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6 **UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Carlos Ruben Basilio Mosso,

10 Petitioner,

11 v.

12 John Cantu, et al.,

13 Respondents.
14
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16
17

No. 2:25-cv-04257-MTL--DMF

18 A- 

**PETITIONER'S RESPONSE TO
RESPONDENTS' ANSWER TO
PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241
AND MOTION FOR TEMPORARY
RESTRAINING ORDER**

19 **I. INTRODUCTION**

20 Petitioner, Carlos Ruben Basilio Mosso, submits this Reply to Respondent's Answer
21 (Doc. 7) in further support of his Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241.
22 Respondents' Answer fails entirely to dispute a central factual claim that Petitioner was re-
23 detained after over six (6) years on an OSUP without providing proper due process necessary for
24 the revocation of an OSUP and despite maintaining compliance with his Order of Supervision.
25 Further, their Response relies on a misreading of the six-month detention presumption from
26 *Zadvydas v. Davis*, 533 U.S. 678 (2001).

27 Respondents have violated 8 C.F.R. § 241.4 as well as Petitioner's due process under both
28 the Fifth Amendment and the Administrative Procedure Act. Further, Respondents' legal

1 arguments do not overcome the fact that Petitioner's removal is currently not reasonably
2 foreseeable.

3 Petitioner therefore respectfully maintains that his continued detention is unlawful and
4 that he should be released under appropriate supervision.

5 **II. THE HABEAS PETITION SHOULD BE GRANTED**

6 **a. DHS Violated 8 C.F.R. § 241.4 When It Re-Detained Petitioner Without**
7 **Notice, Reason, or Required Custody Reviews, and Respondents Were Placed**
8 **on Notice of These Defects From the Outset.**

9 Petitioner alleged in his initial habeas filing that on July 1, 2025, ICE arrested Petitioner
10 despite his compliance with his OSUP and did not provide a reason for his redetention. (Doc. 1
11 at 9-10.). "The arresting ICE officers did not articulate a reason as to why Mr. Basilio was being
12 re-detained, such as how he is now a flight risk, a danger to his community, or for any purported
13 violations of the conditions associated with his release on an order of supervision from 2018.
14 Further, ICE did not articulate any plan to effectuate Mr. Basilio's removal, nor that a third
15 country had formally accepted him." *Id.* These un rebutted allegations demonstrate that ICE
16 revoked Petitioner's release without providing notice, without stating any grounds, and without
17 any reference to removal efforts, despite Petitioner's years of compliance with supervision.

18 Although the initial petition did not cite 8 C.F.R. § 241.4 by name, it squarely alleged the
19 substance of DHS's statutory and regulatory noncompliance—namely, that Petitioner was re-
20 detained abruptly, without warning, without explanation, and with no procedural protections
21 whatsoever. The petition thus put Respondents on notice of DHS's noncompliance and afforded
22 them a fair opportunity to explain or cure it. They have done neither.

23 **i. Section 241.4 Imposes Mandatory Procedures for Revoking Release,**
24 **and DHS Failed to Follow Any of Them.**

25 Under 8 C.F.R. § 241.4(l) (Revocation of Release), DHS may revoke an OSUP only after:

- 26 (1) providing the individual written notice of the reasons for revocation,
27 (2) having an immigration officer document those reasons,
28 (3) giving the individual a meaningful opportunity to respond, and

1 (4) conducting prompt custody reviews under § 241.4(h)–(k).

2 These are mandatory, binding regulations, not aspirational guidelines. Courts consistently
3 hold that DHS’s failure to follow these procedures invalidates post-order detention, because §
4 241.4 defines the scope of the agency’s authority to detain under 8 U.S.C. § 1231(a).

5 DHS has violated every requirement. Petitioner received no written notice, no statement
6 of reasons, no chance to contest the revocation, and no contemporaneous or subsequent custody
7 interview. Respondents do not dispute this in their answer—thus, the Court must accept
8 Petitioner’s allegations as true.

9 **ii. Respondents Were Put on Notice of Regulatory Defects and Failed to**
10 **Cure Them—Indeed, They Deepened the Violation.**

11 Petitioner’s original filing alerted Respondents that DHS had unlawfully re-detained him
12 without cause or procedure. Even if § 241.4 was not cited expressly, the petition alleged lack of
13 notice, lack of any identified basis for detention, lack of any stated flight-risk or danger
14 justification, lack of any removal plan, and lack of any information regarding acceptance by a
15 third country.

16 These allegations track the exact protections § 241.4 requires, giving Respondents ample
17 notice to address their noncompliance. Yet Respondents took no corrective action. As apparent
18 from the declaration of Deportation Officer Kenneth Livingston, (Doc. 7-1), ICE did not issue
19 written notice after the fact; did not provide any belated opportunity to contest the revocation; has
20 not scheduled nor held timely custody reviews; and did not articulate any lawful basis for
21 continued detention or the initial re-detention.

22 To the contrary, Petitioner was finally scheduled for a custody review interview on
23 November 26, 2025, but ICE canceled the interview and failed to reschedule it. This cancellation
24 further demonstrates DHS’s ongoing refusal to comply with § 241.4—even during active habeas
25 litigation and despite being on notice of the issue.

26 **iii. Respondents’ Silence in Their Answer Constitutes Waiver and**
27 **Confirms the Unlawfulness of Detention.**

1 Respondents' answer fails to address DHS's noncompliance with § 241.4, offers no
2 written rationale for revoking Petitioner's release, and does not assert that *any* custody review has
3 occurred since his July 1, 2025 re-detention. Section 241.4(l)(1) expressly requires that "the alien
4 will be afforded an initial informal interview *promptly after his or her return to Service custody*
5 to afford the alien an opportunity to respond to the reasons for revocation stated in the
6 notification." Petitioner has now been held for 155 days without receiving even this initial
7 interview. A 155-day delay cannot plausibly be characterized as "prompt," and it confirms DHS's
8 complete disregard of the mandatory procedures governing revocation and post-revocation
9 custody review.

10 In habeas proceedings, unrebutted factual allegations are accepted as true. Given DHS's
11 total silence on these mandatory procedures, detention is *ultra vires*—beyond the scope of the
12 authority granted under 8 U.S.C. § 1231 and its implementing regulations.

13 **b. DHS's Noncompliance with § 241.4 Also Violates the Fifth Amendment's Due**
14 **Process Clause.**

15 Even aside from § 241.4, DHS's conduct violates the Fifth Amendment. A person released
16 under an OSUP retains a constitutionally protected liberty interest in remaining in the community.
17 Revocation of release and re-detention constitute a significant deprivation of liberty requiring
18 notice, a statement of reasons, an opportunity to respond, and a neutral decisionmaker.

19 DHS provided none of these. Instead, ICE re-detained Petitioner summarily, without
20 cause, and without any procedural safeguard. This type of unexplained, arbitrary re-detention is
21 antithetical to due process and constitutes an independent constitutional violation, irrespective of
22 the length of detention or *Zadvydas*.

23 **c. DHS's Failure to Follow Its Own Mandatory Regulations Is Arbitrary and**
24 **Capricious Under the APA.**

25 The Administrative Procedure Act requires courts to set aside agency action that is:
26 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law (5 U.S.C. §
27 706(2)(A)), or without observance of procedure required by law (5 U.S.C. § 706(2)(D)).
28

1 DHS's conduct meets both defects: It ignored mandatory procedures governing revocation
2 of release; it offered no explanation—in July or in litigation—for its action; it failed to conduct
3 any custody review interviews, including the canceled November 26 appointment; and it provided
4 no evidence of efforts to effectuate removal.

5 When an agency fails to follow its own binding regulations, courts consistently deem the
6 action per se arbitrary and capricious. Thus, even apart from constitutional concerns or *Zadvydas*,
7 DHS's actions violate the APA.

8 **d. These Independent Constitutional and Statutory Violations Require Habeas**
9 **Relief, Even Apart from *Zadvydas*.**

10 Petitioner need not rely solely on *Zadvydas*. DHS's unlawful revocation of the OSUP and
11 continued detention—without notice, without grounds, without custody review, and in ongoing
12 defiance of § 241.4—render detention unlawful regardless of its duration.

13 *Zadvydas* merely provides an additional basis for relief.

14 The Due Process Clause, the APA, and DHS's failure to follow its own regulations
15 provide independent and immediate grounds for granting the writ.

16 **e. *Zadvydas* Does Not Require a Six Month Detention Period.**

17 The INA does not authorize indefinite detention. *Zadvydas v. Davis*, 533 U.S. 678, 689
18 (2001). Beyond the 90-day statutory period, an alien *may* be detained for up to six months
19 pursuant to a final order of removal, after which, the alien may be released if they can “provide[]
20 good reason to believe that there is no significant likelihood of removal in the reasonably
21 foreseeable future” and the Government fails to show otherwise. *Id.* at 701. *Zadvydas* held that
22 post-removal-order detention under 8 U.S.C. § 1231(a)(6) is *presumptively reasonable* for up to
23 six months.

24 Respondents argue that Petitioner's detention remains presumptively reasonable because
25 it has not yet exceeded six months. This argument misinterprets the law. While *Zadvydas v. Davis*
26 identified six months as a “presumptively reasonable” period of post-removal-order detention,
27 that is only a general guideline, not an ironclad rule barring relief before six months have passed.
28 The Supreme Court in *Zadvydas* made clear that the six-month timeframe was a guide for courts,

1 not a strict prerequisite. The Court described the six-month mark as a ‘guide,’ not a rigid threshold
2 and did not say that the presumption is irrebuttable. In other words, the six-month presumption
3 of reasonableness can be overcome by case-specific facts including, but not limited to custody
4 review issues, unreasonable delay, and due process violations, as well as case-specific facts
5 indicating that removal is not reasonably foreseeable in a particular case. If a detained individual
6 can prove that their detention is unlawful and prolonged, and that there is no significant likelihood
7 of removal in the reasonably foreseeable future, he need not wait a full six months to seek release.
8 A New Jersey Federal Judge recently wrote the following in a habeas opinion; “In short, the thrust
9 of *Zadvydas* was to “interpret the statute to avoid a serious constitutional threat,” the possibility
10 of “indefinite, perhaps permanent detention.” *Zadvydas*, 533 U.S. at 699. “[O]nce removal is no
11 longer reasonably foreseeable, continued detention is no longer authorized by [the] statute.’ *Id.*
12 The six-month presumption of reasonableness is merely a tool to ‘guide lower court[s]’ in making
13 those ‘determinations.’ *See id.* at 700–01. To hold otherwise would condone detention in cases
14 where removal is not reasonably foreseeable or even functionally impossible, so long as it did not
15 exceed six months.” *See Munoz-Saucedo v. Pittman*, No. 1:25-cv-02258, Document 24 (D.N.J.
16 2025).

17 As discussed above, Petitioner’s challenges to his detention under the Fifth Amendment
18 and the APA support a finding that Petitioner’s continued detention for up to six months is not a
19 requirement.

20 Further, the facts demonstrate that Petitioner’s removal is not reasonably foreseeable at
21 this time, rebutting any presumption of reasonableness before the six-month mark. According to
22 Respondent’s own evidence, ICE re-detained Petitioner on July 1, 2025. (Doc. 7, Exh. A at 7.).
23 ICE subsequently waited until August 16, 2025 (over 46 days) to submit requests to Spain,
24 Colombia, and Guatemala to accept Petitioner. *Id.* It has now been an additional 109 days since
25 those requests were submitted, and Respondents have provided no evidence that the countries of
26 Spain, Colombia, or Guatemala have even responded to said requests. In other words, after
27 several months of “active efforts,” no third country has even been identified. Respondent’s
28 Answer provides these facts. And merely states that Petitioner’s “case is currently pending third

1 country removal.” *Id.* The question under *Zadvydas* is whether removal is likely to occur in the
2 reasonably foreseeable future, not merely whether the government is trying its best. Here, all
3 indications are that removal remains uncertain and elusive. Combined with the due process
4 considerations of the unlawful revocation of Petitioner’s OSUP, this petition for habeas should
5 be granted.

6 **III. PETITIONER IS ENTITLED TO INJUNCTIVE RELIEF**

7 A temporary restraining order (“TRO”) should be granted to “preserv[e] the status quo
8 and prevent[] irreparable harm just so long as is necessary to hold a hearing and no longer.” *E.*
9 *Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose*
10 *Foods v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)). A
11 petitioner must show “that he is likely to succeed on the merits, that he is likely to suffer
12 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,
13 and that an injunction is in the public interest” to receive a TRO or a preliminary injunction.
14 *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)

15 **a. The *Winter* factors weigh in favor of Petitioner.**

16 **i. Likelihood of Success on the Merits.**

17 The first *Winter* factor “is a threshold inquiry and is the most important factor.” *Baird*
18 *v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (quoting *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d
19 985, 989 (9th Cir. 2020)).

20 Petitioner contends that his detention by ICE is unlawful – given the absence of paperwork
21 or notice discussing his reasons for the revocation of his OSUP, as well as the failure to provide
22 a prompt interview about why he should not be detained – thereby violating the Fifth
23 Amendment’s due process requirement. Petitioner also expresses fear that he will be removed to
24 a third country without notice or an opportunity to challenge removal. Finally, Petitioner contends
25 that his removal is not reasonably foreseeable.

26 As argued above, Petitioner’s habeas should be granted for myriad reasons including
27 DHS’s violation and continued non-compliance with 8 C.F.R. § 241.4. Not only is DHS’s
28

1 noncompliance a violation of regulatory and statutory protections, but they are also in violation
2 of the Fifth Amendment Due Process Clause and the APA.

3 Additionally, despite Respondents' reliance upon their misinterpretation of *Zadvydas* and
4 an alleged requirement that Petitioner remain detained for six months for *Zadvydas* to apply,
5 Petitioner has established that his removal is not reasonably foreseeable.

6 **ii. Irreparable Harm**

7 A party seeking preliminary relief must also make a "clear showing" of a likelihood of
8 irreparable harm in the absence of the relief requested. *Winter*, 555 U.S. at 22; *see also All For*
9 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (" . . . plaintiffs must establish
10 that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction). "[I]t
11 is well established that the deprivation of constitutional rights unquestionably constitutes
12 irreparable injury." *Chhoeun v. Marin*, 306 F.Supp.3d 1147, 1162 (C.D. Cal. 2018) (*quoting*
13 *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017)). Where, as here, the "alleged
14 deprivation of a constitutional right is involved, most courts hold that no further showing of
15 irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005)
16 (*quoting* Wright, Miller, & Kane, *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)).
17 Furthermore, "the Ninth Circuit has recognized the 'irreparable harms imposed on anyone subject
18 to immigration detention' including 'subpar medical and psychiatric care in ICE detention
19 facilities' . . ." *Hoac*, 2025 WL 1993771, at *6 (*quoting Hernandez v. Sessions*, 872 F.3d 976,
20 995 (9th Cir. 2017) (finding irreparable harm where the petitioner was detained far from his
21 family and was at risk of losing his job and housing).

22 Petitioner was re-detained in violation of his due process rights. He has already been and
23 continues to be irreparably harmed by the Respondents' actions.

24 **iii. Balance of Equities and Public Interest**

25 Finally, "[t]he balance of the equities and public interest analyses merge when the
26 government is the opposing party, as is the case in this action." *Hoac*, 2025 WL 1993771, at *6.
27 "Just as the public has an interest in the orderly and efficient administration of this country's
28 immigration laws, [] the public has a strong interest in upholding procedural protections against

1 unlawful detention.” *Id.* (quoting *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312,
2 at *4 (N.D. Cal. Aug. 23, 2020)). “A plaintiff’s likelihood of success on the merits of a
3 constitutional claim also tips the merged third and fourth factors decisively in his favor.” *Baird*,
4 81 F.4th at 1042. “[I]t is always in the public interest to prevent the violation of a party’s
5 constitutional rights[,]” *id.* (quoting *Riley’s Am. Heritage Farms v. Elasser*, 32 F.4th 707, 731 (9th
6 Cir. 2022), and “[t]he government [] ‘cannot reasonably assert that it is harmed in any legally
7 cognizable sense by being enjoined from constitutional violations.’” *Id.* (quoting *Zepeda v. I.N.S.*,
8 753 F.2d 719, 727 (9th Cir. 1983)).

9 Given Petitioner has demonstrated likelihood of success on the merits as to his
10 constitutional claims, the merged third and fourth factors should be tipped in his favor.

11 In sum, the Winter Factors weigh heavily in favor of granting the Motion.

12 IV. CONCLUSION

13 For the foregoing reasons, Petitioner respectfully submits that his continued detention
14 violates his rights under the Fifth Amendment, *Zadvydas v. Davis*, 533 U.S. 678 (2001) and the
15 Administrative Procedure Act. Petitioner therefore respectfully requests that this Court grant the
16 Petition for Writ of Habeas Corpus, order his immediate release under reasonable conditions of
17 supervision, and award any further relief that the Court deems just and proper.

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20 Dated: December 3, 2025

Respectfully submitted,

21 /s/ Spencer C. Lee

22 Spencer C. Lee

23 Attorney for Carlos Ruben Basilio Mosso
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