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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CIVIL DIVISION

GERSON GARRIDO RUIZ

Petitioner,

v.

MOISES BECERRA, San Francisco Field Office) Director, Immigration and Customs Enforcement And Removal Operations ("ICE/ERO"); **DAVID J. VENTURELLA**, Acting Director of Immigration)Customs Enforcement ("ICE"); U.S. Immigration and Customs) Enforcement; **MARKWAYNE MULLIN,** Secretary of the U.S. Department of Homeland Security ("DHS"); and **TODD BLANCHE,** Attorney General of the United States,

Respondents.

Case No. _____
Agency No. [redacted]

VERIFIED **PETITION FOR WRIT OF HABEAS CORPUS**

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

INTRODUCTION

1. Gerson Garrido Ruiz ("Petitioner"), by and through his undersigned counsel, hereby files this petition for a write of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release form immigration custody where he is being held by the U.S. Department of Homeland Security ("DHS").
2. Petitioner is a refugee from El Salvador. After fleeing his country to escape years of escalating violence and death threats, he sought asylum in the United States.
3. Since October 5, 2026, Petitioner has been unlawfully redetained by Respondents in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution, federal regulations and the Administrative Procedure Act ("APA").
4. Petitioner must be released from custody unless and until DHS proves to a neutral adjudicator,a bond that an immigration judge previously set and that Petitioner is a flight risk or danger to the community. Due process requires the government to provide noncitizens with notice and a hearing prior to retention and that re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy procedural due process.
5. Absent an order from this Court, Petitioner will be indefinitely detained and removed from the United States.
6. Petitioner asks this Court to find that his detention was unlawful and order him released immediately.

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1346 (United States as Respondent). This Court also has jurisdiction to hear this case under the Suspension Clause of Article I of the United States Constitution. INS v. St. Cyr, 533 U.S. 289 (2001).

9. Because Petitioner is challenging their custody, jurisdiction is proper in this Court. While the courts of appeals have jurisdiction to review removal orders through petitions for review, see 8 U.S.C. §§ 1252(a)(1) and (b), the federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness of their detention. See, e.g., Zadvydas v. Davis, 533 U.S. 678, 687-88 (2001); Nadarajah v. Gonzales, 443 F.3d 1069, 107576 (9th Cir. 2006). Petitioner has exhausted any and all administrative remedies to the extent required by law.

VENUE

10. Venue is proper because Petitioner is detained at the San Francisco ICE Field Office at 630 Sansome Street in San Francisco, California which is within the jurisdiction of this District. Venue is further proper because a substantial part of the events or omissions given rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding

twenty days, is allowed." *Id.* (emphasis added).

12. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

13. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and detained by Respondents.

PARTIES

14. Petitioner is a refugee currently detained at San Francisco ICE Field Office at 630 Sansome Street, San Francisco, California 94114. Petitioner is a resident of Redwood CIty, California. He is in the custody, and under the direct control, of Respondents and their agents.

15. Respondent, **MOISES BECERRA,** San Francisco Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); is the has immediate physical custody of Petitioner as Petitioner is currently being held detained at the ICE Field Office at 630 Sansome Street, San Francisco, California 94114. pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent **MOISES BECERRA** is a legal custodian of Petitioner.

16. Respondent **MOISES BECERRA** is sued in his official capacity as the Acting Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement.

Respondent **MOISES BECERRA** is a legal custodian of Petitioner and has authority to release him

17. Respondent , **MARKWAYNE MULLIN,** is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent MULLIN is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent MULLIN is a legal custodian of Petitioner.

18. Respondent **TODD BLANCHE is** sued in his official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent BONDI is a legal custodian of Petitioner.

STATEMENT OF FACTS

19. Petitioner is a 48 -year-old citizen of El Salvador. He has a long-term partner legally in the United States, and is the father of a 14 year old son, [redacted]. He has worked for more than a decade at his current place of work, Lov Azzano Mechianical, Inc. and is a valued employee. He has suffered past persecution in his native El Salvador and presently fears his return to the country.

20. Petitioner arrived in the United States in 2006. He was detained by Immigration and Customs Enforcement on August 18, 2011 after an arrest. Petitioner filed for asylum in 2012, and was subsequently released from detention on a $2000 bond when it was determined that he presented no flight or danger risk. An Immigration Judge denied

Petitioner's application for asylum, withholding of removal and protection under the Convention Against Torture on March 5, 2019. Petitioner timely appealed that decision to the Board of Immigration Appeals, but the appeal was dismissed by the BIA on August 3, 2022. Petitioner filed a Petition for Review to the Ninth Circuit Court of Appeals which was dismissed on November 17, 2023. Petitioner was detained by Immigration and Customs Enforcement officers on his way to work on October 5, 2026 at 6:30 a.m. He was not told why he was being detained or where he was being taken.

LEGAL FRAMEWORK

A. Post-Removal Order Detention is Constitutionally Suspect and not Authorized by Statute where Removal is not Reasonably Foreseeable

21. In *Zadvydas v. Davis*, the Supreme Court held that the immigration statute 8 U.S.C. § 1231(a)(6) does not allow ICE to detain a noncitizen indefinitely while attempting to carry out removal. 533 U.S. 678, 689 (2001). Because of the "serious constitutional problem" posed by indefinite detention, the Court read the statute to limit a noncitizen's detention to "a period reasonably necessary to bring about that alien's removal from the United States." *Id.* 20. The Court also recognized six months as the "presumptively reasonable period" of post-removal order detention. Id. at 701. After six months, once the noncitizen provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Id.* Moreover, "as the period of prior post removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." Id. In *Clark v. Martinez*, the Supreme Court held that its ruling in Zadvydas applies equally to noncitizens who have never been admitted to the United States. 543

U.S. 371 (2005). 21. Courts consider the cumulative length of post-order detention when determining if post-order detention exceeds the six-month "presumptively reasonable" period. *See, e.g., Nguyen v. Scott*, 796 F. Supp. 703, 721-22 (W.D. Wash. 2025); *Phan v. Warden of Otay Mesa Det. Facility*, 813 F. Supp. 3d 1179, 1184 (S.D. Cal. 2025); *Huynh v. Marin*, No. 5:26-cv-02405-SP, 2026 WL 1772734, at *2 (C.D. Cal. June 16, 2026). The six-month period of presumptive reasonableness set out in Zadvydas "outlined a 'guide' for approaching these detention challenges . . . not a prohibition on claims challenging detention less than six months." *Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018).

B. **Revocation of Post-Removal Order Release Must Comport with the Governing Regulations.**

22. The Government has promulgated regulations concerning the release of noncitizens who are subject to a final removal order. 8 C.F.R. § 241.4; 8 C.F.R. § 241.13. Both regulations provide that, upon revocation of release, the noncitizen "will be notified of the reasons for revocation of his or her release," and will be given "an initial informal interview promptly after his or her return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation." 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). 23. 8 C.F.R. § 241.4(l) only permits certain officials to revoke a noncitizen's release: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160-61 (W.D.N.Y. 2025) (citing 8 C.F.R. § 241.4(l)(2) and § 1.2 and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director, or another local ICE official with

delegated authority—rather than the ICE Executive Associate Director—intend to revoke release, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). 24. 8 C.F.R. § 241.13(i) further states that release can be revoked only where the noncitizen violated their conditions of release or where the government can show that, "on account of changed circumstances," there has been a "significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(1), (2) The government requesting a travel document and making conclusory statements that re-detention is warranted because circumstances have changed such that removal is now reasonably foreseeable is clearly insufficient to make this showing. *See Nguyen v. Noem*, 817 F. Supp. 3d 889, 897 (C.D. Cal. 2025); Nguyen v. Scott, 788 F. Supp. 3d at 150-52. 25. The government is required to follow these regulations in revoking a noncitizen's release. *See Constantinovici v. Bondi*, 806 F. Supp. 3d 1155, 1164 (S.D. Cal. 2025) (citing *United States ex rel Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954)). When the government fails to follow these regulations, release is the required remedy. *See, e.g., Nguyen v. Noem*, 817 F. Supp. 3d at 899.

CLAIMS FOR RELIEF

COUNT ONE
Detention in violation of 8 U.S.C. § 1231(a)(6) and the Due Process Clause

23. The foregoing allegations are realleged and incorporated herein. Petitioner's continued detention is unlawful and violates 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. The fact that Petitioner has been in post-final-order custody for less

than six months does not foreclose his claim that the detention is unlawful under *Zadvydas*. *See Clark v. Martinez*, 543 U.S. 371, 384 (2005) ("*Zadvydas* did not hold that the statute authorizes detention until it approaches constitutional limits; it held that, since interpreting the statute to authorize indefinite detention (one plausible reading) would approach constitutional limits, the statute should be read (in line with the other plausible reading) to authorize detention only for a period consistent with the purpose of effectuating removal."). Thus in *Palmer-Sardinas v. Chestnut*, No. 1:26-CV-03520-DC-SCR, 2026 WL 2043395, at *3 (E.D. Cal. July 15, 2026), *report and recommendation adopted*, No. 1:26-CV-03520-DC-SCR, 2026 WL 2216044 (E.D. Cal. July 31, 2026), this Court discussed the fact that a grant of habeas relief under *Zadvydas* would be appropriate even if the petitioner had only been detained for four months following a final order of removal because there was good reason to believe petitioner could not be removed in the reasonably foreseeable future. Many district courts have granted petitions and ordered a petitioner be released under *Zadvdyas* before the post-final-order six-month period has run if the petitioner can show their removal in the reasonably foreseeable future is unlikely. *See*, *e.g.*, *Mohammad J.B. v. Warden, California City, et al.*, No. 1:26-CV-02978-TLN-SCR, 2026 WL 2137754, at *5 (E.D. Cal. July 24, 2026) (ordering release four months and 6 days after removal order became final where government produced no evidence petitioner's removal likely in reasonably foreseeable future); *Ndandu v. Noem*, 819 F. Supp. 3d 1155, 1162 (S.D. Cal. 2026) (granting petition and ordering release approximately three months after removal order finalized where petitioner established removal is not reasonably foreseeable); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020)("[a]t no point did the *Zadvydas*

Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

24. Notably, the "standard for lawful continued detention is not that the government simply continue 'good faith efforts to effectuate [removal],' nor that a non citizen must show that removal is impossible." S.F. v. Bostock, No. 3:25-cv-01084-MTK, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025) (*citing Zadvydas*, 533 U.S. at 702). 33. Under similar circumstances, courts have repeatedly found that removal is not reasonably foreseeable and that detention is therefore no longer authorized by § 1231(a)(6). *See, e.g., Nguyen v. Scott*, 796 F. Supp. 3d at 723; 11 *Karimaghaee,* --- F. Supp. 3d ---, 2026 WL 331360, at *4-5; *Isho v. D. Marin,* --- F. Supp. 3d ---, No. 5:26-cv-00764-CV (AS), 2026 WL 855746, at *3-4 (C.D. Cal. Mar. 4, 2026).

25. Accordingly, Respondents cannot meet their burden to show that removal is reasonably foreseeable, Petitioner's detention is no longer authorized under § 1231(a)(6), and this Court should order Petitioner's immediate release.

COUNT TWO

Re-detention in violation of the governing regulations

26. Petitioner was previously released from ICE detention after receiving a removal order and then ICE detained him again without following the governing regulations, as described below.

27. The foregoing allegations are realleged and incorporated herein.

28. Respondents violated the governing regulations when they re-detained Petitioner and release is therefore required.

29. First, as described in the fact section above, ICE failed to adequately notify Petitioner of "the reasons for revocation" of release and failed to provide Petitioner with a meaningful opportunity to respond to those reasons at a prompt, informal interview, in violation of the governing regulation. See 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1). "Courts in this district, circuit, and across the country have held that [] vague, generic statement[s]" in a notice of revocation of release provide "insufficient notice" of the reasons for revocation. *Nguyen v. Noem,* 817 F. Supp. 3d at 899; *see also Hashemi v. Noem*, 809 F. Supp. 3d 1027, 1034-35 (C.D. Cal. 2025); id. at 1030 ("While the government points to a paper trail suggesting it complied with the requirements governing the revocation of release . . . the Court finds that this appearance of process was a sham"). ICE's failure to provide Petitioner with a prompt interview and an opportunity to respond to ICE's stated reasons for revocation is reason enough to find Petitioner's detention unlawful. *See, e.g., Phan v. Noem*, No. 3:25-cv-02422-RBM-MSB, 2025 WL 2898977, at *3-4 (S.D. Cal. Oct. 10, 2025); Yang v. Kaiser, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025). 38. Second, as described in the fact section above, there is no evidence that Petitioner has violated their terms of release such that re-detention was warranted. 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1).

30. Nor was re-detention warranted under 8 C.F.R. § 241.13(i)(2), because ICE has failed to meet its burden of establishing that circumstances have changed such that there is now a "significant likelihood" that the individual can be "removed in the reasonably foreseeable future." *See* 8 C.F.R. § 241.13(i)(2); *Sun v. Noem*, No. 3:25-cv-02433-CAB-MMP, 2025 WL 2800037, at *2-3 (S.D. Cal. Sept. 30, 2025). There is no indication that ICE has secured a travel document for Petitioner. A pending travel document request is

insufficient to establish changed circumstances justifying re-detention. *See, e.g., Phan v. Becerra,* No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D. Cal. July 16, 2025); Nguyen v. Noem, 817 F. Supp. 3d at 896-98. 39.

31. Third, if 8 C.F.R. § 241.4 governs Petitioner's re-detention and Petitioner's release was not revoked by the ICE Executive Associate Director and if the local ICE officer who made the decision to revoke release did not first make the required findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the ICE Executive Associate Director, then the individual who revoked Petitioner's release did not have authority to do so. *See* 8 C.F.R. § 241.4(l)(2); *See M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *9-10, 12 (D. Or. Aug. 21, 2025). The fact that Petitioner's release was not revoked by an authorized individual alone would be sufficient on its own to warrant release. *See Ceesay,* 781 F. Supp. 3d at 162. 40. Because ICE failed to follow their own regulations, release is warranted. *Accardi,* 347 U.S. at 268; *Nguyen v. Noem,* 817 F. Supp. 3d at 899; *Isho,* --- F. Supp. 3d ---, 2026 WL 855746, at *4-5.

32. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

1) Assume jurisdiction over this matter;

2) Issue an order pursuant to 28 U.S.C. § 2243 directing Respondents to show cause why the writ of habeas corpus should not be granted;

3) Grant the writ of habeas corpus and order Petitioner's immediate release from custody;

4) Order that Respondents are permanently enjoined and restrained from re-detaining Petitioner unless they follow the requirements of the governing regulations and any other governing law;

5) Order that Respondents are permanently enjoined and restrained from effectuating Petitioner's third-country removal unless Respondents adhere to the following procedures: a. Provide Petitioner and their counsel (if represented) a minimum of ten (10) days to raise a fear-based claim for protection prior to removal; b. If Petitioner demonstrates reasonable fear of removal to the third country, Respondents must move to reopen Petitioner's removal proceedings; c. If Petitioner is not found to have demonstrated a reasonable fear of removal to the third country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15) days for Petitioner to seek reopening of their immigration proceedings.

6) Order all other relief that the Court deems just and proper.

Respectfully submitted,

/s/ *Chelsea E. HaleyNelson*
Chelsea E. HaleyNelson
Signature block

Counsel for Petitioner

Dated: October 5, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Gerson Garrido Ruiz, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 5th day of October 2026

/s/Chelsea E. HaleyNelson
Chelsea E. HaleyNelson