

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA**

ZU PING CHEN)	
)	
Petitioner,)	
)	Case No.: 3:25-cv-00970-BL-JTA
vs.)	
)	
MELLISSA B. HARPER, Field Office Director)	
<i>New Orleans Field Office</i> , and)	
TODD LYONS, <i>in his official capacity as Acting</i>)	
<i>Director of Immigration and</i>)	
<i>Customs Enforcement</i> , and)	
KRISTI NOEM, <i>Secretary of Homeland Security</i> ,)	
and PAMELA BONDI, <i>U.S. Attorney General</i>)	
)	
Respondents.)	
)	

**PETITIONER’S SUPPLEMENTAL BRIEF IN RESPONSE TO
COURT QUESTIONS AT HEARING ON MARCH 19, 2026**

Petitioner, Zu Ping Chen, by and through undersigned counsel, respectfully submits this supplemental briefing to address the following topics: Due Process rights of individuals who have resided in the United States for extended periods of time; the government’s burden to justify on-going detention upon the issuance of an Order to Show Cause; Time and Length of the Removal Period; Authority and Requirements to Revoke an Order of Supervision (241.4 v. 241.13, delegation memo; predeprivation hearing required by due process).

Petitioner, a Chinese national subject to a final order of removal since 2003, has resided in the U.S. for over 25 years, at least 22 years living in liberty and under an Order of Supervision (OSUP) with perfect compliance. His sudden detention on February 24, 2026, without notice or hearing, and the subsequent revocation of his OSUP, are arbitrary and unlawful. Despite an order of removal to China, entered on April 25, 2000, Respondents have been unable to effectuate

Petitioners' removal for over 25 years—not due to any fault of Petitioner, but because China has refused to issue travel documents for Mr. Chen.

I. PETITIONER'S DETENTION VIOLATES THE STATUTE, SUPREME COURT CASE LAW AND DUE PROCESS.

A. Petitioner's Detention Is Well Beyond the Presumptively Reasonable Six-Months.

Petitioner has been detained for longer than the presumptively reasonable six-month period. That period began when his removal order became administratively final on April 25, 2000, triggering the statutory 90-day removal period and continued for the additional 90 days of presumptively reasonable time under *Zadvydas*. The government detained Mr. Chen a lengthy period (between April 25, 2000 and 2003). Due to their inability to remove him to China, DHS finally released Petitioner from detention on an OSUP. Mr. Chen faithfully complied with this OSUP over the next 22 years. However, in October 2024, DHS detained Mr. Chen without notice or reason, during a routine ICE check-in. Only because Mr. Chen suffered significant injuries during ICE transport to Jena, Louisiana, did DHS released him from detention October 30, 2024, under a renewed OSUP. Then, on December 16, 2025, Mr. Chen was again "detained" in Montgomery, Alabama, and subjected to constructive custody including an ankle monitor and participation in the Intensive Supervision Appearance Program (ISAP). Finally, on February 24, 2026, during a scheduled check-in at the Montgomery ICE office as he was complying with is ISAP, DHS revoked Mr. Chen's OSUP and detained him again. Mr. Chen's cumulative detention time spans two years, plus approximately one month in 2024, plus another three months of constructive custody, and now an additional month and counting from February 2026 to now. Thus, his cumulative detention time is approximately three years and five months—well beyond the presumptively reasonable six month period. And DHS has not provided any justification for

forcing Mr. Chen to endure these additional months of detention. They do not even have a passport or travel document to remove him.

The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 578 (2001), held that post-removal-period detention under 8 U.S.C. § 1231(a)(6) is implicitly limited to a period reasonably necessary to effectuate an alien's removal and does not permit indefinite detention. The Court recognized a presumptively reasonable period of detention of six months, after which, if the alien provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," **the government must rebut that showing with sufficient evidence.** This six-month period is not a rigid deadline for release, but rather the point at which the burden shifts to the government to justify continued detention.

The Eleventh Circuit has interpreted *Zadvydas* as requiring an alien to show: "(1) that the six-month period, **which commences at the beginning of the statutory removal period**, has expired when the § 2241 petition is filed; and (2) evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (emphasis added); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("[I]n order to state a claim under *Zadvydas* the alien ... must show post-removal detention in excess of six months []. . . ."). Notably, for the first requirement, the time **clock starts to run "at the beginning of the statutory removal period"** which is triggered on the date the removal order is administratively final. *See* 8 U.S.C. § 1231(a)(1)(A)-(B) (The removal period begins on the latest of the following: (i) The date the order of removal becomes administratively final. (ii) If the removal order is judicially reviewed and if a court orders a stay of

the removal of the alien, the date of the court's final order. (iii) "If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement."); *Id.* at § 1231(a)(1)(C) (The 90-day removal period may be extended "if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal. . . .").

B. The Removal Period or Detention Period Does Not Restart

There is no statutory or precedential authority permitting the government to restart the 90- or 180-day removal period each time it re-detains a noncitizen who has already been subject to a final order and released under supervision. The six-month presumptively reasonable detention period outline in *Zadvydas* does not "reset" simply because the government detains, releases, and then arbitrarily decides to detain again. *See Quoc Anh Pho v. Noem. et al.*, No. 3:25-CV-977-CCB-SJF, 2025 WL 3750684, at *3-5 (N.D. Ind. Dec. 29, 2025) (explaining that applying a six-month period of presumptive reasonableness to every subsequent period of detention would go against the concerns in *Zadvydas*, noting that detention of a noncitizen past the "removal period" is not authorized by § 1231(a) if it is unrelated to the statutory goals of "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community."); *Id.* ("Allowing the government a six-month period of unreviewable detention every time it re-detains an alien does not advance those statutory goals."); *see also Adu v. Bickham*, No. 7:18-CV-103-WLSMSH, 2018 WL 6495068, at *2 (M.D. Ga. Dec. 10, 2018) ("[W]hile a petitioner's habeas application may be premature where he "did not have even an unencumbered month of detention prior to filing his § 2241 petition," Abu experienced years of detention before applying for habeas relief."). The court highlighted that "[f]inding his petition 'premature' [because he had filed and received a judicial stay of removal] would require disfiguring logical contortions. Petitioner's application for habeas relief is not premature.").

The overwhelming majority of courts around the country dealing with the same issue have held the same—the clock does not restart upon re-detention by ICE following an earlier release from ICE custody, based upon the plain language of § 1231(a)(1)(B). As explained by the court in *Diaz-Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (Nov. 13, 2019):

To start, the text of § 1231(a)(1)(B) does not mention restarting the removal period. Nor does any interpretive regulation of which the Court is aware. . . . Of course, this textual silence is not just persuasive – it has interpretive meaning. The matter is not covered by the text adopted by Congress. Sound interpretive principles would counsel against injecting a provision into the text, particularly where, as here, the injected provision may alter the result.

Further, a plain reading of the *existing* text disfavors the restarting approach. Section 1231 references “[t]he” removal period, a single period triggered exclusively by the latest of three possible events. No other contingencies are provided. Absent a later triggering event - which would, by definition, begin “the” removal period - § 1231(a)(1)(B) dictates that the removal period necessarily begins when a removal order becomes final, and necessarily ends 90 days later.

...

The expiration approach avoids other conflicts as well. For instance, it eliminates the untenable possibility of detaining an alien for countless “conditional removal periods,” each of less than 90 days, and then restarting countless “new removal periods” when the alien is detained again, all without any triggering event.

See also Villanueva Herrera v. Tate, 801 F. Supp. 3d 689, 702 (S.D. Tex. 2025) (“The government’s contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself.”); *Sied v. Nielsen*, 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *Nhean v. Brott*, No. 17-28 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017) (report and recommendation) (holding that when the government detains an alien for 90 days, releases him, and then re-detains him, the second detention “was presumptively reasonable for an additional 90 days (six months in

total),” not an additional six months), adopted, 2017 WL 2437246 (D. Minn. June 5, 2017)); *see also Siguenza v. Moniz*, No. 25-CV-11914-ADB, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) (“Most courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the federal government could otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them.”); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025); *Bailey v. Lynch*, No. 16-2600 (JLL), 2016 WL 5691407, at *2 (D.N.J. Oct. 3, 2016) (holding that the six-month *Zadvydas* period “does not restart simply because an alien who [was previously detained and then] released is taken back into custody”); *Garcia-Aleman v. Thompson*, No. SA-25-CV-886-OLG (HJB), at 7 (W.D. Tex. Nov. 24, 2025), *report and recommendation adopted* (Dec. 9, 2025); *Zavvar v. Scott*, No. TDC-25-2104, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025); *Hamama v. Adducci*, No. 17-cv-11910, 2019 WL 2118784 at *2 (E.D. Mich. May 15, 2019).

Respondents’ citations to various non-precedential decisions from neighboring district courts—are unpersuasive. *See Georgia v. President of the United States*, 46 F.4th 1283, 1304 (11th Cir. 2022) (“a district court’s decisions do not bind . . . [.] other judges on the same court, or even the same judge in another case.”). For example, the court in *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025) failed to consider the explicit language of 8 U.S.C. § 1231(a)(1)(B), which provides: “The removal period begins on the latest of the following: (i) The date the order of removal becomes administratively final. (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order. (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.” Thus, the court in *Barrios* effectively nullified the clause “except under an immigration process” in § 1231(a)(1)(B)(iii) by holding that the clock

restarted upon the petitioner's re-detention by ICE following his earlier release from ICE custody. Mr. Chen's clock started and stopped over 22 years ago.

In *Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018), the district court did NOT hold that the petition was premature. The court simply stated, without much support, that “[a] strong argument exists that the *Zadvydas* removal period did not even begin until January 10, 2018 when Petitioner was returned to ICE custody after serving his criminal prison sentence” citing 8 U.S.C. § 1231(a)(1)(B)(iii) (stating that the removal period begins on the date the order of removal becomes administratively final or the date the alien is released from detention or confinement, whichever is later). *Id.* The court then noted that “[i]f that is the case, neither the statutory ninety-day removal period nor the *Zadvydas* presumptively reasonable six-month removal period has expired.” *Id.* Besides this passing comment, the court decided to “focus [] on today and whether Petitioner will likely be removed in the reasonably foreseeable future based on the facts available to the Court today” and ultimately denied the petition “because Petitioner has failed to show that he will not likely be removed in the foreseeable future and because the Government has shown that there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future”. *Meskini*, 2018 WL 1321576, at *5. More fundamentally, *Meskini* addressed an entirely different legal question— when the initial statutory removal period begins under 8 U.S.C. § 1231(a)(1)(B)(iii) for a noncitizen transferred to ICE custody immediately after serving a criminal sentence. It did not, in any way, sanction a “reset” of the six-month *Zadvydas* clock for a noncitizen like Petitioner, who was detained, released for decades, and then re-detained. To extrapolate *Meskini*'s narrow statutory analysis into a broad, unsupported rule that the government can obtain a fresh six-month presumptively valid detention with every re-arrest would be contrary to the statute, the

Constitution, and the core holding of *Zadvydas*. Such a rule would create a perverse incentive for the government to engage in a cycle of release and re-detention every six months to evade judicial review, creating the very potential for indefinite detention that the *Zadvydas* court sought to avoid through its doctrine of constitutional avoidance. The “Removal Period” in the INA is only a singular event.

The cases cited by Respondents are inapposite or actually support Mr. Chen. As an initial matter, Chen’s revocation is governed by 8 C.F.R. § 241.13, not § 241.4, as explained in his prior filings. The government’s cases all involve routine § 241.4 revocations or pure *Zadvydas* timing disputes, not revocation of decades-long supervision under § 241.13 or the due-process constraints on extinguishing that status.

In *Huete-Alvarez v. Bondi*, 2026 WL 530196 (S.D. Fla. Feb. 25, 2026), the court, at the TRO stage, held only that the petitioner’s *Zadvydas* claim was premature where he had been re-detained for about two weeks and that, on that thin record, a barebones “Notice of Revocation” referencing 8 C.F.R. § 241.4(l) and asserting an ability to remove sufficed to defeat likelihood of success on a regulatory-compliance claim. The court expressly retained § 2241 jurisdiction, preserved the status quo, and did not analyze the heightened liberty interest that arises when the government terminates many years of community-based supervision—precisely the interest at stake in Mr. Chen’s case. Chen’s claim is not *Zadvydas*-based; it rests on *Mathews v. Eldridge* and *Morrissey v. Brewer*, 408 U.S. 471 (1972), and the need for robust process before revoking more than twenty years of conditional liberty, an issue *Huete-Alvarez* did not reach.

In *Flores-Reyes v. Assistant Field Office Director*, 2026 WL 406708 (S.D. Fla. Feb. 13, 2026), the court refused to aggregate a two-year post-order detention from 2000–2002 with a new period of custody beginning in 2025, and held only that the then-current detention of less than six

months was “presumptively reasonable” under *Zadvydas* and that 8 U.S.C. §§ 1252(a)(2)(B), 1231(g)(1) barred an injunction dictating the place of detention. The petitioner there asserted only a *Zadvydas* theory; he did not litigate, and the court did not analyze, the due-process implications of revoking decades of conditional liberty under an order of supervision, or any community-based liberty interest under *Morrissey* and *Young v. Harper*, 520 U.S. 143 (1997). Those are the questions Chen squarely presents.

M.O.G.R. v. Warden, Stewart Detention Center, 2025 WL 3460936 (M.D. Ga. Dec. 2, 2025), involved roughly sixty days of post-order detention of a pregnant woman who had never been on long-term supervised release; she sought a stay of removal and raised conditions-of-confinement and family-unity theories. The court held § 1252 barred a stay of removal and rejected those conditions-based claims, but it did not address revocation of any supervision regime or the procedures required before terminating long-standing conditional liberty. Chen, by contrast, seeks tailored process and interim restraints focused on OSUP revocation and detention, not a wholesale bar on executing a final order.

Martinez-Marino v. Sheriff of Baker County Sheriff's Office, 2026 WL 681812 (M.D. Fla. Mar. 11, 2026), supports Chen. There, after more than fourteen months of post-order detention, Cuba and Spain refused to accept the petitioner and ICE had only vaguely “explor[ed]” third-country options; the court enforced *Zadvydas* strictly, rejected tolling under 8 U.S.C. § 1231(a)(1)(C), and ordered release because the government had shown no significant likelihood of removal in the reasonably foreseeable future. The case did not involve OSUP revocation, but it underscores that prolonged post-order detention without a concrete removal path is unconstitutional—an even stronger concern where, as here, the government has relied on supervised release for decades and then abruptly re-detains.

Finally, *Ramos v. United States Attorney General*, 2026 WL 776177 (M.D. Fla. Mar. 19, 2026), dismissed a pro se *Zadvydas* petition as premature where the petitioner’s current round of detention had lasted only fifteen days; the court adopted a non-aggregation approach and also noted that Ramos had pleaded almost nothing about OSUP revocation or the content of any notice. It did not address the liberty interest that arises when conditional community liberty has been enjoyed “for a number of years” and whose termination, *Morrissey* emphasizes, inflicts a “grievous loss” on the individual and others. *Morrissey*, 408 U.S. at 481–82. Chen’s case presents that very interest after more than twenty years on OSUP, and he alleges detailed defects in notice and process that were absent from Ramos.

C. Petitioner’s Claim Is Not Premature Because there is no SLRRFF.

“[N]othing in *Zadvydas* precludes a challenge to detention before the presumptive[] . . . period has elapsed.” *Villanueva Herrera*, 801 F. Supp. 3d at 702. “*Zadvydas* recognized a presumptively—not categorically—reasonable period of detention. . . . [O]nce removal is no longer reasonably foreseeable,” even within the presumptive period, “continued detention is no longer authorized.” *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025). But “even if the government can ‘reset’ the six-month presumptively constitutional detention period by releasing the noncitizen and then re-detaining him, that would not require dismissal of [a *Zadvydas* claim] because the presumption of constitutionality during that six-month period is rebuttable.” *Villanueva Herrera*, 801 F. Supp. 3d at 703; citing *e.g.*, *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (the “six-month presumption is not a bright line” and *Zadvydas* “did not require a detainee to remain in detention for six months . . . before a habeas court could find that the detention is unconstitutional”); *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025) (collecting cases). Accordingly, “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,” even if detention is still within the presumptively reasonable period. *Id.*

Here, for over two decades, Petitioner has been subject to an OSUP, during which time he was fully compliant with all terms, including regular check-ins with ICE, even after an ankle monitor was placed on him recently with intensive supervision. This extensive history of post-removal confinement, albeit largely under supervision, is precisely the type of “prior post-removal confinement” that *Zadvydas* instructs courts to consider when evaluating the “reasonably foreseeable future.” To ignore this 20-year period and reset the clock based solely on the most recent one-month physical detention would undermine the constitutional concerns *Zadvydas* sought to address regarding indefinite detention. The government’s argument that prior periods of detention cannot be cumulated is overly simplistic and fails to account for the reality of Petitioner’s prolonged status as a removable alien who has not been removed for decades.

Furthermore, Respondents’ prolonged inability to effectuate Petitioner’s removal, despite continuous efforts by the government over two decades, provides “good reason to believe” that there is no significant likelihood of removal in the reasonably foreseeable future. The government has not provided specific, concrete evidence demonstrating a *significant likelihood* of Petitioner’s *individual* removal in the immediate future. The government’s assertion of “ongoing efforts” to secure travel documents is vague and has been a constant for decades without resulting in securing a travel document for Petitioner or being able to remove him. Given the extraordinary length of time Petitioner has been under a final order of removal, the “reasonably foreseeable future” for his removal has significantly shrunk. The government cannot simply re-detain an individual after decades of supervised release and claim prematurity when the underlying issue is the long-standing inability to remove. Petitioner’s claim is not premature; rather, it is a direct challenge to the legality

of his detention in light of an exceptionally prolonged period of non-removal, which triggers the government's burden to demonstrate a significant likelihood of removal.

Before revoking an OSUP and re-detaining a non-citizen, ICE must determine that, based on changed circumstances, removal has become significantly likely in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). ICE must make that determination in the first instance, rather than the Court. *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023). The government bears the burden of demonstrating that ICE properly made such a determination. *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 150 (D. Mass. 2025).

Courts have found regulatory violations where ICE summarily states that circumstances have changed without providing any specific support for that assertion. *See, e.g., Arostegui-Campo v. Noem*, 2025 WL 3280886, at *4 (S.D. Cal. Nov. 25, 2025) (holding that the unsupported statement by the declaring officer that “there is a significant likelihood of his removal in the reasonably foreseeable future” does not satisfy respondents’ burden). Further, the changed circumstances that make an alien’s removal likely in the foreseeable future **must have existed at or before the OSUP revocation; post-hoc justifications are inadequate**. *See, e.g., Sarail A. v. Bondi*, — F.Supp.3d —, —, 2025 WL 2533673, at *10 (D. Minn. Sept. 3, 2025) (finding revocation was unlawful where ICE was not informed that Jamaica would issue petitioner travel documents until after his OSUP had been revoked). Even in a case for a Kenyan national for whom ICE have a newly obtained travel documents, the court invalidated the OSUP revocation because “ICE did not apply for such documents until after it had **revoked** Munagi’s supervised release. **The question before the Court is not whether petitioner's deportation is now likely in the reasonably foreseeable future but whether such likelihood existed at the time**

his OSUP was revoked. The government has proffered no evidence demonstrating the latter.” *Munagi v. McDonald*, --- F.Supp.3d ----, 2025 WL 3688023 (D. Mass., Dec. 19, 2005).

II. RESPONDENTS’ FAILED TO MEET THEIR BURDEN

The Court’s Order to Show Cause (ECF 33) correctly shifted the burden to Respondents to justify Petitioner’s detention, recognizing that the *Zadvydas* framework is applicable. As Petitioner outlined in his Reply brief (ECF No. 40) Respondents have utterly failed to meet their evidentiary and legal obligations to show a “Significant Likelihood of Petitioner’s Removal in the Reasonably Foreseeable Future” (SLRRFF). Respondents have not offered any concrete evidence of a significant likelihood of removal in the reasonably foreseeable future—no passport, no travel document, no agreement with China to issue one. Petitioner’s removal to China is not reasonably foreseeable. That has been true for the past 25 years and has not changed now. Mr. Chen has more than satisfied his initial burden to show that his removal is not significantly likely in the reasonably foreseeable future. The government, other than stating that it wishes to execute the removal order has not provided a single document with its Response that rebuts that presumption. Wishful thinking does not equate to concrete circumstances. Therefore, this Court must release Petitioner immediately.

III. PETITIONER IS ENTITLED TO MORE DUE PROCESS IN THE CONTEXT OF LIBERTY DEPRIVATION

The Fifth Amendment’s Due Process Clause applies to all persons within the United States, including noncitizens, regardless of their status, and freedom from imprisonment lies at the heart of the liberty it protects. *Zadvydas*, at 690. *Padilla v. U.S. Immigration & Customs Enforcement*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023). Detention without due process is unconstitutional unless ordered in a criminal proceeding with adequate procedural safeguards or a special

justification outweighs the individual's liberty interest. *Zadvydas*, at 690. *Rosales-Garcia v. Holland*, 322 F.3d 386, 409 (6th Cir. 2003) (“Excludable aliens—like all aliens—are clearly protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.”), citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. It is firmly established that these protections extend to noncitizens present in the United States. *E.g.*, *Trump v. J.G.G.*, 604 U. S. ___, 145 S. Ct. 1003, 1006 (2025) (per curiam) (“‘It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings,” quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas v. Davis*, 533 U.S. 678, 693, (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“It must be concluded that all persons within the territory of the United States are entitled to the protection guarantied by [the Fifth Amendment], and that even aliens shall not...be deprived of life, liberty, or property without due process of law.”); *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021) (holding the “Fifth Amendment entitles aliens to due process of law in deportation proceedings.”); *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) (“The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process.”), citing *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903).

Even those who face significant constraints on their liberty or those over whose liberty the government wields significant discretion retain a protected interest in their liberty. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“The fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty

interest.”), citing *Young v. Harper*, 520 U.S. 143, 150 (1997). And the “essence” of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time. *E.g.*, *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). “An alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population” is entitled to due process under the fifth amendment and cannot be deported “without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States.” *Kaoru Yamataya v. Fisher*, 189 U.S. 86, 101 (1903). *Constantinovici* held that § 2241 jurisdiction extends to challenges to the legality of post-order detention and the manner in which ICE executes removal-related authority, and that such claims fall outside § 1252(g)’s narrow bar on suits attacking the “decision or action ... to commence proceedings, adjudicate cases, or execute removal orders.” 806 F. Supp. 3d at 1160–62 (applying *Reno v. AADC* and *Lopez-Marroquin v. Barr*).

As *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), recognize, individuals living at liberty on parole or probation enjoy a significant “conditional” liberty interest and may not be re incarcerated without basic procedural safeguards, including notice, an opportunity to be heard, and a **neutral decisionmaker**. The Supreme Court’s decision in *Morrissey*, explained that parole is a form of “conditional liberty” that nevertheless allows the parolee to live in the community, work, be with family and friends, and form “the other enduring attachments of normal life.” It held that the revocation of conditional liberty inflicts a ‘grievous loss’ that triggers robust due process protections. 408 U.S. at 482. The government’s decision to release Petitioner created an ‘implicit promise’ that his liberty would ‘be revoked only if [he] fail[ed] to live up to the... conditions [of release].’ *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025) (quoting *Morrissey*, 408 U.S. at 482).

Individuals conditionally released from detention have a protected interest in their “continued liberty.” *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025) citing *Young v. Harper*, 520 U.S. 143, 147, 149, 152–53, 117 S.Ct. 1148, 137 L.Ed.2d 270 (1997) (holding that a pre-parolee released to “reduce prison overcrowding” enjoy a protected liberty interest). It is well-established that the liberty interest that arises upon release is “*inherent* in the Due Process Clause.” *Pruitt v. Heimgartner*, 620 F. App'x 653, 657 (10th Cir. 2015) (quoting *Boutwell v. Keating*, 399 F.3d 1203, 1212 (10th Cir. 2005)) (emphasis in *Pruitt*). Courts have recognized that, with the passage of time, a protectable liberty interest can “crystallize[]” even where an individual was released from prison in error, where the individual “reasonably thought the release was deliberate and lawful.” See *Hurd v. D.C., Gov't*, 864 F.3d 671, 683–84 (D.C. Cir. 2017).

The Eleventh Circuit has applied similar reasoning in *Rendon v. U.S. Att'y Gen.*, 972 F.3d 1252 (11th Cir. 2020), and *Sarmiento Cisneros v. U.S. Att'y Gen.*, 381 F.3d 1277 (11th Cir. 2004), making clear that when the government confers a particular statutory status and a noncitizen orders his affairs in reliance on that status, it cannot later re-cast the statutory scheme to impose harsher consequences. Here, DHS affirmatively chose to detain and release Petitioner under the § 1226(a)/OREC (or parole) framework, supervised him in the community for an extended period, and gave him every reason to rely on that treatment; it cannot now retroactively characterize him as a § 1225(b)(2)(A) “mandatory” detainee solely to avoid bond eligibility and judicial review.

Mr. Chen’s situation involves a heightened liberty interest. After more than two decades living in the United States under an order of supervision, he has done exactly what *Morrissey* presupposes: lived in the community, worked, maintained family and other “enduring attachments of normal life,” and relied on the government’s implicit representation that

his conditional liberty would not be withdrawn absent specific, articulated grounds. Terminating that long-standing conditional liberty is thus not merely a shift from “release” to “custody” in the abstract; it is the extinguishing of a decades-long settled existence, and so constitutes the kind of “grievous loss” *Morrissey* identifies as weighing heavily in the due-process analysis.

The Supreme Court has extended *Morrissey*’s conditional-liberty framework beyond formal parole to other community-based statuses that are “virtually indistinguishable” from parole. In *Young v. Harper*, 520 U.S. 143 (1997), the Court considered Oklahoma’s preparole conditional supervision program, under which the inmate lived at home, maintained employment, and was “generally free of the incidents of imprisonment,” subject to conditions such as abstaining from alcohol, avoiding certain debts, remaining in the county absent permission, and reporting regularly to a supervising officer. Likewise, in *Kim v. Hurston*, 182 F.3d 113 (2d Cir. 1999), the Second Circuit held that a New York work-release program—under which the prisoner lived at home, worked in the community, and reported periodically to corrections officials—was “virtually indistinguishable” from the parole and preparole programs at issue in *Morrissey* and *Young*, and therefore created a protected liberty interest in remaining in the program. Removal from such a community-based program “imposed a sufficiently serious hardship” to require at least minimal *Morrissey*-style procedural protections before termination.

Under *Morrissey*, *Young*, and *Kim*, even “conditional liberty” of this sort—living at home, working, and being largely free from the incidents of institutional confinement—is “valuable,” and its termination “calls for some orderly process, however informal.” The constitutional stake is not merely the label attached to the status (parole, preparole, work release), but the reality that the individual has been allowed to structure life in the community around that status for an extended period of time.

Orders of supervision in the immigration context share those same core characteristics. Courts have recognized that an ICE order of supervision releases a noncitizen from physical custody and permits her to be “at liberty in the United States” while removal is deferred, subject to conditions such as periodic reporting, advance approval for certain travel, and cooperation in obtaining travel documents; revocation of the order results in renewed detention pending removal. In functional terms, Mr. Chen’s two decades living and working in the community under an order of supervision closely resemble the parole, preparole, and work-release regimes in *Morrissey*, *Young*, and *Kim*. The termination of that long-entrenched conditional liberty therefore inflicts the same kind of “grievous loss” after “a number of years” at liberty that those decisions describe, and should be weighed accordingly in the due process and equitable-relief analysis. In an OSUP revocation case, a court said “That the Government allowed Petitioner to remain in the community for more than six years after releasing him on supervision only strengthened his liberty interest”. *Diego Francisco v. Noem*, 2026 WL 295211 *4. *Tzafir v. Bondi*, NO. 25-cv-02126-JHC, 2026 WL 81759, at *3 (W.D. Wash. Jan. 12, 2026) (citing *Bd. of Pardons v. Allen*, 482 U.S. 369, 377–81 (1987) (recognizing that governmental action can create a liberty interest protected by the Due Process Clause); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (same)). Chen’s nearly 24 years, four times as much as the six years, creates a much greater liberty interest as he has developed more community and family ties, grown his business and built an entire life with adult children in the country. Recent OSUP-revocation decisions underscore that years of successful supervision substantially strengthen the protected liberty interest. In *Tzafir v. Bondi*, the court held that sixteen years of compliant OSUP “only strengthened his liberty interest,” and applied *Mathews* to conclude that re-detention based on vague “changed circumstances” violated due process. *Tzafir v. Bondi*, No. 25-cv-02126-JHC, 2026 WL 81759, at

*3–5 (W.D. Wash. Jan. 12, 2026). Similarly, in *Diego Francisco v. Noem*, the court found that more than six years on OSUP, with work and family life in the community, created a strong liberty interest that could not be extinguished without robust procedures. *Diego Francisco v. Noem*, 2026 WL 295211, at *3–5 (W.D. Wash. Feb. 4, 2026).

IV. CHEN’S OSUP WAS IMPROPERLY REVOKED

A. Chen’s Revocation is Governed by § 241.13, Not § 241.4

Section 241.13 itself contains a distinct revocation standard and procedures tailored to long-term, non-removable noncitizens. It permits DHS to “revoke an alien’s release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future,” and it requires that, “[u]pon revocation,” the alien be notified of the reasons and afforded a prompt informal interview at which he may submit evidence showing that there is still no significant likelihood of removal. 8 C.F.R. § 241.13(i)(2)–(3). In *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018), the court described § 241.13 as governing “the release and revocation of release for noncitizens who are indefinitely detained,” and emphasized that revocation under § 241.13(i) requires both “**changed circumstances**” and the informal interview contemplated by § 241.13(i)(3). None of these § 241.13 prerequisites occurred here.

Mr. Chen is precisely the sort of long-term, non-removable noncitizen for whom § 241.13 was designed. He has lived under a final removal order since 2000, and China has refused to issue travel documents for him for more than twenty-five years, leading DHS to place him on an Order of Supervision in 2003 and to leave him in supervised status for over two decades. In such

circumstances, courts have consistently treated the case as falling within the § 241.13 “no significant likelihood of removal” track, with HQPDU exercising custody jurisdiction and the “changed circumstances” standard governing any return to custody. See, e.g., *Bonitto v. BICE*, 547 F. Supp. 2d 747 (S.D. Tex. 2008) (explaining that the 180-day HQPDU review under § 241.13 focuses on whether there is a “significant likelihood of removal in the reasonably foreseeable future” and that, absent such a likelihood or one of the narrow “special circumstances” in § 241.14, continued detention is not authorized). Under § 241.13(c), HQPDU is specifically tasked with conducting reviews and making determinations regarding release or continued detention under that section, underscoring that actions—including revocations—under § 241.13 should originate from, or be explicitly authorized by, HQPDU, not simply by any field-level official.

As Petitioner previously argued, multiple courts have recognized that once removal is no longer reasonably foreseeable and the case has migrated into the “indefinite detention” posture addressed by *Zadvydas*, custody jurisdiction and review move from the local field office to HQPDU under § 241.13. The recent decision in *Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087 (D. Md. Aug. 25, 2025), reinforces that §§ 241.4 and 241.13 together create a procedural framework “designed to ensure the fair processing of an action affecting an individual,” and that ICE’s failure to follow that framework in revoking release is itself a due-process violation under *Accardi*. There, as here, ICE summarily re-detained a long-term supervisee at a routine check-in, provided no written decision from an authorized official, gave no notice of the reasons for revocation, and never afforded the informal interview required by §§ 241.4(l)(1) and 241.13(i)(3). *Constantinovici v. Bondi* squarely holds that 8 C.F.R. §§ 241.4 and 241.13 “were intended to provide due process” protections in the post-order detention and revocation context,

and that failure to comply with their notice-and-interview requirements is itself a Fifth Amendment violation. 806 F. Supp. 3d 1155, 1162–64 (S.D. Cal. 2025).

Rather than proceed under § 241.13, however, ICE invoked § 241.4(l) and treated Mr. Chen’s revocation as a purely discretionary field-office decision. The February 24, 2026 Notice of Revocation of Release (ICE Form 71-091) explicitly checks the § 241.4(l) box and recites that “this is a determination that revocation is in **the public interest and circumstances do not reasonably permit referral to the Executive Associate Director of ERO**,” with the form signed by the New Orleans Field Office Director. Respondents’ opposition brief likewise characterizes the revocation as having been “pursuant to 8 C.F.R. § 241.4(l)” based on a field-office determination that “revocation was in the public interest and release was no longer appropriate.” That framing ignores both the “special review procedures” that the regulations prescribe for indefinite post-order detention and the regulatory command that § 241.13 governs revocation decisions in cases, like this one, where removal has not been significantly likely for many years.

E.M.M. v. Almodovar explains that § 241.13’s “special review procedures” apply only when an alien has invoked *Zadvydas* by showing “good reason to believe there is no significant likelihood of removal,” HQPDU has accepted jurisdiction, and release was granted through that track; revocation under § 241.13(i)(2) is then available only for those § 241.13 releases. --- F. Supp. 3d ----, 2025 WL 3077995, at *3–4 (S.D.N.Y. 2025).

B. Chen’s Revocation Also Fails Under § 241.4

Even if the revocation could have been done under § 241.4(l)(2), which Chen disputes, there is no evidence that the Executive Associate Director—or even a properly authorized district director—made the revocation decision.

The only signature appears on a check-the-box Form 71-091 signed by the New Orleans Field Office Director, with a boilerplate checkbox that “revocation is in the public interest and circumstances do not reasonably permit referral to the Executive Associate Director of ERO,” and no contemporaneous explanation of why referral to headquarters was supposedly infeasible or what “public interest” was served in this particular case. The form does not set forth the factual reasons for continued detention, and the “Notice of Informal Interview” section is left entirely blank. Counsel’s sworn declaration further confirms that ICE officers “revok[ed] [the] OSUP and [took] him into custody” at the February 24, 2026 check-in “without providing him with an opportunity to respond or to contest the OSUP revocation.” Courts have rejected nearly identical boilerplate as insufficient notice under § 241.4(l). In *Gutnik v. Bondi*, the court held that a Notice of Revocation stating only that “it is appropriate to enforce the removal order” and that the case was “under review for removal to an alternate country” failed to provide the individualized reasons the regulation demands, and therefore violated both § 241.4(l)(1) and due process. 2026 WL 700546, at *2–3 (S.D. Fla. Mar. 5, 2026).

Counsel testified in the hearing that he asked the ICE officers for explanations several times and was refused, and he was also refused access to Mr. Chen and was asked to sit outside away from Chen. Later on Chen was interviewed at the detention center by himself, without counsel, by a low level officer long after the decision to revoke had happened. In fact, the Boghani Declaration and testimony states that Chen’s OSUP was actually revoked (unlawfully) previously in December 2025 by Francisco Ayala, the AFOD, who is not authorized to revoke the OSUP. Thus, as in *Santamaria Orellana*, ICE failed to (1) have the proper official exercise the revocation authority, (2) issue a written decision that sets forth the reasons for detention, and (3) provide the mandatory post-revocation notice and informal interview. Under *Accardi* and *Santamaria*

Orellana, those failures to follow §§ 241.4 and 241.13 are not harmless technicalities; they are due-process violations that independently warrant habeas relief and strongly support a finding of likelihood of success on the merits. *Constantinovici* likewise recognizes that §§ 241.4 and 241.13 together create a unified procedural framework “designed to ensure the fair processing of an action affecting an individual,” and holds that misusing that framework—by invoking the wrong subsection and skipping HQPDU—triggers *Accardi* and due process concerns. 806 F. Supp. 3d at 1163–64. See also *Lim v. Arteta*, 2026 WL 192490, at *2 & n.4 (S.D.N.Y. Jan. 26, 2026) (noting that the same AFOD who signed Lim’s revocation had previously been found to lack revocation authority in *Ceesay* and *E.M.M.*, and invalidating the OSUP revocation on that basis).

Courts have also emphasized that the “upon revocation” / “promptly” language in §§ 241.4(l)(1) and 241.13(i)(3) has real temporal content. In *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025), the court held that a twenty-seven-day delay between revocation and the provision of notice and an interview “cannot reasonably be construed as ‘prompt’ ” and expressly noted that the government did not even “attempt to argue that.” ICE’s failure to provide Mr. Chen with a proper informal interview with his attorney with a neutral decision maker since his February 24, 2026 re-detention cannot be reconciled with the regulatory command that the interview occur “upon” revocation and “promptly” after the return to custody. In this case, “upon revocation” on February 24, 2026 would have meant an interview on or very shortly after that date, not after separation from his counsel and his transfer to a remote detention facility.

“ICE’s decision to release a noncitizen confers a significant liberty interest that cannot be revoked without an individualized determination by **a neutral adjudicator.**” *Trejo v. Warden of ERO El Paso East Montana*, 807 F. Supp. 3d 697, 708–09 (W.D. Tex. 2025). Chen’s interview was done by a lower level subordinate, who did not have authority to revoke, well after Chen was

separated from his attorney and taken away to another detention facility in Montgomery. Therefore, it did not comport with due process.

Even assuming *arguendo* that § 241.4(l)(2) could apply, the regulations strictly limit which officials may exercise revocation authority and under what conditions. Section 241.4(l)(2) gives the Executive Associate Commissioner (now the Executive Associate Director of ERO) primary authority to revoke release, and permits a district director to do so **only** “when, in the district director’s opinion, **revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.**” 8 C.F.R. § 241.4(l)(2). Although Mr. Chen’s Form 71-091 is signed by the New Orleans Field Office Director and contains the pre-printed statement that “revocation is in the public interest and circumstances do not reasonably permit referral to the Executive Associate Director of ERO,” the form is otherwise silent as to *why* referral was supposedly impossible or what specific “**public interest**” was being served by detaining a non-criminal who complied with supervision for over twenty years, owns a business that employs U.S. workers and has U.S. citizen children. The same form reflects that Mr. Chen’s OSUP was reissued on November 2, 2024, and that revocation occurred on February 24, 2026—meaning ICE had well over a year of lead time from his scheduled reporting dates, and at least three months from his December 2025 re-detention and January 2026 ankle-monitor placement, to seek headquarters approval if it genuinely believed revocation was warranted. Those undisputed timelines are irreconcilable with any good-faith claim that “circumstances do not reasonably permit referral” to the Executive Associate Director; on the face of the record, there was ample opportunity to obtain a headquarters revocation decision under the default chain of authority established by § 241.4(l)(2).

Nor does the record supply any articulated “public interest” basis for revoking release in Mr. Chen’s circumstances. The Amended Complaint alleges—and Respondents do not meaningfully contest—that Mr. Chen has no criminal record, has resided in the United States for more than two decades, is married with U.S.-citizen children, owns and operates a restaurant employing others (including U.S. workers), and has complied with supervision requirements for over twenty years. The reason no reason was provided as to what’s in the “public interest” was that ICE simply could not come up with a valid revocation reason. Against that backdrop, a bare, check-the-box assertion that revocation is “in the public interest,” unaccompanied by any contemporaneous explanation tying his individual equities or conduct to one of the regulatory grounds for revocation, falls far short of the reasoned discretionary judgment § 241.4(l)(2) requires. Courts applying the *Accardi* doctrine in this context have treated similar failures as procedural due-process violations. In *Rombot v. Souza*, 296 F. Supp. 3d 383, 387–89 (D. Mass. 2017), for example, the court held that ICE violated § 241.4(l)(2) where a field office director purported to revoke an OSUP without satisfying the regulation’s threshold conditions and without providing the process the regulations mandate, and granted habeas relief on that basis. Here, ICE’s invocation of the narrow district-director exception in § 241.4(l)(2), unsupported by any articulated public-interest rationale and contradicted by months of advance notice that would have allowed referral to the Executive Associate Director, is likewise inconsistent with the regulation’s text and structure and constitutes an *Accardi*-type failure to follow the agency’s own binding rules.

This is more than a technical mis-citation. Under the *Accardi* line of cases, when an agency promulgates regulations “intended to confer important procedural benefits upon individuals,” it is obligated to follow them; failure to do so is itself a due-process violation. The Amended Complaint already invokes *Accardi* and its progeny on this point. Courts applying that principle in the §

241.4/§ 241.13 context have held that DHS violates due process when it relies on the wrong regulation or bypasses required procedures in revoking an order of supervision. In *Rombot*, ICE purported to revoke release under § 241.13 based on an asserted “significant likelihood of removal in the foreseeable future,” but had never made the prerequisite § 241.13 determination, had the wrong official sign the revocation, and failed to afford the informal interview mandated by §§ 241.4(l)(1) and 241.13(i)(3); the court held that ICE had “relied on an inapplicable regulation in revoking [the] OSUP,” violated its own regulations, and deprived the petitioner of a meaningful custody review.

Courts have treated this precise sort of regulatory misstep as an *Accardi*-type due process violation warranting habeas relief. In *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017), ICE cited 8 C.F.R. § 241.13 as the basis for revoking an OSUP on the theory that there was now a “significant likelihood of removal in the foreseeable future,” but it had never made the prerequisite § 241.13 determination that removal was not previously foreseeable, had the wrong official sign the revocation, and failed to afford the “initial informal interview” mandated by §§ 241.4(l)(1) and 241.13(i)(3). The court held that ICE had “relied on an inapplicable regulation in revoking [the] OSUP,” violated its own binding rules under §§ 241.4 and 241.13, and deprived the petitioner of a meaningful custody review, and it ordered his release on habeas. Mr. Chen’s case presents the same basic pattern: ICE invoked the wrong regulatory track, used the wrong decisionmaker, and skipped the mandatory interview, all in violation of the structure Congress and DHS adopted to implement *Zadvydas*.

The same understanding of §§ 241.4 and 241.13 underlies *Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087 (D. Md. Aug. 25, 2025), another habeas case involving summary re-detention after long-term supervision. There, the court described §§ 241.4

and 241.13 as a “procedural framework designed to ensure the fair processing of an action affecting an individual,” held that those regulations were “intended to provide due process” in the post-order detention context, and found *Accardi* violations where ICE could not show that an authorized official had made the revocation decision under § 241.4(l)(2), had issued no written decision setting forth reasons as required by § 241.4(d), and had provided neither notice of reasons for revocation nor the informal interview required by §§ 241.4(l)(1) and 241.13(i)(3). The court granted § 2241 relief on that basis. That decision confirms that misapplying the § 241.4/§ 241.13 framework and ignoring its procedural safeguards is itself a due-process defect, not a harmless technicality.

The same *Accardi* problem exists here. Given Mr. Chen’s decades-long non-removability and twenty-plus years on supervision, his case belongs in the § 241.13 “no significant likelihood of removal” framework, with HQPDU—not the local Field Office Director—making any “changed circumstances” determination and with the specific revocation procedures in § 241.13(i)(2)–(3) strictly followed. DHS instead short-circuited that process by invoking § 241.4(l) “public interest” authority at the field-office level and by skipping the § 241.13(i)(2) “changed circumstances” inquiry altogether. There are, in fact, no “changed circumstances” in this case: ICE is not in possession of travel documents, and there is no evidence that China’s long-standing refusal to issue them has been reversed. In the absence of such changed circumstances, ICE had no legal authority to revoke the OSUP under § 241.13.

Compounding the problem, Mr. Chen was never afforded the “initial informal interview” required by both § 241.13(i)(3) and § 241.4(l)(1). That interview exists precisely to give a long-term supervisee an immediate opportunity to contest the asserted basis for revocation and to present evidence that removal remains not reasonably foreseeable. 8 C.F.R. §§ 241.4(l)(1),

241.13(i)(3). The Declaration of counsel Brian Bogdany attests that ICE officers revoked the OSUP and took Mr. Chen into custody on February 24, 2026 “without providing him with an opportunity to respond or to contest the OSUP revocation.” That omission mirrors the regulatory violations found actionable in *Rombot* and *Santamaria Orellana* and underscores that Respondents did not follow the mandatory procedures their own regulations prescribe for revoking release in an indefinite-detention case.

In short, even if the Court were to accept Respondents’ narrow reading of the regulatory text regarding pre-revocation notice, the larger structural problem remains. ICE placed Mr. Chen under the wrong regulatory regime, allowed a field office to do what § 241.13 assigns to HQPDU, and failed to provide both the “changed circumstances” finding and the informal interview that § 241.13 requires before revoking release in a long-term non-removability case. Under *Accardi*, those failures independently support habeas relief and weigh heavily in favor of finding a substantial likelihood of success on Petitioner’s due-process claims.

Every court to address the issue has rejected the government’s “dual track” reading of § 241.4(l). In *Funes*, *Zhang*, and *Constantinovici*, the courts held that paragraph (l)(1)’s notice-and-interview requirement applies to all revocations under § 241.4(l), including those based on “changed circumstances” under (l)(2), because (i) (l)(2) itself lists “violat[ing] any condition of release” as one of its discretionary grounds, creating clear overlap; and (ii) (l)(3)’s post-revocation custody review expressly assumes the (l)(1) interview occurred and has been treated as applicable to all § 241.4 detainees. *Funes*, 2025 WL 3263896, at *14–17; *Zhang*, 2025 WL 3733542, at *9–11; *Constantinovici*, 806 F. Supp. 3d at 1162–64.

C. The Revoking Official Lacked Authority to Revoke

The Supreme Court has repeatedly affirmed that when Congress or an agency regulation

enumerates particular officials to exercise a power, only those officials may act. In *United States v. Giordano*, 416 U.S. 505, 514–16 (1974), the Court held that delegation to others was not permitted where the statute authorized only the Attorney General or specially designated Assistant Attorneys General to approve wiretap applications (wiretap found unlawful when ordered by unauthorized person). The Court explained that the enumeration of authorized officials is both exclusive and exhaustive; delegation to others is impermissible absent explicit authorization. This principle was reaffirmed in *FEC v. Cruz*, 596 U.S. 289, 301 (2022), which held that an agency “literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute.”

Recent cases construing ICE’s July 25, 2019 Delegation Order have held that it does not delegate OSUP-revocation authority at all. In *E.M.M. v. Almodovar*, the court applied *expressio unius* to the Order’s list of delegated powers (“warrants of removal,” “reinstatement of removal,” “self-removal,” and “release of aliens from detention”) and held that because “revocation of release” is omitted, it remains reserved to the Executive Associate Director. 2025 WL 3077995, at *4–6. *Roman-Cruz v. Lyons* reached the same conclusion and granted habeas relief where an assistant field office director purported to revoke an OSUP without such delegated authority. 2026 WL 114936, at *2–3 (S.D.N.Y. Jan. 2026).

District courts have applied these principles in the immigration context, holding that revocations of release by officials not named in the regulation are invalid and require restoration of release status. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y. 2023); *Zhu v. Genalo*, 2025 WL 2452352, at *2–3 (S.D.N.Y. Aug. 26, 2025); *see also United States v. Wyder*, 674 F.2d 224, 227 (4th Cir. 1982); *Santamaria Orellana v. Baker*, 2025 WL 2841886, at *3 (D. Md. Oct. 7, 2025) (holding that regulation that gave Executive Associate Commissioner authority

to revoke an alien's release and require return to ICE custody could not be exercised by Deportation Officer). The court in *Santamaria Orellana*, citing *Giordano*, noted that "[a] statutory or regulatory provision requiring that a decision affecting personal rights be made only by a designated senior official is fairly deemed to be an important procedural safeguard". *Id.* at *5. The court also directly addressed Due Process: "Respondents nevertheless argue that the failure to adhere to this regulation does not amount to a due process violation. This Court, however, has already found in its earlier ruling in this case that the identified violations of the requirements of 8 C.F.R. § 241.4, including the requirement that an authorized official approve a Notice of Revocation of Release under 8 C.F.R. § 241.4(l)(2), implicate due process." *Id.* at *4.

District courts have enforced these delegation limits in the OSUP context. In *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017), the court held that ICE's revocation of supervised release was invalid where the decision was made by a field office director without clear regulatory authority and without the required public interest finding, explaining that the regulations reserve revocation to the Executive Associate Commissioner or a properly delegated district level official and that actions taken outside those delegations are void. In *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025), the court similarly found that a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" was insufficient to confer OSUP revocation authority and ordered the petitioner's release on that basis. And *Bonitto v. Bureau of Immigration & Customs Enforcement*, 547 F. Supp. 2d 747 (S.D. Tex. 2008), underscores that, under the *Accardi* doctrine, DHS must comply with the allocation of authority and procedures in 8 C.F.R. §§ 241.4 and 241.13 when detaining someone beyond the removal period. *Ceesay* ordered the petitioner's release solely on this basis, underscoring that unauthorized revocation is void ab initio and cannot sustain detention.-interest finding, explaining

that the regulations reserve revocation to the Executive Associate Commissioner or a properly delegated district-level official and that actions taken outside those delegations are void.

D. Even Under Respondents' Reading of the Regulations, the Absence of Pre-Revocation Notice and Hearing Fails the *Mathews v. Eldridge* Balancing Test

Respondents assert that neither 8 C.F.R. § 241.4(l) nor § 241.13(i) require pre-revocation notice or a hearing, and that notice and an informal interview are only required “upon” or “after” revocation. This argument narrowly interprets regulatory requirements while ignoring the broader constitutional demands of due process, particularly when a fundamental liberty interest is at stake.

The Due Process Clause of the Fifth Amendment requires notice and an opportunity to be heard before a neutral decision-maker when a fundamental liberty interest is deprived. *J.G. v. Warden*, 501 F.Supp.3d 1331, 1334 (M.D. Ga., Nov. 16, 2020); *Padilla v. U.S. Immigration & Customs Enforcement*, 704 F.Supp.3d 1163, 1173 (W.D. Wash. Dec. 4, 2023). While specific regulations may not explicitly mandate pre-revocation notice or a hearing, due process may demand such procedures, especially when the revocation of an OSUP directly leads to detention. The adequacy of procedures is determined by the *Mathews v. Eldridge* balancing test. *Lopez v. Decker*, 978 F.3d 842, 852 (2nd Cir. 2020).

Courts have repeatedly held that ICE’s failure to comply with §§ 241.4(l)(1) and 241.13(i)(3) when revoking an OSUP—by withholding contemporaneous written reasons and failing to provide a prompt informal interview—both violates those regulations and deprives the supervisee of due process, rendering the resulting detention unlawful. See, e.g., *Funes v. Francis*, --- F. Supp. 3d ----, 2025 WL 3263896, at *22–24 (S.D.N.Y. 2025) (agency’s refusal to provide same-day written reasons and any interview violated § 241.4(l) and due process); *Zhang v. Genalo*, --- F. Supp. 3d ----, 2025 WL 3733542, at *10–12 (S.D.N.Y. 2025) (vague, post-hoc attempt to tie

revocation to a long-expired travel document did not satisfy the regulatory notice requirement and denied due process); *Constantinovici*, 806 F. Supp. 3d at 1162–64 (27-day delay in notice and no interview held inconsistent with “upon revocation”/“promptly” language and due process).

Petitioner was detained without a prior hearing or a meaningful opportunity to challenge the basis for his OSUP revocation, despite a long history of perfect compliance with reporting requirements for over two. The *Mathews* factors weigh heavily in favor of Petitioner. His liberty interest is profound, and the risk of erroneous deprivation is high when the decision to revoke an OSUP and impose detention is made without a neutral decision-maker or an opportunity for the individual to present their case. *Lopez v. Decker*, 978 F.3d 842, 853 (2nd Cir. 2020). Internal agency reviews, which Respondents seem to rely upon, have been found insufficient to satisfy due process for prolonged detention. Furthermore, Petitioner was prevented another fundamental due process right in access to counsel. While Mr. Bogdani accompanied him to the February 24, 2026 check-in, he requested the informal interview at that time while counsel was still present with Mr. Chen and was refused an opportunity to do so. Instead, the agency stated they will conduct the interview at a later time after Chen would be transferred to a remote detention facility, interfering with the right to access counsel and communicate with him and preventing Mr. Bogdani from effectively representing Mr. Chen. Chen is also not fluent in English, which compounds the language barrier and increase the due process violations in the revocation.

District courts applying *Mathews* to OSUP revocations have uniformly found that the three factors favor the supervisee and require, at minimum, a pre-deprivation custody hearing before a neutral IJ. In *Tzafir*, the court held that (1) the liberty interest was “profound” after 16 years on supervision; (2) the risk of erroneous deprivation was “high” where ICE relied on conclusory “changed circumstances” language and had no executable travel document; and (3) the

government's incremental interest in detaining a long-compliant supervisee without a hearing was low, given that custody hearings are routine and minimally burdensome. 2026 WL 81759, at *4–5. *Diego Francisco* reached the same result, emphasizing disputed facts about supposed OSUP “conditions” and the complete absence of any hearing before re-detention. 2026 WL 295211, at *4–6.

Federal courts confronting materially similar OSUP revocations and re-detentions have applied *Mathews* and held that due process requires exactly the pre-deprivation immigration-court hearing Petitioner seeks. In *Hernandez-Parrilla v. Anda-Ybarra*, No. 2:25-cv-01224-MIS-KK (D.N.M. Dec. 15, 2025), the court granted a preliminary injunction enjoining DHS from detaining the petitioner “without first holding a pre-deprivation hearing before an immigration judge at which the government must prove by clear and convincing evidence changed circumstances rendering the petitioner a danger or flight risk.” Likewise, in *E.A. T.-B. v. Warden* and *Francois v. Warden*, the Eastern District of California ordered that petitioners “may not be re-detained until after an immigration court hearing is held (with adequate notice) to determine whether detention is appropriate,” making clear that the hearing must precede re-detention and must be before a neutral IJ. And in *Gregorio Ordoñez v. Bondi*, No. 25-cv-2356, 2025 WL 3852444, at *4 (W.D. Wash. Dec. 19, 2025), the court squarely rejected the argument Respondents make here—that the absence of an express statutory or regulatory pre-arrest hearing requirement ends the inquiry—holding that “even if a particular statute or regulation does not require a pre-arrest hearing in these specific circumstances, this does not mean such a hearing is not required by Due Process.”

Recent decisions in OSUP/bond-revocation cases, including *Moises V. A. v. Wofford*, No. 1:25-cv-01080-JLT-EPG, 2025 WL 2581576 (E.D. Cal. Sept. 5, 2025), *Elias C.M. v. Warden of the Golden State Annex Detention Facility*, No. 1:25-cv-01081-JLT-EPG, 2025 WL 2581577

(E.D. Cal. Sept. 5, 2025), *Kervis v. Chestnut*, No. 4:25-cv-01205-RK, 2025 WL 2430268 (W.D. Mo. Oct. 7, 2025); *Ericka P.S. v. Chestnut*, No. 4:25-cv-01206-RK, 2025 WL 2430269 (W.D. Mo. Oct. 7, 2025); *Juan Keeny Peralta Ayala v. Wofford*, No. 1:25-cv-01082-JLT-EPG, 2025 WL 2581578 (E.D. Cal. Sept. 5, 2025) follow the same pattern: they recognize that years of successful community supervision significantly strengthen the liberty interest; that arrests or pending misdemeanors, without conviction, do not by themselves establish “violations” or “changed circumstances” justifying summary re-detention; and that where DHS nonetheless seeks to re-detain a long-released supervisee, due process requires a hearing before a neutral decisionmaker—typically an Immigration Judge—at which DHS bears the burden to prove dangerousness or flight risk by clear and convincing evidence. That growing body of authority confirms that, under *Mathews*, the combination of Mr. Chen’s decades of compliance, the absence of any new criminal conviction or violation of supervision, and the summary revocation of his OSUP without any prior IJ hearing is constitutionally deficient, and that the appropriate remedy is to enjoin Respondents from re-detaining him absent just such a pre-deprivation immigration-court hearing.

The government’s interest in summarily detaining a long-term resident with no history of non-compliance, particularly when China has refused to issue travel documents for 25 years, is minimal compared to Petitioner’s fundamental liberty interest. The absence of a regulatory requirement for pre-revocation notice or hearing does not negate the constitutional demand for due process. The Court’s Order to Show Cause (ECF 33) requires Respondents to justify the detention, and their failure to provide constitutionally adequate process for the OSUP revocation means they have not met this burden. Therefore, this ground does not warrant dismissal because the absence

of a specific regulatory requirement for pre-revocation notice or hearing does not negate the constitutional demand for due process, which Respondents failed to provide.

C. Respondents Also Failed to Provide a Hearing Upon OSUP Revocation as Required by their Regulations

By revoking Mr. Chen's OSUP summarily at a check-in—while his retained immigration counsel was physically present—without providing the mandatory informal interview or any comparable hearing, ICE not only denied him the regulatory process that §§ 241.4(l)(1) and 241.13(i)(3) require, but also effectively nullified his ability to invoke the right to counsel embedded in those procedures. The absence of any scheduled interview meant that neither Mr. Chen nor his attorney had a formal forum in which to present evidence, challenge the asserted basis for revocation, or develop a record for HQPDU review. In a context where the regulations expressly contemplate that detained noncitizens may be accompanied and assisted by counsel at post-revocation interviews and custody determinations, ICE's decision to dispense with the interview altogether operated as a practical interference with Mr. Chen's right to the assistance of counsel in contesting his sudden loss of liberty.

Accordingly, even apart from ICE's use of the wrong regulatory framework, Respondents' failure to provide the required informal interview and their effective sidelining of Petitioner's counsel at the moment of revocation independently constitute violations of 8 C.F.R. §§ 241.4(l)(1) and 241.13(i)(3) and an *Accardi*-type denial of procedural due process, further supporting a finding of a substantial likelihood of success on the merits and the need for injunctive relief.

As a remedy for materially indistinguishable violations, courts across the country have ordered outright release, not merely prospective compliance, where ICE has unlawfully re-detained a long-term supervisee in violation of its own post-order regulations. In *Roble v. Bondi*, 2025 WL 2443453 (D. Minn. Aug. 25, 2025), the court ordered the petitioner's "release from

custody as a remedy for ICE's illegal re-detention." In *Nguyen v. Hyde*, 2025 WL 1725791, at 5 (D. Mass. June 20, 2025), the court held that because ICE had violated "its own regulations," the petitioner's "detention is unlawful and ... his release is appropriate." And in *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017), the court found that ICE's failure to follow §§ 241.4 and 241.13 deprived the petitioner of due process and ordered his release "pursuant to the conditions in [his] preexisting Order of Supervision." Those decisions confirm that where, as here, ICE has both invoked the wrong regulatory framework and disregarded the mandatory interview and notice requirements, the appropriate remedy is immediate restoration of the status quo ante: release from custody and reinstatement of the long-standing OSUP rather than a mere promise of better process going forward.

V. THE COURT IS AUTHORIZED TO GRANT A TRO SIMILAR TO OR THE SAME AS THE ULTIMATE RELIEF

The purpose of preliminary relief "is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits." *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974). Where "the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, [such as] by returning to the last uncontested status quo between the parties." *Id.* (citing *Ross-Whitney Corp. v. Smith Kline & French Labs.*, 207 F.2d 190 (9th Cir. 1953)); see also *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012) ("A preliminary injunction can also act to restore, rather than merely preserve, the status quo, even when the nonmoving party has disturbed it.").

In crafting habeas relief, courts facing materially identical OSUP-revocation violations have repeatedly rejected the government's request for a process-only remedy and ordered

immediate release, emphasizing that § 2243 requires courts to “dispose of the matter as law and justice require” when a petitioner is “in custody in violation of the Constitution.” See, e.g., *Funes*, 2025 WL 3263896, at *24–25 (ordering release and declining to allow ICE to supply belated notice and an interview while Funes remained detained); *Zhang*, 2025 WL 3733542, at *16 (joining “many other courts in this circuit” in ordering release as the remedy for a § 241.4(l) violation); *Constantinovici*, 806 F. Supp. 3d at 1164–65 (granting § 2241 and ordering release where ICE violated §§ 241.4(l)(1) and 241.13(i)(3)); *Diego Francisco*, 2026 WL 295211, at *6–7 (same, and barring re-detention absent adequate notice and a pre-deprivation IJ hearing).

This is known as the status quo ante, “the last peaceable uncontested status . . . before the dispute developed.” *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 798 n.3 (10th Cir. 2019). “To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions,” but “[s]uch an injunction restores, rather than disturbs, the status quo ante.” *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1013 (10th Cir. 2004) (McConnell, J., concurring); see *Overstreet v. El Paso Disposal, LP*, 625 F.3d 844 (5th Cir. 2010) (holding district court did not abuse its discretion in ordering reinstatement of striking workers as preliminary relief because it “restores the status quo ante” “by returning the workforce to pre-strike level of Union support”).

Further, the Eleventh Circuit has specifically held that where government officials are alleged to have not followed relevant regulations, “the remedy for a procedural due process violation is restoration of the status quo ante and an injunction barring deprivation of the plaintiff’s rights without the requisite procedural protections.” *Ray v. Foltz*, 370 F.3d 1079, 1085 n.8 (11th Cir. 2004) (citation omitted).

In *L.M. v. Noem*, No. 2:25-cv-02194-RFB-BNW, at 26 (D. Nev. Jan 14, 2026), where the petitioners' parole was revoked without notice and they were subsequently taken into detention, the court found that their "request for immediate release is necessary to restore the status quo ante litem . . . and prevent irreparable harm while allowing for their claims to be adjudicated on the merits."

This principle also holds outside of the immigration context. In *Kelso v. U.S. Department of State*, 13 F. Supp. 2d 1, 12 (D.D.C. 1998), the court held that plaintiff showed a strong likelihood of success on the merits of his claim that the State Department violated its own regulations in revoking his passport and ordered the Department to return the plaintiff's passport "to the British authorities who possessed it prior to the revocation decision" "[b]ecause the purpose of a preliminary injunction is to preserve the status quo ante."

Further, the Tenth Circuit specifically allows for "a preliminary injunction that affords the movant substantially all the relief he may recover at the conclusion of a full trial on the merits" upon "the movant satisfy[ing] an even heavier burden of showing that the four [*Winter* factors] weigh heavily and compellingly in movant's favor." *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096, 1098-99 (10th Cir. 1991); *see also GTE Corp. v. Williams*, 731 F.2d 676, 679 (10th Cir. 1984).

Even if the Court did not grant a TRO and moved to the merits to grant the ultimate relief, expedited adjudication is warranted for § 2241 cases. A court entertaining a habeas petition "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted," that the writ or order to show cause "shall be returned within **three** days unless for good cause additional time, not exceeding twenty days, is allowed," and that "[w]hen the writ or order is returned **a day shall be set for hearing, not more than five days after the**

return unless for good cause additional time is allowed,” after which “[t]he court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.” 28 U.S.C. § 2243. Courts have read this as a congressional command that habeas petitions be prioritized and resolved swiftly; for example, in *In re Habeas Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003), Judge Weinstein explained that § 2243 “requir[es] prompt decisions,” noting that Congress “has decreed that those in state custody who seek federal review of their state court convictions are entitled to a prompt ruling” and that habeas was historically intended to provide a “swift and imperative remedy in all cases of illegal restraint or confinement,” quoting *Fay v. Noia*, 372 U.S. 391, 400 (1963).

VI. CONCLUSION AND PRAYER FOR RELIEF

The Court's Order to Show Cause (ECF 33) placed a clear burden on Respondents to justify Petitioner Chen's detention. Respondents have failed to meet this standard, offering arguments that are either jurisdictionally barred, unripe, or procedurally deficient. Given this failure, the burden has shifted to Respondents to demonstrate the legality of Petitioner's detention, which they have not done. Petitioner's ongoing detention constitutes an unlawful restraint on his liberty, creating a live controversy that demands immediate judicial intervention and his release.

Petitioner faces immediate and irreparable harm from his continued unlawful detention. He suffers from a broken collarbone and chronic pain, requiring ongoing medical care including chiropractic sessions and pain medication. His family, including his wife and two U.S. citizen children, depend on him for financial and emotional support. Petitioner has resided in the U.S. for over 25 years, owns and operates a buffet restaurant, and is an active church member in Auburn, Alabama. His detention severs these deep community and family ties, disrupts his livelihood, and jeopardizes his health, none of which can be adequately remedied by monetary damages.

The balance of hardships overwhelmingly favors Petitioner. His continued detention inflicts severe and irreparable harm on him and his family, threatening his health, financial stability, and fundamental liberty interests. In contrast, the government faces minimal hardship from releasing an individual who has maintained perfect compliance with an Order of Supervision for over two decades and whose removal to China has been refused for over 25 years. The public interest is served by upholding due process and ensuring that individuals are not unlawfully detained, especially when they pose no flight risk or danger to the community.

Granting a Temporary Restraining Order (TRO) would preserve the status quo that existed for over two decades: Petitioner living and working in his community under an Order of Supervision. He has consistently complied with all reporting requirements and conditions. The revocation of his OSUP and subsequent detention on February 24, 2026, disrupted this long-standing, compliant status quo. A TRO would reinstate his OSUP and release him, thereby restoring the stable conditions that prevailed prior to his unlawful detention.

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Grant Petitioner a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and order his immediate and unconditional release from custody;
3. Issue an immediate Temporary Restraining Order and a Preliminary Injunction that:
 - (a) Orders Respondents to immediately release Petitioner from custody and reinstate his Order of Supervision under the terms and conditions that existed prior to his unlawful detention on February 24, 2026;
 - (b) Enjoins Respondents, their officers, agents, and employees from revoking or altering the conditions of Petitioner's OSUP in the future absent strict compliance

with all governing statutes and regulations, including a showing of specific, individualized changed circumstances making his removal significantly likely in the reasonably foreseeable future, supported by a written decision from a duly authorized official and preceded by advance, individualized written notice and a pre-deprivation hearing before a neutral decision-maker—such as a Judge or other adjudicator acting through the custody-review procedures set out in 8 C.F.R. §§ 241.4 and 241.13—rather than Respondents or this Court in the first instance;

4. Award Petitioner his reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and other applicable law; and
5. Grant such other and further relief as this Court deems proper or equitable under the circumstances.

Respectfully Submitted,

This 20th day of March, 2026.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner (pro hac vice)
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2026, this Foregoing Document was served, via electronic delivery to Respondents' counsel via CM/ECF system which will forward copies to Counsel of Record.

/s/ Karen Weinstock
Karen Weinstock
Attorney for Petitioner
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com