

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JHON LESTER GARCIA BARRIENTOS,

Petitioner,

v.

NIKITA BAKER, et al.

Respondents.

Case No. 1:26-cv-984

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO THE AMENDED
PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner Jhon Lester Garcia Barrientos ("Mr. Garcia Barrientos"), through undersigned counsel, submits this Reply to Respondents' Response to Petitioner's Amended Petition for a Writ of Habeas Corpus. ECF No. 22 ("Response").

INTRODUCTION

Immigration and Customs Enforcement ("ICE") has needlessly detained Mr. Garcia Barrientos since March 5, 2026. Since that date, he has been moved from Baltimore, Maryland, to Arizona and then to Tacoma, Washington, where he is currently detained. For the duration of his detention, ICE has deprived Mr. Garcia Barrientos of his necessary psychiatric medication and has failed to adequately treat his worsening kidney stones, putting his life at risk.

Mr. Garcia Barrientos' detention violates 8 USC § 1231(a)(6) under *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001), because his removal is not reasonably foreseeable. Mr. Garcia Barrientos' removal is not reasonably foreseeable, as ICE has inexplicably changed its mind about the third country to which it intends to remove him, evidencing the lack of any real plan

for removal, and has not provided the required fear screening for either country. Respondents have not shown any evidence of any concrete steps they have taken to effectuate removal to one of the intended third countries, such as requests to those countries or requests for travel documents. Additionally, Mr. Garcia Barrientos' re-detention and continued detention violates his procedural due process rights under the Fifth Amendment of the Constitution and his statutory rights under the Administrative Procedure Act ("APA"). ICE did not follow its own regulations in revoking Mr. Garcia Barrientos' Order of Supervision ("OSUP") has deprived Mr. Garcia Barrientos of his liberty interest without any appropriate process prior to detention.

Accordingly, this Court should grant Mr. Garcia Barrientos' Habeas Petition and order his immediate release from ICE custody.

FACTUAL BACKGROUND

The facts alleged in Petitioner's Amended Petition for a Writ of Habeas Corpus and Petitioner's Emergency Motion for Temporary Restraining Order and Preliminary Injunction are incorporated herein by reference. ECF No. 15, 8.

On or about March 16, 2026, an ICE officer told Mr. Garcia Barrientos that ICE now intends to remove him to Mexico. *See* Exh. 1. Mr. Garcia Barrientos stated that he fears removal to Mexico and asked for a fear interview. *Id.* To this date, Respondents have not scheduled a fear interview for Mr. Garcia Barrientos with regards to El Salvador, the first country ICE indicated as the intended country of removal, nor Mexico. *Id.*; ECF No. 16.

On or about March 17, 2026, Mr. Garcia Barrientos was brought to the emergency room where he was given an ultrasound, which revealed large kidneys stones, including one that is causing obstruction and needs to come out and another one that requires surgical removal. Exh. 2. The doctor informed Mr. Garcia Barrientos that the passing kidney stone could cause damage

if left untreated, as it might obstruct the urethra. *Id.* If that happens, Mr. Garcia Barrientos will require emergency care. *Id.* The doctor told Mr. Garcia Barrientos that he would need to return to the hospital to schedule an appointment with the urologist. *Id.* ICE has not informed Mr. Garcia Barrientos of when he would see a urologist or whether he would be able to schedule the surgery while in ICE detention. *Id.*; ECF No. 16.

ARGUMENT

I. Mr. Garcia Barrientos' Detention Violates 8 USC § 1231(a)(6) Under *Zadvydas* and the Due Process Clause of the Fifth Amendment, and He Is Entitled to Immediate Release.

Mr. Garcia Barrientos' detention violates 8 USC § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*.

A. Mr. Garcia Barrientos' Removal Is Not Reasonably Foreseeable Under *Zadvydas*.

Under *Zadvydas*, detention of a noncitizen with a final order of removal is only allowed under § 1231 if the noncitizen's removal is reasonably foreseeable. 533 U.S. at 682. The Court held that six months of post-removal order detention is "presumptively reasonable," meaning that after that point, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," Respondents bear the burden of rebutting that showing with sufficient evidence. *Id.* at 701.

Respondents argue that Mr. Garcia Barrientos is still detained under the presumptively reasonable 6-month period and therefore his *Zadvydas* claim must fail. ECF No. 22 at 8–9. However, the presumptively reasonable 6-month period articulated in *Zadvydas* should be construed as referring to the period that immediately follows when the order of removal becomes final. *See Cruz-Medina v. Noem*, No. 1:25-cv-01768, Dkt No. 15, Order (D. Md. Aug. 11 2025) (Abelson, J.) (noting that "there are good reasons to believe that the Supreme Court understood

the presumption it was adopting to apply only during the first six months after an order of removal becomes administratively final”); *Zavvar v. Scott*, No. CV 25-2104, 2025 WL 2592543, at *5–6 (D. Md. Jan. 12, 2026). *see also* *Tadros v. Noem*, 2:25-cv-04108 (D. N.J. June 17, 2025) (finding that the 6-month presumption of reasonableness ran from the date of the final removal order). Accordingly, the six-month period for Mr. Garcia Barrientos expired back in August 2025. Respondents therefore bear the burden, without any presumption in their favor, of showing that his detention is reasonable because his removal is likely to occur in the reasonably foreseeable future.

Moreover, even if Respondents were entitled to the *Zadvydas* presumption of reasonableness at this stage, the presumption is not irrebuttable. *Cruz-Medina*, No. 1:25-cv-01768, Dkt No. 15 at *12–14 (finding that the Supreme Court’s six-month presumption was intended to be a rebuttable presumption); *Munoz-Saucedo*, No. 25-2258, 2025 WL 1750346 (June 24, 2025 D. NJ).

In their Response, Respondents do not make any argument beyond the presumption of reasonableness that Mr. Garcia Barrientos’ removal is reasonably foreseeable. Respondents’ actions in this case demonstrate that they re-detained Mr. Garcia Barrientos without a plan in place to remove him within a reasonably foreseeable period of time. When Mr. Garcia was first detained in Baltimore, he was given a Notice of Removal informing him of ICE’s intent to remove him to El Salvador. Mr. Garcia Barrientos requested a fear interview, both by himself and through counsel, but was never given a fear interview with regards to El Salvador. Now, ICE has told Mr. Garcia Barrientos that it intends to remove him to Mexico. Mr. Garcia Barrientos refused to agree to removal to Mexico and expressed a fear of removal to Mexico. No fear

interview has been scheduled. It is readily apparent that ICE has no real or actionable plan to remove Mr. Garcia Barrientos in the foreseeable future.

Third country removal is only authorized under the INA if the government of the third country will accept the noncitizen into the country's territory. 8 USC § 1231(b)(1)(C). As numerous courts have recognized, Mexico is only willing to accept individuals for third country removal if they are willing to be removed there. *See, e.g., Rea-Hernandez v. Bondi*, No. 25-cv-2609, 2026 WL 322874, at *5 (W.D. Wash. Feb. 6, 2026); *Jumel Coke v. Bondi*, No. 26-cv-71, 2026 WL 221514, at *2 (W.D. Wash. Jan. 28, 2026); *Olea Sanchez v. Bondi*, No. 25-cv-2573, 2026 WL 160882, at *3 (W.D. Wash. Jan. 21, 2026); *Suarez-Ramirez v. Bondi*, No. 2:25-cv-02369, 2026 WL 115020, at *2 (D. Nev. Jan 15, 2026); *Pena-Gil v. Lyons*, No. 25-cv-03268, 2025 WL 3268333, at *1, *3, *4 (D. Colo. Nov. 24, 2025) (granting habeas relief under *Zadvydas* when ICE repeatedly failed to "persuade" the petitioner to go "voluntarily" to Mexico and then cancelled the deportations when he refused). Removal to Mexico is therefore not reasonably foreseeable, as Mr. Garcia Barrientos has refused to accept being removed there.

In fact, the Department of Homeland Security ("DHS") has granted Mr. Garcia Barrientos employment authorization, thereby acknowledging that Mr. Garcia Barrientos either cannot be removed due to the refusal of all countries designated by him or under the INA to receive him, or that the removal of Mr. Garcia Barrientos is otherwise impracticable or contrary to the public interest. *See* 8 USC § 1231(a)(7).

Furthermore, the removal of Mr. Garcia Barrientos is not reasonably foreseeable in light of Respondents' position on the absence of Immigration Judge ("IJ") review of negative fear interviews in third country removal cases. This Court has held that a noncitizen at risk of removal to a third country in which they fear persecution is entitled to a fear interview, as well as

IJ review of a negative fear determination. Respondents concede that the legal issue of whether denial of review of an asylum officer's negative fear determination by an IJ violates a noncitizen's due process rights does not differ in any material fashion from the Court's decisions in *Cruz Medina*; *Portela Hernandez*, 25-cv-01633-BAH, ECF NO. 41; and *Serrano Maldonado*, 1:26-cv-00041-JRR (no opinion). However, Respondents continue to assert that Mr. Garcia Barrientos does not have a right to IJ review. Assuming that this Court affirms that Mr. Garcia Barrientos is entitled to IJ review of any fear screening regarding a third country of removal, as it should, this is further evidence that his removal is not likely to occur in the reasonably foreseeable future. Finally, Mr. Garcia Barrientos' detention is particularly unreasonable in light of the unconstitutional conditions of his detention. Since detaining Mr. Garcia Barrientos, Respondents have repeatedly failed to give him adequate medical care for his life-threatening mental and physical health conditions. First in Baltimore and again in Tacoma, ICE brought Mr. Garcia Barrientos to the emergency room where a doctor confirmed that he has large kidney stones which are causing him a lot of pain and require surgery and an appointment with a urologist. At the last emergency room visit, the doctor warned that if he does not receive the care that he needs, Mr. Garcia Barrientos' kidney stone may cause damage and obstruct his urethra. ICE has also deprived Mr. Garcia Barrientos of the psychiatric medication that he requires following a suicide attempt less than a year ago, which places him at increased risk of worsening depression and death. Mr. Garcia Barrientos' mental health has been further harmed by ICE's unconstitutional use of collective punishment, whereby everyone in Mr. Garcia Barrientos' cell was forced to remain in bed and could not access common areas or contact loved ones for two days. ICE's medical neglect of Mr. Garcia Barrientos is further evidence that ICE re-detained him without a plan for securing his prompt removal to a third country, as it was not prepared for

– and is apparently incapable of – providing him with necessary, life-saving medication while he is detained.

B. This Court Should Order Mr. Garcia Barrientos’ Immediate Release.

Release is the most common and appropriate remedy for a *Zadvydas* violation. 533 U.S. at 700–01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms of supervision”); *see, e.g., Cordon-Salguero*, No. 1:25-cv-1626 (D. Md. June 18, 2025) (ordering release under *Zadvydas* where Petitioner provided good reason to believe removal was not reasonably foreseeable and the Government failed to rebut).

To order Mr. Garcia Barrientos’ immediate release, this Court need only determine that his removal is not reasonably foreseeable under *Zadvydas*. This Court need not analyze whether Mr. Garcia Barrientos poses a danger to the community or a flight risk—though he does not, as was previously determined by ICE when he was placed on an OSUP. *Zadvydas*, 533 U.S. at 699–700 (“[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.”); *Munoz-Saucedo*, 789 F.Supp.3d at 400 (“[N]othing supports the argument that danger to the community is a relevant factor to consider in conducting a *Zadvydas* analysis.”).

To the extent this Court considers any factors outside of the foreseeability of Mr. Garcia Barrientos’ removal—which it need not do—Mr. Garcia Barrientos has significant equities that warrant release. He has strong ties in Maryland, including a U.S. citizen daughter with disabilities. As explained above and in the Amended Habeas Petition and supporting exhibits, Mr. Garcia Barrientos’ mental and physical health are in danger due to life-threatening conditions and lack of adequate treatment in ICE custody. If Mr. Garcia Barrientos returns to the DC area, he will be able to see a specialist for his kidney stones and receive the treatment that he

needs. Additionally, he will be able to continue taking his necessary psychiatric medication that he was taking prior to detention. In any case, “the [noncitizen]’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. This Court should order his immediate release under the same conditions ICE included in his OSUP in 2025, and to avoid any potential retaliation or further harms from ICE, this Court should bar ICE from imposing additional conditions of supervision (like ankle monitoring).

II. ICE’s Re-Detention and Continued Detention of Mr. Garcia Barrientos Without Sufficient Process Violates the Due Process Clause and the APA.

The lack of procedures afforded to Mr. Garcia Barrientos to challenge his re-detention over a year after he was granted Withholding of Removal under the Convention Against Torture, after he complied with all his terms of supervised release, violated the Due Process Clause of the Fifth Amendment and the APA.

A. ICE’s Failure to Comply with Its Own Regulations Violates the Due Process Clause and the APA Pursuant to *Accardi*.

Pursuant to *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), ICE’s failure to follow its regulations on revocation of release at 8 C.F.R. § 241.4(l) and post-order custody reviews at 8 C.F.R. § 241.4(d), (h), (k) violates the APA and the Due Process Clause of the Fifth Amendment. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration case law, agencies are bound to follow their own policies that affect the fundamental rights of individuals, including self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon

agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

An agency’s failure to adhere to its own policies as required by *Accardi* is a due process violation and it arbitrary, capricious, and contrary to law under the APA. Prejudice is generally presumed when an agency violates its own policy. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) (“We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien’s benefit and that the INS failed to adhere to them.”).

ICE has violated its own binding regulations at 8 C.F.R. § 241.4(l) by re-detaining Mr. Garcia Barrientos after he was granted immigration relief, without first determining whether any of the regulatory justifications for revocation of his release were present in his case (they were and are not). Respondents contend that ICE complied with its regulations by serving Mr. Garcia Barrientos with a Notice of Revocation of Release, “which was signed.” ECF No. 22 at 10. However, the revocation of Mr. Garcia Barrientos’ OSUP is deficient because it does not make the required finding that the Executive Associate Commissioner could not be involved in the decision due to extenuating circumstances. *See* 8 C.F.R. § 241.4(l)(2) (authorizing ICE district director to revoke release where “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”) (emphasis added). No finding was provided as to why revocation of the order of supervision serves the public interest, or why circumstances did not reasonably permit referral of the case to the Executive Associate Commissioner, as required by 8 C.F.R. § 241.4(l)(2). Although the revocation order states that Mr. Garcia Barrientos will be “afforded an

informal interview,” there is no indication on the record that any such informal interview pursuant to 8 C.F.R. § 241.4(l)(1) has taken place, or will take place.

Respondents also argue that ICE’s notice of intent to remove Mr. Garcia Barrientos to El Salvador constitutes a change in circumstances under the regulations. ECF No. 22 at 10. However, ICE did not evaluate and identify this change in circumstances *before* re-detaining Mr. Garcia Barrientos. ICE first detained Mr. Garcia Barrientos, then tried to pressure him to accept removal to a third country. When he refused, ICE gave Mr. Garcia Barrientos a Notice of Removal to El Salvador. On or about March 16, 2026, ICE also informed Mr. Garcia Barrientos of its intent to remove him to Mexico. It is unclear whether ICE has abandoned its post hoc plan to try to remove Mr. Garcia Barrientos to El Salvador in favor of a new, equally unlikely plan to try to remove him to Mexico. In either case, what is clear is that ICE re-detained Mr. Garcia Barrientos without first determining that there had been a material change in circumstances.

ICE’s failure to comply with its regulations is prejudicial to Mr. Garcia Barrientos, both presumptively and actually. Prejudice can be presumed because the regulations implicate fundamental liberty interests and due process rights. *See Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that “violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [noncitizen]” and the violation affected “interests of the [noncitizen] which were protected by the regulation”) (internal quotations omitted). The regulations provide re-detained noncitizens like Mr. Garcia Barrientos with a specific process that ICE must follow if it decides revoke their release and deprive them of their liberty. Moreover, Mr. Garcia Barrientos has been actually prejudiced by ICE’s failure to comply with that process, in that he has been detained in life-threatening conditions since ICE arbitrarily revoked his release without any reasonable justification for its actions. *See Damus*, 313 F. Supp.

3d at 337–38; *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”)

Accordingly, this Court should order Mr. Garcia Barrientos’ release on the conditions with which he was previously complying. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (ordering petitioners’ release because “it would not be appropriate to allow ICE to decide again whether [petitioners’] detention should continue” and “[i]t would be particularly unfair to require that petitioners remain detained for another 30 days while ICE attempts to remedy its failure to follow its regulations and to provide each of them due process”).

B. ICE’s Re-Detention of Mr. Garcia Barrientos Without Sufficient Process After Over One Year of Compliance with His Order of Supervision Independently Violates His Due Process Rights.

Regardless of whether ICE complied with its regulations, the lack of process afforded Mr. Garcia Barrientos to challenge his re-detention violates his procedural due process rights under the test in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Morrissey v. Brewer*, 408 U.S. 471, 480–82 (1972) (holding that revocation of parole involves significant values within the protection of Due Process and termination of that liberty requires, among other protections, written notice of the claimed violations and an informal hearing to ensure that revocation is based on verified facts).

To determine whether a noncitizen’s detention violates due process, the Fourth Circuit has considered the three-part balancing test set forth in *Mathews*, under which the Court must consider the private interest that will be affected, the risk of an erroneous deprivation and value of additional or substitute procedural safeguards, and the Government’s interest, including

the fiscal and administrative burdens from the additional or substitute procedural requirement. See *Miranda v. Garland*, 34 F.4th 338, 358-39 (4th Cir. 2022).

Here, the application of the *Mathews* test shows that Mr. Garcia Barrientos' arbitrary re-detention without any meaningful review is unconstitutional. First, "the private interest at stake is freedom from detention, a liberty interest which 'lies at the heart of the liberty that [the Due Process] Clause protects.'" *Miranda*, 34 F.4th at 359 (citing *Zadvydas*, 533 U.S. at 690). Thus, the first *Mathews* factor undoubtedly favors Mr. Garcia Barrientos.

The second *Mathews* factor also heavily favors Mr. Garcia Barrientos. As discussed above, ICE failed to comply with its already minimal requirements for re-detention under the regulations. Mr. Garcia Barrientos was placed on an OSUP after he obtained CAT protection in February 2025 and was on the OSUP for around a year, during which he complied with all OSUP requirements, so ICE cannot rely on any violation of the conditions of release to justify his problematic re-detention. Further, Respondents have brought forth no evidence to support ICE's decision to re-detain him; instead, they have merely offered their opinion that they may be able to remove him to El Salvador, or now perhaps Mexico, at some point in the future. Mr. Garcia Barrientos was not provided with any opportunity to present evidence in opposition to his re-detention. . The risk of erroneous deprivation is even greater due to Mr. Garcia Barrientos' severe physical and mental health conditions which are rapidly deteriorating due to the Respondents' failure to provide him with his necessary prescription medication and medical treatment. There is a very real risk that Mr. Garcia Barrientos will die if he remains in ICE detention.

The third *Mathews* factor, the Government's interest and the administrative burden of additional procedures, also favors Mr. Garcia Barrientos. The procedures set forth in the relevant

regulations regarding revocation of release impose a negligible burden on the Government. And while the Government may have a legitimate interest in ensuring Mr. Garcia Barrientos' appearance for any additional third country removal proceedings, it "has not articulated an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight." *Black v. Almodovar*, 103 F.4th 138, 155 (2d Cir. 2025) (internal citation omitted)). As ICE has made only a cursory determination to re-detain Mr. Garcia Barrientos that did not consider Mr. Garcia Barrientos' OSUP compliance, his severe health risks, and his community ties, any interest the Government may allege for continuing to detain Mr. Garcia Barrientos is insufficient to justify his indefinite, life-threatening, and needless detention.

Accordingly, Mr. Garcia Barrientos' re-detention and continued detention is also unreasonable under the *Mathews* test, which requires a release on his prior conditions of release.

CONCLUSION

For the foregoing reasons, Mr. Garcia Barrientos respectfully requests that his Petition for a Writ of Habeas Corpus be granted and that this Court order his immediate release under the prior conditions of supervision, with no allowance for ICE to impose additional conditions of supervision such as ankle monitoring

Respectfully submitted,

/s/ Julia Rigal

Julia Rae Liliane Rigal, Esq.

Ayuda

Bar ID: 30740

Ayuda

8757 Georgia Ave, Suite 800

Silver Spring, MD 20910

Telephone: (240) 442-8813

Fax: (202) 571-5592
Email: julia.rigal@ayuda.com
Counsel for Petitioner

Dated: March 18, 2026

CERTIFICATE OF SERVICE

I certify that on this 18th day of March 2026 the foregoing Reply to Respondents' Response to the Amended Petition for a Writ of Habeas Corpus was e-filed using the Court's CM/ECF system and thereby served on counsel of record.

/s/ Julia Rigal

Julia Rae Liliane Rigal
Counsel for Petitioner