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.	

RESPONSE TO PETITIONERS' WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 BY DEFENDANTS SCOTT LADWIG, TODD LYONS, KRISTI NOEM, AND PAMELA BONDI[1]

The material facts in this case are narrow and dispositive. Petitioners are four individuals with final orders of removal, currently detained at the Louisiana ICE Processing Center. In their habeas petition, Petitioners are not challenging their final orders of removal—nor could they. Instead, they contend that they have been detained longer than permissible to effectuate their removal under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and that the U.S. Immigration and Customs Enforcement did not comply with its procedural regulations when Petitioners' Orders of Supervision ("OSUP") were revoked.

Because Petitioners' challenge to their detention is premature, they cannot satisfy their burden of showing that their removal is not reasonably foreseeable, and Federal Respondents have provided evidentiary support to rebut any contention that there is no significant likelihood of removal in the reasonably foreseeable future, Petitioners' habeas petition should be dismissed. As for Petitioners' argument that ICE failed to comply with its own regulations when revoking their

[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.

OSUPs, such a claim does not establish a basis for habeas relief. Moreover, Petitioners have failed to show that they sustained any substantial prejudice which is required to support such a procedural due process claim in the Fifth Circuit. Petitioners' habeas petition should be dismissed on all counts.

I. Factual and Procedural Posture

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.[2] Petitioners Romero, Chomat, and Gaston Sanchez are Cuban citizens, older than 60 years of age, who were subject to OSUPs before their respective detentions on August 6, 2025, June 25, 2025, and June 25, 2025.[3] Petitioner [redacted] is an Ethiopian citizen who was also subject to an OSUP before his detention on July 17, 2025.[4] Petitioner [redacted] cannot be deported to Ethiopia because he was granted a deferral of removal to Ethiopia under the Convention Against Torture (CAT).[5]

No matter how Petitioners color it, each of them was a criminal. As stated in their petition, in 1990, Petitioner Romero was convicted of involuntary manslaughter in Puerto Rico and sentenced to ten years;[6] in 1998, Petitioner Chomat pled guilty to attempted murder and lesser charges in exchange for a lower sentence of five years in 2005;[7] Petitioner Gaston Sanchez was convicted of attempted robbery, attempted felony murder in the second degree, and fleeing law

[2] Doc. 1 ¶¶ 9, 14-17, 34, 52, 69, 81, 103-104.
[3] *Id.* ¶¶ 14-16.
[4] *Id.* ¶ 17.
[5] *Id.*
[6] *Id.* ¶ 51.
[7] *Id.* ¶ 68.

enforcement, for which he was sentenced to 23 years;[8] and in 2017, Petitioner [redacted] pled guilty to sexual abuse of a minor and was sentenced to 21 years in prison, with 10 years suspended.[9]

Under their final orders of removal, ICE is actively working to remove each Petitioner to another country and have made, and are continuing to make, good-faith efforts to execute their removal. For the three Cuban citizens, ICE originally intended on sending those individuals back to Cuba when they were detained. But Cuba refused to accept those Petitioners. Thereafter, ICE attempted to remove the three Cuban citizens to Mexico but discovered that Mexico began denying third country removal of person over 60 years of age.[10] However, on December 10, 2025, ICE learned that Mexico has changed its stance and is now accepting third country removals of individuals over the age of 60.[11]

As a result, it is likely that these three Cuban Petitioners could be removed to Mexico in the very near future. In sum, Petitioners would first need to be moved to a facility closer to the southwest land border, and shortly thereafter removal could be accomplished.[12] But, because of the stay issued in the current litigation, ICE has not yet transferred those Petitioners to another facility near the southwest land border to facilitate this removal.[13] Regarding Petitioner [redacted] who was detained on July 17, 2025, and is (like Petitioner Romero) still within the six-month period that the Supreme Court held is presumably reasonable in *Zadvydas*, he was served with a notice of removal at the time of his detention that indicates ICE's intention to remove him to Canada.[14]

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[8] *Id.* ¶ 82.
[9] *Id.* ¶ 101.
[10] *See* Ex. 1 ¶ 22; Ex. 4 ¶ 15.
[11] Ex. 2 ¶ 6; Ex. 3 ¶ 15; Ex. 4 ¶ 17.
[12] *Id.*
[13] *Id.*
[14] Ex. 5 ¶ 16; Ex. 9.

Regarding the instant litigation, 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.[15] 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.[16] 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."[17] The Court later ordered Federal Respondents to provide their response memorandum to the underlying petition by December 31, 2025.[18] For the following reasons, Petitioners' habeas petition should be dismissed.

II. Legal Standard

Because Petitioners seek a writ of habeas corpus under 28 U.S.C. § 2241,[19] 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*,

[15] Doc. 1, 7.
[16] Doc. 12.
[17] *Id.*
[18] Doc. 17.
[19] Doc. 1.

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 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

A. Petitioners' Detention is Lawful (Counts 2 and 3)[20]

1. 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,

[20] While Petitioners assert a separate claim for substantive due process (Count 2), that claim is effectively the same as their *Zadvydas* claim (Count 3). In both claims, Petitioners allege that there is no lawful reason to detain them because there is no likelihood of their removal in the reasonably foreseeable future, and such detention violates *Zadvydas* and their substantive due process rights. *See, e.g.*, Doc. 1 ¶¶ 126, 128, 147 (citing *Zadvydas* in Count 2). Accordingly, this section addresses Petitioners claims under *Zadvydas* (Count 3) and substantive due process (Count 2).

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."

2. *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. The case concerned two aliens—Kestutis Zadvydas and Kim Ho Ma—who filed petitions for habeas relief in district courts within the Fifth and Ninth Circuits, respectively. Mr. Zadvydas "ha[d] a long criminal record," a "history of flight," and a 1994 final deportation order to Germany. *Zadvydas*, 533 U.S. at 684. Germany refused to accept him, as did Lithuania and the Dominican Republic. *Id.* Despite these prolonged and fruitless efforts, the Fifth Circuit required Mr. Zadvydas to demonstrate his removal was "impossible" before he could secure habeas relief. *Id* at 702. Mr. Ma, a Cambodian national, had a history of "gang membership," was convicted of an "aggravated felony," and received a final order of removal, for which his 90-day removal period expired in "early 1999." *Id.* at 685. He argued his removal was unforeseeable in the absence of a repatriation treaty between the United States and Cambodia. The Ninth Circuit agreed without giving due consideration to future Government negotiations. *Id.* at 702.

The Supreme Court established a middle ground. Analyzing the substance and purpose of 8 U.S.C. § 1231, the Supreme Court first acknowledged that "post-removal-period detention [is limited] to a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. "[O]nce removal is no longer foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. 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 period of six months. *Id.* at 700-701. However, "[t]his 6-month presumption . . . does not mean that every alien not removed must be released after six months." *Id.* at 701. Rather, "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. 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.*

3. Because Petitioners Filed Their Petition within the Presumptively Reasonable 6-Month Period of Their Detention, Their Petition Is Premature and Should be Dismissed.[21]

The six-month period 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

[21] 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 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.[22]

Petitioners filed their petition on December 11, 2025.[23] So, at the time of the filing of their petition, none of the Petitioners had 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;[24] Petitioners Chomat and Gaston Sanchez have been detained since June 25, 2025,[25] less than six months;[26] and Petitioner [redacted] has been detained since July 17, 2025, or less than five months.[27] 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.[28]

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

Petitioners contend that their removal is not reasonably foreseeable because they have "significant diplomatic or legal barriers to removal" and "none have seen any progress in removal since being detained."[29] As for Petitioners Romero, Chomat, and Sanchez, they are arguing that

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[22] *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).

[23] Doc. 1.

[24] *Id.* ¶¶ 14, 61.

[25] Federal Respondents do acknowledge that at the time of this filing, both Sanchez and Chomat have been detained for a period of seven days beyond the presumptively reasonable six-month period.

[26] Doc. 1 ¶¶ 15-16, 79, 89.

[27] *Id.* ¶¶ 17, 113.

[28] Doc. 7 at 21.

[29] Doc. 7-1 at 23; Doc. 14 at 10. Petitioners also contend that their removal is not reasonably foreseeable because they have been detained for more than six months. Respondents disagree and have addressed that argument in the preceding subsection.

because of the diplomatic barriers between the United States and Cuba, their removal is not likely to occur in the reasonably foreseeable future.[30] This is not a novel argument. In fact, the Petitioners' argument is like the unsuccessful argument made by Mr. Ma in *Zadvydas*. Like Mr. Ma, Petitioners Romero, Chomat, and Sanchez are essentially arguing that due to limited diplomatic relations between their country of national origin, Cuba, and the United States, their removal is not reasonably foreseeable. Whereas Petitioner [redacted] asserts that because he has CAT protection from his country of national origin, Ethiopia, this legal barrier makes his removal equally unforeseeable. Neither of these arguments carry the Petitioners' burden.

It is true that foreseeability of removal is the touchstone of the *Zadvydas* inquiry, but that does not negate the fact that Petitioners still "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). "A mere 'lack of visible progress in the removal process does not in and of itself meet [a petitioner's'] burden of showing that there is no significant likelihood of removal.'" *Farashi v. Warden, South Texas ICE Processing Center*, 2025 WL 3654256, *3 (W.D. Tex. Dec. 15, 2025) (citations and internal quotations omitted). And, "[c]onclusory statements" asserted by the Petitioners, without more, are insufficient to satisfy this burden. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).[31]

Additionally, "a detained person who brings a *Zadvydas* claim before the presumptively reasonable six-month period has run will have a harder time establishing a right to relief." *Puertas-*

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[30] Doc. 1 at 37.

[31] *See also Abdimalikkhuzha v. US Immigration & Customs Enforcement*, No. 1:25-CV-00261, 2025 WL 1196008, at *1 (W.D. La. Apr. 23, 2025) (same and citing *Andrade*) ("[w]hen a petitioner comes forward with nothing more than conclusory allegations, he fails to shift the burden to the government under *Zadvydas*"); *Shah v. Wolf*, No. 3:20-CV-994-C-BH, 2020 WL 4456530, at *2-4 (N.D. Tex. July 13, 2020) ("Speculation and conjecture are not sufficient to carry this burden; nor is a 'lack of visible progress' in his removal sufficient in and of itself to show no significant likelihood of removal in the reasonably foreseeable future."), *report and recommendation adopted*, No. 3:20-CV-994-C-BH, 2020 WL 4437484 (N.D. Tex. Aug. 3, 2020).

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 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).

Federal Respondents acknowledge that, after Petitioner Chomat were detained, Cuba subsequently denied his repatriation.[32] Federal Respondents further accept Petitioners' allegation that Romero and Sanchez have not been accepted for removal by Cuba.[33] Respondents further acknowledge that Petitioner [redacted] has CAT protection from removal to his country of national origin, Ethiopia.[34] But the fact that one country—Cuba (as to Petitioners Romero, Chomat, and Sanchez) and Ethiopia (as to Petitioner [redacted])—has either refused to accept Petitioners or is not a legally viable removal country does not mean that there is no significant likelihood of Petitioners' removal in the reasonably foreseeable future. As previously addressed, in the event an alien cannot be removed to the country designated in their final order of removal, removal may be permitted 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).

Here, Respondents have made, and are continuing to make, good-faith efforts to execute Petitioners' removals, including:

[32] Ex. 4 ¶ 16; Doc. 1 ¶ 70.
[33] Doc. 1 ¶ 62, 87, 92.
[34] Ex. 5 ¶ 6.

- On November 13, 2025—well within the presumptively reasonable six-month detention period under *Zadvydas*—Respondents attempted to remove Petitioner Sanchez to Mexico.[35]
- On October 23, 2025—also within the presumptively reasonable six-month period—Respondents served a Notice of Removal on Petitioner Chomat specifying ICE's intention to remove him to Mexico.[36]
- On July 17, 2025, Respondents served a Notice of Removal on Petitioner [redacted] specifying ICE's intention to remove him to Canada. On December 7, 2025, ERO New Orleans followed up with ICE's headquarters component about ongoing efforts to remove Petitioner [redacted] to Canada.[37]

While it is true that, in November 2025, Mexico began denying third country removals of persons over 60 years of age, on December 10, 2025, ICE learned that Mexico has changed its stance and is now accepting third country removals of individuals over the age of 60.[38] Consistent with that change in policy, ICE intends to remove Petitioners Sanchez, Chomat, and Romero to Mexico in the near future.[39] So their removals are, by definition, reasonably foreseeable. And, while ICE does not currently have a projected removal date for Petitioner [redacted], Petitioners have not identified any impediment to ICE's plan to remove Petitioner [redacted] to Canada.

Nor did the Supreme Court in *Zadvydas* require absolute precision regarding removal plans; rather, the issue is whether removal is "reasonably foreseeable." *See, e.g., Joe v. Garland*,

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[35] Ex. 1 ¶ 23.
[36] Ex. 4 ¶ 15; Ex. 7.
[37] Ex. 5 ¶ 16; Ex. 9.
[38] Ex. 2 ¶ 6; Ex. 3 ¶ 15; Ex. 4 ¶ 17.
[39] Ex. 2 ¶ 6; Ex. 3 ¶ 15; Ex. 4 ¶ 17. In fact, due to the stay issued in the current case, ICE's Enforcement and Removal Operations has not transferred these Petitioners to another facility closer to the southwest land border yet to facilitate this removal. *See* Ex. 2 ¶ 6; Ex. 3 ¶ 15; Ex. 4 ¶ 17. Once these Petitioners are moved to such a facility, their removals could be accomplished shortly thereafter. Ex. 2 ¶ 6; Ex. 3 ¶ 15; Ex. 4 ¶ 17.

2021 WL 5332867, *3 (W.D. Wash. Oct. 18, 2021) ("While Respondents have not offered a specific date when they expect Petitioner to be removed, the Ninth Circuit has held that uncertainty as to when removal will occur does not establish that detention is indefinite" (citing *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) and *Zadvydas*, 533 U.S. at 702)). For the reasons discussed above, Respondents have met that standard.

ICE's past and ongoing efforts clearly demonstrate ICE's intention of removing Petitioners from the United States. Accordingly, Petitioners' habeas petition should be dismissed.

B. Petitioners' Regulatory Violation Claims Do Not Establish a Basis for Habeas Relief (Count 1).

Petitioners cannot succeed on their claims challenging the agency's purported noncompliance with its regulations governing the revocation of their orders of supervision. At the onset, even if the agency did not follow the revocation regulations completely, it does not change the fact that: (1) all petitioners are statutorily removable because of their final orders of removal, (2) the "law is clear that the government may revoke supervision to enforce a removal order[,]"[40] and (3) the agency plans on removing them as reflected in the foregoing section regarding *Zadvydas*.

Petitioners do not challenge their final orders of removal authorizing the U.S. Immigration and 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 agency initially detained them but eventually allowed them to be placed on an order of supervision. They each claim that ICE then revoked their orders of supervision and

[40] *Vongdasy v. Harper*, No. 25-1589, 2025 WL 3091706, at *1 (W.D. La. Oct. 23, 2025).

detained them for several months at the Louisiana ICE Processing Center. They assert that the revocation of their orders of supervision and their detention are unlawful because revocation occurred "in violation of ICE's binding procedural regulations."[41]

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.[42] 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[.]"[43]

Petitioners' claims aren't accurate. What Petitioners are looking for are technical defects in the revocation of their orders of supervision and ignore the fact that the agency has the discretion to revoke orders of supervision to effectuate final orders of removal. *Vongdasy*, 2025 WL 3091706, at *1. A "final order of removal" is a final order concluding that a non-citizen is deportable or ordering deportation; thus, he or she no longer has a right to remain in this country. *See, e.g., Nasrallah v. Barr*, 590 U.S. 573, 579 (2020).

Petitioners Romero and [redacted] admit that they received notices of the revocation of their order of supervision.[44] Petitioners Chomat and Sanchez allege they have not.[45] However, Federal Respondents have confirmed that Petitioner Chomat *did* receive a notice of revocation.[46] Notably, Petitioner Chomat was personally served with his order of revocation but refused to sign it.[47] Petitioner Romero also was personally served with a notice of revocation of release.[48]

[41] Doc. 7-1 at 15.
[42] *Id.*
[43] Doc. 1 ¶ 124.
[44] *Id.* ¶¶ 59, 110.
[45] *Id.* ¶¶ 75, 87.
[46] Ex. 6.
[47] *Id.* at 2.
[48] Ex. 8.

Attached are the notices of revocation for Petitioners Romero and Chomat.[49] As of the filing of this memorandum, Federal Respondents have been unable to locate the notices of revocation for Petitioner [redacted] (who admits that he received a notice)[50] and Sanchez.

But Petitioner Sanchez was provided a notice of removal on October 23, 2025,[51] that indicates that the agency intends to remove him to Mexico, which the agency plans on effectuating when the stay of removal in this case is lifted.[52] And the notices of revocation provided to Petitioners Chomat and Romero expressly provided that the orders of supervision were being revoked because the agency determined that they could be "expeditiously removed from the United States"[53] under their final orders of removal, and their cases were now "under review by Cuba for the issuance of a travel document."[54]

Thus, contrary to Petitioners Chomat's and Romero's allegations, their orders of supervision were not revoked "without reason."[55] They were revoked because the agency is empowered by the law to execute a final removal order, and the agency believed when Petitioners were detained they would be removed in the near future as their case was "under review by Cuba for issuance of travel documents(s)." *Vongdasy*, 2025 WL 3091706, at *1. As mentioned above, Cuba later determined that they would not receive the Cuban nationals back into Cuba. But that after-the-fact occurrence does not mean that the agency acted "without reason" when they detained each petitioner.[56] The agency detained Petitioners Chomat and Romero based on its belief that Cuba was reviewing their case for the issuance of travel documents to expeditiously effectuate

[49] Ex. 6, 7.
[50] Doc. 1 ¶ 110.
[51] Ex. 1 ¶ 22.
[52] Ex. 2 ¶ 6.
[53] Ex. 6 at 1; Ex. 8 at 1.
[54] Ex. 6 at 1; Ex. 8 at 1.
[55] Doc. 1 ¶ 1.
[56] *Id.*

their removal. And, as mentioned in the prior section, Mexico is now willing to accept Petitioners Chomat, Sanchez, and Romero.[57] The agency attests that those three can be removed in the near future.[58]

Regarding Petitioner [redacted], he admits that he received an order of revocation and that the notice provides that his case was "under current review by France, United Kingdom, Australia, Germany, and Canada for the issuance of a travel document."[59] Although not stated in his petition, on the day of his detention, Petitioner [redacted] also received a "Notice of Removal"[60] that was signed by him and indicates he would be removed to Canada.[61] Petitioner [redacted] has been detained less than six-months, and the agency continues to work toward effectuating his removal.[62]

For petitioners who have received orders of revocation, they claim that the notices were procedurally defective and thus are invalid because the notices were not personally signed by the Executive Associate Director of ICE.[63] This argument has already been rejected by other courts. "The Executive Commissioner or district director must authorize the revocation of an OSUP pursuant to § 241.4(l)(2)." *See Barrios v. Ripa*, No. 25-22644, 2025 WL 2280485, at *7-8 (S.D. Fla. Aug. 8, 2025). But "[t]he district director includes the Field Office Director or "*other official . . . who is delegated the function or authority.*" *Id.* (citing 8 C.F.R. § 1.2) (emphasis added).

And, as stated by another court, even if Petitioners are correct that the Executive Associate Director or a District Director "must personally decide whether and when to revoke release,"

[57] Ex. 2 ¶ 6; Ex. 3 ¶ 15; Ex. 4 ¶ 17.
[58] Ex. 2 ¶ 6; Ex. 3 ¶ 15; Ex. 4 ¶ 17.
[59] Doc. 1 ¶ 111.
[60] Ex. 9.
[61] *Id.*
[62] Ex. 5 ¶ 18.
[63] Doc. 1 ¶ 29 n.4.

Petitioners still have "not identified authority that would suggest that a District Director is prohibited from delegating signatory authority, or authority that would suggest that a District Director must include in a revocation order the findings set forth in § 241.4(l)(2)." *Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 382 (D. Md. 2025) (rejecting the petitioner's argument that his notice of revocation was invalid because it was not signed by the direct director). Courts also have been "disinclined to interfere with the discretion delegated to those charged with enforcing immigration laws." *See Barrios v. Ripa*, No. 25-22644, 2025 WL 2280485, at *7-8 (S.D. Fla. Aug. 8, 2025) (citing *Goldovsk v. U.S. Citizenship & Immigr. Servs.*, No. 07-21342, 2007 WL 9702722, at *1 (S.D. Fla. Sept. 28, 2007)). And here, there is a "Delegation of Signature Authority"[64] that demonstrates that signature authority has been delegated to Supervisory Detention and Deportation Officers to sign notices of revocation of release. *Id.* (rejecting petitioner's argument and noting that the agency's "Delegation of Signature Authority" demonstrates that signature authority for notices of revocation of release was delegated to the Supervisory Deportation and Detention Officer).

Petitioners also assert that they were detained without a finding by the agency that their detention "was in the national interest nor that circumstances did not permit referral to the Executive Associate Director of ICE."[65] Courts have rejected this argument as well by noting that "the relevant regulation [i.e., 8 U.S.C. § 241.4(l)(2)] does not mandate that the revoking official explicitly state in the Notice of Revocation of Release that the revocation was in the public interest and that the matter could not be referred to the Executive Associate Commissioner. Rather, the official must simply take that into consideration." *Barrios*, 2025 WL 2280485, at *7 (rejecting

[64] Ex. 10 at 3.
[65] *See, e.g.*, Doc. 1 ¶ 111.

petitioner's argument that "the Field Office Director was required to decide—and express in writing—that the revocation was in the public interest and that the revocation could not be referred to the Executive Associate Director.").

1. Even if the Federal Respondents Did Not Follow Their Revocation Regulations to a Tee, the Petitioners Have Not Established Substantial Prejudice to Support Their Procedural Due Process Claims.

Petitioners suggest that the agency's alleged noncompliance with its revocation regulations is a de facto violation of their procedural due process rights. That is an incomplete statement of the law in the Fifth Circuit.

a. In the Fifth Circuit, Petitioners are Required to Establish Substantial Prejudice to State a Procedural Due Process Claim. They Have Not.

The Fifth Circuit has emphasized that "[t]he *Accardi* doctrine stands for the unremarkable proposition that an agency must abide by its own regulations." *Richardson v. Joslin*, 501 F.3d 415, 418 (5th Cir. 2007) (citation and internal quotation marks omitted). "However, this circuit has explicitly read *Accardi* as establishing that '[f]ailure to adhere to regulations *can* constitute a denial of due process of law,' not that it always does." *Retana Leyva v. Barr*, 838 F. App'x 13, 19 (5th Cir. 2020) (quoting *Arzanipour v. INS*, 866 F.2d 743, 746 (5th Cir. 1989)) (emphasis and alteration in original). "Rather, in this circuit, '[t]he failure of an agency to follow its own regulations is not . . . a per se denial of due process unless the regulation is required by the constitution or a statute." *Id.* (quoting *Arzanipour*, 866 F.2d at 746) (alteration in original).

More specifically, within the context of procedural due process claims in immigration cases, the Fifth Circuit has held that "[t]o prove that administrative proceedings should be invalidated for violation of regulations, an alien must show substantial prejudice." *See Molina v. Sewell*, 983 F.2d 676, 678 (5th Cir. 1993) (citing *Ka Fung Chan v. INS*, 634 F.2d 248, 258 (5th Cir. Jan. 1981) ("Totally aside from the doubtful merits of his contentions, each of these due

process attacks fails because proof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice."); *Ayala Chapa v. Bondi*, 132 F.4th 796, 799 n.3 (5th Cir. 2025) ("But even if [the petitioner] had brought a procedural due process claim, he has not alleged substantial prejudice.") (citing *Molina*, 983 F. 2d at 678); *Osorio Diaz v. Barr*, 831 F. App'x 718, 718 (5th Cir. 2020) ("[Petitioner] disputes whether a showing of substantial prejudice is necessary to obtain relief in this case. But this argument is to no avail, as our caselaw makes clear that such a showing is necessary.") (citing *Molina*, 983 F. 2d at 678).[66]

It is Petitioners' burden to establish substantial prejudice that any purported violation of a regulation invalidates their detention. *See Molina*, 983 F.2d at 678. Specifically, "[p]roving substantial prejudice requires an alien to make a prima facie showing that the alleged violation affected the outcome of the proceedings." *Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir. 2018) (citations omitted).

Petitioners have not established substantial prejudice to support their claim. The phrase "substantial prejudice" does not appear in their petition. And in their motion for injunctive relief[67] and their reply,[68] Petitioners continue to ignore that they are required to establish substantial prejudice to support their procedural due process claim—i.e., their *Accardi* claim. Notably, instead of putting forward any showing of substantial prejudice, they have argued that this Fifth Circuit

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[66] Petitioners claim that the Fifth Circuit's substantial prejudice requirement to establish a procedural due process claim does not apply to them. Doc. 14 at 5-6. The cases cited by Petitioners either do not involve procedural due process claims or do not support their position that where regulations were "designed to curb unfettered agency discretion . . . litigants need not show substantial prejudice." *Id.* at 5; *American Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532 (1970) (not involving a procedural due process claim); *Alamo Exp., Inc. v. United States*, 613 F.2d 96 (5th Cir. 1980) (not involving a procedural due process claim); *Francois v. Garland*, 120 F.4th 459, 466 (5th Cir. 2024) (reaffirming that the petitioner was required to establish substantial prejudice to state his procedural due process claim because the alleged regulation violation—there, the Board of Immigration Appeals not applying a proper standard of review—was *not* compelled by the Constitution or statute, "but just by regulation.").

[67] Doc. 7.

[68] Doc. 14.

requirement does not apply to them.[69] And without a reference to the Constitution or a statute, Petitioners assert they are not required to establish substantial prejudice because the subject revocation regulations are "compelled by the constitution or statute."[70] Not so. In fact, courts have held the opposite—i.e., that the subject revocation regulations are not mandated by statute or the Constitution. *See, e.g.*, *Nguyen v. Noem,* No. 25-057, 2025 WL 2737803, at *6 (N.D. Tex. Aug. 10, 2025) ("A violation of Section 241.13(i)(3) alone cannot justify habeas. It is a mere administrative regulation, not required as the result of the Constitution.); *Nouansisouhak v. Noem*, No. 25-CV-2222-K-BW, 2025 WL 3165161, at *7 (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) (same).

In sum, Petitioners are required to prove not only that a violation of a regulation occurred but also that such a violation resulted in substantial prejudice that "affected the outcome" of their detention. *See Okpala*, 908 F.3d at 971. They have not.

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, it did not amount to substantial prejudice. In *Surovtsev v. Noem*, the court reviewed a habeas petition with facts like Petitioners in this case. There, the petitioner had a final order of removal. *Surovtsev v. Noem*, No. 25-160, 2025 WL 3264479, *1 (N.D. Tex. Oct. 31, 2025). 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

[69] *Id.* at 5-6.
[70] *Id.* at 6.

ICE check-in." *Id.* Same as the Petitioners here, in *Surovtsev*, the petitioner claimed that his re-detention violated his due process rights, 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 *5-8.

The *Surovtsev* court attempted to wade through dueling statements of whether notice and an informal interview were provided by the agency. *Id.* at *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 closed, they will have had an opportunity to respond to the Respondents' explanation as to why the revocation of their order of supervision and their detention is lawful. *See id.* *4 ("As an initial matter, these habeas proceedings have afforded [the petitioner] more procedure than he was due under 8 C.F.R. § 241.13(i)(3).").

As such, courts have found that the agency's purported noncompliance with the revocation regulations, such as not providing an informal interview, is "an insufficient basis on which to grant" release from detention. *Umanzor-Chavez v. Noem*, No. 25-01634, 2025 WL 2467640, at *5 n. 4 (D. Md. Aug. 27, 2025).

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."); *see also Ladak v. Noem*, 25-194, 2025 WL 3764016, at *5 (N.D. Tex. Dec. 30, 2025) (same).[71]

2. Even if the Agency's Alleged Noncompliance *Was* Harmful, a Writ of Habeas Corpus Would Not the Appropriate Remedy.

Critically, these types of procedural claims are not cognizable in habeas. "[T]he remedy for an *Accardi* violation appears to be limited to compelling the agency to abide by" the challenged rule or policy, "not release from detention." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 227 n.44 (D.D.C. 2020) (citing *Damus v. Nielsen*, 313 F. Supp. 3d 317, 343 (D.D.C. 2018)); *see also Nguyen,* 2025 WL 2737803, at *6 ("The Fifth Circuit has confirmed in other contexts that the failure of officials

[71] *See Bahadorani v. Bondi,* No. 25-1091, 2025 WL 3048932, at *4 (W.D. Okla. Oct. 31, 2025) ("There is no relief that this Court could offer, since Petitioner has now been adequately provided notice as to the reason for his revocation and detention, he has been provided a forum to rebut the reasons for his detention, and it is still the case that Petitioner is statutorily removable. Every procedural wrong that Plaintiff could conceivably allege as a result of the government's violations of 8 C.F.R. § 241.13(i)(2)–(3) has been righted by the very existence of this habeas proceeding. At best, the Court could order Petitioner released from detention for failure to follow 8 C.F.R. § 241.13(i)(2)–(3), but that does not change the fact that Petitioner is still removable and could promptly be served with a notice of revocation, detained, and provided a brief interview. A do-over in this case would be wasteful.").

to follow their own policies, without more, does not constitute a violation of due process, making a writ of habeas corpus generally not available." (citation and internal quotation marks omitted)).

As such, 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 detentions unlawful—particularly since notice and an informal interview are not prerequisites to detention. *See Nouansisouhak,* 2025 WL 3165161, at *6; *Nguyen,* 2025 WL 2737803, at *6; *Surovtsev,* 2025 WL 3264479, at *5. Specifically, Petitioners do not explain any actionable injury stemming from any violation of a regulation. They do not challenge the underlying justification for their final orders of removal.

Nor is this a situation where an interview might have led to their immediate release—"for example, a case of mistaken identity. There is thus no apparent reason why a violation of the regulation, even assuming it occurred, should result in release." *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018) (denial of informal interview does not entitle habeas petitioner to release); *see also Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL

6928540, at *5 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, No. C18-287-JLR, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019) ("Thus, there is no apparent reason that ICE's failure to provide an informal interview should result in [the petitioner's] release."). Petitioners neither show that the agency's purported adherence to the referenced regulations would have resulted in their release, as necessary to show substantial prejudice, nor make any argument that those regulations are required by constitution or statute.[72]

Because Petitioners' *Accardi* claims do not provide a basis for habeas belief, their petition should be denied.

IV. Conclusion

Accordingly, Federal Respondents request that Petitioners' habeas petition be dismissed in full for the above reasons.

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[72] If Petitioners contend that the substantial prejudice is the detention itself, that argument should be rejected as within the Fifth Circuit "[p]rocedural due process considers not the justice of a deprivation, but only the means by which the deprivation was effected." *Caine v. Hardy*, 943 F.2d 1406, 1411-12 (5th Cir.1991). "Thus, the injury that stems from a denial of due process is not the liberty or property that was taken from the plaintiff, but the fact that it was taken without sufficient process." *Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215, 222 (5th Cir. 2012).