IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EDUARDO YDLIBI TELLISSEH,	§	
	§	
Petitioner,	§	
	§	
v.	§	CAUSE NO. EP-26-CV-1907-KC
	§	
MARKWAYNE MULLIN, et al.,	§	
	§	
Respondents.	§	

PETITIONER'S EMERGENCY MOTION TO ALTER OR AMEND THE JUDGMENT, OR IN THE ALTERNATIVE FOR RELIEF FROM JUDGMENT, AND FOR IMMEDIATE RELEASE FROM CUSTODY

INTRODUCTION

On July 31, 2026, this Court granted the Petition in part. It found that Petitioner Eduardo Ydlibi Tellisseh had carried his burden under *Zadvydas v. Davis*, 533 U.S. 678 (2001); that the burden had shifted to Respondents; and that Respondents had offered "no anticipated timeline for removal" and "appear[ed] to have taken virtually no concrete steps to remove him since his return." Order 4, ECF No. 11. The Court afforded Respondents "a final opportunity": by August 14, 2026, they were to either lawfully remove Petitioner or release him from custody under reasonable conditions of supervision. *Id.* at 4–5. "Barring exceptional circumstances," the Court wrote, "there will be no extensions." *Id.* at 5.

Respondents did not remove Petitioner. On August 11, 2026, they released him. On August 14, they filed a status report representing compliance and attaching the release order. ECF Nos. 12, 12-1. On August 17, this Court entered Final Judgment, observed that the only matter remaining was a fee request foreclosed by *Barco v. Witte*, 65 F.4th 782, 785 (5th Cir. 2023), and directed the Clerk to close the case. ECF No. 13.

Four days later—ten days after the release, and 21 days after the Order—U.S. Immigration and Customs Enforcement ("ICE") arrested Petitioner again in El Paso and returned him to the very custody from which this Court ordered him released. Ex. A, Aff. of Jorge Ydlibi ¶¶ 1–3.

Nothing that mattered to this Court's ruling has changed. The Court held that removal to Mexico is not significantly likely because "Mexico does not accept third country nationals for removal when they do not consent to go there," and Petitioner "previously refused to consent... and continues to refuse to give" it. Order 4, ECF No. 11. He refuses still. Respondents have identified no other country—not in their show-cause response, not in the two declarations they filed, and not in the 21 days since. The single development Respondents can point to is a negative fear determination as to Mexico issued today. That determination does not supply Mexico's consent, and no Immigration Judge has reviewed it.

Respondents obtained a final judgment on August 17 on the strength of their representation that they had complied by releasing Petitioner, and then dismantled the predicate for that judgment on August 21. Respondents essentially acted as if this Court's findings were enforceable for ten days and no longer, and the "final opportunity" the Court extended were a formality that Respondents could satisfy and then revoke at will. Petitioner respectfully asks the Court to alter or amend the judgment, and to order his immediate release and the reinstatement of his October 20, 2014 Order of Supervision. Respondents removed this man to Venezuela once already, in violation of an unterminated grant of deferral of removal under the Convention Against Torture; emergency relief is necessary before they violate the law yet again.

BACKGROUND

1. Petitioner fled Venezuela in 2005, was granted asylum in 2006, and became a lawful permanent resident in 2007. Pet. ¶ 15, ECF No. 1. On November 19, 2013, he was ordered

removed but granted deferral of removal to Venezuela under the Convention Against Torture ("CAT"). *Id.* ¶ 17. That grant has never been terminated.

2. After approximately eleven months of post-order detention during which ICE could not remove him, Petitioner was released on an Order of Supervision ("OSUP") on October 20, 2014. Pet. ¶ 18. In releasing him, ICE necessarily determined that his release posed neither a danger to the community nor a significant risk of flight, with full knowledge of his 2010 conviction. *See* 8 C.F.R. § 241.4(e). He complied with every condition of that OSUP for eleven years.

3. On November 25, 2025, ICE arrested and re-detained Petitioner. Pet. ¶ 20. He was served with no notice of revocation of his OSUP, then or since. *Id.* While detained, ICE officers repeatedly pressed him to sign removal paperwork for Mexico. *Id.* ¶ 21. He refused and expressed fear of removal to Mexico. *Id.*

4. In January 2026, Respondents removed Petitioner to Venezuela notwithstanding his unterminated CAT deferral. Pet. ¶ 24. He lived in hiding there for months. *Id.* ¶ 25.

5. Petitioner sued in this Court on April 1, 2026. Respondents conceded the removal was wrongful, and this Court ordered facilitation of his return. *See Ydlibi Tellisseh v. Mullin*, No. 3:26-cv-911-KC, ECF Nos. 11, 13. He returned on July 8, 2026, and was taken into ICE custody on arrival and transferred to El Paso. Pet. ¶¶ 32–34.

6. Petitioner filed the instant Petition on July 8, 2026. On July 16, the Court ordered Respondents to show cause. ECF No. 9. Respondents responded on July 23, arguing that Petitioner could not show removal was unlikely and that ICE was "making efforts" to remove him to a third country. ECF No. 10 at 5, 7.

7. On July 31, the Court granted the Petition in part. It held that the six-month *Zadvydas* period is cumulative and does not reset upon re-detention; that Petitioner's aggregate

post-order detention far exceeded it; and that Petitioner had shown good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, because Mexico does not accept non-consenting third-country nationals and Petitioner does not consent. Order 3–4, ECF No. 11. The Court found that Respondents "provide no anticipated timeline for removal," had taken "virtually no concrete steps," and offered nothing "regarding their efforts to identify a third country other than Mexico." *Id.* at 4.

8. Respondents did not remove Petitioner. On August 11, 2026, they released him on ICE Form I-220A, subject to electronic monitoring under an Alternatives to Detention program and to conditions including that he "continue to follow any prescribed doctor's orders." Ex. B at 1, 3.

9. On August 14, Respondents filed a status report stating that Petitioner "was released on August 11, 2026" and attaching the release order. ECF Nos. 12, 12-1. On August 17, the Court entered Final Judgment resting on that release and closed the case. ECF No. 13.

10. On the morning of August 21, 2026, Petitioner attended a fear interview at an ICE Enforcement and Removal Operations office in El Paso, accompanied by counsel. Ex. A ¶ 1. Petitioner and counsel were directed to leave while a decision was made, and Petitioner was instructed to return approximately one hour later. Id. ¶ 2. When he returned, without counsel, he was detained. *Id.* His family was notified at approximately 1:50 p.m. *Id.* ¶ 3.

11. Respondents issued a negative fear determination as to Mexico on August 21, 2026. No Immigration Judge has reviewed that determination.

12. Upon information and belief, Respondents made no determination that, "on account of changed circumstances," there is now a significant likelihood that Petitioner may be removed in the reasonably foreseeable future, *see* 8 C.F.R. § 241.13(i)(2), and served no notice of revocation

on Petitioner or on counsel of record. Undersigned counsel has received no such notice.

13. Petitioner has a serious cardiac condition. On August 20, 2026—the day before his arrest—his cardiologist advised him that he had suffered three episodes of arrhythmia: upon his detention in November 2025, on the day of his deportation in January 2026, and in June 2026. Ex. A ¶ 4. The cardiologist attributed the episodes to the shock and stress of those events and advised that Petitioner requires preventive surgery within two months. Id. ¶¶ 4–5.

ARGUMENT

I. The Judgment Should Be Altered, Amended, or Set Aside.

Rules 59 and 60 apply in habeas proceedings. Fed. R. Civ. P. 81(a)(4); Habeas Rule 12. This motion is filed within twenty-eight days of entry of judgment and is therefore timely under Rule 59(e).

A Rule 59(e) motion may be granted to correct manifest injustice. The August 17 judgment rests on a single factual premise: that Respondents complied with the July 31 Order by releasing Petitioner, leaving nothing but a foreclosed fee request. ECF No. 13. That premise no longer holds. Respondents secured the judgment on August 14 and undid its predicate on August 21. A judgment premised on a release that the releasing party revokes ten days later, on a record materially identical to the one this Court has already adjudicated, works precisely the manifest injustice Rule 59(e) exists to prevent.

Relief is independently warranted under Rule 60(b)(6), which reaches extraordinary circumstances not captured by the enumerated grounds and is the more natural vehicle for facts arising after judgment. Petitioner also invokes Rule 60(b)(5): whatever prospective effect the judgment retains is no longer equitable when the custody it resolved has been reimposed. Should the Court conclude that neither Rule affords relief, Petitioner respectfully asks that the motion be

construed as a renewed petition under 28 U.S.C. § 2241 directed at his new custody, and that the Court retain the matter.

Respondents will likely answer that the July 31 Order was disjunctive, that they chose release, and that they complied. The answer is that compliance with a disjunctive command is measured by performance of the chosen branch, not by a ten-day interval the performing party terminates at will. Release that the government may revoke on no changed facts is not "release… under reasonable conditions of supervision." Order 5, ECF No. 11.

II. Respondents Should Be Ordered to Show Cause Regarding Civil Contempt.

Civil contempt requires a clear and unambiguous command and clear and convincing proof of noncompliance. The command here was clear: remove Petitioner lawfully or release him, by August 14, with no extensions. Respondents represented compliance, obtained the benefit of a final judgment, and then reversed course four days after that judgment issued. Petitioner does not ask the Court to adjudicate contempt on this record. He asks the Court to order Respondents to show cause why they should not be held in civil contempt, and to state under oath the basis on which they revoked a release this Court ordered. Any request for sanctions is reserved pending that showing.

III. On This Court's Own Findings, Petitioner Is Entitled to Immediate Release.

The July 31 Order resolved every question this motion presents, and Respondents did not appeal it. The Court held that the *Zadvydas* period is cumulative; that Petitioner's aggregate post-order detention—approximately eleven months in 2013–14, 62 days in 2025–26, and 34 days between July 8 and August 11, 2026, now exceeding fourteen months—far surpasses the presumptively reasonable six months; that Petitioner carried his burden; and that Respondents,

given a final two-week opportunity, failed to carry theirs. Order 3–5, ECF No. 11. Those findings are law of the case.

Nothing has changed. Respondents have never identified a country other than Mexico. Mexico does not accept third-country nationals who do not consent—a proposition this Court observed Respondents have "acknowledged in numerous habeas cases before this Court." Order 4, ECF No. 11. Petitioner refused consent in 2025, refused in July 2026, and refuses now.

The negative fear determination issued today does not alter the analysis. This Court's holding turned on consent, not on fear. A negative screening establishes at most that Petitioner has not shown a likelihood of harm in Mexico; it does not establish that Mexico will accept him, and Mexico's consent is what the Court found lacking. Moreover, no Immigration Judge has reviewed the determination. Removal to Mexico is therefore no more likely today than it was on July 31.

Nor is there any basis for detention independent of removal. ICE itself determined in 2014 that Petitioner's release posed no danger and no flight risk, and eleven years of compliance followed. Respondents have never invoked 8 C.F.R. § 241.14, the sole framework authorizing post-order detention on dangerousness grounds, which requires a Public Health Service examination, written findings, and immigration court proceedings at a clear-and-convincing standard. And Petitioner was released onto electronic monitoring, so Respondents possess continuous location data and a documented compliance record. Detention that serves no removal purpose "bear[s] no reasonable relation" to the statute's aim. *Zadvydas*, 533 U.S. at 690.

IV. The Re-Detention Disregarded the Regulations Governing Revocation of Post-Order Release.

Petitioner has been subject to a final order of removal since November 19, 2013. His detention authority is therefore 8 U.S.C. § 1231(a), and his release was a release under § 1231(a)(3). The August 11 Form I-220A recites that Petitioner is being released "[i]n accordance

with section 236 of the Immigration and Nationality Act" and that he "ha[s] been arrested and placed in removal proceedings." Ex. B at 1. Both recitals are incorrect on this record. Nothing turns on the label: the substance of Petitioner's custody is governed by § 1231 regardless of the form ICE selected, and an erroneous caption cannot supply authority Respondents otherwise lack.

Post-order release may be revoked to enforce removal only where, "on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Upon revocation, the noncitizen must receive notice of the reasons and an initial informal interview promptly after his return to custody. 8 C.F.R. §§ 241.13(i)(3), 241.4(l). Upon information and belief, Respondents made no such determination and served nothing on Petitioner or on counsel. This is the third time in this case that Petitioner has been taken into custody without notice of revocation. An agency is bound by its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

The remedy for the wrongful removal of this Petitioner is that his case be "handled as it would have been had he not been improperly sent" abroad. *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009). The status quo ante is the October 20, 2014 Order of Supervision under which Petitioner lived without incident for eleven years—not a Form I-220A issued under the wrong statute and conditioned on electronic monitoring. The Court should order that OSUP reinstated by its terms.

V. Interim Relief Barring Removal Should Issue Immediately.

Pending disposition of this motion, the Court should bar Petitioner's removal from this District or from the United States absent seventy-two hours' advance written notice to the Court and counsel. The *Winter* factors are satisfied. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

First, Petitioner is likely to succeed. This Court has already found that Respondents failed to carry their burden under *Zadvydas* on a record materially identical to this one, and that finding stands unappealed.

Second, the harm absent relief is irreparable and, in this case, demonstrated rather than hypothetical. Respondents removed Petitioner to Venezuela in January 2026 in violation of an unterminated CAT deferral, and it took this Court's intervention and nearly six months to bring him back. They transferred him from Houston to El Paso within hours of his return. Removal would place Petitioner beyond this Court's practical reach and, on the record already before the Court, at risk of torture. His cardiac condition compounds the harm: his cardiologist has attributed three arrhythmia episodes to the stress of his prior detention and deportation and has advised that he requires preventive surgery within two months. Ex. A ¶¶ 4–5. Respondents' own release conditions required him to follow his physician's orders. Ex. B at 3. He kept that appointment on August 20 and was detained the following day.

Third and fourth, the balance of equities and the public interest—which merge where the government is the opposing party, *Nken*, 556 U.S. at 435—favor relief decisively. The requested order asks nothing of Respondents but notice. It does not bar removal; it requires only that Respondents tell the Court and counsel before effecting one. Against that minimal burden stands an irreversible harm. There is no public interest in removing a person in a manner that evades judicial review, and none in detaining a person the government cannot lawfully remove.

CONCLUSION AND PRAYER FOR RELIEF

Petitioner respectfully requests that the Court enter an order:

(a) Altering or amending the August 17, 2026 Final Judgment, or granting relief from that judgment, and reopening this case;

(b) Immediately barring Petitioner's removal from the Western District of Texas and from the United States absent 72 hours advance written notice to the Court and to counsel, pending disposition of this motion;

(d) Ordering Petitioner's immediate release from custody and the reinstatement of his October 20, 2014 Order of Supervision by its terms;

(e) Ordering Respondents to show cause why they should not be held in civil contempt of the Court's July 31, 2026 Order;

(f) Prohibiting Petitioner's re-detention absent materially changed circumstances presented to the Court in advance; and

(g) Granting such other and further relief as the Court deems just and proper.

Dated: August 21, 2026

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Petitioner seeks relief on an emergency basis. Petitioner was taken into custody on the afternoon of August 21, 2026, and this motion is filed the same day. Conference with counsel for Respondents was not practicable within that time. Respondents are presumed to oppose the relief requested. Undersigned counsel will confer with counsel for Respondents at the earliest opportunity and will promptly advise the Court of Respondents' position.

/s/ Dianisa Erica Sosa
Dianisa Erica Sosa

CERTIFICATE OF SERVICE

I certify that on August 21, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record, including counsel for Federal Respondents.

/s/ Dianisa Erica Sosa
Dianisa Erica Sosa