UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

YURISBEY DIAZ,

Petitioner,
v.
KRISTI NOEM, *et al.;*

Respondents.

Case No. 3:26-cv-00225-LS

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

COMES NOW, the Petitioner, **YURISBEY DIAZ**, by and through undersigned counsel and hereby submits this Reply to the Respondents' opposition to Mr. Diaz's Petition for Writ of Habeas Corpus. The Petitioner would note that the absence of any rebuttal is not a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus.

I. Petitioner has met his burden via *Zadvydas* and Respondents have not rebutted the showing.

Respondents do not contest jurisdiction. Likewise, Respondents do not contest that Mr. Diaz has now been in custody for approximately seven months, one month beyond the presumptively reasonable six-month period. *See generally* DE 5. Instead, Respondents first argue that Mr. Diaz is not entitled to relief because he "cannot" show good reason to believe that his removal is unlikely in the reasonably foreseeable future, thus not shifting the burden pursuant to *Zadvydas v. Davis,* 533 U.S. 678, 680 (2001) DE 5 at 3–6. Respondents argue generally that Petitioner's statements are conclusory but do not point to one statement that is conclusory in nature. Respondents only reiterate that Mr. Diaz's removal order has been final since February 21, 2003, just over 23 years now. The Respondent's do not address the fact that the Petitioner's country of

origin, Cuba, has not accepted him in the last twenty-three years, and definitely not in the last seven months, and that their "efforts" have been focused on pushing, often times physically, the Petitioner to accept to go to Mexico instead in an allegedly voluntary manner. *See* Exhibit A, Declaration of Petitioner.

Once a noncitizen's order of removal becomes administratively final, the Government shall remove the noncitizen during the 90-day removal period. 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the date the order of removal becomes administratively final. 8 U.S.C. § 1231(a)(1)(B). For the sake of uniform administration in the federal courts, the Supreme Court in *Zadvydas* established a six-month reasonable period for post order detention. *Id* at 680. After the 6–month period, once an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must furnish evidence sufficient to rebut that showing. *Id.* And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. *Id.*

The Respondents argue the petitioner *cannot* show a good reason to believe removal is unlikely, however, this ignores the facts as they have been laid out in the petition, stated in the declaration of their own officer and the facts known to the Petitioner. The Petitioner's removal order was administratively final on February 21, 2003, now over twenty-three years ago. He was released from immigration related custody and placed on an Order of Supervision (OSUP), according to Respondents because "repatriation was not feasible." DE 5-1 at 2. In the 6 months since re-detention, the Respondents have not been able to secure any travel documents for the Petitioner, from Cuba or any third country. The Petitioner would note the vagueness of the Declaration by SDDO Hernandez, which fails to mention that the Petitioner has been taken by

force or deceit to the Mexican border, and repeatedly asked if he was "ready to go to Mexico" voluntarily, despite having expressed a fear of going to Mexico to U.S. ICE and Mexican officials. *See* Exhibit A, Declaration of Petitioner. The Respondents would ask this honorable court to find that the Petitioner cannot meet the *Zadvydas* good reason to believe standard "until" he shows "a country refuses to accept the Petitioner." *Id.* However, that is not the standard. An alien seeking release is not required to show the absence of *any* prospect of removal—or that removal is impossible. *Zadvydas v. Davis*, 533 U.S. 678, 702 (2001) To make out a *Zadvydas* claim *after* the six months have run, a detained noncitizen need only "provide[ ] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Additionally, this Petitioner has been forced to the Mexican border, even after having expressed a fear to ICE officials, and was not accepted by Mexico. The Mexican officials told him that they would not accept him in this way. *See* Exhibit A. The Petitioner recounts that the Mexican officials were under the impression that the individuals they received from ICE at the border were there voluntarily. *Id.* The Petitioner heard Mexican officials chastise the ICE officials, stating they couldn't keep bringing people that way. *Id.* The Mexican officials refused to accept him. *Id.* If Mexico were willing to accept the Petitioner, they would have on one of his multiple forced trips to the border.

The Petitioner has carried his initial burden by showing a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. In fact, ICE made that determination in 2003, and several times after, when it released him under an OSUP. There has been no change and no significant likelihood of removal in the reasonably foreseeable future. The burden thus shifts to the Respondents. The Respondents make no statement and provide no evidence that ICE has obtained, or even attempted to obtain, travel documents, only a statement in

the Declaration that ERO "will resume removal efforts to effectuate his removal to Mexico." *See* Docket Entry 5-1 at 3. There is no indication of what efforts would be resumed, or if those would be done in accordance with the law, especially since the Petitioner has been clear about his fear of being sent to Mexico. There is no rebuttal fact indicating it is reasonably foreseeable. There is no evidence before the Court suggesting removal is more likely now than it was in 2003, or in the last 23 years.

According to the Respondents, they began the process of repatriating the Petitioner pursuant to the "CVNH agreement."[1] DE 5-1 at 2. Additionally, by the SDDO's own declaration, he has been removed from that mission. DE 5-1 at 3. Thus, adding to the unlikeliness that he will be removed to Mexico.

Additionally, the Respondents' assertion that they will resume efforts to remove the Petitioner to Mexico falls short of the Immigration and Nationality Act ("INA") requirements and due process. The INA sets out a multi-tiered process for determining a country of removal and a third country of removal. If the Government has a removal order but no country to which an IJ has authorized removal—for instance, if the country of origin, like Cuba, would not accept the individual—it can remove the noncitizen to a third country, meaning any country not designated on the removal order. *D.V.D. v. U.S. Dep't of Homeland Sec.*, CV 25-10676-BEM, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). In doing so, the Government must follow the same multi-tiered process for selecting a country of removal that applied in the removal proceedings. 8 U.S.C.

[1] The Petitioner and undesigned are not aware of any agreement with that nomenclature. No such agreement was provided with the response, and so it is impossible to tell whether this agreement has any limits in application to the Petitioner or what the parameters of this agreement are. However, upon information and belief, CVNH is commonly used to refer to the "parole program" implemented by the prior administration and terminated on June 12, 2025. That program applied to individuals from Cuba Venezuela Nicaragua and Haiti who entered with a parole and were permitted to remain on that parole for a specified period, and the termination of that program by this administration led to calls to self-deport. The Petitioner is not an individual within that program and was not present in the United States pursuant to a parole from the CHNV program, thus he seems outside the scope of that consideration.

§ 1231(b)(2). And in all cases, the INA **prohibits** removal to countries in which a noncitizen would face persecution. 8 U.S.C. § 1231(b)(3)(A).

Similarly, under the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), which codified CAT protections, a noncitizen may not be removed to any country where they would be tortured. *See* 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16–18, 1208.16–18. Put differently, third country removals are subject to the same mandatory protections that exist in removal proceedings.

In the instant case, the Respondents produced a Declaration in which the SDDO identifies Mexico as a country of removal. *See* DE 5-1 at 2-3. There is no indication that a request is pending with Mexico, that removal to Mexico was likely, or that Mexico would accept the Petitioner, or importantly, if the Petitioner was afforded his due process right and protections under the statute. The Petitioner remains in detention, almost 200 days after he was detained, and well beyond the presumptively reasonable removal period has expired. He has shown evidence of a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, and the Respondents have not rebutted this showing. The mere fact that ICE intends to resume or arguably pursue a third-country request is insufficient to show that Diaz's removal is likely to occur in the reasonably foreseeable future. Respondents have thus failed to meet their burden, and Diaz's continued detention violates his due process rights. *See Zadvydas*, 533 U.S. at 690, 701.

For detention to remain reasonable past the 6-month period, as the period of prior post removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) Detention may continue after the removal period, but not indefinitely. In *Zadvydas* the Supreme Court held, "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer

authorized by statute." 533 U.S. at 700-01 (2001). If removal is not practically attainable, detention no longer serves its statutory purpose of "assuring the alien's presence at the moment of removal." *Id.* at 699.

II. ICE violated Petitioner's due process rights by re-detaining him without individualized determination and adequate procedural safeguards.

Diaz has been detained one month beyond the presumptively reasonable period, making his detention less prolonged than most successful *Zadvydas* petitioners. However, the Petitioner's liberty interest is stronger than the usual *Zadvydas* petitioner, who is detained continuously from the time of their final removal order. After he was ordered removed, Diaz was released pursuant to an OSUP and lived at liberty in the United States for nearly twenty-three years. *See* DE 1 at 7. Thus, the Petitioner is entitled to additional procedural protections by virtue of the liberty interest he obtained through his release.

Respondents appear to argue that any procedural due process claim other than a *Zadvydas* claim is foreclosed by *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). DE 5 at 6. They also argue that, even if Diaz can bring a distinct claim, he has been provided with the constitutional minima of due process because he was placed "in removal proceedings before an immigration judge," and that the process before an immigration judge addresses constitutional concerns identified in *Zadvydas*. DE 5 at 7. But the Petitioner is seeking relief from his detention, not from the removal order, in the instant proceeding. And the Petitioner avers that the procedural due process claims are not limited to the *Zadvydas* framework.

Respondents note that the Fifth Circuit "has not provided guidance to lower courts, post-*Arteaga Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231" and point to *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024), a Fourth Circuit decision applying the *Zadvydas* framework. DE 5 at 5.

However, *Castaneda* is unpersuasive for two reasons. First, the *Arteaga-Martinez* Court specifically declined to review the **habeas** petitioner's constitutional claims and "le[ft] them for the lower courts to consider in the first instance." *Arteaga-Martinez*, 596 U.S. at 584, (*citing Jennings v. Rodriguez*, 583 U.S. 281 (2018)). The Court also separately declined to review the petitioner's "alternative theory that he is presumptively entitled to release under *Zadvydas*," thus indicating that the "constitutional claims" left open were distinct from his *Zadvydas* claim and to be considered in their own right. *See id.* at 584.

Second, the petitioners in *Arteaga-Martinez* and *Castaneda* were typical *Zadvydas* petitioners. Neither had been released pursuant to an OSUP after the reinstatement of his final removal order. *See Arteaga-Martinez* at 576–77; *Castaneda* at 753–54. Thus, neither had a strong argument that due process prevented their detention, unless that detention became unreasonably prolonged. ICE's decision to release a noncitizen confers a significant liberty interest that cannot be revoked without an individualized determination by a neutral adjudicator. *See, e.g., Lopez-Arevelo*, —— F. Supp. 3d at ——– – ——, 2025 WL 2691828 at *10–11; *Pinchi v. Noem*, —— F. Supp. 3d ——, ——, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025). Even in this specific context, at least two district courts have found that a § 1231(a) detainee who has been released and then re-detained has a protectable liberty interest and a viable procedural due process claim distinct from a *Zadvydas* claim. *See Garcia v. Andrews*, No. 25-cv-1884, 2025 WL 1927596, at *3–5 (E.D. Cal. July 14, 2025); *Perez v. Berg*, No. 24-cv-3251, 2025 WL 566884, at *1, 5–7 (D. Minn. Jan. 6, 2025), *report and recommendation adopted*, 2025 WL 566321 (Feb. 20, 2025).

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Those factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous

deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. All three factors fall in favor of the Petitioner, as noted previously in the Petition.

III. The revocation of the Petitioner's Order of Supervision was unlawful and violates ICE's regulations and the Fifth Amendment.

ICE failed to provide Petitioner with a meaningful opportunity to contest the revocation of his OSUP through notice and an informal interview. This violates both the Due Process Clause of the Fifth Amendment and ICE's own regulations. The Respondents included a declaration by a Supervisory Detention and Deportation Officer who indicated that the Petitioner was served with a Notice of Revocation on February 13, 2026 – 206 days *after* he was taken into custody. That same Declaration makes no reference to any interview being conducted. *See* DE 9 -7. The Notice provided to the Petitioner - after being detained for over six months – recites plainly the requirement of the regulation that he will promptly be afforded an informal interview and provided with the opportunity to respond to the reasons for revocation and provide evidence to demonstrate that his removal is unlikely. *See* DE 1-2, pp 8-9. There has not been any compliance with that detailed process as is stated in the notice and contained in the regulations at 8 C.F.R. § 241.4.

The opportunity to contest detention through an informal interview is not some ticky-tacky procedural requirement; it strikes at the heart of what due process demands. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172, (2021) ("At one level, today's dispute may seem semantic, focused on a single word, a small one at that. But words are how the law constrains power."). In its most elemental formulation, "the fundamental requirement of due process is the opportunity to be heard

'at a meaningful time and in a meaningful manner.' " *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, (1965)).

There was no notice given to the Petitioner upon revocation of his release to explain anything. There was no prompt informal interview. There is no indication that the Petitioner was made aware of the reasons for revocation, or that he was then provided an opportunity to respond to them. There is no declaration from Deportation Officer J. Hernandez, who served the Notice just in February 2026. DE 5-2 at 2. The process afforded here fails to comply with ICE's own regulations or comport with traditional notions of due process. Respondents attempt to characterize these violations as "irrelevant," but the current detention was accomplished by virtue of these due process, statutory and regulatory violations.

IV. Notice of Revocation is signed by the incorrect official.

ICE's regulations permit only certain officials to revoke an OSUP: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority." 8 C.F.R. §§ 1.2, 241.4(l)(2). The language of section 241.4 specifically limits the power of anyone who is not the Executive Associate Director to revoke release. "A district director may also revoke release of a [noncitizen] when 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 [Director]." 8 C.F.R. § 241.4(l)(2). Before a district director can revoke release, the district director must make certain findings. The term "district director" does not include the delegation to a Deportation Officer, and a Deportation Officer lacks the authority to revoke the Petitioner's release. The government has not alleged that the district director made findings before revoking the Petitioner's release. *See* DE 5-2 at 1. The Notice of Revocation provided is signed by J. Hernandez, Deportation Officer. There is no delegation order clearly giving J. Hernandez, DO, the

authority to revoke release, and even if there were, there is no caselaw supporting the validity of such a delegation order. The government has not argued that J. Hernandez had that authority because a Deportation Officer is the equivalent of a district director. As a result, this Court cannot conclude that J. Hernandez had the authority to revoke release and should find that the Petitioner's release was not lawfully revoked and hold that he is entitled to release on that basis alone. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025) (ICE Assistant Field Office Director lacked authority to revoke noncitizen's release.) Likewise, a Deportation Officer, like DO J. Hernandez, lacks the authority to revoke the Petitioner's release.

CONCLUSION

WHEREFORE, Petitioner renews his requests that this honorable Court exercise jurisdiction over this matter; declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA and implementing regulations and the *Accardi* doctrine and Order Petitioner's immediate release and Order such other relief as this Court may deem just and proper.

Respectfully submitted,
/s/Carolina A. Collado
Attorney for Petitioner
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305-461-3077

TAB A

I, Yurisbey Diaz, declared under penalty that the following is true and correct:

I have been continuously detained since July 22, 2025. I was detained after having reported to my yearly check-in at the ICE office located in Miramar, Florida.

I was taken to Alligator Alcatraz and then on August 17, 2025, I was transferred to El Paso East Montana, where I have remained detained.

On August 18, 2025, I was approached by ICE officers to sign documents indicating they were intending to remove me to Mexico. I advised them that I had a motion to reopen and stay of removal. I also asked them to contact my lawyer.

On September 4, 2025, I was told that I was being transferred around 2pm and while on the bus, the ICE officers told me they were dropping me off in Mexico. I told them I was afraid for my life. I had a pending case and please call my attorney. Once we arrived at the Mexican border, the ICE officers physically pushed me off the bus. They continued to push me towards the border and in front of Mexican Officials, I expressed my fear again. The Mexican Officials advised the ICE officers that they can't continue to bring detainees in that manner, and it had to be voluntary. The ICE officers pushed me back to the bus and I was taken back to East Montana El Paso Detention Center.

On November 12, 2025, ICE officers asked me again if I was ready to go to Mexico. I told the Officers that I feared my life and to contact my lawyer.

On November 28, 2025, ICE officers asked me again if I was ready to go to Mexico and I told then again that I feared for my life if removed to Mexico.

On February 4, 2026, I was told that I was being moved to another housing unit and placed in line for transport. I asked where I was going and I never received a response. I was later removed from the line and remained at El Paso East Montana.

On February 13, 2026, ICE officers gave me documents stating an ankle monitor had been denied and asked me to sign. I told them to please contact my attorney regarding me signing documents. They told me that they had attempted to contact my attorney, but there was no response. I provided them with my attorney's number to make sure they had the correct information.

I provide this affidavit to be accurate regarding the timeline of events since I have been detained.

Executed on 2/26/2026

/s/Yurisbey Diaz

Yurisbey Diaz

NOTARY PUBLIC STATE OF FLORIDA
MELODY D PERKINS
MY COMMISSION # HH 709036
EXPIRES: August 21, 2029

Personally Known

2/26/26