

**UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF LOUISIANA**

Francisco RODRIGUEZ ROMERO, *et al.*,

*Petitioners,*

v.

Scott LADWIG, *et al.*,

*Respondents.*

Case No. 3:25-cv-01106-JWD-EWD

Judge John W. deGravelles

Magistrate Judge Erin Wilder-Doomes

**PETITIONERS' REPLY IN SUPPORT OF THEIR PETITION FOR HABEAS CORPUS**

Respondents do not claim that Petitioners received the full process due under 8 C.F.R. §§ 241.4 and 241.13. Instead, Respondents assert that any violations thereof were mere “technical defects,” and no longer relevant as “it was learned” that Mexico will now accept individuals over sixty years old. But those generalized assertions fall short of the due process necessary to justify Petitioners’ redetention last summer and indefinite detention now. For the reasons that follow and in Petitioners’ prior briefing, *see* Dkts. 1, 7-1, 14, Petitioners must be immediately released.<sup>1</sup>

**A. The Government’s failure to comply with its own revocation regulations is not a mere “technical defect.”**

Respondents rely on the government’s ability to revoke orders of supervision to assert that the government need not follow its own regulations when it does so. *See* Opp. at 14; Dkt. 7-1 at 11–12 (discussing regulatory requirements). Indeed, they waive off ICE’s violations of procedural due process as mere “technical defects,” arguing that regulations need not be followed “to a tee,” because a person with a final removal order “no longer has a right to remain in this country.” Dkt. 18 at 14, 18. This is wrong. Compliance with these regulations is mandatory under the Due Process Clause and a failure to do so warrants release. *See Villanueva v. Tate*, No. 25-cv-3364, 2025 WL 2774610, at \*7–12 (S.D. Tex. Sept. 26, 2025); Ex. 1 (list of cases finding that compliance with 8 C.F.R. §§ 241.4 and 241.13 is mandatory and granting relief).

*First*, and despite this Court’s order that Respondents explain whether Petitioners received an interview, Respondents completely ignore the interview requirement at 8 C.F.R. §§ 241.4(l)(1) and 241.13(i)(3). *See generally* Dkt. 18; *see also* Dkt. 17 at 2. Accordingly, they have abandoned any argument on the issue. *JMCB, LLC v. Bd. of Com. & Indus.*, 336 F. Supp. 3d 620, 634 (M.D.

---

<sup>1</sup> Respondents’ suggestion that Petitioners’ claims are not properly raised in habeas lacks merit. Opp. at 4–5. Habeas is “the basic method for obtaining review of continued custody after a deportation order ha[s] become final” and is “a forum for statutory and constitutional challenges to post-removal-period detention.” *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (citation omitted). “The basic federal habeas corpus statute grants the federal courts authority” to determine whether detention is lawful. *Id.* at 699 (citing 28 U.S.C. § 2241(c)(3)); *see also Demore v. Kim*, 538 U.S. 510, 517 (2003); *Baez v. Bureau of Immigr. & Customs Enf’t*, 150 F. App’x 311, 312 (5th Cir. 2005); Dkt. 14 at 2 n.1.

La. 2018). Where, as here, there is no evidence that Petitioners were provided with the required interview, immediate release is appropriate. *See Villanueva*, 2025 WL 2774610, at \*7, \*11.<sup>2</sup>

*Second*, Respondents claim three Petitioners received a notice of revocation. Dkt. 18 at 15–16. But the notices offered for Petitioners Romero and Chomat merely recite DHS regulations and boilerplate phrases, without satisfying the Government’s obligation to explain why each OSUP was revoked. Dkts. 18-7, 18-8; *see Abuelhawa v. Noem*, No. 25-cv-04128, 2025 WL 2937692, at \*10 (S.D. Tex. Oct. 16, 2025).<sup>3</sup> Beyond that, Petitioner Gaston Sanchez never received a notice at all, which explains why Respondents are “unable to locate” it now. Dkt. 18 at 15; Dkt. 1 at ¶ 87. If anything, this gives rise to an even “stark[er] case of a violation of due process” because “there is absolutely no record of the decision to revoke [Mr. Gaston Sanchez]’s release.” *Santamaria Orellana v. Baker*, No. 25-cv-1788, 2025 WL 2444087, at \*8 (D. Md. Aug. 25, 2025).

*Third*, Respondents argue that because a district director may delegate signature authority to an inferior officer, the findings required by § 241.4(I)(2) are somehow optional. Dkt. 18 at 16–18.<sup>4</sup> According to federal courts nationwide, Respondents are incorrect.<sup>5</sup> *See Villanueva*, 2025 WL 2774610, at \*6; *M.S.L. v. Bostock*, No. 25-cv-1204, 2025 WL 2430267, \*10 (D. Or. Aug. 21, 2025) (rejecting the government’s “breezy assertions” that the revoking official had authority and finding release appropriate “on that basis alone”).<sup>6</sup>

*Finally*, Respondents claim that ICE “believed when Petitioners were detained they would be removed in the near future.” Dkt. 18 at 15. But due process and 8 C.F.R. § 241.13(i)(2) require

---

<sup>2</sup> *See* Ex. 1, Section A (collecting cases).

<sup>3</sup> *See* Ex. 1, Section B (collecting cases).

<sup>4</sup> The delegation memorandum only applies to the Miami ICE Field Office, excluding Mr. [REDACTED] Dkt. 18-10.

<sup>5</sup> This case is distinct from *Barrios v. Ripa*, No. 25-cv-22644, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025), wherein the court was disinclined to interfere as the government had followed all its other processes (the petitioner conceded he received an interview). There is no such record here. And in any event, the fewer than ten cases Respondents cite regarding these regulations represent a substantial minority nationwide. *See* Ex. 1.

<sup>6</sup> *See* Ex. 1, Section C (collecting cases).

more than general “beliefs” before revoking an OSUP. *See Abuelhawa*, 2025 WL 2937692, at \*9. Respondents also claim that “it was learned” (with no clarification as to who learned this, or how) “that Mexico is in fact accepting third country removals of individuals over the age of 60. As a result, it is likely that the petitioner could be removed to Mexico in the near future.” Dkt. 18-2 at ¶ 6; Dkt. 18-3 at ¶ 15; Dkt. 18-4 at ¶ 17; Dkt. 18 at 15. But Respondents are silent as to particular travel documentation or timeline for any Petitioner here—as required to justify revocation. *See Marquez-Amaya v. Thompson*, No. 25-cv-1501, 2025 WL 3654327, at \*7 (W.D. Tex. Dec. 15, 2025) (ordering immediate release where “no removal plan [was] in place at the commencement of detention” and “there has been no stated progress on such removal during the Petitioner’s continued detention, which now approaches its second month”); *Nguyen v. Bondi*, No. 25-cv-323, 2025 WL 3120516, at \*8 (W.D. Tex. Nov. 7, 2025) (finding removal not reasonably foreseeable where government failed to produce specific travel document or timeline for receiving one).

In any event, the Government must have specific evidence of foreseeable removal *before* redetaining the petitioner, not after. *Marquez-Amaya*, 2025 WL 3654327, at \*6 (“The Government cannot cure the wrongful commencement of detention through after-the-fact determinations of potential expeditious removal.”).

**B. Because the regulations are required by statute and the Constitution, the Government’s failure to comply with them constitutes *per se* substantial harm.**

Respondents are right that “[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.” Dkt. 18 at 18 (quoting *Retana Leyva v. Barr*, 838 F. App’x 13, 19 (5th Cir. 2020)). Here, the OSUP regulations are required by *both* the Constitution and statute. *See* Dkt. 1 at ¶¶ 118–20 (explaining that agencies are bound to follow their own regulations, a requirement which “flows directly from the Due Process Clause”). ICE’s predecessor promulgated 8 C.F.R. § 241.4 on March 6, 1997 “to

implement the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act[.]” 62 Fed. Reg. 44, 10,312 (Mar. 6, 1997).<sup>7</sup> After the Supreme Court in *Zadvydas*, 533 U.S. 678, determined that the Constitution requires an implicit time limit on post-order detention, the regulations were amended “[i]n light of the decision in *Zadvydas*.” 66 Fed. Reg. 220, 56,967 (Nov. 14, 2001) (compiled at 8 C.F.R. § 241.13).<sup>8</sup>

Therefore, these regulations were promulgated specifically because they were compelled by statute and the Constitution. *See Abuelhawa*, 2025 WL 2937692, at \*9 (“This itself evinces a lack of accord with § 241.13(i)(2), and thus with the requirements of procedural due process.”); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (explaining that 8 C.F.R. § 241.4 was “promulgated to protect a fundamental right derived from the Constitution”).

The cases cited by Respondents do not change this result. *See Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir. 2018) (specifying substantial prejudice applies “in removal proceedings”); *Molina v. Sewell*, 983 F.2d 676, 678 (5th Cir. 1993) (same, but referring to them as “administrative proceedings”); *Ayala Chapa v. Bondi*, 132 F.4th 796, 799 n.3 (5th Cir. 2025) (same).

To support their argument that harmless error review applies for an agency’s so-called “procedural violations,” Dkt. 18 at 20–21, Respondents point to a string of cases from the Northern District of Texas. As Petitioners have already explained, those cases miss the point entirely. *See* Dkt. 14 at 7 n.10. And, each relies on *City of Arlington, Tex. v. F.C.C.*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 569 U.S. 290 (2013), which concerns notice-and-comment rulemaking by the F.C.C.—not the kind of “important procedural benefits” the Supreme Court carved out in *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 538 (1970), and the Fifth Circuit reiterated in *Alamo Express, Inc. v. United States*, 613 F.2d 96, 97–98 (5th Cir. 1980). Nor do these

---

<sup>7</sup> Available at <https://www.govinfo.gov/content/pkg/FR-1997-03-06/pdf/97-5250.pdf>.

<sup>8</sup> Available at <https://www.justice.gov/sites/default/files/eoir/legacy/2002/09/09/fr14no01R.pdf>.

cases acknowledge that “a *per se* denial of due process” is found where “the regulation is required by the constitution or a statute.” *Retana Leyva v. Barr*, 838 F. App’x 13, 19 (5th Cir. 2020). In any event, Petitioners have suffered substantial prejudice, because if the government had comported with its regulations, each Petitioner would have proffered pertinent information that, due to its regulatory violations, the agency did not consider. *See* Dkt. 1 at ¶¶ 60, 76, 88, 112.

Furthermore, the opportunity to bring a habeas petition in federal court cannot automatically cure a due process violation. This would render the Due Process Clause of the Constitution meaningless. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 499 (S.D.N.Y. 2025) (“[T]he suggestion that government agents may sweep up any person they wish, for no reason whatsoever . . . so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment.” (cleaned up)). And in any event, Petitioners still must be released because there was no lawful purpose for their detention at the time they were redetained and because there is no lawful purpose for their detention now.<sup>9</sup>

**C. Petitioners’ indefinite detention served no purpose at the time they were rearrested and serves no purpose now, violating their substantive due process rights in two ways.**

Petitioners raise two substantive due process claims. The first (Count Two) concerns the fact that the Government did not have a lawful justification for Petitioners’ detention at the time it revoked their OSUPs this past summer. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); 8 C.F.R. § 241.13(i)(2). The second (Count Three) concerns the fact that the Government does not have a lawful justification for Petitioners’ prolonged and ongoing detention now. *See Zadvydas*, 533 U.S. at 699; 8 U.S.C. § 1231(a)(6). These claims are distinct.

---

<sup>9</sup> This fact distinguishes Petitioners from *Vongdasy*, where “[c]ounsel for Petitioner informed the Court that Petitioner’s removal is imminent.” *Vongdasy v. Harper*, No. 25-cv-1589, 2025 WL 3091706, at \*1 (W.D. La. Oct. 23, 2025). Here, there is no removal on the horizon. *See infra*, Section D.

Respondents conflate Petitioners' claims and argue that Petitioners' substantive due process claims are "premature" under two unpublished Fifth Circuit cases. Dkt. 18 at 8–9 (citing *Chance v. Napolitano*, 453 F. App'x 535 (5th Cir. 2011), and *Agyei-Kodie v. Holder*, 418 F. App'x 317 (5th Cir. 2011)). But other courts in the Fifth Circuit have rejected these exact arguments. *See, e.g., Marquez-Amaya*, 2025 WL 3654327, at \*4 (referring to *Chance* and *Agyei-Kodie* as "non-precedential opinion[s]" and stating that the Supreme Court "command[s] against that understanding"); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) (explaining that *Zadvydas* did not require six months of detention "before a habeas court could find that the detention is unconstitutional"); *see also* Dkt. 14 at 9 n.14 (distinguishing Respondents' cases).<sup>10</sup>

**D. Respondents have not met their burden to show reasonably foreseeable removal.**

Respondents are wrong to place the burden on Petitioners to demonstrate the unlikelihood of their removal. Regarding Petitioners' first substantive due process claim (Count Two), Respondents' "detain first, justify later" approach is unlawful. Respondents carry the burden to show a specific change in circumstances made removal more foreseeable than it previously was—and therefore made detention lawful—*before* they revoked Petitioners' OSUPs. 8 C.F.R. § 241.13(i)(2) ("[T]he Service may revoke a [noncitizen's] release under this section and return the [noncitizen] to custody if, *on account of changed circumstances, the Service determines* that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." (emphasis added)); *Escalante v. Noem*, No. 25-cv-182, 2025 WL 2206113, at \*3 (E.D. Tex. Aug. 2, 2025), *appeal docketed*, No. 25-40639 (5th Cir. Oct. 6, 2025) (noting that the OSUP

---

<sup>10</sup> Regardless, Petitioners have passed the 6-month presumptive period. *See* Dkt. 1 at ¶¶ 53, 61, 70, 77, 81, 89, 105, 113 (Mr. Rodriguez Romero, 31+ months; Mr. Blanco Chomat, 9+ months; Mr. Gaston Sanchez, 9–10+ months; Mr. ██████████ 8+ months); Dkt. 7-1 at 24–25 (explaining that post-order detention should be calculated cumulatively); Dkt. 14 at 7–8 & n.13 (distinguishing *Guerra-Castro v. Parra*, No. 25-cv-22487, 2025 WL 1984300 (S.D. Fla. July 17, 2025)).

regulations “clearly indicate, upon revocation of supervised release, it is [DHS’s] burden to show a significant likelihood that the [noncitizen] may be removed”); *Balouch v. Bondi*, No. 25-cv-216, 2025 WL 2871914, at \*2 (E.D. Tex. Oct. 9, 2025) (similar). Indeed, “[i]mposing the burden of proof on the [noncitizen] each time he is re-detained would lead to an unjust result and serious due process implications.” *Escalante*, 2025 WL 2206113, at \*3. Revoking Petitioners’ OSUPs “to effectuate their removal,” Dkt. 18 at 1, but without a specific changed circumstance, violated Petitioners’ procedural due process rights, *see supra*, Section A, as well as their substantive due process rights. *See Jackson*, 406 U.S. at 738.

Regarding Petitioners’ second substantive due process claim (Count Three), the Government still carries the burden to justify Petitioners’ ongoing detention. Dkt. 1 at ¶¶ 131–35 (explaining the burdens under *Zadvydas*). This is because Petitioners have already shown that there is a specific diplomatic barrier to removal.<sup>11</sup> Dkt. 1 at ¶¶ 35, 53, 70, 81, 103–05; Dkt. 18 at 2–3 (“Petitioner ██████████ cannot be deported to ██████████ and “Cuba refused to accept [the other] petitioners”); *Trejo v. Warden of ERO El Paso E. Mont.*, No. 25-cv-401, 2025 WL 2992187, at \*5 (W.D. Tex. Oct. 24, 2025) (petitioner met his burden where he was granted relief from removal under the Convention Against Torture); *Abuelhawa*, 2025 WL 2937692, at \*8 (petitioner met his burden by demonstrating, *inter alia*, that his requests for travel documents were unsuccessful).<sup>12</sup>

---

<sup>11</sup> There is no dispute that Mr. Rodriguez Romero, Mr. Blanco Chomat, and Mr. Gaston Sanchez cannot be removed to Cuba, and that Mr. ██████████ cannot be removed to ██████████ that was true when they were originally placed on OSUPs, when they were redetained, and today. *See* Ex. 2 at ¶ 4 (Decl. of Mr. Rodriguez Romero); Ex. 3 at ¶ 20 (Decl. of Mr. Blanco Chomat); Ex. 4 at ¶ 8 (Decl. of Mr. Gaston Sanchez); Ex. 5 at ¶ 7 (Decl. of Mr. ██████████ Dkt. 18 at 11; Dkt. 1 at ¶¶ 62, 87, 92, 103; Dkt. 7-1 at 24; Dkt. 14 at 10.

<sup>12</sup> The Government’s cases do not compel a different conclusion. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006) (no barriers to repatriation); *Joe v. Garland*, No. 21-cv-998, 2021 WL 5332867, \*3 (W.D. Wash. Oct. 18, 2021) (same); *Farashi v. Warden, S. Tex. ICE Processing Ctr.*, No. 25-cv-956, 2025 WL 3654256, \*1–3 (W.D. Tex. Dec. 15, 2025) (no diplomatic barriers to the petitioner’s removal, who was issued travel documents by his home country on multiple occasions, and had a removal flight secured, blocked only by his refusal to board); *Puertas-Mendoza v. Bondi*, No. 25-cv-890, 2025 WL 3142089, at \*2 (W.D. Tex. Oct. 22, 2025) (petitioner established “no significant likelihood of his removal in the reasonably foreseeable future” because of “the rareness of removal to a third country, ICE’s attempts to convince [him] to consent to removal to a country where he cannot legally be removed, the long period of time between [his] removal order and his detention, the initial lack of any explanation for [his]

Respondents now must rebut that showing with specific, individualized evidence that removal is on the horizon, and therefore that detention still serves a lawful purpose. *See Nguyen v. Bondi*, 2025 WL 3120516, at \*7 (finding evidence of other removals insufficient to establish a likelihood of removal as to this petitioner); *Marquez-Amaya*, 2025 WL 3654327, at \*6 (finding no likelihood where petitioner was “pending approval for removal to Mexico”). They have not. *Compare* Dkt. 18 at 11 (gesturing towards “good-faith efforts to execute Petitioners’ removal”), *with Zadvydas*, 533 U.S. at 702 (rejecting “good faith efforts to effectuate . . . deportation”). Nothing in Respondents’ declarations shows that Mexico or Canada will receive *these* Petitioners, as required by law. *See* Dkt. 18-2 at ¶ 6; Dkt. 18-3 at ¶ 15; Dkt. 18-4 at ¶ 17; Dkt. 18-5 at ¶ 18; *Marquez-Amaya*, 2025 WL 3654327, at \*6; *Nguyen v. Bondi*, 2025 WL 3120516, at \*7.<sup>13</sup>

#### **E. Immediate Release is the Appropriate Remedy.**

The appropriate remedy for constitutional violations such as these is immediate release. Some courts order release immediately on the simple finding that “the revocation has no effect.” *Liu v. Carter*, No. 25-cv-3036, 2025 WL 1696526, at \*3 (D. Kan. June 17, 2025) (“Accordingly, the Court concludes that because officials did not properly revoke petitioner’s release pursuant to the applicable regulations, that revocation has no effect, and petitioner is entitled to his release”);

---

detention in 2025, and the cursory explanation ultimately provided”). Respondents similarly miss the point of *Zadvydas*, Opp. at 10, as, on remand, the Ninth Circuit again granted Mr. Ma’s release as “there was no likelihood of Ma’s removal in the reasonably foreseeable future”: there was no “‘extant or pending’ repatriation agreement” and “an insufficient showing that future negotiations were likely to lead to a repatriation agreement within the reasonably foreseeable future.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1099 (9th Cir. 2001).

<sup>13</sup> Indeed, Respondents attempted to deport Mr. Gaston Sanchez to Mexico (after *almost five months* in detention), and were ultimately unable to. Dkt. 1 at ¶¶ 95–96. They still need Mexico’s approval for each individual. *See* Ex. 4 at ¶ 6 (an ICE official informed Mr. Gaston Sanchez that Mexico would not accept individuals with medical issues); Ex. 3 at ¶ 18 (same as to Mr. Blanco Chomat). As to Mr. ██████████ all Respondents can say, five months after his rearrest, is that “ICE continues to work to process Petitioner for removal to a third country,” and that they recently “followed up with ICE’s headquarters” on efforts to remove him. Dkt. 18-5 at ¶ 18. This bare assertion, with nothing more, is precisely the type of “speculative” removal that courts have rejected. *See Balza v. Barr*, No. 20-cv-866, 2020 WL 6143643, at \*5 (W.D. La. Sept. 17, 2020), *R. & R. adopted*, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) (“Petitioner’s removal need not necessarily be imminent, but it cannot be speculative.” (quoting *Hassoun v. Sessions*, No. 18-cv-586, 2019 WL 78984, at \*6 (W.D.N.Y. Jan. 2, 2019))); *see also* Ex. 5 at ¶¶ 6–8.

see Ex. 1, Sections A–F. Others consider the three factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *Villanueva*, 2025 WL 2774610, at \*10–12 (applying *Mathews* and ordering immediate release).<sup>14</sup> All three factors compel Petitioners’ release here.

**Private interest.** First, Petitioners have a significant private interest in being free from detention. “‘The interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Martinez v. Sec’y of U.S. D.H.S.*, No. 25-cv-1007, 2025 WL 2598379, at \*2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”). And in the case of petitioners who have been released from detention and were at liberty—like Petitioners here—they “have a protected interest in ‘their continued liberty.’” *Villanueva*, 2025 WL 2774610, at \*11 (quoting *Young v. Harper*, 520 U.S. 143, 147 (1997)); *Zhu v. Genalo*, 798 F. Supp. 3d 400, 415 n.4 (S.D.N.Y. 2025) (applying *Mathews* and finding the private interests to weigh in the petitioner’s favor, “especially since he has not violated any condition of his supervised release and was dutifully reporting under his supervision requirements”)<sup>15</sup>; see also *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (“We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee and often on others. . . . By whatever name, the liberty is valuable.”).<sup>16</sup>

---

<sup>14</sup> See Ex.1, Section F (collecting cases).

<sup>15</sup> Petitioners note that they did comply with the conditions of their release, including by attending check-ins. Assistant Field Office Director Fruge-Prudhome states that Petitioners missed many of their check-ins between 2012 and 2024. See Dkt. 18-1 at ¶ 19; Dkt. 18-3 at ¶ 12; Dkt. 18-4 at ¶ 15. This is easily disproven. Petitioners have attached to their declarations documentary evidence that they did attend those check-ins. Exs. 6–9 (Mr. Blanco Chomat’s check-in confirmation page and emails with ICE regarding appointments); Ex. 10 (Mr. Gaston Sanchez’s check-in confirmation page); Ex. 11 (Mr. ██████████ check-in confirmation from 2024); Exs. 3–5.

<sup>16</sup> Courts also consider the conditions of confinement, and whether those “conditions [are] indistinguishable from criminal incarceration.” *Martinez*, 2025 WL 2598379, at \*2 (quoting *Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, at \*7 (D. Minn. May 21, 2025)). In immigration custody, Petitioners are “experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning. . . and, most fundamentally, the lack of freedom of movement.” *Günaydin*, 2025 WL 1459154, at \*7.

**Risk of erroneous deprivation.** The OSUP revocation regulations “enacted by the government itself are intended to ensure that noncitizens who have been released to supervision do not arbitrarily have that supervision revoked.”<sup>17</sup> *Villanueva*, 2025 WL 2774610, at \*11. Without this process, risk of erroneous deprivation is high.<sup>18</sup> *See Zhu*, 798 F. Supp. 3d at 415 n.4.

**Government’s interest.** Finally, while the Government may have an interest in ensuring public safety, “those interests will not be impaired by requiring the government to comply with its own regulations.” *Villanueva*, 2025 WL 2774610, at \*11; *Diallo v. Joyce*, No. 25-cv-9909, 2025 WL 3718477, at \*5 (S.D.N.Y. Dec. 23, 2025). Moreover, “the government can have no legitimate interest in ignoring its own regulations, which are intended to ensure that the discretion afforded to the government’s agents is not exercised arbitrarily.” *Villanueva*, 2025 WL 2774610, at \*11; *see also Martinez*, 2025 WL 2598379, at \*4 (concluding that the government’s interest in the “enforcement of immigration law” is both vague and minimal especially in contrast to the significant liberty interest at stake for the petitioner).

### **CONCLUSION**

Because Petitioners did not receive the process due to them under 8 C.F.R. § 241.4 and § 241.13—regulations promulgated to protect Constitutional rights, where there is no such thing as harmless error—they are entitled to immediate release.

Dated: January 5, 2026

Respectfully submitted,

---

<sup>17</sup> Indeed, the Government’s prior decision to release Petitioners “reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d*, 905 F.3d 1137 (9th Cir. 2018); *see also* Opp. at 6 (explaining the rigorous criteria that must be met to be released pursuant to an OSUP).

<sup>18</sup> Courts have also raised concerns where the process is conducted and adjudicated by ICE itself—not a neutral arbiter. *See Nguyen v. Bondi*, 2025 WL 3120516, at \*6; *Giles v. Shaw Sch. Dist.*, 655 F. App’x 998, 1004 (5th Cir. 2016) (“The basic requirement of constitutional [procedural] due process is a fair and impartial tribunal.”); *Rosario v. Searls*, No. 23-cv-6424, 2023 WL 7326047, at \*3 (W.D.N.Y. Nov. 7, 2023) (finding ICE’s custody review to be insufficient process as it is not a neutral decisionmaker); *Kabba v. Barr*, 403 F. Supp. 3d 180, 189 (W.D.N.Y. 2019) (same).

Lydia Wright (LA Bar No. 37926)

Lillian Novak\*

Amaris Montes\*

**RIGHTS BEHIND BARS**

1800 M St. NW, Front 1 #33821

Washington, DC 20033

Tel: (202) 455-4399

[lydia@rightsbehindbars.org](mailto:lydia@rightsbehindbars.org)

[lily@rightsbehindbars.org](mailto:lily@rightsbehindbars.org)

[amaris@rightsbehindbars.org](mailto:amaris@rightsbehindbars.org)

*/s/ Bridget Pranzatelli*

Bridget Pranzatelli (LA Bar No. 41899)

Stephanie M. Alvarez-Jones (GA Bar No.

237979)\*‡

**NATIONAL IMMIGRATION PROJECT  
OF THE NATIONAL LAWYERS GUILD**

(National Immigration Project)

1763 Columbia Road NW

Ste 175 #896645

Washington, DC 20009

T: (504) 940-4777

[bridget@nipnlg.org](mailto:bridget@nipnlg.org)

[stephanie@nipnlg.org](mailto:stephanie@nipnlg.org)

\* *admitted pro hac vice*

‡ *Not admitted in DC; working remotely from  
and admitted in Georgia only*

*Counsel for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 5, 2026, a true and correct copy of the foregoing document was electronically filed via the Court's CM/ECF system.

Dated: January 5, 2026

Respectfully submitted,

*/s/ Bridget Pranzatelli*

Bridget Pranzatelli (LA Bar No. 41899)  
NATIONAL IMMIGRATION PROJECT  
OF THE NATIONAL LAWYERS GUILD  
(National Immigration Project)  
1763 Columbia Road NW  
Ste 175 #896645  
Washington, DC 20009  
T: (504) 940-4777  
[bridget@nipnlg.org](mailto:bridget@nipnlg.org)

*Counsel for Petitioners*