

Respondents' opposition confirms the central defect in Petitioner's detention: DHS has not shown a significant likelihood of removal in the reasonably foreseeable future ("SLRRFF") as to this Petitioner. Respondents concede that Petitioner was released in 2012 because Vietnam would not accept pre-July-1995 Vietnamese nationals like him. ECF 9 at 4-5. DHS now relies on aggregate Vietnam removal statistics and a conclusory declaration, but it identifies no travel document for Petitioner, no submitted travel-document request for Petitioner, no Vietnamese consular acknowledgment, no scheduled removal, and no individualized acceptance by Vietnam. Belafonte Decl. ¶¶ 11-16.

That is insufficient under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), and 8 C.F.R. § 241.13. Once Petitioner showed good reason to believe his removal is not significantly likely in the reasonably foreseeable future, the Government had to respond with evidence sufficient to rebut that showing. It has not done so.

ICE also revoked Petitioner's OSUP under § 241.4 rather than § 241.13, used an officer Respondents admit is insufficient under § 241.4, and identified no OSUP violation. Ex. 8-5 at 1-2; ECF 9 at 16-17. But the shortest path to relief is simpler: DHS has not met its burden to show individualized changed circumstances or SLRRFF. The petition should be granted, Petitioner released, and his OSUP restored.

ARGUMENT

This reply makes three core points. First, ICE revoked Petitioner's long-standing *Zadvydas*-based release under the wrong regulation, § 241.4, instead of § 241.13. Second, even on ICE's own terms, the revocation is void because it was signed by a deportation officer whom Respondents concede is not an authorized decision-maker under § 241.4(l)(2). Third, ICE cannot salvage the revocation by invoking § 241.13 now because it has not identified any individualized 'changed circumstances' or offered any nonspeculative evidence that Vietnam is significantly likely to accept this Petitioner in the reasonably foreseeable future. Any one of these defects requires habeas relief; together, they compel immediate release and restoration of Petitioner's OSUP.

I. ICE revoked Petitioner's OSUP under the wrong regulation.

A. Petitioner's 2012 release arose from a *Zadvydas*/non-removability situation governed by § 241.13.

Petitioner's 2012 OSUP states that ICE had not effected his removal during the period prescribed by law or due to special circumstances. Ex. 8-6 at 1. Respondents acknowledge that, in 2012, Vietnam would not accept pre-July-1995 Vietnamese nationals and that Petitioner was among those Vietnam would not accept. ECF 9 at 4-5.

That is the factual predicate for § 241.13. The Amended Petition explains that § 241.13 applies to post-order detainees who have shown good reason to believe

there is no significant likelihood of removal in the reasonably foreseeable future. Am. Pet. ¶¶ 56–63. The Amended Petition also alleges that ICE’s decision to re-detain a noncitizen released because removal was not reasonably foreseeable is governed by 8 C.F.R. § 241.13(i)(2), which requires changed circumstances and a significant likelihood of removal in the reasonably foreseeable future. Am. Pet. ¶¶ 57, 63, 78–79.

In *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), the Supreme Court held that if removal is not reasonably foreseeable, continued detention is unreasonable and no longer authorized by statute. The Court further held that after the presumptively reasonable 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. *Zadvydas*, 533 U.S. at 701.

Respondents cannot treat § 241.4 as a catch-all escape hatch when Petitioner’s long-standing release was specifically predicated on the government’s inability to remove him to Vietnam. The general § 241.4 framework cannot be used to bypass the more specific *Zadvydas*-based safeguards in § 241.13.

B. ICE expressly invoked § 241.4(l), not § 241.13.

The April 30, 2026 Notice of Revocation states that Petitioner’s release was revoked pursuant to 8 C.F.R. § 241.4(l). Ex. 8-5 at 1. The notice did not invoke §

241.13 as the revocation authority. Ex. 8-5 at 1-2.

That choice matters. The government's own form contains a separate § 241.13 revocation section. Ex. 8-5 at 1. ICE did not rely on that section. Ex. 8-5 at 1. The form also distinguishes between ICE having obtained a travel document and scheduled removal, and ICE merely seeking a travel document. Ex. 8-5 at 1. ICE did not state that it had obtained a travel document for Petitioner or scheduled his removal. Ex. 8-5 at 1. ICE selected only the assertion that it was seeking a travel document to effect removal to Vietnam. Ex. 8-5 at 1.

Seeking a travel document is not the same as *having* one. It is not evidence that Vietnam has accepted Petitioner.

C. The wrong-regulation error independently invalidates the revocation under Accardi.

Because Petitioner's long-standing release was based on non-removability, DHS could not avoid § 241.13's changed-circumstances and SLRRFF requirements by invoking § 241.4 instead. In *Service v. Dulles*, 354 U.S. 363, 372-73 (1957), the Supreme Court held that an agency must comply with its own procedural rules. See also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (agencies must follow their own procedures where individual rights are affected). Am. Pet. ¶ 84.

Here, the rules protect a core liberty interest. The Amended Petition alleges that revocation of OSUP release implicates substantive due process, procedural due process, APA review, ultra vires principles, and Accardi. Am. Pet. ¶¶ 92-141.

ICE's error is not technical. If § 241.13 governs, then ICE had to show changed circumstances and a significant likelihood of removal. Am. Pet. ¶¶ 57, 63, 78-79. ICE instead invoked § 241.4(l), used a § 241.4 rationale, and omitted any individualized § 241.13 finding. Ex. 8-5 at 1-2. The revocation is therefore invalid.

II. Even under ICE's chosen regulation, the revocation is void because the wrong official signed it.

A. §241.4(l)(2) restricts revocation authority to designated senior officials.

8 C.F.R. § 241.4(l)(2) vests revocation authority in the Executive Associate Commissioner or, under limited circumstances, a district director. 8 C.F.R. § 241.4(l)(2). A district director may revoke release only when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral to the Executive Associate Commissioner. 8 C.F.R. § 241.4(l)(2). The current ICE form tracks this senior-level requirement by indicating that § 241.4 revocation must be approved at the Executive Associate Director or Field Office Director level where the required public-interest and referral findings exist. Ex. 8-5 at 2. Yet the form here was signed only by Jessie D. Gonzalez, RMD Detention and Deportation Officer. Ex. 8-5 at 2. Respondents admit the defect. Their response states that Officer Gonzalez's signature is sufficient under § 241.13 but not under § 241.4. ECF 9 at 16-17.

B. Respondents' proposed cure proves present custody is unlawful.

Respondents argue that, if § 241.4 applies, ICE can promptly have the revocation

re-signed by the proper official. ECF 9 at 17. That is not a defense to present detention. It is a concession that present detention rests on a defective revocation. Habeas addresses present custody. Petitioner is currently detained based on a revocation signed by an official Respondents admit was not sufficient under the regulation ICE invoked. ECF 9 at 16-17.

Courts addressing materially similar OSUP revocations have held that revocation authority must be exercised by the official identified in the governing regulation or by an official with an express and proper delegation of that specific authority. In *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160-62 (W.D.N.Y. 2025), the court held that an OSUP revocation was void where the revoking official lacked express delegated authority. In *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2841886, at *3-5 (D. Md. Oct. 7, 2025), the court found that OSUP revocation authority was not properly delegated to a deportation officer. In *Funes v. Francis*, No. 25 Civ. 7429 (PAE), 2025 WL 3263896, at *18-19 (S.D.N.Y. Nov. 24, 2025), the court rejected the government's reliance on a general delegation order because the order did not specifically delegate OSUP revocation authority.

Other courts have reached the same conclusion. See *Zhu v. Genalo*, No. 25 Civ. 6523, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 25-cv-01317, 2025 WL 2430267 (D. Or. Aug. 21, 2025); *Morales Sanchez v. Bondi*, No. 5:25-cv-02530-AB-DTB, 2025 WL 3651899 (C.D. Cal. Dec. 5, 2025). ICE cannot detain

first and cure later. The April 30 revocation was unauthorized when issued.

III. ICE has not shown individualized changed circumstances or a significant likelihood of removal.

A. Section 241.13 requires individualized changed circumstances.

If Respondents now argue that § 241.13 governs, they still lose. The Amended Petition alleges that § 241.13(i)(2) requires an individualized determination, based on changed circumstances, that removal has become significantly likely in the reasonably foreseeable future. Am. Pet. ¶¶ 57, 63, 78–79. Respondents also identify no OSUP violation, no obstruction, and no misconduct by Petitioner; the sole basis for detention is ICE’s asserted change in removability. Ex. 8-5 at 1.

The Amended Petition further alleges that ICE must identify specific, individualized changes, such as new evidence of flight risk, danger, or a concrete development making removal newly feasible. Am. Pet. ¶¶ 46, 54, 70, 78–79. Vague or generic assertions are insufficient under the authorities cited in the Amended Petition. Am. Pet. ¶¶ 46, 54, 78. There is no individualized evidence here.

B. Belafonte’s declaration is generic and non-individualized.

Belafonte states that Vietnam is currently issuing travel documents to Vietnamese nationals and that ICE is removing Vietnamese nationals. Belafonte Decl. ¶ 11. He provides aggregate numbers for removals to Vietnam in FY2024, FY2025, and FY2026. Belafonte Decl. ¶¶ 12–14. He states that ICE submitted documents for translation on May 4, 2026, which ICE believed were required by the Vietnamese

consulate as part of the travel-document request process. Belafonte Decl. ¶ 16.

Belafonte does not state that Vietnam has issued a travel document for Petitioner.

Belafonte Decl. ¶¶ 11–16. He does not state that Vietnam has accepted Petitioner.

Belafonte Decl. ¶¶ 11–16. He does not state that a travel-document request has been acknowledged by Vietnam for Petitioner. Belafonte Decl. ¶¶ 11–16. He does

not state that Petitioner's removal has been scheduled. Belafonte Decl. ¶¶ 11–16.

That omission is dispositive under *Zadvydas* and 8 C.F.R. § 241.13. Aggregate statistics cannot replace individualized proof. That is especially true because § 241.13 requires consideration of the ongoing nature of ICE's efforts to remove this alien, the alien's assistance with those efforts, the reasonably foreseeable results of those efforts, and State Department views regarding removal prospects. 8 C.F.R. §

241.13(f). Belafonte's declaration supplies aggregate countrywide removal numbers, but it does not identify any individualized consular communication, travel-document request, travel-document issuance, scheduled removal, or Vietnamese acceptance as to Petitioner. Belafonte Decl. ¶¶ 11–16. Section 241.13 requires an individualized likelihood determination; it does not permit ICE to substitute national statistics for evidence that this Petitioner can actually be removed in the reasonably foreseeable future.

C. Raw removal numbers lack foundation and do not prove foreseeability.

Respondents' statistics suffer from a foundational defect. Raw removal numbers

do not show the likelihood of Petitioner's removal without a denominator, without the number of pending travel-document requests, without the number of denied or stalled requests, and without a reliable breakdown for pre-July-1995 Vietnamese nationals. Raw removal totals are of limited value when the record lacks a denominator and does not show how many removals involved pre-1995 arrivals.

That defect is equally present here. Belafonte's declaration states how many Vietnamese nationals ICE removed in certain fiscal years, but it does not identify the number of travel-document requests submitted, the number pending, the number denied, the average time to issuance, or the likelihood that Vietnam will accept Petitioner specifically. Belafonte Decl. ¶¶ 11-16.

A statistic showing that some Vietnamese nationals have been removed does not establish that this Petitioner is significantly likely to be removed in the reasonably foreseeable future.

D. ICE detained first and began preliminary travel-document processing later.

ICE detained Petitioner on April 30, 2026. Belafonte Decl. ¶¶ 9-10. Officer Gonzalez signed the revocation notice on April 30, 2026. Belafonte Decl. ¶ 10. ICE submitted documents for translation on May 4, 2026. Belafonte Decl. ¶ 16.

Thus, at the time of revocation, ICE had not even completed the translation step it believed was required for the Vietnamese consulate. Belafonte Decl. ¶ 16. The

revocation notice did not state that ICE had obtained a travel document or scheduled removal. Ex. 8-5 at 1.

That is not a changed circumstance. It is the beginning of paperwork.

Federal courts have repeatedly held that internal administrative steps do not establish significant likelihood of removal. In *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025), the court held that the government's intent to assemble or submit a travel-document request was insufficient. In *Phan v. Noem*, No. 25-cv-02422, 2025 WL 2898977, at *4 (S.D. Cal. Oct. 10, 2025), the court similarly rejected internal paperwork as sufficient proof of foreseeable removal. In *Hoang Ngoc Dao v. Bondi*, No. 2:25-cv-02340-LK, 2026 WL 18626, at *3 (W.D. Wash. Jan. 2, 2026), the court held that preparing a request for internal review was insufficient, especially without a timeline for submission to the foreign government. In *Nguyen v. Archambeault*, No. CV-25-04107-PHX-SHD (ASB), 2025 WL 3250922, at *2 (D. Ariz. Nov. 21, 2025), the court held that submitting identity documents for translation was insufficient.

The same reasoning controls here. ICE did not possess a travel document, did not have a scheduled removal, and did not identify any consular acceptance at the time it revoked Petitioner's OSUP.

E. "Working on" travel documents is not enough.

The government must show more than an intention to pursue removal.

Courts have rejected similar assertions that ICE is “in the process of obtaining” or “actively working to obtain” travel documents. In *Yee S. v. Bondi*, No. 25-cv-02782 (JMB/DLM), 2025 WL 2879479, at *4–5 (D. Minn. Oct. 9, 2025), the court held that a lone assertion that ICE was in the process of obtaining a travel document was insufficient. In *Huot Kuot v. Bondi*, No. 2:25-cv-02313-BAT, 2025 WL 3763930, at *3–4 (W.D. Wash. Dec. 30, 2025), the court held that representations that the government was actively working to obtain a travel document were insufficient. In *Gilali v. Warden of McHenry County Jail*, No. 19-cv-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019), the court held that a pending travel-document request did not establish likely removal. *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006), the court found that continued follow-up regarding travel documents did not establish removal was significantly likely in the reasonably foreseeable future. Here, the government has less than many of those cases. Belafonte does not say that a formal travel-document request has been submitted for Petitioner. Belafonte Decl. ¶ 16. Belafonte says only that documents were submitted for translation after Petitioner was already detained. Belafonte Decl. ¶ 16.

F. Recent pre-1995 Vietnamese cases reject the government’s generic evidence.

A growing body of recent decisions involving pre-July-1995 Vietnamese nationals rejects the same generic evidence Respondents rely on here. In *Nguyen v. Scott*, 796 F. Supp. 3d 703 (W.D. Wash. 2025), the court rejected vague and conclusory

government assertions concerning Vietnam's review of a pre-1995 Vietnamese petitioner's case. In *Binh Van Tran v. Hyde*, No. 25-cv-12546-ADB, 2025 WL 3724853 (D. Mass. Dec. 24, 2025), the court considered evidence describing the lengthy and complex process for travel-document applications for pre-1995 arrivals. In *Son Hoang Huynh v. Bondi*, No. C25-2371-KKE, 2025 WL 3718991 (W.D. Wash. Dec. 23, 2025), the court ordered immediate release under the petitioner's most recent order of supervision and required compliance with 8 C.F.R. § 241.13(i) and 8 U.S.C. § 1231 before re-detention. Other courts have likewise granted relief where the government relied on general trends rather than individualized proof. See *Huy Van Tran v. Bondi*, No. 2:25-cv-02335-DGE-TLF, 2025 WL 3725677, at *6 (W.D. Wash. Dec. 24, 2025); *Tan Hoang Bui v. Scott*, No. 2:25-cv-02268-TMC, 2025 WL 3706796, at *3 (W.D. Wash. Dec. 22, 2025). The key question is not whether Vietnam has accepted some Vietnamese nationals. The question is whether Vietnam is significantly likely to accept Mr. Thuy in the reasonably foreseeable future. Respondents have not answered that question.

G. T.C.T. is distinguishable.

Respondents rely on *T.C.T. v. Warden*, No. 4:25-cv-373-CDL-CHW, 2025 WL 4648417 (M.D. Ga. Dec. 22, 2025), but their own description of that case shows why it does not control here. Respondents say *T.C.T.* involved evidence that Vietnam had issued a travel document for every request submitted and that a travel-

document request had already been submitted for that petitioner. ECF 9 at 15. Here, Belafonte does not say that a travel-document request has been submitted for Petitioner, that Vietnam has acknowledged any request, that Vietnam has issued a travel document, or that removal has been scheduled. Belafonte Decl. ¶¶ 11-16. At minimum, if the Court is inclined to credit Belafonte's predictive conclusion that Vietnam will accept Petitioner, Petitioner requests an evidentiary hearing and an opportunity to test that conclusion. See *Phouk v. Warden, Stewart Detention Center*, 378 F. Supp. 3d 1209 (M.D. Ga. 2019). In *Phouk*, the court authorized habeas discovery where factual development was needed on the likelihood of removal and the status of foreign-government travel-document efforts. The same principle applies here.

IV. The *Zadvydas* clock does not reset merely because ICE re-detained Petitioner.

Respondents argue that Petitioner has been detained only a few days and suggest that a new six-month *Zadvydas* period may apply. ECF 9 at 11-13. The Amended Petition rejects that reset theory. Am. Pet. ¶¶ 50-53.

The Amended Petition alleges that the removal period began long ago, expired long ago, and does not restart merely because ICE chooses to re-detain a noncitizen previously released under supervision. Am. Pet. ¶¶ 50-53. The Amended Petition cites *Diaz-Ortega v. Lund*, No. 1:19-cv-670-P, 2019 WL 6003485 (W.D. La. Oct. 15, 2019), *Hamama v. Adducci*, 2019 WL 2118784 (E.D. Mich. May 15, 2019), *Bailey v.*

Lynch, No. 16-2600, 2016 WL 5791407 (D.N.J. Oct. 3, 2016), *Sied v. Nielsen*, No. 17-cv-06785-LB, 2018 WL 1876907 (N.D. Cal. Apr. 19, 2018), and *Somsanuk v. Bondi*, No. C26-48-MLP, 2026 WL 221139 (W.D. Wash. Jan. 28, 2026), for the proposition that successive detention does not reset the *Zadvydas* clock absent obstruction by the noncitizen. Am. Pet. ¶¶ 50–53.

The six-month presumptively reasonable period in *Zadvydas* is not a license to restart detention every time ICE chooses to re-detain a long-released OSUP holder. 8 U.S.C. § 1231(a)(1)(B) identifies when the removal period begins, and it does not provide that the period restarts merely because ICE later revokes supervised release. Section 241.13 likewise ties the agency’s six-month opportunity to assess likelihood of removal to “the beginning of the removal period,” not to each later re-detention. 8 C.F.R. § 241.13(b)(2)(ii). The Amended Petition cites multiple decisions rejecting a reset theory absent obstruction by the noncitizen. Am. Pet. ¶¶ 50–53. Here, ICE has not alleged obstruction; it detained Petitioner first and only submitted documents for translation four days later. Belafonte Decl. ¶¶ 9–10, 16. A habeas challenge to re-detention after OSUP revocation is not premature merely because the current detention has lasted less than six months. In *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9–10 (S.D. Tex. Sept. 26, 2025), the court held that nothing in *Zadvydas* precludes a challenge before the presumptively reasonable period has elapsed. In *Ali v. Department of Homeland Security*, 451 F.

Supp. 3d 703, 707 (S.D. Tex. 2020), the court recognized that the six-month presumption is not a bright line. In *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025), the court collected cases recognizing that detention may be challenged even within the presumptive period.

The six-month clock cannot restart each time the government re-detains someone it previously released because removal was not reasonably foreseeable. In *QuocAnh Pho v. Noem*, No. 3:25-cv-977-CCB-SJF, 2025 WL 3750684, at *3-5 (N.D. Ind. Dec. 29, 2025), the court explained that allowing the government a fresh six-month period of unreviewable detention every time it re-detains an alien would undermine *Zadvydas*. Respondents argue that the clock should restart where the second detention is a bona fide attempt to remove the alien. ECF 9 at 12-13. But the record here does not show a bona fide individualized attempt to remove this Petitioner in the reasonably foreseeable future. ICE detained Petitioner on April 30, 2026, but did not submit documents for translation until May 4, 2026. Belafonte Decl. ¶¶ 9-10, 16. The Notice of Revocation did not state that ICE had obtained a travel document or scheduled removal. Ex. 8-5 at 1.

The government's reliance on a fresh six-month period is especially misplaced where the re-detention rests on a prediction that has not been tested by any concrete individualized step. The six-month presumption is not an evidentiary substitute for proof that removal is significantly likely. In *Ali v. Department of*

Homeland Security, 451 F. Supp. 3d 703, 707–09 (S.D. Tex. 2020), the court explained that the six-month period is not a bright-line bar to habeas review and does not automatically authorize detention until constitutional limits are reached. Here, the record shows that ICE had not obtained a travel document or scheduled removal when it revoked Petitioner's OSUP. Ex. 8-5 at 1.

This is not a concrete, individualized removal process that justifies re-detention. It is speculative re-detention based on generalized policy shifts and aggregate countrywide numbers. There is no evidence that Petitioner obstructed removal. The 2012 OSUP required Petitioner to assist ICE in obtaining travel documents and provide copies of requests and consular responses. Ex. 8-6 at 1, 3. Respondents do not identify any violation of those conditions in the April 30 revocation notice. Ex. 8-5 at 1. Petitioner's detention is not presumptively valid simply because ICE re-detained him after years of supervision. The government already had years to attempt removal, and its own evidence shows only that it began translation work after taking Petitioner into custody. Belafonte Decl. ¶ 16.

V. ICE failed to provide meaningful process.

A. ICE was required to provide notice and an informal interview under both § 241.4 and § 241.13.

8 C.F.R. § 241.4(l)(1) requires that, upon revocation, the alien be notified of the reasons for revocation and afforded an initial informal interview promptly after return to custody to provide an opportunity to respond. 8 C.F.R. § 241.4(l)(1).

If the alien is not released following that informal interview, § 241.4(l)(3) requires further review, including evaluation of contested facts relevant to revocation and a determination whether the facts warrant revocation and further denial of release. 8 C.F.R. § 241.4(l)(3).

Courts have read § 241.4(l) as a unified revocation scheme requiring notice and a prompt informal interview for OSUP revocations generally, not only for revocations based on alleged condition violations. In *Funes v. Francis*, No. 25 Civ. 7429 (PAE), 2025 WL 3263896, at *14–16 (S.D.N.Y. Nov. 24, 2025), the court held that § 241.4(l) sets forth a unified set of procedures governing revocation of release. In *Zhu v. Genalo*, No. 25 Civ. 6523, 2025 WL 2452352, at *6–7 (S.D.N.Y. Aug. 26, 2025), the court likewise treated § 241.4(l) as establishing procedures for OSUP revocations. In *M.Q. v. United States*, 776 F. Supp. 3d 180, 186–87, 190 n.1 (S.D.N.Y. 2025), the court held that discretionary OSUP revocation requires notice and an initial informal interview.

Justice Sotomayor has also noted that under § 241.4(l), the government must provide adequate notice and promptly arrange an initial informal interview to afford the alien an opportunity to respond to the reasons for revocation. *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1019 (2025) (Sotomayor, J., statement respecting disposition). Section 241.13 imposes similar protections. The Amended Petition alleges that § 241.13(i)(3) requires notice of the reasons for revocation, a prompt

informal interview, and an opportunity to submit evidence and information. Am. Pet. ¶¶ 65–70, 87–88, 101–109. Thus, under either regulation, ICE had to provide meaningful notice and an opportunity to respond before Petitioner’s conditional liberty was extinguished.

B. The Fifth Amendment required meaningful process before the deprivation of long-standing liberty.

The Amended Petition alleges that Respondents detained Petitioner at a routine check-in without advance notice, without meaningful opportunity to respond, without any identified OSUP violation, and without individualized changed circumstances. Am. Pet. ¶¶ 1–5, 28, 37–40, 98–109. The Amended Petition further alleges that this violated procedural due process, the INA, implementing regulations, the APA, and the Accardi doctrine. Am. Pet. ¶¶ 98–141.

In *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), procedural due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. Am. Pet. ¶¶ 45, 69. The Amended Petition applies *Mathews* to the OSUP revocation context and alleges that Petitioner’s liberty interest, the risk of erroneous deprivation, and the government’s interest all favor meaningful pre-deprivation or contemporaneous process. Am. Pet. ¶¶ 101–109.

The liberty interest here is substantial. In *Zadvydas*, 533 U.S. at 690, the Supreme Court recognized that freedom from physical restraint lies at the heart of the liberty protected by the Due Process Clause. Am. Pet. ¶¶ 43, 93, 102. Courts

have also recognized that individuals conditionally released from custody have a protected interest in continued liberty. In *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025), the court recognized that conditionally released individuals have a protected interest in continued liberty. In *Young v. Harper*, 520 U.S. 143, 147, 149, 152–53 (1997), the Supreme Court recognized a protected liberty interest for a person released from incarceration under a pre-parole program. In *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), the Supreme Court recognized that termination of conditional liberty inflicts a grievous loss.

That liberty interest is especially weighty where, as here, Petitioner lived in the community for years under government-sanctioned supervision and Respondents identify no violation of that supervision. Ex. 8-5 at 1; Ex. 8-6 at 1, 3.

C. A same-day check-in encounter was not meaningful process.

Belafonte states that Petitioner appeared for a scheduled reporting session on April 30, 2026. Belafonte Decl. ¶ 9. Belafonte states that officers conducted a records check, determined circumstances had changed, Officer Gonzalez signed the revocation notice, Petitioner was served, and Petitioner declined to provide statements. Belafonte Decl. ¶¶ 9–10. Petitioner was denied access to counsel and the ICE officer refused to talk to counsel over the phone other than to say that the OSUP has been revoked after it happened. The revocation notice states that Petitioner would be afforded an informal interview on April 30, 2026. Ex. 8-5 at 2.

The interview form states “No Statement” and indicates that no documents were provided. Ex. 8-5 at 3.

This was not a meaningful opportunity to respond. Petitioner was already in ICE’s control at a routine check-in. He had no meaningful opportunity to gather evidence, address Vietnam’s lack of individualized acceptance, present proof of compliance, consult counsel, or challenge the absence of a travel-document request. A pre-filled notice and a same-day custodial “interview” cannot satisfy due process where ICE had already decided to revoke release and detain Petitioner. That process was especially deficient because the asserted basis for detention was not Petitioner’s misconduct, but ICE’s claimed change in removal prospects.

D. Petitioner’s silence did not waive his rights.

Respondents rely on Petitioner’s lack of statement. ECF 9 at 6, 18. But silence during a sudden custodial encounter does not waive the right to meaningful process. The Amended Petition alleges that the revocation process must provide notice and a meaningful opportunity to respond before liberty is withdrawn. Am. Pet. ¶¶ 65–70, 101–109, 139–141. The Amended Petition also alleges that ICE’s procedures require review of the circumstances, service of a notice stating reasons, and an informal interview affording an opportunity to respond. Am. Pet. ¶¶ 87–88. A detainee cannot meaningfully respond to a complex assertion about changed

diplomatic circumstances, travel-document practices, and likelihood of removal while being detained at a routine check-in. The Constitution and regulations require a real opportunity to respond, not a ritualistic checkbox.

VI. Respondents' APA and ultra vires claims are directly tied to custody and support habeas relief.

This case is not a revocation based on Petitioner's conduct. The government has not alleged that Petitioner violated his OSUP as the basis for revocation. The April 30, 2026 Notice of Revocation did not identify any failure to report, failure to cooperate, new criminal conduct, obstruction, travel-document noncompliance, or other violation of release conditions. Ex. 8-5 at 1. Petitioner's 2012 OSUP imposed reporting, cooperation, travel-document, law-abiding, and related supervision conditions. Ex. 8-6 at 1, 3. The only selected basis for revocation was ICE's assertion that it was seeking a travel document to effect Petitioner's expeditious removal to Vietnam. Ex. 8-5 at 1. That confirms the revocation was based solely on ICE's claimed change in removability, which triggers § 241.13's changed-circumstances and significant-likelihood requirements.

Respondents argue that relief beyond release from custody is not available in this proceeding. ECF 9 at 19-21. But Petitioner's APA and ultra vires claims are not collateral to custody. They challenge the agency action that directly caused his present physical detention. The Amended Petition alleges APA claims under 5 U.S.C. § 706(2)(A), (B), and (C), including claims that the revocation was contrary

to law, contrary to constitutional right, arbitrary and capricious, and in excess of statutory authority. Am. Pet. ¶¶ 110–134. The Amended Petition also alleges ultra vires action and an independent Accardi claim. Am. Pet. ¶¶ 135–141.

Those claims are central to habeas because the challenged agency action is the revocation that placed Petitioner in custody. The arbitrary and capricious nature of the revocation, the action contrary to law, and the action in excess of statutory authority directly resulted in the unlawful deprivation of Petitioner's liberty.

The revocation was contrary to law because ICE invoked § 241.4(l) for a Zadvydas-based release that should have been governed by § 241.13. Ex. 8-5 at 1. The revocation was in excess of authority because it was signed by an officer Respondents admit was insufficient under § 241.4. ECF 9 at 16–17. The revocation was arbitrary and capricious because ICE failed to identify any OSUP violation, travel document, scheduled removal, individualized consular acceptance, or individualized changed circumstance. Ex. 8-5 at 1; Belafonte Decl. ¶¶ 11–16.

Respondents cannot defeat review by characterizing the revocation as discretionary. Even where a jurisdictional statute limits review of a substantive discretionary decision, courts retain authority to review whether ICE complied with mandatory procedures and whether the manner of custody violates the Constitution, statutes, or regulations. In *Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017), the court held that habeas jurisdiction was proper where

petitioners challenged restraints tied to their OSUPs. *Devitri* also recognized that 8 U.S.C. § 1252(g) is limited to the three discrete actions identified in the statute and does not bar every claim connected to removal enforcement. In *Candra v. Cronen*, 361 F. Supp. 3d 148 (D. Mass. 2019), the court explained that APA review remains available for certain immigration agency decisions outside the confines of removal proceedings. The APA claims here are therefore not collateral civil claims untethered to custody; they challenge the revocation decision that directly caused Petitioner's physical detention.

In *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983), agency action is arbitrary and capricious when it runs counter to the evidence before the agency or fails to consider important aspects of the problem. Am. Pet. ¶¶ 121–123. In *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891, 1910 (2020), the Supreme Court required agencies to consider important aspects of the problem before acting. ICE's record here does not show a reasoned, individualized revocation decision. It shows a checkbox revocation followed by post-detention translation work.

VII. Immediate release and restoration of the OSUP are the proper remedies.

Respondents argue that any procedural error should be cured later rather than remedied by release. ECF 9 at 3, 19. That argument fails because Petitioner's current custody rests on an invalid revocation.

The Amended Petition requests immediate release, restoration of the prior OSUP, a declaration that the April 30 detention was unlawful, setting aside the revocation, and an injunction preventing future re-detention absent lawful notice, individualized reasons, meaningful opportunity to respond, and compliance with governing law. Am. Pet. at 68–70.

The Supreme Court has recognized that habeas is the core remedy for unlawful executive detention. In *Munaf v. Geren*, 553 U.S. 674, 693 (2008), the Court stated that habeas is at its core a remedy for unlawful executive detention and that the typical remedy is release. In *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973), the Court described the traditional function of the writ as securing release from illegal custody.

Respondents’ proposed cure mischaracterizes the defect. This is not a collateral administrative error unrelated to custody. The unauthorized revocation is the asserted legal basis for Petitioner’s physical detention. If the revocation was void, the detention is unlawful, and the ordinary habeas remedy is release.

Restoration of the OSUP is not relief beyond habeas; it is the practical means of ending unlawful custody and returning Petitioner to the lawful status he held before the invalid revocation. An individual subject to an OSUP remains “in custody” for habeas purposes when challenging restraints tied to that OSUP. *Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017). Because the

challenged agency action is the revocation that converted supervised release into physical detention, setting aside that revocation and restoring the prior OSUP directly remedies the unlawful custody.

The status quo before the unlawful revocation was Petitioner's release under the 2012 OSUP. Ex. 8-6 at 1. The April 30 revocation did not identify any OSUP violation, danger finding, flight-risk finding, travel document, or scheduled removal. Ex. 8-5 at 1.

Restoring Petitioner to his prior supervised-release status is a classic form of habeas relief: it alters the conditions of custody by returning him to the lawful, less-restrictive status he held before the unlawful revocation, while leaving the underlying order of removal intact. In *Zadvydas*, 533 U.S. at 699-700, the Supreme Court recognized release under supervision as the appropriate remedy when continued detention is no longer authorized by the removal purpose.

An injunction is also necessary to provide meaningful relief. Without forward-looking relief, Respondents could release Petitioner, obtain a new signature, issue another conclusory notice, and immediately re-detain him, forcing repetitive litigation over the same unlawful conduct. The Trinh response argues that restoration of the status quo ante and injunctive relief are necessary where an unauthorized OSUP revocation directly caused unlawful custody. The Trinh response also identifies similar relief in *R.O.A. v. Lewis*, No. 4:25-cv-00164-GNS

(W.D. Ky. Dec. 18, 2025), where the court enjoined the government from re-detaining the petitioner absent strict compliance with constitutional and regulatory requirements.

Because ICE used the wrong regulation, used an unauthorized official under the regulation it invoked, failed to provide meaningful process, failed to identify any OSUP violation, and failed to show individualized changed circumstances or a significant likelihood of removal, the April 30, 2026 revocation is invalid.

CONCLUSION

Respondents' own filings establish the clean path to relief.

ICE invoked § 241.4(l). Ex. 8-5 at 1. ICE used a signer Respondents admit is insufficient under § 241.4. ECF 9 at 16–17. ICE now attempts to rely on § 241.13 to save the signer, but § 241.13 requires individualized changed circumstances and a significant likelihood of removal in the reasonably foreseeable future. Am. Pet. ¶¶ 57, 63, 78–79. ICE has not made that showing.

Belafonte's declaration provides aggregate removal statistics and states that documents were submitted for translation after Petitioner was detained. Belafonte Decl. ¶¶ 12–16. It does not state that Vietnam has accepted Petitioner, issued a travel document for him, acknowledged a request for him, or scheduled his removal. Belafonte Decl. ¶¶ 11–16.

The cumulative effect of these defects is insurmountable. ICE invoked the

wrong regulation, used an unauthorized officer, failed to identify any OSUP violation, failed to provide meaningful process, and failed to produce individualized evidence of changed circumstances or a significant likelihood of removal. Each defect independently undermines the revocation. Together, they make clear that Petitioner's present detention is unlawful. Most importantly, the government has never alleged that Petitioner violated his OSUP; its sole basis for re-detention is a speculative assertion of changed removability unsupported by any travel document, submitted travel-document request, consular acknowledgment, scheduled removal, or individualized acceptance by Vietnam. Ex. 8-5 at 1; Belafonte Decl. ¶¶ 11-16.

Petitioner respectfully requests that the Court:

1. Grant the Amended Petition for Writ of Habeas Corpus;
2. Declare the April 30, 2026 revocation invalid;
3. Set aside the revocation as contrary to law, arbitrary and capricious, in excess of authority, ultra vires, and invalid under *Accardi*;
4. Order Petitioner's immediate release from ICE custody;
5. Restore Petitioner to the lawful status he held immediately before the unlawful revocation: release under an Order of Supervision on terms materially similar to his prior OSUP; and

6. Enjoin Respondents from arresting or re-detaining Petitioner in the future absent full and strict compliance with the Due Process Clause of the Fifth Amendment and all applicable statutory and regulatory requirements, including 8 C.F.R. §§ 241.4 and 241.13; approval by an authorized decisionmaker; meaningful notice and opportunity to respond; and individualized evidence of changed circumstances showing a significant likelihood of removal in the reasonably foreseeable future.¹

Respectfully submitted,

This 6th day of May, 2026.

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¹ This is similar to relief obtained in another case, *R.O.A. v. Lewis* in the Western District of Kentucky. Exh. 1.

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Book Antiqua, 13 point font.

/s/ Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on May 6, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

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