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11  
 12 UNITED STATES DISTRICT COURT  
 13 DISTRICT OF NEVADA

14 Jesus Verdugo-Carrasco,  
 15 Petitioner,  
 16 v.  
 17 The United States of America, *et al.*,  
 18 Respondents.

Case No. 2:25-cv-02374-CDS-BNW  
**Reply to Response to Amended  
 Petition**

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 20  
 21 **INTRODUCTION**

22 The re-detention of Petitioner Jesus Verdugo-Carrasco is completely  
 23 indefensible. Verdugo-Carrasco has been on an order of supervision (“OSUP”) for  
 24 over nine years now, since October 2016, after an immigration judge granted him  
 25 relief under the Convention Against Torture. Without any notice, ICE officials  
 26 arrested him at gunpoint on his way to work. Since his arrest, he has not been  
 27 provided with any valid justification for why he was re-detained as required under

1 the relevant regulations. He has not been given an opportunity to challenge the re-  
2 detention as required under the relevant regulations. And the reason Respondents  
3 provide in their Response is demonstrably not a valid reason for his re-detention. In  
4 fact, it is arbitrary.

5 As asserted in Ground One of the Amended Petition, this unlawful re-  
6 detention violates the regulations as well as Verdugo-Carrasco's due process rights.  
7 Because Verdugo-Carrasco was on OSUP, the revocation of his release is governed  
8 by 8 C.F.R. § 241.13(i). This regulation requires notice and an opportunity to be  
9 heard and only allows for re-detention when, "if, on account of changed  
10 circumstances," it is determined that "there is a significant likelihood that the  
11 [noncitizen may be removed in the reasonably foreseeable future." This regulation  
12 concerning re-detention while on OSUP was created to provide due process  
13 protection to non-citizens. *Ghafouri v. Noem*, No. 3:25-cv-02675-RBM-BLM, 2025  
14 WL 3085726 at \*4 (S.D. Cal. Nov. 4, 2025).

15 The re-detention here violated both the regulation and due process.  
16 Respondents do not even engage with this claim. They do not mention § 241.13 at  
17 all. They do not directly respond to any of the regulation arguments made in the  
18 Amended Petition. The arguments they make are completely irrelevant to the  
19 claim. Respondents also do not dispute Verdusco-Carrasco's allegations that he was  
20 not given proper notice of the reason for the re-detention or an opportunity to be  
21 heard on those purported reasons. Moreover, Respondents also do not provide any  
22 valid reason for the re-detention. These represent clear violations of the regulations  
23 and Verdugo-Carrasco's right to due process.

24 After the Amended Petition was filed in this case, a judge in this district  
25 granted a temporary restraining order and ordered the petitioner's immediate  
26 release, based upon the exact same factual situation. See *Bunnell v. Noem*, No. 2:25-  
27 cv-02259-GMN-EJY, 2025 WL 3707588 (D. Nev. Dec. 22, 2025). This is in line with

1 many other courts that have ordered immediate release based upon ICE's failure to  
2 comply with their re-detention regulations, including § 241.13(i). *See infra* at 6;  
3 ECF No. 14 at 17-18 (citing eleven cases). Although *Bunnell* is an order on a  
4 temporary restraining order as opposed to a decision on the petition itself, the  
5 reasoning remains directly applicable to the situation here. Just as in that case, this  
6 Court should order that Verdugo-Carrasco be released.

7 In addition, Verdugo-Carrasco's indefinite detention violates due process.  
8 Respondents argue that his claim is premature as he has been detained for a little  
9 over one month. This argument should be rejected. *Zadvydas* created only a  
10 presumption that six months is a reasonable amount of time. Several courts have  
11 held that the six month time reasonable time period is a rebuttable presumption.  
12 Verdugo-Carrasco can overcome that presumption because he can show that his  
13 removal is not reasonably foreseeable. There is absolutely no possibility of removal  
14 to Mexico because he was granted deferral of removal under the Convention Against  
15 Torture. There is no evidence whatsoever that he will otherwise be removed to any  
16 other country. Respondents acknowledge that there has not even been a third  
17 country designation or that any country is willing to accept him.

18 Finally, Respondents do not meaningfully address Grounds Four and Five,  
19 which concern third country removals. Instead, they make a summary argument  
20 that the claim fails as a matter of law without explaining why. They otherwise  
21 make the irrelevant claim that his detention has been for less than six months.  
22 Although Respondents concede that no third country has been identified for a  
23 possible removal, the only option for removal for Verdugo-Carrasco would be to a  
24 third country. Thus, relief should be granted on this claim.

25 As a result, Verdugo-Carrasco should be granted relief on all the claims in  
26 the amended petition.  
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ARGUMENT

I. **Verdugo-Carrasco’s re-detention violates his due process rights as ICE failed to comply with its re-detention regulations in every way.**

Verdugo-Carrasco is entitled to relief under Claim One because ICE violated their own regulations when they re-detained him. Respondents have the authority to detain non-citizens with final orders of removal to effectuate a deportation. See 8 U.S.C. § 1231; *Zadvydas*, 533 U.S. at 697. But when a non-citizen has been released from immigration detention, the revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. Specifically, a noncitizen's release may be revoked “if, on account of changed circumstances,” it is determined that “there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Upon such a determination:

[T]he [noncitizen] will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

*Id.* § 241.13(i)(3). This regulation concerning re-detention while on OSUP was created to provide due process protection to non-citizens. *Ghafouri*, 2025 WL 3085726 at \*4.

ICE failed to comply with *every* requirement in this regulation. Indeed, the situation here is indistinguishable from *Bunnell*. Just as in that case, Respondents do not dispute that this regulation applies here, nor do they argue that any of the

1 process in this regulation is not required. The only meaningful information they  
2 provide is that the arrest was because Verdugo-Carrasco entered the United States  
3 “without inspection.” ECF No. 21 at 3.

4 It is clear from the record that ICE violated the regulations in every way. As  
5 in *Bunnell*, Respondents did not present any evidence to show that Verdugo-  
6 Carrasco was given any notice of why he was being re-detained prior to his arrest.  
7 Although the regulation requires notice “upon revocation,” there is no evidence that  
8 ICE has *ever* provided Verdugo-Carrasco with a “Notice of Revocation of Release”  
9 form. Verdugo-Carrasco was never told that his arrest was because his entry was  
10 “without inspection.” Respondents do not claim otherwise. Respondents also do not  
11 contest Verdugo-Carrasco’s allegation that he was never given the required  
12 opportunity to contest the reasons for his re-detention.

13 Even worse, the reason Respondents have provided for his re-detention is not  
14 a proper ground for re-detention under the regulation. In fact, it is arbitrary. In the  
15 first instance, this reason is no longer relevant to his immigration case. That case is  
16 in the post-removal-order stage. Whether Verdugo-Carrasco entered the country  
17 without inspection is now moot. A removal order has been issued, he was granted  
18 relief under the Convention Against Torture, and he was released on OSUP. Those  
19 are the only relevant facts with respect to both re-detention and any continuing  
20 detention. Moreover, “entry without inspection” is not a valid ground for re-  
21 detention under the regulations. It is clearly not a “conditions of release” violation.  
22 *See* 8 C.F.R. § 241.4(l). Further, it is not a valid justification under § 241.13(i)(3).  
23 This regulation requires a change in circumstances showing that his deportation is  
24 now reasonably foreseeable. This proffered reason is the opposite of that. It is a fact  
25 that was known before he was even ordered removed. It also has absolutely nothing  
26 to do with whether his deportation is now reasonably foreseeable. It is simply  
27 arbitrary. Indeed, Respondents do not even try to justify it in their Response.

1 Overall, Respondents make no real attempt to contest this claim. They do not  
2 discuss or even cite the relevant regulations. Rather, they simply contend that  
3 Verdugo-Carrasco's detention is authorized under 8 U.S.C. § 1231(a)(6). But that  
4 contention is irrelevant to this claim. This claim concerns the process guaranteed to  
5 Verdugo-Carrasco related to his *re-detention while on OSUP*. See *Fajardo v.*  
6 *Raycraft*, No. 1:25-CV-1529, 2025 WL 3649522, at \*4 (W.D. Mich. Dec. 17, 2025)  
7 (“However, Respondents arguments confuse their ability to hold Petitioner once  
8 properly detained with Petitioner's “right not to be detained without adequate—in  
9 fact, without any— process.”). As shown above, those regulations govern this  
10 situation. Respondents' failure to discuss any of this in their Response must be  
11 viewed as a concession.

12 Government agencies are required to follow their own regulations. *United*  
13 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The failure to follow  
14 the regulations prejudiced Verdugo-Carrasco because it deprived him of his due  
15 process protections. Because there is no indication that any of the required process  
16 was provided to Petitioner—notice, opportunity to be heard, and a valid reason for  
17 the re-detention—this Court must grant relief, just as in *Bunnell* and the large  
18 number of cases that have granted similar relief. See, e.g., *Moskovyan v. Noem*, No.  
19 3:25-cv-03537-RBM-AHG, 2026 WL 63472 at \*2 (S.D. Cal. Jan. 8, 2026) (granting  
20 petition based on ICE's failure to follow its own regulations on re-detention);  
21 *Briones v. LaRose*, No. 3:25-cv-03421-RBM-AHG, 2026 WL 18787 at \*2-3 (S.D. Cal.  
22 Jan. 2, 2026) (same); *Fajardo*, 2025 WL 3649522 at \*5-6; *Touch v. Noem*, No.: 3:25-  
23 cv-03118-RBM-AHG, 2025 WL 3278019 at \*3, \*6 (S.D. Cal. Nov. 25, 2025), *adopted*,  
24 No.: 3:25-cv-03118-RBM-AHG, 2025 WL 3296280 (S.D. Cal. Nov. 26, 2025);  
25 *Rasakhamdee v. Noem*, No.: 3:25-cv-02816-RBM-DEB, 2025 WL 3102037 at \*4-5  
26 (S.D. Cal. Nov. 6, 2025) (same); ECF No. 14 at 17-18 (citing eleven additional cases).

1           Accordingly, relief should be granted on this claim. Verdugo-Carrasco should  
2 be immediately released.

3 **II. Verdugo-Carrasco's indefinite detention violates due process**  
4 **because his deportation is not reasonably foreseeable.**

5           Respondents' main argument in response to Verdugo-Carrasco's due process  
6 argument under *Zadvydas* in Claim Two is that it is premature as he has been  
7 detained for a little over one month. ECF No. 21 at 8-9. This argument should be  
8 rejected.

9           In the first instance, Respondents claim that Verdugo-Carrasco is still within  
10 the 90-day removal period. This is simply not true. Verdugo-Carrasco's removal  
11 order became final in October 2016, over nine years ago. The 90-day removal period  
12 began to run back then. Rather than detain him for the removal period, they  
13 released him and placed him on OSUP pursuant to the statute *because his*  
14 *deportation was not reasonably foreseeable*. That 90-day removal period does not  
15 start anew simply because they re-detained him (particularly where there was no  
16 change in circumstances showing reasonable foreseeability). The situation is the  
17 same now as it was then—he cannot be removed to Mexico. ICE officials decided  
18 back then that the 90-day removal period was not necessary. There is no  
19 justification for it to be somehow reinstated.

20           As such, his current indefinite detention is unreasonable. In *Zadvydas*, the  
21 Supreme Court recognized a six-month presumptively reasonable period of  
22 detention after a noncitizen's removal order becomes final. 533 U.S. at 701. “After  
23 this 6-month period, once the [noncitizen] provides good reason to believe that there  
24 is no significant likelihood of removal in the reasonably foreseeable future, the  
25 Government must respond with evidence sufficient to rebut that showing.” *Id.*

26           Multiple district courts have found that the six-month presumption is  
27 rebuttable. See *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025)

1 (analyzing the issue and collecting cases); *accord*, e.g., *Ndandu v. Noem*, No. 3:25-  
2 cv-02939-RBM-MSB, 2026 WL 25848 at \*3-4 (S.D. Cal. Jan. 5, 2026); *Hoang Trinh*  
3 *v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) (“The Supreme Court in  
4 *Zadvydas* outlined a ‘guide’ for approaching these detention challenges ... not a  
5 prohibition on claims challenging detention less than six months.”) (quoting  
6 *Zadvydas*, 533 U.S. at 700–01); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D.  
7 Cal. 2020) (“At no point did the *Zadvydas* Court preclude a noncitizen from  
8 challenging their detention before the end of the presumptively reasonable six-  
9 month period.”); *Uzzhina v. Chestnut*, No. 1:25-cv-01594-DAD-SCR, 2025 WL  
10 3458787, at \*3 n.3 (E.D. Cal. Dec. 2, 2025) (“The fact that a noncitizen has been  
11 held in-custody less than six months does not foreclose a claim that his or her  
12 detention is unlawful under *Zadvydas*.”); *Medina v. Noem*, 794 F. Supp. 3d 365, 375  
13 (D. Md. 2025) (noting that “what *Zadvydas* did make clear was that it was adopting  
14 a presumption—not a conclusive bar to adjudication of whether continued detention  
15 is authorized that lifts only after six months have elapsed”). To find otherwise  
16 would be to give ICE license to “detain noncitizens ordered removed for up to six  
17 months even when their removal is impossible.” *Zavvar v. Scott*, No. 25-2104-TDC,  
18 2025 WL 2592543, at \*5 (D. Md. Sept. 8, 2025).

19 Generally, “a ‘presumption’ can be rebutted only by contrary evidence.” *Godoy*  
20 *v. Spearman*, 861 F.3d 956, 965 (9th Cir. 2017); *see also* Fed. R. Evid. 301 (“In a civil  
21 case, unless a federal statute or these rules provide otherwise, the party against  
22 whom a presumption is directed has the burden of producing evidence to rebut the  
23 presumption.”). As such, within the six-month period, “the petitioner must claim  
24 and prove [ ] that his removal is not reasonably foreseeable” to overcome the  
25 presumption. *Munoz-Saucedo*, 789 F. Supp. 3d at 398 (emphasis in original); *see*  
26 *also Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008) (“[T]he presumption  
27 scheme merely suggests that the burden the detainee must carry within the first six

1 months ... is a heavier one than after six months has elapsed.”). District courts must  
2 “measure reasonableness primarily in terms of the statute’s basic purpose, namely,  
3 assuring the [noncitizen’s] presence at the moment of removal.” *Zadvydas*, 533 U.S.  
4 at 699. “[O]nce removal is no longer reasonably foreseeable, continued detention is  
5 no longer authorized by statute.” *Id.*

6 Here, Verdugo-Carrasco was granted deferral of removal to Mexico, and no  
7 other countries were designated in the removal order. ECF No. 21-6 at 5. As was  
8 the situation in *Ndandu* (cited above), this presents a legal impediment to Verdugo-  
9 Carrasco’s eventual removal because he may not be removed to Mexico—the only  
10 country he has a claim to citizenship—as long as the deferral of removal remains in  
11 effect. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1082 (9th Cir. 2006) (holding the  
12 petitioner sufficiently established no significant likelihood of his removal in the  
13 reasonably foreseeable future based on his grant of asylum and CAT protection  
14 because “the government [was] not entitled to remove him to Sri Lanka, and no  
15 other country has been identified to which he might be removed.”). Further,  
16 Respondents have presented no evidence that a third country removal is even a  
17 remote possibility here. They acknowledge that no third country designation has  
18 occurred or even that any country has indicated that it would be willing to accept  
19 him. ECF No. 21 at 9. At this point, deportation to a third country is simply not  
20 reasonably foreseeable.<sup>1</sup> *See generally Ndandu*, 2026 WL 25848 at \*5 (explaining  
21 reasons why third-country removal is not reasonably foreseeable, particularly before  
22 a third country has been identified).

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25 <sup>1</sup> Respondents point out that there currently is a stay in the Ninth. However,  
26 the stay is irrelevant to the analysis here because there was absolutely no  
27 possibility of removal *prior* to the issuance of the administrative stay. Once again,  
Verdugo-Carrasco cannot be deported to Mexico, and there is no evidence that his  
deportation to a third-country is even a remote possibility.

1 Thus, Verdugo-Carrasco can overcome the presumption because he can  
2 establish that his detention is not reasonably foreseeable.

3 Respondents argue, in the alternative, that if this petition is not decided until  
4 the six months of presumptive reasonableness has expired, then the claim should be  
5 denied because Verdugo-Carrasco has not shown good reason to believe that there is  
6 a significant likelihood that deportation is reasonably foreseeable. ECF No. 21 at 6.  
7 This is wrong. For the reasons discussed above, he has shown good reason—he has  
8 deferral from removal making deportation to Mexico impossible. Otherwise, there is  
9 no evidence showing that his deportation is reasonably foreseeable. For those same  
10 reasons, Respondents would be unable to meet their burden to show that  
11 deportation is reasonably foreseeable.

12 Accordingly, relief should be granted on this claim and Verdugo-Carrasco  
13 should be immediately released.

14 **III. Relief should be granted on Grounds Four and Five because the only**  
15 **possibility for deportation is to a third country.**

16 Respondents argue that relief should be denied on the third-country claims  
17 because Verdugo-Carrasco has not shown that deportation to a third country is  
18 “occurring or even imminent.” ECF No. 21 at 9. They acknowledge that there has  
19 been no third country designation. *Id.* They acknowledge that no notice of removal  
20 to a third country has been issued. *Id.* They claim that there is no liberty interest  
21 until that occurs. *Id.*

22 This is wrong. The danger of third country removal is present even without a  
23 formal designation or notice. As explained above, Verdugo-Carrasco cannot be  
24 removed to Mexico, the only country to which he has a claim of citizenship. Thus,  
25 the only possibility for deportation is to a third country. It is entirely disingenuous  
26 for Respondents to claim that Verdugo-Carrasco does not have a liberty interest  
27 here when they claim to be detaining him for the purpose of deporting him and the

1 only way they can deport him is to remove him to a third country. Respondents do  
2 not deny that this is their intent. Thus, third country removal remains a real  
3 danger to Verdugo-Carrasco. He is entitled to due process protections before such a  
4 removal. Further, his detention for the purpose of third-country removal without  
5 providing him the necessary due process is unconstitutional.

6 Otherwise, Respondents do not meaningfully engage with these claims. For  
7 instance, they make a summary argument that the claim fails as a matter of law  
8 without explaining why. ECF No. 21 at 10. They otherwise make the irrelevant  
9 claim that his detention has been for less than six months. *Id.* It simply does not  
10 provide a reason to deny these claims.

11 Accordingly, relief should be granted on these claims.

#### 12 CONCLUSION

13 Verdugo-Carrasco is entitled to relief on each claim in his Amended Petition.  
14 He must be released immediately, prohibit Respondents from re-detaining him in  
15 the future absent proof of changed circumstances making his removal reasonably  
16 foreseeable, and he must be given adequate notice and an opportunity to contest  
17 any future attempt to remove him to a third country.

18  
19 Dated January 9, 2026.

20 Respectfully submitted,

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