

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

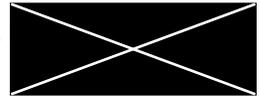
JUAREZ PONCE, ERICK EGDAR,

Petitioner,

v.

Case No.: 3:25-cv-00632-LS

Agency No.



KRISTI NOEM, et. al.;
Respondents.

**PETITIONER'S TRAVERSE IN REPLY TO RESPONDENTS' RESPONSE TO ORDER TO
SHOW CAUSE**

Petitioner ERICK EDGAR JUAREZ PONCE ("Petitioner"), by and through undersigned counsels, respectfully submit this Petitioner's Traverse in Reply to Respondents' Response to Order to Show Cause, and alleges as follow:

Respondents' response fails to meaningfully address the claim presented in the Petition for Writ of Habeas Corpus. The petition does not seek relief based solely on the length of Petitioner's post-order detention under *Zadvydas v. Davis*, nor does it argue that Petitioner must be released merely because six months have elapsed. Rather, the petition challenges the legality of Petitioner's detention at its inception, based on ICE's failure to comply with mandatory regulatory procedures governing revocation of an Order of Supervision. That procedural violation renders the detention unlawful regardless of duration.

Respondents repeatedly characterize the petition as a premature *Zadvydas* claim and argue that Petitioner's constitutional challenge is unripe because he has not yet been detained for six months post-order. That framing is incorrect. As pled, the procedural due process claim is primary and dispositive.

Courts routinely grant habeas relief where ICE re-detains a noncitizen without complying with 8 C.F.R. §§ 241.4 and 241.13, without reaching *Zadvydas* at all. The petition expressly pleads *Zadvydas* only in the alternative and only if the Court were to find that the procedural violations alone do not warrant relief.

The regulations governing revocation of supervision impose binding obligations on ICE. An order of supervision may be revoked only by an authorized official and only after the noncitizen is notified of the reasons for revocation and afforded a prompt informal interview with an opportunity to respond. These are not discretionary considerations; they are mandatory procedural safeguards that protect against arbitrary loss of liberty. As pled in the petition, Petitioner received no notice of the reasons for revocation, no informal interview, and no opportunity to contest the revocation decision. Respondents' response does not dispute these facts, nor does it submit evidence demonstrating regulatory compliance.

Respondents' reliance on the existence of a final order of removal does not cure these defects. Even where a final order exists, ICE's detention authority is constrained by its own regulations. An order of supervision is not revocable at will, and detention following a procedurally defective revocation is *ultra vires*. The Fifth Circuit and district courts within it have long recognized that an agency's failure to follow its own regulations constitutes a denial of due process and renders resulting detention unlawful. This case does not implicate the remedial concerns addressed in *Garland v. Gonzalez*, 596 U.S. 543 (2022), or *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). Petitioner does not seek a court-imposed bond hearing, a class-wide injunction, or a judicial rewriting of § 1231. Rather, Petitioner seeks release because ICE failed to comply with mandatory regulatory procedures governing revocation of an Order of Supervision, rendering his detention unauthorized at its inception. Courts remain empowered, *post-Gonzalez*, to order release where detention is unlawful due to an agency's failure to follow binding regulations or where custody lacks statutory authorization. *See, e.g., Santamaria Orellana v. Baker*, 2025 WL 2444087, at *8; *Zhu v. Genco*, 2025 WL 2452352, at *9. Granting habeas relief here requires no

extension of *Zadvydas* and no imposition of new procedural requirements; it simply restores the status quo ante until ICE conducts a revocation in compliance with existing law.

Respondents' emphasis on foreseeability of removal is likewise misplaced. The procedural claim does not turn on whether removal to El Salvador is statistically likely in the abstract. It turns on whether ICE lawfully revoked Petitioner's supervised release. A procedurally invalid revocation cannot be justified after the fact by asserting that removal may occur at some future point. Habeas relief is appropriate where detention rests on an invalid administrative action, irrespective of eventual removability.

The government's response also fails to grapple with the legal effect of the BIA's stay of removal. The stay confirms that removal is not currently executable and underscores why regulatory compliance in revoking supervision was essential. While the stay independently undermines Respondents' reliance on § 1231's removal-period framework, Petitioner does not require that conclusion for relief. Even assuming § 1231 applies, ICE was still obligated to follow the revocation procedures set forth in 8 C.F.R. §§ 241.4 and 241.13, which it failed to do.

Respondents suggest that, even if a procedural violation occurred, release would not be the appropriate remedy. That assertion is inconsistent with habeas jurisprudence and with the authorities cited in the petition. Where detention is predicated on a procedurally invalid revocation of supervision, the proper remedy is restoration of the last lawful custodial status, including release under supervision, unless and until ICE conducts a revocation in compliance with the regulations. Substitute process after detention has already occurred does not retroactively legitimize unlawful custody.

In sum, Respondents' response addresses a claim Petitioner did not bring and ignores the claim that was squarely presented. Because ICE revoked Petitioner's Order of Supervision without complying with mandatory regulatory procedures, Petitioner's detention is unlawful under the INA, its implementing

regulations, and the Due Process Clause. The Court should therefore grant the writ and order Petitioner's immediate release under the conditions of his prior Order of Supervision while his motion to reopen and MIL-PIP request remain pending.

Respectfully submitted on January 12, 2026.

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CERTIFICATE OF SERVICE

I certify that on January 12, 2026, I filed the foregoing Petitioner's Traverse In Reply To Respondents' Response To Order To Show Cause using the Court's CM/ECF system, which will serve all counsel of record who are registered CM/ECF users.

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