UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

FRANCISCO RODRIGUEZ ROMERO, ET AL.	**CIVIL ACTION**
VERSUS	**NO. 25-1106-JWD-EWD**
SCOTT LADWIG, ET AL.	

MEMORANDUM IN OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION BY DEFENDANTS SCOTT LADWIG, TODD LYONS, KRISTI NOEM, AND PAMELA BONDI[1]

On its face, Petitioners' request for injunctive relief should be denied because the relief sought—i.e., immediate release from detention—mirrors the ultimate relief they seek in their habeas petition.[2] The purpose of preliminary injunctions and temporary restraining orders is "to preserve the status quo prior to the court's consideration of a case on its merits, and they are not intended as a substitute for relief on the merits of the case." *Pegues v. Hooper*, No. 23-270-JWD-SDJ, 2023 WL 3574793, at *1 (M.D. La. May 19, 2023) (citing *Federal Savings & Loan Insurance Corp. v. Dixon*, 835 F.2d 554, 558 (5th Cir. 1987); *Shanks v. City of Dallas, Texas*, 752 F.2d 1092, 1096 (5th Cir. 1985)). Injunctive relief is not designed as a mechanism to circumvent the "normal procedures of litigation" by trying a case on the "merits through a motion for injunctive relief." *Id.* This Court has held as such repeatedly. *See id.*; *see also Truman v. LeBlanc*, No 16-339-JWD-RLB, 2017 WL 1734041, at *2 (M.D. La. May 2, 2017); *Edwards v. Lavespere*, No. 21-59-JWD-SDJ, 2021 WL 2386198, at *1 (M.D. La. June 10, 2021).

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[1] Federal Respondents are Scott Ladwig, Todd Lyons, Kristi Noem and Pamela Bondi. The undersigned do not represent Kevin Jordan, Warden, Louisiana ICE Processing Center, as Warden Jordan is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to Warden Jordan, as he is detaining the Petitioners at the request of the United States.

[2] Doc. 7 at 1; Doc. 7-1 at 1, 7, 20, 28, and 29; Doc. 1, ¶¶ 10, 144, 155, and 161.

The same is true in a habeas petition. "The very basis of a habeas action is to challenge the statutory or constitutional basis for detention." *Rodrdiguz v. Lyons, et al*., No. 25-1926, 2025 WL 3553742, at *1 (W.D. La. Dec. 8, 2025) (citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and … the traditional function of the writ is to secure release from illegal custody.")). "Seeking injunctive relief that mirrors the relief requested in the habeas petition is nothing more than a motion to decide my habeas petition now." *Id.*

Petitioners' motion is not about maintaining the status quo until the Court is able to determine the merits of their habeas petition. Instead, Petitioners seek merits relief—i.e., "an Order requiring their immediate release from Respondents' custody."[3]

District courts—particularly district courts within the Fifth Circuit—have routinely denied requests for injunctive relief in immigration habeas cases when the requested expedited relief is the same as the relief sought in the petition. *See id.; Alessandro da Silva v. Heriberto Tellez, et al.*, No. 25-1960, 2025 WL 3553041, at *1 (W.D. La. Dec. 8, 2025) (same); *Anselmo Flores Perez v. Kristi Noem, et al.*, No. 25-2920, 2025 WL 3532430, at *6 (N.D. Tex. Nov. 14, 2025), *report and recommendation adopted*, No. 25-2920-K, 2025 WL 3530951 (N.D. Tex. Dec. 9, 2025) ("Insofar as [the Petitioner] seeks the same ruling on the merits as the habeas petition, the undersigned finds that the TRO motion improperly seeks ultimate relief."); *see also Chambliss v. Ashcroft,* No. 04-298-D, 2004 WL 718998, at *2 (N.D. Tex. Apr. l, 2004), *report and recommendation adopted,* No. 04-CV-298D, 2005 WL 724206 (N.D. Tex. Mar. 30, 2005) (recommending preliminary injunction be denied and habeas briefing be expedited because the preliminary relief was "the same as the relief sought through the habeas petition").

[3] Doc. 7 at 1.

There's no reason for the Court to allow "Petitioner[s] to commit an end-run around the habeas process." *Rodrdiguz*, 2025 WL 3553742, at *1.[4] So even before reaching whether the injunctive relief factors weigh for or against injunctive relief, on its face, Petitioners' request for injunctive relief should be denied.

I. Factual and Procedural Posture

For the limited purpose of resolving this motion, Federal Respondents accept the following factual allegations from the petition as true. Petitioners are all currently detained at the Louisiana ICE Processing Center and are subject to final removal orders authorizing the U.S Immigration and Customs Enforcement (ICE) to remove them from the United States.[5] Petitioners Romero, Chomat, and Gaston Sanchez are Cuban citizens, older than 60 years of age, who were subject to Orders of Supervision ("OSUPs") before their respective detentions on August 6, 2025, June 25, 2025, and June 25, 2025.[6] Petitioner [redacted] is an [redacted] citizen who was also subject to an OSUP prior to his detention on July 17, 2025.[7] Petitioner [redacted] cannot be deported to [redacted] because he was granted a deferral of removal to [redacted] under the Convention Against Torture (CAT).[8]

No matter how Petitioners color it, each of them have a criminal, and often violent, history. As stated in their petition, in 1990, Petitioner Romero was convicted of involuntary manslaughter

[4] Federal Respondents submit that the proper mechanism to resolve the habeas petition is using the standard briefing schedule that has been used in recent habeas cases in the Middle District of Louisiana. *See, e.g.*, *Najafabadi v. U.S. Immigration and Customs Enforcement*, et al., No. 25-1016-JWD-EWD, Doc. 4 (M.D. La. November 17, 2025) (allowing 30 days for the Respondents to respond to the habeas petition followed by 30 days for Petitioner to file a reply brief). The nature of this case is no different than the flood of other habeas cases that the Middle District of Louisiana has received recently, most of which involve the same request for relief as here—release from detention. The same timeline should apply.
[5] Doc. 1 ¶¶ 9, 14-17, 34, 52, 69, 81, 103-104.
[6] *Id.* ¶¶ 14-16.
[7] *Id.* ¶ 17.
[8] *Id.*

in Puerto Rico and sentenced to ten years;[9] in 1998, Petitioner Chomat pled guilty to attempted murder and lesser charges in exchange for a lower sentence of five years in 2005;[10] Petitioner Gaston Sanchez was convicted of attempted robbery, attempted felony murder in the second degree, and fleeing law enforcement, for which he was sentenced to 23 years;[11] and in 2017, Petitioner [redacted] pled guilty [redacted].[12]

On December 11, 2025, Petitioners filed a verified petition for writ of habeas corpus under 28 U.S.C. § 2241 and a motion for temporary restraining order/preliminary injunction.[13] On Friday, December 12, 2025, at 2:54 p.m., the Court issued an Order directing the Federal Respondents to respond to Petitioners' motion by Monday, December 15th, at 4:00 p.m.[14] The Court also sua sponte directed the Government that it "shall not remove the petitioners from this district or the country while the instant motion is pending and is being considered."[15] For the following reasons, Federal Respondents contend that Petitioners are not entitled to injunctive relief.

II. Legal Standard

A. Standard for the Extraordinary Relief of a Temporary Restraining Order or Preliminary Injunction

A party seeking both a temporary restraining order and preliminary injunctive relief must satisfy the four-factor standard for obtaining a preliminary injunction. At all times, the burden remains with Petitioners to establish each of the four elements. Petitioners must establish: (1) a

[9] *Id.* ¶ 51.
[10] *Id.* ¶ 68.
[11] *Id.* ¶ 82.
[12] *Id.* ¶ 101.
[13] Doc. 1, 7.
[14] Doc. 12.
[15] *Id.*

substantial likelihood of prevailing on the merits; (2) a substantial threat of irreparable injury if the injunction is not granted; (3) the threatened injury outweighs any harm that will result to the non-movant if the injunction is granted; and (4) the injunction will not disserve the public interest. *See Ridgely v. Fed. Emergency Mgmt. Agency*, 512 F.3d 727, 734 (5th Cir. 2008). Critically, a temporary restraining order "is an extraordinary remedy," meaning that "it should be granted only if Plaintiff clearly carries his burden of persuasion as to all four factors." *Atakapa Indian de Creole Nation v. Edwards*, No. 19-28-SDD-EWD, 2019 WL 245917, at *2 (M.D. La. Jan. 17, 2019). The same is true for a preliminary injunction. *Cf. Pegues v. Hooper*, No. 23-270-JWD-SDJ, 2023 WL 3574793, at *1 (M.D. La. May 19, 2023).

B. Limited Scope of Habeas Relief

Because Petitioners seek a writ of habeas corpus under 28 U.S.C. § 2241,[16] only limited relief is available in this case. The Fifth Circuit has adopted a "bright-line rule" that "if a favorable determination of the prisoner's claim would not automatically entitle him to accelerated release, then the proper vehicle is a civil rights suit," not a petition for a writ of habeas corpus. *Melot v. Bergami*, 970 F.3d 596, 599 (5th Cir. 2020). Therefore, "a civil rights suit pursuant to 42 U.S.C. § 1983 for a state prisoner or under *Bivens* for a federal prisoner is 'the proper vehicle to attack unconstitutional conditions of confinement and prison procedures.'" *Id.* (quoting *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997)); *cf. also Maxwell v. Thomas*, 133 F.4th 453, 454 (5th Cir. 2025) (holding that the relief of "transfer to a halfway house or home confinement" is unavailable in habeas). This rule also applies for immigration detention. *See Tahtiyork v. DHS*, No. 20-1196, 2021 WL 389092, at *3 (W.D. La. Jan. 12, 2021), *report and recommendation adopted*, 2021 WL 372573 (W.D. La. Feb. 3, 2021); *Roman v. Garcia*, No. 6:24-CV-01006, 2025

[16] Doc. 1 at 1.

WL 1441101, at *4-5 (W.D. La. Jan. 29, 2025), *report and recommendation adopted sub nom. Lobaton v. Garcia*, 2025 WL 1440056 (W.D. La. May 16, 2025).

Notably, "[u]nconstitutional conditions of confinement—even conditions that create a risk of serious physical injury, illness, or death—do not warrant release." *Burk v. Rios*, No. EP-25-CV-199-LS, 2025 WL 2524138, at *3 (W.D. Tex. Sept. 3, 2025). "Even allegations of mistreatment that amount to cruel and unusual punishment do not nullify an otherwise lawful incarceration or detention." *Id.* "Accordingly, district courts dismiss § 2241 petitions challenging conditions of confinement for lack of subject matter jurisdiction." *Id.*

III. Law and Argument

Petitioners cannot establish that they are likely to succeed on the merits of their habeas petition because they are properly detained under 8 U.S.C. § 1231(a), none of the Petitioners have met the six-month mark that the Supreme Court has held is presumptively reasonable in *Zadvydas v. Davis*, and, even assuming the agency's compliance with revocation regulations fell short, a writ of habeas corpus is not an appropriate remedy.

Further, there is nothing extraordinary about this case warranting a temporary restraining order or a preliminary injunction. Although Petitioners decorate their petition and motion with details about their health, family, and ancillary commentary regarding the Louisiana ICE Processing Center, this case presents a typical habeas challenge to the legal basis for Petitioners' detention. There are no extraordinary circumstances justifying their immediate release.

A. Petitioners are Not Likely to Succeed on the Merits of their Claims.

1. Petitioners' Detention is Lawful, and They Have Not Established That There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future.

a. Relevant Removal Statutes Under the Immigration and Nationality Act

Because the Petitioners are subject to a final order of removal, the statutory basis for their detention is 8 U.S.C. § 1231. That statute requires the Government to "remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A). The statute further provides that the Attorney General "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

However, even after the 90-day removal period, the alien's release from detention is not guaranteed. "An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in" 8 U.S.C. § 1231(a)(3). 8 U.S.C. § 1231(a)(6). The decision regarding release is discretionary. The Supreme Court has held that 8 U.S.C. § 1231(a)(6) does not require bond hearings for aliens after six months of detention or require the Government to bear the burden of proving by clear and convincing evidence that an alien poses a flight risk or a danger to the community. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022).

Importantly, the alien has the burden to "demonstrate[] to the satisfaction of the Attorney General or her designee that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States." 8 C.F.R. § 241.4(d)(1). "Before making any recommendation or decision to release a detainee," the pertinent reviewing officials "must conclude that: (1) Travel documents

for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest; (2) The detainee is presently a non-violent person; (3) The detainee is likely to remain nonviolent if released; (4) The detainee is not likely to pose a threat to the community following release; (5) The detainee is not likely to violate the conditions of release; and (6) The detainee does not pose a significant flight risk if released." *Id.* § 241.4(e). Further, 8 C.F.R. § 241.4(f) sets forth eight factors, which "should be weighed in considering whether to recommend further detention or release of a detainee . . . ."

Through 8 U.S.C. § 1231(b)(1)-(2), Congress has provided for the determination of a country to which an alien with a final order of removal may be removed. But should it become infeasible to remove an alien to the country designated in their final order of removal, Congress has provided a fail-safe option: permitting removal to "another country whose government will accept the alien into that country." 8 U.S.C. § 1231(b)(2)(E)(vii); *cf. also id.* § 1231(b)(1)(C)(iv). Removals under this provision are referred to as "third-country removals."

b. *Zadvydas v. Davis*

In *Zadvydas v. Davis,* 533 U.S. 678 (2001), the Supreme Court analyzed the substance and purpose of 8 U.S.C. § 1231. In doing so, the *Zadvydas* Court acknowledged that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689. But recognizing the Executive Branch's constitutional responsibility over foreign policy, the Court thought "it practically necessary to recognize some presumptively reasonable period of detention" and settled on a six-months. *Id.* at 700-701. Notably, the Court explained that "[t]his 6-month presumption . . . does not mean that every alien not removed must be released after six months."

Id. at 701. Even after the six-month period of presumptive reasonableness has run, "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.* The Court thus endorsed a two-step approach: "*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." *Id.* at 701. (emphasis added). So, this six-month period of time is a "presumptively reasonable period of detention" after which an alien may "provide[] good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

c. Because Petitioners Filed Their Petition within the Presumptively Reasonable 6-Month Period of Their Detention, Their Motion and Petition Are Premature and Should be Denied.[17]

The six-month period of time set forth in *Zadvydas* is a "presumptively reasonable period of detention" after which an alien may "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. At least two Fifth Circuit cases have denied petitions for writ of habeas corpus as premature where the period of post-removal-order detention is under six months. *Agyei-Kodie v. Holder*, 418 F. App'x. 317, 318 (5th Cir. 2011) ("any challenge to [petitioner's] continued post removal order detention is premature"); *see also Chance v. Napolitano*, 453 F. App'x. 535 (5th Cir. 2011) (same). Many

[17]Accepting the Petitioners' allegations regarding their detention as true, Federal Respondents acknowledge that the Petitioners were previously detained by ICE. However, Federal Respondents maintain that the relevant time period at issue should be based on when each of the Petitioners were re-detained in 2025. *See Guerra-Castro v. Parra*, No. 25-22487, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) (In finding that his petition was premature and that "his two-month detention [was] lawful under *Zadvydas*" the court did not count or factor in petitioner's previous time in ICE detention) (citations omitted)).

recent district court cases in the Western District of Louisiana, Southern District of Texas, and the Northern District of Texas have followed this line of reasoning.[18]

Petitioners filed their petition and motion on December 11, 2025.[19] But, accepting the Petitioners' allegations regarding their redetention as true—solely for the purposes of resolving the request for injunctive relief—none of them have been detained in ICE custody for more than six-months. Specifically, Petitioner Romero has been detained since August 6, 2025, or less than five months;[20] Petitioners Chomat and Gaston Sanchez have been detained since June 25, 2025, less than six months;[21] and Petitioner [redacted] has been detained since July 17, 2025, or less than five months.[22] So, considering the Fifth Circuit decisions in *Agyei-Kodie v. Holder and Chance v. Napolitano*, as well as the recent district court decisions within the Fifth Circuit, the Petitioners' habeas petition is premature and should be dismissed. Accordingly, Petitioners are unlikely to succeed on the merits of their claim of their "prolonged detention."[23]

d. Petitioners Cannot Satisfy Their Initial Burden of Showing that Their Removal is Not Reasonably Foreseeable

Petitioners "bear[] the initial burden of proof in showing that no such likelihood of removal exists." *Andrade v. Gonzales*, 459 F. 3d 538, 543 (5th Cir. 2006). And, in a case such as this, where "a detained person [] brings a *Zadvydas* claim before the presumptively reasonable six-

[18] *Enwonwu v. Joyce*, No. 6:25-CV-0232, 2025 WL 2112712, at *3 (W.D. La. May 14, 2025); *Qasem A. v. DHS ICE*, No. 3:25-CV-841-L-BK, 2025 WL 2816816, at *2 (N.D. Tex. July 18, 2025); *Etadafimue v. Noem*, No. 1:25-CV-00282, 2025 WL 2252585, at *1 (W.D. La. July 11, 2025), *report and recommendation adopted*, No. 1:25-CV-00282, 2025 WL 2248942 (W.D. La. Aug. 6, 2025); *Kakhidze v. Venegas*, No. 1:25-CV-136, 2025 WL 2411229, at *1 (S.D. Tex. Aug. 20, 2025); *Kim v. Warden, S. Louisiana ICE Processing Ctr.*, No. 6:25-CV-00912, 2025 WL 2451094, at *1 (W.D. La. Aug. 8, 2025), *report and recommendation adopted*, No. 6:25-CV-00912, 2025 WL 2444595 (W.D. La. Aug. 25, 2025); *Mbaye v. US Immigr. & Customs*, No. 6:25-CV-01449, 2025 WL 3213782, at *1 (W.D. La. Oct. 7, 2025), *report and recommendation adopted*, No. 6:25-CV-01449, 2025 WL 3209030 (W.D. La. Nov. 17, 2025).
[19] Doc. 1, 7.
[20] Doc. 1 ¶¶ 14, 61.
[21] *Id.* ¶¶ 15-16, 79, 89.
[22] *Id.* ¶¶ 17, 113.
[23] Doc. 7 at 21.

month period has run [he] will have a harder time establishing a right to relief." *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025). If such a claim is brought before the presumptively reasonable six-month period has run, then instead of simply "provid[ing] [a] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future . . . they must *prove* 'that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* (emphasis original) (quoting *Zadvydas*, 533 U.S. at 701). Petitioners' unsubstantiated argument that they "have a 'good reason to believe' that there is no significant likelihood of removal in the reasonably foreseeable future"[24] without more, will not satisfy their burden requiring the dismissal of their petition. *See Zadvydas*, 533 U.S. at 701 ("*After* this [presumptively reasonable] 6-month period [of detention], 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.") (emphasis added).

2. Petitioners' Regulatory Violation Claims Do Not Establish a Basis for Habeas Relief.

Petitioners also are not likely to succeed on their claims that they should be released because the agency did not comply with its regulations when it revoked their orders of supervision. Habeas is not a proper remedy for any such purported regulatory violations.

As the Federal Respondents understand Petitioners' allegations, they claim that the United States Immigration and Customs Enforcement did not follow parts of the agency's regulations when it revoked each Petitioners' order of supervision and decided to detain them.[25] Petitioners do not challenge their final orders of removal authorizing the United States Immigration and

[24] Doc. 7-1 at 24.
[25] *See* Doc. 7.

Customs Enforcement to remove them from the United States, nor could they. *Cf.* 8 U.S.C. § 1252(a)(5), (b)(9) (channeling review of final orders of removal to the U.S. courts of appeals). Instead, Petitioners allege that they are similarly situated because, after their final orders of removal were issued, the United States Immigration and Customs Enforcement initially detained them but eventually allowed them to be placed on an order of supervision. They each allege that recently the United States Immigration and Customs Enforcement revoked their order of supervision and have detained them for several months at the Louisiana ICE Processing Center. Petitioners Chomat and Gaston Sanchez claim they has been detained since June 25, 2025;[26] Romero since August 6, 2025;[27] and [redacted] since July 17, 2025.[28] They allege that the revocation of their order of supervision and their detention are unlawful because revocation occurred "in violation of ICE's binding procedural regulations."[29] Because the agency did not comply with regulatory provision, Petitioners claim that they should be released.

Specifically, Petitioners point to two regulations—8 C.F.R. § 241.4(l) and 8 C.F.R. § 241.13(i)—that they allege were violated by the agency.[30] They cite cases from outside of the Fifth Circuit, none of which are binding on this Court, for their position that courts "across the country" have ordered the "immediate release" of non-citizen detainees when "ICE revokes an OSUP in violation of its own regulations[.]"[31] They allege that the Federal Respondents did not follow four regulations. They claim that: (1) their order of supervision was revoked by someone other than the Executive Director, (2) they were not provided notice, (3) they were not provided an informal interview, and (4) and their order of supervision was revoked without a finding of a

[26] Doc. 1 ¶¶ 15, 16, 79, 89.
[27] *Id.* ¶¶ 14, 61.
[28] *Id.* ¶¶ 17, 113.
[29] Doc. 7-1 at 15.
[30] *Id.*
[31] *Id.*

"changed circumstances" that there is "significant likelihood" that they may be "removed in the reasonably foreseeable future."[32]

Given the timeframe for the Respondents to provide their response to the Petitioners' request for injunctive relief, it is unclear when, if, or on what basis each Petitioner was given a notice of revocation of their order of supervision and an informal interview. That timeline and the agency's plans to effectuate removal of each Petitioner can be established through the normal course of a habeas petition, which is typically already on an expedited schedule. The recent practice in the Middle District of Louisiana has been allowing 21 or 30 days from service of the petition and the Court's scheduling order for the Respondents to respond to a petition for habeas corpus. *See, e.g.*, *Najafabadi v. U.S. Immigration and Customs Enforcement*, *et al.*, Case No. 25-1016-JWD-EWD, Doc. 4 (M.D. La. November 17, 2025) (filed by a single petitioner and allowing 30 days for the Respondents to respond to the habeas petition followed by 30 days for Petitioner to file a reply brief). But even on its face, the Petitioners are unlikely to succeed on the merits of their claim regarding regulation violations.

"The law is clear that the government may revoke supervision to enforce a removal order." *Vongdasy v. Harper*, No. 25-1589, 2025 WL 3091706, at *1 (W.D. La. Oct. 23, 2025); *see also* 8 C.F.R. § 241.4(l)(2)(iii). Petitioners seem to suggest that they were entitled to notice and an informal interview *before* their orders of supervision were revoked and they were detained.[33] Their petition states that "[t]o the extent Petitioners received a Notice of Revocation of Release at all, such notices were not provided *until the Petitioners were already in custody*, and contained standardized, boilerplate phrases, rather than personalized reasons for revocation, as the

[32] *Id.* at 17-20.
[33] *See* Doc. 1 ¶ 140.

regulations and due process require[.]"[34] Notice and an informal interview occurring before detention are not included in or required by the regulations. "Under the plain language of the regulation, notice and an informal interview are not prerequisites to detention." *Nguyen v. Noem,* No. 25-057, 2025 WL 2737803, at *6 (N.D. Tex. Aug. 10, 2025). "The regulation contemplates that these procedures will occur after detention because notice is to happen 'upon revocation' and the initial informal interview occurs 'after [the alien's] return to [ICE] Custody.'" *Id.* (quoting 8 C.F.R. § 241.13(i)(3)). The regulation does not provide a timeframe of when notice and an informal interview should be provided "upon revocation." *Surovtsev v. Noem, et al.*, No. 25-160, 2025 WL 3264479, at *4 n.2 (N.D. Tex. Oct. 31, 2025) ("The Court notes that there is no particular timeline in which these procedures must happen. The procedures all take place after the alien is detained, so they are not precursors to detention.") (referencing 8 C.F.R. § 241.13(i)(3)).

But even accepting Petitioners' allegations as true (at this point) that the agency fell short, they ultimately still are not entitled to habeas relief. In the Fifth Circuit, "[h]armless error applies in immigration cases generally." *Id.* at *4 (citing *Rangel-Betancourt v. Barr*, 820 F. App'x 253, 255 (5th Cir. 2020); *Enriquez-Gutierrez v. Holder*, 612 F.3d 400, 407 (5th Cir. 2010) (further citations omitted)). "The same is true for an agency's procedural violations." *Nguyen*, 2025 WL 2737803, at *5. The party asserting error bears the burden of demonstrating substantial prejudice. *See Molina v. Sewell*, 983 F.2d 676, 678 (5th Cir. 1993) ("To prove that administrative proceedings should be invalidated for violation of regulations, an alien must show substantial prejudice."); *see also Surovtsev*, 2025 WL 3264479, at *4

[34] *Id.* (emphasis added).

And habeas is a specific and limited form of relief that is only available to correct unlawful imprisonment or custody based on the denial of fundamental constitutional rights. *Nouansisouhak v. Noem*, No. 25-CV-2222-K-BW, 2025 WL 3165161, at *5 (N.D. Tex. Oct. 9, 2025), *report and recommendation adopted*, No. 25-CV-2222-K-BW, 2025 WL 3161730 (N.D. Tex. Nov. 12, 2025) Habeas "may not be used to correct mere irregularities or errors of law." *Id.* at *5 (N.D. Tex. Oct. 31, 2025) (citing *Wooten v. Bomar*, 267 F.2d 900, 901 (6th Cir. 1959)). "[T]he failure of officials 'to follow their own policies, without more, does not constitute a violation of due process,' making a writ of habeas corpus generally not available." *Nguyen,* 2025 WL 2737803, at *6 (quoting *Iruegas-Maciel v. Dobre*, 67 F. App'x 253, 253 (5th Cir. 2003)).

In reviewing habeas petitions with similar facts as the Petitioners—i.e., seeking release because of the agency's alleged noncompliance with revocation regulations—several district courts have concluded that ICE's violation of procedural requirements was harmless; thus, did not amount to substantial prejudice. And even if it *was* harmful, the agency's noncompliance with the procedural requirements of 8 C.F.R. § 241.4(l) and 8 C.F.R. § 241.13(i) was not a constitutional violation to make a petitioner entitled to habeas relief. *Id.*; *see also Nouansisouhak*, 2025 WL 3165161, at *6 (same); *Surovtsev,* 2025 WL 3264479, at *4-5.

Such as in *Surovtsev v. Noem*, the court reviewed a habeas petition with facts similar to Petitioners in this case. There, the plaintiff had a final order of removal. *Surovtsev,* 2025 WL 3264479, at *1. He initially was detained but later was released from ICE custody on an order of supervision. *Id.* The petitioner was on an order of supervision for ten years, until August of 2025, when he was re-detained during "a routine ICE check-in." *Id.* Same as the Petitioners here, in *Surovtsev*, the petitioner sought habeas relief and claimed that he should be released because the

agency did not provide him with notice, an informal interview, and an opportunity to respond. *Id.* at *8.

The *Surovtsev* court attempted to wade through dueling statements of whether notice and an informal interview were provided by the agency. *Id.* *3. Ultimately the court decided that the dueling statements were inconsequential because, even if a violation of 8 C.F.R. §§ 241.4(l) and 241.13(i)(3) had occurred, the violation was harmless. In fact, for the purpose of that court's analysis, it assumed the respondents had "yet to follow the procedural requirements of sections 241.4(l) and 241.13(i)(3)." *Id.* at *4. The court reasoned any purported violation was harmless because, through the filing of the petition, the petitioner had an opportunity to obtain counsel, make a full argument to a federal court regarding his detention, submit evidence, and respond to the respondents' argument. *Id*. The court concluded that the petitioner had "received more than a full notice and an opportunity to be heard, even if the respondents failed to conform to the regulations set forth in section 241.4(l)(1), [and] any error is now harmless in light of the procedures in this case." *Id.*

The same is true here. Petitioners have had an opportunity to obtain counsel and file their habeas petition, in which they make full arguments as to why they believe their detention is unlawful. *See id.* And, once briefing on the underlying petition is ordered and filed, they will have an opportunity to respond to the Respondents' explanation as to why the revocation of their order of supervision and their detention is lawful.

Thus, even if the Respondents did not comply with the revocation regulations to a tee, that error is harmless considering the procedures that will be afforded to Petitioners in this habeas proceeding. *See Nguyen,* 2025 WL 2737803, at *5 ("Given that [the Petitioner] has had more than a full notice and opportunity to be heard, the Court concludes that, even if the respondents failed

to abide by Section 241.13(i)(3), the error is now harmless in light of the procedures in this case, and there is no basis for which the Court could justify ordering [the Petitioner's] immediate release.").

Regarding the availability of habeas relief, the court in *Surovtsev* went one step further and decided that, even if any noncompliance with the regulations *was* harmful, a writ of habeas corpus is not the appropriate remedy. *Surovtsev,* 2025 WL 3264479, at *4. That court and others have reasoned that habeas "may not be used to correct mere irregularities or errors of law." *Id.* at *5 (quoting *Wooten v. Bomar*, 267 F.2d 900, 901 (6th Cir. 1959)). Those regulations—i.e., 8 C.F.R. § 241.4(l) and 8 C.F.R. § 241.13(i)—were "mere administrative regulation[s], not required as the result of the Constitution." *Nguyen,* 2025 WL 2737803, at *6 (citing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272-73, (2010) (distinguishing between ordinary procedural violations and constitutional due-process violations)).

Like the petitioner in *Surovtsev*, the Petitioners here do not explain how they had any constitutional right to notice and an informal interview, nor do they explain why the alleged failure to follow those regulatory provisions render their detention itself unlawful—particularly since notice and an informal interview are not prerequires to detention. *See Nouansisouhak,* 2025 WL 3165161, at *6; *Nguyen,* 2025 WL 2737803, at *6; *Surovtsev,* 2025 WL 3264479, at *5.

Again, writs of habeas corpus are only available to correct the denial of fundamental constitutional rights, not to correct irregularities or errors of law. Alleged violations of procedural requirements do not amount to a denial of a fundamental constitutional right that makes habeas an available remedy. *Surovtsev,* 2025 WL 3264479, at *5. ("[Petitioner] does not allege that ICE's violations of the procedural requirements amount to a constitutional violation. Accordingly, habeas relief is not warranted on these grounds.") (internal citation omitted). Thus, even if the

Petitioners are correct that the agency's compliance with regulations fell short, they have not established an actual denial of a fundamental constitutional right that warrants habeas relief—especially considering the period of their detention being presumptively reasonable under *Zadvydas*.

B. Petitioners Have Not Met Their Burden to Show Imminent, Irreparable Injury.

Petitioners' primary allegation of irreparable injury is detention and the impact their detention has on their health and family.[35] By definition, that potential harm is at issue in every habeas case. Petitioners have otherwise "not explained what irreparable injury [they] face[] outside of the injuries addressed by the merits of [the] underlying habeas petition itself if [their] order is not granted . . . ." *Abdullah v. Bush*, 945 F. Supp. 2d 64, 67 (D.D.C. 2013) (denying a preliminary injunction to a detainee seeking habeas relief based on allegedly unlawful detention).

Petitioners face the same asserted irreparable harm, i.e., continued detention, as any habeas corpus petitioner in immigration custody and have not shown extraordinary circumstances warranting interim relief—especially here, where Petitioners are subject to final, executable orders of removal and have no right to remain in the United States. Petitioners' reasoning would "logically require the release of all individuals currently detained who are elderly or suffer from certain underlying medical conditions. The law does not require such a generalized result." *Sacal-Micha v. Longoria,* 449 F. Supp. 3d 656, 665 (S.D. Tex. 2020). Also, as mentioned above, to the extent Petitioners are challenging the conditions of their confinement regarding the alleged availability of medication, such relief is not found in habeas.

[35] Doc. 7-1 at 26-28.

C. The Balance of Hardships and the Public Interest Favor the Respondents.

It is well settled that "the public interest in enforcement of the immigration laws is significant." *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (collecting cases); *see Nken v. Holder*, 556 U.S. 418, 436 (2009) ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [the Illegal Immigration Reform and Immigrant Responsibility Act] established, and permits and prolongs a continuing violation of United States law.") (simplified).

Petitioners cannot succeed on the merits of their claims and the public interest in the execution of final removal orders is significant. The balancing of equities and the public interest thus weigh heavily against granting equitable relief in this case.

D. If the Court Issues a Temporary Restraining Order or Preliminary Injunction, Petitioners Should Be Required to Post Bond

To the extent the Court decides to issue the requested temporary restraining order or preliminary injunction, the Petitioners should be required to post bond under Rule 65(c) of the Federal Rules of Civil Procedure. That rule specifies that a court "may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c).

In this case, the purpose of the Petitioners' detention is to secure their presence for removal from the United States. *See Zadvydas*, 533 U.S. at 690. Federal Respondents therefore request that the Court require the issuance of a bond that is reasonably calculated to ensure the Petitioners' compliance with any conditions of release and their surrender for removal. The Government also

requests that the Court order the Petitioners to comply with the conditions of release set forth in 8 C.F.R. § 241.5 and any order of supervision thereunder.

IV. Conclusion

Petitioners seek an injunction granting them the same ultimate relief—i.e., immediate release from ICE detention—they seek on the merits of their habeas petition. Injunctive relief should not be used to seek relief that is "co-extensive" with the relief sought in the underlying lawsuit. *Edwards*, 2021 WL 2386198, at *1 ("[T]he relief sought by the plaintiff in his Motion is generally co-extensive with the relief sought in his Complaint.") (denying plaintiff's request for injunctive relief). Also, Petitioners have not "clearly carrie[d] [their] burden of persuasion" to demonstrate a likelihood of success on the merits, irreparable injury, a balance of the hardships in their favor, and a public interest favoring injunctive relief; therefore, their motion for a temporary restraining order and preliminary injunction should be denied. *Atakapa Indian de Creole Nation*, 2019 WL 245917, at *2.

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