UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01046-SKC

YAIROVIS SANTACRUZ MACIAS,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

GEORGE VALDEZ, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity,

MARKWAYNE MULLIN,[1] Secretary, U.S. Department of Homeland Security, in his official capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity,

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents.

AMENDED[2] REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE (ECF 14)

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[1] Markwayne Mullin is substituted for former Secretary of Homeland Security Kristi Noem pursuant to Fed. R. Civ. P. 25(d).

[2] Undersigned counsel files this Amended Reply shortly after filing the initial Reply due to the initial Reply's failure to comply with this Court's Practice Standards. Specifically, the original reply (ECF 15) was drafted in Arial Font and did not include the Generative AI Certification.

I. Introduction

This Court must order Petitioner's ("Mr. Santacruz") immediate release. Respondents' authority to jail Mr. Santacruz is no longer authorized by statute and his reincarceration violated due process, the *Accardi* doctrine and the APA. As of today, Respondents admit they have failed to remove Mr. Santacruz for 2,038 days while incarcerating him for 198. ECF 14-1 (detailing, *inter alia*, the dates on which Respondents jailed, released, and jailed Mr. Santacruz).[3] Respondents' bare assertion that removal is now significantly likely in the reasonably foreseeable future falls woefully flat. *E.g.*, *Tran v. Baltazar, et al.*, 1:26-cv-00940-CNS, 2026 WL 764002, at *3 (D. Colo. Mar. 18, 2026). Mr. Santacruz should be expeditiously released.

II. Mr. Santacruz's Incarceration is Not Presumptively Reasonable.

Mr. Santacruz's incarceration is not presumptively reasonably because it has lasted for more than 180 days and his removal order is over 2,000 days old. As Judge Wang's "independent research" shows, "district courts more often conclude that a detainee's periods of detention should be considered together in determining whether the detention has exceeded the presumptively reasonable time under *Zadvydas*." *Aguilar v. Noem*, 25-cv-03463-NYW, 2025 WL 3514282, at *3 (D. Colo. Dec. 8, 2025)

[3] Mr. Santacruz, through counsel acknowledges an error in his Petition (ECF 1) and Motion for a TRO (ECF 3). In sum, the number of days Mr. Santacruz claimed that Respondents incarcerated him was incorrect. He claimed 65 days of incarceration since Respondents rearrested him in January and 206 days of incarceration in total. *E.g.*, ECF 3, at **1–2. That is wrong. As detailed herein, Respondents have jailed Mr. Santacruz for a total of 198 days and 57 days since Respondents rearrested him. The difference does not affect the outcome of this case. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (discussing the presumptively reasonable six-month period with statutory authority to jail someone post-final order).

(collecting cases). Chief Judge Brimmer agrees. *Pena-Gil v. Lyons*, No. 25-cv-03268-PAB-NRN, 2025 WL 3268333, at *2(D. Colo. Nov. 24, 2025) (collecting cases). So does Judge Sweeney. *Tran*, 2026 WL 764002, at *3. In fact, "[m]ost courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the federal government could otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them." *Siguenza v. Moniz*, 25-CV-11914-ADB, 2025 WL 2734704, at *3 (D.Mass. Sept. 25, 2025) (collecting cases).[4] Permitting Immigration and Customs Enforcement ("ICE") to do just that "in essence results in an indefinite period of detention, albeit executed in successive six month intervals." *Nguyen v. Scott*, 796 F.Supp.3d 703, 722 (W.D. Wash. 2025) (citation omitted).

The cases upon which Respondents rely in support of their contrary position are unpersuasive and ignore the Supreme Court's concern with indefinite detention. The issue of whether incarceration should be viewed cumulatively was not at issue in *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *9 n.9 (W.D. Okla. Oct. 15, 2025) because "such aggregation [was] unnecessary" as ICE had already reincarcerated the petitioner for more than six months. *Id. Qui v. Carter* is also unhelpful for Respondents because that court relies on a case where the petitioner "did not dispute" that the removal period restarts upon reincarceration. Case No. 25-3131-JWL, 2025 WL 2770502, at *1 (D.Kan. Sept. 26, 2025) (citing *Liu v. Carter*, Case No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25, 2025)).

[4] Of note, whether "there is a significant gap between periods of detention" makes no difference. *Tran*, 2026 WL 764002, at *3 (collecting cases).

Nevertheless, whether this Court views Mr. Santacruz's incarceration cumulatively is not dispositive. ICE's authority to jail someone for removal is only "*presumptively* reasonable" for six months. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (emphasis added). A jailed noncitizen may rebut that presumption by showing good reason to believe that their removal is not significantly likely in the reasonably foreseeable future regardless of the amount of time ICE jails them. *See id.*

This Court should join Chief Judge Brimmer, Judge Wang, Judge Sweeney, and most courts across the country to view his incarceration in the aggregate. ICE has jailed him for 198 days, showing that incarceration is not presumptively reasonable and satisfying his good-reason burden. *Tran*, 2026 WL 764002, at *3 ("[b]ecause Petitioner has demonstrated that he has been cumulatively held in immigration detention for over six months . . . the presumptively reasonable period for Petitioner's detention has been exceeded") (cleaned up, citation omitted)).

Alternatively, Mr. Santacruz rebuts the presumptively reasonable period of incarceration through facts demonstrating good reason to believe his removal is not significantly likely in the reasonably foreseeable future: (1) ICE has failed to remove him in the 2,038 days since his removal order became final; (2) ICE has yet to request travel documents from any country since it rejailed Mr. Santacruz 57 days ago; (3) ICE has never presented a travel document to Mr. Santacruz for removal to any country; and (4) Mr. Santacruz has no travel document to any country. *See* ECF 1, ¶¶ 24, 28; ECF 14-1.

III. Mr. Santacruz Meets the Good Reason Standard.

Mr. Santacruz met his burden that there is good reason to believe that removal is not significantly likely in the reasonably foreseeable future. This good reason standard is "something less" than showing that removal is not significantly likely in the reasonably foreseeable future. *Azzo v. Noem*, 3:25-cv-03122-RBM-BJW, 2025 WL 3535208, at *3 (S.D. Cal. Dec. 10, 2025); *Ahmed v. Freden*, 744 F.Supp.3d 259, 265 (W.D.N.Y. 2024) (citation omitted); *Hamed Aramin v. Baltasar, et al.*, 1:26-cv-616-RBJ, ECF 14 at *8 (D. Colo. Mar. 18, 2026) (attached as Exh. 1). The "distinction is not a matter of semantics, but an important clarification of [Mr. Santacruz's] burden at this stage." *Aguilar*, 2025 WL 3514282, at *4. The burden is of production, not persuasion. *Cruz Medina v. Noem*, 794 F.Supp.3d 365, 379 (D. Md. 2025). The good reason standard is satisfied "by, inter alia, showing the existence of either institutional barriers to repatriation or obstacles to . . . removal." *Aguilar*, 2025 WL 3514282, at *4 (citation omitted) (collecting cases). The court may also consider "the target country's prior record of accepting removed [noncitizens] and specific assurances from the target country regarding its willingness to accept a [noncitizen]." *Ahmed*, 744 F.Supp.3d at 265.

Mr. Santacruz's 198 days in ICE custody is good reason to believe that his removal is not significantly likely in the reasonably foreseeable future. *Tran*, 2026 WL 764002, at *3; *See* Section II, *supra*. But if this Court needs more, it is presented with plenty. ICE has had over 2,000 days to remove Mr. Santacruz from the United States. ECF 14-1. He has therefore "shown that his removal . . . is unlikely given that

the government has been unable to deport [him]" for years. *Pena-Gill*, 2025 WL 3268333, at *3; *Ali v. Baltazar*, 1:25-cv-03317-RBJ, 2026 WL 322565, at *4 (D. Colo. Jan. 27, 2026); *Azzo*, 2025 WL 3535208, at *3; *Tran*, 2026 WL 764002, at *3.

In *Chennah*, Judge Sweeney found that the petitioner met their threshold burden where the petitioner there, like here, had no travel documents and ICE presented no evidence of when or if the petitioner would be removed. *Chennah v. Baltazar*, 1:26-cv-00112-CNS, 2026 WL 179951, at *2 (D. Colo. Jan. 3, 2026) In *Tran*, Judge Sweeney found similarly where Respondents did "not even indicate whether [any country] ha[d] acknowledged the latest request for Petitioner's travel documents." 2026 WL 764002, at *4.

Here, Mr. Santacruz does not have a passport and his only ties to any country other than to the United States are with Cuba. ECF 1, at ¶ 24. Respondents neither provide proof nor allege that they have requested a travel document from Cuba since they rejailed him over 50 days ago. ECF 14-1. In fact, Respondents seemingly have not requested a travel document for Mr. Santacruz from Cuba in over five years. *Id.* Respondents similarly neither provide proof nor allege that they requested or have a travel document for Mr. Santacruz from Mexico. *Id.* Rather, ICE has only advised Mr. Santacruz that it will try to remove him there. *Id.* [5]

[5] The process ICE and U.S. Citizenship and Immigration Services ("USCIS") provided Mr. Santacruz after he expressed fear of return to Mexico "further supports that his deportation is not likely in the reasonably foreseeable future." *Castellano v. U.S. Department of Homeland Security*, No. 26-cv-00080-PAB, 2026 WL 472732, at *3 (D. Colo. Feb. 19, 2026). Indeed, under analogous facts, Chief Judge Brimmer noted that, like here, Respondents' failure to effectuate removal of a Cuban national to Mexico

Mr. Santacruz therefore demonstrates that there is good reason to believe that his removal is not significantly likely in the reasonably foreseeable future. The burden now shifts to Respondents to prove that removal is significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Respondents cannot meet that burden.

IV. Respondents Did Not Meet Their Burden.

Respondents present no evidence that Mr. Santacruz's removal is significantly likely in the reasonably foreseeable future. ECF 14-1. Instead, ICE admits that it failed to remove Mr. Santacruz to Cuba over five years ago and that ICE has yet to request travel documents to any country since it rejailed him over 50 days ago. ECF 14-1. Their statement that they have "been working on removing [Mr. Santacruz] to Cuba or Mexico" does nothing to support its cause. ECF 14-1.

"*Zadvydas* rejected the proposition that continued detention is permissible 'as long as good faith efforts to effectuate deportation . . . continue.'" *Ahrach v. Baltazar*, 25-cv03195-PAB, 2025 WL 3227529, at *4 (D. Colo. Nov. 19, 2025) (quoting *Zadvydas*, 533 U.S. at 702)). Courts have therefore resoundingly found that Respondents' "[u]nsubstantiated assertions that [it] will pursue removal are insufficient to satisfy its burden." *Pena-Gil*, 2025 WL 3268333, at *4 (collecting cases). Courts have "persuasively rejected such equivocated, conclusory justifications for continued detention . . . ." *Chennah*, 2026 WL 179951, at *3 (quotation omitted). In fact, "vague

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after they fail to prove a risk of persecution or torture in Mexico supports such a finding. *Id.*

statement[s]" about ICE's pursuit of removal that provide "no meaningful information" do "not demonstrate that removal is likely" let alone significantly so. *Koca v. Noem*, 26-cv-00443-NYW, 2026 WL 575661, at *3 (D. Colo. Mar. 2, 2026); *Tran*, 2026 WL 764002, at *4.

Respondents' assertion that ICE is working to remove Mr. Santacruz to Mexico or Cuba without addressing why removal now is significantly likely in the reasonably foreseeable future after being unable to remove him for over five years is a quintessential example of a vague statement with no meaningful information. *Tran*, 2026 WL 764002, at *4 (finding Respondents did not meet their burden due to their "failure to explain why deportation is now possible, when previous deportation efforts have failed").

Moreover, Respondents have not requested a travel document from any country for Mr. Santacruz in the past five years. ECF 14-1. And even if it did, "[m]erely asserting" that ICE has requested "travel documents" without any "substantive indication regarding how or when it expects to obtain the necessary travel document" does not meet ICE's burden anyways. *Singh v. Gonzales*, 448 F.Supp.2d 1214, 1220 (W.D. Wash. 2025). Even if Respondents' evidence shows that there is at least some possibility that Mexico or Cuba will accept Mr. Santacruz at some point, which Mr. Santacruz does not concede, "that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen*, 796 F.Supp.3d at 725 (citing *Zadvydas*, 533 U.S. at 701). Indeed, "Courts have found that the remote prospect of removal to a hypothetical third country that

may eventually choose to accept a petitioner does not make that petition's removal reasonably foreseeable." *Yaya v. Baltazar*, No. 26-cv-00332-STV, 2026 WL 693128, at *4 (D. Colo. Mar. 12, 2026).

Respondents therefore did not meet their burden because "[a]t bottom, Respondents' own evidentiary submission belies their argument that [Mr. Santacruz's] removal is significantly likely in the reasonably foreseeable future." *Chennah*, 2026 WL 179951, at *3 (quotation omitted). The Court must therefore order Mr. Santacruz immediately released. *Id.*

V. In the Alternative, the Court Should Order Mr. Santacruz's Immediate Release because Respondents' Concede that it Did Not Provide Him with Process Required by the Constitution.

Respondents do not contest that ICE failed to provide Mr. Santacruz with notice or an opportunity to be heard before and since rejailing him. ECF 14; ECF 14-1. That failure is particularly egregious where, as here, ICE previously found Mr. Santacruz to be neither a risk of flight nor a danger to the community. *Compare Alfaro Herrera v. Baltazar*, 1:25-cv-04014-CNS, 2026 WL 91470, at *9 (D. Colo. Jan. 13, 2026) (ordering immediate release of a noncitizen who ICE previously released and redetained without process) *with* 8 C.F.R. § 241.4(d)(1) (providing that ICE may release someone who is subject to a final order of removal if they are neither a risk of flight nor a danger). "While Respondents get to repeat themselves, they don't get to repeatedly violate [a Petitioner's] due process rights." *Cortes v. Guadian*, 1:26-cv-00294-CNS, 2026 WL 265688, at *2 (D. Colo. Feb. 2, 2026). That is exactly what Respondents are doing here.

Respondents cannot illegally jail Mr. Santacruz and then deny him due process. ECF 3, at **6–9. ICE does not contest that these violations occurred or that due process applies. ECF 14. Therefore, "where, as here, a party files a response to a motion but does not address all arguments which the motion raises, the party has effectively conceded the arguments which it does not address." *Alfaro Herrera*, 2026 WL 91470, at *5.

This Court should grant Mr. Santacruz's immediate release because Respondents already "determined that [Mr. Santacruz] is neither a flight risk nor a danger to the community, and because [Mr. Santacruz] has already been held in immigration detention for over six months . . . ." *Id.* at *13. Immediate release is the only appropriate remedy for Respondents' conceded, ongoing constitutional violations. *See* ECF 3 at *9 (citing cases).

VI. Also Alternatively, the Court Should Order Immediate Release as Respondents' Concede They Failed to Provide the Process Required by the Regulations.

Before rejailing Mr. Santacruz, "the regulations at issue . . . place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future," *Roble v. Bondi*, 803 F.Supp.3d. at 772 (D.Minn. 2025); 8 C.F.R. § 241.13(i)(2), and to notify Mr. Santacruz of the reasons for his revocation, 8 C.F.R. 241.13(i)(3). The regulations also require a prompt interview after being returned to custody. *Id.* Respondents do not contest that ICE failed to give Mr. Santacruz notice prior to his reincarceration. ECF 14. Respondents do not contest that ICE failed to give him a prompt interview upon reincarceration. *Id.* Respondents

do not contest that ICE failed to interview him at all since his reincarceration. *Id.* Respondents also do not claim changed circumstances merited Mr. Santacruz's incarceration. *Id.* Instead, they claim that they rejailed him solely to pursue his removal despite having no travel document, not having requested a travel document in over five years, and having no plan to effectuate his removal. *See* ECF 14-1, at ¶ 22 (noting that the only reason they jailed Mr. Santacruz was to pursue his removal). Once again, these egregious violations of Mr. Santacruz's rights should not go unaddressed.

Respondents seek to evade repercussions for its violations by arguing that instead of release, Mr. Santacruz should be provided process without saying what that process is and how it would remedy his unlawful incarceration. ECF 14. The proper remedy is release, "because [once again] it has already been determined that [Mr. Santacruz] is neither a flight risk nor a danger to the community, and because [Mr. Santacruz] has already been held in immigration detention for over six months . . . ." *Alfaro Herrera,* 2026 WL 91470 at *13. Courts across the country agree. *Roble,* 803 F.Supp.3d. at 774; *Nguyen,* 788 F.Supp.3d at 152–53; *Hoac v. Becerra, et al.*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. Jul. 16, 2025).

VII. Conclusion

Based on the foregoing, this Court should order Respondents to immediately release Mr. Santacruz.

Dated: March 25, 2026

Respectfully submitted,

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GENERATIVE AI CERTIFICATION

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

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2026 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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