
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Bisser Lissitchev,

Petitioner,

v.

JUAN BALTASAR, Warden, GEO Group ICE
Processing Center;

ROBERT HAGAN, Director of the Denver Field
Office for U.S. Immigration and Customs
Enforcement;

TODD LYONS, Acting Director of U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security; and

PAMELA BONDI, U.S. Attorney General,

in their official capacities,

Respondents.

Case No.: 25-cv-3790

**EXPEDITED
CONSIDERATION
UNDER 28 USC § 1657(a)
REQUESTED**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Bisser Lissitchev, husband to a U.S. citizen and father to two U.S. citizen children, was granted withholding of removal by an immigration judge on May 23, 2005, barring removal to his native Bulgaria. As a withholding of removal grantee, he has for many years regularly attended check-ins pursuant to an Order of Supervision with Immigration and Customs Enforcement (ICE). At no time has it been alleged that Petitioner was not compliant with terms of the Order of Supervision. In addition, he regularly applied for and was granted employment authorization by the Department of Homeland Security. Without warning, when Petitioner attended a check-in at the ICE offices the week of November 3, 2025, ICE arrested him. ICE then transported him to the Aurora ICE Processing Center, where he remains in custody.
2. Because his detention violates Petitioner's constitutional, statutory, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus and order release.

CUSTODY

3. Petitioner is in the physical custody of Respondents, imprisoned at the Aurora ICE Processing Center, an immigration detention center in Aurora, Colorado. Petitioner is under direct control of Respondents.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1331 (federal question) because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, and Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*
6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper because Petitioner is detained at the GEO Group's ICE Processing Center in Aurora, Colorado, which is within the jurisdiction of this District. In addition, venue is proper in this District because a substantial part of the events giving rise to Petitioner's claims occurred in this District, he resides in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

EXPEDITED TREATMENT OF HABEAS CLAIMS

8. Federal law provides that each court of the United States shall determine the order in which civil actions are heard and determined, except that the court shall expedite consideration of certain actions including any action brought under chapter 153 of Title 18 (habeas corpus cases). 28 U.S.C. § 1657(a).
9. Congress has directed courts to grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the

Court must require Respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

10. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

11. Petitioner Bisser Lissitchev is a native and citizen of Bulgaria. He resides in the United States with his wife and children, who are United States citizens. In 2005 an immigration judge granted him withholding of removal from Bulgaria. Prior to his current detention, he resided in Adams County, Colorado. He is being detained at the GEO Group’s ICE Processing Center in Aurora, Colorado. He is in custody, and under the direct control, of Respondents and their agents.
12. Respondent Baltasar is sued in his official capacity as the Warden of the GEO Group’s ICE Processing Center in Aurora, Colorado. He has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain non-citizens. Respondent Baltasar is a legal custodian of Petitioner.

13. Respondent Hagan is sued in his official capacity as Field Office Director of the Denver Office of U.S. Immigration and Customs Enforcement (ICE). Respondent Hagan is a legal custodian of Petitioner and is responsible for detaining him.

14. Respondent Todd M. Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement (ICE). Respondent Lyons is responsible for Petitioner's detention.

15. Respondent Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem has ultimate custodial authority over Petitioner.

16. Respondent Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is a legal custodian of Petitioner.

LEGAL FRAMEWORK

Detention During the Removal Period

17. The government's authority to detain noncitizens, including those who are subject to final orders of removal, is subject to constitutional limits. "It is well

established that [t]he Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (Apr. 7, 2025) (per curiam) (“[t]he Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.”).

18. For noncitizens as well as citizens “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

19. Due process requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the [incarcerated] individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal citation omitted). Civil immigration detention is therefore constitutional only in “certain special and ‘narrow’ nonpunitive ‘circumstances.’” *Id.* at 690 (quoting *Foucha*, 504 U.S. at 80). The Supreme Court identified those limited circumstances as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; *see also Demore v. Kim*, 538 U.S. 510, 527-28 (2003).

20. In addition to Constitutional requirements, for detention to be lawful the government must comply with both the applicable statutory provisions and its agency regulations. *See United States v. Caceres*, 440 U.S. 741, 759-60 (1979).

21. Pursuant to 8 U.S.C. § 1231(a) ICE has authority to detain noncitizens with a final order of removal for 90 days after the removal order becomes final—a time frame known as the “removal period.” *See* 8 U.S.C. § 1231(a)(1)(A). When the 90-day period expires the non-citizen may be released under supervision or the government may continue detention if the non-citizen is found to be “a risk to the community or unlikely to comply with the order of removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(2); (a)(6).

22. To extend detention after the removal period, DHS must follow regulations outlining post custody review procedures intended to provide due process. 8 U.S.C. § 1231(a)(6), 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i) § 241.4(k)(2)(ii). 241.4(j)(2).

23. In addition to these regulatory requirements, the Constitution further “limits a [noncitizen]’s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. As the Court explained, post-removal detention “has two regulatory goals: ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.” *Id.* at 690 (internal quotation marks and citation omitted). Neither purpose, the Court determined, provided grounds sufficient to authorize indefinite detention. *Id.* “[B]y definition the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best . . . [because] where detention’s goal is no longer practically attainable, detention no longer ‘bear[s]

[a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quotations and ellipses in original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Thus, the Court concluded “once the flight risk justification evaporates, the only special circumstance present is the alien’s removal status itself, which bears no relationship to a detainee’s dangerousness.” *Id.* at 691 (citations omitted).

24. After *Zadvydas*, DHS added new regulations creating “special review procedures” to determine whether detained noncitizens are likely to be removed in the reasonably foreseeable future. See *Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56,967 (Nov. 14, 2001). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on “special circumstances,” it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)–(d), or by demonstrating by clear and convincing evidence before an immigration judge that the noncitizen is “specially dangerous.”

Withholding of Removal and Third Country Removal

25. Petitioner was granted withholding of removal from Bulgaria. Withholding and deferral of removal under the Convention Against Torture (CAT) are both mandatory forms of protection preventing deportation to the country or countries where an immigration judge finds that the individual is more likely than not to be persecuted or tortured. See 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§

208.16–18, 1208.16–18; *see also Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013). Specifically, the withholding statute implements the United States’s obligations under Article 33 of the 1951 United Nations Refugee Convention, incorporated into its 1967 Protocol by which signatory countries may not “expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” *INS v. Aguirre Aguirre*, 526 U.S. 415, 427 (1999).

26. Withholding and deferral of removal do not prevent a noncitizen from being removed from the United States, but rather prohibit removal to the specific country where a noncitizen has established they are likely to be persecuted.

27. Under certain circumstances, noncitizens can be removed to a “third country” that is not their country of citizenship or nationality, provided the foreign government will accept them. 8 U.S.C. § 1231(b)(1)-(3). 8 U.S.C. § 1231(b)(2)(E)(vii). However, “the Attorney General may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A).

28. To remove a foreign national to a third country, the INA requires that the Attorney General—by and through a delegate, such as an immigration judge—first determine that it is “impracticable, inadvisable, or impossible” to remove

Petitioner to China and that the designated third country “will accept [Petitioner] into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(E)(vii) “indisputably requires the Attorney General to prove that the proposed country of removal is willing to accept the alien”); *see also Jama v. Immigr. & Customs Enft*, 543 U.S. 335, 344 (2005).

29. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. § 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge “shall... identify for the record a country, or countries in the alternative, to which the alien’s removal may be made”).

30. To remove a foreign national to a third country, the Attorney General would need to move to reopen removal proceedings to designate a third country for removal under the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014) (unpublished) (holding that should a new country of removal be designated, “the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a hearing shall be held before the immigration judge so that petitioner may apply for relief from removal” as to a country not designated in prior proceedings).

31. Adherence to that process is necessary to ensure the foreign national has a statutory right to claim protection in immigration court against removal to a third country where he may be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of removal under CAT. *See* 28 C.F.R. § 200.1 (“A removal order. . . shall not be executed in circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18.

32. Due process requires the government to “ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen’s response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.

33. Any unannounced attempt at a third country removal would violate these statutory and constitutional procedural protections.

Due Process and Decisions to Revoke and Order of Supervision

34. “The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693 (citation modified). “Freedom from imprisonment—from government custody, detention, or other forms of physical

restraint—lies at the heart of the liberty that Clause protects.” *Id.* at 690 (2001).

35. Under substantive due process doctrine, revocation of a noncitizen’s order of supervision is a restraint on liberty that is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention; preventing danger to the community or preventing flight prior to removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention).

36. “Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty,” like the decision to revoke a non-citizen’s order of supervision. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (citation modified).

Procedure for Revoking an Order of Supervision

37. A noncitizen with a final order of removal “who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”).

38. A noncitizen may only be detained past the 90-day removal period following a removal order if found to be “a risk to the community or unlikely to comply

with the order of removal” or if the order of removal was on specified grounds.

Id. § 1231(a)(6).

39. But even where initial detention past the 90-day removal period is authorized, if “removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances” *Zadvydas*, 533 U.S. at 699-700.

40. Regulations provide the following additional circumstances, beyond those listed at § 1231(a)(6), which allow for the revocation of an order of supervision and re-detention of a noncitizen: “(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen “violates any of the conditions of release”).

41. These regulations are intended to provide noncitizens released on an Order of Supervision with due process protections. *Minh Nhat Phan v. Noem*, 3:25-cv-02422-RBM-MSB, 2025 U.S. Dist. LEXIS 201411, *8-9 (S.D. Cal. Oct. 10, 2025).

42. The detention of a noncitizen in violation of the regulations is unlawful. *Id.* at 8-9 (citing cases).

The APA Sets Minimum Standards for Final Agency Action

43. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.
44. Final agency actions are those (1) that “mark the consummation of the agency’s decision making process[,]” and (2) “by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).
45. ICE’s decision to detain Petitioner, without prior revocation of his Order of Supervision or without written notice, is a final agency action subject to this Court’s review.
46. Here, Petitioner’s detention marked the consummation of ICE’s decision-making process regarding his custody.
47. Petitioner’s detention was an action by which rights or obligations have been determined, or from which legal consequences flowed, as ICE detained Petitioner in violation of his rights under the Constitution, statute, and regulations.

Agencies Must Follow Lawful Rules and Policy

48. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); see also *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 . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

STATEMENT OF FACTS

49. Mr. Lissitchev is a 50-year-old citizen of Bulgaria. He is married to a United States citizen and has two United States citizen children, ages 17 and 10.

50. On May 23, 2005, an immigration judge denied Petitioner’s application for asylum and ordered him removed to Bulgaria. No alternative country for removal was designated in the order. While the asylum application was denied, the immigration judge granted Petitioner withholding of removal as to Bulgaria, barring the execution of his removal to that country. Both petitioner and the Department of Homeland Security waived appeal of the order.

51. The government did not remove Petitioner in the wake of the immigration judge’s 2005 order.

52. At the request of Petitioner’s former immigration counsel,¹ ICE placed Petitioner on an Order of Supervision beginning in 2014.

¹ The request appears to have been in response to United States Citizenship and Immigration Services (USCIS) asking for evidence that he was on an Order of Supervision so he could qualify for an employment authorization document under 8 C.F.R. § 274a.12(c)(18) (allowing issuance of employment authorization documents to certain applicants who have orders of removal but have been release on an Order of Supervision). Irrespective of the Order of Supervision, he would have qualified for an employment authorization document under 8 C.F.R. § 274a.12(a)(10) (allowing issuance of employment authorization documents to those who have been granted withholding of removal). Because his counsel at the time had applied for the employment authorization document in the (c)(18) Order of Supervision category, he requested, was put on, and complied with an Order of Supervision and his category (c)(18) employment authorization was approved. His current employment authorization document is under category (a)(10).

53. After the issuance of the Order of Supervision, Petitioner reported to annual check-ins with ICE on April 9, 2015; April 20, 2016; April 12, 2017; April 11, 2018; April 17, 2019; June 24, 2020; June 16, 2021; December 15, 2021; June 15, 2022; April 19, 2023; April 17, 2024; and April 17, 2025. Through years of appearing at required check-ins with ICE, there is no allegation in his records that he missed appointments or was otherwise not compliant with the terms of the Order of Supervision. Petitioner has consistently applied for and received documentation of his employment authorization, and his current Department of Homeland Security-issued employment authorization document is valid through March 4, 2029.

54. At his check-in on April 17, 2025, he was informed that his next check-in would be April 16, 2026. For unexplained reasons, ICE issued a letter instructing him to appear at a check in the week of November 3, 2025, rather than his scheduled 2026 check-in. He appeared as instructed and was arrested without explanation.

55. During his arrest and his ongoing detention, no ICE officer has alleged that he ever failed to check in with ICE as required or ever violated the terms of his Order of Supervision. No ICE officer has alleged or indicated that he has any criminal record or that for any reason he is a threat to public safety. And no ICE officer has indicated that the agency has identified a third country for removal where the agency intends to send him.

56. Petitioner is subject to a final order from an immigration judge, ordering him removed from the United States but precluding removal to his native Bulgaria due to a grant of withholding of removal. As such, he is not scheduled for any future immigration court hearings at this time.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1231 and Fifth Amendment Right to Due Process (Unlawful Indefinite Detention)

57. Petitioner incorporates by reference the above paragraphs of this petition.

58. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids the government from depriving any person of liberty “without due process of law.” *Zadyvdas* authorizes detention only for “a period reasonably necessary to bring about the [noncitizen’s] removal from the United States.” 533 U.S. at 689, 701. Petitioner’s detention beyond the statutory removal period is unlawful because there is no significant likelihood of removal in the reasonably foreseeable future. Therefore, his continued detention violates due process and he must be immediately released.

59. When courts find a noncitizen’s removal is not reasonably foreseeable under *Zadvydas*, the remedy provided is release. *See, e.g., Morales-Fernandez v. INS*, 418 F.3d 1116, 1124 (10th Cir. 2008) (ordering petitioner’s release where “[t]here is no contention that conditions in Cuba have changed so that [the petitioner’s] removal to Cuba is reasonably foreseeable,” and therefore he must “be released and paroled into the United States.”) (citing *Clark v. Martinez*,

543 U.S. 371, 386–87 (2005); *Nzayikorera v. Fabbricatore*, No. 1:21-CV-02037-RMR, 2021 WL 9385836, at *2 (D. Colo. Sep. 9, 2021). District courts across the country recognize immediate release as the remedy to a *Zadvydas* violation. *Zhuzhiashvili v. Carter*, No. 25-3189-JWL, 2025 WL 2837716, at *3 (D. Kan. Oct. 7, 2025); *Manago v. Carter, et. al.*, No. 5:25-cv-03183-JWL, 2025 WL 2841209, at *2 (D. Kan. Oct. 7, 2025); *Vargas v. Noem*, No. 25-3155-JWL, 2025 WL 2770679, at *2 (D. Kan. Sept. 29, 2025); *Zavvar v. Scott, et. al.*, No. 1:25-cv-02104-TDC, 2025 WL 2592543, at *8 (D. Md. Sept. 8, 2025); *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *8 (D.N.J. June 24, 2025); *Tadros v. Noem*, No. 2:25-cv-04108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025); *see also Tadros v. Noem*, No. 2:25-cv-04108-EP, Order (D.N.J. June 17, 2025), ECF No. 17 (granting habeas petition).

60. Respondents have not and cannot credibly allege that Petitioner poses any danger. He is also not a flight risk, as evidenced by his U.S. citizen wife and kids, his long-term residence in Colorado, and his record of consistent reporting to ICE in compliance with his Order of Supervision.

61. Moreover, the Supreme Court has determined that “preventing flight” is a “weak or nonexistent” justification for detention when removal is not reasonably foreseeable, as is the case here. *Zadvydas*, 533 U.S. at 690. Respondents have not pointed to any valid justification for ongoing detention. Therefore, the Court should order his release.

COUNT TWO

**Violation of Fifth Amendment Right to Due Process
(As-Applied Challenge)**

62. Petitioner incorporates by reference the above paragraphs of this petition.
63. The Due Process Clause of the Fifth Amendment to the U.S. Constitution guarantees protection to all “persons” in the United States, including noncitizens, regardless of immigration status. *See Zadvydas*, 533 U.S. at 693. It further prohibits the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.
64. To comport with the due process clause, civil detention must “bear[] a reasonable relation to the purpose for which the individual was committed,” which for detention under §1231 is removal from the United States. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).
65. The indefinite nature of Petitioner’s detention under section 1231 violates his substantive due process rights under the Fifth Amendment by depriving him of his “strong liberty interest.” *United States v. Salerno*, 481 U.S. 739, 750 (1987).
66. There is no indication that the government has made any effort towards securing removal in the over twenty years since his removal order became final. The 90-day removal period at 8 U.S.C. § 1231(a) ran over two decades ago. The government is barred from removing Petitioner to Bulgaria and there is no indication the government has found—or even worked towards finding—a third country which would accept him. Nor, if the government intends to remove Petitioner to a third country, has it afforded him any notice or

opportunity to express a fear of removal to that country. At this stage in the process, there is no likelihood that he will be removed in the near future. This violates his procedural due process rights and renders his detention indefinite.

67. Petitioner's detention is thus in violation of Petitioner's Fifth Amendment rights.

COUNT THREE

Violation of Fifth Amendment Rights (Substantive Due Process)

68. Petitioner incorporates by reference the above paragraphs of this petition.

69. The Due Process Clause of the Fifth Amendment protects against punitive detention and similar restrictions on a person's liberty.

70. ICE has unlawfully detained Petitioner, because he had a valid Order of Supervision and did not receive notice and an opportunity to be heard, as required by the regulations and the Due Process Clause of the Fifth Amendment.

71. Petitioner has complied with all terms and conditions of his Order of Supervision.

72. No change in circumstances has warranted Petitioner's detention.

73. Petitioner's arrest and detention, therefore, did not bear a reasonable relationship to the two recognized purposes of immigration detention: preventing danger to the community, or flight prior to removal.

74. Because Respondents had no legitimate, non-punitive objective in detaining Petitioner, his detention violated his substantive due process rights under the Fifth Amendment of the U.S. Constitution.

COUNT FOUR
Violation of Fifth Amendment Rights
(Procedural Due Process)

75. Petitioner incorporates by reference the above paragraphs of this petition.

76. The Supreme Court's decision in *Mathews*, 424 U.S. at 333, instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

77. All three factors demonstrate Respondents have violated Petitioner's rights to due process.

78. The first factor, the private interest at issue, favors Petitioner. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

79. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner.

80. To safeguard against erroneous deprivations of liberty, the statute specifies the limited number of reasons that an order of supervision can be revoked.

Regulations specify who may lawfully revoke the order, and the procedures that must be followed when doing so, including giving notice and an opportunity to be heard. 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i).

81. Here, Respondents unlawfully detained Petitioner in violation of his procedural due process protections under the statute, regulations, and the Fifth Amendment. The failure to follow the requisite procedural safeguards has led to the deprivation of Petitioner's liberty.

82. The third factor, the government's interest, also favors Petitioner.

83. When the government does not provide the required notice and an opportunity for a person with an order of supervision to respond, the government is more likely to waste limited financial and administrative resources on the unnecessary detention of people who are neither flight risks nor dangerous to the community, as is the case with Petitioner. Further, because the government must also allocate resources defending against a habeas corpus petitions in federal court to compel Respondents to comply with the law, requiring Respondents to instead provide notice and a meaningful opportunity to respond, prior to revoking an Order of Supervision, reduces the fiscal and administrative burdens on the government.

84. Respondents' detention of Petitioner, prior to the revocation of his Order of Supervision and without providing him with the requisite notice and a

meaningful opportunity to respond, violated his procedural due process rights under the Fifth Amendment of the U.S. Constitution.

COUNT FIVE

Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B) (Contrary to Law and Constitutional Right)

85. Petitioner incorporates by reference the above paragraphs of this petition.

86. Under the APA, a court shall “hold unlawful and set aside agency action . . . found to be . . . not in accordance with law” or “contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(A), (B).

87. The APA’s reference to “law” in the phrase “not in accordance with law,” “means, of course, any law, and not merely those laws that the agency itself is charged with administering.” *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

88. ICE failed to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 at the time of Petitioner’s detention.

89. ICE never revoked Petitioner’s Order of Supervision prior to taking him into custody.

90. Respondents’ detention of Petitioner was, therefore, arbitrary and capricious because it violated statute, regulation, and the Constitution.

91. An agency decision that “runs counter to the evidence before the agency” is also arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

92. Respondents' decision to arrest and detain Petitioner was unlawful, and must be set aside. 5 U.S.C. § 706(2)(A).

COUNT SIX

Violation of Fifth Amendment Rights to Procedural Due Process and Administrative Procedure Act, 5 U.S.C. § 706(2) (Adequate Notice and a Meaningful Opportunity to Present a Fear-Based Claim)

93. Petitioner incorporates by reference the above paragraphs of this petition.

94. The INA and implementing regulations as well as the Constitution mandate meaningful notice and an opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

95. The Administrative Procedure Act empowers courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C).

96. The APA compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

97. Agencies must follow their own policies and procedures, particularly when they impact individual rights. *See Accardi*, 347 U.S. at 268.

98. Petitioner has been given no notice regarding any intended removal to a third country. He has not had any opportunity to present a fear-based claim to an immigration judge.

99. Petitioner has no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court grant the following:

- (1) Assume jurisdiction over the matter;
- (2) Enjoin Petitioner's removal or transfer outside of this Court's jurisdiction during the pendency of this case;
- (3) Pursuant to 28 U.S.C. § 2243, forthwith award the writ or issue an order directing respondents to show cause why the writ should not be granted within three days;
- (4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment; the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- (5) Grant a writ of habeas corpus directing Respondents to immediately release Petitioner on his own recognizance and enjoining Respondents from removing or attempting to remove Respondent to a third country or a country to which his removal has been withheld in violation of the Constitution as well as statutory and regulatory procedures;
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

Dated: November 22, 2025

/s/ Aaron C. Hall
Aaron C. Hall
Colorado Reg. No. 40376
Joseph & Hall, P.C.
12203 East Second Avenue
Aurora, CO 80011
303-297-9171
aaron@immigrationissues.com

Attorney for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Aaron Hall, submit this verification on behalf of the Petitioner because I am Petitioner's attorney. On the basis of documents reviewed and discussions with Petitioner and Petitioner's family, I hereby verify that statements made in this petition are true and correct to the best of my knowledge.

Dated: November 22, 2025

/s/ Aaron C. Hall
Attorney for Petitioner