IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

DANIEL ISAAC MORENO MIRANDA,
Petitioner,

v.

JUAN BALTAZAR, Warden, GEO Aurora Contract Detention Facility, in his official capacity;
GEORGE VALDEZ, Director, Denver Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, in his official capacity;
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity;
MARKWAYNE MULLIN, Secretary, United States Department of Homeland Security;
PAMELA JO BONDI, Attorney General of the United States, in her official capacity,

Respondents.

PROLONGED DETENTION CLAIM: PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

Petitioner Daniel Isaac Moreno Miranda was ordered removed to Nicaragua in 2011 for trafficking in marijuana. He spent 10 years outside of the United States, which he was told was his deportation penalty. But he was attacked and persecuted in Nicaragua on account of his political opinion — severely beaten by Nicaraguan police during a protest, suffering head injuries, seizures, and a broken ankle requiring hospitalization. Facing continued political danger, Daniel fled Nicaragua with his wife and daughter and reentered the United States in 2021. He crossed the U.S. border without inspection and was soon encountered by border patrol. He was placed on an Order of Supervision (OSUP).

This OSUP meant he was released from custody and allowed to live in the United States community so long as he abided by the terms of his OSUP, which he did. However, in June of 2025 at a routine OSUP check-in, Daniel was re-arrested by ICE with no pre-deprivation due process.

Daniel has been held at the GEO ICE Processing Center in Aurora, Colorado since June 26, 2025 — more than nine months — pursuant to 8 U.S.C. § 1231(a)(6) (person ordered removed), without any individualized determination that his continued detention is justified. No neutral adjudicator has ever conducted an individualized determination of whether his continued detention is justified. Whatever internal custody reviews ICE may have conducted were performed

without the required notice to Daniel's counsel, without affording his counsel any opportunity to be heard, and under a burden structure that this District has held is constitutionally inadequate. Daniel's continued confinement violates the Fifth Amendment's guarantee of due process.

The irony of Daniel's situation is this: for nearly four years after his reentry into the United States, the very agency now holding him made a considered judgment that he did not require detention. ICE placed Daniel on an OSUP and he complied with every condition — every check-in, every reporting requirement — without a single violation across nearly four years of supervision. Then he was detained on June 26, 2025, not because these circumstances changed, not because he committed a new offense, and not because ICE identified new flight risk or dangerousness concerns. He was detained when he appeared for a routine OSUP check-in — but no reason was given for suddenly detaining him. It was a surprise to him. There was no process whatsoever before suddenly depriving him of his liberty.

Daniel now finds himself in a constitutional no-man's land. His detention is governed by 8 U.S.C. § 1231(a)(6) (he was ordered removed in 2011), but it provides no mechanism for an individualized bond hearing. The administrative proceedings he could lawfully invoke — withholding-only proceedings, an Immigration Judge hearing, and now a pending BIA appeal — are the sole reason

his 2011 removal cannot yet be executed. The duration of his detention is dictated entirely by the withholding-of-removal timeline, which is outside his control and may extend for a year or more and ultimately proceed into the Tenth Circuit.

The path that remains open to Daniel is primarily his claim for protection under the Convention Against Torture. The Immigration Judge denied that claim, but did so on the basis of a factually erroneous finding — that Daniel had experienced no harm "for the past seven years." That finding is wrong on its face. Daniel was physically attacked by Nicaraguan police during a political protest in Nicaragua in 2019, suffering head injuries, memory loss, seizures, and a broken ankle requiring hospitalization. He then fled Nicaragua with his family in late 2019, entering the United States in October 2021. As of the IJ's December 2025 decision, Daniel had been physically present in the United States for approximately four years — beyond the physical reach of the Ortega regime. Absence from Nicaragua because you fled persecution is not the same as the absence of persecution. The IJ's analysis of past harm under 8 C.F.R. § 1208.16(d)(3) rested on a timeline that cannot be squared with the record, and that error independently requires remand, but not release from detention. This is precisely the kind of prolonged, open-ended detention that the Due Process Clause cannot tolerate absent an individualized justification determined by a neutral adjudicator.

Courts in this District have consistently held that when detention under § 1231(a)(6) becomes unreasonably prolonged, due process requires an individualized bond hearing at which the government bears the burden of proving by clear and convincing evidence that continued detention is justified. *See Vizguerra-Ramirez v. Baltazar*, No. 25-cv-00881-NYW, 2025 WL 3653158 (D. Colo. Dec. 17, 2025); *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926 (D. Colo. 2025); *Juarez v. Choate*, No. 24-cv-00419-CNS, 2024 WL 1012912 (D. Colo. Mar. 8, 2024); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1186 n.14 (D. Colo. 2024). Petitioner respectfully requests that this Court join that consensus and grant him the same constitutionally required due process — an individualized bond hearing before this Court or at least before the Immigration Court.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 2241 to grant the writ of habeas corpus to persons held in custody in violation of the Constitution or laws of the United States.[1] "Challenges to immigration detention are properly brought

[1]Petitioner is not required to exhaust administrative remedies before seeking habeas relief challenging the constitutional adequacy of his detention. Challenges to the conditions and duration of immigration detention — as distinct from the merits of removal — are cognizable directly under § 2241 without exhaustion. *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001). No administrative process exists by which Daniel could obtain the individualized bond hearing he seeks; the absence of any such mechanism independently forecloses any exhaustion requirement.

directly through habeas." *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

Daniel is presently detained within the District of Colorado, and his immediate custodian is subject to this Court's jurisdiction. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). This Court also has authority to issue ancillary relief preserving its jurisdiction pending resolution of the petition, including an order requiring Respondents to maintain Petitioner within this District and to provide advance notice before any removal.

PARTIES

Petitioner DANIEL ISAAC MORENO MIRANDA [redacted] is a native and citizen of Nicaragua, born [redacted] He is currently detained by Respondents at the GEO ICE Processing Center, 3130 North Oakland Street, Aurora, Colorado 80010. JUAN BALTAZAR is the Warden of the GEO Aurora Contract Detention Facility located 3130 N. Oakland St., Aurora, CO 80010. He has immediate custody of Petitioner. GEORGE VALDEZ is the Director, Denver Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He has immediate legal power over the custody of Petitioner. TODD M. LYONS is the Acting Director, U.S. Immigration and Customs Enforcement, Department of Homeland Security (DHS). He also has immediate legal power over the custody of Petitioner. MARKWAYNE MULLIN is

the Secretary of the U.S. Department of Homeland Security and he is also legally responsible for Daniel's detention. PAMELA JO BONDI is the Attorney General of the United States; her agency includes the Immigration Courts and Board of Immigration Appeals which adjudicate bond redeterminations for noncitizen detainees. All respondents are sued in their official capacities.

FACTUAL BACKGROUND

A. Daniel's Background, Family Ties, and Community Roots.

Daniel is a forty-three-year-old Nicaraguan national who has established deep ties in the Denver community. His wife, [redacted] resides in the United States. She appeared with him before the Aurora Immigration Court and testified credibly on his behalf. Immigration Judge Nina Carbone made an explicit positive credibility finding as to both Daniel and his wife. It is more likely than not they will face persecution and torture if they return to Nicaragua. Daniel has one minor child of Nicaraguan nationality. He is employed as a laborer. The separation inflicted by his continued detention falls not only on him but on his wife and family unit.

B. Prior Immigration History and Prior Removal.

Daniel was previously removed from the United States on October 19, 2011, pursuant to an order entered August 22, 2011. After his return to Nicaragua, Daniel

became actively involved in political protest activities against the Ortega regime. During one protest, he was severely beaten by Nicaraguan police officers, suffering significant head injuries — including memory loss, headaches, and seizures — as well as a broken ankle requiring extended hospitalization and recovery. Facing continued political danger, Daniel, his wife, and his daughter departed Nicaragua at the end of 2019. Daniel and family subsequently entered the United States without inspection at or near San Luis, Arizona, on or about October 23, 2021.

C. Nearly Four Years of Compliant OSUP Supervision — ICE's Own Judgment That Daniel Did Not Require Detention.

Following his reentry, ICE placed Daniel on an Order of Supervision (OSUP). This placement reflects ICE's own affirmative determination that Daniel did not pose a danger to the community or a flight risk requiring detention. From his placement on the OSUP through June 2025 — approaching four years — Daniel complied fully with every supervisory requirement. He reported to the ICE field office as required, maintained a stable Denver address, supported his family, and committed no violations of any kind. Daniel did not abscond. He did not evade authorities. He appeared voluntarily at the Denver ICE field office for a routine OSUP check-in on June 18, 2025. On June 26, 2025, ICE issued a Notice of Intent/Decision to Reinstate Prior Order pursuant to INA § 241(a)(5), reinstating the 2011 order of removal, after having detained Daniel. The government has never

explained why it chose to reinstate the prior order and detain a compliant supervisee after nearly four years. Daniel has been in continuous ICE custody ever since — detained, it bears emphasis, after presenting himself voluntarily at ICE's direction.

D. Withholding-Only Proceedings and Pending BIA Appeal.

Upon reinstatement of the prior 2011 order, Daniel expressed a fear of return to Nicaragua. After an asylum officer found that he had not established a reasonable fear of persecution or torture, he requested review by an Immigration Judge. On July 25, 2025, the Immigration Judge vacated the asylum officer's finding, determined that Daniel had established a reasonable possibility of persecution or torture, and placed him in withholding-only proceedings.

On August 24, 2025, Daniel filed a Form I-589 for withholding of removal under INA § 241(b)(3) and protection under the Convention Against Torture ("CAT"), 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18. A merits hearing was held on December 1, 2025. IJ Carbone found both Daniel and his wife to be credible witnesses. Despite her positive credibility findings, the IJ denied all claims.

The IJ found that Daniel's 2006 federal marijuana trafficking conviction — for which he was sentenced to sixty months nearly twenty years ago — constituted a particularly serious crime ("PSC") barring statutory withholding under 8 U.S.C. § 1231(b)(3). Under *Matter of Y-L-, A-G-, R-S-R-*, 23 I&N Dec. 270 (A.G. 2002), a

drug trafficking conviction carries a rebuttable presumption of PSC status, and at the Immigration Court Daniel was not afforded any meaningful opportunity to present mitigation evidence as the regulatory framework requires. *See* 8 C.F.R. § 1208.16(d)(2).

Critically, the PSC bar does not reach Daniel's CAT deferral claim. See 8 C.F.R. §§ 1208.16(c)(4), 1208.17. The IJ denied CAT on the merits, but that denial independently contains reversible error. The IJ's written decision stated that Daniel had experienced no harm "for the past seven years." That finding cannot be reconciled with the record. Daniel was beaten by Nicaraguan police during a political protest in Nicaragua in 2019 — suffering head injuries with resulting memory loss and seizures, and a broken ankle requiring hospitalization. He then fled Nicaragua with his family in late 2019, entering the United States in October 2021. As of the IJ's December 2025 decision, Daniel had been physically present in the United States for approximately four years. He has experienced no further persecution from the Ortega regime for the simple reason that he has been in the United States — beyond that government's physical reach. The IJ's "seven years" finding conflates the regime's inability to reach Daniel on U.S. soil with the absence of a persecution history, in direct contravention of 8 C.F.R. § 1208.16(d)(3), which requires consideration of past harm regardless of the applicant's current location. The IJ was also required under § 1208.16(d)(3) to

consider Daniel's documented past torture — injuries corroborated by the IJ's own positive credibility findings — in assessing the probability of future torture, and failed to do so.

Daniel filed a timely Notice of Appeal to the Board of Immigration Appeals on December 5, 2025. Should the BIA affirm, Daniel will have the right to seek review before the United States Court of Appeals for the Tenth Circuit — a process that could require an additional year or more.

E. Duration and Conditions of Detention — No Bond Hearing Has Ever Been Held.

No reason was given for reinstating the old removal order and arresting Daniel, but he has been continuously detained since June 26, 2025. As of the date of this Petition, he has been detained for more than nine months. At no point has any neutral adjudicator conducted an individualized determination of whether his continued detention is necessary to ensure his appearance or to protect the community. No bond hearing of any kind has been held. No neutral adjudicator has ever conducted an individualized bond hearing. Whatever internal custody review ICE may have conducted occurred without the required notice to Daniel's counsel, without Daniel even knowing a custody determination was being made, and without any opportunity to present the record that § 241.4 requires ICE to consider.

Daniel is detained at the GEO ICE Processing Center in Aurora, Colorado. Courts in this District have consistently found that the conditions at that facility resemble criminal incarceration rather than civil immigration confinement. *See, e.g., Vizguerra-Ramirez*, 2025 WL 3653158, at *12; *Arostegui-Maldonado*, 794 F. Supp. 3d at 940; *de Zarate v. Choate*, No. 23-cv-00571-PAB, 2023 WL 2574370, at *4 (D. Colo. Mar. 20, 2023); *Villaescusa-Rios v. Choate*, No. 20-cv-03187-CMA, 2021 WL 269766, at *4 (D. Colo. Jan. 27, 2021).

LEGAL ARGUMENT

I. DANIEL'S DETENTION IS GOVERNED BY § 1231(a)(6).

Daniel is detained pursuant to 8 U.S.C. § 1231(a)(6) because the reinstated 2011 removal order constitutes a final order of removal and the ninety-day removal period has long since expired. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021) (confirming that § 1231 governs detention of individuals subject to reinstated removal orders who are pursuing withholding-only proceedings). Section 1231(a)(6) authorizes, but does not require, continued detention where the government determines that the individual is a risk to the community or unlikely to comply with the removal order. *In Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that § 1231(a)(6) does not authorize indefinite detention and that detention beyond six months is presumptively unreasonable absent a showing

that removal is reasonably foreseeable. The Court grounded this statutory construction in the constitutional avoidance principle, recognizing that indefinite civil detention raises serious Fifth Amendment due process concerns. *Id.* at 690-91. In *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022), the Court confirmed that *Zadvydas* rested on constitutional avoidance interpretation of § 1231(a)(6), and that § 1231(a)(6) does not itself require a bond hearing after six months, but expressly left open as-applied constitutional challenges for lower courts to consider in exceptional cases. *Id.* at 583.

II. COURTS IN THIS DISTRICT APPLY THE SIX-FACTOR SINGH TEST TO PROLONGED DETENTION UNDER § 1231(a)(6).

Multiple judges in this District have applied the six-factor balancing test established in *Singh v. Choate*, No. 19-CV-00909-KLM, 2019 WL 3943960 (D. Colo. Aug. 21, 2019), to evaluate whether detention under § 1231(a)(6) has become unconstitutionally prolonged. The test considers: (1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in proceedings caused by the detainee; (5) delays in proceedings caused by the government; and (6) the likelihood that proceedings will result in a final order of removal. *Singh*, 2019 WL 3943960, at *5.

Critically, the court in *L.G. v. Choate* expressly observed that if the petitioner there "had filed his petition when he was detained under 8 U.S.C. § 1231, the

six-factor prolonged detention analysis would have been applicable," citing *Juarez v. Choate* as applying "the six-factor prolonged detention balancing test for a noncitizen detained under 8 U.S.C. § 1231." 744 F. Supp. 3d at 1186 n.14. And in *Vizguerra-Ramirez* — a § 1231(a)(6) detention case involving withholding-only proceedings, decided at this very facility — Judge Wang applied the *Singh* factors and held that because the government cannot simply rely on the pendency of withholding-only proceedings to satisfy due process, "there appears to be little substantial distinction between the liberty interest of noncitizens detained pursuant to § 1226(c) and § 1231(a)(6), because regardless of the stage of the proceedings, the same important interest is at stake — freedom from prolonged detention." 2025 WL 3653158, at *11 (quoting *Juarez*, 2024 WL 1012912, at *6).

This District's consistent application of the *Singh* framework to § 1231(a)(6) cases reflects the constitutional reality that the liberty interest at stake is identical regardless of the statutory label. The government will likely argue that *Zadvydas*, not *Singh*, provides the controlling standard, and that Daniel's removal is "reasonably foreseeable" pending the BIA appeal. But as *Vizguerra-Ramirez* recognized, citing *Arteaga-Martinez*, this argument fails when the particular circumstances of the individual's detention present exceptional constitutional concerns that the mechanical *Zadvydas* inquiry does not address. 2025 WL 3653158, at *9-10. Here, those exceptional circumstances are present.

III. DANIEL'S DETENTION PRESENTS EXCEPTIONAL CIRCUMSTANCES AND ALL SIX SINGH FACTORS WEIGH IN HIS FAVOR.

What makes Daniel's case exceptional is not simply the length of his detention — though nine months without any custody hearing exceeds the presumptively reasonable six-month period that even *Zadvydas* identified as the threshold. 533 U.S. at 701. What makes it exceptional is the nature of ICE's own prior conduct: the government spent nearly four years supervising Daniel in the community, demonstrating through its own affirmative decisions that he posed no flight risk or danger warranting detention, and is now detaining him again without explanation. No individualized dangerousness or flight risk determination has ever been made. The combination of these circumstances is precisely what *Arteaga-Martinez* contemplated as warranting as-applied constitutional relief. 596 U.S. at 583.

Applying the Singh factors, each weighs in Daniel's favor or is neutral, as follows:

Factor One: Total Length of Detention.

Daniel has been detained for more than nine months. This exceeds the six-month period that *Zadvydas* identified as the presumptively reasonable outer limit for post-removal-period detention. 533 U.S. at 701. The first *Singh* factor

weighs strongly in Daniel's favor. *See Vizguerra-Ramirez*, 2025 WL 3653158, at *11; *Juarez*, 2024 WL 1012912, at *6.

Factor Two: Likely Duration of Future Detention.

"Courts examine the anticipated duration of all removal proceedings — including administrative and judicial appeals — when estimating how long detention will last." *Villaescusa-Rios*, 2021 WL 269766, at *3. Here, the BIA appeal has only recently been filed and briefing has not yet been scheduled. Following the BIA's decision — whenever it issues — Daniel has the right to file a Petition for Review with the Tenth Circuit, a process requiring additional briefing, scheduling, and oral argument that typically spans one to two years. As *Vizguerra-Ramirez* recognized in an identically postured case, detention "will definitely terminate at some point, but that point is likely to be many months or even years from now." 2025 WL 3653158, at *11 (quoting *Villaescusa-Rios*, 2021 WL 269766, at *3). This factor weighs strongly in Daniel's favor.

Factor Three: Conditions of Detention.

Daniel is detained at the GEO ICE Processing Center in Aurora, Colorado. As this Court's sister judges have consistently found, the conditions at that facility more closely resemble criminal incarceration than civil immigration confinement. *See Vizguerra-Ramirez*, 2025 WL 3653158, at *12; *Arostegui-Maldonado*, 794 F.

Supp. 3d at 940; *de Zarate*, 2023 WL 2574370, at *4; *Villaescusa-Rios*, 2021 WL 269766, at *4. The third *Singh* factor weighs in Daniel's favor.

Factor Four: Delays Attributable to Daniel.

Daniel has caused no procedural delays. He filed his I-589 promptly, appeared for his merits hearing on December 1, 2025, and timely filed his BIA appeal on December 5, 2025. Courts in this District have uniformly declined to "hold a petitioner's efforts to seek relief through the available legal channels against" him. *Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1195 (D. Colo. 2024) (citing *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 212 (3d Cir. 2020)); *see also Vizguerra-Ramirez*, 2025 WL 3653158, at *12. The fourth factor weighs in Daniel's favor.

Factor Five: Delays Attributable to the Government.

The fifth factor weighs heavily in Daniel's favor for two independent reasons. First, ICE has never provided any explanation for re-arresting a fully compliant supervisee after nearly four years, or for continuing to detain him beyond the 90-day removal period. The government's silence on the justification for Daniel's detention is itself a governmental delay and deficiency, not a neutral circumstance.

Second, the Post-Order Custody Review (POCR) process that ICE employs during post-order detention is constitutionally inadequate under this District's precedent. In *Vizguerra-Ramirez*, Judge Wang squarely held that ICE's POCR procedure fails due process because it asks only whether the detainee has demonstrated that he would not pose a flight risk — it does not require the government to affirmatively establish that continued detention is justified. 2025 WL 3653158, at *14. Moreover, Daniel has not been privy to POCR findings and conclusions, and the written records of those reviews — which the regulations require — have not been provided to him. ICE has failed to conduct constitutionally adequate custody review, and its failure to disclose whatever reviews it did conduct, are both chargeable to the government under the fifth factor. Thus, the fifth factor weighs in Daniel's favor.

Factor Six: Likelihood of Removal.

The sixth *Singh* factor requires the Court to assess the likelihood that proceedings will ultimately result in a final order of removal. That assessment here turns almost entirely on Daniel's CAT claim — because the statutory withholding pathway, while preserved for appeal, faces a significant headwind.

The PSC finding is likely to stand, but it is not the end of the analysis. Daniel's 2006 federal conviction for marijuana trafficking carries a presumption of particularly serious crime status under Matter of Y-L-, A-G-, R-S-R-, 23 I&N Dec.

270 (A.G. 2002). While Daniel argued below that the IJ failed to allow mitigation evidence under 8 C.F.R. § 1208.16(d)(2) — and that argument is preserved on BIA appeal — the Court should not assess this factor as though reversal on the PSC issue is likely. It is not. Drug trafficking convictions carrying multi-year sentences have consistently been treated as per se PSCs under the existing regulatory framework, and the BIA's track record of affirming such findings is well established.

The critical pathway is CAT deferral, and the IJ's CAT analysis contains reversible legal error. Crucially, the PSC bar does not reach Daniel's claim for deferral of removal under the Convention Against Torture. See 8 C.F.R. §§ 1208.16(c)(4), 1208.17. A PSC finding eliminates statutory withholding under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) — it does not eliminate CAT deferral. The IJ denied CAT on the merits, but that denial rested on two legally independent errors, either of which independently requires remand.

First, 8 C.F.R. § 1208.16(d)(3) requires the IJ to consider past harm suffered by the applicant as evidence bearing on the likelihood of future torture. The IJ failed to do this. The IJ's written decision stated that Daniel had experienced no persecution "for the past seven years." That finding is factually erroneous on its face. Daniel was physically attacked by Nicaraguan police during a political protest in Nicaragua — suffering head injuries, memory loss, seizures, and a broken ankle

requiring hospitalization — in 2019. He then fled Nicaragua with his family and entered the United States in October 2021. As of the IJ's December 2025 decision, Daniel had been physically present in the United States for approximately four years. He has experienced no further persecution from the Nicaraguan government for the straightforward reason that he has been in the United States — beyond that government's physical reach. The IJ's statement that Daniel suffered no harm "for the past seven years" conflates the Ortega regime's lack of access to Daniel with the absence of persecution risk. By this logic, no asylum applicant who successfully fled to the United States could ever demonstrate past harm. That is not the law. See 8 C.F.R. § 1208.16(d)(3) (requiring consideration of past harm regardless of whether the applicant is currently outside the country of removal). The IJ's failure to properly weigh documented past persecution — corroborated by a full positive credibility finding — in the CAT analysis is an independent basis for remand.

Second, the IJ made full positive credibility findings as to both Daniel and his wife, and Daniel's fear of detention and torture at the hands of the Ortega regime was specifically found credible at the reasonable fear stage — the threshold inquiry that placed him in withholding-only proceedings in the first place. The IJ's subsequent finding that the evidence of future torture was "insufficient" sits in irresolvable tension with those earlier determinations. Where the record contains a

positive credibility finding, a prior adjudicatory determination of reasonable fear, documented past torture corroborated by medical sequelae, and a CAT analysis that the IJ herself conducted on the basis of an erroneous seven-year timeline, the probability of BIA or Tenth Circuit remand on CAT grounds is substantial.

The outcome of Daniel's appeal is genuinely uncertain. But that uncertainty cannot weigh heavily against him. It is the legal process for protecting his rights — not a mechanism for indefinitely extending his detention. *See Vizguerra-Ramirez*, 2025 WL 3653158, at *12 (treating likelihood of removal as neutral where the pendency of proceedings reflects the legal system working, not the petitioner's fault). The Court should treat this factor as neutral: even on a realistic assessment of the PSC issue, Daniel retains a legally independent, viable CAT pathway that remains open at the BIA and, if necessary, the Tenth Circuit.

IV. THE MATHEWS BALANCING TEST REQUIRES THE GOVERNMENT TO BEAR THE BURDEN OF PROOF BY CLEAR AND CONVINCING EVIDENCE.

Once the Court determines that a bond hearing is required, it must assess what procedures are constitutionally due under the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See L.G.*, 744 F. Supp. 3d at 1180 ("[T]he Tenth Circuit uses *Mathews* when determining the 'type of process required in a given case.'" (quoting *Marin v. King*, 720 F. App'x 923, 940-41 (10th Cir.

2018))); *Vizguerra-Ramirez*, 2025 WL 3653158, at *13 (applying *Mathews* to determine burden of proof at bond hearing). Application of the *Mathews* factors compels placing the burden on the government by clear and convincing evidence.

First, Daniel's private interest in freedom from detention is at the core of the liberty the Due Process Clause protects. He has now been detained for over nine months under conditions this District has consistently characterized as resembling criminal incarceration. He is separated from his wife and daughter, unable to work, and confined to the GEO facility while exercising rights the law expressly grants him. This factor weighs heavily in Daniel's favor.

Second, the risk of erroneous deprivation under the current procedure — in which the government has never been required to justify detention at all — is substantial. As *L.G.* recognized, proving a negative is inherently difficult: Daniel would face the burden of proving he is not a flight risk and not a danger to the community without the government having been required to identify any specific concern or reason for detaining him. 744 F. Supp. 3d at 1183-84. Moreover, the government demonstrably has information relevant to his custody status through its own records, his nearly four years of OSUP compliance, and the extensive merits proceedings already conducted, and the required POCRs. The information needed to assess flight risk and dangerousness is squarely within the government's

possession and control. This factor favors placing the burden on the government. *See L.G.*, 744 F. Supp. 3d at 1184; *Vizguerra-Ramirez*, 2025 WL 3653158, at *14.

Third, the government's interest in maintaining the existing burden allocation does not outweigh the foregoing concerns. As courts in this District and the First and Second Circuits have recognized, the administrative burden of conducting a bond hearing is minimal, and shifting the burden of proof imposes no significant additional cost while serving both the detainee's interest and the taxpayers' interest in reserving detention for those who actually require it. *L.G.*, 744 F. Supp. 3d at 1185; *see also Velasco Lopez v. Decker*, 978 F.3d 842, 854-55 (2d Cir. 2020). Consistent with *Mathews* and the consensus of this District, the government should bear the burden of establishing by clear and convincing evidence that Daniel presents a flight risk or danger to the community warranting continued detention. *See Vizguerra-Ramirez*, 2025 WL 3653158, at *15; *Juarez*, 2024 WL 1012912, at *8; *Arostegui-Maldonado*, 794 F. Supp. 3d at 944; *L.G.*, 744 F. Supp. 3d at 1186.

V. THE GOVERNMENT CANNOT MEET ITS BURDEN — DANIEL'S OWN RECORD DEMONSTRATES HE POSES NO FLIGHT RISK OR DANGER.

If the Court were to consider the merits of the custody determination at this stage, the record overwhelmingly favors Daniel's release. The most probative

evidence of future compliance is past compliance: Daniel reported to ICE without fail across nearly four years of OSUP supervision, maintained a stable address, supported his family, and appeared voluntarily at the very check-in at which he was detained without explanation. ICE's own institutional judgment — reflected in its decision to place him on supervision rather than detain him from the outset — reflects an affirmative assessment that he posed no danger and was not a flight risk.

Nothing material about Daniel's circumstances changed since that OSUP determination. He has a stable Denver address. He has the same family ties — his wife and daughter in the United States — that anchor him against flight. He has no history of flight. He has the same employment history as a laborer. The sole criminal conviction in his record is the 2006 federal marijuana trafficking conviction, for which he was sentenced to sixty months; he has incurred no additional criminal conduct in the nearly two decades since. He was in perfect compliance with his OSUP from its issuance in 2021 until his arrest and detention by ICE in 2025.

ICE has never articulated a basis for Daniel's rearrest or his continued detention beyond the statutory 90-day period. See 8 U.S.C. § 1231(a)(3). By statute, ICE was required to conduct Post-Order Custody Reviews, but the results of those reviews have not been provided to Daniel, and the government bears the burden of demonstrating, through constitutionally adequate procedures, that

continued detention is justified. The record at any individualized bond hearing would show a man who appeared voluntarily at ICE, who never once violated the conditions of his supervision, whom the Immigration Judge found credible, and whose continued detention serves no legitimate civil detention purpose that community supervision could not address equally well.

VI. ICE'S FAILURE TO FOLLOW ITS OWN POST-ORDER CUSTODY REVIEW REGULATIONS INDEPENDENTLY REQUIRES RELIEF UNDER THE ACCARDI DOCTRINE.

The government's violations of its own published POCR regulations provide an independent and sufficient basis for the relief Daniel seeks, separate from the constitutional due process analysis above.

A. Published CFR Regulations Legally Bind the Agency.

The Supreme Court held in *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 266 (1954), that an agency is "expected to render a decision in accord with its own" regulatory obligations, and that failure to do so renders the agency's action invalid. The Tenth Circuit reaffirmed this principle just months ago in *Ramos v. Bondi*, 155 F.4th 1154, 1165 (10th Cir. 2025): "The BIA's regulations legally bind the agency." In *Ramos*, this Court's own circuit enforced 8 C.F.R. § 1003.1(d)(3)(i) against the BIA when it failed to apply the clear-error standard of review its own regulation required — and vacated the BIA's decision on that basis.

The *Accardi* doctrine applies when the regulation at issue is a published rule designed to protect individual rights, not merely an internal management directive or operational memorandum. See *Zalaya Orellana v. Bondi*, No. 24-1111 (4th Cir. June 24, 2025) (holding *Accardi* inapplicable to internal EOIR memorandum lacking force of law). That predicate is unambiguously satisfied here. Sections 241.4 and 292.5(a) of Title 8 of the Code of Federal Regulations are codified, published rules promulgated through notice-and-comment rulemaking. They are legislative rules that have the force of law. The regulations at issue here satisfy *Chrysler Corp. v. Brown*, 441 U.S. 281, 295-96 (1979), which established that rules promulgated through notice-and-comment rulemaking under 5 U.S.C. § 553 carry the force and effect of law. Sections 241.4 and 292.5(a) were published in the Federal Register and promulgated through notice-and-comment. They are legislative rules in the fullest sense — binding on the agency that issued them and enforceable by the courts. They exist specifically to constrain ICE's post-order detention authority and to protect the procedural rights of detained persons like Daniel. They are binding law — not guidance, not policy, not an OPPM. *Ramos* directly confirms that the Tenth Circuit will enforce published CFR regulations against agencies that fail to follow them.

B. ICE Violated Three Independent Provisions of 8 C.F.R. § 241.4.

Section 241.4 governs post-order custody review for persons detained beyond the 90-day removal period. It imposes mandatory, time-bound obligations on ICE — not discretionary ones. ICE has violated at least three of them in Daniel's case.

First, 8 C.F.R. § 241.4(c) requires ICE to conduct an initial custody review within 90 days of the commencement of post-order detention. Daniel has been detained since June 26, 2025. That initial review was due by approximately September 24, 2025. No review has been disclosed.

Second, 8 C.F.R. § 241.4(i) requires that before a custody determination is made, the detained person be notified of the pending review and be given a meaningful opportunity to submit written documentation bearing on the § 241.4(f) custody factors — which include, among other things, the alien's history of compliance with supervision, family and community ties, employment history, rehabilitation, and likelihood of removal. Daniel was never notified of any pending POCR and was given no opportunity to submit documentation. The § 241.4(f) factors map directly onto his record: nearly four years of perfect OSUP compliance, stable family ties, steady employment, zero recidivism, and the IJ's positive credibility findings. ICE conducted whatever internal review it conducted — if any — entirely in isolation from this record.

Third, 8 C.F.R. § 241.4(j) requires that ICE issue a written decision explaining the basis for any continued detention, and that this decision be provided to the alien. No written decision has ever been provided to Daniel or his counsel. The government cannot produce what does not exist.

C. ICE Independently Violated 8 C.F.R. § 292.5(a) by Failing to Notify Counsel of Record.

A Form G-28 designating undersigned counsel has been on file with ICE since June 2025. Section 292.5(a) requires that whenever notice of any proceeding or action is owed to a person who is represented by counsel of record, that notice must be directed to counsel — not merely to the detained individual. The notice obligation created by § 241.4(i) therefore ran not to Daniel alone but to undersigned counsel. ICE's failure to notify counsel of a pending custody review affecting Daniel's liberty is a compounded and independent regulatory violation. The right to have counsel participate in a custody determination is precisely the kind of individual right §§ 241.4 and 292.5(a) were designed to protect, and precisely what *Accardi* obligates this Court to enforce.

D. Prejudice Is Presumed Under the *Garcia-Flores* Framework as Applied by the Tenth Circuit in *Aguayo*.

Under *Accardi* and its progeny, prejudice from a regulatory violation implicating individual liberty interests may be presumed. See *Montilla v. INS*, 926

F.2d 162, 169 (2d Cir. 1991). The presumption is not merely available here — it is compelled. ICE did conduct questioning of Daniel that it apparently treated as a POCR. But Daniel was never told that was what was happening. He did not know he was participating in a custody review. He was given no opportunity to present documentation, invoke his four years of OSUP compliance, or have counsel present. Undersigned counsel — whose G-28 has been on file since June 2025 — was never notified that any custody review was pending or occurring, in direct violation of §§ 241.4(i) and 292.5(a). What ICE conducted was not a POCR within the meaning of the regulation. It was an unnoticed, uncounseled, undisclosed interrogation that Daniel did not know was determining whether he would remain imprisoned. That is not the procedural framework § 241.4 establishes — it is the precise opposite of it.

The *Aguayo* petitioner failed on presumed prejudice for two reasons that have no application to Daniel. First, the regulations at issue in *Aguayo* contained express language stating they did not create any rights "enforceable at law by any party." *Id.* (quoting 8 C.F.R. § 287.12). Sections 241.4 and 292.5(a) contain no such disclaimer — they are mandatory provisions promulgated specifically to protect detained persons and to constrain ICE's detention authority. Second, Aguayo involved pre-arrest violations over a twelve-hour period before removal proceedings began — not the ongoing, multi-month failure to conduct any

adequate review of a person who has been detained for over nine months. The liberty stakes and the constitutional context are categorically different.

On the first *Garcia-Flores* prong — constitutional mandate — the notice and participation requirements of §§ 241.4(i) and 292.5(a) are not merely consistent with constitutional interests; they are the regulatory embodiment of the Fifth Amendment due process protections that this entire petition establishes. The *Mathews* analysis in Section IV above confirms that the risk of erroneous deprivation is maximized precisely when the government conducts custody determinations without notice to the detainee or his counsel. Regulations that implement constitutional requirements are constitutionally mandated within the meaning of *Garcia-Flores*. See *Aguayo*, 78 F.4th at 1219; *Montilla v. INS*, 926 F.2d 162, 169 (2d Cir. 1991).

On the second *Garcia-Flores* prong — systemic framework failure — ICE did not violate one provision of the POCR regulations. It violated all of them. Section 241.4(c): no timely initial review. Section 241.4(i): no notice, no opportunity to participate. Section 241.4(j): no written decision. Section 292.5(a): no notification to counsel of record. The POCR framework is an integrated procedural structure — notice, participation, written decision, counsel notification — designed to insure the fair processing of custody determinations affecting a person's liberty. ICE did not fail to follow part of that framework. It failed to

follow any of it. That is precisely the "entire procedural framework" failure that *Garcia-Flores* and *Aguayo* identify as the basis for presuming prejudice.

Independently, actual prejudice is plain on this record. Had undersigned counsel been notified of a pending POCR under §§ 241.4(i) and 292.5(a), counsel would have submitted documentation of Daniel's four years of unbroken OSUP compliance, his voluntary appearance at the check-in at which he was arrested, his stable family ties and employment, the IJ's positive credibility findings, and the complete absence of any new criminal conduct in nearly two decades. This is precisely the record that § 241.4(f) requires a reviewing officer to consider. ICE never considered it, because ICE never invited it. The government cannot now claim its own regulatory violations were harmless when it controls all of the records it was required to disclose and never disclosed them.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Daniel Isaac Moreno Miranda respectfully requests that this Court:

1. Issue an Order to Show Cause directing Respondents to show cause within three (3) days why the writ of habeas corpus should not be granted;
2. As part of the Order to Show Cause, and as an exercise of this Court's inherent authority to preserve its jurisdiction, direct Respondents to maintain Petitioner

within the territorial jurisdiction of this Court and to provide undersigned counsel with not less than thirty (30) days' advance written notice before any removal, transfer outside this District, or other disposition that would remove Petitioner from this Court's jurisdiction;

3. Grant the writ of habeas corpus and direct Respondents to bring Petitioner before an impartial Immigration Judge for a constitutionally adequate, individualized bond hearing within three (3) days of this Court's final order, at which: (a) Respondents bear the burden of establishing by clear and convincing evidence that Petitioner presents a flight risk or danger to the community warranting continued detention; (b) the Immigration Judge meaningfully considers alternatives to detention, including community supervision; and (c) the Immigration Judge considers Petitioner's ability to pay any bond amount;
4. In the alternative, order Petitioner's release on reasonable conditions of supervision pending resolution of his administrative and judicial removal proceedings; or conduct his bond hearing forthwith before this District Court;
5. Direct Respondents to produce as part of their return to the Order to Show Cause all documentation relating to any Post-Order Custody Review conducted in Petitioner's case, including: (a) all § 241.4 worksheets; (b) any written decisions or determinations issued under 8 C.F.R. § 241.4(j); (c) documentation

of any notice provided under 8 C.F.R. § 241.4(i); and (d) any record of notice directed to counsel of record pursuant to 8 C.F.R. § 292.5(a).

6. Award Petitioner his reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. The government's position in opposing Daniel's entitlement to a bond hearing is not substantially justified given the overwhelming weight of precedent in this District — including no fewer than seven prior rulings by judges of this Court on the identical constitutional question — and the government's own four-year institutional judgment that Daniel did not require detention. *See Daley v. Choate*, No. 24-1191 (10th Cir. Nov. 3, 2025) (affirming EAJA fee award in immigration detention habeas action); and

7. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/jimsalvator
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