

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 26-cv-00560-RMR

HUGO HERNANDEZ CEREN,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;
PAM BONDI, in her official capacity as Attorney General of the United States;
TODD M. LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;
ROBERT HAGAN, in his official capacity as Field Office Director of the Denver Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; and
JUAN BALTAZAR, in his official capacity as Warden of the Aurora Contract Detention Facility,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Respondents hereby respond to the Court's February 12, 2026 Order to show cause, ECF No. 8.¹

In his Petition, Petitioner alleges that his ongoing detention is improper and violates due process because Respondents cannot effectuate a removal that can occur in the reasonably foreseeable future. He further alleges that Respondents' revocation of his release under an Order of Supervision ("OSUP"), without notice or an opportunity

¹ The Order directed Respondents to respond to the Petition within 5 days of service. See *id.* Respondents received service by mailing on February 17, 2026, and as such, their response is due February 23, 2026.

to be heard, violated his procedural due process rights, the *Accardi* doctrine, and the Administrative Procedure Act (“APA”).

The Court should deny the Petition. *First*, Petitioner’s detention is within the presumptively reasonable six-month period established in *Zadvydas v. Davis*, 533 U.S. 678 (2001) for detention of aliens who have been ordered removed. And in any event, pursuant to Tenth Circuit precedent, Petitioner’s removal has a definite endpoint—the conclusion of his testimony in the *Menocal* litigation. *Second*, Petitioner has not shown that any purported deficiency in the process by which Respondents revoked his release under an OSUP would entitle him to his requested habeas relief of immediate release.

BACKGROUND

I. Factual background

Petitioner is a native and citizen of El Salvador. See Exhibit 1, Declaration of I. Quinones (“Quinones Decl.”) ¶ 4. On August 25, 2009, the Department of Homeland Security (“DHS”) issued a Notice to Appear (“NTA”), initiating removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 6. The NTA charged Petitioner with being deportable from the United States pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii); 8 U.S.C. § 1101(a)(43)(F) (any alien who is convicted of an aggravated felony at any time after admission, to wit: a crime of violence); 8 U.S.C. § 1227(a)(2)(E)(i) (any alien who at any time after admission is convicted of a crime of domestic violence, stalking, or child abuse, child neglect, or child abandonment).

On May 28, 2012, Petitioner was removed from the United States. *Id.* ¶¶ 7-10. On November 29, 2012, U.S. Customs and Border Protection (“CBP”) agents

apprehended Petitioner at or near Hebronville, Texas after he illegally re-entered the United States, and CBP reinstated the order of removal under 8 U.S.C. § 1231(a)(5). *Id.* ¶ 11. Petitioner was again removed from the United States on September 3, 2013. *Id.* ¶¶ 12-13.

On December 13, 2013, CBP agents apprehended Petitioner at or near Mission, Texas after he illegally re-entered the United States, and CBP reinstated the order of removal under 8 U.S.C. § 1231(a)(5). *Id.* ¶ 14. Petitioner was again removed from the United States on July 15, 2015. *Id.* ¶¶ 15-17.

On August 7, 2017, Petitioner applied for admission at a Port of Entry. *Id.* ¶ 18. Petitioner did not have a visa or other document authorizing his admission into the United States, and CBP processed Petitioner for expedited removal pursuant to 8 U.S.C. § 1225(b)(1). *Id.* Petitioner claimed fear of persecution if returned to El Salvador, and CBP referred Petitioner to U.S. Citizenship and Immigration Services (“USCIS”) for a credible fear interview by an asylum officer pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii). *Id.*

On March 22, 2018, an Immigration Judge (“IJ”) denied Petitioner’s asylum application, and ordered him removed to El Salvador or, in the alternative, to Mexico. *Id.* ¶ 20. The IJ also denied Petitioner’s applications for withholding of removal under 8 U.S.C. § 1231(b)(3). *Id.*

On June 11, 2020, after various proceedings with the Board of Immigration Appeals (“BIA”) and the Ninth Circuit, *id.* ¶¶ 21-26, the U.S. District Court for the District of Colorado issued a writ of habeas corpus ad testificandum to produce Petitioner for

deposition in *Alejandro Menocal et al. v. The GEO Group, Inc.*, No. 1:14-cv-02887 (D. Colo.) ("*Menocal*"), ECF No. 275. *Id.* ¶ 27. Petitioner appeared for the deposition on June 24, 2020. *Id.*

Petitioner filed a motion to reconsider and motion for stay of removal with the BIA. *Id.* ¶ 28. The BIA granted the stay of removal on July 2, 2020. *Id.* On September 15, 2020, the BIA denied Petitioner's motion to reconsider. *Id.* ¶ 29. The BIA also denied the stay of removal as moot. *Id.* On September 24, 2020, Petitioner filed a petition for review with the Ninth Circuit. *Id.* ¶ 30. He also filed a motion for stay of removal on September 25, 2020. *Id.* The Ninth Circuit issued a temporary stay upon the filing of the motion. *Id.*

On December 11, 2020, ICE released Petitioner on an Order of Supervision ("OSUP"). *Id.* ¶ 31. On April 18, 2022, the Ninth Circuit denied in part and dismissed in part Petitioner's petition for review. *Id.* ¶ 32. On or about February 21, 2023, Petitioner filed a motion to reopen and motion for stay of removal with the BIA. *Id.* ¶ 33.

On November 7, 2025, the BIA denied the motion for stay of removal. *Id.* ¶ 36. On November 26, 2025, ICE officers encountered Petitioner and arrested and detained him pending removal. *Id.* ¶ 37. Petitioner's release on OSUP was also revoked. *Id.* ICE determined that the purpose of release had been served and it was appropriate to enforce the removal order. *Id.*

On December 8, 2025, the District Court granted Petitioner's emergency motion to modify the writ of habeas corpus ad testificandum for trial testimony in the U.S. District Court for the District of Colorado. *Id.* ¶ 38; see *Menocal*, ECF No. 436. The

Court ordered that Petitioner shall not be removed from the United States until the need for his live trial testimony has resolved. *Id.*

On February 5, 2026, ICE served Petitioner with a Notice of File Custody Review, which advised him that ICE will review his custody status and potential for release on an OSUP. *Id.* ¶ 40. The notice also advised Petitioner of the criteria that ICE will consider when deciding whether to release or continue to detain him. *Id.* Additionally, the notice advised Petitioner that he can submit documents in support of his release. *Id.*

On February 7, 2026, ICE conducted a Post Order Custody Review pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 41. ICE determined that Petitioner did not satisfy the criteria for release because he failed to demonstrate that he will not pose a danger to the community or pose a significant risk of flight pending removal from the United States. *Id.* Additionally, ICE was in receipt of the necessary travel documents to effectuate Petitioner's removal. *Id.* ICE determined that there is a significant likelihood of removal in the reasonably foreseeable future and continued to detain Petitioner. *Id.*

On February 24, 2026, ICE will serve (or has served) Petitioner with a Notice of Revocation of Release pursuant to 8 C.F.R. § 241.4, explaining the reasons for the revocation of his release. *Id.* ¶ 42.

Petitioner remains detained pursuant to 8 U.S.C. § 1231. *Id.* ¶ 43.

II. The habeas petition and procedural background

Petitioner filed his habeas petition on February 12, 2026. See ECF No. 1. He raises four claims challenging the revocation of his OSUP and his detention on a

reinstated final order of removal pursuant to 8 U.S.C. § 1231. *See generally id.* at 18-22. First, he asserts a procedural due-process claim, asserting his OSUP was revoked without notice or an opportunity to contest revocation. *Id.*, ¶¶ 61-66. Second, he argues that Respondents' alleged failure to abide by federal regulations violates *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). *See id.*, ¶¶ 67-71. Third, he alleges a substantive due-process claim, asserting that Respondents have no basis to detain him. *Id.*, ¶¶ 72-75. Fourth and finally, he asserts an APA claim stating that the revocation of his OSUP was arbitrary and capricious. *Id.*, ¶¶ 76-79.

ARGUMENT

As a removable alien, Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6) because it has been brief, and Petitioner's detention has a definite endpoint. Further, Petitioner does not show that any purported deficiencies in the process he has received justify his immediate release.

I. **Petitioner's detention is lawful.**

Petitioner contends that detention is unlawful under *Zadvydas* because his removal is presently barred pursuant to a Court Order in *Alejandro Menocal et al. v. The GEO Group, Inc.*, No. 1:14-cv-02887 (D. Colo.), ECF Nos. 275, 436. *See* ECF No. 1 at 2-3. Accordingly, Petitioner contends that removal cannot occur in the reasonably foreseeable future. Petitioner's ongoing detention is not unlawful or violative of his substantive due process rights. As an initial matter, Petitioner has been detained for less than three months since his detention on November 26, 2025, *see* Quinones Decl. ¶ 37, and as such his period of detention complies with due process as the Supreme

Court set forth in *Zadvydas*. Moreover, Petitioner's detention (and eventual removal) is not indefinite by virtue of the writ of habeas corpus ad testificandum in *Menocal*. It has a definite endpoint—the conclusion of his testimony at trial in *Menocal*.

Under Section 1231(a), “[d]uring the removal period,” DHS “shall detain the alien.” 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). Upon expiration of the 90-day period, during which detention is mandatory, the government may continue to detain an alien in limited circumstances. *See id.* § 1231(a)(6).

Those circumstances are present here because Petitioner is an “alien ordered removed who is inadmissible under section 1182 of this title.” *Id.* (providing that an “alien ordered removed who is inadmissible under section 1182 of this title . . . or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period”); *see also* Quinones Decl. ¶¶ 19 (Petitioner was charged with being, and found by an immigration judge to be, inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) and ordered removed on that basis).

If detained under Section 1231, the alien receives periodic post custody order reviews. *See* 8 C.F.R. § 241.4. Petitioner received such a review approximately two weeks ago, after which ICE determined that Petitioner should continue to be detained. *See* Quinones Decl. ¶¶ 41 (noting that ICE conducted a Post Order Custody Review on February 7, 2026).

The Supreme Court has recognized that Section 1231(a) authorizes continued

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.... [Section 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).

Detention beyond the initial 90 days also comports with due process. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court also held that a six-month period of detention for removable aliens complies with due process. In *Zadvydas*, the Court acknowledged that removing an alien 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 an alien 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 an alien’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*, 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 Section 1231(a)(6) detention is presumptively reasonable and does not violate his constitutional rights because that detention has not yet exceeded six months. He was taken into custody on November 26, 2025, and so he had been in detention for approximately two and a half months when he filed his petition. Because the six-month presumptively reasonable detention period under *Zadvydas* has not yet elapsed, the Petition is premature, and the presumption that detention under Section 1231 is lawful applies. See *Aguina-Arreola v. Holder*, No. 13-cv-02942-RM-KMT, 2014 WL 128559, at *3 (D. Colo. Jan. 10, 2014) (finding that the petitioner’s claim challenging the constitutionality of his detention under Section 1231(a) was premature because he had not yet been detained for six months and noting that the petitioner could “file a new application after expiration of the six month period”). Petitioner’s substantive due process claim, APA claim, and ultra vires claim should, therefore, be denied.

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. 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). Petitioner alleges that “removal is presently barred by an operative writ of habeas corpus ad testificandum in the *Menocal* case,” and as such, Respondents have not established “that removal is significantly likely in the reasonably foreseeable future.” ECF No. 1, ¶ 55.

But binding Tenth Circuit case law supports Petitioner’s continued Section 1231 detention. Petitioner’s removal will occur after he testifies in *Menocal*. See, e.g., Quinones Decl. ¶ 44. In the Tenth Circuit, when an alien’s detention is “directly associated with a judicial review process that has a definite and evidently impending termination point, and, thus, is more akin to detention during the administrative review process,” the detention “is clearly neither indefinite nor potentially permanent like the detention held improper in *Zadvydas*.” *Soberanes*, 388 F.3d at 1311; see also *Castaneda v. Perry*, 95 F.4th 750, 757 (4th Cir. 2024) (detention on a final order of removal during withholding-only proceedings “simply is not the type of ‘indefinite and potentially permanent’ detention at issue in *Zadvydas*” because “withholding-only proceedings are *finite*”). Put differently, Petitioner’s continued detention satisfies due process under *Zadvydas* because his detention has a definitive termination point—the conclusion of his testimony in *Menocal*. Thus, although the government does not have a burden to establish that removal is reasonably foreseeable at this point, it can and has done so here under the reasoning in *Soberanes*.

In sum, because he is properly detained for removal on a reinstated final order of removal under 8 U.S.C. § 1231(a)(6), and his detention is neither indefinite nor

prolonged beyond the six-month presumptively reasonable period, Petitioner has failed to demonstrate that his detention is unlawful.

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

Petitioner's release was revoked pursuant to 8 C.F.R. § 241.4(l)(2), which allows ICE to revoke release where, among other things, the purposes of release have been served; it is appropriate to enforce a removal order; or there is a change in circumstances. See Quinones Decl. ¶ 37; see also 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: (i) The purposes of release have been served; . . . (iii) It is appropriate to enforce a removal order . . . ; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.").

Petitioner seeks his immediate release on the ground that the revocation of release here did not procedurally comply with the regulatory provisions governing revocations of release. Specifically, he contends that, because the revocation occurred without prior notice, without findings by an authorized official, and without any hearing, it violated his procedural due process rights (Claim 1), federal regulations contrary to the *Accardi* doctrine (Claim 2), and the APA (Claim 4). See ECF No. 1 at 18-22. Based on these alleged violations, he requests his immediate release. See *id.* at 22 (Prayer for Relief).

Petitioner is not entitled to immediate release. *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. See *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 is being given an opportunity to be heard—that is, he has received a Notice of File Custody Review, where his custody status was reviewed; he was able to submit documents to support his release during that review; and ICE has conducted the post order custody review to assess Petitioner’s ongoing detention. See Quinones Decl. ¶¶ 40-41. He will also receive on February 24, 2026, a Notice of Revocation of Release pursuant to 8 C.F.R. § 241.4, explaining the reasons for the revocation of his release. See *id.* ¶ 42. In short, Petitioner has received notice and an opportunity to be heard.

Second, even if Petitioner had not received notice and an opportunity to be heard appropriate to the nature of his case, he 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 would demonstrate that his detention is substantively unwarranted. Under the applicable regulations and statute, ICE may, in the exercise of its discretion,² revoke release where the purposes of release have been served; it is

² To the extent the Petition challenges the exercise of that decision—that is, the decision *whether* to revoke supervised release, as opposed to the *procedures* used to do so—that discretionary decision is not judicially reviewable. See 8 U.S.C. § 1252(a)(2)(B) (“Notwithstanding any other provision of law . . . , including section 2241 of title 28, or any other habeas corpus provision,” and other provisions not relevant

appropriate to enforce a removal order; or there is a change in circumstances. See 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(2)(i), (iii), and (iv). Those were the bases for Petitioner's revocation for release and detention here. See Quinones Decl. ¶ 41. 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, an APA violation, or a regulatory 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, therefore, is 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 post order custody review was not performed, “the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation”); *Bahadorani v. Bondi*, No. 25-cv-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

here, “no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security”); *id.* § 1231(a)(6) (an alien like Petitioner who is inadmissible under § 1182 “*may be detained* beyond the removal period” (emphasis added)).

*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”). Likewise, under *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), the proper remedy is to afford the process provided by regulation, not release. See 347 U.S. at 268 (ordering the agency to afford the process provided in its regulations, not ordering substantive relief—there, the suspension of deportation); *Doe v. Bondi*, No. 25-cv-02712-DDD-SBP, 2025 WL 3516292, at *7 n.11 (D. Colo. Nov. 4, 2025) (“the appropriate remedy” for a claim under the *Accardi* doctrine “would not be release or a bond hearing before this Court, but rather to remand the case to ICE”). Finally, immediate release is also not a proper remedy under the APA. See, e.g., *Ton v. Noem*, No. 25-cv-02033-SB-AGR, 2025 WL 2995068, at *5 (C.D. Cal. Sept. 3, 2025) (immediate release of an immigration detainee is not “appropriate” under APA). In short, at most, Petitioner should 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.³

CONCLUSION

³ Should the Court nonetheless order Petitioner released on an OSUP, this release would be subject to conditions. Section 1231(a)(3) provides the Attorney General with the authority to issue regulations on terms of supervision for an alien released pending removal. See 8 U.S.C. § 1231(a)(3). Such regulations governing the release of aliens pending removal have been promulgated. 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. Petitioner appears to acknowledge as much, seeking his immediate release alternatively “under reasonable conditions of supervision.” ECF No. 1 at 22 (Prayer for Relief). Accordingly, if Petitioner is released, his release should be governed by conditions of supervised release set by ICE.

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

Dated: February 23, 2026.

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s/ Andrew M. Soler

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CERTIFICATE OF SERVICE

I hereby certify that, on February 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Andrew M. Soler

Andrew M. Soler

United States Attorney's Office