IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-04210-NYW

JUAN IZQUIERDO NAVARRO,

Petitioner,

v.

PAMELA BONDI, in her official capacity as U.S. Attorney General,
KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,
ROBERT HAGAN, in his official capacity as Field Office Director of Enforcement and Removal Operations, Denver Field Office, Immigration and Customs Enforcement, and
JUAN BALTAZAR, in his official capacity as Warden of Denver Contract Detention Facility,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

In accordance with the Court's Order dated January 5, 2026, ECF No. 4, Respondents respond to the Petition for Writ of Habeas Corpus filed by Juan Izquierdo Navarro ("Petitioner"), ECF No. 1 (filed December 30, 2025).

As explained further below, Petitioner, a citizen of El Salvador, was issued a final order of removal in 2017, but he was granted deferral of removal under Article III of the Convention Against Torture and was subsequently released on an order of supervision. On November 19, 2025—just under two months ago—U.S. Immigration and Customs Enforcement ("ICE") revoked Petitioner's release on supervision, took him into custody, and informed him that he would be removed to Mexico.

Petitioner challenges his detention on the ground that it violates his due process rights and the Immigration and Nationality Act ("INA"), for two reasons. *See* ECF No. 1 ¶¶ 1, 27. He alleges that Respondents did not comply with the relevant regulations when they revoked his release, and that "it is not reasonably foreseeable that he will be removed to El Salvador or any other country." *Id.* ¶ 27. He also references the procedures required to effectuate removal to a third country. *Id.* ¶ 15. Petitioner seeks immediate release. *Id.* at 17.

The Court should deny the Petition, for multiple reasons. Petitioner has been detained for just under two months, which is far less than the presumptively reasonable six-month detention period recognized by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Respondents have been actively pursuing Petitioner's removal to Mexico (a country to which ICE has successfully removed Salvadorans in recent months, and for which Petitioner's claim of fear has already been heard and rejected) but cannot effectuate his removal because of the Court's order that he not be removed. In addition, Petitioner has not shown any prejudice from any deviation from the regulations that give ICE discretion to revoke release, including "to enforce a removal order," 8 C.F.R. § 241.4(l)(2). And, even if he had established a due-process violation, the proper remedy would not be release, but additional process—which he is already receiving. To the extent Petitioner challenges the procedures concerning his removal to a third country, such a challenge does not amount to a claim that his detention is unlawful, and thus it is not a habeas claim. Further, any challenge to the procedures

used for his removal to a third country would need to be raised in the ongoing certified non-opt-out nationwide class action on the same issue.

BACKGROUND

I. Petitioner's immigration history

Petitioner is a native and citizen of El Salvador. Ex. A ¶ 4 (Decl. of Gary Zolock). He illegally entered the United States on May 16, 2013, by crossing the border near Hidalgo, Texas. *Id.* ¶ 5. U.S. Customs and Border Patrol ("CBP") encountered Petitioner, and he claimed fear of persecution if returned to El Salvador. *Id.* CBP processed Petitioner for expedited removal pursuant to 8 U.S.C. § 1225(b)(1) and referred him to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview by an asylum officer. *Id.*

On June 14, 2013, USCIS determined that Petitioner had established a credible fear of persecution or torture if returned to El Salvador. *Id.* ¶ 7. On July 31, 2013, USCIS issued Petitioner a Notice to Appear ("NTA") initiating removal proceedings under 8 U.S.C. § 1229a before the Executive Office for Immigration Review ("EOIR"). *Id.* ¶ 8. The NTA charged Petitioner with being inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document). *Id.*

On August 8, 2013, ICE exercised its discretionary authority to parole Petitioner from custody pursuant to 8 U.S.C. § 1182(d)(5). *Id.* ¶ 9. On January 12, 2017, Petitioner appeared, with counsel, before an Immigration Judge ("IJ") for a master

calendar hearing. *Id.* ¶ 10. Petitioner admitted the charge in the NTA. *Id.* The IJ found Petitioner inadmissible and designated El Salvador as the country of removal. *Id.* Petitioner then filed a Form I-589, Application for Asylum and for Withholding of Removal with EOIR. *Id.*

On March 2, 2017, Petitioner was convicted of Unlawful Sexual Contact – No Consent in violation of C.R.S. § 18-3-404(1)(a). *Id.* ¶ 11. Petitioner was sentenced to four years of sex offender probation and required to register as a sex offender. *Id.*

On April 1, 2017, ICE arrested Petitioner and took him into custody pending resolution of his removal proceedings. *Id.* ¶ 12. On August 7, 2017, the IJ denied his application for asylum and ordered him removed to El Salvador. *Id.* ¶ 13. However, the IJ granted deferral of removal. *Id.* Both parties waived appeal and the IJ's order became administratively final the same day. *Id.*

On November 6, 2017, ICE conducted a Post Order Custody Review ("POCR") pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 15. ICE determined that it would not continue to detain Petitioner because, at that time, removal to a third country was impracticable.[1] *Id.* ICE released Petitioner on an order of supervision. *Id.*

On November 19, 2025, ICE revoked Petitioner's release on supervision and detained him for the purpose of executing the final order of removal pursuant to 8

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[1] The INA permits noncitizens to be removed to third countries. 8 U.S.C. § 1231(b)(1)(C); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021) (explaining that "the statute provides numerous options: a country designated by the alien; the alien's country of citizenship; the alien's previous country of residence; the alien's country of birth; the country from which the alien departed for the United States; and finally, any country willing to accept the alien").

C.F.R. § 241.4(l)(2)(iii). *Id.* ¶ 16. That same day, ICE notified Petitioner that he would be removed to Mexico and served him with a Notice of Removal. *Id.* & Attach. 1 (November 19, 2025, Notice of Removal). Petitioner refused to sign the notice. *Id.* Petitioner did not claim fear of removal to Mexico at that time. *Id.* Due to operational issues, Petitioner was not transferred for removal at that time. *Id.*

On December 3, 2025, ICE again notified Petitioner that he would be removed to Mexico and served him with a second Notice of Removal. *Id.* ¶ 17 & Attach. 2 (December 3, 2025, Notice of Removal). Petitioner again refused to sign the notice and, for the first time, claimed fear of removal to Mexico. *See id.* Based on that claim, ICE referred Petitioner to USCIS for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3). *Id.*

On December 5, 2025, USCIS conducted a screening interview with Petitioner. *Id.* ¶ 18. USCIS concluded that Petitioner failed to establish that it is more likely than not that he will be persecuted or tortured in Mexico. *Id.*

Following USCIS's determination that Petitioner had not established he was eligible for protection under § 1231(b)(3), ICE began the process of preparing Petitioner for removal to Mexico by nominating him for removal and engaging in the diplomatic process with the Mexican government. *See id.* ¶ 19. In recent months, ICE has successfully executed removals of Salvadorans to Mexico. *Id.* ¶ 22.

On December 30, 2025, Petitioner filed the instant petition, and, on January 5, 2026, the Court issued the Order enjoining Respondents from transferring or removing Petitioner. ECF Nos. 1, 4. ICE continues to pursue Petitioner's removal to Mexico, and

based on the prior efforts it made to remove Petitioner to Mexico believes that he will be accepted for removal. Ex. A ¶ 22. However, Respondents cannot effectuate Petitioner's removal unless and until the Court vacates its order. *Id.* ¶¶ 21-22.

Petitioner is currently scheduled for a POCR on February 17, 2026. *Id.* ¶ 23.

II. Petitioner's habeas petition

Petitioner claims that his detention violates due process for two reasons. First, he asserts that "the revocation of his release was effected without compliance with applicable regulations, in violation of" *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). ECF No. 1 ¶ 27. Specifically, he claims that Respondents did not comply with a regulatory provision governing revocations of release, 8 C.F.R. § 241.4(l), because the decision to revoke his release was not made by an Executive Associate Commissioner or certain delegated officials. *Id.* ¶ 34. He also references the procedures for removal to third countries and claims he was not provided "meaningful notice and an opportunity to present a fear-based claim before removal." *Id.* ¶¶ 15, 29.

Second, Petitioner claims that "it is not reasonably foreseeable that he will be removed to El Salvador or any other country." *Id.* ¶ 27. Petitioner does not further explain this argument.

On January 5, 2026, the Court ordered Petitioner to serve Respondents by email and overnight mail on or before January 7, 2026. ECF No. 4 at 1-2. The Court also ordered Respondents to show cause why the Petition should not be granted within seven days of service. *Id.* at 2.

Respondents did not receive the overnight mail service until January 8, 2026.

Thus, Respondents calculated their deadline as January 15, 2026.[2] Pursuant to the Court's Order at ECF No. 8, the new deadline is today, January 16, 2026.

ARGUMENT

As a removable noncitizen, Petitioner's detention is lawful because it has been brief and the government is taking steps to remove him (though removal cannot occur while the Court's Order, ECF No. 4, is in place). Further, Petitioner does not show that any purported deficiencies in the process he has received justify his release.

I. Petitioner's detention does not violate his due process rights or the INA.

Petitioner appears to assert that his ongoing detention by ICE violates 8 U.S.C. § 1231(a) and due process, as interpreted by the Supreme Court in *Zadvydas*. *See* ECF No. 1 ¶¶ 17, 27. The Court should find that Petitioner's detention does not violate his substantive due-process rights or § 1231.

Petitioner's detention is authorized by 8 U.S.C. § 1231. *See* Ex. A ¶ 13 (noting that Petitioner was ordered removed on August 7, 2017); 8 U.S.C. § 1231 (providing for the detention and removal of noncitizens ordered removed). Under § 1231(a), DHS "shall detain" a noncitizen "[d]uring the removal period." 8 U.S.C. § 1231(a)(2). The removal period is the 90-day period during which DHS "shall remove the alien from the United States." *Id.* § 1231(a)(1)(A). Following the IJ's order of removal, Petitioner was

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[2] The Court appeared to calculate Respondents' deadline as January 14, 2026, due to the deadline the Court imposed for service. *See* ECF No. 8. In email correspondence with Petitioner's counsel, Petitioner's counsel agreed that service was complete on January 8, 2026, and that Respondents' response was thus due on January 15, 2026. Undersigned counsel apologize to the Court for any confusion or miscommunication about the response deadline.

detained for approximately 90 days, at which time he was released on supervision. Ex. A ¶ 15 (noting that Petitioner was released on November 6, 2017).

The statute further provides that individuals like Petitioner who have been determined to be inadmissible under Section 1182 may be detained beyond the initial 90-day removal period. *See* 8 U.S.C. § 1231(a)(6) ("An alien ordered removed who is inadmissible under section 1182 of this title . . . may be detained beyond the removal period"). The Supreme Court has expressly recognized that § 1231(a) authorizes further detention after the initial 90 days:

> In addition to setting out a 90-day removal period, § 1231 expressly authorizes DHS to release under supervision or continue the detention of aliens if removal cannot be effectuated within the 90 days. . . . DHS routinely holds aliens under these provisions when geopolitical or practical problems prevent it from removing an alien within the 90-day period. . . . [§ 1231] provides for post-removal detention and supervised release in the event an alien cannot be removed within the 90-day removal period.

Johnson v. Guzman Chavez, 594 U.S. 523, 546–47 (2021) (citations omitted). If detained, the noncitizen receives periodic custody reviews. *See* 8 C.F.R. § 241.4. Here, ICE has confirmed that Petitioner is scheduled for a POCR. Ex. A ¶ 23.

The Supreme Court has also found that a six-month period of detention for removable noncitizens comports with due process. In *Zadvydas*, the Court acknowledged that removing a noncitizen to another country often involves negotiations between the Executive Branch and foreign nations. *See* 533 U.S. at 700. Recognizing that reality, and "to guide lower court determinations" and "limit the occasions when courts will need to make" difficult judgments about Executive Branch activities, the Court found that detention of a noncitizen under 8 U.S.C. § 1231 for up to six months beyond

the 90-day removal period is "presumptively reasonable." *Id.* at 700–01. Since *Zadvydas*, the Supreme Court has emphasized that the period reasonably necessary to bring about a noncitizen's removal from the United States is "presumptively six months" and then, "*[a]fter that point*, if the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must . . . rebut that showing." *Guzman Chavez*, 594 U.S. at 529 (discussing *Zadvydas*) (emphasis added); *cf. Bokole v. McAleenan*, 1:18-cv-00583-JB-LF, 2019 WL 2024922, at *5 (D.N.M. May 8, 2019) (petitioner's claim challenging his detention was premature because the presumptively reasonable six-month period had not yet expired).

Here, Petitioner's detention does not violate his constitutional rights. He was initially detained during the 90-day removal period; after that period he was released because he was not removable to his home country and ICE determined that third-country removal was impracticable at that time. *See* Ex. A ¶¶ 13, 15. But that assessment recently changed: ICE notified Petitioner he would be removed to Mexico, served him a Notice of Removal, and re-detained him on November 19, 2025. *Id.* ¶ 16; *see also* 8 C.F.R. § 241.4(b)(4) (recognizing that noncitizens who are released from custody upon a determination that removal is not significantly likely in the reasonably foreseeable future may be re-detained if ICE "subsequently determines, because of a change in circumstances" that there is such a likelihood). Petitioner has a final order of removal, was determined to be inadmissible under Section 1182, and has been detained for less than two months, well within *Zadvydas*'s presumptively reasonable six-month period. His detention is authorized by statute and consistent with due process.

Even if six months had passed—such that Petitioner could challenge his detention based on an alleged lack of significant likelihood of removal in the reasonably foreseeable future—he has not met that burden. Petitioner vaguely alleges that "it is not reasonably foreseeable that he will be removed to El Salvador or any other country." ECF No. 1 ¶ 27. He offers no further explanation, and this conclusory allegation is insufficient to meet his burden under *Zadvydas*. *See Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("The onus is on the alien to provide good reason to believe that there is no such likelihood before the Government must respond with evidence sufficient to rebut that showing.") (cleaned up); *cf. Nkwanga v. Maurer*, No. 06-cv-00262-MSK-MEH, 2006 WL 2475261, at *1 (D. Colo. Aug. 24, 2006) (the petitioner failed to demonstrate that he was entitled to relief under *Zadvydas* where he failed to provide evidence indicating that his continued detention in the foreseeable future was likely). And, though it is not the government's burden to establish that there *is* a significant likelihood of removal at this point, the evidence in the record indicates that ICE has successfully conducted removals of Salvadorans to Mexico in recent months and that ICE is engaged in the diplomatic process with Mexico to effectuate Petitioner's removal. Ex. A ¶¶ 19, 21-22. ICE believes, based on its efforts to date, that Petitioner will be accepted for removal, but it cannot effectuate his removal until the Court's Order enjoining removal is lifted. *Id.* ¶ 21-22.

II. Petitioner has not shown that he is entitled to release from custody on his revocation of release.

Petitioner asserts that ICE's revocation of his order of supervision did not procedurally comply with the regulatory provisions governing revocation of release. *See*

ECF No. 1 ¶¶ 27. He argues that any defects in following this provision amounted to a due-process violation. *See id.* ¶ 27 (asserting a "violation of due process on the grounds that . . . the revocation of his release was effected without compliance with applicable regulations"). That argument is unavailing.

As set forth above, Petitioner's release was revoked pursuant to 8 C.F.R. § 241.4(l)(2)(iii), which allows ICE to revoke release where appropriate to enforce a removal order. *See* 8 C.F.R. § 241.4(l)(2) ("Release may be revoked in the exercise of discretion when, in the opinion of the revoking official: . . . (iii) It is appropriate to enforce a removal order . . . ."). Petitioner asserts that this regulation was violated because "there is no indication" that the decision was made by the appropriate official. ECF No. 1 ¶ 34. But Petitioner does not provide any factual support for this allegation. Petitioner's due-process claim based on this allegation, even if supported, fails.

First, Petitioner has not shown that even if there has been some deviation from the procedures set forth in 8 C.F.R. § 241.4(l)(2), such a deviation would amount to a due process violation. Due process requires notice and an opportunity to be heard. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (recognizing that immigration detainees "are entitled to notice and opportunity to be heard appropriate to the nature of the case") (internal marks omitted). Petitioner has been provided notice and an opportunity to be heard. Ex. A ¶¶ 16-18.

Second, even if Petitioner has not shown prejudice from any violation, as he must. *Cf. Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) ("In order to prevail on his due process challenge, Petitioner must show he was prejudiced by the

actions he claims violated his Fifth Amendment rights."). Petitioner has not shown that any procedural violation deprived him of the ability to show that his detention is substantively unwarranted. Under the applicable regulation, ICE may revoke release to enforce a removal order; that was the basis ICE relied on here. Petitioner has not established that the outcome—detention pending removal—would have been any different absent any alleged violation of the regulations.

Finally, even if Petitioner had shown a procedural due-process violation, he would not be entitled to release. A procedural due-process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. The proper remedy for lack of procedural due process should be additional process, not immediate release—as numerous district courts have recognized in declining to grant release as a remedy for a procedural violation of immigration regulations. *See, e.g.*, *Olmedo v. ICE*, No. 25-3159-JWL, 2025 WL 2821860, at *3 (D. Kan. Oct. 3, 2025) (concluding that where a 90-day POCR was not performed, "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation"); *Bahadorani v. Bondi*, No. CIV-25-1091-PRW, 2025 WL 3048932, at *3 (W.D. Okla. Oct. 31, 2025) ("Even if the government failed to comply with 8 CFR § 241.13(i)(2)–(3), and such noncompliance were prejudicial, the [c]ourt would not be able to issue a writ of habeas corpus as an appropriate remedy."); *Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *11 (D. Md. Aug. 11, 2025) (explaining that the petitioner had "not pointed to authority showing that the remedy for a violation of [§

241.4(l] (if such a violation has occurred) is release from detention").[3] Thus, Petitioner should at most be given exactly what the text of the regulation requires.

Accordingly, the Court should decline to grant Petitioner's request for immediate release based on any alleged procedural deficiencies.[4]

III. Any challenges to procedures that may be used for a third country removal are unavailing and not properly presented here.

Petitioner claims that he has not been provided "meaningful notice and an opportunity to present a fear-based claim before removal." ECF No. 1 ¶ 29. Petitioner further asserts that "[i]f ICE identifies an appropriate alternative county [sic] of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that country." *Id.* ¶ 15 (citations omitted). It is unclear if Petitioner alleges those specific procedures have not been followed, or if Petitioner asserts any claims for relief based on those procedures. But to the extent Petitioner asserts such a claim, it would fail.

First, Petitioner is incorrect that ICE has not identified a third country for removal.

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[3] *Accord Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187, at *11 (W.D. Tex. Oct. 24, 2025); *Douglas v. Baker*, No. 25-cv-2243-ABA, 2025 WL 2687354, at *6 (D. Md. Sept. 19, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7–8 (D. Md. Aug. 27, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025 WL 2062181, at *6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025).

[4] Should the Court order Petitioner released on an order of supervision, this release would be subject to conditions. 8 U.S.C. § 1231(a)(3) provides the Attorney General with the authority to issue regulations on terms of supervision for an alien released pending removal. ICE has issued those regulations governing the release of aliens pending removal. *See* 8 C.F.R. § 241.13(h). Thus, an "alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas*, 533 U.S. at 700. Accordingly, if Petitioner is released, his release may be governed by conditions of supervised release set by ICE.

ICE has notified him twice that he will be removed to Mexico. Ex. A ¶¶ 16-17. Petitioner was also provided a screening interview after he claimed a fear of removal to Mexico. *Id.* ¶¶ 17-18. Thus, contrary to his allegations, Petitioner has been provided notice and an opportunity to present a fear-based claim.

Second, a challenge to the procedures for removal to a third country is not cognizable in this habeas proceeding because it is not a challenge to his detention. A habeas proceeding is "at its core a remedy for unlawful executive detention" and cannot be used to bring other challenges. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (quotation omitted). Petitioner's objection to any procedures that might be used to remove him to a third country is not a challenge to his detention.

Third, a claim requesting that certain procedures be used for any third-country removal would be encompassed within the claims already presented in a certified class action pending in the District of Massachusetts, *see D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025), and Petitioner must proceed through that suit instead. The *D.V.D.* court certified a non-opt-out class, which includes:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. at 378, 394.[5] That lawsuit concerns challenges to Respondents' "policy or practice

[5] While the Supreme Court has stayed the preliminary injunction issued in *D.V.D.*, *see DHS v. D.V.D.*, No. 24A1153 (S. Ct. June 23, 2025), the litigation remains ongoing with the non-opt-out class.

of designating aliens for removal to any country other than the country or alternative country of removal designated and identified in writing in their prior immigration proceedings without first providing notice and an opportunity to apply for protection from removal to that 'third' country." *See id.* at 368. Thus, Plaintiff's allegation that he has not been provided notice and an opportunity to be heard falls within the scope of *D.V.D.*

CONCLUSION

For the foregoing reasons, the Court should deny the Petition, ECF No. 1.

Dated: January 16, 2026. Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Jennifer R. Lake
U.S. Attorney's Office