JUDGE LEON SCHYDLOWER

242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS DIVISION
EL PASO

FILED
DEC 19 2025
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

A# #212-347-358
Maikel Gallo Surera

petitioner
v.

Angelo Garite, Warden SPC, ICE Processing center, And assistant field office director of the U.S. Immigration and Customs Enforcement and Removal Operations EL Paso Field, **Mary-De-Andra** Office director of the Immigration El Paso, **Kristi Noem**, Secretary of The Department Homeland Security, **Pamela Bondi**, Attorney General of The United States.
Respondents- Defendants
(name of warden or authorized person having custody of petitioner)

Case No. _____
(Supplied by Clerk of court

EP 25CV0710

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241
Personal Information

1. Petitioner Maikel Gallo surera ("Mr Surera " or "Petitioner") a Cuban National, has been Detained by the United States Department Homeland Security's Immigration and Customs Enforcement division at the SPC El Paso processing Center in Texas Under 8 U.S.C. § 1231(a)(6) since May 29,2025, for over six-months. Mr. surera Hereby petitions this Court for a writ of habeas Corpus to remedy his unlawful detention and to enjoin his continued unlawful detention by the respondents. In support of this petition and complaint for injunctive relief.

2. Mr. Surera civil Immigration detention in the absence of an individualized determination of the flight risk or danger, is substantially unjustified and has become unduly prolonged in the violation of due process clause of the Fifth Amendment of the U.S. Constitution. Accordingly, respondents release Mr. Surera from custody Immediately, subject to an appropriate Order of Supervision, which the Department of Homeland Security ("DHS") bears the burden of providing by clear and convincing evidence that no condition or alternatives to detention exist to mitigate any risk of flight or danger he may pose. petitioner alleges as follows:

3. Petitioner, Mr. Maikel Gallo Surera, is a native and citizen of Cuba, is currently detained at SPC ICE Processing Center ("SPC") in SPC El Paso, Texas. He is under the Direct control of respondents and their agents.

4. respondent, Angel Garite is the warden of SPC processing Center, El Paso in his official capacity as Assistant Field Office Director of the Immigration and Customs. Respondent Garite, Mr. Surera's immediate custodian, is sued in his official capacity.

5. Mary De-Anda Ybarra is sued in her official capacity as the director of the el Paso field office of ICE Enforcement and Removal Operations ("ERO"). In this capacity, she has Responsibilty for over the detention and removal of non-citizens detained at SPC Processing Center El Paso, Texas, is authorized to release Mr. Surera , and is an immediate and legal custodian of Mr. Surera.

6. Respondent Krisiti Noem is sued in her official capacity as the secretary of the DHS. DHS is responsible for the administration and enforcement of immigration laws. Respondent has supervisory responsibility and authority over detention and removal of no- citizens through put the United States of America. ICE is a subdivision of DHS, and respondent, Kristi Noem is legal custodian of Mr. Surera.

7. Respondent, Pamela Bondi is sued in her official capacity as the attorney general of the United States and head of the US department of justice, which encompasses the BIA and the IJs as submits of the Executive Office of Immigration Review ("EOIR"). Respondent Pamela Bondi supervises IJs. Including those who preside over the Texas Immigration Court, which have jurisdiction over bond proceedings for individuals in ICE Custody at SPC El Paso. EOIR has authority to provide Mr. Surera with a bond hearing and routinely does so a federal District Court orders.

I. STATEMENT OF FACTS

8. petitioner(' Maikel Gallo Surera") was born in Cuba 06/18/1979 and admitted to the United Stated in July 07-2010 as a political Refugees. In 2010 Mr Surera became a permanent resident. see exb d. he married to American citizen, they have two kids together, the oldest is one years and six months old

girl. The last one is six months old girl. See exhibit A&B. When he was 32 old Mr. Surera face a charge to marijuana procession in court polk County, and he went to trial and found him guilty to 15 years. Five years incarceration and 10 years probation. See *Docket case no. 2D19-3188, #case no.2d18-1395*

9. in September 3, 2020, After Mr. Surera served his sentence conviction in Florida State Department of Corrections, ICE held him in custody for Approximately forty four days before Releasing him on an Order Supervision , at the time ICE was Unable to effectuate his Removal to Cuba ("Discussing the Status of the diplomatic Relationship between the United States of the Diplomatic Relationship between the United States and Cuba") (Describing Why Mr Surera was release from ICE Custody in 2020 during the five years since his Release from ICE custody, Mr Surera was Complied with the Condition of his Release de On June The Department of Homeland security commence removal proceedings against petitioner, charging Surera with as removable under section 237(a)(2)(A)(iii) of the immigration and Nationality Act..(see removal Order at *exibit c)* petitioner admitted the factual allegation and conceded the Charge of removability. *(id)*

10. on September 25, 2020 Mr Surera was order removed, Ordering him ('Removed from the United States to any other country than Cuba that will accept him" on December 13, 2021, Immigration and Customs Enforcement (ICE)'which had kept petitioner in Custody during those removal proceedings, released petitioner under an order of supervision after determining that there was no significant likelihood of his removal in the reasonably foreseeable future. Mr. Surera avers that he "never violated any" of his conditions of Supervised release and has mot had any other "encounter with [] law enforcement."Respondents do not contest this assertion. Nor do Respondents offer any evidence the contrary.

11. on May 29th, 2025 Ice arrested Mr. Surera "based on a determination that his removal is now significantly likely in the reasonably foreseeable future"see *exibit a.* the next day, having already detained petitioner, ICE Served a Notice revocation of (Revocation Notice) on him. On Sept 9 th ,2025

"ICE had a order to remove petitioner to a third country he will be safe"

Accordingly, Since he was taken into immigration custody, Immigration and Customs Enforcement ("ICE") officers have attempted to persuade petitioner to voluntarily go to Mexico. *Id.*,. ICE has transferred petitioner to several locations during its efforts to convince petitioner to voluntarily go to Mexico, but each time returned petitioner to the SPC detention El Paso processing Center in Texas.

12. Surera was initially detained while the government attempted to find a third country that would accept him. *(Id.)*. When the government was unable to do so, it released on Sept 23, 2020, under an Order of Supervision. Implicit in this decision was a finding that Mr.Surera was non-violent and would remain so if released, that he was not likely to pose a threat to the community if released, that he was not likely to violate the conditions of his release and that he did not pose a flight risk. *See* 8 C.F .R. § 241.4(d)(l) (permitting the release of a non-citizen "if the [non-citizen] demonstrates 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 [non-citizen]'s removal from the United States."); 8 C.F.R.§ 241 .4(e) (listing the criteria for release as including a determination that the non-citizen "is not likely to pose a threat to the community following release "and does not pose a significant risk of flight if released").

13. The Order of Supervision required Surera to maintain contact with an assigned ICE official and report in person when requested, not commit any new crimes, cooperate with ICE in locating a third country to accept him, complete an application for any travel documents that ICE requested, and cooperate with his removal once a third country is identified.

14. Once a non-citizen subject to an Order of Removal has been released from detention under an Order of Supervision, there are detailed regulations concerning when and how that Order of Supervision may be revoked. *See* 8 C.F.R. § 241.4(/).Generally speaking, the Order of Supervision may be revoked if the non-citizen violates any of its conditions. *See* 8 C.F.R. § 241.4(/)(1); § 241.4(l)(2)(ii). In addition,

an Order of Supervision may be revoked when it is appropriate to enforce a removal order or when "[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2)(iii),§ 241.4(l)(2)(iv). Regardless of the reason for the revocation, only two officials have the authority to revoke an Order of Supervision: the Executive Associate

Director of ICE or a district director of ICE if the "circumstances do not reasonably permit referral of the case to Executive Associate [Director]." 8 C.F.R. § 241.4(/)(2).When an Order of Supervision is revoked, the non-citizen must "be notified of the reasons for revocation of his or her release" and must be afforded a prompt "initial informal interview" to allow the non-citizen an opportunity to respond to and contest the reasons for revocation. 8 C.F.R. § 241.4(/)(1).In addition, there are specific regulations pertaining to non-citizens whose removal to a particular country has been withheld. *See* 8 C.F.R. § 1208.16(b).

15. To address any concerns that a non-citizen could be removed to a third country that would simply, in tum, send the citizen back to his home country, a non-citizen with an order withholding removal to a particular country must be given notice of the country to which the government intends to remove him and an opportunity to apply for protection from removal to that country. *See* 28 C.F.R. § 200.1; *see also Dep't of Homeland Sec. v. D.*

16. Moreover, the length of time that a non-citizen under an Order of Removal may be held in detention is governed by statutes, regulations, and case law. After an Order of Removal is entered, the government must detain the non-citizen for 90 days, during which the government must attempt to remove the noncitizen. *See* 8 U.S.C. § 1231(a)(l); 8 C.F.R. § 241.4(g)(l)(ii). This 90-day removal period runs from the latest of the date of Order becomes final, the date on which a court-ordered expires, or the date the non-citizen is released from detention. *See* 8 U.S.C. § 1231(a)(l)(B); 8 C.F.R. § 241.4(g)(l)(i).

17. Detention may be extended beyond the 90-day removal period if the non-citizen fails or refuses to apply in good faith for travel documents as directed by ICE. *See* 8 C.F .R.§ 241.4(g)(l)(i). Detention may also be extended if the non-citizen is inadmissible under 8 U.S.C. §1182, if the non-citizen has committed certain crimes, and if the government determines that the non-citizen poses a risk to the community or is a . flight rise. *See* 8 U.S.C. § 123 l(a)(6). But the Supreme Court has held that a non-citizen may not, consistent with the Due Process Clause, be detained indefinitely. *See Zadvydas v. Davis*, 533 U.S. 678, 697 (2001). Instead, due process requires that a non-citizen be detained for no longer than the time "reasonably necessary to secure removal." *Id.* At 699.

18. Therefore, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statutes."*Id.* at 699-700. The Court also held that 180 days is a "presumptively reasonable"period for removing a non-citizen. *Id.* at 701. But if there is no reasonably likelihood that the non-citizen will be removed in the foreseeable future, the government may not continue to detain him. *Id.*

19. Surera has been living in the Tampa, Florida area under his Order of Supervision Since July 01, ,2021 . He alleges that he has reported to ICE as required.*(Id.)*. He has not been arrested, charged with, or convicted of any criminal offense since his release. *(id)*.The government has never requested Surera to take any actions to obtain travel documents from any third country. *(Id.* at 5).On May 29, 2025, ICE officials arrested Mr Surera without notice, and he has been detained ever since. *(Id.)*. petitioner alleges that he has not been given a copy of any order revoking his Order of Supervision. *(Id.)*. He has not been given notice of the reasons why his Order of Supervision was revoked, assuming that it even legally was revoked. *(Id.)*. He has not been given the informal interview required by the regulations and statutes. *(Id.)*. He has been told that he will be detained until ICE can find a third country that is willing accept him-however long that takes. *(Id.)*.

20. And the government has refused to identify the countries to which it is trying to remove him. *(Id.)*.

On December 17, 2025, Mr. Surera filed this petition for writ of habeas corpus. In that petition, he does not challenge his removal or the government's right to effect his removal. Instead, contends that the *process* the government is using to attempt to remove him violates his Fifth Amendment due process rights, the provisions of the Immigration and Nationality Act and its implementing regulations, and his due process rights under *Zadvydas.* As relief, he asks the Court to order his immediate release, restore his Order of Supervision, and order the government to comply with Its rules and regulations regarding notice and removal.

EXHAUSTION OF REMEDIES

21. Mr. Gallo Surera has Exhausted this Administrative remedies to the extent required by law, and his monthly remedy is by way of this judicial action. After the supreme court's decision in Zadvydas, attorney General Ashcroft issue a memorandum outlining how such aliens may seek release from custody pursuant to Zadvydas. See memorandum, john Ashcroft, Attorney General July 19, 2001: post-Order Custody review After Zadvydas v. Davis. 66 Fed. Reg. 38,433 (2001)("Ashcroft Memorandum").this petition should treated by ICE as a request for custody review subject to the terms of the Ashcroft Memorandum. Neither the Ashcroft Memorandum nor ICE's previous custody review procedures at 8 C.F.R. § 241.4 provides another method of obtaining or appealing a custody review decision. No statutory exhaustion requirements apply to petitioner's Claim of Unlawful detention.

II. LEGAL STANDARDS

A. Petitions for a Writ of Habeas Corpus

22.Surera seeks release through a petition for writ of habeas corpus under 28 U.S.C. § 2241. To be entitled to the issuance of a writ of habeas corpus, the petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States[.]" 28 U.S.C. § 2241(c)(3); *see Orellana v. Kyle*, 65 F.3d 29, 31 (5th Cir. 1995) (per curiam) ("[N]either habeas

nor civil rights relief can be had absent the allegation by a plaintiff that he or she has been deprived of some right secured to him or her by the United States Constitution or the laws of the United States." (quoting *Hilliard v. Bd. of Pardons & Paroles*, 759 F.2d 1190, 1192 (5th Cir. 1985) (per curiam))). The habeas petitioner "bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence." *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011) (citing *Parke v. Raley*, 506 U.S. 20, 31 (1992)); *see also Bruce v. Estelle*, 536 F.2d 1051, 1058 (5th Cir. 1976). A court considering a habeas petition must "determine the facts, and dispose of the matter as law and justice require." 28 U.S.C. § 2243. When the Court finds that a petitioner's constitutional rights have been violated, the petitioner is entitled to the issuance of the requested writ.

B. Motions for Summary Judgment

23. The government has moved for entry of summary judgment. "As a general principle, Rule 56 of the Federal Rules of Civil Procedure, relating to summary judgment, applies with equal force in the context of habeas corpus cases." *Clark v. Johnson*, 202 F.3d 760, 764 (5th Cir. 2000). Under Rule 56, the moving party is entitled to summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The moving party bears the initial burden of providing the Court with a legal basis for its motion, and it must identify those portions of the record that it contends demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is "material" if its resolution in favor of one party might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,248

(1986). An issue is "genuine" if the evidence is sufficient for a reasonable jury to return a verdict for the non-moving party. *Id.* This standard "mirrors the standard for a directed verdict under Federal Rule of Civil Procedure S0 (a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict." *Id.* at 250. To meet this burden, the moving party must inform the Court of the basis for the motion and identify those portions of the record which demonstrate the absence of a genuine dispute of material fact *and* the appropriateness of judgment as a matter of law. *See Celotex Corp.*, 477 U.S. at 323. If the moving party fails to meet its initial burden, the motion for summary judgment must be denied. *See Pioneer Exp!., L.L.C. v. Steadfast Ins. Co.*, 767 F.3d 503, 511 (5th Cir. 2014).

III. DISCUSSION

24. Non-citizens, even those subject to a final Order of Removal, have constitutional rights just like everyone else in the United States. *See Zadvydas*, 533 U.S. at 693. And while the new administration may have changed how it prioritizes the removals of non-citizens, it may not do so at the expense of fairness and due process. *See Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (Apr. 7, 2025) (per curiam) ("It is well established that the Fifth Amendment entitles [non-citizens] to due process of law in the context of removal proceedings."). It also may not do so in violation of its own regulations. *See Gulf States Mfrs., Inc. v. Nat'! Labor Relations Bd.*, 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); *see also Bonitto v. Bureau of Immigr. & Customs Enf't*, 547 F. Supp. 2d 747, 755 **(S.D.** Tex. 2008) ("Where

individual interests are implicated, the Due Process clause requires than an executive agency adhere to the standards by which it professes its action to be judged." (citing *Vitarelli v. Seaton,* 359 U.S. 535, 547 (1959))). With these principles in mind, the Court will consider whether the government is entitled to summary judgment and, if not, what relief is due to Surera

A. JURISDICTION

25. The government does not challenge the Court's jurisdiction to entertain Surera's petition, but it does contend that the Court may not review its discretionary decision to revoke Surera's Order of Supervision~ Under 8 U.S.C.§ 1252(a)(2)(B)(ii), federal courts have no jurisdiction to review a "decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this sub chapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." *See also* 8 C.F.R. § 241.4. (permitting ICE officials to decide to revoke supervised release "in the exercise of discretion").

26. Therefore, the Court agrees that it cannot review the discretionary decision to revoke Surera's Order of Supervision. But Surera does not challenge the purported decision to revoke his Order of Supervision. 2 Instead, he challenges the manner in which the government has re-detained him under this purported order. The Court unquestionably has jurisdiction to review Surera's claims that the government has violated his statutory and constitutional rights to due process by re-detaining him. *See Demore v. Kim,* 538 U.S. 510, 516-17 (2003) (citing 28 U.S.C. § 2241(c)(3)); *Baez v. Bureau of Immigr. & Customs Enf't,* 150 F. App'x 311,312 (5th Cir. 2005) (per curiam) (courts retain the power to hear statutory and constitutional challenges to immigration detention when those claims do not

challenge the final order of removal). Nothing in 8 U.S.C. 2 The Court refers to this as a "purported" revocation because the government has not provided a copy of an order revoking supervision to either Surera or the Court. Absent this, nothing before the Court demonstrates that such an order exists. § 1252(a)(2)(B)(ii) prevents the Court from considering Surera's challenge to the manner in which the government revoked his Order of Supervision or considering whether the government followed its own regulations in doing so. *See Zadvydas*, 533 U.S. at 687-88 (holding that a§ 2241 petition is the proper vehicle for a petitioner to use to challenge the legality and constitutionality of post-removal period detention); *Oyelude v. Chertoff*, 125 F. App'x 543,546 (5th Cir. 2005) (courts have jurisdiction to review detention "insofar as that detention presents constitutional issues, such as those raised in a habeas petition"); *Mantena v. Johnson*, 809 F.3d 721, 728-29 (2d Cir. 2015) (even when a "statute strips jurisdiction over a substantive discretionary decision, [it] does not strip jurisdiction over procedural challenges" and when procedural requirements bind an official's exercise of discretion, "courts retain jurisdiction to review whether those requirements have been met").

27.Surera's petition does not challenge his removal; he challenges the manner in which the government revoked his release, which he contends was done without due process and in violation of ICE's own regulations. Similarly, Surera does not challenge the government's ability detain him for the time necessary to effect his removal. Instead, he challenges the government's authority to hold him in detention indefinitely while it tries to find a third country that will accept him. These types of claims not barred by 8 U.S.C. § 1252(g). To the extent that the government's motion for summary judgment can be read to challenge the Court's jurisdiction to entertain Surera's due process and statutory claims,

denied.

Violation of the INA and its Regulations

28. The statutes and regulations governing immigration and removal proceedings afford important procedural safeguards to detainees. *See United States v. Caceres*, 440 U.S. 741, 760 (1979). For Surera's detention to be constitutional, the government must have complied with both the applicable statutory provisions and its own regulations. *Id.* (when federal regulations .afford individual rights and protections, the Supreme Court has insisted on requiring an agency's compliance with its own regulations). Surera alleges three claims based on alleged violations of the statutes and regulations applicable to the proceedings against him: (1) his rights were violated in connection with the purported revocation of his Order of Supervision;· (2) his rights have been violated in connection with his right to challenge the revocation; and (3) his rights have been violated in connection with his potential removal to a third country. The Court considers each of these challenges in tum.

1. The Revocation of the Order of Supervision

29. Surera first contends that the government violated his due process rights by purporting to revoke his Order of Supervision without complying with the regulations governing such revocations. As explained above, once Surera was released from detention under an Order of Supervision, the revocation of that release was subject to the provisions of 8 C.F .R. § 241.4(1)(2). That subsection specifically limits which government officials have the authority to revoke an Order of Supervision:

The Executive Associate [Director] shall have authority, in the exercise of discretion, to revoke release and return to [ICE] custody a [non-citizen] previously approved for release under the procedures in

this section. A district director may also revoke release of a [non-citizen] when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director].

30. 8 C.F.R. § 241.4(1)(2). The same subsection limits the exercise of the discretion to revoke an Order of Supervision: Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

(i) The purposes of release have been served;

(ii) The [non-citizen] violates any condition of release;

(iii) It is appropriate to enforce a removal order or to commence removal proceedings against a[non-citizen]; or (iv) The conduct of the [non-citizen], or any other circumstance, indicates that release would no longer be appropriate. 8 CPR§ 241.4(1)(2). Surera asserts that the government did not comply with either of these binding regulations in revoking his Order of Supervision. Trejo's declaration contains no facts concerning whether Surera's Order of Supervision has ever been revoked-much less whether it has been legally revoked for a permissible reason by an order signed by the Executive Associate Director of ICE, someone to whom the Executive. Associate Director has legally delegated authority, or a district director who has made specific findings that the circumstances "do not reasonably permit referral of the case to the Executive Associate [Director]. 8 C.F.R. § 241.4(1)(2). Instead, it states only that Surera was arrested and re-detained "due to the current administration's renewed emphasis on removing criminal aliens." In the absence of some evidence showing that Surera's Order of Supervision was lawfully

revoked by someone with the authority to do so and for a reason lawfully permitted, the government has failed to show that it afforded Surera with due process in connection with the purported revocation of his Order of Supervision. The record before the Court shows that Surera was arrested and re-detained in violation the statutes and regulations that govern the revocation of a lawful Order of Supervision. The government's motion does not show that genuine issues of fact exist material to the question of whether Surera has been lawfully re-detained under a valid revocation of his Order of Supervision.

2. The Right to Challenge the Purported Revocation

31. Surera also contends that the government violated his due process rights by failing to comply with the requirements of 8 C.F.R. § 241.4(1)(1). That section provides: Any [noncitizen] . . . who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. . . . *Upon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release or parole. The [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.*

32. 8 C.F.R. § 241.4(1)(1) (emphasis added). Surera asserts that he has never been provided with a notification of the revocation of his Order of Supervision, has never been advised of the reasons for the purported revocation, and has never been provided with the informal interview required by § 241.4(/)(1). In neither its motion for summary judgment nor the Trejo' declaration does the government allege, much less offer evidence to show, that it has complied with these

requirements, which are contained in its own regulations. "Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Fed. Deft. of New York, Inc. v. Fed. Bureau of Prisons,* 954 F.3d 118, 130 (2d Cir. 2020); *see also Gulf States Mfrs., Inc. v. Nat'/ Labor Relations Bd.,* 579 F.2d 1298, 1308 (5th Cir. 1978) ("It is well settled that an Executive Agency of the Government is bound by its own regulations, which have the force and effect of law, and the failure of an agency to follow its regulations renders its decision invalid."); *Gov't of Canal Zone* v. *Brooks,* 427 F.2d 346, 347 (5th Cir. 1970) (per curiam) ("It is equally well established that it is · a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it."). Multiple c courts have held that the government's failure to follow its own immigration regulations may warrant release of a detained non-citizen. *See, e.g., Bonitto,* 547 F. Supp. 2d at 756; *Zhu* v. *Genalo,* No. 1 :25-cv-06523 (JLR), 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *Guillermo MR.* v. *Kaiser,* No. 25-cv-05436-RFL, 2025 WL 1983677 (N.D. Cal. July 17, 2025); *Ceesay* v. *Kurzdorfer,* 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Rombot* v. *Souza,* 296 F. Supp. 3d 383, 389 (D. Mass. 2017) ("While ICE does have significant discretion to detain, release, or revoke aliens, the agency must still follow its own regulations, procedures, and prior written commitments."). The government's position that it can choose, based on a change in administration, not to comply with its own regulations is unprecedented. The government does not address Surera's claim that it violated his due process rights by failing to comply with its own regulations, much less point to evidence to show that genuine issues of fact exist material to his claim.

3. Notice of Removal to a Third Country

33. Surera's also contends that the government has violated his due process rights by failing or refusing to tell him what third country it intends to send him to so that he will have an opportunity to object and be heard on any objections, if necessary. Removal proceedings determine not only *whether* a non-citizen may be removed from the United States but also to *where* he may be removed. In determining the location of removal, the law entitles the noncitizen to first voluntarily select a country of removal. *See* 8 U.S.C. § 1231(b)(2)(A)(i); 8 C.F.R. § 1240.l0(f). If the non-citizen does not do so, the immigration judge will designate the country of removal and may also designate alternate countries to which the non-citizen may be removed. *See* 8 C.F.R. § 1240.l0(f). In addition, the immigration judge may designate a country or countries to which the noncitizen *may not* be removed if the noncitizen proves to the court's satisfaction that the noncitizen is likely to be tortured or persecuted if removed to that country. *See* 8 U.S.C. § 123 l(b)(3)(A); 8 C.F.R. § 1208.16(b). In that circumstance, the government may remove the noncitizen to any third "country whose government will accept the [non-citizen] into that country." 8 U.S.C. § 123 l(b)(2)(E)(vii). But the non-citizen may not be removed to any country in which there is reason to believe that he would be be tortured or persecuted. *See* 8 U.S.C. § 123l(b)(3)(A); 8 C.F.R. §§ 208.16-208.18; 8 C.F.R. §§ 1208.16-1208.18. Therefore, when the government intends to remove a non-citizen to a third county, the government must provide notice of the intended removal that is sufficient to enable the non-citizen to challenge that removal either as violating an order of withholding or as removing him to a country that will subject him to torture or persecution. *See, e.g., Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101, at *2 (Apr. 10, 2025) (Sotomayor, J.,

concurring); *Andriasian v. Immigr. & Naturalization Serv,* 180 F.3d 1033, 1041 (9th Cir. 1999).

34. The "notice must be afforded within a reasonable time and in such a manner as will allow [the non- citizne] to actually seek ... relief in the proper venue before removal occurs." *J. G. G.*, 2025 WL 1024097, at 2. Surera contends that the government has violated his due process rights by failing to notify him of what country it intends to remove him to so that he will have an opportunity to object, if necessary. In response, the government indicates that it has not yet found a country willing to accept Surera , so no right to any process has yet been triggered. Surera points to no authority that requires the government to provide him with notice of the countries to which it has applied when those countries have not yet agreed to accept him. At this stage of the proceedings, then, Surera has not established that his due process rights have been violated in this context. Nevertheless, Trejo's declaration does not address this claim, and neither he nor the government offer any assurances that Surera will be afforded the required notice once it identifies a third county that will accept him.

C. The Fifth Amendment Violation

35. In addition to his claims based on the violation of various immigration statutes and regulations, Surera contends that his re-detention violates due process because his removal from the United States is not reasonably likely to occur in the foreseeable future. In response, the government contends that it may detain Surera indefinitely because he is inadmissible under 8 U.S.C. § l 182(a)(6). Alternatively, the government contends that Surera's current detention is presumptively valid under *Zadvydas.* The government's positions are not well taken.

36. To the extent that the government contends that it can detain Surera indefinitely, it is incorrect. In *Zadvydas*, the Supreme Court specifically rejected the argument that the government could detain a removable non-citizen indefinitely. *Zadvydas*, 533 U.S. at 682. The Supreme Court held that, despite the apparently · clear language of 8 U.S.C. § 123 l(a)(6), due process prohibits the government from detaining an individual indefinitely after the 90-day removal period has expired. *Id.* • at 689 (specifically stating that§ 123 l(a)(6) "does not permit indefinite detention"). Instead, detention is limited to the period reasonably necessary to bring about the removal. *Id.* Therefore, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized." *Id.* At 699.

37. In this case, Surera contends that his removal is not reasonably foreseeable and therefore his re-detention violates *Zadvydas*. He points out that the government has been unsuccessful in finding a country willing to accept him, and it has not identified any country that it is currently in contact with about Surera's removal. Neither the government's motion nor Trejo' s declaration identify any country that the government has recently contacted about Mr.Surera's removal. Considering the government's past failure to identify a country willing to accept Surera and its current refusal to identify any possible third country for Surera' s removal, the Court cannot say that his removal is reasonably foreseeable. Surera's current detention therefore violates the Due Process Clause, as explained in *Zadvydas*. In the alternative, the government contends that Surera's detention does not violate *Zadvydas* because he has not yet been detained for more than six months. The government contends that because it re-detained Surera May 29,2025, it may hold him for six months from that date before running a foul of *Zadvydas*. But nothing in *Zadvydas* precludes a challenge to detention before

38 .the presumptively constitutional time period has elapsed. *Zadvydas* specifically holds that continued detention is proper only when the non-citizen's removal is reasonably foreseeable. "[I]f removal is not reasonably foreseeable, the court should hold continued detention is unreasonable and no longer authorized by statute." *Id.* At 699- 700. The government's contention that it may avoid the holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a non-citizen has no basis in either the statutes, the regulations, or *Zadvydas* itself. *See, e.g., Nguyen v. Scott,* No. 2:25-cv-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) (rejecting the government's argument that the six-month· period resets when the government re-detains a noncitizen); *Sied v. Nielsen,* No. 17-cv-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *Chen v. Holder,* No. 6:14-2530, 2015 WL 132366635, at *2(W.D. La. Nov. 20, 2015) (rejecting the government's argument that a petition was premature under *Zadvydas* and noting that "[s]urely, under the reasoning of *Zadvydas,* a series of releases and re-detentions by the government, while technically not in violation of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention, albeit executed in successive six month intervals.") (cleaned up). The Court recognizes that at least one court has allowed the government to engage in this type of gamesmanship. *See, e.g., Guerra-Castro v. Parra,* No. 1:25-cv-22487, 2025 WL 1984300, at *4 (S.D. Fla. July 1 7, 2025). Two other courts appear to have accepted this argument but have based their rejection of the petitioners' *Zadvydas* claims on facts showing that the petitioners' removals were reasonably foreseeable. *See Thai v. Hyde,* No. 25- 11499-NMG, 2025 WL 1655489, at *3 (D. Mass. June 11, 2025); *Meskini v. Att'y Gen. of the United States,* No. 4:14-cv-42, 2018 WL

39. 1321576, at *4 (M.D~ Ga. Mar. 14, 2018). Despite this split of authority, the Court does not read *Zadvydas* to permit the government to indefinitely detain a non-citizen by the simple expedient of . releasing and then re-detaining him in a series of"presumptively constitutional" six month increments. The Court therefore rejects the government's contention that Surera must remain in detention for six months before the Court may consider whether his continued detention violates his due process rights.

40. However, even if the government can "reset". the six-month presumptively constitutional detention period by releasing the non-citizen and then re- detaining him, that would not require dismissal of Surera's habeas petition because the presumption of constitutionality during that six-month period is rebuttable. *See, e.g., Ali v. Dep'to/Homeland Sec.,* 451 F. Supp. 3d 703, 707 **(S.D.** Tex. 2020) (the "six month presumption is not a bright line;' and *Zadvydas* "did not require a detainee to remain in detention for six months . . . before a habeas court could find that the detention is unconstitutional"); *Zavvar v. Scott,* No. 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025) (collecting cases). Even within the presumptively constitutional detention period, whether a non-citizen's detention is constitutional hinges on whether his removal from the United States is reasonably likely in the foreseeable future, not on how long the non-citizen has been detained.

41.*See Zadvydas,* 533 U.S. at 699.for a withhold of removal, *see* 8 C.F.R. §_ 1208.24(f), but the 'government has not initiated such proceedings and the Trejo declaration does not state that any such proceedings are anticipated. Further, the Trejo's declaration demonstrates that during the 5-year period since Surera was ordered removed, the government's efforts to remove him- sparse and sporadic as they may have been-have been unsuccessful. The declaration contains

no information tending to show that circumstances have changed to the point that Surera's removal is now reasonably foreseeable when it was not before. Further, any efforts to remove Surera to a third country would likely be delayed by proceedings contesting his removal to the third country finally identified. *See Johnson v. Guzman Chavez,* 594 U.S. 523, 528, 530-31 (2021); *Zavvar,* 2025 WL 2592543, at *8 ("The fact that Zavvar likely will have the opportunity· to seek further relief from the Immigration Court, and then potentially file appeals from any adverse rulings, further demonstrates that removal is not likely in the reasonably foreseeable future.");*Munoz-Saucedo v. Pittman,* No. 25-2258. (CPO), 2025 WL 1750346, at *7 (D.N.J.June 24, 2025) (finding relevant to the reasonably foreseeable analysis the fact that "even if ICE identified a third country, Petitioner ... would be entitled 'to seek fear-. ' based relief from removal to that country,' which would require 'additional, lengthy proceedings'"):

42. The Court is mindful that the government has the right to enforce Surera' s Order of Removal. But the government may not detain Surera a for an indefinite and undetermined period of time while it tries to effect that removal when the circumstances are such that his removal is not reasonably likely in the foreseeable future. Such an action violates the Due Process Clause, as explained in *Zadvydas.*The government points to no evidence showing that disputed issues of fact exist material to this determination.

D. Scope of Relief

Having determined that the government is not entitled to summary judgment in its favor and that Surera's petition is well taken, the question remains as to_what relief to afford Surera. In resolving that question, the Court must consider the three factors set out by the Supreme Court in *Mathews v. Eldridge,424 U.S. 319,334-35 (1976):*

43. First, the private interest that will be affected by the official action;Second, the risk of an erroneous deprivation of sub-interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. • Here, even if the government has the discretion to revoke Surera's supervision, his constitutionally protected liberty interests are implicated by his re-detention. The Supreme Court has stated that " [f]reedom 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." *Zadvydas,* 533 U.S. at 690.

44. Moreover, individuals who have been conditionally released from detention have a protected interest in their "continued liberty." *Young v. Harper,* 520 U.S. 143, 147 (1997). This is true even when the released individual is subject to extensive conditions of release. *Id.* at 148; *see also Morrissey v. Brewer,* 408 U.S. 471, 482 (1972). Surera has a liberty interest in his continued release under· his Order of Supervision. He has been free under that Order for over five years. He has a job and a family. He has complied with all of the terms of his Order of Supervision. There is no principled reason to find that Surera does not have an overwhelming liberty interest in his continued release that may not be removed without due process.

45. Second, the risk of an erroneous deprivation of Surera's rights is high. The regulations enacted by the government itself are intended to ensure that non-citizens who have been released to supervision do not arbitrarily have that supervision revoked. By failing to follow its own regulations,· the government has denied Surera notice of its intent to revoke his supervision, notice of the reasons for the revocation, and an opportunity to challenge those

reasons. The government's only explanation for its failure to comply with its own regulations is a change in emphasis by the new administration. While the administration is free to change its areas of enforcement emphasis, it may not do so at the expense of individuals' due process rights.

46. The risk of an arbitrary and erroneous deprivation under these circumstances is undeniably significant. Third, the burden imposed on the government does not outweigh Surera's interests. To be sure, the government has a weighty interest in removing deportable noncitizens, ensuring compliance with Orders of Supervision, and protecting the public. But in this case, those interests will not be impaired by requiring the government to comply with its own regulations in determining whether to revoke Surera's supervision and whether to re-detain him.

47. As explained above, 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.

48. The government does not allege in its motion, and Trejo does not attesting his declaration, that Surera failed to comply with his Order of Supervision or that his removal is imminent. Further, the government identifies no factual basis to believe that Surera poses a danger to the public.

49. While the government recounts Surera's criminal history, those events predated the government's initial decision to release Surera on an Order of Supervision, and the government does not identify any changed circumstances that would appear to warrant the revocation of Surera 's supervision and his re-detention without even the barest hint of due process.

50. Having considered Surera's petition and its attachments, the government's response and attachments, and the law, the Court finds that the balance of the factors establishes that the

government violated Surera's due process rights by re-detaining him without complying with its own regulations and the law.

51. The Court also finds that Surera's continued detention violates due process because it is not reasonably likely that he will be removed in the foreseeable future. The only way to vindicate Surera's due process rights is to order his release from custody.

CERTIFICATE OF SERVICE

I, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send true copies , with corresponding summonses, by USPS Certified Priority Mail to the following individuals:

Angel Garite, Warden SPC
Ice Processing Center
AFOD EPSPC,
8915 Montana Ave,
El Paso, TX 79925

Mary De Anda-Ybarra FOD
ICE El Paso Field Office
11541 Montana Ave., Suite E
El Paso, TX 79936

The Honorable Kristi Noem
Secretary of Homeland Security
US Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington DC 20528

US Attorney General Pam Bondi
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dated:
12/17/2025

Respectfully submitted
Pro se Gallo Surera Maikel
A# #212-347-358
8915 Montana El Paso, T