Regina Dryjanski, Esq. (CA 336432)
(858) 361-9725
reginac@jfssd.org
Krista Kshatriya, Esq. (CA 274609)
(858) 201-0349
kristak@jfssd.org
Jewish Family Service of San Diego
8804 Balboa Avenue
San Diego, CA 92123
Pro Bono Counsels for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOL DE LA ROSA GUARIN,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego 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.

Case No.: 25-CV-3085-DMS-VET

REPLY IN SUPPORT OF PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

REPLY IN SUPPORT OF PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner respectfully submits this reply in support of his Motion for Temporary Restraining Order, ECF No. 2, in accordance with the Court's order, ECF No. 3. For the reasons discussed below, Respondents' response confirms that the Court should grant the Motion and Petition for Writ of Habeas Corpus, ECF No. 1.

First, Respondents' argument that Petitioner's Due Process claim is premature is wrong. Petitioner's claim is ripe because the presumptively reasonable period has passed or will pass within two days of the date of this filing: Petitioner has already spent 180 days detained post-removal order and Withholding of Removal (WOR) grant as of November 18, 2025, and he will reach the six-month calendar mark on November 22, 2025, rendering his claim ripe for this Court's adjudication.

Regardless of whether the presumptively reasonable period has passed, Petitioner has demonstrated that his detention is unreasonable, and Respondents have provided no countervailing evidence to disprove that. Indeed, the government's evidence confirms that Petitioner's detention is unreasonable because there is no significant likelihood of removal in the reasonably foreseeable future. A whopping 141 days have passed since Immigration and Customs Enforcement (ICE) officers sent resettlement requests to three countries—to which Respondent has no ties and to which the Immigration Judge did not order removal—and these requests,

unsurprisingly, have gone unanswered. Contrary to Respondents' self-serving statements, this simply does not demonstrate that Petitioner's removal is significantly likely in the reasonably foreseeable future, and therefore it cannot be used to continue depriving him of his constitutionally protected liberty interest. Thus, having provided no concrete evidence as to third-country acceptance or even consideration thereof, Respondents have failed to "respond" to Petitioner's "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" with "evidence sufficient to rebut that showing." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). That alone is sufficient for this Court to grant Petitioner's Motion.

Second, Respondents do not contest that ICE failed to conduct a proper post-order custody review under 8 C.F.R. § 241.4, and they do not disclaim the reality that the tactics ICE used on Petitioner after realizing their failure could amount to malfeasance.[1] Instead, they argue that Petitioner has not shown that he suffered substantial prejudice as a result of these procedural deficiencies. Contrary to the government's arguments, however, these violations entitle Petitioner to release without a showing of prejudice because the regulations protect his fundamental due process rights. *Martinez v. Barr*, 941 F.3d 907 (9th Cir. 2019). Additionally, that

[1] It is also worth noting that Respondents' copy of ICE's Decision to Continue Detention (Doc 7-2, Exh. 3) submitted to the Court includes a blue checkmark indicating Petitioner does not want a personal interview on page 2 of the document. Petitioner's copy of the same document (Doc 2-2, Exh B at 35) does not include this checkmark, indicating the document is either not the one that was provided to Petitioner or that it was altered after it was provided to Petitioner.

argument is entirely without merit where the entire basis of Petitioner's Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order is his continued unlawful detention.

As such, the Court should grant Petitioner's Petition for Writ of Habeas Corpus outright or, alternatively, it should grant Petitioner's Motion for Temporary Restraining Order and order his release pending further briefing.

II. ARGUMENT

A. The Court has jurisdiction to consider Petitioner's claims.

To begin, this Court has jurisdiction to consider all of Petitioner's claims. Petitioner does not challenge whether the government may "execute" his removal under 8 U.S.C § 1252(g)—only whether it may detain him up to the date it does so or remove him to a third country without notice and an opportunity to be heard.

Section 1252(g) does not bar review of challenges to unlawful detention. *See, e.g.*, *Kong v. United States*, 62 F.4th 608, 617-18 (1st Cir. 2023) ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order…"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"). Moreover, section 1252(g) does not bar review of Due Process claims, which Petitioner has raised here. *See Walters v. Reno*, 145 F.3d 1032, 1032 (9th Cir. 1998); *J.R. v. Bostock*, No. 2:25-

CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country"). This Court thus has jurisdiction over Petitioner's claims.

B. Petitioner's claims succeed on the merits.

i. Petitioner's ongoing detention violates Due Process.

Petitioner merits release from detention because his claim is timely and the government was unable to rebut his evidence that there is no significant likelihood of removal in the reasonably foreseeable future. Respondents preliminarily argue that Petitioner's *Zadvydas* claim is premature because the six-month presumptively reasonable period has not yet passed. This is incorrect for two reasons.

First, Petitioner's claim is not premature. As of this date of this filing, Petitioner has been detained 182 days since he was ordered removed from the United States and granted withholding of removal (WOR), and for nearly 500 days in total. Thus, Petitioner has exceeded 180 days of post-removal order custody as of the date of this filing, and he will reach the six-month mark on November 22. This is a distinction without a difference. Either way, the presumptively reasonable period has

either lapsed, or it will lapse within two days of the instant filing. Petitioner's claim is thus ripe for adjudication.[2]

Second, regardless of whether the Court looks to the 180-day or six-month count to assess the presumptively reasonable period, Petitioner has rebutted the presumption of reasonableness. The Supreme Court in *Zadvydas* "tasked lower courts with determining 'whether the detention in question exceeds a period reasonably necessary to secure removal.'" *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025) *(*quoting *Zadvydas*, 533 U.S. at 699). The Court then noted the six-month presumption in order to further guide lower courts' decision making. "At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period." *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020). In order to operationalize this, the Supreme Court in *Zadvydas* established a burden shifting framework in which the Petitioner must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. Once Petitioner has met their initial burden, the burden shifts to the government. Thus, the six-month presumption is just that—a presumption—which

[2] Any suggestion that Petitioner's petition and Motion should be denied now, but could be considered on November 22 would contravene basic principles of judicial economy.

Petitioner has already rebutted. Respondents failed to provide any countervailing evidence to the contrary.

As he pled in his petition and argued in his Motion for a Temporary Restraining Order, Petitioner has been detained for nearly 500 days in total, and for 182 days since his order of removal and WOR grant. The passage of time without any progress is sufficient to show there is no significant likelihood of removal in the reasonably foreseeable future. Furthermore, Petitioner's removal is withheld to not one, but two countries—and the only countries to which he has ties other than the United States. The Immigration Judge has not entered any orders of removal to other countries. Finally, Petitioner has the right to claim fear under 8 U.S.C. § 1231 to any country where DHS may send him if he fears his life or freedom would be threatened there on account of his bisexuality or Roma ethnicity. 8 U.S.C. § 1231(b)(3); *see also Popova v. INS*, 273 F.3d 1251 (9th Cir. 2001). As such, Respondent "provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," thus shifting the burden back to Respondents "to rebut that showing." *Zadvydas*, 533 U.S. at 680. Unsurprisingly, Respondents were unable to carry their burden.

Indeed, Respondents' evidence provides further confirmation that Petitioner's removal is not likely to occur in the reasonably foreseeable future. According to the Declaration of Deportation Officer Hugo Lara Ramirez, San Diego Enforcement and Removal Operations (ERO) submitted a request to effectuate third country removal

of Petitioner to three countries in July 2025, nearly 5 months ago. Doc. 7-1 at ¶ 5. There is no specific evidence provided of any progress made toward removal to these third countries, none of which were designated by the Immigration Judge. Indeed, Respondents have not even identified to which one of the three countries they intend to remove Petitioner. The Deportation Officer readily admits that all three requests remain pending to this day—141 days after submitting them. *Id.* Respondents' evidence does not indicate that the countries have even responded to the requests—simply that they have been submitted. *Id.* The evidence does not demonstrate any progress toward securing travel documents nor the expected timing of removal. ERO continuing to work with their own Removal and International Operations (RIO) unit indicates no modicum of progress with the actual countries to which ERO hopes to remove Petitioner. *Id.* ¶¶ 7-11. With no concrete evidence as to third-country acceptance or even consideration of acceptance, the Court cannot be persuaded that removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.

Furthermore, Respondents' argument regarding removal to an alternate country under 8 U.S.C. § 1231(b)(2)(E) is unresponsive to the pertinent question. Petitioner has the right to claim fear to any country where DHS may send him if he fears his life or freedom would be threatened there under 8 U.S.C. § 1231(b)(3). The question, then, is not whether the Secretary of Homeland Security has the authority to remove Petitioner to a country whose government will accept him, but whether he

is given adequate notice and opportunity to claim fear of removal to said third country under 8 U.S.C. § 1231(b)(3) before removal is effectuated. *See also* 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. Thus, this part of Respondents' argument in response is irrelevant.

Petitioner has established that the presumptively reasonable period of detention has lapsed or will lapse within a matter of days. But even if the Court disagrees, it may nonetheless join other courts in this district that granted habeas petitions filed before the presumptively reasonable removal period had elapsed. *See Vlasov v. Bondi*, No. 25-CV-1342-AJB-MSB, 2025 WL 2258582 (S.D. Cal. Aug. 7, 2025) (granting the petition for habeas relief where Petitioner filed for relief before the 6-month presumptively reasonable removal period had lapsed, but the court ruled after 6 months).

ii. Petitioner's ongoing detention violates the APA.

Contrary to Respondents' arguments, violations of 8 CFR § 241.4 entitle Petitioner to release without a showing of prejudice because these regulations protect his fundamental due process rights. "There are two types of regulations: (1) those that protect fundamental due process rights, and (2) those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first

type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up).[3]

Here, there can be little doubt that ICE regulations requiring the agency to review a noncitizen's detention status after the 90-day mandatory detention period has expired protect fundamental liberty interests and due process rights. Indeed, "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). "When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). Thus, these regulations fall squarely into the first category requiring no prejudice showing.

As such, Petitioner does not need to show prejudice. Nonetheless, he has. During the time that he has remained detained with no procedural protections, he has endured dental pain without access to the proper procedures; he has been ridiculed for being attracted to men; and he has spent his second birthday away from any friends or family. Doc. 2-1 at ¶¶ 11-12. This, despite the fact that Petitioner has no criminal history, no write-ups while detained for nearly 500 days, a U.S. citizen

[3] Respondents' passing note that regulatory violations do not amount to constitutional violations is irrelevant and mischaracterizes Petitioner's APA claim.

brother ready to receive him in Florida, and a grant of Withholding of Removal. *Id.* at ¶¶ 13, 25. There is, therefore, a "plausible scenario[] in which the outcome of the proceedings would have been different if a more elaborate process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up). Instead, Petitioner was not afforded these bare-bones procedural rights. ICE officers attempted to backdate documents, pressured him into signing forms without presence of counsel or translation, and never provided him with a proper 90-day custody review as is his right under 8 C.F.R. § 241.4. Doc. 2-1 at ¶¶ 17, 19, 21, 24; *see also* Doc 2-2 at ¶¶ 18-24. Respondents' brief disputes none of these facts. Because ICE did not follow their own regulations under 8 C.F.R. § 241.4, Petitioner remains detained nearly 500 days after he claimed fear of return at the U.S. border. He should be released immediately pursuant to this violation of the APA. 5 U.S.C. §706(2).

III. CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Dated: November 20, 2025

Respectfully submitted,

Regina Dryjanski, Esq. (CA 336432)
Pro bono Counsel for Petitioner
Jewish Family Service of San Diego
8804 Balboa Avenue
San Diego, CA 92123
(858) 361-9725
reginac@jfssd.org

Krista Kshatriya, Esq. (CA 274609)
Pro Bono Counsel for Petitioner
Jewish Family Service of San Diego
8804 Balboa Avenue
San Diego, CA 92123
(858) 201-0349
kristak@jfssd.org