IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01168-RMR

ANH KHOA HOANG NGUYEN,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of Aurora Contract Detention Facility owned and operated by GEO Group, Inc.,
GEORGE VALDEZ, in his official capacity as Field Office Director, Denver, U.S. Immigration and Customs Enforcement,
MARKWAYNE MULLIN, in his official capacity as Secretary, U.S. Department of Homeland Security,[1]
TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement (ICE), and
TODD BLANCHE, in his official capacity as Acting Attorney General, U.S. Department of Justice,[2]

Respondents.

RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER (ECF No. 2) AND ORDER TO SHOW CAUSE (ECF No. 9)

Respondents Juan Baltazar, George Valdez, Markwayne Mullin, Todd Lyons, and Pam Bondi respond to Petitioner's Motion for Temporary Restraining Order (ECF No. 2) and the Court's Order to Show Cause (ECF No. 9).

In his Petition, Petitioner alleges that his ongoing detention violates 8 U.S.C. § 1231 and his due process rights per the Supreme Court's opinion in *Zadvydas v.*

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

Davis, 533 U.S. 678 (2001). He further alleges that Respondents' revocation of his release under 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).

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. *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 Vietnam. *See* Respondents' Appendix ("Appx."), ¶ 4 (Declaration of N. Horn). On November 22, 1994, he was admitted to the United States as an immigrant. *See id.*, ¶ 5.

On May 6, 2009, Petitioner was convicted in Arizona of Drug Paraphernalia in violation of Ariz. Rev. Stat. § 13-3415. *See* Appx., ¶ 6.

On March 12, 2012, he was convicted in Colorado of Unauthorized Use $500-$15,000 of a Financial Transaction Device in violation of Colo. Rev. Stat. § 18-5-701. *See* Appx., ¶ 7. He was sentenced to 18 months on probation. *See id.*

On June 19, 2012, Immigration and Customs Enforcement (ICE) officers encountered Petitioner and determined that he is subject to removal from the United

States. *See id.*, ¶ 8. Petitioner was arrested and detained pending resolution of removal proceedings. *See id.* At that time, DHS issued a Notice to Appear (NTA), initiating removal proceedings under 8 U.S.C. § 1229a. *See id.*, ¶ 9. The NTA charged Petitioner with being deportable from the United States pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) based on his Colorado conviction. *See* Appx., ¶ 9 (citing 8 U.S.C. § 1101(a)(43)(M) (an alien, who at any time after admission, is convicted of an aggravated felony relating to an offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000)).

On July 12, 2012, Petitioner, represented by counsel, appeared before an immigration judge in removal proceedings. *See id.*, ¶ 10. At that time, he admitted the allegations and conceded the charge of removability in the NTA. *See id.* He declined to pursue an application for relief from removal. *See id.* The immigration judge sustained the charge of removal and ordered Petitioner removed to Vietnam. *See id.* Both parties waived their right to appeal. *See id.* The immigration judge's removal order thus became administratively final at that time. *See id.*

On or about September 20, 2012, ICE conducted a Post Order Custody Review (POCR) pursuant to 8 C.F.R. § 241.4. *See* Appx., ¶ 11. On October 10, 2012, Petitioner was released on an order of supervision. *See id.*, ¶ 12.

On December 3, 2025, ICE officers encountered Petitioner in [redacted] Colorado, and arrested and detained him to effectuate his removal to Vietnam. *See id.*, ¶ 13. Petitioner's release on supervision was terminated. *See id.*

On December 27, 2025, ICE served Petitioner a Form I-229(a), Warning for Failure to Depart. *See id.*, ¶ 16. A Form I-229(a) is served on all detained aliens subject to a final order of removal and notifies those aliens of the consequences of taking any action to prevent or hamper his removal. *See id.* At that time, ICE also served Petitioner with a Notice of File Custody Review, which advised him (a) that ICE would review his custody status and potential for release on an order of supervision, (b) of some of the criteria that ICE would consider when deciding whether to release or continue to detain him, and (c) that he could submit documents in support of his release. *See id.*

On February 20, 2026, ICE conducted a panel interview with Petitioner. Petitioner was given the opportunity to make a statement and provide documentation relevant to his custody review. At the conclusion of the interview, the panel recommended that Petitioner remain detained pending removal because Petitioner failed to meet the criteria under 8 C.F.R. § 241.4(e). *See* Appx., ¶ 17.

Since ICE detained Petitioner, ICE has been working on preparing a complete travel document application on Petitioner's behalf. *See id.*, ¶ 18. The process involves researching and gathering information on Petitioner's personal and family background, as well as translations of that information from English to Vietnamese. *See id.* Additionally, on at least three occasions, ICE provided Petitioner with an application for a travel document. *See id.* Petitioner most recently returned an application that was not fully completed. *See id.* Once the application is fully completed, ICE will submit it and all supporting documentation to the government of Vietnam. *See id.*

In recent months, ICE has successfully obtained travel documents from the government of Vietnam. *See id.*, ¶ 19. Additionally, ICE has removed Vietnamese citizens with final orders of removal from the United States to Vietnam in recent months. *See id.*

Petitioner is currently detained pursuant to 8 U.S.C. § 1231 in Denver, Colorado. *See* Appx., ¶¶ 14-15. He is a priority for removal and remains detained pending removal to Vietnam. *See id.*, ¶ 20.

II. The habeas petition and procedural background

Petitioner filed his habeas petition on March 20, 2026. *See* ECF No. 1. He raises five claims challenging the revocation of his OSUP and his detention on a final order of removal pursuant to 8 U.S.C. § 1231. *See generally id.* First, he alleges a violation of 8 U.S.C. § 1231, asserting that his detention is not authorized under federal law (Claim 1). *See id.*, ¶¶ 60-63. Second, he asserts a procedural due-process claim, asserting that his detention does not bear a reasonable relationship with the purposes of immigration detention (Claim 2). *See id.*, ¶¶ 64-68. Third, he asserts another procedural-due process claim, claiming that the revocation of his OSUP violated due process (Claim 3). *Id.*, ¶¶ 69-70. Fourth, 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 4). *See id.*, ¶¶ 71-74. Finally, he asserts an APA claim stating that the revocation of his OSUP was arbitrary and capricious because it violated "the statute, ICE's own regulations, and the Constitution" (Claim 5). *Id.*, ¶¶ 75-77. As relief, Petitioner seeks his immediate release. *See id.* at 22 (Prayer for Relief).

On March 23, 2026, the Court ordered that Respondents respond "to the Motion and SHOW CAUSE why the … Petition shall not be granted." ECF No. 9.[3]

ARGUMENT

As a removable alien, Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6) because it has been brief and the government is taking steps to remove him (though removal cannot occur while the Court's Order, ECF No. 9, is in place). Further, Petitioner does not show that any purported deficiencies in the process he has received justify his immediate release.

I. Petitioner's detention does not violate his due process rights or 8 U.S.C. § 1231.

Petitioner appears to assert that his ongoing detention by ICE violates due process and 8 U.S.C. § 1231(a), as interpreted by the Supreme Court in *Zadvydas*. *See* ECF No. 1 ¶¶ 60-68 (Claims 1 and 2). The Court should find that Petitioner's detention does not violate his due-process rights or Section 1231.

Petitioner's ongoing detention is not unlawful or violative of his due process rights. Petitioner's detention is authorized by 8 U.S.C. § 1231. *See* Appx., ¶ 10 (noting that Petitioner was ordered removed on July 12, 2012); 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

[3] The Court ordered Respondents to respond within seven days of service. ECF No. 9. Respondents were served on March 30, 2026. Therefore, this Response is timely.

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 ... removable under section ... 1227(a)(2)." *Id.* (providing that an "alien ordered removed who is removable under section ... 1227(a)(2) ... may be detained beyond the removal period"); *see also* Appx., ¶¶ 9-10 (Petitioner was charged with being, and found by an immigration judge to be, inadmissible to the United States pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) and ordered removed on that basis). If detained under Section 1231, the alien receives periodic POCRs, and Petitioner has already received such a review. *See* 8 C.F.R. § 241.4; Appx., ¶ 17.

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 3, 2025, Appx., ¶ 13, and so he had been in detention for less than four months at the time the Petition was filed on March 20, 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 Petition is premature, the presumption that the detention is lawful applies, and the *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").

Petitioner argues that, in evaluating whether the six-month period authorized by *Zadvydas* has expired, the Court should look not just to his current period of detention but also to the approximately three months he was detained in 2012 before being released on the OSUP and add these two periods together, the cumulative duration of which exceeds six months. *See* ECF No. 1, ¶ 42. In support, he cites several district court cases which held that the *Zadvydas* period is cumulative. *See id.*

While some district courts have considered the six-month *Zadvydas* period to be cumulative, other district courts have held the opposite, including district courts in the Tenth Circuit. *See, e.g.*, *Qui v. Carter*, No. 25-3131-JWL, 2025 WL 2770502, at *1 (D. Kan. Sept. 26, 2025) (noting that "the [c]ourt has previously rejected the argument that the Supreme Court's six-month presumptively-reasonable period of detention under *Zadvydas* does not restart upon detention of an alien previously released on an OSUP"); *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25, 2025) (finding the petitioner's *Zadvydas* claim premature because "courts have agreed that [where ICE has previously detained and released an individual] the removal-period clock restarts when an alien subject to a removal order is again detained by ICE"); *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *9 n.9 (W.D. Okla. Oct. 15, 2025) ("Courts are mixed on whether … aggregation [of previous detention with

current detention] is appropriate, but most appear to disfavor aggregation."); *see also Thai v. Hyde*, 788 F. Supp. 3d 57, 61 (D. Mass. 2025) (considering the length of the petitioner's current period of detention only); *Meskini v. Att'y Gen. of U.S.*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, *3 (M.D. Ga. 2018) ("This [c]ourt does not read *Zadvydas* to be a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past. The [c]ourt's focus is on *today*...." (emphasis in original)).

This Court should likewise conclude that the period in 2012 during which Petitioner was detained should not count towards the *Zadvydas* period now. This approach is consistent with the Supreme Court's recognition in *Zadvydas* that one purpose of detention is to ensure the alien's presence at the time of removal, 533 U.S. at 690 (citing the goals of "ensuring the appearance of aliens at future immigration proceedings" and "preventing flight" (quotation omitted)); that arranging removal may take more than a few months, *id.* at 701 ("[W]e doubt that when Congress shortened the removal period to 90 days . . . it believed that all reasonably foreseeable removals could be accomplished in that time."), and that a six-month period is a standard that allows for consistent application in law in lower courts, *id.* (recognizing that it is "practically necessary to recognize some presumptively reasonable period of detention" and that six months is an appropriate period "for the sake of uniform administration in the federal courts").

However, even if the six-month presumptively reasonable period had expired, Petitioner still fails to establish a due process violation under *Zadvydas*, as he has not

met his initial burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* In the Petition, he asserts that, because ICE has not removed him and has not produced a travel document, there is no good reason to believe that his removal is significantly likely in the reasonably foreseeable future. *See* ECF No. 1, ¶ 45. Petitioner's reasoning, however, proves too much and fails to provide "good reason" to believe in the lack of likely removal. That Petitioner has not yet been removed does not mean that he will not be removed. Indeed, in recent months, ICE has removed Vietnamese citizens with final orders of removal from the United States to Vietnam and is actively working to obtain Petitioner's travel documents from the government of Vietnam. *See* Appx., ¶¶ 18-19. In short, Petitioner's conclusory allegation is insufficient to meet his burden under *Zadvydas*. *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).

And, though it is not the government's burden to establish that removal is reasonably foreseeable at this point, the record demonstrates that Petitioner's detention is not indefinite. Specifically, ICE is currently working on obtaining Petitioner's travel documents, with Petitioner's assistance. *See id.*, ¶ 18. ICE has, in recent months,

successfully obtained travel documents from the government of Vietnam. *See id.*, ¶ 19. Once ICE obtains that document for Petitioner, it will be able to remove Petitioner and has successfully done so for other Vietnamese citizens in recent months. *See id.* Simply put, Petitioner's detention is not indefinite as identified in *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 claim under 8 U.S.C. § 1231 (Claim 1) and his due-process claim (Claim 2).

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* Appx., ¶ 13; *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. 1, ¶¶ 69-77. Specifically, he contends that the revocation violated his procedural due process rights (Claim 3), federal regulations contrary to the *Accardi* doctrine (Claim 4), and the APA (Claim 5). *See id.* Based on these alleged violations, he requests his immediate release. *See id.* at 22 (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 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 received a Notice of File Custody Review in December 2025, and his custody status was subsequently reviewed on February 20, 2026. *See* Appx., ¶¶ 16-17. At the time that ICE reviewed Petitioner's custody status, Petitioner had the opportunity to make a statement and provide documentation relevant to his custody review. *See id.*, ¶ 17. 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 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* Appx., ¶13. 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 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 *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.[4]

CONCLUSION

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

[4] 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.

Dated: April 6, 2026.

PETER MCNEILLY
United States Attorney

s/ Nicholas A. Deuschle
Nicholas A. Deuschle
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0411
Email: nick.deuschle@usdoj.gov
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that, on April 6, 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