UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

FIKRET AVDULOVIC,	§	
	§	
	§	Case No. 25-5873
Petitioner,	§	
	§	
v.	§	
	§	
RANDALL TATE Warden, *et al.*,	§	
	§	
Respondents.	§	
	§	

RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Petitioner, Fikret Avdulovic, submits this response in opposition to the Government's motion for summary judgment. Respondents' motion, and the declaration filed in support of said motion, establish that they are currently detaining Petitioner without cause and in violation of his due process rights.

Petitioner was ordered removed on December 14, 2009 and his order is administratively final. Petitioner was detained while his removal proceedings were pending and was not released from immigration detention until June 21, 2010 when he was served with an Order of Supervision. Following several unsuccessful attempts to secure travel documents, no violations of the Order of Supervision, and no further criminal arrests, Respondents arrested the Petitioner without notice or cause at his routine check-in on November 12, 2025.

Respondents claim that they are actively working to remove Petitioner to Bosnia but provide no compelling or reliable evidence that removal is likely in the foreseeable future. In sum, Respondents have yet to identify any factual basis for Petitioner's arrest and detention. A full month after arresting Petitioner, they are still in the process of determining whether Bosnia will

issue travel documents to him. In other words, Respondents put the proverbial cart before the horse in electing to arbitrarily arrest him, separate him from his family, and keep him behind bars without adequate notice or opportunity to be heard before they had any notion of whether a travel document could be obtained. Petitioner's detention violates the law, and this Court should deny the motion for summary judgment and the writ of habeas corpus should issue.

I. Petitioner's Detention is Unlawful

Respondents argue that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231 and that his claim fails because he has failed to show "there is no significant likelihood of removal...in the reasonably foreseeable future."[1] Respondents cite to *Zadvydas*, for the presumption that post-removal-period detention of six months is reasonable to allow the United States to effectuate removal.[2] Thus, they allege, the Petitioner's detainment since November 12, 2025 is well within that time frame and that Petitioner's claim is misplaced.[3] However, Respondents' cite to no authority that Petitioner *must* be re-detained for six months before his detention is unreasonable or unlawful.

Here, the 90-day removal period set forth in 8 U.S.C. § 123l(a)(l)(A) expired on March 14, 2010 or over fifteen years ago. Petitioner was detained for his removal proceedings, continued to be detained post-removal, then released from ICE custody and placed on an Order of Supervision on June 21, 2010.[4] Any contention that Petitioner's habeas claim is premature because he has not spent 90-180 days detention since he was re-detained misreads the *Zadvydas* framework. As

[1] (Dkt. 6 at 4).

[2] *Zadvydas* v. *Davis*, 533 U.S. 678 (2001)

[3] (Dkt. 12 at 2-3)

[4] (Dkt. 1 at Exh.2 and Dkt. 6-1 at 4)

Zadvydas explained, after the 90-day removal period ends, the government "may" continue to detain a noncitizen or release them under supervision. 533 U.S. at 683. The Supreme Court's decision put limits on the option of continuing to detain—the detention could only *continue* for "a period reasonably necessary to bring about that alien's removal from the United States."[5] But the decision does not curtail the rights of those already previously subjected to the latter option, having been released under supervision. In fact, in cases of re-detention, numerous courts have held that such detention did not fall exclusively under *Zadvydas* nor did they give the government the benefit of a six-month presumption.[6] *Zadvydas* specifically holds that continued detention is proper only when the noncitizen's removal is reasonably foreseeable. "[I]f removal is not reasonably foreseeable; the court should hold continued detention is unreasonable and no longer authorized by statute."[7]

The basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal."[8] In so doing, the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the

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[5] *Id.* at 689

[6] *See Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9–10 (S.D. Tex. Sept. 26, 2025) (relying on *Zadvydas* reasoning in holding even within the presumptively constitutional detention period, whether a noncitizen's detention is constitutional hinges on whether his removal from the United States is reasonably likely in the foreseeable future, not on how long the noncitizen has been detained). *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future).

[7] *Id.* at 699-700

[8] *Zadvydas*, 533 U.S. at 699

noncitizen'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."[9]

Here, it is immediately evident that removal is not reasonably foreseeable. Respondents' own evidence is as good an indicator as one might hope for as it memorializes repeated, unsuccessful efforts to obtain travel documents in 2010, 2019, and over the past month.[10] The Respondents supporting declaration also falls flat as reliable or convincing evidence—much less summary judgment evidence—of the underlying proceedings. The supporting declaration states "On November 19, 2025, a TD request was initiated. A TD request is comprised of a packet of documents requested by the receiving country. If this packet is deemed suitable, a TD will be issued in AVDULOVIC's name."[11] The Declaration then states "On December 9, 2025, DO Maple emailed the Detention & Deportation Officer (DDO) to inquire about documents needed for TD request. A response is still pending from the DDO."[12]

Assuming TD stands for travel document, the declaration is riddled with ambiguous, misleading, and factually questionable assertions. These are not matters of legal interpretation but contested facts that go to the very heart of whether Petitioner's detention is lawful.[13] When the government seeks to deprive a man of his liberty after fifteen years of compliance with an Order of Supervision, it must do so on the basis of clear, credible, and verifiable facts.

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[9] *Id.*

[10] (Dkt. 6-1 at 4-6)

[11] Id.

[12] Id.

[13] *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) (explaining an evidentiary hearing is warranted where a habeas petitioner's claims, if true, would entitle him to relief and the record presents a factual dispute).

Specifically, Respondents' entire case for detaining Petitioner rests on three pillars of disputed fact: (1) the existence of a specific individualized change in circumstances justifying Petitioner's detention; (2) the actual likelihood of effectuating his removal in the reasonably foreseeable future; and (3) compliance with mandatory due process regulations. The current record reveals profound conflicts on all three points.

Based on the statements in DO Maple's declaration, it is unlikely he was involved with the actual re-detainment of Petitioner on November 12, 2025. First, DO Maple's duties listed in the declaration do not include making arrests, processing, conducting interviews, etc.[14] Furthermore, based on information, belief, and statements in DO Maple's declaration, it appears the basis for his knowledge is through reviewing Petitioner's case—which is code in ICE language for reviewing the alien file and all of the relevant DHS systems that track things such as encounters, interviews, and statements by noncitizens.[15]

What is DO Maple's basis for the statements made in paragraphs 52 and 53 of his declaration? Surely the best evidence of the process being adhered to is the TD request, report, system entry, or other documentation that was actually made at the time of the request for said "TD." This begs the question: why not submit that documentation? These facts were pled in the habeas petition and are now in dispute. The timeline in the declaration further calls into question the accuracy of the statement. If a travel document request was "initiated" on November 19, 2025, why was DO Maple emailing the Detention & Deportation officer about documents needed for the TD request on December 9, 2025?

[14] (Dkt. 6-1 at 1-2)

[15] Id. at 3.

In other words, Respondents' declaration completely fails to support Respondents position that Petitioner's removal is reasonably foreseeable as, on information and belief, the documents to secure Petitioner's removal back to Bosnia have not even been requested. Respondents' own admissions create grave doubt as to whether Petitioner's removal can be effectuated within a reasonable period. Indeed, Respondents declaration is silent as to whether any request for travel documents as of December 16, 2025 has even been transmitted to the Bosnian authorities. Respondents then fail to provide any concrete estimate as to how much longer the entire process is likely to take for Petitioner specifically and merely indicate a response is still pending from the DDO. Meanwhile, Petitioner waits in detention after fifteen years complying with an Order of Supervision. This creates a real possibility that Petitioner will be detained indefinitely, after already having been detained post-removal for the presumptively reasonable period of detention under *Zadvydas* for noncitizens immediately following a final order. It is untenable that Respondents' could re-detain someone after fifteen years of liberty for any period longer than what is necessary to assure his presence at the moment of removal—a matter of days not months.

There is no authority for the proposition that Respondents may only work to remove Petitioner while he is detained. This may well be current DHS *practice,* thus explaining why Respondents arrested Petitioner *before* securing the necessary documents to remove him, but it is not the law. Respondents' own vague description of what's required to request travel documents or otherwise attempting to negotiate removal, belie the need to detain him now in order to effectuate removal. Petitioner's re-detention was unlawful because the removal period has long run and removal is not likely in the foreseeable future. "A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable

future."[16] Respondents have made no showing that their continued detention of Petitioner is justified or necessary for his removal.

In short, over a month after detaining Petitioner, Respondents have no idea if or when Petitioner's home country might agree to accept him; they don't have any specific reason to believe they will be able to remove him, but they haven't given up hope that they might be able to. Notably, they have provided no documents to the Court, absent the statements in the declaration attached to their motion, regarding any efforts to effectuate removal, any transcripts of the proceedings as ordered by this Court, or names of the officers or "DDO" seeking any travel documents. 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.

II. Respondents Deprived Petitioner of Due Process

While 8 U.S.C. § 1231(a) provides the general statutory framework for post-removal-order detention and supervised release, "[t]he 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.'"[17] Furthermore, the regulations go on to proscribe the process for revocation based on a determination of changed circumstances as follows:

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[16] *Kane v. Mukasey*, No. CV B-08-037, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008), *superseded by*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008) (a new report and recommendation was entered denying the petition as moot because petitioner was deported prior to the order adopting), *R & R adopted*, 2008 WL 11393148 (S.D. Tex. Oct. 7, 2008)

[17] *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025) (quoting 8 C.F.R. § 241.13(i)(2)).

[T]he alien 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 alien an opportunity to respond to the reasons for revocation stated in the notification. The alien 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.[18]

These regulations, govern ICE's re-detention of individuals who have been released after a determination was made that they could not be removed. The first step in this process is necessarily a determination of changed circumstances. Then, once that determination is made, ICE is required to follow the interview and notice requirements of § 241.13(i)(3). As discussed above and below, ICE's failure to do either of these things properly provide independent bases for granting this Petition.

a. <u>ICE did not make an individualized determination as to changed circumstances and admits that the one circumstance that has prevented removal in the past (no travel documents) has not changed.</u>

The government's power to revoke supervised release and re-detain a noncitizen is strictly circumscribed. The regulation at 8 C.F.R. § 241.13(i)(2) provides that ICE may revoke release "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." As the First Circuit has held, and district courts have recently reaffirmed in cases identical to this one, before re-detaining an individual like Petitioner, there must be "(1) an individualized determination (2) by ICE that,

[18] 8 C.F.R. § 241.13(i)(3).

(3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future."[19]

Significantly, in the context of re-detention, the burden is on the government to show an individualized change of circumstances sufficient to demonstrate a true "significant likelihood that the alien may be removed."[20] This is not a mere formality. The regulation requires ICE to consider specific factors when making this determination, including "the history of the Service's efforts to remove aliens to the country in question," "the ongoing nature of the Service's efforts to remove *this alien and the alien's assistance with those efforts*," and "the reasonably foreseeable results of those efforts."[21] The inquiry is, by its very nature, individualized and fact-intensive.

In this case, Respondents have made no attempt to claim ICE made "an individualized determination" that Petitioner's circumstances have changed or that removal is reasonably foreseeable in the future. Instead, the evidence submitted in support of summary judgment merely states on the day Petitioner went in for his routine reporting appointment he "was placed into ICE

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[19] *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (citing 8 C.F.R. § 241.13(i)(2)); *Phan v. Beccerra,* No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *4–6 (E.D. Cal. July 16, 2025), *Hoac v. Beccerra, et al.,*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025), and *Nguyen v. Hyde,* No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025); *Roble v. Bondi, et. al.,* No. 25-CV-3196, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

[20] *Escalante, v. Noem, et. al.*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); *see also See Nguyen v. Hyde,* No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem,* No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future).

[21] *See* 8 C.F.R. § 241.13(f) (setting out factors to consider including "the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries, including the ongoing nature of the Service's efforts to remove this alien and the alien's assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question.").

custody."[22] There is no evidence any individualized determination or analysis of the required factors ever took place, much less who made such determinations.

Here, Petitioner was released from detention after the statutory removal period had expired because ICE could not obtain travel documents for him from Bosnia. Said differently, the "circumstance" which prevented his removal previously was that Bosnia did not issue him travel documents. As discussed above, approximately one month after he was taken into custody it's still unclear whether Respondents have even re-requested a travel document for Petitioner.[23] Instead, the record reflects such documents have not been able to be obtained for the past fifteen years. This demonstrates that no individualized assessment occurred. Instead, ICE's decision was seemingly based on a generalized policy of re-detaining immigrants with prior removal orders, triggered by the mere fact that Petitioner complied with his check-in requirements. The Constitution and the agency's own regulations demand far more.

When both the spirit and letter of the regulations are followed ICE waits until travel documents have been obtained and the means of removal (e.g. charter flight, bus, commercial flight, etc.) have been scheduled. Under those circumstances, noncitizens who are re-detained pursuant to 8 C.F.R. § 241.13(i) cannot find relief in filing a habeas petition. This is illustrated by *Ahmad v. Whitaker*.[24] In *Ahmad*, ICE already had travel documents in hand and Mr. Ahmad's removal flight scheduled when he was detained less than two weeks before the flight was scheduled to depart.[25] If the facts of this case were remotely close to similar to those in *Ahmad*,

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[22] (Dkt. 6-1 at 6.)

[23] (Dkt. 6-1 p. 6 ¶ 52-53.)

[24] *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018)

[25] (*Id.* at 1.)

ICE would have had Petitioner's travel documents in hand and a flight already scheduled when they detained him at his annual check-in.

Under those circumstances, Petitioner would be in Bosnia now, not sitting in an ICE detention center while his habeas petition is litigated. In stark contrast to *Ahmad*, ICE detained Petitioner without having travel documents in hand. As a result, more than a month later, Petitioner remains in ICE custody and ICE still hasn't requested such travel documents.

Ultimately, the facts of *Ahmad* demonstrate that when ICE follows its regulations and ensures a concrete individualized change of circumstances, noncitizens with years of compliance on OSUP are not detained until the circumstance that has prevented removal in the past has changed. Unfortunately, those critical facts in *Ahmad* are not present here.[26]

Unlike the 2018 decision in *Ahmad*, the recent cases of *Nguyen v. Whitaker*, *Phan v. Beccerra*, *Hoac v. Beccerra*, *Nguyen v. Scott*,[27] and *Roble v. Bondi*,[28] are factually similar in many respects. Each case involves a noncitizen, a prior determination that removal could not be effectuated, years of compliance on OSUP, and ICE re-detaining each of the non-citizens without making an individualized concrete finding of changed circumstances or following the procedures

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[26] The only real factual similarity is the "appalling" way in which ICE went about re-detaining the noncitizen. The *Ahmad* court did not mince words on this issue, stating:

> Although unable to grant Mr. Ahmed the relief he seeks, the Court is appalled by how ICE went about revoking his OSUP. Mr. Ahmad had given ICE no reason to suspect that he would not comply with the execution of his removal order when the time came. He already was wearing an ankle monitor. ICE officers told him that he would be permitted to take a family trip to visit his elderly parents after Christmas. But instead, they ripped him away from his family without any warning or opportunity to say goodbye. To make matters worse, the situation was entirely avoidable; ICE could have taken a number of other courses of action that would have lessened the blow of Mr. Ahmad's removal on him and his family. Were it in the Court's habeas power to remedy the way ICE treated Mr. Ahmad and his family, it would do so.
> *Id.* at 6.

[27] *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025).

[28] *Roble v. Bondi, et. al.*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

set forth in § 241.13(i).[29] And in every single one of those cases, the district courts found ICE failed to (1) demonstrate the required individualized changed circumstances and (2) follow the procedures required by the regulations including an informal interview, notice, and an opportunity to respond. These conclusions led all three courts to determine "that Petitioner has shown a likelihood of success on the merits of his claims that his re-detainment is unlawful because ICE had not complied with the controlling regulations to re-detain him."[30]

b. ICE's Failure to Follow the Process Required by its Own Regulations Provides an Independent Basis for Relief.

Separate and apart from the lack of changed circumstances, Petitioner's detention is unlawful because ICE violated its own mandatory procedural regulations. Indeed, 8 C.F.R. § 241.13(i) explicitly requires an informal interview, written notice of the reasons for the revocation, and an opportunity for the noncitizen to respond. Petitioner was afforded none of these procedural protections, at least not that he was aware of at the time.[31]

Petitioner's habeas petition explicitly raised this failure.[32] Respondents' supporting declaration, however, is devoid of the factual detail necessary to establish that Petitioner received specific notice of any changed circumstances in his immigration case and a lawful "informal

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[29] *See Nguyen*, 2025 WL 1725791, at 5; *Phan*, 2025 WL 1993735, at *4-6; *Hoac*, 2025 WL 1993771, at *4-6; *Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *15-20; *Roble*, 2025 WL 2443453, at *4.

[30] *Phan*, 2025 WL 1993735, at *4; *Hoac*, 025 WL 1993771, at *5; *Nguyen*, 2025 WL 1725791, at 5 (Based on ICE's violations of its own regulations, I conclude that Petitioner's detention is unlawful and that his release is appropriate).

[31] Notably, ICE has provided no documentary evidence of these things taking place at the time of his re-detention. Based on information, belief, and extensive experience, ICE documents encounters and arrests like this one as a matter of course on documents such as an I-213 Record of Deportable Alien, or other relevant forms. Instead of such evidence, ICE has submitted a declaration that does not even purport to be from the officer who re-detained Petitioner.

[32] (Dkt. No. 1).

interview." It fails to state who conducted the interview, what specific information was provided to Petitioner, or how he was given a meaningful opportunity to respond. Critically, DO Maple does not claim to have personal knowledge of the arrest, further suggesting any such statements are based on a second-hand file review.[33]

ICE's failure to conform with requisite notice has been addressed by many District courts nationwide and just a few months ago in a District of Minnesota case with facts extremely similar to the ones at issue here.[34] Mr. Roble, a Somali national who immigrated to the United States in 1995 as a refugee, was placed on an OSUP in 2019.[35] Similar to Petitioner, Mr. Roble was suddenly arrested in July 2025 with zero indication of any changed circumstances.[36] Mr. Roble subsequently filed a habeas application, along with a motion for a temporary restraining order, arguing that ICE violated his due process rights and their own regulations when it re-detained him.[37] In considering whether ICE followed its own regulations, the district court considered that a noncitizen must "be notified of the reasons for revocation of his or her release" but this requirement is not satisfied by "simply recit[ing] the language of the regulation."[38] Instead, "the essence of due process is notice

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[33] (Dkt. No. 6-1 at 6).

[34] *Roble*, 2025 WL 2443453, at *1.

[35] (*Id.*)

[36] (*Id.*)

[37] (*Id.* at *2.)

[38] (*Id.* at *3.); *See also* Villanueva v. Tate, No. CV H-25-3364, 2025 WL 2774610, at *6 (S.D. Tex. Sept. 26, 2025) (holding that in the absence of some evidence showing that Villanueva's Order of Supervision was lawfully revoked by someone with the authority to do so and for a reason lawfully permitted, the government has failed to show that it afforded Villanueva with due process in connection with the purported revocation of his Order of Supervision."

and an opportunity to respond."[39] If the notification "does not actually state any reasons for revocation," then it cannot be said that the requisite process has been met.[40]

This same reasoning is applicable to Petitioner's case. Similar to Mr. Roble, Petitioner had not received any notice of what the changed circumstances actually encompassed. DO Maple's declaration only corroborates this fact by providing no information about any notice that Petitioner received as to why his Order of Supervision was being revoked. Like the Minnesota district court found, this cannot be sufficient notice under due process. The failure to notify Petitioner what exactly has changed in his circumstances—whether that be his travel documents have now been procured and/or a flight has been scheduled to take him back to Bosnia—illuminates the fact that ICE has continued to fail in following their own guidelines and regulations. No specific facts have been alleged and therefore the requisite notice has not been provided.

Tellingly, Respondents have also failed to produce any contemporaneous documentation of this process. The best evidence would be the official report, transcript, or system entry made at the time of Petitioner's re-detainment. This is particularly true if, as Petitioner suspects, DO Maple was not present at all during the process—as it means he would have had to have gotten that information from something or someone else. The who, what, and when of that information is of critical importance and should have been provided to this court for review.[41] The government's decision to rely on an ambiguous and vague, second-hand declaration instead of primary evidence

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[39] (*Id.*)

[40] (*Id.*)

[41] (Dkt. no. 4 at 2 directing Respondents' answer to contain "a statement indicating what transcripts of prior proceedings, including detention proceedings, are available and when they can be furnished, and what proceedings have occurred but without transcription.")

creates a clear factual dispute as to whether the procedural safeguards of § 241.13(i) were actually followed.

An agency's failure to follow its own regulations is a fatal flaw. Under the *Accardi* doctrine, "when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid."[42] The Fifth Circuit has likewise recognized that an agency's violation of its regulations may support a procedural due process claim.[43] Here, Respondents violated regulations that were clearly put in place to protect the due process rights of individuals like Petitioner, and this violation prejudiced Petitioner as set forth herein. The *ultra vires* re-arrest of Petitioner violated his due process rights and must be set aside under *Accardi.*

As multiple courts have recently held in cases similar to this one, when ICE fails to provide the interview and notice required by § 241.13(i), its decision to re-detain is invalid and release is the proper remedy.[44] As the court in *Nguyen* stated, "ICE, like any agency, has the duty to follow its own federal regulations... where an immigration regulation is promulgated to protect a fundamental right... and [ICE] fails to adhere to it, the challenged [action] is invalid."[45] This procedural failure provides a clear and independent basis upon which to grant the habeas petition.

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[42] *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954)

[43] *Ayala Chapa v. Bondi*, 132 F.4th 796, 799 (5th Cir. 2025) (citing *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)

[44] *Phan,* 2025 WL 1993735, at *4 ("Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful."); *See also Wing Nuen Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) (finding "that officials did not properly revoke petitioner's release pursuant to [§] 241.13" because "and most obviously ... petitioner was not granted the required interview upon the revocation of his release"); *See Nguyen*, 2025 WL 1725791, at *5; *Phan v. Beccerra*, No. 25-cv-11472, 2025 WL 1993735, at *3 (D. Mass. July 1, 2025); *Hoac v. Beccerra*, No. 25-cv-11471, 2025 WL 1993771, at *3 (D. Mass. July 1, 2025)

[45] *Id.* (internal citations omitted).

Indeed, as stated above, the *Nguyen, Phan,* and *Hoac* courts all held the failure to conduct an informal interview and the other procedures required by the regulations was sufficient for petitioners to show a strong likelihood of success sufficient to meet the preliminary injunction standard. This Court should find similarly that Petitioner was deprived of due process and his arrest and re-detention are unlawful.

c. Petitioner has been and continues to be deprived of his life and liberty, things universally recognized as irreparable injuries; meanwhile, ICE will suffer no injury whatsoever if Respondent is released.

Continued unlawful detention is, by its very nature, an irreparable injury.[46] The Supreme Court has affirmed that "[f]reedom from imprisonment... lies at the heart of the liberty" protected by the Due Process Clause.[47] "Where, as here, the 'alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary'."[48]

Everyday Petitioner remains in custody, he is irreparably harmed by the loss of his fundamental liberty, his separation from his U.S. citizen wife and children, and the loss of his ability to provide for his family. The harm is not merely abstract. This is particularly true of Petitioner who has deep ties to the United States after having entered as a refugee on March 24, 1998. This risk constitutes a severe and irreparable harm that, when combined with the obvious irreparable injury of being unlawfully detained, it is the type of irreparable injury that warrants prompt judicial intervention.

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[46] *Phan*, 2025 WL 1993735, at *5 ("Further, '[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

[47] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

[48] *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

Petitioner is not seeking never-ending-supervision. Nor is he seeking to prevent or stop the government from removing him to Bosnia. He is simply asking ICE to follow the mandatory process required by § 241.13(i), to include ensuring there is an actual change in his circumstances (i.e. Bosnia has actually issued a travel document) and he is only detained when doing so is required to "assure his presence at the *moment* of removal." Not for months on end in overcrowded detention facilities. And certainly not before a travel document request has even been submitted.

d. Balancing of the Equities and Public Interest Weigh Strongly in Favor of Petitioner's Request for Relief

The balance of equities and public interest weigh overwhelmingly in Petitioner's favor. "Just as the public has an interest in the orderly and efficient administration of this country's immigration laws, [ ] the public has a strong interest in upholding procedural protections against unlawful detention."[49] Indeed, habeas petitions in and of themselves demonstrate a recognition of the strong public interest against unlawful detention of anyone present in the United States. For this reason (buttressed by the likelihood of success discussed above), the public interest weighs strongly in Petitioner's favor.

While Petitioner does not dispute the government's and the public's strong interest in the enforcement of immigration laws, that abstract interest is in no way advanced by the needless and arbitrary detention of Petitioner. In this case, and many others, ICE's intention to indefinitely detain Petitioner in the speculative hope of someday getting a travel document to Bosnia, after years of failure, is not grounded in the legitimate enforcement of the immigration laws, but rather the agency's desire to use Petitioner's as to its detention statistics. But Petitioner is not a statistic, he is a human being, and the agency's refusal to treat him as such underscores the necessity of

[49] *Phan*, 2025 WL 19933735 (citing *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

granting this habeas petition. His ultimate removal to Bosnia simply does not require his pre-emptive confinement.

Moreover, Petitioner's detention is a profound waste of public resources that actively harms the public interest it purports to serve. Taxpayers are funding the tens of thousands of dollars required to keep him needlessly incarcerated. Allowing Petitioner to remain at liberty pending removal would not only save these significant detention costs but would also enable him to purchase his own ticket should removal be necessary. Among other things, this would free up a seat on an alleged future charter, saving the public the additional two-to-three-month detention cost for the individual who will ultimately take the place of Petitioner on that flight. There is simply no public interest served by unnecessarily detaining a family's primary provider, a valued employee, and a man with a 15-year record of perfect compliance. His confinement is as fiscally irresponsible as it is legally unwarranted.

In sum, the equities and due process interest in this case weigh strongly in favor of Petitioner. The harm of ordering him released to Respondents is nonexistent. Petitioner is not a danger to the community; he has lived peacefully and productively for many years. He is not a flight risk; he has complied with his OSUP and reported to ICE for years. Releasing Petitioner to his OSUP, a status ICE itself deemed appropriate for over a decade, poses no conceivable harm to the government. Meanwhile, the harm to Petitioner and his family if his is not released is significant and irreparable.

III. Jurisdiction is Clear

Respondents argue that this Court does not have jurisdiction to hear Petitioner's claims related to his removal to Bosnia.[50] This argument fails to address clear precedent that negates

[50] (Dkt. 6 at 5-6).

the Government's contentions. The United States Supreme Court has specifically held that 28 U.S.C. § 2241 confers jurisdiction to challenge detention that is without statutory authority, as well as constitutional challenges to post-removal-period detention.[51]

Petitioner's challenge as to the unreasonableness of his current detention as well as the due process violations created by the Respondents failing to follow the law are both clearly within this Court's jurisdiction. Petitioner is not challenging his removal order, or the specific discretionary decision which was apparently made to revoke his order of supervision—a decision he has never received notice of or an opportunity to challenge—but rather the due process violations committed in revoking the order and the resulting unlawful detention.

[Nothing further on this page.]

[51] *Zadvydas v. Davis*, 533 U.S. 678, 687- 88 (2001); *see also Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, at *1 (W.D. Tex. Mar. 23, 2020) ("Federal courts have jurisdiction, however, to adjudicate claims challenging the constitutionality of an alien's continued detention.") (citing *Gul v. Rozos*, 163 F. App'x 317, 2006 WL 140540, at *1 (5th Cir. 2006))

CONCLUSION

Respondents have failed to rebut any of the claims in Petitioner's habeas petition indicating there is no lawful basis for his sudden and indefinite detention. Respondents likely violated their own regulations, both substantively and procedurally. They have misrepresented key facts to this Court. Their legal arguments rest on a misreading of precedent and a fundamental misunderstanding of constitutional limits on government power. The Respondents' case is built not on facts, but on speculation; not on law, but on whim.

For many years, Petitioner has lived under the shadow of a removal order that could never be executed. The reward for his years of compliance should not be a cage. For all the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for a Writ of Habeas Corpus and order his immediate release from custody or, alternatively, schedule a hearing on this matter.

Respectfully submitted,

Date: December 22, 2025

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Response in Opposition to Summary Judgment with the Court and on Respondents via the Court's electronic filing system on December 22, 2025.

/s/ William C. Strom
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