UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LUIS CRUZ VARGAS *Petitioner*, vs. PAMELA BONDI, United States Attorney General; KRISTI NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; SYLVESTER ORTEGA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement; BOBBY THOMPSON, Warden, South Texas ICE Processing Center *Respondents*.	§	Civ. No. 5:26-cv-00512 DHS File Number: [redacted] **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND MEMORANDUM OF LAW IN SUPPORT REQUEST FOR EXPEDITED CONSIDERATION UNDER 28 U.S.C. § 2243**

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I. INTRODUCTION

1. Petitioner Luis Cruz-Vargas ("Mr. Cruz-Vargas), 68-year-old, national and citizen of Mexico seeks a writ of habeas corpus under 28 U.S.C. § 2241 because ICE has re-detained him for more than six months without a realistic removal plan, in violation of 8 U.S.C. § 1231(a)(6) and the Due Process Clause.
2. On July 17, 2025, Petitioner reported for a scheduled check in at approximately 9:00 a.m. at the San Antonio ICE Field Office as required under his order of supervision. ICE told him they needed to "review his file." Instead of releasing him after that review, ICE held him for the entire day at 3523 Crosspoint in San Antonio until approximately 10:00 p.m., then transferred him to the South Texas ICE Processing Center in Pearsall, Texas, where he has remained detained for more than six months. Exh. 1 (ICE Locator Results).
3. Petitioner has lived in the United States for decades, is married to a United States citizen, and is the father of five adult United States citizen children. His family's ties to this country are profound, including military service and longstanding community roots. His children are: Edgar Cruz Benitez, age 47, a disabled Army veteran; Noemy Cruz Cottle, age 42, a who has served on National Guard for over twenty-five years and has been deployed twice; Mayra Cruz Benitez, age 45; Esther Cruz Benitez, age 43, a breast cancer survivor; and Luis Enrique Cruz Benitez, age 33, who was born in Austin, Texas. He has deep family ties and a long record of compliance with ICE.
4. Most importantly, Petitioner cannot be removed to Mexico because an Immigration Judge (IJ) granted him deferral of removal to Mexico under the Convention Against Torture (CAT) on April 4, 2013, and the Board of Immigration Appeals (BIA) dismissed DHS's appeal on September 13, 2013. Exh. 2 (IJ Order Granting of Deferral of Removal); Exh. 3

(BIA Order Dismissing Appeal). ICE has repeatedly acknowledged he cannot be deported to Mexico yet has continued to pressure him to sign "voluntary departure" to Mexico rather than demonstrating any concrete, timely, third-country removal plan.

5. Under *Zadvydas v. Davis*, once detention exceeds six months and removal is not significantly likely in the reasonably foreseeable future, continued civil detention becomes unlawful and the remedy is release under appropriate supervision conditions. Petitioner respectfully requests immediate release under conditions no more restrictive than those in place before ICE re-detained him.

II. JVENUE

6. Petitioner is detained in civil immigration custody at South Texas ICE Processing Center in Pearsall, Texas. He has been in the custody of ICE since on or about 2013, when it released him on an Order of Supervision. Recently, on July 17, 2025, ICE revoked its Order of Supervision without explanation. He has not received an individualized bond hearing before an immigration judge (IJ).
7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

9. Venue is proper because Petitioner is detained at Pearsall, Texas, which is within the

jurisdiction of this District.

10. Venue is proper in this District also pursuant to 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to her claims occurred in this district, and no real property is involved in this action.

IV. PARTIES

11. Petitioner is a citizen of Mexico, was ordered removed following proceedings under 8 U.S.C. § 1231(a)(5). He has been under ICE's custody on an Order of Supervision for over twelve years, and now in addition ICE has revoked such order and is currently detaining him at South Texas ICE Processing Center, Pearsall, Texas. He is in the custody, and under the direct control, of Respondents and their agents.

12. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

13. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention. Respondent Noem is empowered to carry out any administrative order against Petitioner and is a legal custodian of Petitioner.

14. Respondent Todd M. Lyons is sued in his official capacity as nationwide Director of ICE, with authority to carry out any administrative order against Petitioner and is legal custodian of Petitioner.

15. Sylvester Ortega, in his official capacity as the Director of the San Antonio Field Office of U.S. Immigration and Customs Enforcement. Respondent Ortega is a legal custodian of Petitioner and has authority to release him.

16. Respondent Bobby Thompson is the Warden of South Texas ICE Processing Center, and he has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens and is a legal custodian of Petitioner. He is sued in her official capacity, as well as by any successors or assigns.

V. STATEMENT OF FACTS

17. Petitioner is a longtime resident of the United States who has built a stable life here. Before his detention, he worked part time as a mechanic at Hyundai and had worked there for more than ten years, reflecting steady employment and deep community ties.

18. Petitioner is married to Fernanda Benites De Cruz, a United States citizen. Mrs. De Cruz suffers from sleep apnea, chronic depression, hypertension, vertigo, and is pre-diabetic. Petitioner's detention has forced her to cope with these serious conditions without her spouse's daily support.

19. Petitioner is the father of five United States citizen children, all adults, and his family has deep ties to this country through military service and community roots. Edgar Cruz Benitez is approximately 47 years old and is a disabled Army veteran who suffers chest pain related to an accident while serving. Noemy Cruz Cottle is approximately 42 years old; she joined the National Guard on December 16, 2000, was stationed in Austin, Texas, has been

deployed twice, and has served in the U.S. military for approximately twenty-five years. Mayra Cruz Benitez is approximately 45 years old. Esther Cruz Benitez is approximately 43 years old and is a breast cancer survivor. Luis Enrique Cruz Benitez is approximately 33 years old and was born in Austin, Texas.

20. In 1987, Petitioner adjusted his status to that of lawful permanent resident under the immigration amnesty of 1986[1]. Exh. 2 at 2.

21. Petitioner's criminal history is remote. In 1992, he was convicted in federal court of one count of conspiracy under 18 U.S.C. § 371, based on allegations that he conspired with others to export firearms and ammunition from the United States to Mexico. He was sentenced to ten months of imprisonment and three years of supervised release. In 2001, he was arrested for misdemeanor DWI and later received jail time and/or a fine and court costs. He has not been charged with or convicted of any other crime since.

22. Petitioner lost his lawful permanent resident status due to his 1992 conviction, and a judge ordered him removed from the United States on March 28, 2000. He returned to the United States shortly after. *Id*, at 2. DHS subsequently removed him from the United States on July 15, 2007. *See* Exh. 2 at 1. Petitioner later re-entered the United States unlawfully at or near Eagle Pass, Texas. *Id.* In 2012, DHS encountered him and transferred to ICE custody, who then issued him a Notice of Intent/Decision to Reinstate his Prior Removal Order on July 11, 2012. *Id.*

[1] Congress enacted the Immigration Reform and Control Act of 1986 (IRCA, often referred to as the 1986 "amnesty," which created a one-time legalization program under INA § 245A. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, tit. II, § 201, 100 Stat. 3359, 3394–3404 (1986) (codified as amended at 8 U.S.C. § 1255a). The program allowed certain undocumented individuals who had entered the United States before January 1, 1982, and who met continuous-residence/physical-presence and admissibility requirements, to apply, during an 18-month filing window, for lawful temporary resident status and later adjust to lawful permanent resident status. 8 U.S.C. § 1255a(a)–(b). IRCA also created a separate legalization pathway for certain agricultural workers. 8 U.S.C. § 1160 (INA § 210).

23. On October 26, 2012, an asylum officer conducted a reasonable fear interview with Petitioner and on October 31, 2012, the officer determined he was credible and established a reasonable fear of persecution or torture if returned to Mexico. *Id.* On November 2, 2012, the officer referred the Petitioner's case to the Pearsall Immigration Court to consider his request for withholding of removal before an IJ. *Id.*

24. Due to his conviction in 1992 for conspiracy under 18 U.S.C. § 371, the immigration court determined he was an aggravated felon under 8 USC § 1101(43)(C), therefore not eligible for withholding of removal or withholding of removal under CAT, but eligible for deferral of removal under the Convention Against Torture[2]. *Id*, at 2.

25. On April 4, 2013, an IJ granted Petitioner deferral of removal to Mexico under the CAT, finding it was more likely than not he would be tortured if returned. Exh. 2. DHS appealed the IJ's decision, and on September 13, 2013, the BIA dismissed the appeal, leaving CAT deferral in place. Exh. 3. Since then, Petitioner has lived under immigration supervision while consistently complying with ICE requirements.

26. After receiving CAT deferral in 2013, Petitioner complied with ICE order of supervision and reported as directed. For years, he appeared for every check in and never missed an appointment. During the years he lived in the community, ICE did not accuse Petitioner of

[2] To obtain protection under the Convention Against Torture (CAT), an applicant must prove that it is more likely than not that they would be tortured in the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). "Torture" is an extreme form of cruel and inhuman treatment that causes severe physical or mental pain or suffering and is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official (or other person acting in an official capacity). 8 C.F.R. § 1208.18(a)(1), (7). If the applicant meets this "more likely than not" standard and is not subject to mandatory withholding bars, the form of protection is withholding of removal under CAT. 8 C.F.R. §§ 1208.16(c), 1208.16(d)(2). But when the applicant satisfies the CAT torture standard yet is ineligible for withholding (including statutory withholding under INA § 241(b)(3) and/or withholding under CAT) because mandatory bars apply—such as the persecutor bar, a "particularly serious crime," a serious nonpolitical crime outside the United States, or specified security-related grounds—the regulations require the grant of deferral of removal under CAT as the minimum form of CAT protection. 8 U.S.C. § 1231(b)(3)(B); 8 C.F.R. §§ 1208.16(d)(2), 1208.17(a).

absconding, hiding, or violating supervision. He has also not had any new charges or convictions since his conviction for DWI in 2001.

27. On July 17, 2025, Petitioner reported for a scheduled check in at approximately 9:00 a.m. at the San Antonio ICE Field Office. ICE told him they needed to "review his file." Instead of releasing him after that review, ICE held him for the entire day at 3523 Crosspoint in San Antonio until approximately 10:00 p.m., then transferred him to the South Texas ICE Processing Center in Pearsall, Texas, where he has remained detained for more than six months.

28. That same day, ICE attempted to make Petitioner sign papers for "voluntary departure" to Mexico. Petitioner refused because he has shown that he will be tortured if removed to Mexico, and Mexico is the very country to which he cannot be removed due to his CAT deferral. Petitioner asked to speak with his attorney. ICE did not comply with his request and did not provide him copies of the documents it wanted him to sign. ICE also did not provide meaningful written notice explaining why he was being detained.

29. About three months into detention, ICE again called Petitioner and again requested that he sign "voluntary departure" to Mexico. Petitioner again refused. ICE still did not provide him copies of documents or a meaningful explanation that justified continued detention.

30. On October 20, 2025, Petitioner received a custody review notice listing generic factors such as criminal convictions, immigration history, disciplinary issues, equities, and "cooperation in obtaining your travel document." Exh. 4 (Notice to Alien of Custody Review). During this review process, ICE asked Petitioner again to sign "voluntary departure" to Mexico. He refused and the Respondents did not release him.

31. Petitioner's attorney submitted a request for his release. ICE denied the request in a conclusory letter signed by Assistant Field Office Director Daniel Subia, stating that, based on the "totality of the circumstances," ICE would not favorably exercise its discretion. Exh. 5 (ICE Denial of Request for Release). The denial did not identify any concrete third country plan, timeline, travel document progress, or meaningful steps taken toward removal. *Id.*

32. Respondents also have not asked Petitioner for his passport during his entire detention and have not identified any specific third country to which removal is being pursued. Respondents have told Petitioner only that an officer and a supervisor were "looking for another country," without naming any country or describing any concrete steps which they have taken.

33. On December 13, 2025, ICE reached out to him again and conducted a telephonic interview, once again asking him to sign his voluntary departure. He refused to sign.

34. In early-January 2026, approximately two weeks before Petitioner reached the six-month mark of detention, Officer Aguilar told Petitioner, in substance, that Petitioner should not have been detained given his CAT protection, or at minimum that the officer would not have detained him. The officer then told Petitioner that, now that he was detained, ICE needed to find another country to deport him to. Officer Aguilar asked whether Petitioner had family in any other country, and Petitioner stated that he did not. ICE still did not identify any proposed country of removal, any pending request to a third country, or any realistic time frame for removal.

35. Petitioner's detention has been compounded by serious medical issues and troubling conditions of confinement. While detained, Petitioner repeatedly experienced prostate-

related symptoms and sought medical care from detention medical staff. He continued to complain of worsening prostate problems and ultimately underwent a biopsy.

36. Respondents never informed Petitioner of the biopsy results. On December 7, 2025, around 10 p.m., officers abruptly removed him from his room and took him to segregation (the "hole"), where the officers told him for the first time that he was scheduled for prostate surgery the next day.

37. That night, Petitioner asked if he could contact his family and attorney to tell them that he would be undergoing surgery the next day. The officers refused, stating they did not want his family showing up at the hospital.

38. The next day, on December 8, 2025, the officers took Petitioner to the hospital for emergency prostate surgery for hyperplasia. After he returned to the detention facility, Petitioner was removed from the general population and was not afforded meals or adequate post-surgical care. He was in grave pain. After being without food all day, he requested a meal. A guard initially brought a sandwich and told him to wait for milk, but another guard promptly yanked the sandwich away, stating he did not believe Petitioner was sick, and said Petitioner should not receive "special privileges" because "everyone here is sick anyway." He was not given a meal until the next day around 11 a.m.

39. Petitioner's counsel urgently reported that Petitioner had not eaten since surgery, was in significant pain, and was not receiving appropriate post-surgical medical monitoring. Counsel requested immediate provision of meals, post-surgery medical care, and compassionate consideration for release given Petitioner's medical vulnerability and family support.

40. After the surgery, a doctor recommended rest. ICE claimed it placed Petitioner in segregation to "rest," but the area was dirty and unsanitary. Petitioner feared infection and complications and felt he was being punished as if he had done something wrong. He asked to be returned to general population.

41. Petitioner took antibiotics for five days. He urinated blood for several days, but the officers did not take him back to the clinic during that period. Approximately two weeks ago, in mid-January 2026, Respondents transported petitioner to an outside clinic and the doctor cleared him.

42. Petitioner also has other serious medical concerns, including elevated thrombocytes. Before detention, he obtained medical care regularly and received injections for chronic back problems every one to two months. During detention, he has not received comparable continuity of care.

43. Despite Petitioner's extensive compliance history since 2013, deep family ties, and serious medical concerns, and despite the absence of any concrete third-country removal plan, the Respondents continue to hold him indefinitely while pressuring him to abandon his CAT protections and "voluntarily" depart to the very country where an IJ already found he is likely to be tortured.

VI. APPLICABLE LAW

44. Under 28 U.S.C. § 2241, this Court may grant habeas relief to any person "in custody in violation of the Constitution or laws or treaties of the United States." Petitioner is in ICE custody and challenges the legality of his continued post-order detention.

45. Under 28 U.S.C. § 2243, the Court must either grant the writ or issue an order directing Respondents to show cause why the writ should not be granted, unless it appears from the

petition that Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondents' return is due "within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243.

46. The Fifth Amendment's Due Process Clause protects noncitizens from arbitrary civil detention. "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." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). These protections apply in immigration proceedings. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (*quoting Reno v. Flores*, 507 U.S. 292, 306 (1993)).

47. The statutory framework for post-order detention is 8 U.S.C. § 1231(a). The "removal period" generally lasts 90 days. 8 U.S.C. § 1231(a)(1)–(2). Although § 1231(a)(6) permits continued detention beyond the removal period for certain noncitizens, the Supreme Court has held that the statute must be read to contain constitutional limits. *Zadvydas*, 533 U.S. at 689–90.

48. In *Zadvydas*, the Supreme Court held that § 1231(a)(6) authorizes detention only for a period "reasonably necessary" to bring about removal—it "does not permit indefinite detention." *Id.* at 689. Once removal is no longer "reasonably foreseeable," continued detention is not authorized by § 1231(a)(6). *Id.* at 699.

49. *Zadvydas* recognized six months as a "presumptively reasonable" period of post-order detention. *Id.* at 701. After six months, if the detainee "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts and the Government must rebut that showing with "evidence sufficient" to

justify continued detention. *Id.* The Fifth Circuit applies this burden-shifting framework. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006).

50. The Government sometimes invokes tolling or extension principles where a detainee affirmatively obstructs removal by refusing to cooperate with travel documents. *See* 8 U.S.C. § 1231(a)(1)(C); *Gonzalez v. Gills*, No. 20-60547, slip op. at 2 (5th Cir. Apr. 8, 2022) (per curiam) (unpublished). But tolling requires an actual failure or refusal to make good-faith application for documents "necessary" to effectuate removal or acts that prevent removal. 8 U.S.C. § 1231(a)(1)(C).

51. District courts in Texas have repeatedly granted habeas relief where ICE relies on speculation about third-country removal rather than concrete, time-bound evidence that removal is significantly likely in the reasonably foreseeable future. *See, e.g., Puertas-Mendoza v. Bondi*, No. 5:25-cv-00890-XR, slip op. at 7–9 (W.D. Tex. Oct. 22, 2025); *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187, at *5–6 (W.D. Tex. Oct. 24, 2025); *Shengelia v. Ortega*, No. 5:25-cv-01545-JKP, slip op. at 2–4 (W.D. Tex. Dec. 16, 2025); *Villanueva Herrera v. Tate*, No. H-25-3364, 2025 WL 2774610 (S.D. Tex. Sept. 26, 2025); *Abuelhawa v. Noem*, No. 4:25-CV-4128, 2025 WL 2937692 (S.D. Tex. Oct. 16, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3–4 (E.D. Tex. Aug. 2, 2025); *Gomez-Simeon v. Bondi*, No. 5:25-cv-01460-JKP (Tex. W.D. Nov. 24, 2025).

52. Separately, longstanding administrative-law principles require agencies to follow their own binding regulations and procedures (the Accardi doctrine). *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Arzanipour v. INS*, 866 F.2d 743, 746–47 (5th Cir. 1989). In the post-order context, ICE's custody-review regulations also

contemplate timely notice and meaningful review when release is revoked or detention is continued. *See* 8 C.F.R. § 241.4; *Escalante,* 2025 WL 2206113, at *3–4.

VII. ARGUMENT

A. Petitioner's claims for reliefunder 8 U.S.C. § 1231(a)(6) and *Zadvydas* because removal is not significantly likely in the reasonably foreseeable future.

53. The INA authorizes detention during the 90-day "removal period," 8 U.S.C. § 1231(a)(1)–(2), and in limited circumstances "beyond the removal period," 8 U.S.C. § 1231(a)(6). But the Supreme Court has held that § 1231(a)(6), read in light of the Constitution, permits detention only for the period "reasonably necessary" to accomplish removal. *Zadvydas v. Davis,* 533 U.S. 678, 689 (2001). When removal is no longer "reasonably foreseeable," continued detention is not authorized by statute and violates due process. *Id.* at 699–700.

54. *Zadvydas* recognized six months as a presumptively reasonable period of post-order detention. 533 U.S. at 701. After six months, once a detainee provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts and the Government must rebut that showing with evidence—not conjecture. *Id.*; *see Andrade v. Gonzales*, 459 F.3d 538, 544–45 (5th Cir. 2006).

55. Respondents have detained Petitioner since July 17, 2025—well beyond six months. The presumption of reasonableness has expired, and Respondents must now show a significant likelihood of removal in the reasonably foreseeable future with concrete, individualized evidence. *Zadvydas*, 533 U.S. at 701; *Andrade*, 459 F.3d at 544–45.

56. Petitioner has more than met his burden to show removal is not significantly likely in the reasonably foreseeable future. Petitioner has deferral of removal to Mexico under the Convention Against Torture. Respondents have acknowledged they cannot remove him to Mexico yet have repeatedly pressured him to sign "voluntary departure" to Mexico—the

very country an IJ has found would more likely than not torture him. That coercion is not evidence of a lawful, workable removal plan—it is evidence Respondents lacks one.

57. Although "third-country removal" may be legally possible in the abstract, it is operationally rare and practically difficult: it requires identifying a receiving country, securing that country's agreement to accept the person, and completing time-bound travel documentation and logistics. *See Zadvydas*, 533 U.S. at 699–701 (requiring a "significant likelihood" of removal, not speculative possibilities).

58. The best available public data underscores that "third-country removal" for people with withholding/CAT protection is uncommon. A Freedom of Information Act data analysis reported that, in FY 2017, only 21 of 1,274 people granted withholding of removal were deported to a third country—about 1.6%. AM. IMMIGR. COUNCIL, THE DIFFERENCE BETWEEN ASYLUM AND WITHHOLDING OF REMOVAL 8 (Jan. 2020). That reality matters because *Zadvydas* turns on what is significantly likely in the reasonably foreseeable future—not what is theoretically possible at some unknown time.

59. Consistent with that framework, district courts in Texas, including multiple decisions from the Western District of Texas, have granted habeas relief where ICE detained a person with withholding/CAT protection, could not identify a receiving country, and relied on conclusory assurances about third-country removal. *See, e.g., Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *4–5 (W.D. Tex. Oct. 22, 2025) (granting habeas where ICE relied on conclusory assertions and the record showed no concrete, time-bound third-country plan); *Gomez-Simeon v. Bondi*, No. 5:25-CV-01460-JKP, 2025 WL 3534806, at *2–4 (W.D. Tex. Nov. 24, 2025) (granting habeas where government failed to show removal was reasonably foreseeable); *Garcia-Aleman v.*

Thompson, No. 5:25-CV-00886-OLG, 2025 WL 3470872, at *4–6 (W.D. Tex. Nov. 24, 2025).

60. Other Texas districts have likewise recognized that vague "intent" to remove, without concrete evidence of a receiving country and imminent progress, does not satisfy *Zadvydas*. *See Villanueva Herrera v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *8–10 (S.D. Tex. Sept. 26, 2025) (granting habeas where there was no significant likelihood of removal in the reasonably foreseeable future); *Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025 WL 2871914, at *2–3 (E.D. Tex. Oct. 9, 2025).

61. Petitioner's case fits the pattern those courts have found unlawful: (1) CAT deferral bars removal to Mexico; (2) ICE has not identified any specific third country; (3) ICE has not described concrete, time-bound steps showing acceptance by any country is likely; (4) ICE has not even requested Petitioner's passport during this detention; and (5) ICE's repeated focus has been coercing "voluntary departure" to Mexico rather than executing a lawful third-country plan. These facts provide compelling "good reason" to believe there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

62. Because Petitioner has made the required showing, Respondents must rebut it with evidence—not boilerplate discretion language and vague statements that an officer and supervisor are "looking for another country." *Zadvydas*, 533 U.S. at 701; *Andrade*, 459 F.3d at 544–45. Where the Government cannot identify a destination country or demonstrate concrete progress after months of detention, continued detention is unlawful. *Puertas-Mendoza*, 2025 WL 3142089, at *4–5; *Villanueva Herrera*, 2025 WL 2774610, at *8–10.

B. Respondent's failure to provide timely notice and follow its re-detention procedures underscores the arbitrariness of detention and supports habeas relief.

63. Petitioner lived for years under ICE supervision in the community. When ICE revokes release and re-detains a person previously under an order of supervision, ICE's regulations require notice of the reasons for revocation and a prompt opportunity to respond. *See* 8 C.F.R. § 241.4(l)(1) (revocation of release requires notice of reasons and a prompt informal interview).

64. Here, ICE provided no meaningful written justification at the time of detention and did not offer any substantive explanation until shortly before the six-month mark—long after liberty had already been taken. That kind of delayed, conclusory "explanation" does not cure the absence of timely process and reinforces the core *Zadvydas* problem—ICE is detaining first and searching later, without a concrete, workable removal plan.

65. The Fifth Circuit recognizes that an agency's failure to follow its own regulations can amount to a denial of due process. *See Francois v. Garland*, 120 F.4th 459, 465 (5th Cir. 2024) (*quoting Arzanipour v. I.N.S.*, 866 F.2d 743, 746 (5th Cir. 1989)); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Respondent's months-long delay in providing any meaningful justification, combined with its continued refusal to identify a destination country or concrete steps toward removal, confirms that detention is arbitrary.

C. Civil detention cannot be justified as "necessary" where Petitioner's history shows compliance and supervision would address any concerns.

66. Civil immigration detention is justified only by limited purposes such as preventing flight and protecting the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (2003). Where removal appears remote, the flight-risk rationale is "weak or nonexistent," and detention no longer bears a reasonable relation to a legitimate civil

purpose. *Zadvydas*, 533 U.S. at 690 (*quoting Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

67. Petitioner's history shows that supervision works. After obtaining CAT deferral in 2013, Petitioner complied with ICE supervision for years. He appeared for every check-in and never missing an appointment, until ICE suddenly re-detained him at his July 17, 2025, check-in. He has stable and compelling family ties, including a U.S. citizen spouse and five adult U.S. citizen children, including a disabled Army veteran and a long-serving member of the National Guard. Those ties strongly indicate he will comply with reasonable conditions of release, just as he did for years.

68. Continued detention is also grossly disproportionate given Petitioner's medical vulnerability and the documented failures in post-surgical care. While detained, Petitioner developed serious prostate issues, received almost no advance notice of emergency surgery, was prevented from notifying family or counsel, and then was denied basic post-operative meals and humane treatment—followed by placement in an unsanitary "hole" purportedly for "rest." These circumstances underscore that continued confinement is not a narrowly tailored civil measure—it is punitive in effect.

69. The Due Process Clause does not allow ICE to continue detention on speculation while subjecting a medically vulnerable person to conditions that create needless risk of complications, infection, and suffering, particularly where the agency cannot show that removal is significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 690–91, 699–701; *Puertas-Mendoza*, 2025 WL 3142089, at *4–5.

70. Because Petitioner has shown there is no significant likelihood of removal in the reasonably foreseeable future, and because Respondents cannot rebut that showing with concrete

evidence, Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6) and the Fifth Amendment. *Zadvydas*, 533 U.S. at 699–701; *Andrade*, 459 F.3d at 544–45. The appropriate remedy is immediate release under appropriate supervision conditions. *Puertas-Mendoza*, 2025 WL 3142089, at *5.

VIII. CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

71. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

72. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

73. Petitioner has been detained continuously since July 17, 2025. ICE re-detained him at a routine, in-person check-in after years of compliance under supervision and has kept him confined for more than six months without a meaningful, timely explanation and without showing that removal is significantly likely in the reasonably foreseeable future.

74. Freedom from physical restraint lies at the heart of the liberty interest protected by due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil immigration detention must bear a reasonable relation to a legitimate governmental purpose and cannot become arbitrary, indefinite, or punitive in effect. *Id.* at 690, 699–700.

75. Petitioner cannot be removed to Mexico because he has final deferral of removal to Mexico under the Convention Against Torture, granted on April 4, 2013, and affirmed when the Board of Immigration Appeals dismissed DHS's appeal on September 13, 2013. ICE nonetheless has repeatedly pressured Petitioner to sign "voluntary departure" to Mexico

while failing to identify any third country willing to accept him or to document concrete progress toward removal elsewhere.

76. ICE's conduct underscores the arbitrariness of continued detention. ICE delayed providing any meaningful explanation for Petitioner's re-detention until approximately two weeks before the six-month mark and has relied on vague statements that officers are "looking for another country," without naming any specific country, any pending request, or any realistic timeline.

77. Where removal is not reasonably foreseeable, continued detention is not reasonably related to the purpose of effectuating removal and violates due process. *Zadvydas*, 533 U.S. at 690, 699–700.

78. Petitioner's detention is also arbitrary and punitive in effect in light of the medically vulnerable circumstances described in the Statement of Facts, including the events surrounding his emergency surgery and the conditions and treatment he experienced immediately after returning to detention.

79. For these reasons, Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO

Detention Not Authorized by 8 U.S.C. § 1231(a)(6) as Construed by *Zadvydas*

80. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

81. Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1231(a)(6). Under that statute, as construed by the Supreme Court, post-order detention is limited to a period reasonably necessary to bring about removal. *Zadvydas*, 533 U.S. at 689.

82. *Zadvydas* recognizes a six-month benchmark. After six months, if the detainee provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. *Zadvydas*, 533 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). The Fifth Circuit applies this framework. *Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006).

83. Respondents may contend that the "removal period" began (or restarted) when ICE re-detained Petitioner on July 17, 2025, to attempt to effectuate removal. Even under Respondents' most favorable view, Petitioner has been detained for more than six months. If Respondents contend the removal period began earlier, Petitioner's confinement is longer still.

84. Petitioner has provided good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. ICE cannot lawfully remove him to Mexico because of his final CAT deferral, and ICE has not identified any specific third country willing to accept him or demonstrated concrete, time-bound progress toward removal to any other country.

85. ICE's repeated attempts to obtain Petitioner's signature on "voluntary departure" to Mexico, combined with ICE's failure to request Petitioner's passport and failure to identify any third country, further demonstrate that removal is not significantly likely in the reasonably foreseeable future.

86. Because removal is not reasonably foreseeable, continued detention is not authorized by § 1231(a)(6) as construed by *Zadvydas* and *Clark*, and Petitioner is entitled to habeas relief.

Zadvydas, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.").

COUNT THREE

Violation of ICE's Mandatory Post-Order Custody Review Regulations and Due Process Under the Accardi Doctrine

87. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

88. An agency must follow its own binding regulations, and failure to do so can violate due process. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

89. ICE regulations governing post-order custody and related custody reviews require meaningful procedures, including notice and an opportunity to be heard, and require that custody decisions remain tethered to whether removal is significantly likely in the reasonably foreseeable future. *See* 8 C.F.R. §§ 241.4, 241.13.

90. Here, ICE re-detained Petitioner after years of compliance under supervision, failed to provide timely, meaningful notice explaining the basis for re-detention, delayed any explanation until shortly before the six-month mark, and has provided only conclusory assertions while continuing to pressure Petitioner to sign "voluntary departure" to Mexico.

91. ICE's failure to follow its own mandatory procedures and to conduct a meaningful custody review consistent with *Zadvydas* renders Petitioner's detention unlawful and arbitrary and independently warrants habeas relief.

COUNT FOUR

Unlawful Prolonged Detention Without Adequate Procedural Protections

92. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

93. Due process requires adequate procedural protections to ensure that civil confinement remains justified and does not continue based on speculation or conclusory assertions. *Zadvydas*, 533 U.S. at 690.

94. Petitioner's detention has extended beyond the presumptively reasonable period, yet ICE has not provided a meaningful, evidence-based determination that removal is significantly likely in the reasonably foreseeable future, nor a meaningful opportunity for Petitioner to challenge the factual basis for continued confinement.

95. ICE's delayed, shifting, and conclusory explanations mirror the procedural defects identified in *Puertas-Mendoza v. Bondi*, No. 5:25-cv-00890-XR (W.D. Tex. Oct. 22, 2025), where ICE failed to provide any justification at the time of detention and waited roughly three weeks before issuing a conclusory explanation.

96. Accordingly, Petitioner's prolonged detention without adequate procedural protections violates due process, and the appropriate remedy is immediate release under appropriate supervision conditions, including conditions no more restrictive than those in place before he was detained on July 17, 2025.

IX. PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order Respondents to release Petitioner without delay.

(1) Order release under conditions no more restrictive than those that governed Petitioner before he was re-detained on July 17, 2025, including reinstatement of his prior order of supervision or comparable conditions of supervision, and no additional restrictions such as electronic monitoring, home confinement, or curfews absent a particularized showing of necessity.

(2) Prohibit transfer of Petitioner outside this Court's jurisdiction and prohibit removal or attempted removal of Petitioner from the United States while this action is pending, absent further order of the Court.

(3) Require Respondents to provide written notice to counsel of the time and location of release, the manner of release, and the terms and conditions of supervision, and to provide at least two hours' advance notice to counsel of the time and location of release whenever practicable.

(4) In the alternative, if the Court does not order immediate release, order an expedited evidentiary hearing at which Respondents must prove, with competent evidence, that there is a significant likelihood of removal in the reasonably foreseeable future, and order release if Respondents fail to meet that burden.

(5) Require production, within a short deadline set by the Court, of the complete administrative custody record, including all post-order custody review materials, any travel document requests, any third-country communications, and all records reflecting efforts to effectuate removal since July 17, 2025.

(6) Set an expedited schedule consistent with 28 U.S.C. § 2243 and require Respondents to show cause and file a return within the statutory timeframe, absent good cause.

(7) Prohibit re-detention based on the same facts and record absent a material change in circumstances, without prior notice to counsel and an opportunity to be heard.

(8) Grant any other relief the Court deems just and proper, including an award of costs.

Respectfully submitted on this 28th day of January 2026

(signature on next page)

/s/ Maria Nereida Jaimes
Maria Nereida Jaimes
Tex. Bar No. 24124936
O'Connor & Associates PLLC
7703 N. Lamar Blvd, Ste 300
Austin, TX 78752
Tel: (512) 617-9600
maria@oconnorimmigration.com

Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Luis Cruz Vargas, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 28th day of January 2026.

s/ Maria Nereida Jaimes
Maria Nereida Jaimes