UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ROBERTO VILORIO,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 25-cv-10254 (KMK)

RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

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The Government respectfully submits this memorandum of law in opposition to the petition for writ of habeas corpus, ECF No. 1 ("Pet."), filed by petitioner Carlos Roberto Vilorio ("Petitioner") on December 11, 2025.

PRELIMINARY STATEMENT

Petitioner is a native and citizen of El Salvador. In June 2024, while released on bond, Petitioner received a final order of removal. In December 2025, U.S. Immigration and Customs Enforcement ("ICE") detained him due to the final removal order while it seeks his removal. Petitioner now challenges his detention as unlawful.

Petitioner's arguments are without merit. His challenge to his detention based on his Convention Against Torture ("CAT") 8 C.F.R. § 1208.17 deferral order is misplaced. The CAT deferral prohibits Petitioner from being removed to El Salvador; it does not mean he cannot be detained and removed to a third country. The Court should also reject Petitioner's claim that his removal is not reasonably foreseeable at this time and therefore violates due process. Aside from being premature, Petitioner does not meet his threshold burden of demonstrating that there is good cause to believe that there is no significant likelihood of removal in the reasonably foreseeable future, which he premises only on the mistaken assertion that ICE is attempting to terminate his CAT deferral. ICE is not.

Petitioner's remaining claims should be rejected as well. His separate due process challenge on the basis of alleged government interference, even if true, does not rise a due process violation. Finally, his claims under the Administrative Procedure Act ("APA") and the *Accardi* doctrine, fail for the reasons stated above, because they are premised on the false assertion that ICE is attempting to terminate his CAT deferral.

Accordingly, the Court should deny the Petition.

BACKGROUND

I. Legal Background

A. Removal Orders and CAT Relief

The INA authorizes the removal of classes of aliens from the United States. 8 U.S.C. §§ 1182, 1227. The removal process can include a hearing before an immigration judge, an appeal to the Board of Immigration Appeals, and review in a court of appeals. 8 U.S.C. §§ 1229a, 1252. Many aliens facing removal have an opportunity to apply for relief or protection from removal. *See, e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(a) (cancellation of removal); 8 U.S.C. § 1229b(b) (adjustment of status).

In the INA, Congress has enacted provisions governing the determination of the country to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1) and (2); *Jama v. ICE*, 543 U.S. 335, 338-341 (2005). For certain aliens arriving in the United States (Section 1231(b)(1)) and then all other aliens (Section 1231(b)(2)), the statute establishes sequences of countries where an alien shall be removed, subject to certain disqualifying conditions (*e.g.*, the receiving country does not consent). For instance, under Section 1231(b)(2), possible countries of removal can include a country designated by the alien, the alien's country of citizenship, the alien's previous country of residence, the alien's country of birth, and the country from which the alien departed for the United States. *See* 8 U.S.C. § 1231(b)(2). Importantly, under both Section 1231(b)(1) and (b)(2), Congress provided a fail-safe option in the event that other options do not work: An alien may be removed to any country willing and able to accept him. *See* 8 U.S.C. § 1231(b)(1)(C)(iv) and (2)(E)(vii).

Congress has also provided means for an alien to challenge removal to a particular country where he may face persecution or torture. As relevant here, the alien may seek withholding or deferral of removal under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty

Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85—a treaty that addresses the removal of aliens to countries where they would face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681-822; 8 C.F.R. § 208.31, 241.8(e). "Torture" is defined as an "extreme form of cruel and inhuman treatment," which intentionally inflicts "severe pain or suffering" on another for an improper purpose, and is performed "at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity." 8 C.F.R. § 208.18(a)(1) and (a)(2); *see, e.g.*, *Del Carmen Amaya De Sicaran v. Barr*, 979 F.3d 210, 218-219 (4th Cir. 2020) (torture is a "high bar").[1]

CAT protection does not alter whether an alien may be removed; it affects only *where* an alien may be removed. That is, a grant of CAT protection "means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country." *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). The United States remains free to remove that alien "at any time to another country where he or she is not likely to be tortured." *Id.* (citation omitted); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987).

B. Detention Pursuant to a Final Removal Order

Pursuant to 8 U.S.C. § 1231, ICE has authority to detain an alien subject to a final removal order. 8 U.S.C. § 1231(a)(2); *see Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) (noting that § 1231 "governs the detention, release, and removal of individuals 'ordered removed'"); *accord Wang v. Ashcroft*, 320 F.3d 130, 145 (2d Cir. 2003). An order of removal is final upon the earlier of "(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the

[1] An alien may also seek "withholding of removal" under 8 U.S.C. 1231(b)(3), which prohibits the removal of an alien to a country where he would face persecution because of a protected trait.

expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals." 8 U.S.C. § 1101(a)(47)(B); *see Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (interpreting § 1101(a)(47)(B) to provide that "[a]n order of removal is 'final' upon the earlier of the BIA's affirmance of the immigration judge's order of removal or the expiration of the time to appeal the immigration judge's order of removal to the BIA.").

Section 1231 establishes a 90-day "removal period" within which the government generally must effectuate removal after a removal order becomes final, and during which the government "shall" detain the alien pending removal. *See* 8 U.S.C. § 1231(a)(1)(A), (a)(2)(A). When the government is unable to secure removal within the removal period, while detention is no longer mandatory, the government "may" continue to detain four categories of aliens: (1) "inadmissible" aliens; (2) aliens who are "removable" for national-security or foreign-policy reasons or for violating entry conditions, status requirements, or certain criminal laws; (3) aliens who pose a "risk to the community," and (4) aliens who are "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6). Aliens who fall outside those categories (or who fall within them but are not detained) are subject to supervision upon release. 8 U.S.C. § 1231(a)(3), (a)(6).

The Supreme Court addressed ICE's authority to detain aliens after their removal orders become final in *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Court held that 8 U.S.C. § 1231(a)(6) authorizes immigration detention for a period reasonably necessary to accomplish the alien's removal from the United States. 533 U.S. at 699-700. The Supreme Court recognized six months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. *Id.* at 701. However, the Court did not require the government to release every alien whose detention exceeds six months. Rather, the Court held:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Id.[2] Thus, the Supreme Court placed the initial burden on the alien to demonstrate the lack of a likelihood of removal; if the alien fails to meet that burden, or if the government rebuts the alien's showing, then continued detention is permissible. *See id.*

Aliens detained under § 1231(a) pending removal are not entitled to bond hearings before an immigration judge. Instead, such aliens receive periodic custody reviews from ICE, and following *Zadvydas*, the government promulgated regulations requiring ICE to conduct custody reviews for aliens whose post-removal-order detention has exceeded six months. *See* 8 C.F.R. §§ 241.4, 241.13. Before deciding to release any alien, ICE must conclude that removal is not foreseeable, that the alien is not a danger to the community, and that the alien is not likely to flee or to violate the conditions of release. *Id.* § 241.4(e). Where an alien subject to a final removal order has provided to ICE "good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future," 8 C.F.R. § 241.13(a), ICE may choose to release an alien subject to "appropriate conditions of

[2] In *Zadvydas*, the concern of "indefinite detention" arose where the petitioners could not be removed from the United States because their home countries would not accept their repatriation, yet the government continued to detain them. *See Zadvydas*, 533 U.S. at 684-86. But "indefinite" does not merely mean of uncertain duration; the concerns animating *Zadvydas* pertained to aliens in a "removable-but-unremovable limbo," *Jama v. ICE*, 543 U.S. 335, 347 (2005), where an alien's confinement is "not limited, but potentially permanent," *Zadvydas*, 533 U.S. at 691.

supervision." 8 C.F.R. § 241.13(c), (g)(1).[3] Ultimately, if an alien who is subject to a final removal order is released from custody, the law mandates that such an alien be placed on an order of supervision. *See, e.g.*, 8 U.S.C. § 1231(a)(6) (an alien subject to a final removal order, "if released, shall be subject to the terms of supervision in paragraph (3)"); *id.* § 1231(a)(3) (if an alien is not removed and is released from detention, "the alien, pending removal, shall be subject to supervision under regulations prescribed by the attorney general"); *accord Zadvydas*, 533 U.S. at 695-96 (noting that an alien subject to a final removal order may either be detained or, if released, subject to "supervision under release conditions that may not be violated").

II. Relevant Factual Background

Petitioner is a native and citizen of El Salvador. *See* Declaration of Deportation Officer William Rodriguez ("Rodriguez Decl."), ¶ 3. Petitioner originally entered the United States at an unknown time or place, and while here, he pled guilty in December 2005 to New York Penal Law ("NY PL") 265.01 (01) for Criminal Possession of a Weapon, in Suffolk County District Court and was given three years probation. *Id.* ¶ 4. In June 2006, Petitioner was charged with NY PL 205.30 Resisting Arrest, which was reduced to NY PL 240.20 (07) Disorderly Conduct in Suffolk County District Court and on February 15, 2008, Petitioner pled guilty to the charge of Disorderly Conduct NY PL 240.20 (07), and paid a fine. *Id.* ¶¶ 5–6.

[3] Regulations also address when ICE may revoke an order of supervision issued to an alien who was released while subject to a final removal order. Specifically, ICE "may 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." 8 C.F.R. § 241.13(i)(2). ICE also has "discretion" to "grant a stay of removal or deportation for such time and under such conditions as [it] may deem appropriate." 8 C.F.R. § 241.6(a).

In September 2007, Petitioner was arrested by ICE. *Id.* ¶ 7. At that time ICE had identified petitioner as having a gang affiliation; he was placed in removal proceedings and was granted voluntary departure in November 2007. *Id.* ¶¶ 7–11. Pursuant to that order, was thereafter released by ICE, and he voluntary returned to El Salvador at that time. *Id.* Petitioner has claimed in applications filed with the immigration court that he re-entered on or about August 10, 2009. *Id.* ¶ 12.

In August 2016, Petitioner was arrested for Driving While Intoxicated and Operating Motor Vehicle with .08 of 1% Alcohol or More in Blood. *Id.* ¶ 13. In October 2016, Petitioner was arrested by ICE during a vehicle stop and was detained by ICE from October 25, 2016 to February 24, 2017. *Id.* ¶¶ 14–20. On October 25, 2016, ICE issued and personally served Petitioner with a Notice to Appear ("NTA") to commence new removal proceedings against Petitioner. *Id.* ¶ 15. The NTA charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), which applies to aliens present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* Petitioner was released from custody after the immigration court granted him bond of $23,000. *Id.* ¶ 20.

On June 12, 2024, while released on bond, Petitioner was ordered removed to El Salvador by an immigration judge who concurrently granted a Deferral of Removal Under Article III of the Convention Against Torture ("CAT"), country-specific relief preventing his removal to El Salvador. *Id.* ¶ 23. Petitioner, despite reserving appeal, did not appeal this decision by the Immigration Judge, and so the order became final. *Id.*

On December 3, 2025, Petitioner was arrested by ICE during a vehicle stop in Hauppauge, New York. *Id.* ¶ 24. He was arrested and was transported to 535 Federal Plaza, Central Islip, New York for processing. *Id.* He was then transferred to Nassau County Correctional Center on

December 5, 2025, and then to Orange County Jail ("OCJ") on December 8, 2025. *Id.* ¶¶ 26–27. He remains detained at OCJ pending removal. *Id.* ¶ 27. ICE does not dispute that Petitioner has a CAT deferral to is not seeking to removal him to El Salvador; instead, ICE is actively pursuing Petitioner's removal to a third country. *Id.* ¶ 28.

III. Petitioner's Habeas Petition

On December 11, 2025, Petitioner filed this habeas action. ECF No. 1. Petitioner alleges that his detention violates his CAT deferral, *Zadvydas*, and the *Accardi* doctrine. Pet. at 7. Petitioner also alleges that ICE failed to provide any individual determination of custody and "interfered with the attorney-client relationship," in violation of his due process rights. *Id.* Finally, Petitioner also brings claims under the Administrative Procedure Act ("APA"). *Id.* Ultimately, Petitioner seeks an order from this Court directing ICE to immediately release him. *Id.*

ARGUMENT

As explained below, Petitioner's claims are misguided. They are largely based on the mistaken premise that ICE is seeking to remove him to El Salvador, notwithstanding his grant of CAT relief that prevents removal to that country. As explained, ICE is not seeking Petitioner's removal to El Salvador, and so his claims on that ground fail. Further, the INA lawfully permits the government to detain Petitioner while it seeks his removal to a third country. Nothing in the habeas petition provides any legal support for Petitioner's claims. The petition should be denied.

I. ICE is Authorized to Detain Petitioner Pending Removal

A. Petitioner's Detention Does Not Violate CAT

First, Petitioner's claim that his detention is in violation of CAT is misguided and without merit. Petitioner asserts that he was detained "despite a valid CAT deferral and without initiating mandatory termination procedures. This violates federal law and renders detention unlawful." Pet. at 7. ICE does not dispute that Petitioner has a valid CAT deferral to El Salvador, nor is ICE attempting to terminate Petitioner's CAT deferral or remove him to El Salvador. A valid CAT deferral does not mean that Petitioner cannot be detained, nor does it mean, as Petitioner argues, that "[r]emoval is legally impossible." *Id.* Petitioner can in fact be detained and removed to a third country while having a valid CAT deferral. *See* 8 U.S.C. § 1231(b); *see also, e.g.*, *A.A.M v. Andrews, et al.*, No. 25 Civ. 01514-DC-DMC (HC), 2025 WL 3485219, at *8 (E.D. Cal. Dec. 4, 2025) ("DHS has the authority to remove a noncitizen to any other country as permitted by 8 U.S.C. § 1231(b)") (internal citations and quotations omitted). Therefore, any claim by Petitioner that he cannot be detained while holding a CAT deferral and that mandatory termination provisions have not been followed are without merit.[4]

Petitioner is subject to a final order of removal and his detention is statutorily authorized under 8 U.S.C. § 1231(a)(6). Rodriguez Decl. ¶ 23. Because Petitioner's order of removal was final in 2024, Petitioner is now outside of the 90-day removal period during which the government "shall detain" the individual. 8 U.S.C. § 1231(a)(2). However, 8 U.S.C. § 1231(a)(6) allows ICE to detain Petitioner because he is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i); that is, Petitioner was neither admitted nor paroled in the United States upon entry. As such, ICE has statutory

[4] Similarly, Petitioner's reliance on *Noem v. Garcia*, 145 S. Ct. 1017, 225 L. Ed. 2d 655 (2025) is misplaced as ICE is not "disregarding" Petitioner's CAT deferral. Pet. at 5 ¶ 5.

authority to detain Petitioner to effectuate his removal from the United States pursuant to his valid removal order, and Petitioner has not shown that he is entitled to release at this time.

That ICE seeks to remove Petitioner to a third country does not alter this analysis. Section 1231(b)(1)(C) authorizes Petitioner's removal to a third country and detention to carry out that removal is lawful under section 1231(a)(6). Petitioner points to no authority that prevents ICE from detaining him while seeking his removal to a third country.

B. Petitioner's Detention Comports With Due Process

Petitioner has suffered no due process violations. His detention comports with *Zadvydas* because he has not been detained for more than six months, and his removal remains reasonably foreseeable. Petitioner received a custody determination upon detention, and finally, any alleged government interference does not come close to the standard required for finding a due process violation.

1. Petitioner's Detention Comports With *Zadvydas*

Petitioner was detained on December 3, 2025, one week before filing his petition. Rodriguez Decl. ¶ 24. ICE is actively pursuing his removal to a third country. *Id.* ¶ 28. Petitioner's detention comports with the framework set forth by the Supreme Court in *Zadvydas*, through which a due process challenge to post-final order detention must be analyzed. Petitioner does not face indefinite detention and will not be removed to El Salvador. Petitioner has not been detained six months, let alone one month, and so he has no due process claim.

Petitioner's due process claim fails because any *Zadvydas* challenge cannot be raised until Petitioner has been detained for six-months in post-final order custody; Petitioner here has been detained for only 13 days. *See, e.g.*, *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1332-33 (11th Cir. 2021) (explaining that "[i]f after six months he is still in custody and has not been removed from

the United States, then he can challenge his detention under section 1231(a). But until then, his detention is presumptively reasonable under *Zadvydas*"); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011) ("challenge to [alien's] continued post removal order detention is premature" because he "has not been in post-removal-order detention longer than the presumptively reasonable six-month period set forth in *Zadvydas*"); *Rodney v. Mukasey*, 340 F. App'x 761, 764-65 (3d Cir. 2009) (challenge to post-removal-order detention within the six-month presumptively reasonable period under *Zadvydas* premature); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (per curiam) ("[The] six-month period thus must have expired at the time [the petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*."); *Rodriguez-Guardado v. Smith,* 271 F. Supp. 3d 331, 335 (D. Mass. Sept. 22, 2017) ("As petitioner has been detained for approximately two months as of this date, the length of his detention does not offend due process."); *Julce v. Smith*, No. 18-cv-10163-FDS, 2018 WL 1083734, at *5 (D. Mass. Feb. 27, 2018) (deeming habeas petition "premature at best" as it was filed after three months of post-final order detention); *Mathews v. Philips*, No. 13-CV-339 (JTC), 2013 WL 5288166, at *5 (W.D.N.Y. Sept. 18, 2013) ("Because the detention challenged by the habeas petition in this action is still presumptively reasonable under *Zadvydas*, the duration of petitioner's detention cannot be found to constitute a violation of his [due process] rights.").

Petitioner's challenge nonetheless fails. As noted above, the Supreme Court has held that aliens subject to final removal orders may be detained for as long as is "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. The Court concluded that six months was a presumptively reasonable period of time for detention in order to execute a removal order. *Id.* at 701. While it found that this period was presumptively reasonable, the "6-month presumption, of course, does not mean that every alien not removed must be released

after six months." *Id.* An alien challenging a post-removal-order detention bears the initial burden of "provid[ing] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," after which "the Government must respond with evidence sufficient to rebut that showing." *Id.*

Petitioner has not met his threshold burden of showing that there is good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. He offers only a conclusory statement that his removal is not reasonably foreseeable, because his CAT deferral renders his removal "legally impossible." Pet at 6. As discussed above, his CAT deferral does not mean that he cannot be removed to a third country, so removal remains possible. Further, "mere assertions that removal is unforeseeable do not satisfy this burden." *Juma v. Mukasey*, No. 09 Civ. 3122 (PAC) (AJP), 2009 WL 2191247, at *3 (S.D.N.Y. July 23, 2009) (quoting *Zadvydas*, 533 U.S. at 701); *see Callender v. Shanahan*, 281 F. Supp. 3d 428, 434-35 (S.D.N.Y. 2017) (allegations that an embassy "will not issue a travel document in the foreseeable future" or that "government has been unable to obtain a travel document to date" do not satisfy petitioner's burden).

As recognized by the Supreme Court, "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating "reasonableness" of detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. And here, it does.

Accordingly, this is not a case where the detention is "indefinite and potentially permanent." *Demore*, 538 U.S. at 567. Petitioner's "'due process rights are not jeopardized by his continued detention as long as his removal remains reasonably foreseeable.'" *Portillo v.*

Decker, No. 21 Civ. 9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022) (quoting *Wang*, 320 F.3d at 146)); *accord Leslie v. Mule*, 423 F. App'x 29, 30 (2d Cir. 2011) (summary order).

In light of the fact that ICE is actively pursuing Petitioner's removal to a third country, his detention pending removal does not violate due process. Moreover, ICE will conduct post-order custody reviews as required by its regulations, and Petitioner remains free at any time to submit a release request to ICE.

2. Petitioner's Allegations of Government Interference Do Not Rise to the Level of a Due Process Violation

Petitioner also claims that ICE violated his due process by interfering "with the attorney-client relationship, [making] coercive and misleading statements," and "conceal[ing] Petitioner's whereabouts. Pet. at 7. "A Fifth Amendment due process violation may occur when government interference in an attorney-client relationship results in ineffective assistance of counsel or when the government engages in outrageous misconduct." *United States v. Marshank*, 777 F. Supp. 1507, 1519 (N.D. Cal. 1991). The statements Petitioner alleges the ICE officer made, even if true, meet neither of these standards. Petitioner has not alleged nor demonstrated that he received ineffective assistance of counsel— "When the government interferes in a defendant's relationship with his attorney to the degree that counsel's assistance is rendered ineffective," *Marshank*, 777 F. Supp. at 1519. Whatever the ICE officer said to him, Petitioner has not been prejudiced or deprived access to counsel; to the contrary, Petitioner's counsel filed the instant Petition on Petitioner's behalf. *See United States v. Sanin*, 113 F.3d 1230, 1997 WL 280083, *4 (2d Cir. 1997) (no government intrusion because "not only was the [intrusion upon attorney client privilege] unintended by the government ... [the defendant] has been unable to point to any prejudice he has suffered"). Neither would these statements constitute "outrageous misconduct." To meet this

standard, "the government conduct at issue must be fundamentally unfair and shocking to the universal sense of justice, mandated by the Due Process Clause of the Fifth Amendment." *Marshank*, 777 F. Supp. at 1523 (quoting *United States v. Russell,* 411 U.S. 423, 431–32 (1973) (internal quotation marks removed)). Again, even assuming the statements made by the ICE officer were true, they do not rise to the level of "shocking to the universal sense of justice," in fact, at least some of the alleged statements are true ("deferral" is not in fact the same thing as "withholding" and deferral also does not mean Petitioner cannot be detained). "Outrageousness in the constitutional sense is not established merely by showing obnoxious police behavior or even flagrant misconduct." *United States v. DiGregorio*, 795 F. Supp. 630, 635 (S.D.N.Y. 1992).

II. Petitioner's Remaining Claims Lack Merit

Petitioner's remaining claims fail. First, Petitioner claims that ICE's actions are "arbitrary, capricious, and contrary to law under the APA." Pet. at 7. But he cannot sustain a claim under the APA because the APA is not the proper vehicle to challenge the validity of one's detention. The Supreme Court recently held that, for an action bringing claims under statutes including the APA that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such "claims fall within the 'core' of the writ of habeas corpus and thus *must be brought in habeas*." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (emphasis added). Here, Petitioner seeks release from custody. This is a core habeas claim—that fails on the merits for the reasons already discussed—and it is simply not cognizable under the APA. Petitioner's challenge to detention premised on the APA, then, must fail.

In addition, an APA claim is only viable where there is no other adequate remedy. *See* 5 U.S.C. § 704 ("[a]gency action made reviewable by statute and final agency action for which there

is no other adequate remedy in a court are subject to judicial review"); *see also J.G.G.*, 604 U.S. at 674 (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' . . . habeas corpus, not the APA, is the proper vehicle here."). Here, Petitioner has identified alternative avenues for remedy via a habeas petition. Accordingly, Petitioner's APA claim should be denied. Further, His APA claims are merely repackaged habeas claims that fail for the reasons explained herein.

Second, Petitioner claims that ICE has violated *U.S. ex rel.Accardi v. Shaughnessy*, 347 U.S. 260 (1954), "[b]y failing to follow binding regulations governing the termination of CAT deferral and detention procedures, ICE acted ultra vires." Pet. at 7. "*Accardi* and its progeny teach generally that federal agencies are required to follow their own regulations and some other formally adopted procedures, including those that govern exercises of an agency's discretion." *Diaz v. Rosen*, 986 F.3d 687, 690 (7th Cir. 2021). Petitioner argues that ICE failed to follow its own regulations and CAT. This argument repeats the one Petitioner makes in his first claim and should be rejected for the reasons above. Simply put, ICE is not seeking Petitioner's removal to El Salvador, and so there the basis for his claims is mistaken and wrong.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioners' petition for writ of habeas corpus in its entirety.

Dated: New York, New York
December 17, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c) and Rule II.B of Judge Karas's Individual Rules of Practice, the undersigned counsel hereby certifies that this memorandum complies with the word-count limitations of this Court's Local Civil Rules and Judge Karas's Individual Rules. As measured by the word processing system used to prepare it, and excluding the items set forth in the rule, there are 4,761 words in this memorandum.

/s/ Mallika Balachandran
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Assistant United States Attorney