UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Erika Noemy ALCANTARA DE ERAZO, *et al.*, Petitioners, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Respondents.	Case No. 1:25-cv-10098-ALC

PETITIONERS' REPLY IN SUPPORT OF THEIR PETITION FOR A WRIT OF HABEAS CORPUS

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PRELIMINARY STATEMENT

The Government's opposition claims that ICE has unfettered discretion to summarily revoke Petitioners' long-standing order of release and detain a mother and her two minor children without notice, warning, or opportunity to respond, even after two years of compliance and assurances from ICE that supervision would continue while their appeal at the Board of Immigration Appeals ("BIA") remains pending. That position is incompatible with the Due Process Clause, the structure of the INA, its implementing regulations, and persuasive authority from this District, particularly *Torres-Jurado v. Biden*, No. 19 Civ. 3595 (AT), 2023 WL 7130898 (S.D.N.Y. Oct. 29, 2023) and *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451 (S.D.N.Y. 2018).

Ms. Alcantara and her children do not argue that ICE lacks statutory authority to detain noncitizens subject to final orders of removal in appropriate circumstances. They challenge *how* ICE exercised that authority under the facts of their case: abruptly, without notice, without process, and in derogation of reliance interests ICE itself created. That claim is cognizable in habeas and warrants relief.

ARGUMENT

I. ICE's Revocation of Petitioners' Order of Release Without Notice or Opportunity to be Heard Violated Procedural Due Process.

"[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). When the government seeks to deprive a person of liberty, it must provide notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). "The determination of what procedures are required under the Fifth Amendment requires consideration of: (1) the private

interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail." *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *10 (S.D.N.Y. June 12, 2018) (citation omitted).

In *Torres-Jurado v. Biden*, the Plaintiff had a final order of removal which he never appealed. No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *1 (S.D.N.Y. Oct. 29, 2023). ICE granted him an ICE Stay of removal, which had been in place for eighteen years. *Id.* at *3. On October 2, 2023, the Government informed the Court that it intended to remove the Plaintiff and had directed him to report to his October 10, 2023 ICE check-in appointment with a plan to self-deport or face detention. *Id.* at *2. ICE did not provide the plaintiff with an explanation why the ICE Stay had been annulled nor an opportunity to provide any facts relevant to their decision to revoke the ICE Stay. *Id.* at *4.

The Court found that the plaintiff's liberty interest in the ICE Stay was limited because ICE undoubtedly has the authority to revoke the ICE Stay and the Court cannot hold that plaintiff will be allowed to remain in the United States indefinitely. *Id.* Nonetheless, the Court found that ICE "cannot decide to revoke the ICE Stay without affording Plaintiff an opportunity to be heard in a meaningful time and in a meaningful manner." *Id.* (cleaned up). The Court held that this included, at a minimum, "the opportunity for Plaintiff to submit evidence relevant to whether Defendants should revoke the ICE Stay before they make a revocation decision." *Id.*

Ms. Alcantara and her children have a liberty interest in being free from imprisonment. *See Velasco Lopez v. Decker*, 978 F .3d 842, 851 (2d Cir. 2020). The specific facts of Petitioners' case increase their liberty interests. *See Black v. Decker*, 103 F .4th 133, 151-52 (2d Cir. 2024)

(considering financial, health, and other humanitarian factors as part of the first *Mathews* factor). First, ICE is detaining a six-year-old child and a twelve-year-old child and depriving them of an adequate education during their detention. Amended Petition for Writ of Habeas Corpus ("Am. Pet.") at 1 ¶ 1, ECF No. 20. Second, ICE took Ms. Alcantara's DNA without her consent as part of its detention procedure. See ECF No. 11-9 at 8. Third, unlike the Plaintiff in *Torres-Jurado*, who was informed almost a month in advance that he would be detained at his ICE check-in if he did not come to the check-in with a plan to self-deport, Ms. Alcantara and her children attended their December 4, 2025 ICE check-in without the opportunity to say goodbye to Ms. Alcantara's husband and her children's father, or their other close family members who they may never see again. Nor did the minor petitioners have the chance to say goodbye to their classmates and teachers or inform them that they were being deported to El Salvador. *See Ragbir v. Sessions*, No. 18-CV-236 (KBF), 2018 WL 623557, at *2 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded sub nom. Ragbir v. Barr*, No. 18-1595, 2019 WL 6826008 (2d Cir. July 30, 2019) ("But if due process means anything at all, it means that we must look at the totality of circumstances and determine whether we have dealt fairly when we are depriving a person of the most essential aspects of life, liberty, and family.")

Moreover, Ms. Alcantara's and her children's reliance interests are substantial. ICE did not attempt to detain petitioners during the twenty-two months since their removal orders became final. There has been no change in the procedural posture of petitioners' case since ICE removed Ms. Alcantara's GPS ankle monitor and reduced her biometrics reporting from weekly to monthly in August 2024. *See* ECF No. 11-9 at 8. Most importantly, petitioners have a pending BIA appeal that does not have an automatic stay of removal, yet ICE provided them with written assurances

that Ms. Alcantara would continue "to report to ISAP until a decision is reached on their case." ECF No. 20-2 at 1.

The risk of erroneous deprivation of petitioners' liberty interest is high. ICE provided no advance notice that detention was planned, no explanation for the sudden change in enforcement posture, and no opportunity for Petitioners to respond or contest detention. In addition, the probable value of additional or substitute procedural safeguards is high. Critically, ICE's own evidence suggests that ICE may not have detained petitioners if they had filed a stay of removal at the BIA. *See* ECF No. 11-9 at 8. Yet ICE never informed petitioners that their pending appeal would no longer prevent their detention and that they would need to file a stay motion. ICE's failure to provide even the most minimal process denied Ms. Alcantara and her children "an opportunity to be heard in a meaningful time and in a meaningful manner." *Torres-Jurado* at *4 (quoting *Rodriguez-Figueroa*, 442 F. Supp. 3d 549, 564 (W.D.N.Y. 2020))

Finally, the government's interest in dispensing with minimal process is weak. ICE had successfully supervised Petitioners for years and expressly acknowledged that Ms. Alcantara would remain on ISAP supervision while her BIA appeal was pending. ECF No. 20-2 at 1. Ms. Alcantara had never missed an ISAP appointment during her more than two years of supervision, and she was already on GPS monitoring at the time of her and her children's detention. Providing notice and an opportunity to respond would have imposed little burden on the government.

II. Petitioners' Case Closely Mirrors *You v. Nielsen*.

Ms. Alcantara's and her children's case is similar to *You v. Nielsen*, 321 F. Supp. 3d 451 (S.D.N.Y. 2018). In *You*, the petitioner had a final order of removal, but ICE never attempted to execute the removal order until they detained him without notice at his adjustment of status interview years later. *Id.* at 455. The petitioner was released from detention before his removal

order became final. *Id.* at 463. He was never placed on an order of supervision pursuant to 8 C.F.R. § 241.4. *Id.* The Court found that the Petitioner was likely to succeed on his claim that ICE violated the INA and applicable regulations by detaining him without notice, opportunity to be heard, or individualized determination as to whether he poses a danger or flight risk, because the INA only mandates detention during a 90-day removal period that begins when an order of removal becomes final, and petitioner's removal period expired long before ICE detained him. *See id.* at 463-64.

The Court also found that even if petitioner had been on an order of supervision and subject to 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, ICE "could not detain him without providing him with notice and an informal interview." *Id.* at 463. "Nor could they detain Petitioner without finding that he was 'a risk to the community or unlikely to comply with the order of removal.'" *Id.* (citing 8 U.S.C. § 1231(a)(6)).

Like the petitioner in *You*, Ms. Alcantara and her children were released from detention before their removal orders became final, and they were never formally placed on orders of supervision pursuant to 8 C.F.R. § 241.4. Although ICE could have exercised its discretion to extend the 90-day removal period because Ms. Alcantara and her children entered the United States without inspection and were therefore inadmissible, *see* 8 U.S.C. § 1231(a)(6), ICE's decision to continue authorizing Ms. Alcantara's and her children's release over the course of twenty-two months after their removal orders became final means that, like the petitioner in *You*, "[d]etention to facilitate removal – even imminent removal – is not permitted beyond the removal period" without finding that Ms. Alcantara and her children were "a risk to the community or unlikely to comply with the order of removal." *Id.*

Here, ICE did not find that Ms. Alcantara or her children were a risk to the community or unlikely to comply with their orders of removal. To the contrary, petitioners have no criminal

history, and Ms. Alcantara has been complying with her ISAP and ICE reporting requirements since her initial release from ICE custody in early November 2023. Those requirements have included uploading weekly photos of herself to the Smartlink application installed on her phone, attending ISAP office visits, attending ISAP home visits, video calls and messaging, and in-person ICE check-in appointments at 26 Federal Plaza. Moreover, Ms. Alcantara has complied with GPS monitoring on her wrist and her ankle. Finally, even if Ms. Alcantara had been on an order of supervision, ICE failed to comply with the procedural requirements at 8 C.F.R. 241.4(1) governing revocation of orders of supervision by failing to provide them "with notice and an informal interview." *You* at 463. Therefore, Ms. Alcantara's and her children's detention was not consistent with the INA and applicable regulations, and this Court should order their release from detention.

III. The Order of Release Regulations at 8 CFR 241.4(*l*) Apply to Petitioners.

The government incorrectly argues that Ms. Alcantara and her children do not benefit from the procedural protections of 8 C.F.R. 241.4 because they were not formally placed on an order of supervision. *See* Gov't Opp'n at 12 (ECF No. 23). In support of this argument, the government incorrectly states that "ICE has discretionary authority to revoke release on recognizance at any time, pursuant to section 1226(b)[.]" Gov't Opp'n at 11 (ECF No. 23). But section 1226 only applies to noncitizens currently in removal proceedings. *See* § 1226(a) (authorizing custody determinations "pending a decision on whether the [noncitizen] is to be removed from the United States."). Petitioners' custody is governed by 8 U.S.C. 1231(a)(6) and 8 C.F.R. 241.4 because they have final orders of removal and are inadmissible. 8 C.F.R. § 241.4(l) governs revocation of release decisions for noncitizens described in section 1231(a)(6), who have been "released under an order of supervision *or other conditions of release*[.]" 8 C.F.R. § 241.4(l)(1) (emphasis added).

A recent unpublished decision from the Central District of California rejected the government's position in materially identical circumstances. *See Gadyan v. Noem*, No. 5:25-cv-03219-RGK-JDE, slip op. at 5, (C.D. Cal. Dec. 18, 2025) (*order available on ECF No. 16*). In *Gadyan*, the Petitioner was released on bond after entering the United States and continued to be subject to this conditional release after his order of removal became final. *Id.* Under those circumstances, the Court found that the Petitioner "is subject to 'other conditions of release,' as referenced in 8 C.F.R. § 241.4(l)." *Id.* Like the Petitioner in *Gadyan*, Ms. Alcantara and her children continued to be subject to their enrollment in the ISAP-ATD program after their orders of removal became final. Therefore, they are subject to "other conditions of release" pursuant to 8 C.F.R. § 241.4(l).

The government argues in the alternative that ICE's revocation of Petitioners' release comported with procedural due process because the regulation at 8 C.F.R. § 241.4(l), providing for an informal interview and an opportunity to respond, would only occur after Petitioners' return to custody. Gov't Opp'n at 12 (ECF No. 23). This argument fails. First, the government does not allege that ICE has provided Ms. Alcantara with an informal interview or an opportunity to respond. Second, ICE did not notify Petitioners in writing of the reasons for revocation of their release upon revocation. *See Funes Gamez v. Francis*, No. 1:25-cv-07429-PAE, slip op. at 32-33 (S.D.N.Y. Nov. 24, 2025) (*order available on ECF No. 56*) (holding that, under § 241.4(l), Petitioner was entitled to "notice of the reasons for the revocation of her release" and "an informal interview promptly after . . . her return to custody [that] afford[e]d [her] an opportunity to respond to the reasons for revocation stated in the notification."). Third, the purported revocation decision was not authorized by an official with authority to do so by virtue of the fact that ICE has not provided written notification of the reasons for revocation. *See* 8 C.F.R. § 241.4(l)(2).

IV. The Government's Authorities Are Distinguishable.

The cases cited by the Government are distinguishable. *Callender v. Shanahan* addressed the length of detention under *Zadvydas*, not the revocation of release without process after years of compliance. 281 F. Supp. 3d at 436 n.7. In *Callender*, the petitioner was already detained, and the Court addressed the reasonableness of his continued detention, not the process due to a noncitizen before depriving him of his liberty. *See id.* at 435-37. Similarly, *Jiang v. Bondi* addressed the presumptively reasonable period of detention under *Zadvydas*. No. CIV 25-0922 KG/GBW, 2025 WL 3281819, at *2 (D.N.M. Nov. 25, 2025). *Piao v. Lyons* stands for the proposition that the government's failure to detain the Petitioner during the removal period or immediately thereafter does not eliminate the Government's ability to detain Petitioner for the purpose of enforcing that removal order at a later time. No. 1:25-CV-1725, 2025 WL 3046783, at *2 (E.D. Va. Oct. 31, 2025). *Lin v. United States* also stands for the proposition that there is nothing in § 1231 to indicate that the government cannot enforce removal orders late and that the government enjoys the corresponding power to detain noncitizens for a term reasonably necessary to effectuate removal. No. CIV.A. 5:07-CV-26, 2007 WL 951618, at *3 (S.D. Tex. Mar. 28, 2007).

V. The Government's Attempt to Distinguish *Farez-Espinoza* and *Ulysse* is Misplaced.

Farez-Espinoza and *Ulysse* also address the removal period and the reasonable period of detention. In *Farez-Espinoza*, the Court focused on the fact that the Petitioner's "address and whereabouts have been on file with DHS and the Government has shown no reason why it did not pursue removal of Farez-Espinoza until more than 15 months after her order of removal was entered." 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009). The Court reasoned that the Government could not arbitrarily trigger the removal period by its unilateral action of choosing not to pursue the Petitioner's removal for more than a year. *Id.* The Court's reasoning in *Ulysse* is similar. *See*

Ulysse v. Dep't of Homeland Sec., 291 F. Supp. 2d 1318, 1325 (M.D. Fla. 2003). Therefore, these cases stand for the narrow holding that the removal period, as well as any presumptively reasonable six month period of removal to which the Government may have been entitled, continue to run where the Government has the Petitioner's address and whereabouts and the Government has shown no reason why it did not pursue removal during an extended period after the removal order became final.

Ms. Alcantara's and her children's case is similar to *Farez-Espinoza* and *Ulysse*. Not only were their address and whereabouts on file with ICE, but Ms. Alcantara was subjected to constant supervision and surveillance during her enrolment in the ISAP-ATD program. The Government attempts to distinguish the facts of Petitioners' case by focusing on the fact that they became aware of their removal order in February 2024, whereas the Petitioners in *Espinoza-Farez* and *Ulysse* were unaware of their removal orders until ICE detained them. Gov't Opp'n at 14 n.10 (ECF No. 23). However, the Courts in *Espinoza-Farez* and *Ulysse* focused on ICE's awareness of the Petitioners' addresses and ICE's unexplained failure to detain them during the removal period, not the Petitioners' lack of awareness of their removal orders.

VI. Section 1226(e) Does Not Bar Review of Petitioners' Due Process Claims.

8 U.S.C. § 1226(e) does not bar review of petitioners' due process claims for two independent reasons. First, § 1226(e) governs only custody determinations made under § 1226, which applies exclusively to detention pending a removal decision. Once a removal order becomes final, detention authority arises under § 1231, and §1226(e)'s limitation on review is inapplicable. Second, § 1226(e) bars review of discretionary judgments, not constitutional challenges to the procedures by which liberty is deprived. *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018).

Petitioners do not ask the Court to second-guess ICE's discretionary weighing of factors; they ask the Court to enforce the Constitution's minimum procedural requirements.

CONCLUSION

For the foregoing reasons, and those set forth in Petitioners' Petition for a Writ of Habeas Corpus, the Court should grant the Writ of Habeas Corpus and order Petitioners' release subject to constitutionally adequate procedures.

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Brooklyn, New York

Respectfully submitted,

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CERTIFICATION OF WORD-COUNT

Pursuant to Local Civil Rule 7.1(c) and Rule 2.B of this Court's Individual Practices, the undersigned counsel hereby certifies that this reply brief complies with the word-count limitations of this Court's Local Civil Rules and the page limits of this Court's Individual Practices. As measured by the word processing system used to prepare it, and excluding the items set forth in the rule, there are 2980 words in this reply brief.

/s/ Michael Shannon
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