the Shaw Declaration, Shaw Decl. ¶ 5, and appear to concede that the decision to revoke Mr. Ziaei's release was made by deportation officers—which is plainly improper under the regulations. *See* I-213 at 1-3 (documents signed by "Deportation Officer"); MTD at 6 (stating that an "individualized assessment did occur" and citing to the I-213 and the Shaw Declaration); *Santamaria Orellana v. Baker,* 2025 WL 2841886, at *6 (D. Md. Oct. 7, 2025) (finding violation where revocation of release was not made by an Executive Associate Director or district director).

Third, after the decision is made to revoke a noncitizen's OSUP, the noncitizen must be notified of the revocation and provided an informal interview. 8 C.F.R. § 241.4(*l*)(1). Even if "ERO *issued* a Revocation of Order of Supervision letter," Shaw Decl. ¶ 5 (emphasis added), Mr. Ziaei never received such a letter nor was he given notice, *see* Ziaei Decl. ¶¶ 9-10. He was also not given an informal interview to respond. *Id.* ¶¶ 10, 14. Respondents do not contest otherwise. Shaw Decl.

Respondents failed to comply with both federal statute and regulations when re-detaining Petitioner. *See* 8 C.F.R. § 241.4(*l*)(1)-(2); 8 U.S.C. § 1231(a)(3); *see also Ceesay v. Kurzdorfer*,

781 F. Supp. 3d 137, 159-66 (W.D.N.Y. 2025) (finding violations when unauthorized authority revoked petitioner's OSUP and respondents failed to provide an informal interview). Additionally, because Respondents have continued to fail to articulate a reasonable explanation for their decision to re-detain him, their decision violates the APA. *See* 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made").

F. The petition should be granted because Respondents' *indefinite detention* of Mr. Ziaei is unlawful under *Zadvydas*, and Respondents have violated their own regulations and policies in failing to make the requisite custody determinations.

Respondents have held Mr. Ziaei unlawfully in detention for over five months in violation of 8 U.S.C. § 1231(a)(6). In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6), when "read in light of the Constitution's demands, limits an [noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." 533 U.S. at 689. The Supreme Court adopted a "presumptively reasonable period" necessary to effectuate removal of six months, inclusive of the 90-day removal period. *Id*. at 701. "After this 6-month period, once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id*.

i. The six-month period runs from the beginning of the removal period and therefore Mr. Ziaei's detention is presumptively unreasonable.

The six-month period "reasonably necessary" to bring about a noncitizen's removal who has been granted withholding of removal starts at the beginning of the removal period. This conclusion is consistent with *Zadvydas* and 8 U.S.C. § 1231. *See, e.g.*, *Sagastizado Sanchez v. Noem*, No. 25-cv-00104, at *14 (S.D. Tex. Nov. 14, 2025) ("If the government "can be presumed

to be working to effectuate removal in good faith, that presumption does not reset at the time a noncitizen is re-detained after being released on an order of supervision during which time the Government could have been taking steps to effectuate the noncitizen's removal."); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543 (D. Md. Sept. 8, 2025), 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."); *Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding that a final order of removal triggered the six-month period). Indeed, the facts of *Zadvydas* only considered situations in which a noncitizen was *continuously* detained from the issuance of a removal order, while the government attempted to remove them. 533 U.S. at 684-86. *Zadvydas* did not address the factual circumstance here, in which a noncitizen is released from detention on an OSUP, more than six months have elapsed without removal, and a noncitizen is subsequently re-detained. *Cf. Sagastizado Sanchez*, No. 25-cv-00104, at *14 ("[T]he 180-day period—and therefore the presumption of reasonable detention—does not reset simply because a noncitizen is redetained.")

While some courts have found that the six-month presumptive period can only run while an individual is detained, it is an exaggeration that finding otherwise has been "consistently rejected by the majority of the courts." MTD 12 at 6. The District of New Mexico case that Respondents rely on for this proposition is inapposite. The petitioner in *Jiang v. Bondi, et al.*, 2025 WL 3281819 (D.N.M. Nov. 25, 2025), filed his habeas petition after being detained by ICE for the first time, meaning ICE had not previously made a determination that there was no significant likelihood of removal, *cf.* Shaw Decl. ¶ 4. However, Mr. Ziaei was detained at that time that he received a final order of removal and was subsequently released on OSUP; once he was re-

detained, the reset of the six-month presumptive period would introduce an undue burden and due process implications. *See Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tx. August 2, 2025) ("Imposing the burden of proof on the [noncitizen] each time he is re-detained would lead to an unjust result and serious due process implications."). The petitioner in *Jiang* had also not been granted withholding, meaning the government sought to effectuate removal to his country of origin and was not required to go through the third-country removal process. *Jiang,* 2025 WL 3281819, at *1. Here, by contrast, Respondents have not even identified an intended country of removal for Mr. Ziaei, let alone begun the requisite processes to remove him there. Shaw Decl. ¶ 9.

ii. There is good reason to believe that there is no significant likelihood of Mr. Ziaei's removal in the reasonably foreseeable future and Respondents have not proven otherwise.

Mr. Ziaei has provided "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" and Respondents have not furnished evidence, as required, to rebut this showing. *Zadvydas*, 533 U.S. at 689. Mr. Ziaei cannot be removed to Iran, the only country of which he and his parents are citizens, and the only country to which he has ties besides the United States, because he was granted withholding of removal to Iran. Ziaei Decl. ¶¶ 5, 19. Respondents have had more than 15 months to begin the process to remove Petitioner to a third country yet have not done so. *Id*. ¶¶ 8, 12. Since his re-detention, Mr. Ziaei has inquired numerous times as to his custody status of his custody, and to the extent he has received responses, they have only support the conclusion that there no significant likelihood of removal in the reasonably foreseeable future: ICE has stated that his release request was "submitted to upper management" (Aug. 8, 2025), Hamid Decl. ¶ 14; "I am going to get with my attorneys and get you

an answer as soon as I can." (Sept. 25, 2025), *id.* ¶ 17; and "Your case is pending third country removal" (Nov. 7, 2025 & Nov. 17, 2025), *id.* ¶ 18.

The government's belief or unsubstantiated assertion that someone will be removed in the reasonably foreseeable future is not enough to meet its burden. *See McKenzie v. Gillis*, 2020 WL 5536510, at *3 (S.D. Miss. July 30, 2020) (concluding that "ICE's *belief* that Petitioner will be removed" does not "satisfy the government's burden to rebut Petitioner's showing that he will not be removed in the foreseeable future" (emphasis original)); *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019) ("[I]f [ICE] has no idea of when it might reasonably expect [petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to that it *might* occur—in the reasonably foreseeable future."); *Andreasyan v. Gonzalez*, 446 F. Supp. 2d 1186, 1189-90 (W.D. Wash. 2006) (finding respondent had not rebutted petitioner's showing when respondent repeatedly asked for "a few more weeks" to obtain travel documents).

Here, Respondents fail to provide any evidence that the likelihood of removal has changed since Petitioner was released in 2024. *See* I-213 (deciding to detain Petitioner "pending removal from the U.S. to a third country" without any further explanation). Respondents themselves admitted that they did not even begin vetting Mr. Ziaei for removal until more than a month after they initially re-detained him. Shaw Decl. ¶ 7; *see also. Tran v. Scott*, No. 2-25-cv-01886-TMC-BAT, 2025 WL 2898638, at *4 (W.D. Wash. Oct. 12, 2025) (rejecting respondents' explanations that petitioner would likely be removed soon because ICE delayed in taking steps to obtain a travel document or effectuate removal even after detaining petitioner). Respondents also admit that they have yet to identify a country that is willing to accept Mr. Ziaei—five months after they purportedly determined that they could enforce Mr. Ziaei's removal order. Shaw Decl. ¶ 9 ("ERO

is waiting for HQ-RIO to coordinate an interview with a foreign embassy that may accept him."). While Respondents claim that Mr. Ziaei refused to comply with ICE's single request to help facilitate removal to an unnamed country one month after re-detaining Mr. Ziaei, Shaw Decl. ¶ 6, ICE failed to follow through with their efforts to obtain a travel document, *see* Ziaei Decl. ¶ 13.

iii. Even if Mr. Ziaei's detention is not presumptively unreasonable, Mr. Ziaei has met his burden to rebut the presumption.

Even if the Court were to find that it is still presumptively reasonable to detain Mr. Ziaei for 23 more days—it is not—Mr. Ziaei has rebutted that presumption given Respondents' failure to even identify a country that may take him. The *Zadvydas* court emphasized that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S at 699; *see supra*, Section III.A.iii; see also *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) (holding that individuals could challenge detention after the 90-day removal period). Provided that both Mr. Ziaei and Respondents have furnished plenty of evidence that there is an extremely low likelihood of removal in the reasonably foreseeable future, *supra*, Section III.F.ii, this Court should find that Mr. Ziaei rebutted the six-month presumption. Mr. Ziaei's documented efforts and ICE's failure to provide him with any information regarding their efforts to effectuate his removal are a far cry from "conclusory assertions" or "generalized statements." *Jiang*, 2025 WL 3281819, at *2. Furthermore, Mr. Ziaei has already been detained at TCDF for more than five months with no indication that ICE has made any progress on finding a country to remove him to, let alone obtain the necessary travel documents to do so. Ziaei Decl. ¶ 9, 13-21. Given that Mr. Ziaei has rebutted the six-month presumption, there is no reason that he should be detained an additional 23 days before bringing the exact same claims.

iv. Respondents' indefinite detention of Mr. Ziaei independently violates the APA and the Accardi doctrine.

Mr. Ziaei's indefinite detention is further unlawful, as Respondents have violated the Immigration and Nationality Act and ICE's own policies by failing to provide Mr. Ziaei individualized review of his detention. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures[.]."); 8 C.F.R. § 241.4(h)(1) (requiring an individualized records review prior to the end of the removal period to determine whether a noncitizen should remain in custody); Message from Tae Johnson, ICE Acting Dir., "REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed" (Jun. 7, 2021) (hereinafter, "2021 ICE Withholding Release Policy Reminder).[5] The 2021 ICE Withholding Release Policy Reminder emphasized that noncitizens granted protection "should be released" absent "exceptional circumstances," which include "when the noncitizen presents a national security threat or a danger to the community, or any legal requirement to detain." *Id.* "[I]ndividual facts and circumstances … should be considered in making [an exceptional circumstances] determination." *Id.*

While Respondents claim that they performed an individualized review of Mr. Ziaei's detention during his June 26, 2025 ICE check-in, the evidence they provide simply states a timeline of his removal proceedings and factual statements about his removability that were known when he was initially released on OSUP. *See* I-213. They then conclude, without any evidence, that Mr. Ziaei "will remain in ICE custody pending removal from the U.S. to third country[.]" *Id.* at 3. If anything, the evidence affirms that, had the deportation officers (who are not even authorized to revoke Mr. Ziaei's OSUP) done a proper review, they would have found no reason to re-detain

[5] Available at: https://www.acluva.org/app/uploads/2023/10/all_ice_policies_on_post-relief_release_2000-20211.pdf.

Mr. Ziaei, as they explicitly state that Mr. Ziaei has no criminal record and does not list any violations of his OSUP. *See id.* Even after re-detaining Mr. Ziaei, Respondents have not done the required review of ICE's decision to detain or continue to detain Mr. Ziaei despite multiple requests to do so. *See* Ziaei Decl. ¶¶ 13-18. Given that Respondents have not conducted any custody review, nor have they presented any valid reason for Mr. Ziaei's re-detention, Respondents' detention of Mr. Ziaei for any amount of time violates the APA. 5 U.S.C. § 706(2)(A).

G. The petition should be granted because Respondents' re-detention and indefinite detention of Mr. Ziaei violates Substantive Due Process.

Petitioner's re-detention and continued detention violates substantive due process, regardless of the amount of time that he has been detained. Freedom from physical restraint "lies at the heart of the liberty that that the Due Process Clause protects." *Zadvydas*, 533 U.S. at 690; *see also Jimenez v. Bostock*, 2025 WL 2430381, at *6-7 (D. Or. Aug. 22, 2025). ("[F]reedom from government custody is fundamental."). This protection applies regardless of a person's immigration status. *See Zadvydas*, 533 U.S. at 690; *see also Mathews v. Diaz*, 426 U.S. 67, 77 (1976). "In the context of immigration, a period of detention must 'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Gamez Lira v. Noem*, 2025 WL 2581710, at *2 (D.N.M. Sept. 9, 2025) (finding likelihood of success on merits of substantive due process claim) (quoting *Demore v. Kim*, 538 U.S. 510, 516-17 (2003)); *see Jackson v. Indiana,* 406 U.S. 715, 738 (1972) (similar).

Civil immigration detention thus runs afoul of the due process clause when it no longer bears a reasonable relation to the detention statute's purpose. Here, Respondents purport to justify the re-detention of Petitioner generally under 8 U.S.C. § 1231 to enforce Petitioner's removal order. MTD 12 at 6. The purposes of post-order detention under 8 U.S.C. § 1231 are to ensure an individual's presence for imminent removal and, secondarily, to prevent danger to the community.

See Zadvydas, 533 U.S. at 690, 697. Neither justification is present here.

First, as explained *supra* Section III.F, Respondents have had 15 months to follow the law to remove Mr. Ziaei to a third country and have failed to do so. Respondents themselves do not claim to have begun seeking to effectuate Mr. Ziaei's removal order until more than a month after he was re-detained. *See* Shaw Decl. ¶ 6. Since then, Respondents can only point to efforts made to search for a third country that will accept Mr. Ziaei but have failed to identify *any* possible country of removal. *See id.* ¶¶ 6-9. "[T]he first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best." *Zadvydas*, 533 U.S. 678, 690. Such is the case here. Respondents provide no evidence or argument for why ICE is unable to achieve the statutory purpose—ensuring Petitioner's presence for his removal, if and when ICE is able to carry it out—by less restrictive means.

Second, Respondents have not shown that Petitioner's detention is reasonably related to the goal of community safety on the basis that he is a "particularly dangerous individual[]." *Zadvydas*, 533 U.S. at 691. The Shaw Declaration and the I-213 make no such assertion, and the I-213 states that Mr. Ziaei "has no criminal history." I-213, at 2; Shaw Decl. "[O]nce the flight risk justification evaporates, the only special circumstance present is the alien's removable status itself, which bears no relation to a [noncitizen]'s dangerousness." *Zadvydas*, 533 U.S. at 691-92. Mr. Ziaei's "removable status" is the very justification Respondents' assert here. MTD at 6.

Because Petitioner's detention bears no rational relation to the purpose of 8 U.S.C. § 1231, each day that he continues to be deprived of his liberty violates his substantive due process rights.

H. The petition should be granted because Respondents' re-detention and indefinite detention of Mr. Ziaei violates Procedural Due Process.

Mr. Ziaei has been deprived of his liberty without the process due at every stage of his re-detention and now indefinite detention. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings." *J.G.G.*, 604 U.S. at

673; *see also Velasquez Salazar v Dedos et al*, Case 1:25-cv-00835, ECF 28 at 9 (D.N.M. Sept. 17, 2025) ("The Due Process Clause's protections extend to all persons in the United States, including non-citizens."). Due process also requires notice and "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Where the government seeks to deprive an individual of a protected interest, such as their liberty, the Supreme Court has directed that courts balance three factors to determine what process is due: (1) "the private interest that will be affected"; (2) "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 (3) "the Government's interest[.]" *Id.* at 335. Courts have applied this framework in similar circumstances to Petitioner's. *See, e.g.*, *Jimenez*, 2025 WL 2430381, at *6-7 (applying *Mathews* factors to uphold immigration petitioner's right to an individualized custody determination); Transcript and Oral Decision, *O-J-M- v. Bostock*, Case No. 3:25-cv-00944-AB at 37-38 (D. Or. July 14, 2025) (applying *Mathews* test to grant writ of habeas corpus based on "a very concerning deprivation of petitioner's constitutional due process rights"); *E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *3-6 (W.D. Wa. Aug. 19, 2025) (applying Mathews factors to assess right to pre-deprivation hearing).

The first *Mathews* factor strongly favors Mr. Ziaei. As described in *supra* Section III.G, Mr. Ziaei has a strong interest in freedom from physical confinement and in a notice and an opportunity to be heard prior to any restraint of his liberty. *See also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

The second and third *Mathews* factors also heavily favor Mr. Ziaei because he requests only the procedural safeguards that are already enshrined in statute, regulations, and ICE's policies. *See supra* Section III.E, F. As described *supra* III.E, Respondents failed to follow their

own regulations in re-detaining Mr. Ziaei when he was originally released with an OSUP. 8 C.F.R. § 241.4(*l)*(1)-(3). Courts across the country have found that revocation of release on an OSUP without following the required procedures constitutes a deprivation of due process. These procedures are "not merely a housekeeping requirement" but rather "implicate due process" *Santamaria Orellana,* 2025 WL 2841886, at *6 (finding the requirement that "only an ICE Executive Associate Director make a determination to revoke release … is art of a procedural framework, designed to insure the fair processing of an action affecting an individual" (internal quotations omitted)); *see also Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *6 (S.D. Tex. Sept. 26, 2025) ("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."); *Cifuentes Rivera v. Arnott*, No. 4:25-cv-00570-RK (W.D. Mo. Oct 7, 2025) ("Federal district courts across the country have recently found that an initial informal interview is required under the relevant regulations when an order of supervision is revoked (regardless of the actual reason given for revocation) and that ICE violates a detained alien's constitutional rights to procedural due process when the alien is not afforded the initial informal interview that is plainly required under ICE's own regulations."); *Ceesay*, 781 F. Supp. 3d at 163-64 (collecting cases and rejecting the government's argument that an initial informal interview is only required if supervision is revoked based on a violation of conditions of release).

Similarly, as described *supra* III.F.iv, ICE has also continued to detain Petitioner without the custody review procedures due under 8 C.F.R. § 214.13 or ICE's own policy. While Petitioner does not concede that the custody review procedures under 8 C.F.R. § 214.13 are constitutionally sufficient, Respondents' failure to follow them can nevertheless constitute a violation of due process. *See Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011) (holding that post-order

custody review procedures under 8 C.F.R. § 241.4 do not meet minimum due process requirements); *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at *4-6 (W.D. Ky. Sept. 4, 2025) (finding due process violation where ICE failed to provide notice and interview as required under 8 C.F.R. § 241.13). So too for failure to follow ICE's own policies. *See Sameena, Inc. v. United States Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted). In sum, Respondents have violated and continue to violate Mr. Ziaei's due process rights. Had Respondents provided Mr. Ziaei the process he is due, they would have been compelled to conclude that Mr. Ziaei's facts and circumstances do not support re-detention nor continued detention, resulting in his freedom.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully request that this Court grant the writ of habeas corpus to release Petitioner from unlawful custody. *See* Pet. at 25-26.

Dated: December 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, this 3rd day of December, 2025, I filed a copy of the foregoing Petitioner's Response to Respondents' Motion to Dismiss and Reply in Support of Petition for Writ of Habeas Corpus electronically through the CM/ECF system, which gave service to all counsel of record.

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