IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00581-GPG

ISRAEL GUERRA GONZALEZ,

Petitioner,

v.

JUAN BALTAZAR, Warden, Aurora ICE Processing Center,[1]
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement,
MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security,[2] and
TODD BLANCHE, Acting Attorney General of the United States,[3]

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 6)

Respondents respond to the Court's Order to Show Cause. *See* ECF No. 6.

In his First Amended Petition, Petitioner alleges that his ongoing detention violates his due-process rights and is ultra vires. *See* ECF No. 5, ¶¶ 44-48, 81-83. He further alleges that Respondents' revocation of his release on an Order of Supervision ("OSUP") violated his procedural due-process rights, Department of Homeland Security (DHS) regulations under the *Accardi* doctrine, and the Administrative Procedure Act (APA). *See id.*, ¶¶ 49-55-80, 84-88.

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[1] Under Fed. R. Civ. 25(d), Juan Baltazar, Warden of the Aurora ICE Processing Center, is automatically substituted as an official-capacity respondent.
[2] Under Fed. R. Civ. 25(d), Markwayne Mullin, Secretary of the Department of Homeland Security, is automatically substituted as an official-capacity respondent.
[3] Under Fed. R. Civ. 25(d), Todd Blanche, Acting U.S. Attorney General, is automatically substituted as an official-capacity respondent.

The Court should deny the Petition. *First*, Petitioner has not shown that his detention is unreasonable under the presumptively reasonable six-month detention period established in *Zadvydas* for detention of aliens who have been ordered removed. And, even if he could make that initial showing under *Zadvydas*, Petitioner's failure to cooperate in his removal confirms that his continued detention is valid and lawful. *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, immediate release.

BACKGROUND

I. Factual background

Petitioner is a native and citizen of Cuba. *See* Exhibit 1, ¶ 4 (Declaration of S. Christner). He is a convicted felon and has multiple times been encountered off the coast of the United States. *See id.*, ¶¶ 6, 10, 13.

In 1998, Petitioner unlawfully entered the United States. *See id.*, ¶ 5.

In June 2007, the U.S. Coast Guard (USCG) encountered Petitioner on a vessel off the coast of the Florida Keys. *See id.*, ¶ 6. Petitioner was arrested and detained as a suspected smuggler in violation of immigration laws. *See id.* Later in 2007, DHS initiated removal proceeding against Petitioner and charged Petitioner as inadmissible under 8 U.S.C. § 1182(a)(6)(E)(i). *See id.*, ¶ 7. In July 2007, an immigration judge ordered Petitioner removed to Cuba, but, shortly thereafter, Petitioner was released from ICE custody on an order of supervision. *See id.*, ¶¶ 8-9.

In August 2007, the USCG again encountered Petitioner in the waters between Florida and Cuba. *See id.*, ¶ 10. Thereafter, Petitioner was again placed in removal proceedings, again charged as inadmissible under 8 U.S.C. § 1182, and again ordered removed. *See id.*, ¶¶ 10-11. Petitioner was turned over to another law enforcement agency in September 2007. *See id.*, ¶ 12.

Petitioner was subsequently convicted in the U.S. District Court for the Southern District of Florida of Conspiracy to Induce Aliens to Enter the United States in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I) and Unauthorized Entry in Cuban Territorial Waters in violation of 50 U.S.C. § 192. *See* Ex. 1, ¶ 13. He was sentenced to 24 months in prison. *See id.*

After Petitioner served his prison sentence, ICE arrested and detained Petitioner to effectuate his removal from the United States. *See id.*, ¶ 15. Petitioner, however, was later released on an order of supervision. *See id.*, ¶ 16.

In January 2011, Petitioner applied for admission at the Laredo (Texas) Port of Entry. *See id.*, ¶ 17. Petitioner admitted that, in or about April or May 2010, he travelled from Cuba to Mexico. *See id.* Other than two trips in the interim to Cuba, Petitioner remained in Mexico until his arrival at the port of entry in January 2011. *See id.* U.S. Customs and Border Protection paroled Petitioner into the United States. *See id.*

On July 3, 2024, Petitioner was issued an order of supervision during a check-in with ICE in Miramar, Florida. *See id.*, ¶ 18.

On December 24, 2025, ICE officers encountered Petitioner in Florence, Colorado. *See id.*, ¶ 19. ICE determined that Petitioner is subject to an order of removal.

See id. ICE arrested and detained Petitioner under 8 U.S.C. § 1231(a)(6) to effectuate his removal form the United States. *See id.* Petitioner's release on supervision was revoked to enforce his removal order. *See id.*

Since Petitioner's detention, ICE has been pursuing his removal to a third country pursuant to 8 U.S.C. § 1231(b). *See* Ex. 1, ¶ 23.

On February 1, 2026, ICE served Petitioner with a Form I-229(a), Warning for Failure to Depart. *See id.*, ¶ 24. The Form I-229(a) notifies an alien subject to a final order of removal of the consequences of taking any action to prevent or hamper his removal. *See id.*

On February 11, 2026, ICE served Petitioner with a Notice of Removal to Mexico as a third country, which is required for Petitioner's removal to a third country. *See id.*, ¶ 25. Petitioner, however, refused to sign the notice. *See id.*

ICE subsequently referred Petitioner to U.S. Citizenship and Immigration Services (USCIS) for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3). *See* Ex. 1, ¶ 26. USCIS conducted a third country screening interview with Petitioner. *See id.* On February 23, 2026, USCIS determined that Petitioner did not establish that it is more likely than not that he will be persecuted or tortured in Mexico. *See id.*

On April 21, 2026, ICE served Petitioner with a Notice of Failure to Comply pursuant to 8 C.F.R. § 241.4(g). *See* Ex. 1, ¶ 27.

ICE continues to pursue Petitioner's removal to Mexico as a third country. *See id.*, ¶ 29. In recent months ICE has successfully removed Cuban citizens to Mexico as a third country. *See id.*, ¶ 28. The government of Mexico will accept Petitioner for removal,

and ICE can remove Petitioner to Mexico, but Petitioner must comply with ICE's removal efforts, including by signing the Notice of Removal. *See id.*, ¶ 29.

In the meantime, Petitioner remains detained in Denver under 8 U.S.C. § 1231 pursuant to his final order of removal. *See id.*, ¶¶ 20-21.

II. The amended habeas petition and procedural background

Petitioner filed his habeas petition on February 13, 2026. *See* ECF No. 1. He then filed a First Amended Petition on March 11, 2026. *See* ECF No. 5. He raises seven claims challenging the revocation of his OSUP and his detention on a final order of removal. *See generally id.* First, he alleges a violation of substantive due process, asserting that his detention violates the Fifth Amendment because it does not bear a reasonable relationship with the purposes of immigration detention (Claim 1). *See id.*, ¶¶ 44-48. Second, he asserts a procedural due-process claim, asserting that the revocation of his OSUP violated due process (Claim 2). *See id.*, ¶¶ 49-54. Third, he asserts three APA claims, asserting that revocation of his OSUP was contrary to law, arbitrary and capricious, and in excess of statutory authority (Claims 3-5). *See id.*, ¶¶ 55-80. Fourth, he argues that his detention is ultra vires because no law authorizes his detention (Claim 6). *See id.*, ¶¶ 81-83. Finally, he argues that Respondents failed to abide by federal regulations in violation of *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (Claim 7). As relief, Petitioner seeks his immediate release. *See id.* at 18 (Prayer for Relief).

On March 13, 2026, the Court ordered Respondents to show cause "as to why the Petition should not be granted" within "30 days of service as set out above." ECF

No. 6. On April 10, 2026, the United States Attorney's Office was fully served, and so this response is timely.[4]

ARGUMENT

I. Petitioner's detention does not violate his due-process rights.

Petitioner appears to assert that his ongoing detention by ICE violates due process and is ultra vires. *See* ECF No. 1, ¶¶ 44-48, 81-83 (Claims 1 and 6). Petitioner is incorrect.

Petitioner's detention is authorized by 8 U.S.C. § 1231. *See* Ex. 1, ¶¶ 9, 11 (noting that Petitioner was ordered removed on July 13, 2007, and September 7, 2007); 8 U.S.C. § 1231 (providing for the detention and removal of aliens ordered removed).

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." *Id.* (providing that an "alien ordered removed who is removable under section under section 1182 … may be detained beyond the removal period"); *see also* Ex. 1, ¶¶ 7-8, 10-11 (Petitioner was charged with being, and found by

[4] Thirty days from April 10, 2026, is a Sunday, May 10. Under Federal Rule of Civil Procedure 6, "if the last day" of a period "is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." Fed. R. Civ. P. 6(a)(1)(C). Therefore, Respondents' response deadline is Monday, May 11.

an immigration judge to be, inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(E)(i), 8 U.S.C. § 1182(a)(6)(E)(i), 8 U.S.C. § 1182(a)(7)(A)(i)(I), and 8 U.S.C. § 1182(a)(9)(A)(i), and ordered removed on those bases).

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 observed that "indefinite detention" would raise constitutional concerns, but held that a six-month period of detention for removable aliens presumptively complies with due process. *Id.* at 682. In *Zadvydas*, the Court acknowledged that removing an alien to another country often involves negotiations between the Executive Branch and foreign nations. *See id.* 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 detention has not yet exceeded six months. He was taken into custody on December 24, 2025, Ex. 1, ¶ 19, and so he had been in detention for less than two months at the time the initial habeas petition was filed on February 13, 2026, *see* ECF No. 1, and has been in detention for just over four months to date. Because the six-month presumptively reasonable detention period under *Zadvydas* has not yet elapsed, the operative habeas petition is premature, the presumption that the detention is lawful applies, and Petitioner's *Zadvydas* claim should be denied. *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").

Even if the six-month presumptively reasonable period had expired, however, Petitioner still fails to establish that his continued detention is a due-process violation under *Zadvydas*.

In the First Amended Petition, Petitioner asserts that, because the United States has no diplomatic relationship with his home country, Cuba, there is no good reason to believe that his removal is significantly likely in the reasonably foreseeable future. *See* ECF No. 5, ¶ 6. He further contends that Respondents have "failed to produce any documentation" for third-country removal to Mexico. *See id.*, ¶ 5; *see also* 8 U.S.C. § 1231(b)(1)(C) (allowing for third-country removal).

What Petitioner omits from his allegations, though, is that his continued detention is a product of his own making. That is, Petitioner's continued detention is justified because he has not fully cooperated in his removal.

Federal law provides that an alien's removal period "shall be extended ... if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). As a result, an "alien's continued detention past ... the six-month presumptively reasonable removal period in *Zadvydas* is authorized if the alien 'refuses to cooperate fully and honestly with officials to secure travel documents from a foreign government.'" *Robinson v. Terry*, No. 11-cv-1142-JH-LAM, 2012 WL 13081894, at *3 (D.N.M. May 3, 2012) (quoting *Lema v. U.S. I.N.S*, 341 F.3d 853, 856 (9th Cir. 2003)). "This is because, if a petitioner refuses to cooperate and be honest with immigration officials, the petitioner cannot meet

his or her burden to show there is no significant likelihood of removal in the reasonably foreseeable future and the Court 'cannot know whether [the petitioner's] removal is a remote possibility.'" *Id.*; *see also Riley v. Greene*, 149 F. Supp. 2d 1256, 1262 (D. Colo. 2001) (finding that petitioner's refusal to cooperate with his removal, thereby contributing to the delay of his departure, tolls the six-month period to effect his removal and his continued detention is authorized).

Here, Petitioner has not fully cooperated in his removal. ICE attempted to remove Petitioner to Mexico in February 2026, but was unable to effectuate removal because Petitioner refused to sign a Notice of Removal to Mexico. *See* Ex. 1, ¶ 25. Petitioner's signing of the Notice of Removal is required for his third-country removal. *See id.* ¶¶ 17-23. ICE is continuing to pursue Petitioner's removal to Mexico and is currently able to remove Petitioner to Mexico if Petitioner complies with removal efforts. *See id.* ¶ 29. Petitioner's continued detention is thus a result of his refusal to cooperate in his removal, not Respondents' lack of diligence in pursuing removal. *Cf. Amra v. Olson*, No. 25-cv-3222-JWL, 2025 WL 3684264, at *2 (D. Kan. Dec. 19, 2025) (observing that "acts of refusal by petitioner undermine any argument that petitioner has been detained longer than needed to effectuate his removal"). Petitioner, therefore, has not shown that there is no significant likelihood of removal in the reasonably foreseeable future. *See Abiodun v. Mukasey*, 264 F. App'x 726, 729 (10th Cir. 2008) (holding no *Zadvydas* violation occurred where "[t]he main reason [the petitioner] stills remains in the United States" was his "refusal to cooperate with ICE officials"); *Rivero v. FNU LNU*, No. 2:26-cv-00349-KG-KRS, 2026 WL 607416, at *1 (D.N.M. Mar. 4, 2026) ("Because

Petitioner's conduct is preventing execution of the removal order, the removal period is extended by operation of statute, and continued detention is authorized during that extended period. *Zadvydas v. Davis* is not implicated because removal remains reasonably foreseeable."); *Amom v. Carter*, 2025 WL 3267755, at *2 (D. Kan. Nov. 24, 2025) (petitioner was not entitled to release—despite having been detained more than six months—since the removal period started because he had failed to cooperate with removal efforts); *Singh v. Barr*, No. 17-cv-03057-DDD, 2019 WL 2452822, at *4 (D. Colo. June 12, 2019) (same). Accordingly, Plaintiff fails to establish a due-process violation under *Zadvydas*.

In sum, because he is properly detained for removal on a final order of removal under 8 U.S.C. § 1231(a)(6), Petitioner has failed to demonstrate his due-process claim (Claim 1) or his ultra vires claim (Claim 6).

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

Petitioner's release was revoked to enforce his removal order. *See* Ex. 1, ¶ 19; *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: … (iii) It is appropriate to enforce a removal order…").

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. *See* ECF No. 5, ¶¶ 49-55-80, 84-88. Specifically, he contends that the revocation violated his procedural due-process rights (Claim 2), the APA (Claims 3-5), and federal regulations under the *Accardi* doctrine (Claim 7). *See id.*

Based on these alleged violations, he requests his immediate release. *See id.* at 18 (Prayer for Relief).

Petitioner is not entitled to immediate release based upon alleged violations of procedural due-process rights, federal regulations, or the APA in connection with the revocation of his OSUP.

First, Petitioner has not shown prejudice from any violation, as he must. *Cf. Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) ("In order to prevail on his due-process challenge, Petitioner must show he was prejudiced by the actions he claims violated his Fifth Amendment rights."). Petitioner has not shown that any procedural violation would demonstrate that his detention is substantively unwarranted. Under the applicable regulations and statute, ICE may revoke release where it is appropriate to enforce a removal order. *See* 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(2)(iii). That was the basis for Petitioner's revocation for release and detention here. *See* Ex. 1, ¶ 19. Petitioner has not established that the outcome—detention pending removal on his final order of removal—would have been any different absent any alleged violation of the regulations.

Finally, even if Petitioner had demonstrated prejudice caused by 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 *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.[5]

CONCLUSION

For the foregoing reasons, the Court should deny the First Amended Petition, ECF No. 5.

Dated: May 11, 2026.

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[5] Should the Court nonetheless order Petitioner released on an OSUP, this release should 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). ICE has issued those regulations governing the release of aliens pending removal. *See* 8 C.F.R. § 241.13(h). Thus, an "alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances." *Zadvydas*, 533 U.S. at 700. Petitioner appears to acknowledge as much, seeking his immediate release under the same or lesser conditions of his OSUP. *See* 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.

CERTIFICATE OF SERVICE

I hereby certify that, on May 11, 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/ Nicholas A. Deuschle
Nicholas A. Deuschle
United States Attorney's Office