IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-03790-KAS

BISSER LISSITCHEV,

Petitioner

v.

JUAN BALTASAR, Warden, GEO Group ICE Processing Center,
ROBERT HAGAN, Field Director of the Denver Field Office,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
PAMELA BONDI, U.S. Attorney General, and
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,
in their official capacities,

Respondents

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

Respondents respond to the Court's Order to Show Cause (ECF No. 4) why Petitioner Bisser Lissitchev's Petition for Writ of Habeas Corpus (ECF No. 1) should not be granted. In the Petition, Petitioner alleges that his ongoing detention lacks any legitimate, non-punitive purpose and there is no significant likelihood of removal in the reasonably foreseeable future; therefore, his detention violates his substantive due-process rights per the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001). ECF No. 1 ¶¶ 57-74. Petitioner also alleges that Respondents failed to follow the relevant regulations when they ended his supervised release and thus violated procedural due process and the Administrative Procedure Act. *Id.* ¶¶ 75-92. Finally, Petitioner alleges Respondents purportedly failed to notify him of a potential removal to a third country and an opportunity to assert a fear of going to that country, as

well as an alleged failure to follow statutory procedures at 28 U.S.C. § 1231(b) for removal to a third country, violating procedural due process and the relevant statutory provisions. *Id.* ¶¶ 93-99.

The Court should deny the Petition. First, the burden is on Petitioner to show that his detention while awaiting removal violates 8 U.S.C. § 1231 or due process under the standards described in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner has not met his burden—his detention does not exceed the six-month mark and ICE is pursuing steps to effectuate his removal. Second, Petitioner has not shown that any purported deficiency in the process by which Respondents revoked his supervised release would entitle him to habeas relief. Third, Petitioner has not shown that Respondents have failed to follow the relevant procedures for removal to a third country.

FACTUAL BACKGROUND

I. Petitioner's background

Petitioner is a native and citizen of Bulgaria. Ex. 1 (Zolock Decl.) ¶ 4. He was admitted to the United States on a nonimmigrant visa with permission to remain for a temporary period on January 18, 1999. *Id.* ¶ 5.

On October 20, 1999, a Notice to Appear (NTA) was issued to Petitioner, initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 6. The NTA charged Petitioner with being deportable from the United States pursuant to 8 U.S.C. § 1227 (a)(1)(B). *Id.* Petitioner submitted a Form I-589, Application for Asylum and for Withholding of Removal to the immigration court. *Id.* ¶ 7. On April 8, 2002, the

Immigration Judge (IJ) denied Petitioner's application and ordered him removed from the United States to Bulgaria. *Id.* ¶8.

Petitioner filed a motion to reopen before the Board of Immigration Appeals (BIA), which granted the motion and remanded the case to the IJ. *Id.* ¶ 9. On May 23, 2005, the IJ denied Petitioner's asylum application and ordered him removed from the United States to Bulgaria but granted withholding of removal. *Id.* ¶ 10. On the same date, ICE placed Petitioner on an Order of Supervision until it could effectuate his removal from the United States. *Id.* ¶ 11.

On November 8, 2025, ICE officials encountered Petitioner, revoked his Order of Supervision, and detained him in order to execute his final order of removal from the United States. *Id.* ¶ 12. ICE determined that it would detain Petitioner as he poses a significant risk of flight given his final order of removal and current efforts to remove him. *Id.* When Petitioner was taken into custody, ICE officials explained the basis for revoking his conditional release and the basis for his detention and went over other information with Petitioner. *See id.* ¶¶ 13 and 14.

ICE is pursuing Petitioner's removal to a third country pursuant to 8 U.S.C. § 1241(b)(1)(C), and is coordinating with the State Department to evaluate and select a third country for removal. *Id.* ¶ 15.

II. Petitioner's habeas petition

Petitioner filed his Petition two weeks after he was detained, on November 22, 2025. *See* ECF No. 1.

Petitioner brings six claims in the Petition. In Count One, he alleges that his "indefinite detention" is unlawful under the Fifth Amendment and in violation of 8 U.S.C. § 1231. *Id.* ¶¶ 57-61. In Counts Two and Three, he also alleges a violation of substantive due process because his detention serves no legitimate purpose and is punitive because there is no significant likelihood of removal in the reasonably foreseeable future, and there has been no change in circumstances to warrant his detention. *Id.* ¶¶ 62-74. In Counts Four and Five, Petitioner alleges a violation of procedural due process and the Administrative Procedure Act (APA) because Respondents allegedly failed to follow the relevant regulations in revoking his supervised release. *Id.* ¶¶ 75-92. In Count Six, he alleges a violation of procedural due process and the APA because he allegedly has not been given notice and an opportunity to challenge removal to a third country. *Id.* ¶¶ 93-99.

For relief, Petitioner seeks an order that he not be removed from the district while this petition is pending; a declaration that his detention violates the due-process clause and the Immigration and Nationality Act, the APA, and the *Accardi* doctrine; that he not be removed to a third country without following proper procedures; and a release from detention. *Id.* at 25.

ARGUMENT

I. Petitioner's current detention does not violate his substantive due process rights under *Zadvydas* nor does it violate 28 U.S.C. § 1231.

In Counts One, Two, and Three, Petitioner asserts that his ongoing detention serves no legitimate, nonpunitive purpose because there is no significant likelihood of removal in the reasonably foreseeable future (SLRRFF) and thus his detention violates

his substantive due-process rights and § 1231 under the framework set forth in *Zadvydas*. The Court should find that Petitioner's ongoing detention does not violate his substantive due-process rights or § 1231.

Petitioner's detention is authorized by 8 U.S.C. § 1231. *See* Ex. 1 ¶ 10 (noting that Petitioner is subject to a final order of deportation); 8 U.S.C. § 1231 (providing for the detention and removal of aliens[1] ordered removed). Under § 1231(a), DHS "shall detain" a noncitizen "[d]uring the removal period." 8 U.S.C. § 1231(a)(2). The removal period is the 90-day period during which DHS "shall remove the alien from the United States." *Id.* § 1231(a)(1)(A).

Upon expiration of the 90-day period, during which detention is mandatory, the government may continue to detain a noncitizen in limited circumstances, such as when a noncitizen has been ordered removed and is a flight risk. *See id.* § 1231(a)(6) (providing that an "alien ordered removed . . . who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period"); Ex. 1 ¶ 12. The Supreme Court has recognized that § 1231(a) authorizes continued detention after the initial 90 days:

> In addition to setting out a 90-day removal period, § 1231 expressly authorizes DHS to release under supervision or continue the detention of aliens if removal cannot be effectuated within the 90 days. . . . DHS routinely holds aliens under these provisions when geopolitical or practical problems prevent it from removing an alien within the 90-day period. . . . [§ 1231] provides for post-removal detention and supervised release in the event an alien cannot be removed within the 90-day removal period.

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[1] Respondents use the terms "alien" and "noncitizen" interchangeably in this brief. *See* 8 U.S.C. § 1101(a)(3) (defining an "alien" as "any person not a citizen or national of the United States").

Johnson v. Guzman Chavez, 594 U.S. 523, 546–47 (2021) (citations omitted). If detained, the noncitizen receives periodic custody reviews. *See* 8 C.F.R. § 241.4.

A noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory right to release or a bond hearing. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578-83 (2022). But despite the lack of a statutory right to release or a bond hearing, the Supreme Court has held that a noncitizen detained under this provision may still claim that the detention is so extended that it violates due process. *See Zadvydas*, 533 U.S. at 682, 690.

In *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is "presumptively reasonable." *Id.* at 700–01. The Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, the Court held that after six months, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.*; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("The onus is on the alien to 'provide good reason to believe that there is no such likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'" (cleaned up) (quoting *Zadvydas*, 533 U.S. at 701)).

Here, Petitioner's detention is statutorily authorized and does not violate his constitutional rights. He is detained pursuant to § 1231(a)(6), under which the government may detain a noncitizen beyond 90 days when the individual is ordered

removed and determined to be unlikely to comply with the order of removal. Additionally, his detention complies with *Zadvydas*: he has been detained for less than two months. He was taken into custody on November 8, 2025. Ex. 1 ¶ 12. His detention is thus well-short of the six-month presumptively-reasonable period of detention.

Petitioner argues that his detention still runs afoul of *Zadvydas* because it has lasted beyond the 90-day statutory removal period and there is no SLRRFF. ECF No. 1 ¶ 66. But Petitioner fails to address § 1231(a)(6), which authorizes detention beyond 90 days for individuals such as Petitioner. Thus, because Petitioner's detention is "presumptively reasonable" his Petition should be denied.

Even if Petitioner could show that his detention was not presumptively reasonable, he cannot meet his burden here. Setting aside that Petitioner's detention has only lasted two months, for him to establish a due-process violation under *Zadvydas*, Petitioner has an initial burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

Petitioner argues that his "removal is not reasonably foreseeable" because, according to him, "[t]here is no indication that the government has made any effort towards securing removal in the over twenty years since his removal order became final." *See* ECF No. 1 ¶¶ 58, 59, 66. But ICE and the State Department are, in fact, now taking steps to secure Petitioner's removal to a third country. Ex. 1 ¶ 15. Moreover, as explained above, because Petitioner's detention is well-within the six-month

presumptively reasonable period, the Court should find that his current detention does not violate his substantive due-process rights under *Zadvydas.*

II. Petitioner is not entitled to release based on claimed deficiencies in the process by which Respondents revoked his OSUP and re-detained him.

In Claims Four and Five, Petitioner seeks release on the ground that the government did not revoke his Order of Supervision or provide him with requisite notice and a meaningful opportunity to respond prior to detaining him. ECF No. 1 ¶¶ 75-92. He points to 8 C.F.R. §§ 241.4(l) as setting forth the procedure ICE should have followed to revoke his supervised release. *Id.* ¶¶ 80, 88. Petitioner alleges that ICE violated his procedural due-process rights and the APA. *Id.* ¶¶ 75-92. Based on these alleged violations, he requests release. *See id.* at 25. But Petitioner has not shown any procedural due-process violation and, even if established, that would not warrant immediate release. A procedural due-process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. The proper remedy for lack of procedural due process should be additional process, not immediate release.

Petitioner argues that the Court should apply the *Mathews* balancing test here to determine if the steps taken to detain him were constitutional. *See* ECF No. 1 ¶ 76 (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). However, given the Supreme Court's analysis of due process rights in *Zadvydas*, *Mathews* does not supply the correct standard here.

If the Court does apply the *Mathews* balancing test, the Court should still conclude that there has been no violation of Petitioner's due process rights. Under

Mathews, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." 424 U.S. 335, 333 (1976) (citation omitted). Due process "is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 334 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). In assessing whether a given procedural framework affords due process, courts typically assess three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional procedural requirements would entail. *See id.* at 335.

In the immigration context, courts must "weigh heavily" the fact "that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Courts also must consider that Congress "emphatic[ally]" intended the government's discretionary decisions regarding detention to be "presumptively correct and unassailable except for abuse." *Carlson v. Landon*, 342 U.S. 524, 540 (1952).

Here, the revocation of Petitioner's supervised release did not violate due process. As to the first *Mathews* factor, while Petitioner has a private interest at stake here, his interest—as a noncitizen with a removal order—is much weaker than it would be if he were a citizen or a noncitizen not facing removal on the grounds of inadmissibility. As to the second *Mathews* factor, Petitioner's supervised release and its

revocation are discretionary. *See* 8 C.F.R. § 241.4(l)(1) & (2). Moreover, the relevant procedures provide Petitioner with opportunities to respond to the reasons for the revocation both with an initial informal interview and a custody review within approximately three months. *Id.* These procedures protect against erroneous deprivations of liberty, while also protecting the government's interests in ensuring that noncitizens do not abscond or commit crimes while removal proceedings are ongoing. As to the third *Mathews* factor, the government has a strong interest in being able to ensure that it is able to effectuate removal orders for inadmissible noncitizens. Being able to revoke orders of supervision in appropriate circumstances promotes the prompt execution of removal orders, and "[t]here is always a public interest in prompt execution of removal orders" because "[t]he continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings ... and permit[s] and prolong[s] a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009) (citation omitted).

Even if the Court were to conclude that the revocation of Petitioner's order of supervision violated his procedural due process rights, the proper remedy is additional process, not release. Various district courts have declined to grant release as a remedy for a procedural violation of immigration regulations. *See, e.g.*, *Olmedo v. ICE*, No. 25-3159-JWL, 2025 WL 2821860, at *3 (D. Kan. Oct. 3, 2025) (concluding that where a 90-day POCR was not performed, "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation"); *Bahadorani v. Bondi*, No. CIV-25-1091-PRW, 2025 WL 3048932, at *3 (W.D. Okla. Oct. 31, 2025) ("Even if the government

failed to comply with 8 CFR § 241.13(i)(2)–(3), and such noncompliance were prejudicial, the [c]ourt would not be able to issue a writ of habeas corpus as an appropriate remedy."); *see also Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187, at *11 (W.D. Tex. Oct. 24, 2025); *Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *11 (D. Md. Aug. 11, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7–8 (D. Md. Aug. 27, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025 WL 2062181, at *6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025).

Accordingly, the Court should decline to grant Petitioner's request for immediate release based on alleged deficiencies in the process by which Petitioner's OSUP was revoked.[2]

III. Petitioner's claim regarding notice of Petitioner's removal to a third country is not ripe.

In Count Six, Petitioner alleges that Respondents have violated his Fifth Amendment Rights and the APA because he "has been given no notice regarding any intended removal to a third country." ECF No. 1 ¶ 98. But, at this time, ICE has not

[2] Should the Court order Petitioner released on an order of supervision, this release would be subject to conditions. 8 U.S.C. § 1231(a)(3) provides the Attorney General with the authority to issue regulations on terms of supervision for an alien released pending removal. ICE has issued those regulations governing the release of aliens pending removal. *See* 8 C.F.R. § 241.13(h). Thus, an "alien's 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 700. Accordingly, if Petitioner is released, his release may be governed by conditions of supervised release set by ICE pursuant to the regulations.

confirmed acceptance of Petitioner to any third country. ICE is still in the process of identifying and soliciting acceptance of Petitioner to potential third countries. *See* Ex. 1 ¶ 15. Because ICE has yet to receive an acceptance of Petitioner, Petitioner has not been notified of his removal to a third country. Thus, any claim challenging Petitioner's potential removal to a third country is not yet ripe, since Respondents have not yet identified a third country. *See Doe v. Becerra*, No. 23-cv-00072-BLF, 2023 WL 218967, at *4 (N.D. Cal. Jan. 17, 2023) ("[A] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (internal quotation omitted) (quoting *Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009)). Moreover, any future objection Petitioner may have to removal to a particular third country would not be a habeas challenge to detention, and is the subject of a non-opt-out class action.[3]

CONCLUSION

For the foregoing reasons, the Court should deny the Petition, ECF No. 1.

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[3] Petitioner's assertions concerning notice and processes associated with third-country removal may implicate issues that are currently being addressed through a certified, non-opt-out class action pending in the District of Massachusetts. *See D.V.D. v. DHS,* 778 F. Supp. 3d 355, 2025 WL 1142968 (D. Mass. 2025).

Dated: December 26, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

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