UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

SALIMBHAI MANSIYA,	§	
	§	Case No. 4:25-cv-05604
Petitioner,	§	
	§	
v.	§	
	§	
RANDALL TATE Warden, *et al.*,	§	
	§	
Respondents.	§	
	§	

RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Petitioner, Salimbhai Mansiya, submits this response and opposition to the Government's motion for summary judgment. Respondents' motion, and the declaration filed in support of said motion, establish that they are currently detaining Petitioner with no cause and in violation of his due process rights. The Petitioner was ordered removed on July 15, 2011. The Petitioner did not appeal that decision nor has anyone since sought to reopen it. Following unsuccessful attempts to remove him to India, he was released from DHS custody in following the 180-day *Zadvydas* period on February 15, 2012.

Respondents claim that they are actively working to remove Petitioner to India but provide no evidence that removal is likely in the foreseeable future. A full month after arresting Petitioner, they are still in the process of determining whether they might finally, after fourteen (14) years, be able to secure a travel document to

India—a determination they were required to make before arbitrarily arresting him, separating him from his family, and keeping him behind bars. It is respectfully submitted that Petitioner's detention violates the law, and this Court should deny the motion for summary judgment and the writ of habeas corpus should issue.

I. Petitioner's Detention is Unlawful

Respondents posit that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231 and that his petition is essentially premature as it has been less than 90 days since his *re-detention*. (Dkt. 12 at 6-7). Further, they cite to *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), for the presumption that post-removal-period detention of six months is reasonable to allow the United States to effectuate removal. Thus, they allege, the Petitioner's detainment since November 18, 2025, is well within that time frame and the claim is essentially premature at this time. However, they cite to no authority that Petitioner *must* be detained for six months before his detention is unreasonable or unlawful.

Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) expired on October 15, 2011 or over fourteen (14) years ago. Petitioner was placed on an Order of Supervision on February 15, 2012. (Dkt.1 at Exh.2). Respondents' contention that Petitioner's habeas claim is premature because he has not spent 90-180 days detention since he was *re-detained* misreads *Zadvydas*. As *Zadvydas* explained, after the 90-day removal period ends, the government "may" continue to

detain a noncitizen or release them under supervision. 533 U.S. at 683. The Supreme Court's decision put limits on the option of continuing to detain—the detention could only *continue* for "a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. But the decision does not curtail the rights of those already previously subjected to the latter option, having been released under supervision. In fact, in cases of re-detention, courts have held that such detention did not fall under *Zadvydas* nor did they give the government the benefit of a six-month presumption. *See Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future).

The basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. In so doing, the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the noncitizen's presence at the moment of removal. Thus, if removal is not reasonably foreseeable,

the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700. Here, it is immediately evident that removal is not reasonably foreseeable. Respondents' own evidence is as good an indicator as one might hope for as it memorializes unsuccessful efforts to obtain a travel document to India for over fourteen (14) years (Dkt. 12, Exh.1 at 2-3). The Government does not even identify the efforts they have made about having recently contacted the Indian consulate or any other country to secure a travel document. *Id.* Despite being advised by the arresting ICE officer that they were going to "try" to remove Petitioner to a third country, there is no mention of such efforts in the Respondents' motion, nor evidence of a pending request to a third country concerning Petitioner's removal. There is simply no way that removal is reasonably foreseeable under the circumstances.

Moreover, there is no authority for the proposition that the Government may only work to remove Petitioner while he is detained. This may well be current DHS *practice,* thus explaining why Respondents arrested Petitioner *before* determining that removal to India was likely, but it is not the law. Their own actions in requesting travel documents when Petitioner was detained, combined with Petitioner's efforts thereafter, belie the need to detain him now in order to effectuate removal. It is respectfully submitted that it was his re-detention that was premature, not the pending petition for habeas relief. His detention is

unlawful because the removal period has long run and removal is not likely in the foreseeable future. "A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Kane v. Mukasey*, No. CV B-08-037, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008), *superseded by*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008) (a new report and recommendation was entered denying the petition as moot because petitioner was deported prior to the order adopting), *R & R adopted*, 2008 WL 11393148 (S.D. Tex. Oct. 7, 2008). Respondents have made no showing that their continued detention of Petitioner is justified.

In short, over a month after detaining him, Respondents have no idea if or when India or a third country might agree to accept Petitioner; they don't have any specific reason to believe they will be able to remove him, but they haven't given up hope that they might be able to. Notably, they have provided no documents to the Court, absent the statements in the declaration attached to their motion, regarding any of their efforts to effectuate removal. This does not suffice to meet the government's burden to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701.

II. Respondents Deprived Petitioner of Due Process

Respondents point to Petitioner's alleged failures to (1) provide evidence of a pending passport application, (2) provide status of a pending arrest, and (3) attend a

single ICE reporting date in 2019. (Dkt. 12 at 4-5). However, on March 21, 2012, Petitioner advised the ICE officer that he had attempted to apply for an Indian passport but was advised by the Indian consulate that they would not even accept, much less process a passport application unless they could present proof of lawful status in the United States. Petitioner was advised to try again and report back on July 19, 2012. Petitioner reported on his ICE check-in on July 19, 2012. He advised the ICE officer that he had again attempted to present a passport application to the Indian consulate but was told that the consulate had not changed its policy regarding accepting passport applications from those who could not provide proof of lawful status in the United States. Petitioner thereafter continued to report at his ICE check-in appointments but no longer requested to provide proof of a pending passport application.

On June 19, 2019, Petitioner was advised to provide an update regarding a misdemeanor DWI arrest at his next reporting date on September 19, 2019. As Tropical Storm Imelda struck the Houston area on that day, Petitioner requested and was granted a reset to report telephonically on November 17, 2020. Petitioner reported telephonically on November 17, 2020, advised that he had been convicted of a misdemeanor DWI and had been placed on probation. As a result, at his next report date on November 15, 2021, ICE enrolled Petitioner in the CART Kiosk check-in system. He continued to report personally via the CART Kiosk check-in

system and remained under the order of supervision, with no further violations or arrests for over five (5) years before Respondents arrested him while he was reporting for his regular ICE check-in on November 18, 2025. At no point has ICE or the Respondents declared or considered Petitioner a danger to the community.

Further, the regulations provide specific factors to be considered when revoking an order of supervision and there is no evidence that those factors were considered prior to purportedly revoking Petitioner's.

A determination of re-detainment focuses on the following factors: 1) history of the noncitizen's efforts to comply with removal order; 2) history of the Service's efforts to remove noncitizens to the country in question; 3) ongoing nature of the Service's efforts to remove this noncitizen and the noncitizen's assistance; 4) reasonably foreseeable results of those efforts; and 5) the views of the Department of State regarding the prospects for removal of noncitizens to the country in question. 8 C.F.R. § 241.13(f). Here, all clearly weigh in favor of Petitioner as he has always been in compliance with all directives of DHS to comply with his removal order, the Service itself has not been able to secure a travel document for nearly fourteen (14) years and no indication they have even contacted the Indian consulate since his re-detention, and there is no indication at all that he has ever been uncooperative. Additionally, the prospects for the timeliness of removal must be reasonable under the circumstances and it is clear that the prospects here are quite dim. It is

respectfully submitted that DHS did not follow their own regulations in making the purported revocation decision.

The regulations also provide that upon revocation of an order of supervision the noncitizen is afforded an "initial informal interview promptly after his or her return to Service custody to afford the noncitizen an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l). Thereafter, a records review is done, and an interview is scheduled "within approximately three months after release is revoked." *Id.* Petitioner has never been served with a notice of termination nor was he afforded the informal interview required by law. The failure to provide Petitioner with even the meager procedural protections provided by regulation is further evidence that Respondents violated the law in purportedly revoking the order of supervision and deprived Petitioner of due process.

Under the *Accardi* doctrine, "when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid." *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954). The Fifth Circuit has likewise recognized that an agency's violation of its regulations may support a procedural due process claim. *Ayala Chapa v. Bondi*, 132 F.4th 796, 799 (5th Cir. 2025) (citing *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). Here, Respondents violated regulations that were clearly put in place to protect the due process rights of individuals like Petitioner, and this violation prejudiced Petitioner as set forth herein.

The *ultra vires* re-arrest of Petitioner violated his due process rights and must be set aside under *Accardi.*

Several federal district courts have held that where ICE revokes an order of supervision without following the procedures set forth in these regulations, such revocation violates due process and the post-removal-period statute. *See Ceesay v. Kurzdorfer,* 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025); *Rombot v. Souza,* 296 F. Supp. 3d 383, 388 (D. Mass. 2017). In *Ceesay,* the court explained, "This case raises the question of whether a noncitizen subject to a final order of removal and released on an order of supervision is entitled to due process when the government decides—in its discretion—to revoke that release. The Court answers that question simply and forcefully: Yes." 2025 WL 1284720, at * 1. It is respectfully requested that this Court should find similarly that Petitioner was deprived of due process and his arrest and re-detention are unlawful.

III. Jurisdiction is Clear

Respondents argue that this Court does not have jurisdiction to hear Petitioner's claims because the decision to revoke an order of supervision is discretionary. (Dkt. 12 at 5-6). This argument fails to address clear precedent that negates the Government's contentions. The United States Supreme Court has specifically held that 28 U.S.C. § 2241 confers jurisdiction to challenge detention that is without statutory authority, as well as constitutional

challenges to post-removal-period detention. *Zadvydas v. Davis,* 533 U.S. 678, 687- 88 (2001); *see also Virani v. Huron,* No. SA-19-CV-00499-ESC, 2020 WL 1333172, at *1 (W.D. Tex. Mar. 23, 2020) ("Federal courts have jurisdiction, however, to adjudicate claims challenging the constitutionality of an alien's continued detention.") (citing *Gul v. Rozos*, 163 F. App'x 317, 2006 WL 140540, at *1 (5th Cir. 2006)).

Petitioner's challenge as to the unreasonableness of his current detention as well as the due process violations created by the Respondents failing to follow the law are both clearly within this Court's jurisdiction. Petitioner is not challenging his removal order or the specific discretionary decision which was apparently made to revoke his order of supervision—a decision he has never received notice of or an opportunity to challenge—but rather the due process violations committed in revoking the order and the resulting unlawful detention.

IV. Conclusion

Based on the foregoing, Petitioner asks this Court to deny the Respondents' motion for summary judgment and issue an order for his release from detention or, alternatively, schedule a hearing on this matter.

Respectfully submitted,

Date: December 17, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Response in Opposition to Respondents' Motion for Summary Judgment with the Court and on Defendants via the Court's electronic filing system and via electronic mail on December 17, 2025.

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