IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01046-SKC

YAIROVIS SANTACRUZ MACIAS,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.,
GEORGE VALDEZ, in his official capacity as Acting Field Office Director, Denver, U.S. Immigration & Customs Enforcement,
KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,
TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement (ICE), and
PAMELA BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 9)

In accordance with the Court's Order dated March 13, 2026, ECF No. 9, Respondents respond to the Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, ECF No. 1 (filed March 13, 2026), and the Motion for Temporary Restraining Order and/or Preliminary Injunction, ECF No. 3 (filed March 13, 2026).[1]

[1] Respondents' response is timely. The Court ordered Respondents to respond "within five days of service." ECF No. 9. Service was made upon the U.S. Attorney's Office on March 17, 2026. Respondents' response was therefore due on March 23,

The Petition differs materially from the petition in *Koridze v. Ice Field Office Director*, No. 1:25-cv-3870-SKC (D. Colo.), and should be denied.

BACKGROUND

Petitioner was born in Cuba. ECF No. 1 ¶ 24; *see also* Ex. 1 ¶ 4 (Declaration of Deportation Officer Jared Todd). He entered the United States in June 2020. ECF No. 1 ¶ 24; Ex. 1 ¶ 5. About two months later, on August 25, 2020, he was ordered removed to Cuba. ECF No. 1 ¶ 25; Ex. 1 ¶ 12. At that time, the Immigration Judge denied his application for withholding of removal to Cuba and protection under the Convention Against Torture. Ex. 1 ¶ 12. Pursuant to 8 U.S.C. § 1231, Petitioner was detained pending his removal. *See id.* ¶¶ 13–19. About four-and-a-half months afterwards, on January 13, 2021, he was released under an order of supervision. *Id.* ¶ 20.

Five years later, on January 7, 2026, ICE detained Petitioner again to effectuate his removal pursuant to 8 U.S.C. § 1231. *Id.* ¶ 22. On February 11, 2026, and again on February 18, 2026, ICE served Petitioner with a Notice of Removal to Mexico. *Id.* ¶ 28. Petitioner refused to sign the notices and claimed fear of removal to Mexico. *Id.* On February 19, 2026, ICE referred Petitioner to U.S. Customs & Immigration Services (USCIS) for a credible fear screening. *Id.* ¶ 29. On around

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2026. *See* Fed. R. Civ. P. 6(a)(1) (when a period of time is stated in days, the day of the even that triggers the period is excluded, and "if the last day of the period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

February 24, 2026, USCIS determined that Petitioner had not established that it was more likely than not that he would be persecuted or tortured if removed to Mexico. *Id.* ¶ 30. ICE is presently working on removing Petitioner to Cuba or Mexico. *Id.* ¶ 31.

Petitioner filed this habeas petition about two months into his current period of detention. *See* ECF No. 1 (filed March 13, 2026). In the Petition, he asserts five separately-labeled claims, contending that: (1) his detention violates 8 U.S.C. § 1231, *id.* ¶¶ 53–56; (2) the revocation of his supervised release violated substantive due process, *id.* ¶¶ 57–61; (3) the revocation of his supervised release violated procedural due process, *id.* ¶¶ 62–63; (4) the revocation of his supervised release violated the *Accardi* doctrine, *id.* ¶¶ 64–67; and (5) the revocation of his supervised release violated the Administrative Procedure Act, *id.* ¶¶ 68–70. He seeks immediate release. *Id.* at 20. He has also filed a motion for a temporary restraining order or preliminary injunction, in which he requests the same relief, as well as an order enjoining Respondents from transferring him outside the District of Colorado pending resolution of this case.[2] ECF No. 3.

[2] The Court has already ordered that Petitioner may not be transferred from this judicial district or removed from the United States. ECF No. 9. Because Petitioner has a final order of removal, however, the Court should modify its order to permit Petitioner to be removed to Cuba or Mexico, as he has no lawful basis to remain in the United States, and his petition rests on his argument that his detention is unlawful because there is no significant likelihood of his removal in the reasonably foreseeable future.

ARGUMENT

I. This case differs materially from *Koridze v. Ice Field Office Director*, No. 1:25-cv-3870-SKC (D. Colo.)

In its show cause order, the Court ordered Respondents to "first address whether the present case differs factually or legally from *Koridze* in any material respect, and if so, [to] specify the material differences." ECF No. 9. There are material differences. The Petitioner in *Koridze* was a citizen of Georgia who had been granted withholding of removal to Georgia. Order at 3–4, *Koridze*, No. 25-cv-3870-SKC (D. Colo. Mar. 6, 2026), ECF No. 16. When the Court granted the petition in *Koridze*, the petitioner had been continuously detained for more than six months after his removal order became final. *Id.* at 4. Further, the petitioner's withholding of removal to Georgia also had been in effect for the entire post-removal-order period. *Id.* at 3. In other words, the petitioner's post-removal-order detention was not extended by any additional process requested by the petitioner. *See id.*

Further, it appears the petitioner in *Koridze* had been in custody continuously for more than two years since his apprehension at the U.S.–Mexico border in December 2024. *See id.* at 2. And in *Koridze*, Respondents had not identified a particular third country other than Georgia to which they were seeking the petitioner's removal. *See id.* at 4–5.

Here, on the other hand, Petitioner has *not* been in custody continuously for more than six months. In fact, he has never been in ICE's custody continuously for more than six months post-final-removal-order. *See* ECF No. 1 ¶ 25 (stating that

after his removal order became final in August 2020, Petitioner was detained "for approximately four and a half months"). Rather, post-final-removal-order, Petitioner has been detained for a total of approximately seven months, with the initial four-and-a-half-month detention separated from his current two-and-a-half-month detention by about five years (i.e., sixty months). *See id.* ¶¶ 25–27. Put differently, Petitioner has been at liberty within the United States for close to 90% of the time he has been subject to a final order of removal.

Also, unlike in *Koridze*, Petitioner has not been granted cancelation or withholding of removal to his native country, Cuba. In addition, Respondents have also identified a third country for potential removal (Mexico), and have taken steps towards potentially removing Petitioner to Mexico. These steps include processing Petitioner's claim of fear of being removed to Mexico.

These facts are material both because they show that Petitioner's detention has not been unduly prolonged and because they indicate that there is a significant likelihood of removing Petitioner in the reasonably foreseeable future.

II. Petitioner's detention does not violate 8 U.S.C. § 1231.

Petitioner argues that his detention is no longer authorized under 8 U.S.C. § 1231. ECF No. 1 ¶ 54. He contends that the removal period "began on August 25, 2020," and that "[i]n the aggregate," ICE has detained him for "approximately 206 days since his removal order became final." *Id.* He further asserts that because the

government has not yet removed him, there is no reason to believe that it will remove him in the reasonably foreseeable future. *Id.* ¶ 55.

Petitioner's contentions rest on an incorrect reading of 8 U.S.C. § 1231 and the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Under 8 U.S.C. § 1231(a), DHS "shall detain" a noncitizen "[d]uring the removal period," which the statute sets at 90 days from when the removal order becomes final. 8 U.S.C. § 1231(a)(1)–(2).

But, as the Supreme Court has recognized, § 1231(a)(6) also 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. . . . [§ 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). A noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory right to release or a bond hearing. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–83 (2022). *Guzman Chavez* addressed the circumstance where an alien with a final order of removal seeks to avoid removal to a particular country "based on fear of persecution in the particular countries designated by their removal order[]" and initiates post-removal-order withholding-only proceedings. 594 U.S. at 526. The

Supreme Court held that "[t]here is no reason why [the government] cannot detain aliens in withholding-only proceedings" during those proceedings. *Id.* at 546.

Further, even absent withholding-only proceedings, continued detention beyond the removal period is authorized. In *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is "presumptively reasonable." 533 U.S. at 700–01. And detention beyond six months does not, by itself, mean that the noncitizen *must* be released. *Id.* at 701. Rather, the Court held that after six months, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.*; *see also 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) (quoting *Zadvydas*, 533 U.S. at 701)). After the presumptive six months, whether continued post-removal-period detention is "unreasonable and no longer authorized by [8 U.S.C. § 1231(a)]" depends on the "particular circumstances" of each case. *See Zadvydas*, 533 U.S. at 699–700.

Petitioner has been detained for approximately two-and-a-half months since he was taken into custody on January 7, 2026. ECF No. 1 ¶ 25. For part of that period, he was pursuing withholding of his removal to Mexico. Ex. 1 ¶¶ 28–30.

Further, in the approximately 67 months since his removal order became final, Petitioner has been detained for a total of about seven months.

Petitioner is wrong that under *Zadvydas*, Respondents' authority to detain him "expired 180 days after the Immigration Judge's . . .order to remove [him] to Cuba became final on August 25, 2020." ECF No. 1 ¶ 1. As the Supreme Court confirmed in *Guzman Chavez*, the *Zadvydas* analysis is fact-specific. *See Guzman Chavez*, 594 U.S. at 546–47. Under *Zadvydas*, the court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." 533 U.S. at 699. Thus, whether continued post-removal-order detention is reasonable depends on circumstances particular to the alien and the government's efforts to remove that alien at that point in time.

Petitioner also appears to argue that the Court should "aggregate" his two periods of post-removal-order detention. *See* ECF No. 1 ¶ 54. 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"); *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."). And formalistic aggregation is particularly inappropriate here, where Petitioner's prior period of detention lasted less than six months and happened approximately five years ago, belying any suggestion that ICE released and re-detained Petitioner for the purpose of avoiding the six-month presumptively reasonable timeframe.

Further, even if the Court were to find that Petitioner met his burden to provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Court should consider that showing rebutted on the facts of this case. ICE is working to remove Petitioner to either Cuba or Mexico, and Petitioner's claim of fear if removed to Mexico was resolved only about one month ago. *See* Ex. 1 ¶¶ 29–30.

Finally, if the Court nevertheless orders Petitioner's release, this release would be subject to conditions to be set by ICE, as permitted by statute and regulation and as the Supreme Court has recognized.[3] Therefore, if the Court orders

[3] 8 U.S.C. § 1231(a)(3) provides the Attorney General with the authority to issue regulations on terms of supervision for an alien released pending removal. DHS 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. Accordingly, if Petitioner is released, his release may be governed by conditions of supervised release set by ICE pursuant to the regulations.

Petitioner's release, it should provide Respondents with at least three business days to process his release so that appropriate conditions can be identified and implemented.

III. Petitioner is not entitled to release based on claimed deficiencies in the process by which Respondents re-detained him.

Petitioner is not entitled to habeas relief based on any of the other grounds identified in his petition. He has not shown any substantive or procedural due-process violation and, even if established, that would not warrant immediate release. Substantively, Petitioner's detention relates to "the statute's basic purpose, namely, assuring [his] presence at the moment of removal." *See Zadvydas*, 533 U.S. at 699. And 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 would be additional process, not immediate release.

Petitioner points to *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954), for the principle that "agencies must follow their own policies, rules, and instructions." ECF No. 1 ¶¶ 67-69. But the Supreme Court in *Accardi* did not determine the sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that affects a party's rights. As the Supreme Court has clarified, *Accardi* "enunciates[s] principles of federal administrative law rather than of constitutional law." *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). "*Accardi* is based on

administrative law principles, not constitutional due process requirements." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (quoting *Vanover v. Hantman*, 77 F.2d 91, 103 (D.D.C. 1935), *aff'd*, 38 F. App'x 4 (D.C. Cir. 2002)) (explaining limits on the *Accardi* doctrine). Moreover, in *Accardi*, the Supreme Court did not order substantive relief (there, the suspension of deportation) but rather ordered the agency to afford the process provided in its regulations. *See* 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeal's failure to comply with its regulations, "he should receive a new hearing before the Board"). Thus, even under *Accardi*, Petitioner should at most be given what the text of the relevant regulations—here, 8 C.F.R. §§ 241.4(l)—requires.[4]

Consistent with this reasoning, various district courts have declined 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 POCR was not performed, "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation"); *Bahadorani v. Bondi*, No. CIV-25-1091-PRW, 2025 WL 3048932, at *3 (W.D. Okla. Oct. 31, 2025) ("Even if the government failed to comply with 8 C.F.R.

[4] Petitioner's APA claim does not meaningfully differ from his procedural-due-process and *Accardi* claims. *See* ECF No. 1 ¶ 70 (alleging that "Respondents' revocation of Mr. Santacruz's order of supervision was arbitrary and capricious because it violated the statute, regulation, and the Constitution"). Therefore, his APA claim should be denied for the same reasons his procedural-due-process and *Accardi* claims should be denied.

§ 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."); *see also Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *11 (D. Md. Aug. 11, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7–8 (D. Md. Aug. 27, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025 WL 2062181, at *6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025).

Moreover, Petitioner has also not shown prejudice, as required to show a violation of due process in the immigration context. *See 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.").

Accordingly, the Court should decline to grant Petitioner's request for immediate release based on alleged deficiencies in the process by which his supervised release was revoked.[5]

[5] Should the Court order Petitioner released on an order of supervision, this release would be subject to conditions, as explained in note 3, *supra*. Furthermore, Petitioner's Prayer for Relief explicitly recognizes that any release may be subject to the conditions in his original order of supervision. *See* ECF No. 1 at 20 (seeking writ to immediately release Petitioner "subject to the same or less onerous conditions on which ICE released Mr. Santacruz on in his original OSUP").

IV. The Court should deny Petitioner's motion for a temporary restraining order or preliminary injunction.

In his motion for a temporary restraining order or preliminary injunction, ECF No. 3, Petitioner requests two forms of relief: an order prohibiting Respondents "from transferring him outside this Court's jurisdiction while it considers his case" and an order granting his "immediate release." *Id.* at 1. On March 13, 2026, the Court entered an order that did not expressly grant or deny this motion, but that directed Respondents not to remove Petitioner from the District of Colorado or the United States "unless or until this Court or the Court of Appeals for the Tenth Circuit vacates this Order." ECF No. 9.

The Court should not grant any injunctive relief based on Petitioner's motion. A court may grant a TRO or preliminary injunction only if the moving party makes a four-part showing: (1) a substantial likelihood of succeeding on the merits; (2) irreparable injury if the court denies the injunction; (3) that the threatened injury absent the injunction outweighs the opposing party's injury under the injunction; and (4) that the injunction is not adverse to the public interest. *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019). The last two factors "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. Also, a preliminary injunction is disfavored when "(1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win." *Fort Collins*, 916 F.3d at 797. "To get a disfavored injunction, the moving party faces a heavier

burden on the likelihood-of-success-on-the-merits and the balance-of-harms factors," and must make a "strong showing" that those factors weigh in their favor. *Id.* (quoting *Fish v. Kobach*, 840 F.3d 710, 724 (10th Cir. 2016)).

Petitioner's request for an order granting his immediate release is duplicative of the relief requested in his habeas petition. Thus, that portion of his request is disfavored. But the Court need not rule on this portion of his request for injunctive relief because it can directly decide the issue by resolving his habeas petition.

As to his request for an order prohibiting his transport outside this jurisdiction, although the Court has not granted that portion of Mr. Armendariz's motion, it has extended him equivalent relief. *See* ECF No. 9. And there is no reason now to grant this aspect of Petitioner's motion. If the Court denies Petitioner's habeas petition (as it should), Petitioner will not be entitled to any injunctive relief because he will not have succeeded on the merits. And if the Court grants the habeas petition, his request for an order prohibiting his transfer will become moot upon his release.[6]

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[6] Respondents respectfully request that if the Court grants the petition, it expressly enter final judgment and/or vacate its order prohibiting Petitioner's transfer or removal. Respondents are also aware that this Court has ordered in other cases that respondents must immediately release the petitioner and, if the petitioner resides outside of Colorado, transport the petitioner to his or her place of residence within 36 hours. *See, e.g.*, Carrillo Alonzo, No. 26-cv-0666-SKC, ECF No. 14, at 5–6 (D. Colo. Feb. 25, 2026). Respondents submit that, if the Court is inclined to order Petitioner's immediate release, the Court should (1) require counsel for Respondents promptly to confer with counsel for Petitioner to determine whether Petitioner wishes for ICE to transport him back to his residence, or would prefer for ICE to simply release him from custody; (2) require Respondents to submit a status

At bottom, the Court's ruling on the underlying habeas petition will also effectively resolve (or dictate the result of) his motion for a temporary restraining order or preliminary injunction. Thus, because the Court should dismiss the petition, the Court should also deny the motion.

CONCLUSION

The Court should deny the Petition, ECF No. 1, and the Motion for Temporary Restraining Order and/or Preliminary Injunction, ECF No. 3.

Respectfully submitted on March 23, 2026.

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report updating the Court on such conferral within 36 hours of the date and time of the order; and (3) if Petitioner prefers to be transported by ICE to his residence, afford Respondents three days in which to effect such transportation.

GENERATIVE AI CERTIFICATION

I certify that no portion of this filing was drafted using generative AI.

s/ Brad Leneis
Brad Leneis

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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