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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 Motion for a  
 Temporary Restraining Order**

19  
 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 motion for a temporary restraining order was filed in this case, a  
25 judge in this district granted a temporary restraining order and ordered the  
26 petitioner's immediate release, based upon the exact same factual situation. *See*  
27 *Bunnell v. Noem*, No. 2:25-cv-02259-GMN-EJY, 2025 WL 3707588 (D. Nev. Dec. 22,

1 2025). This is in line with many other courts that have ordered immediate release  
2 based upon ICE's failure to comply with their re-detention regulations, including §  
3 241.13(i). *See infra* at 6; ECF No. 14 at 17-18 (citing eleven cases). This Court  
4 should order the same relief as in *Bunnell* and these other cases because Verdugo-  
5 Carrasco has shown a likelihood of success on the merits on Ground One.

6 In addition, Verdugo-Carrasco has shown a likelihood of success on the  
7 merits of Ground Two, namely that his 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.

25 Verdugo-Carrasco can show a likelihood of success on every ground in his  
26 petition. The motion for a temporary restraining order should be granted. This  
27 Court should order that: Verdugo-Carrasco be immediately released; Respondents

1 cannot re-detain him unless there has been a change in circumstances establishing  
2 that his deportation is reasonably foreseeable; and he be given notice and  
3 opportunity to be heard before any third country removal.  
4

5 **ARGUMENT**

6 **I. Verdugo-Carrasco can show a likelihood of success on all Grounds in**  
7 **the Amended Petition.**

8 **A. Verdugo-Carrasco's re-detention violates his due process rights**  
9 **as ICE failed to comply with its re-detention regulations in**  
10 **every way**

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

21 [T]he [noncitizen] will be notified of the reasons for  
22 revocation of his or her release. The Service will conduct an  
23 initial informal interview promptly after his or her return to  
24 Service custody to afford the [noncitizen] an opportunity to  
25 respond to the reasons for revocation stated in the notification.  
26 The [noncitizen] may submit any evidence or information that  
27 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.

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

4 ICE failed to comply with *every* requirement in this regulation. Indeed, the  
5 situation here is indistinguishable from *Bunnell*. Just as in that case, Respondents  
6 do not dispute that this regulation applies here, nor do they argue that any of the  
7 process in this regulation is not required. The only meaningful information they  
8 provide is that the arrest was because Verdugo-Carrasco entered the United States  
9 “without inspection.” ECF No. 20 at 3.

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

19 Even worse, the reason Respondents have provided for his re-detention is not  
20 a proper ground for re-detention under the regulation. In fact, it is arbitrary. In the  
21 first instance, this reason is no longer relevant to his immigration case. That case is  
22 in the post-removal-order stage. Whether Verdugo-Carrasco entered the country  
23 without inspection is now moot. A removal order has been issued, he was granted  
24 relief under the Convention Against Torture, and he was released on OSUP. Those  
25 are the only relevant facts with respect to both re-detention and any continuing  
26 detention. Moreover, “entry without inspection” is not a valid ground for re-  
27 detention under the regulations. It is clearly not a “conditions of release” violation.

1 See 8 C.F.R. § 241.4(l). Further, it is not a valid justification under § 241.13(i)(3).  
2 This regulation requires a change in circumstances showing that his deportation is  
3 now reasonably foreseeable. This proffered reason is the opposite of that. It is a fact  
4 that was known before he was even ordered removed. It also has absolutely nothing  
5 to do with whether his deportation is now reasonably foreseeable. It is simply  
6 arbitrary. Indeed, Respondents do not even try to justify it in their Response.

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

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

1 (S.D. Cal. Jan. 2, 2026) (same); *Fajardo*, 2025 WL 3649522 at \*5-6; *Touch v. Noem*,  
2 No.: 3:25-cv-03118-RBM-AHG, 2025 WL 3278019 at \*3, \*6 (S.D. Cal. Nov. 25, 2025),  
3 *adopted*, No.: 3:25-cv-03118-RBM-AHG, 2025 WL 3296280 (S.D. Cal. Nov. 26, 2025);  
4 *Rasakhamdee v. Noem*, No.: 3:25-cv-02816-RBM-DEB, 2025 WL 3102037 at \*4-5  
5 (S.D. Cal. Nov. 6, 2025) (same); ECF No. 14 at 17-18 (citing eleven additional cases  
6 granting a temporary restraining order or habeas relief on this claim).

7 Accordingly, Verdugo-Carrasco has shown a likelihood of success on this  
8 ground. Verdugo-Carrasco should be immediately released on the same OSUP as  
9 was in effect previously and ICE should be ordered not to re-detain him unless there  
10 is a change in circumstances showing that his deportation is reasonably foreseeable.

11 **B. Verdugo-Carrasco's indefinite detention violates due process**  
12 **because his deportation is not reasonably foreseeable**

13 Respondents' main argument in response to Verdugo-Carrasco's due process  
14 argument under *Zadvydas* in Ground Two is that it is premature as he has been  
15 detained for a little over one month. ECF No. 20 at 8-9. This argument should be  
16 rejected.

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

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

7 Multiple district courts have found that the six-month presumption is  
8 rebuttable. See *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025)  
9 (analyzing the issue and collecting cases); *accord, e.g., Ndandu v. Noem*, No. 3:25-  
10 cv-02939-RBM-MSB, 2026 WL 25848 at \*3-4 (S.D. Cal. Jan. 5, 2026); *Hoang Trinh*  
11 *v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) (“The Supreme Court in  
12 *Zadvydas* outlined a ‘guide’ for approaching these detention challenges ... not a  
13 prohibition on claims challenging detention less than six months.”) (quoting  
14 *Zadvydas*, 533 U.S. at 700–01); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D.  
15 Cal. 2020) (“At no point did the *Zadvydas* Court preclude a noncitizen from  
16 challenging their detention before the end of the presumptively reasonable six-  
17 month period.”); *Uzzhina v. Chestnut*, No. 1:25-cv-01594-DAD-SCR, 2025 WL  
18 3458787, at \*3 n.3 (E.D. Cal. Dec. 2, 2025) (“The fact that a noncitizen has been  
19 held in-custody less than six months does not foreclose a claim that his or her  
20 detention is unlawful under *Zadvydas*.”); *Medina v. Noem*, 794 F. Supp. 3d 365, 375  
21 (D. Md. 2025) (noting that “what *Zadvydas* did make clear was that it was adopting  
22 a presumption—not a conclusive bar to adjudication of whether continued detention  
23 is authorized that lifts only after six months have elapsed”). To find otherwise  
24 would be to give ICE license to “detain noncitizens ordered removed for up to six  
25 months even when their removal is impossible.” *Zavvar v. Scott*, No. 25-2104-TDC,  
26 2025 WL 2592543, at \*5 (D. Md. Sept. 8, 2025).

1 Generally, “a ‘presumption’ can be rebutted only by contrary evidence.” *Godoy*  
2 *v. Spearman*, 861 F.3d 956, 965 (9th Cir. 2017); *see also* Fed. R. Evid. 301 (“In a civil  
3 case, unless a federal statute or these rules provide otherwise, the party against  
4 whom a presumption is directed has the burden of producing evidence to rebut the  
5 presumption.”). As such, within the six-month period, “the petitioner must claim  
6 and prove [ ] that his removal is not reasonably foreseeable” to overcome the  
7 presumption. *Munoz-Saucedo*, 789 F. Supp. 3d at 398 (emphasis in original); *see*  
8 *also Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008) (“[T]he presumption  
9 scheme merely suggests that the burden the detainee must carry within the first six  
10 months ... is a heavier one than after six months has elapsed.”). District courts must  
11 “measure reasonableness primarily in terms of the statute’s basic purpose, namely,  
12 assuring the [noncitizen’s] presence at the moment of removal.” *Zadvydas*, 533 U.S.  
13 at 699. “[O]nce removal is no longer reasonably foreseeable, continued detention is  
14 no longer authorized by statute.” *Id.*

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

1 him. ECF No. 20 at 9. At this point, deportation to a third country is simply not  
2 reasonably foreseeable.<sup>1</sup> *See generally Ndandu*, 2026 WL 25848 at \*5 (explaining  
3 reasons why third-country removal is not reasonably foreseeable, particularly before  
4 a third country has been identified).

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

7 Respondents argue, in the alternative, that if this petition is not decided until  
8 the six months of presumptive reasonableness has expired, then the claim should be  
9 denied because Verdugo-Carrasco has not shown good reason to believe that there is  
10 a significant likelihood that deportation is reasonably foreseeable. ECF No. 20 at 6.  
11 This is wrong. For the reasons discussed above, he has shown good reason—he has  
12 deferral from removal making deportation to Mexico impossible. Otherwise, there is  
13 no evidence showing that his deportation is reasonably foreseeable. For those same  
14 reasons, Respondents would be unable to meet their burden to show that  
15 deportation is reasonably foreseeable.

16 Accordingly, Verdugo-Carrasco has shown a likelihood of success on this  
17 claim. The same relief should be granted here as on Ground One.

18 **C. Verdugo-Carrasco has shown a likelihood of success on**  
19 **Grounds Four and Five because the only possibility for**  
20 **deportation is to a third country.**

21 Respondents argue that relief should be denied on the third-country claims  
22 because Verdugo-Carrasco has not shown that deportation to a third country is  
23 “occurring or even imminent.” ECF No. 20 at 9. They acknowledge that there has  
24

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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 been no third country designation. *Id.* They acknowledge that no notice of removal  
2 to a third country has been issued. *Id.* They claim that there is no liberty interest  
3 until that occurs. *Id.*

4 This is wrong. The danger of third country removal is present even without a  
5 formal designation or notice. As explained above, Verdugo-Carrasco cannot be  
6 removed to Mexico, the only country to which he has a claim of citizenship. Thus,  
7 the only possibility for deportation is to a third country. It is entirely disingenuous  
8 for Respondents to claim that Verdugo-Carrasco does not have a liberty interest  
9 here when they claim to be detaining him for the purpose of deporting him and the  
10 only way they can deport him is to remove him to a third country. Respondents do  
11 not deny that this is their intent. Thus, third country removal remains a real  
12 danger to Verdugo-Carrasco. He is entitled to due process protections before such a  
13 removal. Further, his detention for the purpose of third-country removal without  
14 providing him the necessary due process is unconstitutional.

15 Otherwise, Respondents do not meaningfully engage with these claims. For  
16 instance, they make a summary argument that the claim fails as a matter of law  
17 without explaining why. ECF No. 20 at 10. They otherwise make the irrelevant  
18 claim that his detention has been for less than six months. *Id.* It simply does not  
19 provide a reason to deny these claims.

20 Accordingly, Verdugo-Carrasco has shown a likelihood of success on these  
21 Grounds. He should be provided due process protections prior to any potential third  
22 country removal.

## 23 **II. The balance of hardships and the public interest weigh heavily in** 24 **Verdugo-Carrasco's favor**

25 Verdugo-Carrasco has demonstrated that his continuing detention violates  
26 the law. It would not be “in the public’s interest to allow the [Government] . . . to  
27 violate the requirements of federal law, especially when there are no adequate

1 remedies available.” *Ariz. Dream Act Coal. V. Brewer*, 757 F.3d 1053, 1069 (9th Cir.  
2 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006) (9th Cir. 2013)). “The  
3 public interest in enforcement of immigration laws, although significant, does not  
4 override the public interest in protecting the safeguards of the Constitution.”  
5 *Domingo-Ros v. Archambeault*, No. 25-cv-1208, 2025 WL 1425558, at \*5 (S.D. Cal.  
6 May 18, 2025). Accordingly, this factor supports injunctive relief. A TRO is  
7 warranted.

### 8 **III. This Court should not impose a bond requirement.**

9 Pursuant to Federal Rule of Civil Procedure 65(c), “[t]he court may issue a  
10 preliminary injunction or a temporary restraining order only if the movant gives  
11 security in an amount that the court considers proper to pay the costs and damages  
12 sustained by any party found to have been wrongfully enjoined or restrained.” FED.  
13 R. CIV. P. 65(c). “The purpose of such a bond is to ensure that the enjoined party  
14 may readily be compensated for the costs incurred as a result of the injunction  
15 should it later be determined that it was wrongfully enjoined.” *Axia NetMedia Corp.*  
16 *v. Mass. Tech. Park Corp.*, 889 F.3d 1, 11 (1st Cir. 2018); accord *Edgar v. MITE*  
17 *Corp.*, 457 U.S. 624, 649 (1982) (Stevens, J., concurring) (“The bond, in effect, is the  
18 moving party’s warranty that the law will uphold the issuance of the injunction”).

19 The Ninth Circuit has previously indicated that, “[d]espite the seemingly  
20 mandatory language, Rule 65(c) invests the district court with discretion as to the  
21 amount of security required, *if any*.” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th  
22 Cir. 2009) (citations and quotation marks omitted) (emphasis added). And, “[t]he  
23 district court may dispense with the filing of a bond when it concludes there is no  
24 realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Id.*  
25 The burden of establishing the amount of bond necessary to secure against the  
26 wrongful issuance of an injunction rests with the party opposing the injunction. *See*,  
27

1 e.g., *Doctor's Assocs. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996) (suggesting burden on  
2 defendant to support claim for bond).

3 This Court should waive the security requirement here because the requested  
4 TRO would merely maintain the status quo and there is no likelihood of harm to the  
5 Respondents.

6  
7 **CONCLUSION**

8 Verdugo-Carrasco has shown a likelihood of success on each ground in his  
9 Amended Petition. This Court should order that he be released immediately,  
10 Respondents should be prohibited from re-detaining him in the future absent proof  
11 of changed circumstances making his removal reasonably foreseeable, and he must  
12 be given adequate notice and an opportunity to contest any future attempt to  
13 remove him to a third country.

14 Dated January 12, 2026.

15  
16 Respectfully submitted,

17  
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