UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Laredo Division

QUIRONG ZHU, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	Civ. No. 5:25-cv-00239

REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS
AND IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS[1]

[1] Although Respondents cite Fed. R. Civ. P. 12(b)(6), they do not make any pretense of following its requirement that such motion be limited to the four corners of the complaint and accept all well-pled factual allegations as true. *Colony Ins. Co. v. Peachtree Const.*, 647 F.3d 248, 252 (5th Cir. 2011). Their motion is best understood as a factual challenge to this Court's subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). *Kling v. Hebert*, 60 F.4th 281, 284 (5th Cir.).

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INTRODUCTION

On October 9, 2008, Petitioner Qiurong Zhu won an order from an immigration judge granting her a form of relief called withholding of removal, which prohibits Respondents from removing her native China, the one country on earth in which she holds any claim to citizenship. Dkt. No. 1-1; Dkt. No. 13 at 6. Recognizing that they could not remove petitioner to China, and with no other country willing to accept her, Respondents issued Petitioner an Order of Supervision on April 16, 2009. Dkt. No. 1-2. Since then, Respondents have repeatedly reaffirmed their conclusion that Petitioner could not be removed from the United States, and accordingly issued her no fewer than ten Employment Authorization Documents. *See* Dkt. No. 1-4.

After approximately 16 years of supervised release without any violations, on October 2, 2025, Respondents re-arrested and re-detained Petitioner without any forewarning, but the individual ICE officer who revoked her Order of Supervision lacked authority to do so. *See* Dkt. No. 13 at 1. Respondents detained petitioner without prior notice or explanation, despite Petitioner having no criminal history and maintaining consistent compliance with ICE supervision.

The stated purpose of arresting Petitioner was ostensibly to "expeditiously" remove her to Mexico, *see id.* at 11; yet Respondents admit Mexico is not accepting Chinese nationals such as Petitioner. *See* Ex. A hereto (Declaration of Jane Ho) at ¶ 5. Over a month after Petitioner was detained, Respondents subsequently sent acceptance requests to other third countries; however, these post-hoc attempts to rationalize Respondent's detention have now all been rejected. *See* Dkt. No. 13 at 18-19. In fact, Respondents have not identified any country to which they are currently seeking to remove Petitioner, nor articulated any reason to believe that any particular third country would accept Petitioner for removal. *Id.* Simply, there is no significant likelihood of removal in the reasonably foreseeable future.

LEGAL STANDARD

Withholding of removal under 8 U.S.C. § 1231(b)(3) prohibits the government from removing a noncitizen to a country where it is more likely than not that the individual would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. See 8 C.F.R. § 1208.16(b). This form of relief is mandatory if the applicant meets the standard and is distinct from asylum in that it does not lead to permanent residency.

Withholding of removal is a country-specific form of relief. *Guzman Chavez v. Hott*, 940 F.3d 867, 880 (4th Cir. 2019) ("And precisely because withholding of removal is country-specific, as the government says, if a noncitizen who has been granted withholding as to one country faces removal to an alternative country, then she must be given notice and an opportunity to request withholding of removal to that particular country."), *rev'd on other grounds*, 594 U.S. at 523; *Sagastizado v. Noem*, 2025 WL 2957002, at *9 (S.D. Tex. Oct. 2, 2025) (hereinafter "*Sagastizado I*") ("[a] noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation") (quoting *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019)).

When an individual is ordered removed, 8 U.S.C. §1231(a) permits the government to detain them during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). With two exceptions not relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). The 90-day removal period is tolled and extended only if "the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's

removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). The statute contains no other provision for pausing, re-initiating or refreshing the removal period after the 90-day clock to zero.

After the removal period expires, the government may continue to detain certain noncitizens. 8 U.S.C. § 1231(a)(6). However, this broad authority is subject to an important constitutional limitation, which the Supreme Court has read into the statute: detention beyond the removal period is permissible only where reasonably related to a legitimate government purpose, namely, securing the noncitizen's physical removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). Where there is no possibility of removal, detention presents due process concerns because the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Id.* at 690–92. Detention is lawful only when "necessary to bring about that alien's removal." *Id.* at 689. Because the *Zadvydas* Court understood Congress to have recognized that not all removals can be accomplished in 90 days, the Court established a rebuttable presumption that six months could be deemed a "presumptively reasonable period," after which the burden shifts to the government to justify continued detention by means of evidence if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

ARGUMENT

I. Since Petitioner's removal is not reasonably foreseeable, her detention is no longer permissible under *Zadvydas*.

The government may, of course, detain a noncitizen with a final order of removal in order to actually remove that noncitizen, no matter how long ago the removal order was entered. This much is not in doubt. Petitioner's contention in this litigation is a modest one: once the removal period has passed, *Zadvydas* requires that the government have some *objective* reason to believe that removal is significantly likely within the reasonably foreseeable future, before it can lock up

a person by surprise without any due process review.

Here, the government has not bothered to put forward one shred of evidence that it actually *expects* to be able to remove Petitioner.[2] Rather, Petitioner's sole argument is jurisdictional: that a *Zadvydas* claim is premature because 180 days have not yet elapsed since Petitioner was detained. If the Court rejects that argument, therefore, Respondents are left with no defense on the merits.

A. This habeas petition, filed more than seventeen years after the expiration of the removal period, is not premature.

1. The removal period has not reset due to re-detention.

Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) commenced upon the administratively final removal order against Petitioner on October 9, 2008, and ran through January 7, 2009. *See* Dkt. 1-1; 8 U.S.C. §1231(a)(1)(A). The 180-day presumptively reasonable period under 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas* expired on April 7, 2009, more than sixteen years ago. *See Zavvar v. Scott*, 2025 WL 2592543 at *4(D. Md. Sept. 8, 2025)). Respondents' contention that Petitioner's habeas claim is premature because she has not spent 180 days behind bars in ICE detention since her arrest misreads the statute and *Zadvydas*.

First, the plain text of the statute makes clear that the removal period has not reset in this case. As 8 U.S.C. § 1231(a)(2)(B) states,

> **Beginning of period**
>
> The removal period begins on the latest of the following:
>
> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

[2] Why, then, did Respondents even arrest Petitioner? Sworn testimony from a high-level ICE official in another case shows that ICE's practice in cases of this nature is to arrest first and come up with a reason thereafter: third-country removal plans are determined only after a noncitizen is taken into custody. *Abrego Garcia v. Noem*, No. 8:25-CV-00951-PX, 2025 WL 2062203, at *5-*6 (D. Md., July 23, 2025). In other words, ICE's strategy is to lock them up first, and then figure out removal later.

In other words, once the 90-day removal period has run, it resets only upon (i) a new administratively final removal order, or the prior order being reopened and then reentered; (ii) a final order from a reviewing Court of Appeals that had entered a stay of removal; or (iii) the noncitizen's release from criminal detention or confinement. None have occurred in this case.

Additionally, 8 U.S.C. § 1231(a)(1)(C) provides the only reason for the removal period to be tolled: "if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." Again, this did not occur here.

For this reason, courts agree that detention for the purpose of removal, without more, does not reset the removal period. *See, e.g.*, *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019), *R&R adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019), citing *Bailey v. Lynch*, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) ("The removal period does not restart simply because an alien who has previously been released is taken back into custody.").

Second, the reasoning of *Zadvydas* explains why the 180-day period does not reset simply because a noncitizen is detained. *Sagastizado v. Noem*, No. 5:25-cv-00104, Dkt. No. 29 (S.D. Tex. Nov. 14, 2025) (hereinafter "*Sagastizado II*"). As the *Zadvydas* court explained, 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 alien'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. Under *Zadvydas*, after 180 days have elapsed since the start of the removal period, even just one day of additional detention could be found unreasonable if not justifiable by the statute's

basic purpose of assuring the noncitizen's presence at the moment of removal.

Here, Respondents have had over seventeen years to work on removal, with Petitioner on close supervision throughout. As this Court correctly noted in *Sagastizado II*:

> *Zadvydas* contemplated only the situation in which a noncitizen was continuously detained from the issuance of the removal order while efforts to execute the removal were ongoing, and did not directly address the situation presented here, where a noncitizen was not detained upon the issuance of the removal order, remained on release for 17 years, and only then was subjected to post-removal order detention for the first time. This distinction is significant because *Zadvydas* appears to have sought to balance the length of time a noncitizen would be held in detention against the need to afford the Government some time immediately following the issuance of the removal order to make and execute arrangements for removal. Because some if not most of those arrangements, such as securing approval from a foreign country to remove an individual to that nation, can likely be pursued even while the noncitizen is on release, that balance may well differ in circumstances where, before the period of detention began, the Government had a period of time . . . to make the arrangements for removal. Thus, there is, at a minimum, a reasonable argument that the six-month period runs continuously from the beginning of the removal period, even if the noncitizen is not detained throughout that period.

Sagastizado II at *14 (citing *Zavvar,* 2025 WL 2592543 at *4); *see also Tadros v. Noem*, 2025 WL 1678501, *3 (D.N.J. June 13, 2025); *Alam v. Nielsen*, 312 F. Supp. 574, 581–82 (S.D. Tex. 2018) (rejecting the argument that the Section 1231(a)(1)(A) removal period is restarted when a noncitizen is re-detained for the purposes of removal); *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (citing *Nguyen v. Hyde*, 2025 WL 1725791 (D. Mass. June 20, 2025)); *Villanueva v. Tate*, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025).

Under Respondents' view of the 180-day clock, if the government releases a noncitizen from custody after 181 days on a finding that he cannot be removed to country A, then re-arrests him the following morning in order to attempt removal to country B, the holding of *Zadvydas* does not allow him to file a habeas corpus petition until he spends *another* 181 days in detention. With 195 countries on earth, if the government could simply reset the removal period by designating one of them, this would completely devastate the holding of *Zadvydas*. *See Sagastizado II* at *15

("While the Supreme Court in *Zadvydas* set six months as a reasonable time period of detention in which the Government can be presumed to be working to effectuate removal in good faith, that presumption does not reset at the time a noncitizen is re-detained after being released on an order of supervision during which time the Government could have been taking steps to effectuate the noncitizen's removal.").

For the foregoing reasons, this Court should find that the 90-day Section 1231(a)(1) removal period, and the additional 90-day Section 1231(a)(6) post-removal period, both expired in 2009, and did not reset upon Petitioner's re-detention on October 2, 2025. *See Tadros*, 2025 WL 1678501 (finding 6-month presumption lapsed while petitioner was on supervised release).

2. The *Zadvydas* presumption of reasonableness may be rebutted within the initial 180-day period of detention.

Even if the *Zadvydas* six-month presumptively reasonable period only counts days spent behind bars during the current period of detention, that presumption of reasonableness would still be nonetheless rebuttable prior to that period's expiration. *Zadvydas* does not prohibit the filing of a habeas petition for 180 days, it merely gives the government a *presumption* that 180 days' worth of detention is reasonable. *See Zadvydas*, 533 U.S. at 701 (recognizing a "presumptively reasonable period of detention"); *see also Sagastizado II* at *13 n.3 (finding no controlling precedent or legal support to indicate that six months must have elapsed *at the time of filing*); *Villanueva*, 2025 WL 2774610, at *9 ("nothing in *Zadvydas* precludes a challenge to detention before the presumptively constitutional time period has elapsed."); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 396 (D.N.J. 2025).

Zadvydas did not announce a bright-line prohibition on challenges prior to the six-month mark. *Id*. at 396 (citing *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) and *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008)). Rather, "the presumption scheme

merely suggests that the burden the detainee must carry within the first six months . . . is a heavier one than after six months has elapsed." *Cesar*, 542 F. Supp. 2d at 903.

The District of Maryland recently considered the question of whether the *Zadvydas* presumption was rebuttable and held that it was. *Cruz Medina v. Noem*, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (hereinafter "*Cruz Medina I*") ("But regardless of which *type* of presumption applies to a *Zadvydas* claim, which this Court need not decide, what *Zadvydas* did make clear was that it was adopting a presumption—not a conclusive bar to adjudication of whether continued detention is authorized that lifts only after six months have elapsed."). The *Cruz Medina* court explained that the presumption of reasonableness was merely the "default." *Id.* "But if a petitioner 'claim[s] and *prove[s]* . . . that his removal is not reasonably foreseeable'—including during the six-month period—the petitioner 'can overcome that presumption' and detention is no longer authorized." *Id.* (citing *Munoz-Saucedo*, 2025 WL 1750346, at *6). *See also Zavvar*, 2025 WL 2592543, at *6 ("[E]ven if the presumption is not rebuttable in the standard situation under which, as in *Zadvydas*, the six-month period consisted of continuous detention beginning on the date of the removal order, it must be rebuttable when, as here, the noncitizen was not initially detained and there was thus a substantial pre-detention period during which Respondents could have arranged for the removal."); *Villanueva*, 2025 WL 2774610, at *10 ("even if the government can 'reset' the six-month presumptively constitutional detention period by releasing the noncitizen and then re-detaining him, that would not require dismissal of Villanueva's habeas petition because the presumption of constitutionality during that six-month period is rebuttable.").

The District of New Jersey also agreed in *Munoz-Saucedo* that the presumption of reasonableness is rebuttable within the initial 180 days: "Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from

challenging the reasonableness of his detention before such time." *Munoz-Saucedo*, 789 F. Supp. 3d at 395. The *Munoz-Saucedo* court went on to explain, "Although some courts have read *Zadvydas* as creating a bright-line rule—one that effectively allows the government to detain a person for at least six months without judicial review, even if there was no possibility of removal—a close reading of *Zadvydas* does not support that interpretation. . . . The Court described the six-month mark as a 'guide,' not a rigid threshold. The Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption that requires it to be irrebuttable." *Id.*at 396 (internal citations omitted). The *Munoz-Saucedo* court concluded, "Thus, the *Zadvydas* presumption . . . is rebuttable. The presumption of reasonableness is the default, but if a person 'can prove' that his removal is not reasonably foreseeable, then he can overcome that presumption. In practical terms, before the six-month period elapses, the government bears no burden to justify detention, and the petitioner must claim and prove, that his removal is not reasonably foreseeable." *Id.* at 397 (internal citations omitted). *See also Ali v. DHS*, 451 F. Supp. 3d 703, 706–07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, . . . and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits."); *Hoang Trinh*, 333 F. Supp. 3d at 994 ("The six-month *Zadvydas* presumption is just that—a presumption . . . not a prohibition on claims challenging detention less than six months." (internal quotation marks omitted)); *Cesar*, 542 F. Supp. 2d at 903 ("The *Zadvydas* Court did not say that the presumption is irrebuttable."); *Ortega v. Kaiser*, 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025); *Puertas-Mendoza v. Bondi*, 2025 WL 3142089 (W.D. Tex. Oct. 2, 2025).

For the foregoing reasons, this Court should not credit Respondents' argument that this petition was filed prematurely and should find jurisdiction over the matter and determine the merits of the habeas petition under *Zadvydas*.

B. The evidence in the record establishes no significant likelihood that Petitioner will be removed in the reasonably foreseeable future.

Going to the substance of the *Zadvydas* test, Respondents summarily aver that Petitioner has not met her burden under *Zadvydas*, arguing that she has not offered "any evidence altogether he [sic] will not be deported in the reasonably foreseeable future." Dkt. No. 12 at 8. Rather, according to Respondents, there is a significant likelihood of removal because they are "actively working with other agencies to identify and secure acceptance from a third country for her removal." Dkt. No. 12 at 7. This blatantly mischaracterizes the record: Petitioner has not merely suggested that removal is unlikely, she has pointed to objective legal barriers and the government's own administrative admissions to prove removal is not reasonably foreseeable. Not only have Respondents been unsuccessful in removing Petitioner, but it has exhausted its efforts and presently has no pending plans or prospects to remove her.

At the outset, Petitioner has a final, un-terminated grant of withholding of removal as to China, and Respondents have not taken any steps re-open and terminate her withholding of removal. *See* Dkt. No 1; 8 C.F.R. § 1208.24(f). Further, there is no evidence that any other country on earth has accepted Petitioner for removal.

Indeed, Petitioner was detained on October 2, 2025, based on Respondent's stated intention to "expeditiously" effectuate her removal to Mexico. *See* Dkt. No. 13 at 5, 11. Yet Respondent's declaration in support of its motion to dismiss conspicuously makes no mention of any attempt to deport her to Mexico. *Id.* at 18-19. Instead, it describes how, more than a month after her detention, Respondents submitted requests for acceptance to Belize, Costa Rica, and Panama on November 12, 2025. These requests were summarily denied: Panama and Belize rejected them the same day, and Costa Rica followed suit on November 17, 2025. *Id.*; *cf. Zavvar*, 2025 WL 2592543, at *7 ("The lack of any sign that Australia or Romania is actively considering accepting Zavvar further

demonstrates that removal is not likely in the foreseeable future."). In fact, Respondents concede there are no pending removal requests to any country in the world. *Id.*

While the government may try to justify detention based on a theoretical possibility of removal to Mexico, it offers no evidence of even attempting to pursue removal to that country. As noted *supra*, this omission is particularly telling because the justification Respondents provided for revoking Peitioner's order of supervision was that she could expeditiously be removed to Mexico. *Id.* at 11. ("ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. . . . Your case is under current review by the consular of Mexico for the issuance of a travel document."); *id.* at 5.

In fact, as explained in the attached declaration by Petitioner's immigration attorney Jane Ho, a deportation officer at the Laredo Processing Center confirmed that Mexico is not currently accepting Chinese nationals for removal. *See* Ex. A at ¶ 5.[3] The government cannot manufacture foreseeability by naming Mexico as a removal destination while admitting that: (1) it has not tried to deport Petitioner there, and (2) Mexico is not accepting individuals like Petitioner.

Further, Petitioner has shown "good reason to believe that [her] removal is not reasonably foreseeable" in the future. *See Sagaztizado II* at *17. The government concluded as much on April 16, 2009, when they issued Petitioner's Order of Supervision. Dkt. No. 1-1. Respondents have had over sixteen years to locate a third country willing to accept Petitioner and are no closer today than they were on April 16, 2009.

Indeed, on no less than ten occasions, and as recently as March 24 2022, Respondents issued Petitioner an Employment Authorization Document ("EAD"). *See* Dkt. No. 1-3. Pursuant

[3] Ms. Ho also notes that USCIS already conducted a fear interview for Respondent as to her fear of being removed to Mexico. *Id.* at 2. Notably, Respondents make no mention of said interview in their filing.

to 8 U.S.C. § 1231(a)(7), "No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or (B) the removal of the alien is otherwise impracticable or contrary to the public interest." Accordingly, each time Respondents issued Petitioner an EAD, they understood that removal was either impossible or impracticable.

In sum: over the course of the last seventeen years, the government repeatedly concluded that Petitioner could not be removed from the United States. That conclusion was correct then, and remains correct now. Nothing has changed other than the government's *desire* to remove her, but a desire does not create a *significant likelihood*. 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.

Since the 90-day removal period and the 180-day presumptively reasonable post-removal-period detention elapsed many years ago, Respondents lacked legal basis to detain Petitioner absent newly obtained means to actually remove her from the United States, which, again, they do not claim. *See You v. Nielsen*, 321 F. Supp. 3d 451, 462 (S.D.N.Y. 2018) (after the removal period, where a noncitizen is released on supervision, he cannot be re-detained except upon a finding of danger to the community or flight risk); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 502 (S.D.N.Y. 2009) ("[B]ecause the removal period and any presumptively reasonable detention period has expired, and the removal period was not tolled pursuant to § 1231(a)(1)(C), this Court finds that the Respondents are without statutory authority to detain Farez-Espinoza.").

The facts of this case are similar to *Zavvar*: Petitioner here has been granted withholding of removal to the only country to which she has a claim to citizenship or legal immigration status. *Zavvar*, 2025 WL 2592543 at *7. Like *Zavar*, for a period of seventeen years, Respondents made

no efforts to remove Petitioner, and at least ten times during that period affirmatively determined that they could not do so. *Id.* "To the extent that no such efforts were made, it is thus reasonable to infer . . . that any such efforts likely would have been unsuccessful." *Id. See also Phongsavanh v. Williams*, 2025 WL 3124032, at *3–*4 (S.D. Iowa Nov. 7, 2025) ("Even assuming Phongsavanh bore the initial burden, he has satisfied it. He alleges that his CAT deferral remains in place, that no third country willing to accept him has been identified, and that the Government has been unable to secure travel documents for his removal in the past 25 years.").

Petitioner has met her burden under *Zadvydas* to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and Respondents have failed to "respond with evidence sufficient to rebut that showing." 533 U.S. at 701. As this Court recently held in *Sagastizado II*, "some possibility of an eventual removal is not the same as a significant likelihood that removal will occur in the reasonably foreseeable future." *See Sagastizado II* at *19. Without evidence that a third country has accepted Petitioner, or is at least reviewing the request with a specific timeline for acceptance, the government's plan is the definition of speculative. The government cannot say whether deportation might occur in "ten days, ten months, or ten years," which is precisely the scenario in which courts find continued detention unreasonable. *Singh v. Whitaker*, 362 F. Supp. 3d 93, 101–02 (W.D.N.Y. 2019). Accordingly, continued detention is impermissible, and the writ of habeas corpus should issue.

II. Petitioner's Order of Supervision was revoked by an official who lacked authority to do so, thus violating the *Accardi* doctrine.[4]

Independent of the *Zadvydas* argument, as outlined in Count 5 of the Petition for Writ of Habeas Corpus, Respondents improperly revoked Petitioner's Order of Supervision. *See* Dkt. No.

[4] Respondents' Motion to Dismiss (Dkt. No. 13) entirely omits any response to Petitioner's Fifth Claim for Relief, much less demonstrates why it should be dismissed.

1 at 11. Petitioner's Notice of Revocation was signed by an Acting Field Office Director, without any apparent involvement from the responsible ICE headquarters-level official, and without the Acting Field Office Director making the required finding that the headquarters-level official could not be involved in the decision. *See* Dkt. No. 13 at 11.

The regulation governing revocations, 8 C.F.R. § 241.4(*l*)(2), could not be more specific about who is empowered to revoke supervised release:

> The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest **and** circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.

(Emphasis added). Contrast this subsection with another subsection in the same regulation, 8 C.F.R. § 241.4(h)(5), regarding periodic custody reviews of already-detained noncitizens. That subsection allows high-level ICE officials to designate custody review authority to a long list of other officials with other job titles, including the catch-all ". . . or such other persons as the district director or the Director of the Detention and Removal Field Office may designate from the professional staff of the Service." The absence of such a catch-all provision in subsection (*l*)(2) is no less meaningful than its presence in subsection (h)(5). *See United States v. Menasche*, 348 U.S. 528, 538–39 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute,' . . . rather than to emasculate an entire section, as the Government's interpretation requires."); *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). Respondents cannot come up with a justification for the Notice of Revocation of Release having been signed by an Acting Field Office Director, where no specific findings of "revocation is in the public interest **and** circumstances do not reasonably permit referral of the

case to the Executive Associate Commissioner" were made, that does not read Subsection (*l*)(2) out of the regulation entirely.

Of course, Petitioner is not arguing that this Court would have the authority to second-guess a determination by the Field Office Director that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner," had such finding been made. But this Court does have the authority to ascertain *whether* the Field Office Director actually made such a determination. Here, she did not. *See Bonitto v. ICE*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) ("It is important to emphasize that the Court here is not reviewing and reversing the *manner* in which agency discretion was exercised, but is instead dealing with DHS's failure to exercise its discretion altogether and provide aliens with the applicable process contrary to valid existing regulations. As the Supreme Court has made clear, there is a 'strong tradition in habeas corpus law' that subjects an agency's failure to exercise discretion, unlike an agency's unwise exercise of given discretion, to habeas corpus review.").

Under the *Accardi* doctrine, "an agency's failure to afford individual procedural safeguards required under its own regulations may result in the invalidation of the ultimate administrative determination." *Richardson v. Joslin*, 501 F.3d 415, 418 (5th Cir. 2007) (quoting *United States v. Morgan*, 193 F.3d 252, 266 (4th Cir.1999)); *see also Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) (per curiam) ("It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it."); *Villanueva*, 2025 WL 2774610, at *7 ("Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations."). Indeed, the Supreme Court has stressed the importance of the government following the very regulation that

was violated here. "Federal law governing detention and removal of immigrants continues, of course, to be binding as well." *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Sotomayor, J., concurring) (citing 8 C.F.R. § 241.4(*l*)).

Several federal district courts have applied *Accardi* to hold that where ICE revokes release and rearrests a noncitizen without following the procedures set forth in Section 241.4(*l*), such revocation violates due process and requires that the revocation be set aside and the Order of Supervision restored. *See, e.g.*, *Salgar v. Noem*, 4:25-cv-04797, Dkt. No. 11 (S.D. Tex. Nov. 14, 2025) ("Here, the record is clear that ICE violated its own regulations by failing to have an authorized official make the revocation decision . . . . ICE's failure to follow the procedural requirements for revoking Petitioner's Order of Supervision renders Petitioner's detention unlawful."); *C.M. v. Maples*, 2025 WL 3091623, at *3 (S.D. Ind. Nov. 5, 2025); *E.M.M. v. Almodovar*, 2025 WL 3077995 (S.D.N.Y. Nov. 4, 2025); *McSweeny v. Warden*, 2025 WL 2998376 (S.D. Cal. Oct. 24, 2025); *N.A.L.R. v. Bondi*, 2025 WL 2987239 (S.D. Ind. Oct. 23, 2025); *K.E.O. v. Woosley*, 2025 WL 2553394 (W.D. Ky. Sept. 4, 2025); *Santamaria Orellana v. Baker* (hereinafter "*Santamaria I*"), 2025 WL 2444087, at *7–*8 (D. Md. Aug. 25, 2025); *Santamaria Orellana v. Baker* (hereinafter "*Santamaria II*"), 2025 WL 2841886 (D. Md. Oct. 7, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025); *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Ceesay v. Kurzdorfer*, No. 25-cv-267-LJV, 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 *Santamaria II*, the court found that the authority to revoke an order of supervision had not properly been delegated or exercised, and that such violation implicated due process rights. "While it is correct that not every technical failure to comply with policies or procedures violates the Constitution, the requirement that an Executive Associate Director make the determination to

revoke release—that is, to restrict a person's liberty—is not merely a housekeeping requirement. A statutory or regulatory provision requiring that a decision affecting personal rights be made only by a designated senior official is fairly deemed to be an important procedural safeguard." 2025 WL 2841886 at *3 *5.

A fundamental tenet of due process is that the jailer himself cannot be the neutral and detached magistrate. Requiring that the decision be made by a high-ranking ICE official—indeed a headquarters-level official, absent specific circumstances—provides certain due process protections to noncitizens like Petitioner. *Santamaria II*, 2025 WL 2841886, at *5 ("[T]he requirement that only an ICE Executive Associate Director make a determination to revoke release in the ordinary course ensures that an individual's right to liberty is not restricted without consideration by a senior ICE official exercising mature judgment and thus is fairly deemed to be part of a procedural framework, designed to insure the fair processing of an action affecting an individual, a violation of which can be deemed to be prejudicial and thus to implicate due process." (Internal citations omitted.)). The regulations at 8 C.F.R. § 241.4 were written in the aftermath of *Zadvydas*, precisely to vindicate the due process rights of noncitizens set forth in that landmark Supreme Court decision. *See Bonitto*, 547 F. Supp. 2d at 756 ("Detention beyond the removal period may be maintained only upon compliance with applicable process. . . . The regulations promulgated in response to *Zadvydas* aim to provide such safeguards. DHS cannot constitutionally continue to detain Bonitto without complying with the procedures laid out in the regulations.").

Finally, ICE knows how to follow 8 C.F.R. § 241.4(l)(2), and does so in other cases. *See* Ex. B hereto (Notice of Revocation of Release signed by ICE Executive Associate Director); Ex. C hereto (Notice of Revocation of Release signed by Acting Field Office Director, but containing a written determination that "revocation of your order of supervision is in the public interest and

that circumstances do not reasonably permit referral of the case to the Executive Associate Director, Enforcement and Removal Operations."). They simply chose not to do so here.

For the foregoing reasons, pursuant to the *Accardi* doctrine, Respondents' actions violated regulations as well as Petitioner's due process rights, and should therefore be set aside. Petitioner's notice of revocation of release should be vacated, and her Order of Supervision restored.

III. The proposed removal procedure violates Due Process.

As a threshold matter, Respondents' plan to remove Petitioner to a "third country" is currently academic. As detailed above, no country has agreed to accept Petitioner. However, to the extent Respondents maintain that their justification for continued detention is the possibility of future removal to some as-yet-unnamed third country, Petitioner preserves her objection that the process Respondents intend to use to effectuate that removal violates the Due Process Clause.

A. Respondents' proposed application of the March 30 memorandum violates Petitioner's right to due process.

Third-country removal is permitted under 8 U.S.C. § 1231(b)(2), but like all removal, it is subject to the requirements of procedural due process. "'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

Here, Respondents' proposed application of the March 30 Memorandum to Petitioner violates Petitioner's due process rights, as applied to Petitioner. First, Petitioner is entitled to an individualized determination of her risk of torture and persecution. Second, if that determination is negative, due process requires that determination include review by an Immigration Judge, before removal can take place.

1. Should Respondents identify a third country of removal, Petitioner is entitled to an individualized assessment of her risk of persecution and torture regarding her removal to that country.

The prohibition on removal to a persecution or torture is a mandatory bar and explicitly supersedes Respondents' otherwise broad discretion to select a country for third-country removal. 8 U.S.C. § 1231(b)(3) ("Notwithstanding paragraphs (1) and (2)"—the third-country removal clauses—"the Attorney General *may not* remove an alien to a country" where she would be persecuted (emphasis added)). This subsection of statute contains no mention of diplomatic assurances as somehow obviating ordinary adjudicatory procedures.

Federal regulations implementing the Convention Against Torture ("CAT") *do* make reference to diplomatic assurances. 8 C.F.R. § 208.18(c). Even in the CAT context, the foreign government must assure that "*an alien* would not be tortured there," 8 C.F.R. § 208.18(c)(1) (emphasis added); if those assurances are deemed credible by our Secretary of State, then "*the alien's* claim for protection under the Convention Against Torture shall not be considered further," 8 C.F.R. § 208.18(c)(3) (emphasis added). It is clear from the wording and structure of the regulation, therefore, that the assurances must be specific to "an alien," not generalized.

In other words, if Respondents provide this Court with diplomatic assurances from the government of a third country that *Petitioner himself* will not be tortured there, and a finding from Secretary Rubio that these assurances are credible, then Petitioner is no longer eligible to seek CAT relief as to that country; however, an individualized assessment is still mandated by due process and by the governing statute and regulations.[5]

[5] Respondents rely on *Munaf v. Geren*, 553 U.S. 674 (2008), and *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), to argue that the Executive's assessment that a noncitizen will not be tortured abroad is unreviewable. This reliance is misplaced. First, Petitioner is not asking the Court to review the Executive's assessment of Petitioner's risk of torture; rather, she is alleging that the March 30 Memorandum, if applied to Petitioner, would violate her due process rights. *Sagastizado I* at *11. Second, those cases involved enemy combatants held in military custody in conflict zones (Iraq) or at Guantanamo Bay—territories outside the sovereign United States. Petitioner is a

2. Due process requires that Petitioner be afforded a fear interview and Immigration Judge review of her risk of persecution and torture from removal to a third country.

"Due process requires the 'opportunity to be heard at a meaningful time and in a meaningful manner.'" *Sivalingam v. Garland*, 839 F. App'x 946, 947 (5th Cir. 2021) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). When the government deprives a person of a protected interest, it must provide "notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). The *Mathews* standard balances: (1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements. *See Mathews*, 424 U.S. at 335.

Applying the *Mathews* factors, this Court should follow its well-reasoned decision in *Sagastizado I* and hold that Petitioner "has demonstrated a likelihood of success as to her claim that he cannot be removed to a third country without sufficient notice and a meaningful opportunity to raise a claim, and that Respondents' failure to provide him with review of her negative [fear of removal] determination deprives him of her rights under the Due Process Clause of the Fifth Amendment." *Sagastizado I* at *9. As this Court explained in *Sagastizado I*, no federal regulation directly covers the factual scenario of a noncitizen granted protection from removal to her home country, whom the Government now seeks to remove to a third country. *Id.* at *10. Nevertheless, "[h]ad Respondents designated Mexico as the country of removal during Petitioner's initial removal proceedings under 8 U.S.C. § 1229a, he would have been provided the opportunity to

civilian detained in Laredo, Texas who has been in the United States continuously since 2001, with a lawful Employment Authorization Document for much of that time.

apply for withholding of removal from Mexico directly before an IJ rather than complete a threshold fear-based screening. Moreover, the regulations provide for IJ review of USCIS fear interviews in situations where the noncitizens are arguably entitled to lesser procedural protections than Sagastizado under the Constitution." *Id.* at *11 (internal citations omitted).

Since no provision in the Code of Federal Regulations directly covers the adjudication of fear-based claims to withholding of removal in the third-country context, Petitioner maintains that the procedure set forth in 8 C.F.R. § 1208.31, the Reasonable Fear Interview with IJ review, is the most directly analogous to the situation at bar in which a prior removal order is later effectuated in a manner and at a time not originally contemplated when the removal order was entered. Indeed, another similar regulation also provides for IJ review of denied fear interviews: 8 C.F.R. § 1003.42, providing for IJ reviews of denied Credible Fear Interviews, where a noncitizen has recently entered the country unlawfully and is subjected to the expedited removal process under 8 U.S.C. § 1225(b)(1). There is *no* regulation, no set of facts or circumstances, under which USCIS conducts a fear-of-removal screening interview that is *not* then subject to review by an IJ.

Due process requires that the same procedures be available to Petitioner as are available to noncitizens apprehended at the border seeking relief from expedited removal or from reinstatement of removal, or aggravated felons. In *Sagastizado I*, this Court cited *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 107 (2020), which held that "aliens who have established connections in this country" have greater due process rights than "an alien at the threshold of initial entry." *See Sagastizado I* at *11. Here, Petitioner has lived in the United States since 2001, working pursuant to duly authorized Employment Authorization Documents since 2010. *See* Dkt. No. 1-3. There is no reason she would be entitled to *less* due process than someone whose removal is being reinstated under 8 U.S.C. § 1231(a)(5) because she has just committed the federal felony of

illegally reentering the United States, 8 U.S.C. § 1326; or *less* due process than someone who is being removed on the basis of an aggravated felony, 8 U.S.C. § 8 U.S.C. § 1228(b). *See Thuraissigiam*, 591 U.S. at 107 (contrasting the greater due process rights of "aliens who have established connections in this country" with the lesser due process rights of "an alien at the threshold of initial entry").

If Petitioner had been apprehended while illegally entering the United States as "an alien at the threshold," she indisputably would have had a right to IJ review of her denied Credible Fear Interview. 8 C.F.R. § 1003.42. If a third country had been named as an alternate country of removal on Petitioner's Notice to Appear, Petitioner would not even have been required to go through the fear-interview procedure at all, she could have simply filed an application for withholding of removal directly to the IJ. 8 C.F.R. § 1240.1(a)(1)(iii). And if Petitioner is removed from the United States today and illegally reenters tomorrow, she would have a right to IJ review of her denied Reasonable Fear Interview as to any country Respondents might name in the future. 8 C.F.R. § 1208.31(e). Petitioner has no less due process rights today than she would in those scenarios. Put differently, Respondents cannot cut off Petitioner's due process rights by waiting seventeen years to spring a surprise alternate country of removal. *See also Sagastizado I* at *12; *Cruz Medina v. Noem*, 2025 WL 2841488 (D. Md. Oct. 7, 2025), at *6 (hereinafter "*Cruz Medina II*").

On the second prong of the *Mathews* test, review by an Administrative Law Judge would provide additional probative value over an interview with a non-judicial officer resulting in a check-the-box form providing no reasons; this is why the government affords IJ review in every other analogous circumstance. The procedures applied here to date do not meet the constitutional minimum requirements of notice and opportunity to be heard. In contrast, in a normal Reasonable Fear Interview, the asylum officer creates (and the noncitizen is given) "a written record of his or

her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officers, and the officer's determination of whether, in light of such facts, the alien has established a reasonable fear of persecution or torture." 8 C.F.R. § 208.31(c). The IJ reviewing the matter (and the noncitizen) is provided with "[t]he record of determination, including copies of the Notice of Referral to Immigration Judge, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based[.]" 8 C.F.R. § 208.31(g).

As the Western District of Washington recently explained, "a noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation. The guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim." *Nguyen v. Scott*, 2025 WL 2419288, at *18 (W.D. Wash., Aug. 21, 2025), citing, *inter alia*, *Aden*, 409 F. Supp. 3d at 1009. Indeed, the procedures that the District Court in *Nguyen* found necessary were significantly more robust than the procedure that Petitioner seeks here: while the *Nguyen* court held that "removal proceedings must be reopened so that a hearing can be held," *id.*, Petitioner here merely seeks IJ review of any denied fear interview, following which she would be allowed to file a full application for withholding of removal only if he *passes* the IJ review. *See also Sagastizado I* at *12 ("Requiring IJ review in Petitioner's case provides significant but minimally burdensome procedural safeguards in the form of independent review by a subject-matter expert and the opportunity to receive a written explanation of a denial by an IJ. Moreover, this procedure is already provided for in various other removal contexts where noncitizens are entitled to lesser due process rights[.]" (Internal citations omitted)); *Cruz Medina II*, 2025 WL 2841488, at *7 ("The government offers

no articulable reason why there is any lesser risk of erroneous deprivation in this scenario than in scenarios where DHS regulations contemplated the potential risk of erroneous deprivation of a noncitizen's liberty interest and determined to mandate review by an immigration judge. While there remains a risk of erroneous deprivation following review by an immigration judge, this Court defers to DHS's own longstanding determination that similar circumstances call for providing IJ review to lessen the risk of erroneous deprivation of relief under the [CAT].").

Finally, on the third *Mathews* prong, burden to the government, Respondents cannot complain of excessive burden in extending to Petitioner a procedure that already exists in so many other contexts. 8 C.F.R. § 1208.31(g) ("In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I-863, Notice of Referral to Immigration Judge, and the complete record of determination with the immigration court."). *See also Sagastizado I* at *12; *Cruz Medina II* at *7–*8.

For the foregoing reasons, due process requires that Petitioner be afforded no less procedural protections than as set forth in 8 C.F.R. § 1208.31(g). If an aggravated felon would be given an IJ review of a denied Reasonable Fear Interview, if an individual who illegally reentered the United States after prior removal would be given an IJ review of a denied Reasonable Fear Interview, if an "alien at the threshold" would be given an IJ review of a denied Credible Fear Interview, then so must Petitioner.

B. This Court has jurisdiction to rule on Petitioner's due process claims.

This Court has jurisdiction to enjoin Petitioner's removal from the United States unless and until the Immigration Judge review is carried out, because 8 U.S.C. § 1252(g) "strips the federal courts of jurisdiction only to review the Attorney General's exercise of **lawful** discretion to commence removal proceedings, adjudicate those cases, and execute orders of removal." *Abrego*

Garcia v. Noem, No. 25-1345, 2025 WL 1021113, at *2 (4th Cir. Apr. 7, 2025) (emphasis in original). As this Court correctly held in *Sagastizado II*, "[t]he Fifth Circuit 'has long recognized that § 1252(g) is designed to protect the discretionary decisions of immigration authorities in matters related to removal and deportation.'" *Sagastizado II* at *8 (quoting *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022)); *see also Sagastizado I* at *6, quoting *Duarte*, 27 F.4th at 1055 ("The distinction between claims that are linked to a removal order and those that are not depends on the relief that a petitioner seeks."); *Cruz Medina II* at *2 ("[A]lthough "§ 1252(g) precludes review of the execution of removal orders, it does not bar consideration of purely legal questions that do not challenge the Attorney General's discretionary authority." (Internal citations omitted.)); *Mahdejian v. Bradford*, 2025 WL 2269796, at *3 (E.D. Tex. July 3, 2025) (citing *Kong v. United States*, 62 F.4th 608, 618 (1st Cir. 2023)) (holding that § 1252(g) insulates only the discretionary decision to commence removal, not related, potentially unlawful acts).

As the Fifth Circuit explained in *Texas v. United States*, the Supreme Court has "rejected the unexamined assumption that § 1252(g) covers the universe of deportation claims—that it is a sort of 'zipper' clause that says 'no judicial review in deportation cases unless this section provides judicial review.'" 126 F.4th 392, 417 (5th Cir. 2025) (citing *Reno v. American–Arab Anti–Discrimination Committee*, 525 U.S. 471 (1999)). Likewise, as the Ninth Circuit recently explained, Section 1252(g) is a "discretion-protecting provision" that "was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion," but it leaves undisturbed a District Court's "jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (internal citations omitted).

Nor do 8 U.S.C. §§ 1252(a)(5) or (b)(9) bar this action, as it is not a challenge to Petitioner's

underlying removal order entered in 2008, which remains undisturbed no matter what the outcome of her fear proceedings as to any potential third country: as the Supreme Court recently explained, "the finality of an order of removal does not depend in any way on the outcome of the withholding-only proceedings." *Riley v. Bondi*, 145 S. Ct. 2190, 2199 (2025). Put differently, if Petitioner wins her case for protection as to a third country, she will still have a final removal order; there will simply be *two* countries instead of one to which that removal order may not be executed. *See Ibarra-Perez*, 2025 WL 2461663, at *9 (" Section 1252(a)(5) does not apply because Ibarra-Perez does not seek review of his removal order. Similarly, § 1252(b)(9) does not apply because Ibarra-Perez brings claims that arose after completion of his removal proceedings.").

Further, Respondents would have this Court place dispositive weight on the Supreme Court's stay of the classwide preliminary injunction in *D.V.D. v. DHS*, 145 S. Ct. 2153 (June 23, 2025). However, as this Court correctly concluded in *Sagastizado I*, the stay in *D.V.D.* does not mandate dismissal and the well-reasoned rationale in *Sagastizado I* similarly applies to the instant case. 2025 WL 2957002, at *8. The Supreme Court majority in *D.V.D.* chose not to provide any reasoning for its entry of a stay, and the dissent suggests that the reason may have been dissatisfaction with the class-action vehicle, an issue not relevant to this case. *Id.*, 145 S. Ct. at 2160-61. To read substance into the stay decision would be pure speculation, and the three-sentence opinion of the High Court cannot carry all the water that Respondents seek to pour into it. *See also Nguyen*, 2025 WL 2419288, at *22 ("The Supreme Court did not decide *D.V.D.* on the merits, nor did it even necessarily rule on the class's likelihood of success on its due process and APA claims."), citing *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) ("The stay will allow this Court to decide the merits in an orderly fashion . . . [t]he Court's stay order is not a decision on the merits."). As *Nguyen* explained, "This Court cannot ascertain from

the Supreme Court's emergency order whether it found the government likely to succeed on its jurisdictional or substantive claims. This distinction is especially important in this case, where one of the government's primary arguments—that the *D.V.D.* court had no power to enter *classwide* injunctive relief—would have no bearing on the merits of individual habeas petitions." 2025 WL 2419288, at *23.

On the jurisdictional issue, since there is no "final judgment on the merits of an action," there is no preclusive effect as a matter of res judicata to bind the litigants in this case. "Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Houston Pro. Towing Ass'n v. City of Houston*, 812 F.3d 443, 447 (5th Cir. 2016). Res judicata requires, *inter alia*, that "the prior action was concluded by a final judgment on the merits[.]" *Id.* Likewise, collateral estoppel requires "a valid and final judgment[.]" *Stripling v. Jordan Prod. Co., LLC*, 234 F.3d 863, 868 (5th Cir. 2000). For this reason, and for those articulated in *Sagastizado I*, the *D.V.D.* preliminary injunction does not bar this Court from hearing Petitioner's claim as a matter of law.

CONCLUSION

For the foregoing reasons, Petitioner has met her burden of showing that her detention lacks any factual basis, since Respondents have not shown a significant likelihood of removal in the reasonably foreseeable future. Respondents have not yet even determined whether any country will accept Petitioner for removal, much less when. Petitioner has furthermore shown that her Order of Supervision was revoked by an official who lacked authority to do so, violating required procedures and due process. Finally, should the Respondents identify a third country of removal, due process requires that she be afforded the opportunity to contest her removal to that country, including independent review by an Immigration Judge of any fear determination, before execution

of the removal order. Accordingly, the writ of habeas corpus should issue, and this Court should order that Petitioner be released from detention forthwith and restored to her order of supervision.

Respectfully submitted,

/s/ Simon Y. Sandoval-Moshenberg Date: December 16, 2025

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Certificate of Service

I, Simon Sandoval-Moshenberg, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants.

Respectfully submitted,

/s/ Simon Y. Sandoval-Moshenberg Date: December 16, 2025

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