UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GJON MHILLI,

Petitioner,

v.

LADEON FRANCIS, *et al.*,

Respondents.

No. 26 Civ. 392 (KPF)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Regulations:

Respondents (the "Government") respectfully submit this memorandum of law in opposition to the Petition for Writ of Habeas Corpus, ECF No. 1 (the "Petition" or "Pet."), filed by petitioner Gjon Mhilli ("Petitioner").

PRELIMINARY STATEMENT

Petitioner, born in the former Yugoslavia and a citizen of Albania, was ordered removed to Albania or Serbia in 2010 following separate convictions for conspiracy to distribute heroin and aggravated assault. ICE issued an order of supervision ("OSUP") in 2010 permitting Petitioner to be released from custody subject to certain conditions while ICE and Petitioner attempted to secure travel documents to effectuate Petitioner's removal to Albania or Serbia. On January 14, 2026, Petitioner was taken into ICE custody and his OSUP was revoked so that ICE could execute his long-final removal order.

Because Petitioner is subject to a final removal order, he is detained under 8 U.S.C. § 1231(a)(6). Petitioner challenges the revocation of his release and his detention as violations of his substantive and procedural due process rights, the Administrative Procedure Act ("APA"), and the *Accardi* doctrine. As discussed below, Petitioner's detention comports with the Constitution and applicable statutes and regulations, which allow ICE to revoke supervision when, as here, it determines that removal would be appropriate, and which allow ICE to detain pending removal an alien who, like Petitioner, has a final order of removal. For these reasons, as further explained below, the Petition should be denied.

BACKGROUND

I. Factual Background

Petitioner was born in the former Yugoslavia and is a citizen of Albania. *See* Declaration of Supervisory Detention and Deportation Officer Ronald Romero dated January 20, 2026 ("Decl.") ¶ 3; Return Exs. 1 & 6. On March 26, 1968, when approximately three and a half years

old, Petitioner was granted lawful permanent resident ("LPR") status in the United States as a child of an LPR. Decl. ¶ 4.

In 1985, Petitioner began accumulating a criminal history, first being convicted of driving while his license was suspended. Decl. ¶ 5; Return Exs. 2 & 3.[1] Notably, in 1987, Petitioner was convicted in the United States District Court for the Eastern District of Michigan of conspiracy to distribute heroin, in violation of 18 U.S.C. § 846, and was sentenced to one year and one day in prison, with a subsequent probationary period of three years. Decl. ¶ 6; Return Ex. 2.

When Petitioner attempted to renew his LPR card with USCIS in January 2005, a background check revealed the 1987 conviction for conspiracy to distribute heroin. Decl. ¶ 8. On the same day, USCIS issued a Notice to Appear ("NTA") charging Petitioner as removable under Immigration and Nationality Act ("INA") § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), for committing an aggravated felony after entry, namely an offense relating to the illicit trafficking of a controlled substance, and INA § 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), for being convicted of a controlled substance violation. Decl. ¶ 8, Return Ex. 18. ICE did not detain Petitioner at that time. Decl. ¶ 8. Removal proceedings were thereafter commenced against Petitioner. Decl. ¶ 8.

While in removal proceedings, in April 2006, Petitioner was convicted in Michigan state court of assault resulting in serious or aggravated injury, in violation of Michigan Consolidated Laws ("MCL") 750.81A, a misdemeanor. Decl. ¶ 10; Return Exs. 2 & 3. He was sentenced to 12 months' probation, community service, programs, restitution, and fines. Decl. ¶ 10; Return Exs. 2 & 3. ICE thereafter amended the NTA to lodge an additional charge of removability, contending that the aggravated assault conviction, coupled with the conviction for conspiracy to distribute

[1] The Romero Declaration includes a more comprehensive discussion of Petitioner's complete criminal history as known by ICE.

heroin, also rendered Petitioner removable as an alien convicted of two crimes of moral turpitude pursuant to INA § 237(a)(2)(A)(ii), 8 U.S.C. § 1227(a)(2)(A)(ii). Decl. ¶ 10; Return Ex. 6.

On May 5, 2008, the Immigration Court ordered Petitioner removed to Albania or, in the alternative, Serbia. Decl. ¶ 11; Return Ex. 5. On March 19, 2010, the BIA dismissed Petitioner's appeal and denied his motion to remand, rendering Petitioner's removal order final. Decl. ¶ 13; Return Ex. 6. ICE detained Petitioner in April 2010 for purposes of executing the final removal order. Decl. ¶ 14. At that time, ICE initiated the process to obtain a travel document from Albania; however, ICE's attempts to obtain a travel document were unsuccessful. Decl. ¶ 14.

On July 21, 2010, ICE served Petitioner with an OSUP (Form I-220B) and released him, because ICE had been unsuccessful in obtaining travel documents. Decl. ¶ 15; Return Ex. 7. The OSUP required Petitioner to report to ICE as scheduled, not travel outside Michigan without notifying ICE, obey all laws, maintain residence and employment, and "make good faith and timely efforts to obtain a travel document and assist ICE in obtaining a travel document." Decl. ¶ 15; Return Ex. 7. A July 20, 2010, release notification also stated: "Once a travel document is obtained, you will be required to surrender to ICE for removal. You will, at that time, be given an opportunity to prepare for an orderly departure." Decl. ¶ 15; Return Ex. 8.

From 2010 through 2025, ICE and Petitioner's efforts to obtain travel documents were unsuccessful, although by 2025, ICE concluded that Petitioner was no longer making a good faith effort to obtain travel documents. Decl. ¶¶ 17-18.

On January 14, 2026, ICE encountered Petitioner at LaGuardia airport, preparing to board a departing flight. Decl. ¶ 19; Return Ex. 1. Petitioner provided ICE officers with his name, and ICE confirmed that Petitioner lacked legal immigration status. Decl. ¶ 19; Return Ex. 1. At approximately 6:05 a.m. on January 14, 2026, ICE officers informed Petitioner verbally that his

OSUP was revoked and arrested Petitioner pursuant to a warrant for arrest (Form I-200) for lack of immigration status in the United States. Decl. ¶ 19; Return Exs. 1 & 9. ICE then transferred Petitioner to 26 Federal Plaza, New York, New York for processing. Decl. ¶ 19.

While at 26 Federal Plaza, at 8:05 a.m. on January 14, 2026, a Deportation Officer personally served Petitioner with a copy of a Notice of Revocation of Release, which advised Petitioner that "[his] order of supervision has been revoked and [he] will be detained in the custody of U.S. Immigration and Customs Enforcement (ICE) at this time." Decl. ¶ 20; Return Ex. 10. The Notice further stated that the decision to revoke the OSUP "has been made based on a review of [Petitioner's] official alien file and a determination that there are changed circumstances in [Petitioner's] case." Decl. ¶ 20; Return Ex. 10. The Notice further explained that "ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal" to Albania or Serbia. Decl. ¶ 20; Return Ex. 10. The Notice stated that Petitioner "will promptly be afforded an informal interview at which [he] will be given an opportunity to respond to the reasons for the revocation." Decl. ¶ 20; Return Ex. 10. The Notice was signed by Assistant Field Office Director Alberto Morales. Decl. ¶ 20; Return Ex. 10.

ICE also conducted an initial informal interview with Petitioner on January 14 at 26 Federal Plaza to afford him an opportunity to respond to the reasons for revocation of his OSUP. Decl. ¶ 21; Return Ex. 11. At the interview, Petitioner stated that ICE did not know what it was doing and that he did not understand what was occurring. Decl. ¶ 21; Return Ex. 11.

On January 15, 2026, ICE transferred Petitioner to Orange County Jail in Goshen, New York, pending his removal, where he remains detained today. Decl. ¶ 23. ICE and Orange County Jail are aware that Petitioner claims to have stage four kidney failure and diabetes and is taking medication. Decl. ¶ 24. Orange County Jail is able to provide appropriate treatment for Petitioner's

medical needs. Decl. ¶ 24. While at Orange County Jail, Petitioner has been allowed to communicate with family and friends via phone, and he will also be allowed to communicate with them via videoconference when his seven-day quarantine period ends pursuant to Orange County Jail's normal quarantine procedures. Decl. ¶ 24.

ICE intends to remove Petitioner to Albania or Serbia, or if not possible, a third country, and is in the process of obtaining travel documents. Decl. ¶ 25. ICE has not previously tried to remove Petitioner to a third country. Decl. ¶ 25. Because the relationship between the United States and other countries including Albania has improved, it is very likely that a travel document can be obtained from Albania soon. Decl. ¶ 25.

II. Procedural History

On January 15, 2026, Petitioner initiated this action by filing a petition for writ of habeas corpus under 28 U.S.C. § 2241. *See* ECF No. 1 ("Pet."). Petitioner seeks, among other things, immediate release from detention. *Id.* This Court ordered the Government to respond to the petition in two business days. *See* ECF No. 3 (Order).

ARGUMENT

I. Legal Standard

A. Detention Pursuant to a Final Removal Order

The Government's authority to detain an alien subject to a final removal order is governed by 8 U.S.C. § 1231. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022). Pursuant to § 1231, after "an alien is ordered removed," the Government "shall remove the alien from the United States" within a 90-day period called the "removal period." 8 U.S.C. § 1231(a)(1)(A), (a)(2).

After the removal period has elapsed,[2] aliens convicted of certain offenses and ordered removed under 8 U.S.C. § 1227(a)(2) – such as Petitioner – "may" either be detained beyond the removal period or released subject to an order of supervision ("OSUP"). 8 U.S.C. § 1231(a)(6). If an alien is released pursuant to an OSUP, the "terms of supervision" are governed by § 1231(a)(3). *See* 8 U.S.C. § 1231(a)(3), (a)(6).

The Supreme Court addressed ICE's authority to detain aliens after their removal orders become final in *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Court held that 8 U.S.C. § 1231(a)(6) authorizes immigration detention for a period reasonably necessary to accomplish the alien's removal from the United States. *Zadvydas*, 533 U.S. at 699-700. But "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. In so holding, the Court recognized a "presumptively reasonable period of detention" of six months. *Id.* at 701."This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

DHS has promulgated regulations governing custody determinations under 8 U.S.C. § 1231(a)(6) when there is a final order of removal. *See* 8 C.F.R. §§ 241.4, 241.13; *see also Portillo v. Decker*, No. 21 CIV. 9506 (PAE), 2022 WL 826941, at *4 (S.D.N.Y. Mar. 18, 2022). Specifically, under these regulations, ICE conducts a custody review shortly before the expiration of the 90-day removal period, *see* 8 C.F.R. § 241.4(c)(1), (h)(1)–(2), and, if the alien remains

[2] The Government does not dispute that the 90-day removal period has elapsed.

detained beyond the removal period, periodically thereafter, *see* 8 C.F.R. § 241.4(c)(2), (k). "In such reviews, ICE makes a discretionary decision whether continued detention is justified, based on numerous factors including, inter alia, a detainee's flight risk and risk of committing future crimes." *Portillo*, 2022 WL 826941, at *4 (citing 8 C.F.R. § 241.4(f)).

When an alien subject to a final order of removal has "provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future" a separate but related regulation establishes "special review procedures." 8 C.F.R. § 241.13(a). If ICE determines that there is no significant likelihood of removal in the reasonably foreseeable future, the alien must be released, unless special circumstances justify continued detention. 8 C.F.R. § 241.13(g)(1); *see id.* § 241.14. In those circumstances, ICE must release the alien subject to "appropriate conditions," 8 C.F.R. § 241.13(g)(1), including the conditions enumerated in 8 U.S.C. § 1231(a)(3), as well as "the conditions that the alien obey all laws," and "that the alien continue to seek to obtain travel documents," 8 C.F.R. § 241.13(h).

B. Revocation of an Order of Supervision

Two regulations govern the procedures for revoking supervised release issued pursuant to 8 U.S.C. § 1231(a)(6). For orders issued pursuant to 8 C.F.R. § 241.4, ICE may revoke the OSUP for the following reasons, which are enumerated in 8 C.F.R. § 241.4(*l*). *See E.M.M. v. Almodovar*, No. 25 Civ. 08212 (MMG), 2025 WL 3077995, at *3 (S.D.N.Y. Nov. 4, 2025) (describing the "two bases on which the Government may revoke an alien's OSUP, enumerated at Section 241.4(*l*)"). First, ICE may revoke the OSUP if the alien violates any of the conditions of supervised release. 8 C.F.R. § 241.4(*l*)(1). Second, ICE "shall have authority, in the exercise of discretion, to revoke release and return to [ICE] custody an alien previously approved for release under the procedures in this section." 8 C.F.R. § 241.4(*l*)(2). The regulation permits ICE to revoke release "in the exercise of discretion when, in the opinion of the revoking official: (i) The purposes of

release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." *Id.*

When ICE proceeds with a revocation under 8 C.F.R. § 241.4(*l*)(2), it need not promptly conduct an initial informal interview to afford the alien an opportunity to respond. *Compare* 8 C.F.R. § 241.4(*l*)(1) and 8 C.F.R. § 241.13(i)(3) (requiring that the alien be notified of the reasons for revocation and be afforded with an initial informal interview to respond to the reasons for revocation) with 8 C.F.R. § 241.4(*l*)(2) (including no such requirement). *But see Funes v. Francis*, No. 25 Civ. 7429 (PAE), 2025 WL 3263896, at *15-16 (S.D.N.Y. Nov. 24, 2025) (concluding that § 241.4(*l*)(1) and § 241.4(*l*)(2) "are not mutually exclusive," but rather "that the text of § 241,4(*l*) sets forth a unified set of procedures governing the revocation of release."); *Zhu v. Genalo*, 798 F. Supp. 3d 400, 410 (S.D.N.Y. 2000).

For orders issued pursuant to 8 C.F.R. § 241.13, ICE may revoke the OSUP for the reasons set forth in 8 C.F.R. § 241.13(i). Specifically, ICE may revoke release if: (1) the alien violates any conditions of release; or (2) "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(1), (2). Upon revocation under this section, ICE must notify the alien of the reasons for revocation and conduct an "initial interview" to afford the alien an opportunity to respond to the reasons for revocation of release. 8 C.F.R. § 241.13(i)(3).

II. Petitioner's Claims Fail

Petitioner brings seven claims challenging the revocation of his OSUP and his detention. Each of these claims lack merit. As discussed below, the revocation of his OSUP and his detention comported with the applicable statutes and regulations, and thereby also comported with substantive and procedural due process under the Constitution (Counts One through Three).

Petitioner raises additional claims under the APA (Counts Four through Six) and the *Accardi* doctrine (Count Seven), but these claims simply repackage his constitutional claims and lack merit for the same reasons. Accordingly, the petition should be denied.

A. Petitioner's Detention Does Not Violate Substantive Due Process (Counts One and Three)

Petitioner claims in Count One that the revocation of his order of supervision, and his detention pending removal, violates substantive due process because (1) there has been no change in circumstances warranting revocation, and (2) Petitioner's detention bears no reasonable relationship to the two regulatory purposes of immigration detention (preventing danger to the community or flight prior to removal). Pet. ¶¶ 48-49. But this claim lacks merit because Petitioner's OSUP was revoked, and he is detained, pursuant to ICE's clear statutory and regulatory authority.

Specifically, Petitioner's OSUP was granted because ICE concluded that there was no likelihood of removal in the foreseeable future given that ICE was unable to obtain travel documents. Decl. ¶ 15. However, 8 C.F.R. § 241.13(i)(2), as described above, grants ICE broad discretion to revoke release, including "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). That is what happened here. As Petitioner was notified when he was taken into custody on January 14, 2026, ICE determined that circumstances had changed, specifically, that Petitioner could expeditiously be removed from the United States to Albania or Serbia. Decl. ¶ 20; Return Ex. 10. Accordingly, Petitioner's assertion that circumstances have not changed is incorrect, and his release was validly revoked.

Petitioner's detention pending removal is also valid. He was convicted of conspiracy to distribute heroin and assault resulting in serious or aggravated injury. Decl. ¶¶ 6, 10; Return Exs.

2 & 3. His detention is therefore authorized by statute, given that aliens, like Petitioner, who have been convicted of two or more crimes of moral turpitude pursuant to 8 U.S.C. § 1227(a)(2)(A)(ii), aggravated felonies pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), and a controlled substance violation pursuant to 8 U.S.C. § 1227(a)(2)(B)(i), "may" either be detained beyond the removal period or released subject to an order of supervision. 8 U.S.C. § 1231(a)(6). Specifically, 8 U.S.C. § 1231(a)(6) allows detention beyond the 90-day removal period of certain categories of aliens, including "an alien . . . removable under section . . . 1227(a)(2)," like Petitioner. *See* Decl. ¶¶ 8, 10, 13; Ex. 6 (BIA decision stating bases for removal); Ex. 12 (Warrant of Removal) (same). His detention pending removal is therefore authorized under § 1231(a)(6).

In addition to being authorized by § 1231(a)(6), Petitioner's detention squarely relates to the regulatory purposes of immigration detention. The statute's "basic purpose" is "effectuating an alien's removal." *Zadvydas*, 533 U.S. at 697. Moreover, in detaining noncitizens under § 1231 pending removal, the government also seeks to effectuate additional "regulatory goals" for detention, which include "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (brackets and quotation marks omitted). The government's interests in "(1) ensuring that noncitizen[s] do not abscond and (2) ensuring they do not commit crimes" are "well-established." *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (citing *Zadvydas*, 533 U.S. at 690; *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017)). Because Petitioner's detention serves the valid immigration purposes of ensuring that ICE can effectuate his final order of removal, his due process claim fails. *See Zadvydas*, 533 U.S. at 690–91; *Velasco Lopez*, 978 F.3d at 854.

Petitioner's due process claim relating to "denial of medical care" is also unavailing. *See* Pet. ¶¶ 57-59. To state a Fifth Amendment due process claim for deliberate indifference to the

medical needs of civil detainees, the conduct at issue must be "egregious enough to state a substantive due process claim." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849–50 (1998). That requires two showings: first, that petitioner has serious, unmet medical needs; second, that the Government acted with deliberate indifference to those needs. *See Charles v. Orange Cnty.*, 925 F.3d 73, 85–86 (2d Cir. 2019). Although Petitioner asserts, and ICE understands, that Petitioner suffers from stage four kidney failure and diabetes and is taking medication, there is no evidence that ICE or Orange County Jail has been deliberately indifferent to Petitioner's medical needs. Pet. ¶¶ 19, 21, 58; Decl. ¶ 24. Rather, ICE understands that Orange County Jail is able to provide for Petitioner's medical needs. Decl. ¶ 24.[3] Accordingly, this substantive due process claim (Count Three) also fails.

B. The Revocation of Petitioner's OSUP Did Not Violate Procedural Due Process (Count Two)

Petitioner also claims that ICE's revocation of his OSUP violated procedural due process by depriving him of a protected liberty interest without providing him with notice and an opportunity to respond, and by failing to follow other procedures. Pet. ¶¶ 51-56 (citing the factors under *Mathews v. Eldridge*, 424 U.S. 319 (1976)). But his supervised release was not a liberty interest protected by the Due Process Clause, and in any event, he was provided with notice and an opportunity to respond, and ICE followed appropriate procedures. Accordingly, this claim also lacks merit.

1. The OSUP Did Not Give Petitioner a Cognizable Liberty Interest

Fundamentally, Petitioner's release under an ICE order of supervision did not create a liberty interest protected by the Due Process Clause. The procedural component of the Due Process

[3] Although Petitioner asserts that he was recently in a diabetic coma, he was by his own admission well enough to attempt to travel from Michigan to Florida when he was apprehended by ICE in New York. Pet. ¶¶ 1, 18, 19.

Clause protects against the deprivation of life, liberty or property without constitutionally adequate procedures. However, the safeguards of the Due Process Clause are not implicated unless Petitioner has been deprived of a constitutionally protected liberty or property interest. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). Such an interest can be created by the Due Process Clause itself, or by an independent source such as federal statutes or regulations. *See, e.g.*, *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005) ("Our cases recognize that a benefit is not a protected entitlement if government officials may grant or deny it in their discretion."); *Sealed v. Sealed*, 332 F.3d 51, 55 (2d Cir. 2003). In order for a statute or regulation to create a vested liberty interest, it must confer an entitlement to the relief. *Handberry v. Thompson*, 446 F.3d 335, 353 (2d Cir. 2006). That is, the law must place "substantive limitations on official discretion." *Olim v. Wakinekoma*, 461 U.S. 238, 249 (1983); *see also id.* ("If the decisionmaker is not 'required to base its decision on objective and defined criteria,' but instead 'can deny the requested relief for any constitutionally permissible reason or for no reason at all,' the State has not created a constitutionally-protected liberty interest" (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 358, 466–67 (1981) (Brennan, J., concurring))). There is no constitutionally protected interest if the law permits government officials to grant or deny the benefit in their discretion. *Town of Castle Rock,* 545 U.S. at 756.

It is well-established that an alien has no entitlement, and therefore no protected liberty interest, in discretionary relief from the immigration laws. *See, e.g.*, *Yuen Jin v. Mukasey*, 538 F.3d 143, 156–57 (2d Cir. 2008) (holding that aliens have no "liberty or property interest in asylum that warrants Fifth Amendment protection," as such relief is discretionary); *Rojas-Reyes v. INS*, 235 F.3d 115, 125–26 (2d Cir. 2000) (holding that alien did not have constitutional right to be considered for the discretionary relief of cancellation of removal); *see also Matias v. Sessions*, 871

F.3d 65, 72 (1st Cir. 2017) (holding that, because BIA's exercise of its sua sponte authority was purely discretionary, there could be no due process violation in the denial of such relief); *Assaad v. Ashcroft*, 378 F.3d 471, 475–76 (5th Cir. 2004) (holding that there could be no due process violation from the failure to be considered for discretionary waiver of removability); *Smith v. Ashcroft*, 295 F.3d 425, 429–30 (4th Cir. 2002) ("[T]he discretionary right to suspension of deportation does not give rise to a liberty or property interest protected by the Due Process Clause."); *Oguejiofor v. Attorney General of the United States*, 277 F.3d 1305, 1309 (11th Cir. 2002) ("[A]n alien has no constitutionally protected right to discretionary relief or to be eligible for discretionary relief."); *Ashki v. INS*, 233 F.3d 913, 921 (6th Cir. 2000) ("Ashki has no constitutionally-protected liberty interest in obtaining discretionary relief from deportation."); *Appiah v. INS*, 202 F.3d 704, 709 (4th Cir. 2000) ("Because suspension of deportation is discretionary, it does not create a protectible liberty or property interest.").

The above principles apply in the context of discretionary relief from detention granted by government officials for aliens subject to final orders of removal. ICE's authority to issue or revoke OSUPs is discretionary. *See, e.g.*, *Lin v. Borgen*, No. 25 Civ. 05618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025) (describing ICE's authority to make determinations regarding OSUPs as a "wholly discretionary act").[4] Moreover, the statute provides that "[n]othing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the [government]." 8 U.S.C. § 1231(h). And the regulations implementing the statute and governing revocation of release further establish the discretionary nature of an alien's release from detention. ICE regulations authorize ICE to revoke the release of

[4] *But see, e.g.*, *Funes*, 2025 WL 3263896, at *21 (holding that due process requires ICE to follow its procedures in this context).

an alien and return him to custody "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.FR.. § 241.13(i)(2). Such a regulatory scheme does not confer an enforceable entitlement upon any alien to a continuation of their release from detention, except as required to comply with the constitutional limitations set forth in *Zadvydas*—limitations that are not alleged to be implicated here.[5] In short, an alien who has "been adjudicated removable and ordered deported, and who has nevertheless remained in the country illegally for several years, does not have a liberty or property interest in a discretionary grant" of relief from removal. *Yuen Jin*, 538 F.3d at 157. An OSUP does not shield an alien who is subject to a final removal order from being removed. As such, Petitioner cannot articulate a protected liberty interest, and his procedural due process claim therefore lacks merit.

2. Revocation of Petitioner's OSUP Was Procedurally Appropriate

In any event, ICE's revocation of Petitioner's OSUP comported with procedural due process. To begin, Petitioner's assertion that his supervised release was revoked without notice or an opportunity to respond is inaccurate. Pet. ¶¶ 54-56. As described above, on the day of his arrest, January 14, 2026, Petitioner was served with a Notice of Revocation of Release, which explained the reason for the revocation of his OSUP and advised him that he would be given an informal interview so that he could respond to the reasons for the revocation. Decl. ¶ 20; Return Ex. 10. On

[5] In the context of aliens subject to final orders of removal who challenge their detention under § 1231, "the *Zadvydas* standard *is* due process." *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) ("*Zadvydas* largely, if not entirely, forecloses due process challenges to § 1231 detention apart from the framework it established") (citing, *inter alia*, *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) ("Because the *Zadvydas* Court set forth this 'reasonable foreseeability' test in order to prevent [§ 1231] from violating the Due Process Clause, we may safely assume that this test articulates the outer bounds of the Government's ability to detain aliens . . . without jeopardizing their due process rights.")).

the same date, Petitioner was in fact interviewed. Decl. ¶ 21; Return Ex. 11. These procedural safeguards comport with 8 C.F.R. § 241.13(i)(3), which states that when an OSUP is revoked under this section, ICE must notify the alien of the reasons for revocation and conduct an initial informal interview "to afford the alien an opportunity to respond to the reasons for revocation stated in the notification."

Petitioner also claims, without merit, that the ICE official who revoked his OSUP lacked authority to do so. Pet. ¶¶ 20, 65.[6] As an initial matter, if Petitioner's OSUP was issued and revoked under 8 C.F.R. § 241.13(i), which is supported by the underlying record, the pertinent regulation—§ 241.13(i)—does not specify a specific individual at ICE who may make the revocation decision, so this argument is misguided. *Compare* 8 C.F.R. § 241.13(i) ("The Service may revoke an alien's release under this section . . . ."), *with* 8 C.F.R. § 241.4(l)(2) ("The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release . . . ."). Thus, the delegation issue does not come into play here.

Regardless, the revoking official had authority to do so. The Notice of Revocation is signed by Assistant Field Office Director Alberto Morales. Decl. ¶ 20; Ex. 10. As described above, supervision of aliens subject to final orders of removal after the 90-day removal period is governed by regulations promulgated pursuant to 8 U.S.C. § 1231(a)(3). Under 8 C.F.R. § 241.4(*l*)(2), the "Executive Associate Commissioner" has the authority to revoke release.[7] However, § 241.4(c)(4)

[6] Petitioner makes this and other allegations discussed below in the context of his APA claims in Counts Four and Five, but as they are procedural in nature, the Government addresses them here for organizational purposes.

[7] "A district director may also revoke release of an alien 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 Commissioner." 8 C.F.R. § 241.4(*l*)(2).

provides that "[a]ll references to the Executive Associate Commissioner" are "deemed to include any person or persons . . . designated in writing by the Executive Associate Commissioner . . . to exercise powers under this section." 8 C.F.R. § 241.4(c)(4). That has happened: in accordance with these regulations, by order dated July 25, 2019 (the "Delegation Order"), Executive Associate Director[8] Nathalie R. Asher re-delegated her "Authority under INA § 241 [8 U.S.C. § 1231] and 8 C.F.R. Part 241, relating to warrants of removal, reinstatement of removal, self-removal, and release of aliens from detention" to, among others, Assistant Field Office Directors. Return Ex. 17.

The logical reading of the Delegation Order is that it includes revocation authority. Specifically, the Delegation Order delegates all Part 241 authority "relating to" four categories: (1) "warrants of removal," (2) "reinstatement of removal," (3) "self-removal," and (4) "release of aliens from detention." Ex. 17. The first three categories correspond to identically named sections of Part 241: respectively, §§ 241.2 ("Warrant of removal"), and 241.8 (Reinstatement of removal orders), 241.7 (Self-removal). Thus, logically the Delegation Order encompasses the authority set forth in those sections. The fourth delegated category of authority, "release of aliens from detention," does not have an identically named corresponding section of Part 241. But that category must mean something, *see Fischer v. United States*, 603 U.S. 480, 486 (2024) (courts "must 'give effect, if possible, to every clause and word of [a] statute'"), and it should mean a delegation of authority similar to the other items listed, *see Dole v. United Steelworkers of Am.*, 494 U.S. 26, 36 (1990) ("words grouped in a list should be given related meaning"). Logically, the fourth delegated category therefore refers to all release-related authority under Part 241, including

[8] After the transfer of the functions of the former Immigration and Naturalization Service to the Department of Homeland Security and ICE, the "Executive Associate Commissioner" now refers to the "Executive Associate Director." *See* 8 C.F.R. § 1.2.

the release-related provisions in §§ 241.4, 241.13, and 241.14—including the authority to revoke release, which is intrinsic to "Authority … relating to … release." Ex. 17.

The Government acknowledges that several district judges within the Second Circuit have held otherwise when analyzing the revocation of OSUPs under § 241.4(*l*)(2). These decisions focus on the fact that the Delegation Order, although it refers to "release of aliens from detention," does not mention "revocation" of release. *See Cruz v. Lyons*, No. 25 Civ. 10522 (RA), 2026 WL 114936, at *2-3 (S.D.N.Y. Jan. 15, 2026); *Zhang v. Bondi*, No. 25 Civ. 10418 (JPO), 2026 WL 42778, at *4 n.3 (S.D.N.Y. Jan. 7, 2026); *Zhang v. Genalo*, No. 25 Civ. 06781 (NRM), 2025 WL 3733542, at *8 (E.D.N.Y. Dec. 28, 2025); *Funes*, 2025 WL 3263896, at *19; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025); *E.M.M. v. Almodovar*, No. 25 Civ. 08212 (MMG), 2025 WL 3077995, at *6 (S.D.N.Y. Nov. 4, 2025). But that conclusion is inconsistent with the Delegation Order's use of "relating to," which courts recognize as an expansive term. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (observing, in the context of Airline Deregulation Act of 1978, that "[t]he ordinary meaning of [the words 'relating to'] is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with[.]'" (quoting Black's Law Dictionary 1158 (5th ed. 1979)); *Coregis Ins. Co. v. Am. Health Found., Inc.*, 241 F.3d 123, 128–29 (2d Cir. 2001) ("The term 'related to' is typically defined more broadly and is not necessarily tied to the concept of a causal connection. Webster's Dictionary defines 'related' simply as 'connected by reason of an established or discoverable relation.' The word 'relation,' in turn, as used especially in the phrase 'in relation to,' is defined as a 'connection' to or a 'reference' to. Courts have similarly described the term 'relating to' as equivalent to the phrases 'in connection with' and 'associated with,' and synonymous with the phrases 'with respect to,' and 'with reference to,' and have held such phrases to be broader in

scope than the term 'arising out of.'" (internal citations, quotation marks, and brackets omitted)). Authority "relating to" the supervised release of an alien naturally includes authority over revocations of that release.

Petitioner's alleged procedural violation on the basis that the "release notification" stated that "the agency would give an opportunity to arrange for an orderly departure once it obtained travel documents" also fails. *See* Pet. ¶¶ 44, 79, 90. The 2010 release notification stated: "Once a travel document is obtained, you will be required to surrender to ICE for removal. You will, at that time, be given an opportunity to prepare for an orderly departure." Decl. ¶ 15; Return Ex. 8. As one court recently observed in rejecting such a claim as a violation of the *Accardi* doctrine,[9] "the 'opportunity' could very well mean time after the alien surrenders." *Karki v. Raycraft*, No. 2:25-CV-13186, 2025 WL 3516782, at *8 n.2 (E.D. Mich. Dec. 8, 2025); *see also Doe v. Smith*, No. CV 18-11363-FDS, 2018 WL 4696748, at *10 (D. Mass. Oct. 1, 2018) (observing that "[t]here is at least some doubt whether a constitutional right can be created by such a notice and that "it is also unclear what, exactly, constitutes an 'orderly departure,' or an 'opportunity to prepare' for such a departure"). And "[e]ither way, [Petitioner] was allowed to prepare for his departure: he has pursued various legal avenues within and without the immigration system, and he has had the opportunity to communicate with family through phone," and will have the opportunity to communicate with them by videoconference, while in ICE custody. *See Karki*, 2025 WL 3516782, at *8 n.2; Decl. ¶ 24. Further, even if the Court were to find a due process violation here, the appropriate remedy would not be release from custody because this issue does not involve ICE's right to take Petitioner into custody, but only the means by which it did so—and "an improper

[9] Here, Petitioner alleges that a lack of opportunity to prepare for an orderly departure despite the release notification violates the *Accardi* doctrine and APA. *See* Pet. ¶¶ 79, 90.

method of arrest (as opposed to lack of authority for the arrest) does not normally result in the release of the arrestee." *See Doe*, 2018 WL 4696748, at *10 ("[E]ven assuming a due-process violation based on ICE's failure to comply with the statement in the Release Notification that Doe would be provided with 'an opportunity to prepare for an orderly departure,' there is no basis to order a remedy in the form of release from custody.").

The government acknowledges that other courts in this Circuit have concluded otherwise, found a due process violation, and ordered the petitioner released when a release notification stated that the petitioner would have an opportunity to prepare for an orderly departure. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166-70 (W.D.N.Y. 2025); *Ragbir v. Sessions*, No. 18-CV-236 (KBF), 2018 WL 623557, at *1-3 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds at* 2019 WL 6826008 (2d Cir. July 30, 2019). However, in *Ceesay*, the court declined to set a time period for how long the government needed to give the petitioner to prepare for an orderly departure (rejecting petitioner's suggestion of 30 days) and suggested that it might be appropriate for the government to use electronic monitoring during the temporary release. *See Ceesay*, 781 F. Supp. 3d at 169-70 & n.29. Should the Court order that Petitioner be released to prepare for an orderly departure, it should likewise "largely le[ave] [it] to ICE to define" what the opportunity to prepare for an orderly departure means. *Id.* at 169-70.

Petitioner's remaining procedural arguments also lack merit. For instance, Petitioner asserts that Respondents "did not make findings that Petitioner is dangerous or unlikely to comply with a removal order, as required by statute." Pet. ¶ 66. Presumably this refers to 8 U.S.C. § 1231(a)(6), but as discussed above, danger and flight risk are just two of several grounds on which that statute authorizes detention—as noted, Petitioner was removable under § 1231(a)(6) for violating certain criminal laws. Petitioner also alleges that Respondents could not make findings

that any regulatory basis justified revoking his supervised release. *See* Pet. ¶ 67. But as discussed above, the regulations authorize ICE to revoke release "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). And, as discussed above, the Notice of Revocation served on Petitioner identified changed circumstances as the reason for revocation, specifically, that ICE determined that circumstances had changed and would be proceeding with removal. *See* Ex. 10; Decl. ¶¶ 20, 25. Finally, Petitioner alleges that ICE could not have deemed it appropriate to enforce a removal order "because it had yet to make final arrangements for Petitioner's removal." Pet. ¶ 67. But Petitioner cites no authority requiring "final arrangements" to have been made before revocation; that language does not come from the statute or the regulation, and indeed, 8 U.S.C. § 1231(a) expressly contemplates detention while removal is effectuated, *e.g.*, while ICE works to obtain travel documents or to determine a country of removal, during which detention is often necessary to secure the alien's assistance. Accordingly, Petitioner's procedural due process claim lacks merit.

C. Petitioner's Claims Under the APA Are Improper (Counts Four Through Six)

Petitioner also claims that revocation of his OSUP violated the APA because it was contrary to law and constitutional right (Count Four), arbitrary and capricious (Count Five), and in excess of statutory authority (Count Six). These claims, which in substance repackage Petitioner's due process claims, are legally improper (and otherwise fail for the reasons already discussed above). *See* Pet. ¶¶ 60-86.

Specifically, the APA is not the proper vehicle to challenge the validity of one's detention. The Supreme Court recently held that, for an action bringing claims under statutes including the APA that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such "claims fall within the 'core' of the writ

of habeas corpus and thus *must be brought in habeas*." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (emphasis added). Here, Petitioner seeks release from custody. *See* Pet. page 21. This is a core habeas claim—that fails on the merits for the reasons discussed herein—and therefore is not cognizable under the APA.

In addition, an APA claim is only viable where there is no other adequate remedy. *See* 5 U.S.C. § 704 ("[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review"); *see also J.G.G.*, 604 U.S. at 674 (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' … habeas corpus, not the APA, is the proper vehicle here."). Courts have thus refused to adjudicate APA claims as part of habeas petitions. *Raspoutny v. Decker*, 708 F. Supp. 3d 371 (S.D.N.Y. 2023), a case involving a petitioner who challenged his detention pursuant to § 1226(a), is instructive. In declining to review the petitioner's APA claim, the court held that "petitioner points to no 'statute' that permits 'review[] of the arrest,'" and an arrest is not a "'final agency action for which there is no other adequate remedy in a court'—because the issuance of a writ of habeas corpus under 28 U.S.C. § 2241 would provide an adequate remedy were the Court to find [the petitioner's] custody to be improper." *Id.* at 381 (quoting 5 U.S.C. § 704); *see also Lucas v. Fed. Bureau of Prisons*, No. 17 Civ. 1184 (VB), 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) ("[B]ecause plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim."); *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *3 n.5 (S.D.N.Y. Feb. 22, 2021) (finding a violation of due process and thus not addressing the petitioner's INA or APA claims). Here, Petitioner has identified alternative

avenues for remedy via a habeas petition (indeed, his APA claims simply repackage his other claims).

For these reasons, Petitioner's APA claims should be rejected.

D. Petitioner's Detention Does Not Violate *Accardi* (Count Seven)

Petitioner also claims that ICE violated *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), by failing to follow agency regulations when it revoked his OSUP, specifically, regulations concerning who may revoke and upon what findings and regulations requiring advance notice. Pet. ¶¶ 87-91.

"*Accardi* and its progeny teach generally that federal agencies are required to follow their own regulations and some other formally adopted procedures, including those that govern exercises of an agency's discretion." *Diaz v. Rosen*, 986 F.3d 687, 690 (7th Cir. 2021). However, the *Accardi* doctrine is a principle governing review of agency action, not an independent cause of action. *See, e.g.*, *Velesaca v. Decker*, 458 F. Supp. 3d 224, 236 (S.D.N.Y. 2020) (noting that, "[w]hen agencies fail to [follow their own regulations], the APA (as developed by case law) gives aggrieved parties a cause of action to enforce compliance" (citing *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020))). Rather, to bring a cause of action based on *Accardi*, Petitioner must satisfy the requirements of the APA. *Id.*; *see also Tendo v. U.S.*, Case No. 2:23 Civ. 438, 2024 WL 3650462, at *13 (D. Vt. Aug. 5, 2024) ("Because actions alleging violation of the *Accardi* principle are based upon the APA, they must challenge a "final agency action."); *Damus v. Nelson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (collecting cases for the proposition that *Accardi* claims are actionable under the APA). Construed as an additional APA claim or habeas claim, Petitioner's *Accardi* claim fails for the same reasons discussed above. Moreover, for the reasons discussed above, ICE "did not breach any statute or regulation, [and so]

that theory fails." *Lin v. Francis*, 25 Civ. 10001 (PAE), 2025 WL 3751855, at *5 (S.D.N.Y. December 29, 2025).

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of habeas corpus.

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c) and Section 4.b of the Court's Individual Practices, the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules and the Court's Individual Practices. As measured by the word processing system used to prepare it, this memorandum contains 7,371 words.