FILED
United States Court of Appeals
Tenth Circuit

October 21, 2026

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

KAVEH ABEDI[1],

Petitioner - Appellant,

v.

CRYSTAL CARTER, Warden, FCI-Leavenworth; MARKWAYNE MULLIN, Secretary, Department of Homeland Security[2]; CHRISTOPHER CHAMBERLIN, Acting Assistant Field Office Director, UNITED STATES DEPARTMENT OF HOMELAND SECURITY,[3]

Respondents - Appellees.

ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK,

Amicus Curiae.

No. 25-3179

---

[1] Petitioner-Appellant Kaveh Abedi's first name is misspelled as "Kavah" on the docket. We direct the Clerk to update the docket to reflect the correct spelling of Mr. Abedi's first name.

[2] Pursuant to Federal Rule of Appellate Procedure 43(c)(2), the current Secretary of the Department of Homeland Security, Markwayne Mullin, is automatically substituted for former Secretary Kristi Noem.

[3] The U.S. Department of Homeland Security was named as a respondent in the district court proceedings and has participated as an appellee, but it is not listed on the docket for this appeal. We direct the Clerk to update the docket to include the U.S. Department of Homeland Security as a Respondent–Appellee.

Appeal from the United States District Court
for the District of Kansas
(D.C. No. 5:25-CV-03141-JWL)

Rekha Sharma-Crawford, Sharma-Crawford, Attorneys at Law, LLC, Kansas City, Missouri, for Petitioner-Appellant.

Russell J. Keller, Assistant United States Attorney (Ryan A. Kriegshauser, United States Attorney, with him on the brief), District of Kansas, Kansas City, Kansas, for Respondents-Appellees.

Virginia M. Creighton, Blaire Bayliss and Iva Velickovic, Wheeler Trigg O'Donnell LLP, Denver Colorado, filed an amicus curiae brief for the Rocky Mountain Immigrant Advocacy Network in support of the Petitioner-Appellant.

Before **PHILLIPS**, **McHUGH**, and **EID**, Circuit Judges.

McHUGH, Circuit Judge.

Petitioner-Appellant Kaveh Abedi, a native and citizen of Iran, filed a habeas petition to challenge the legality of his immigration detention. The district court denied his habeas petition, and he filed this appeal. While the appeal was pending, Mr. Abedi filed a second habeas petition in which he sought release based on the length of his detention and the unlikelihood that he will be removed from the United States in the reasonably foreseeable future. The district court granted the second habeas petition, and Mr. Abedi was therefore released from detention.

Respondents-Appellees Crystal Carter, Markwayne Mullin, Christopher Chamberlain, and the U.S. Department of Homeland Security (collectively, "the

Government") argue that Mr. Abedi's release from detention mooted this appeal. However, we conclude that this case falls within the mootness exception for wrongs capable of repetition yet evading review. And on the merits, we conclude that the district court committed various legal errors in assessing Mr. Abedi's claims for relief. We therefore reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

Mr. Abedi was born in Iran. In 1991, when he was ten years old, his family fled Iran and entered the United States, where they were granted asylum. Shortly after Mr. Abedi turned twenty-one, however, he was convicted in a California state court on a single drug possession count. He was accordingly placed in removal proceedings. *See* 8 U.S.C. § 1227(a)(2)(B)(i) ("Any [noncitizen] who at any time after admission has been convicted of a violation of . . . any law or regulation . . . relating to a controlled substance . . . , other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.").

On September 30, 2002, an immigration judge granted Mr. Abedi's request for deferral of removal under the Convention Against Torture ("CAT"). Mr. Abedi was thereafter released under an order of supervision. *See* 8 C.F.R. § 241.13 (setting forth the procedures governing the release of noncitizens subject to a final order of removal who are unlikely to be removed from the United States in the reasonably foreseeable future). Over the next twenty-plus years, Mr. Abedi complied with all

requirements imposed by immigration officials as part of the conditions of his release, including attending check-in meetings as required and seeking advance permission before traveling outside of the state where he resided.

In 2016, Mr. Abedi married a U.S. citizen who had been his high school classmate. Since 2020, Mr. Abedi has been the primary provider and caretaker for his wife, whose chronic health conditions prevent her from continuing to work in her prior profession as a chef.

Around May 2025, Mr. Abedi and his wife decided to relocate from California to Kansas for financial reasons. The Immigration and Customs Enforcement ("ICE") office in San Diego approved their move, and they relocated to Kansas at the beginning of June 2025.

On the morning of June 23, 2025, Mr. Abedi and his wife encountered ICE officers in their front yard. The officers handcuffed and detained Mr. Abedi. One officer told Mr. Abedi's wife that Mr. Abedi was being deported to Iran. Mr. Abedi's wife responded that he had his papers and that he would be killed if he was sent to Iran. But the officers loaded Mr. Abedi in an unmarked van and drove away.

The officers initially took Mr. Abedi to a county jail. They informed Mr. Abedi that they intended to deport him to Iran despite the immigration judge's order deferring removal under the CAT, but they did not give him any other explanation or information about his detention. And they did not accuse him of violating any of the terms of his order of supervision.

While Mr. Abedi was in detention, immigration officials allegedly provided him with a Notice of Revocation of Release. The Notice of Revocation stated that Mr. Abedi's order of supervision had been revoked because "[r]emoval to a country other than Iran is now a possibility." App. Vol. I at 93. The Notice of Revocation promised that Mr. Abedi would "promptly be afforded an informal interview at which [he] w[ould] be given an opportunity to respond to the reasons for the revocation." *Id.*; *see also* 8 C.F.R. § 241.13(i)(3) (setting forth various procedures, including the requirement for a prompt informal interview, that govern the revocation of release for a noncitizen who was released pursuant to § 241.13 based on the unlikelihood of removal in the reasonably foreseeable future). Mr. Abedi asserts, and the Government does not dispute, that—as of the time of briefing in this appeal—he had never received the promised informal interview.[4]

On July 21, 2025, four weeks after he was re-detained, Mr. Abedi filed the instant habeas petition under 28 U.S.C. § 2241, challenging the legality of his detention on several grounds. Among other arguments, Mr. Abedi contended that ICE had violated its own regulations, as well as his due process rights, by revoking his

[4] As discussed in more detail below, Mr. Abedi filed a second habeas petition on January 16, 2026. We take judicial notice of relevant documents filed in the second habeas proceeding, *see Bunn v. Perdue*, 966 F.3d 1094, 1096 n.4 (10th Cir. 2020), and we note that certain documents filed in that case suggest that the Government may have finally provided Mr. Abedi with an informal interview sometime in January 2026, more than six months after he was re-detained. However, whether an interview occurred more than six months after the revocation of Mr. Abedi's release or never occurred at all, we would reach the same conclusion in this appeal, and we therefore need not resolve any possible disputes on this point.

release without notice or an opportunity to be heard. He also argued that his detention was impermissible under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because it lacked a reasonable relationship to any legitimate purpose.

Mr. Abedi requested habeas relief and a declaratory judgment on the legality of his detention. He also sought a preliminary injunction to prevent the Government from transferring him outside the jurisdiction of the District of Kansas pending the resolution of this case, as well as an award of costs and attorneys' fees. The district court denied the request for a preliminary injunction in August 2025, then denied the habeas petition in October 2025. In its order denying habeas relief, the court invited Mr. Abedi to file a new habeas petition seeking relief under *Zadvydas* if his detention extended for more than six months. The district court entered final judgment on October 6, 2025, and Mr. Abedi filed his notice of appeal on that same day.

On January 16, 2026, shortly before the appellate briefing in this case was complete, Mr. Abedi filed a second habeas petition in the district court, asserting that he had now been detained for more than six months with no real likelihood of imminent removal and that he was therefore entitled to relief under *Zadvydas*. *See Abedi v. Carter* (*Abedi II*), No. 26-3012-JWL, 2026 WL 482329, at *1 (D. Kan. Feb. 20, 2026). The district court granted the second habeas petition in February 2026. *See id.* Mr. Abedi was accordingly released under an order of supervision on February 25, 2026. The Government then filed a motion to dismiss this appeal as moot based on Mr. Abedi's release from detention.

II. DISCUSSION

We first address the Government's motion to dismiss for mootness, concluding that this appeal is not moot. Turning then to the merits of the appeal, we consider Mr. Abedi's challenge to the district court's denial of his request for a preliminary injunction, which we affirm in part and reverse in part. We next consider Mr. Abedi's argument that immigration officials violated the regulations applicable to his re-detention, and we conclude that he is entitled to declaratory and habeas relief on this basis. Finally, we address Mr. Abedi's argument that he was separately entitled to declaratory and habeas relief pursuant to the Supreme Court's decision in *Zadvydas*. We conclude that the district court evaluated this claim under the wrong standard, incorrectly holding that the first six months of Mr. Abedi's re-detention were presumptively reasonable, and we remand for the district court to reconsider the issue without the benefit of any presumption.

A. Mootness

1. Legal Background

"Courts recognize two kinds of mootness: constitutional mootness and prudential mootness." *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1121 (10th Cir. 2011). A case becomes constitutionally moot "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome," causing there to no longer be the constitutionally required "case or controversy." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (internal quotation marks omitted) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). This occurs,

however, only "when it is impossible for a court to grant any effectual relief whatever" to a litigant if that litigant prevails in the action. *Id.* (quoting *Knox v. Serv. Emps.*, 567 U.S. 298, 307 (2012)). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* (quoting *Knox*, 567 U.S. at 307).

The prudential mootness doctrine applies when, although the case is not constitutionally moot, "the benefit of injunctive (or declaratory) relief is too slight or speculative to justify granting such relief." *Eaves v. Polis*, 167 F.4th 1304, 1311 (10th Cir. 2026). In such circumstances, the court "*may* rely on its remedial discretion" to deny prospective relief. *Id.*

"Under both Article III and prudential mootness doctrines, the central inquiry is essentially the same: have circumstances changed since the beginning of litigation that forestall any occasion for meaningful relief." *Rio Grande Silvery Minnow*, 601 F.3d at 1122 (quotation marks omitted). The burden of proof does not apply in the same way under these two doctrines, however. *See Eaves*, 167 F.4th at 1312. When a defendant seeks dismissal of a plaintiff's claims for prospective relief under the constitutional mootness doctrine, "[the] defendant bears the burden of establishing that a grant of at least some meaningful relief to [the] plaintiff is not possible, because the prospect that the wrong(s) about which [the] plaintiff complained will recur is highly unlikely." *Id.* (citation omitted). "But to avoid dismissal [of these claims] on the basis of prudential mootness, [the] plaintiff bears the burden of establishing a recurrent violation of the wrongs about which he complained is more

than an abstract possibility, such that the court may grant him some meaningful relief." *Id.* (citation omitted).

When the district court addresses mootness in the first instance, we review its evaluation of constitutional mootness de novo but review its prudential mootness determination for an abuse of discretion. *See Jordan v. Sosa*, 654 F.3d 1012, 1023 n.14 (10th Cir. 2011). But when, as in this case, the question of mootness arises after the district court proceedings have terminated, "we necessarily undertake the mootness inquiry in the first instance" and therefore "operate on a clean slate as to both our constitutional and prudential mootness analyses." *Id.*

Although "mootness has often been characterized as standing set in a time frame . . . [,] that characterization is not totally accurate." *Ajaj v. Fed. Bureau of Prisons*, 25 F.4th 805, 811 (10th Cir. 2022) (internal quotation marks omitted). Specifically, mootness differs from standing in that "(1) there is at least one exception to mootness (when the terminated action is capable of repetition yet evading review) that has no counterpart in standing doctrine," "(2) the defendant has the burden of proving mootness while the plaintiff must establish standing," and (3) "the likelihood of future action by the defendant may be too speculative for standing but not to overcome mootness." *Id.*; *see also Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) ("[T]here are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness."); *WildEarth Guardians v. Pub. Serv. Co.*, 690 F.3d 1174,

1183 (10th Cir. 2012) ("[S]ometimes mootness relies on contested facts, particularly where the likelihood of future harm is at issue. In such cases, the defendant may be unable to show mootness, even if the facts . . . would not have been sufficient for the plaintiff to demonstrate standing at the start of the case." (citation omitted)).

We have recognized four types of circumstances that we have referred to as "exceptions to the mootness doctrine," *Riley v. INS*, 310 F.3d 1253, 1256 (10th Cir. 2022), although they might more accurately be viewed as situations in which the court retains the ability to grant meaningful relief despite the apparent resolution of the primary injury alleged by the plaintiff. *See Chafin*, 568 U.S. at 172 ("[A] case 'becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.'" (quoting *Knox*, 567 U.S. at 307)); *Brown v. Buhman*, 822 F.3d 1151, 1166 (10th Cir. 2016) ("Courts recognize [certain] 'exceptions' to the mootness doctrine—situations in which a case remains subject to federal court jurisdiction notwithstanding the seeming extinguishment of any live case or controversy."). Under these so-called mootness exceptions, we may resolve a seemingly moot case on the merits if (1) "secondary or 'collateral' injuries survive after resolution of the primary injury"; (2) the matter before the court "is deemed a wrong capable of repetition yet evading review"; (3) "the defendant voluntarily ceases an allegedly illegal practice but is free to resume it at any time"; or (4) "it is a properly certified class action suit." *Riley*, 310 F.3d at 1257 (quoting *Chong v. Dist. Dir., INS*, 264 F.3d 378, 384 (3d Cir. 2001)). The plaintiff bears the burden of persuasion with respect to the first, second, and fourth mootness exceptions. *See Ind*

v. Colo. Dep't of Corr., 801 F.3d 1209, 1215 (10th Cir. 2015); *Spencer v. Kemna*, 523 U.S. 1, 14, 18 (1998); *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 78 (2013). On the other hand, a defendant who has voluntarily ceased an allegedly wrongful practice "bears the heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again." *Ind*, 801 F.3d 1209 at 1214 (quotation marks omitted); *see also id.* at 1215. We may consider these mootness exceptions as "an important component of the overall analysis with respect to both constitutional and prudential mootness." *Rio Grande Silvery Minnow*, 601 F.3d at 1122.

a. Wrongs capable of repetition yet evading review

We conclude that this appeal is not moot based on the mootness exception for wrongs capable of repetition yet evading review. We therefore address only this mootness exception and do not reach the parties' arguments regarding the other mootness exceptions.

The mootness exception for wrongs capable of repetition yet evading review applies when "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Brown*, 822 F.3d at 1166 (quotation marks omitted).

Our analysis of this exception is guided by the Supreme Court's decision in *Turner v. Rogers*, 564 U.S. 431 (2011). The petitioner in that case, Michael Turner, was held in contempt several times based on his repeated failure to pay his court-

ordered child support. *Id.* at 436. "The first four times he was sentenced to [ninety] days' imprisonment, but he ultimately paid the amount due (twice without being jailed, twice after spending two or three days in custody)." *Id.* "The fifth time he did not pay but completed a 6–month sentence." *Id.* When Mr. Turner still failed to pay his child support after his latest release from jail, the family court judge found him in willful contempt and sentenced him to twelve months of incarceration. *Id.* at 437. Mr. Turner appealed this decision, contending that he was denied his constitutional right to counsel at his contempt hearing. *Id.* at 438. The South Carolina Supreme Court rejected this argument, holding that Mr. Turner was not entitled to counsel in a civil contempt hearing. *Id.* Mr. Turner then sought certiorari from the U.S. Supreme Court. *Id.* By this point, he had already been released from custody. *Id.*

Despite Mr. Turner's release from custody, the Supreme Court held that his case was "not moot because it falls within a special category of disputes that are 'capable of repetition' while 'evading review.'" *Id.* at 439 (quoting *S. Pac. Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911)). The Court explained that "[a] dispute falls into that category, and a case based on that dispute remains live, if '(1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again.'" *Id.* at 439–40 (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)).

The Court then concluded that both of these prongs were met in Mr. Turner's case. *See id.* at 440. On the first prong, the Court held that its "precedent makes clear

that the 'challenged action,' [Mr.] Turner's imprisonment for up to [twelve] months, is 'in its duration too short to be fully litigated' through the state courts (and arrive here) prior to its 'expiration.'" *Id.* (quoting *Weinstein*, 423 U.S. at 149). On the second prong, the Court reasoned that there was "a more than 'reasonable' likelihood that [Mr.] Turner w[ould] again be 'subjected to the same action.'" *Id.* (quoting *Weinstein*, 423 U.S. at 149). He had "frequently failed to make his child support payments" and had "been the subject of several civil contempt proceedings," for which he was imprisoned several times. *Id.* And the Court concluded that "[t]hese facts bring this case squarely within the special category of cases that are not moot because the underlying dispute is 'capable of repetition, yet evading review.'" *Id.* (quoting *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 546–47 (1976)).

2. Analysis

Applying this test to Mr. Abedi's circumstances, we conclude that he has shown both that the challenged action is in its duration too short to be fully litigated and that there is a reasonable expectation he will be subjected to the same action again. We therefore conclude this appeal falls within the mootness exception for wrongs capable of repetition yet evading review, thus defeating the Government's constitutional and prudential mootness arguments. *See id.*; *see also Eaves*, 167 F.4th at 1312.

a. Evading review

Mr. Abedi was detained from June 23, 2025, to February 25, 2026. His immigration detention thus lasted for eight months, four months less than the twelve-

month imprisonment that the *Turner* Court held was "clear[ly] . . . 'in its duration too short to be fully litigated' . . . prior to its 'expiration.'" 564 U.S. at 440 (quoting *Weinstein*, 423 U.S. at 149)

Nevertheless, the Government contends that Mr. Abedi has not satisfied this prong of the mootness exception for disputes capable of repetition yet evading review because the detention that Mr. Abedi challenges in this appeal "would have been long enough to fully litigate the matter if [he] had not filed a Second Habeas Petition and obtained a release order from the district court in *Abedi II*." Mot. to Dismiss at 15. But the Government cites no authority for the proposition that the first prong of this mootness exception requires courts to consider how long an alleged injury could have continued if the injured party had not taken steps to stop the injury, and we see no basis for adopting such a requirement. *Cf. FCC v. Consumers' Rsch.*, 606 U.S. 656, 671 n.1 (2025) (holding that litigation decisions such as declining to request preliminary relief do not prevent a party from availing itself of this mootness exception).

Accordingly, because Mr. Abedi was detained for a significantly shorter period of time than the twelve-month period of imprisonment that the Supreme Court held was too short to be fully litigated prior to its expiration in *Turner*, we hold that Mr. Abedi has satisfied this prong of the mootness exception for wrongs capable of repetition yet evading review. *See Turner*, 564 U.S. at 440.

b. Capable of repetition

We turn then to "[t]he second prong of the 'capable of repetition' exception[, which] requires a 'reasonable expectation' or a 'demonstrated probability' that 'the same controversy will recur involving the same complaining party.'" *FEC v. Wis. Right to Life*, 551 U.S. 449, 463 (2007) (quoting *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curiam)). "[T]he same controversy [is] sufficiently likely to recur when a party has a reasonable expectation that it 'will again be subjected to the alleged illegality,' or 'will be subject to the threat of prosecution' under the challenged law." *Id.* (first quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983), then quoting *First Nat'l Bank v. Bellotti,* 435 U.S. 765, 774–75 (1978)).

This standard does not require the plaintiff to "demonstrate[] that a recurrence of the dispute [i]s more probable than not." *Honig v. Doe*, 484 U.S. 305, 318 n.6 (1988). To the contrary, courts may find a matter to be "capable of repetition based on expectations that, while reasonable, [a]re hardly demonstrably probable." *Id.* Thus, this standard may be satisfied by evidence that would have been too speculative to demonstrate standing at the onset of the litigation. *See Friends of the Earth, Inc.*, 528 U.S. at 190 ("[T]here are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness."); *WildEarth Guardians*, 690 F.3d at 1183 ("[S]ometimes mootness relies on contested facts, particularly where the likelihood of future harm is at issue. In such cases, the

defendant may be unable to show mootness, even if the facts . . . would not have been sufficient for the plaintiff to demonstrate standing at the start of the case." (citation omitted)).

Applying this test here, we find guidance in other cases in which the plaintiffs' injuries were allegedly inflicted by government officials. In this context, courts have held that a plaintiff cannot establish a reasonable expectation that the same controversy is likely to recur if (1) the claimed reinjury will not occur unless the plaintiff engages in future misconduct, and (2) the plaintiff has the ability not to engage in this misconduct. In *Ind v. Colorado Department of Corrections*, for instance, a state prisoner in administrative segregation filed suit to challenge a policy preventing inmates in administrative segregation from possessing more than two books. 801 F.3d at 1211. While the case was pending, however, he was transferred out of administrative segregation and into the general population. *Id.* We concluded that this transfer mooted the case, reasoning in part that the prisoner did not have a reasonable expectation that the injury would recur because the book policy would only apply to him if he repeated his misconduct and thus ended up in administrative segregation again, which we "decline[d] to assume" he would do. *Id.* at 1216. In reaching this conclusion, we cited to the Fourth Circuit's decision in *Incumaa v. Ozmint*, 507 F.3d 281 (4th Cir. 2007), which involved very similar facts. *See Ind*, 801 F.3d at 1216. As we explained, the Fourth Circuit reasoned in *Incumaa* that the inmate in that case "had not carried his burden of establishing there was a reasonable expectation he would be subject to the publications ban again in the future because

'assignment to the [Maximum Security Unit] is directly tied to an inmate's bad behavior, so [the inmate] thus "holds the keys" to his remaining free from the unit.'" *Ind*, 801 F.3d at 1216 (quoting *Incumaa*, 507 F.3d at 289).

However, the same reasoning does not apply if the conditions that led to the prior alleged injury have remained intact and the plaintiff cannot readily prevent recurrence of the injury by choosing not to engage in misconduct. For instance, the Supreme Court has explained that the plaintiff's imprisonment in *Turner* was capable of repetition due to his "inability, for reasons beyond [his] control, to prevent [himself] from transgressing and avoid recurrence of the challenged conduct." *United States v. Sanchez-Gomez*, 584 U.S. 381, 393 (2018). Specifically, the Court explained, Mr. Turner's "large outstanding debt made him effectively incapable of satisfying his imminent support obligations," creating a reasonable expectation that he would again be held in contempt for failing to make his child support payments. *Id.*; *see also Turner*, 564 U.S. at 437, 440–41.

The claimed injury in *Honig v. Doe*, 484 U.S. 305 (1988), was likewise capable of repetition due to the plaintiff's inability to avoid running afoul of government authorities by simply choosing not to engage in misconduct. *See Sanchez-Gomez*, 584 U.S. at 393; *see also Honig*, 484 U.S. at 317–22. In *Honig*, a disabled student named Jack Smith brought a claim under the Education of the Handicapped Act ("EHA") against local and state school officials after he was expelled from a public school "for violent and disruptive conduct related to [his] disabilities." 484 U.S. at 312; *see also id.* at 314–15. At the time of the Supreme

Court's decision, Mr. Smith was "not faced with any proposed expulsion or suspension proceedings," and he no longer resided within the same school district. *Id.* at 318. Indeed, Mr. Smith was no longer attending a public school, whether in his former school district or his current one, and "his counsel was unable to state affirmatively during oral argument that [Mr. Smith] would seek to reenter the state school system." *Id.* at 318 n.6. Nonetheless, the Court held that the case was not moot based on the mootness exception for issues capable of repetition yet evading review. *Id.* at 317–20. "Given [Mr.] Smith's continued eligibility for educational services under the EHA, the nature of his disability, and [the State Superintendent of Public Instruction's] insistence that all local school districts retain residual authority to exclude disabled children for dangerous conduct," the Court had "little difficulty concluding that there [wa]s a 'reasonable expectation' that [Mr.] Smith would once again be subjected to a unilateral 'change in placement' for conduct growing out of his disabilities." *Id.* at 318–20 (footnote and citation omitted).

The Court reasoned that Mr. Smith had a "prior history of behavioral problems" caused by his disability, and the record was void of "any suggestion that [he] ha[d] overcome his earlier difficulties." *Id.* at 320. Thus, the Court could not "assume that [his] future placement w[ould] satisfactorily prevent any further dangerous conduct on his part." *Id.* at 321. And because the State Superintendent of Public Instruction "urge[d the Court] to hold that local school districts retain unilateral authority under the EHA to suspend or otherwise remove disabled children for dangerous conduct," the Court had "every reason to believe that . . . [Mr. Smith]

would be faced with a real and substantial threat of such action in any California school district in which he enrolled." *Id.* at 321–22. Accordingly, the Supreme Court held that Mr. Smith had established a reasonable expectation that his claimed injury would recur in the future, even if he had not shown that recurrence of his injury was "more probable than not." *Id.* at 318 n.6; *see also id.* at 318–23.

Applying the reasoning of these cases to the facts of this case, we conclude that Mr. Abedi has established a reasonable expectation that his injury will recur. As Mr. Abedi notes, his "removal order remains in effect," and "ICE continues to pursue removal to a third country." Resp. to Mot. to Dismiss at 18. Given the nature of a removal order, Mr. Abedi cannot avoid recurrence of his claimed injury through good conduct. Indeed, the Government does not dispute Mr. Abedi's assertion that he has consistently complied with all terms of his order of supervision since he was first released in 2002, nor does the Government dispute that his release was revoked based on the unilateral decision of ICE officials rather than anything he did. Moreover, as Mr. Abedi points out, "[t]he Government has not disclaimed its authority to revoke his current [order of supervision]" in the same manner in the future. *Id.* at 18.

Thus, unlike the plaintiffs in *Ind* and *Incumaa*, Mr. Abedi does not "'hold[] the keys' to his remaining free," *Ind*, 801 F.3d at 1216 (quoting *Incumaa*, 507 F.3d at 289), from a recurrence of the injury he alleges here. Rather, as in *Turner* and *Honig*, the conditions that led to his prior injury remain intact, and he is unable, "for reasons beyond [his] control," to "avoid recurrence of the challenged conduct." *Sanchez-Gomez*, 584 U.S. at 393; *see also Turner*, 564 U.S. at 437, 440–41; *Honig*,

484 U.S. at 317–22. And, as in *Honig*, the Government's litigation position gives us "every reason to believe" that Mr. Abedi is "faced with a real and substantial threat" of government officials inflicting the same injury upon Mr. Abedi again in the future. 484 U.S. at 321–22.

The Government resists this conclusion, arguing that Mr. Abedi cannot establish a reasonable expectation of re-detention because he argued in *Abedi II* "that certain United States Immigration and Customs Enforcement employees had determined the chances of removal were slim and he should not be detained." Mot. to Dismiss at 11. However, the Government does not suggest that these ICE employees' determinations will be binding on other government officials or will otherwise prevent Mr. Abedi's re-detention.[5] Indeed, the Government has repeatedly emphasized in both this appeal and in the *Abedi II* litigation that this determination

[5] The dissent argues that "a binding recommendation (or court order) is not required," contending that "[t]o hold otherwise would improperly flip the burden onto the government." Dissent at 2. This argument misses the point. Based on the facts and circumstances of this case, we hold that Mr. Abedi has met his burden of showing a reasonable expectation that he will be re-detained in similar circumstances again. And we hold that the Government cannot defeat this showing by relying on the non-binding recommendation of "certain" local ICE officials whom the Government repeatedly argues lack the authority to make a final decision on Mr. Abedi's detention status or removability. Mot. to Dismiss at 11. Ultimately, the Government's own litigation position demonstrates that the two local ICE officials' recommendation bears little importance in assessing whether Mr. Abedi has a reasonable expectation of being re-detained in similar circumstances in the future. We therefore give this non-binding recommendation little weight in evaluating whether, under all of the circumstances of this case, Mr. Abedi has met his burden of showing a reasonable expectation that he will suffer a similar injury in the future.

was made solely by "certain" local ICE employees.[6] *Id.*; *see also* Oral Arg. Recording at 16:25–16:48; Resp. to Second § 2241 Habeas Petition at 2, 6, 14–15, *Abedi II* (D. Kan. Feb. 17, 2026). And the Government has asserted that these local employees lack final authority to decide Mr. Abedi's detention status. Moreover, although the district court relied on these local officials' determination in *Abedi II* to find that Mr. Abedi was not likely to be removed in the reasonably foreseeable future, thus warranting his release under *Zadvydas*, the order granting habeas relief did not foreclose either these local officials or any other ICE officials from making a contrary determination later. Thus, as in *Honig*, Mr. Abedi continues to face "a real and substantial threat," 484 U.S. at 322, that government officials will inflict the same injury upon him in the future, regardless of the determination on removability made by "certain" local ICE employees, Mot. to Dismiss at 11. *See Honig*, 484 U.S. at 321–22 (holding that "it matters not that [Mr.] Smith no longer resides within the [school district that expelled him]," as the State Superintendent of Public Instruction's litigation position created a reasonable expectation that the same injury might be inflicted "in any California school district in which he enrolled").

The Government further asserts that re-detention is unlikely because the district court granted Mr. Abedi's release in *Abedi II*. However, the district court's order granting Mr. Abedi's release did not prohibit his re-detention, and the Government has presented no evidence that the district court's decision has caused

[6] We take judicial notice of relevant documents filed in *Abedi II*. *See Bunn*, 966 F.3d at 1096 n.4.

ICE officials to abandon their repeatedly expressed intentions of pursuing Mr. Abedi's removal. Nor has the Government indicated that it has changed its stance on the appropriateness of detention pending this intended removal.

Moreover, Mr. Abedi has identified several recent cases in which a noncitizen was re-detained shortly after a district court granted the noncitizen habeas relief based on a finding—similar to the district court's finding in this case—that the noncitizen was unlikely to be removed in the reasonably foreseeable future. *See, e.g.*, Mot. to Enforce, *I.F.M. v. Baltazar*, No. 1:25-cv-03475-RMR (D. Colo. Mar. 17, 2026); Order, *Bedoya v. Bondi*, 2:26-cv-00035 (D. Ariz. Apr. 15, 2026) (explaining that the court ordered the noncitizen's "immediate release from immigration custody" in February 20, 2026, and that the noncitizen "was redetained six weeks later without any change in circumstances and without a hearing"); Order Denying Pet'r's Mot. to Enforce, *Yugar-Cruz v. McCleary*, 3:25-cv-00136-SHL-HCA (S.D. Iowa Apr. 27, 2026) (explaining that the court ordered the noncitizen's release on December 23, 2025, and that he was re-detained on April 8, 2026); Order, *Aedo Sanchez v. Joyce*, No. 2:26-cv-00402-DWL-MTM (D. Ariz. Feb. 11, 2026) (order granting habeas release under *Zadvydas*); Pet. for Writ of Habeas Corpus, *Aedo Sanchez v. Joyce*, 2:26-cv-04836-CCC (N.D.N.J. Apr. 9, 2026) (second habeas case filed to challenge re-detention less than two months after the noncitizen's release).

We therefore reject the Government's assertion that the district court's order granting habeas relief has removed any real likelihood that the Government will re-detain Mr. Abedi in the future. Based on the Government's litigation position in this

appeal and in *Abedi II*, as well as the Government's demonstrated pattern of re-detaining other similarly situated noncitizens who have been granted habeas relief, we conclude that Mr. Abedi has shown "a real and substantial threat," *Honig*, 484 U.S. at 322, of experiencing a repetition of the same injury.

Finally, we are unpersuaded by the Government's argument that Mr. Abedi has not shown a reasonable expectation "that any future detention or removal efforts will be based on the same facts, statutory provisions, regulatory provisions, and case authorities." Mot. to Dismiss at 16. The Government's authority to revoke Mr. Abedi's release is constrained by the statutes, regulations, and precedents that are at issue in this appeal. Thus, any future detention or removal efforts are quite likely to implicate the same legal authorities. And based on the Government's litigation position in this appeal, we have a reasonable expectation that any future detention is likely to implicate the same material facts and legal issues. *See Honig*, 484 U.S. at 321–22. Thus, as in *Honig*, Mr. Abedi has demonstrated "a sufficient likelihood that he will again be wronged in a similar way," *id.* at 323 (quoting *Lyons*, 461 U.S. at 99), thereby satisfying the second prong of the mootness exception for disputes capable of repetition yet evading review.

We accordingly hold that Mr. Abedi's allegedly unlawful detention in this case is an injury capable of repetition yet evading review, and we therefore deny the Government's motion to dismiss the appeal as constitutionally and prudentially moot.

B. Preliminary Injunction

In his appellate brief, Mr. Abedi first challenges the district court's denial of his request for a preliminary injunction to prevent his transfer outside of Kansas pending the district court's resolution of his habeas case. The Government argues that this issue is moot and that Mr. Abedi is not entitled to relief on the merits. We conclude that this issue is not moot. On the merits, we affirm in part and reverse in part the district court's denial of preliminary injunctive relief.

1. Mootness

The Government contends that this appellate issue was mooted by the district court's resolution of the habeas petition. Specifically, the Government contends that any error in the denial of a preliminary injunction was superseded by the district court's entry of final judgment on the merits of the habeas case. Accordingly, the Government argues, reversing the district court's decision on this issue would have no effect in the real world.

Our resolution of this argument depends on our resolution of the merits of Mr. Abedi's habeas claims. If we were to affirm the district court's final judgment on the merits of those claims, we would agree that the entry of final judgment had mooted Mr. Abedi's request for a preliminary injunction while the case was pending. However, for the reasons discussed later in this opinion, we conclude that the district court erred in denying Mr. Abedi's request for habeas relief, and we therefore remand this case for further proceedings in accordance with this decision. Mr. Abedi's habeas petition will thus be pending again before the district court on remand. And an order

enjoining the Government from removing Mr. Abedi from the District of Kansas while the habeas case is pending will have an effect in the real world by preventing such an action from occurring. We therefore reject the Government's mootness challenge to this issue and proceed to address it on the merits.

2. Merits

We review the district court's denial of injunctive relief for an abuse of discretion. *See Bailey v. State Farm Fire & Cas. Co.*, 414 F.3d 1187, 1189 (10th Cir. 2005). A district court abuses its discretion when it "applies the wrong legal standard or relies on clearly erroneous fact findings." *Id.* (internal quotation marks omitted).

Mr. Abedi sought an injunction under the All Writs Act, which authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Specifically, he asked the court to "issue an order preventing the transfer or removal of [Mr. Abedi] during the pendency of these proceedings to preserve the [c]ourt's authority to resolve the underlying legal questions." ROA Vol. I at 115.

The district court interpreted Mr. Abedi's request for injunctive relief to include two separate requests: a request to enjoin Mr. Abedi's transfer to a detention facility in a different state, and a request to prevent his removal from the country. The court denied the first request based on its conclusion that it "would retain jurisdiction in the event of an ordinary transfer to another facility," so "an injunction against a mere transfer" would not be "necessary to preserve the [c]ourt's

jurisdiction." *Id.* at 117. As for the request to prevent his removal from the country while the habeas petition was pending, the district court concluded that it could only issue the requested injunction if the legal rights at issue were "indisputably clear," and the court concluded that Mr. Abedi had not satisfied this demanding standard. *Id.* at 119.

We hold that the district court did not abuse its discretion in denying Mr. Abedi's request for an injunction to prevent his transfer to another facility, but we reach the opposite conclusion with respect to Mr. Abedi's request for an injunction to prevent his removal from the country.

a. Transfer

On appeal, Mr. Abedi contends that the district court should have granted an injunction to prevent his transfer to a different detention facility because "all witnesses and evidence were within the [district c]ourt's geographic location when the habeas petition was filed," and, if the court were to hold an evidentiary hearing, "allowing [Mr. Abedi] to remain in the [c]ourt's vicinity would indeed be beneficial to the [c]ourt in conducting and resolving all issues before it." Appellant's Br. at 21. Whatever the merits of this argument, however, it is not properly before us, as Mr. Abedi did not raise it before the district court and does not make a plain error argument on appeal. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1128 (10th Cir. 2011).

Mr. Abedi's only argument before the district court was that the injunction was necessary to preserve the court's jurisdiction. On appeal, however, he does not

dispute the district court's conclusion that it would retain jurisdiction over the case even if Mr. Abedi were transferred to a different detention facility elsewhere in the United States. *See Santillanes v. U.S. Parole Comm'n*, 754 F.2d 887, 888 (10th Cir. 1985) ("It is well established that jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change.").

Therefore, because Mr. Abedi does not contest the district court's resolution of the only argument that he raised before the court, we cannot conclude that the district court "applie[d] the wrong legal standard or relie[d] on clearly erroneous fact findings," *Bailey*, 414 F.3d at 1189 (internal quotation marks omitted), in denying his request for injunctive relief as it related to a potential transfer. We accordingly affirm the district court's denial of this aspect of Mr. Abedi's request for injunctive relief.[7]

b. Removal

As for Mr. Abedi's request for the district court to temporarily enjoin his removal to Iran or a third country, however, we conclude that the district court abused its discretion by applying the wrong legal standards.

In denying relief, the district court reasoned: "A court's authority under the All Writs Act is to be used 'sparingly and only in the most critical and exigent circumstances,' and the legal rights at issue must be 'indisputably clear.'" App. Vol. I

[7] In so doing, we express no opinion as to whether Mr. Abedi may file another motion for a preliminary injunction on remand or what arguments he could raise in such a motion.

at 118 (quoting *Wis. Right to Life, Inc. v. FEC*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J., in chambers)). The authority the district court relied on for this point was an in-chambers opinion[8] in which Chief Justice Rehnquist rejected a litigant's request for him, in his capacity as a Circuit Justice, to issue "[a]n injunction pending appeal barring the enforcement of an Act of Congress" that the Supreme Court had "recently held [to be] facially constitutional." *Wis. Right to Life*, 542 U.S. at 1305–06. Chief Justice Rehnquist noted in his in-chambers decision that "a unanimous three–judge" panel had already considered and denied the litigant's request for a preliminary injunction to prevent the enforcement of this facially constitutional law. *Id.* at 1306. Under these circumstances, Chief Justice Rehnquist concluded that the requested injunction "would be an extraordinary remedy" that he should only grant if (1) the requested injunction was "[n]ecessary or appropriate in aid of [the Court's] jurisdiction," and (2) "the legal rights at issue [we]re 'indisputably clear.'" *Id.* (first quoting 28 U.S.C. § 1651(a); then quoting *Brown v. Gilmore*, 533 U.S. 1301, 1303 (2001) (Rehnquist, C.J., in chambers)).

[8] "An 'in chambers' opinion is an opinion written and issued by a single judge of a multi-judge court, pursuant to a court rule allowing a lone judge to address certain secondary matters without obtaining concurrence from the full court or a panel thereof." *Bongo Prods., LLC v. Lawrence*, 548 F. Supp. 3d 666, 686 n.12 (M.D. Tenn. 2021). As relevant here, "[t]he Supreme Court allows a single justice, serving in his or her capacity as Circuit Justice, to deny requests for interim relief, such as stays, in chambers." *Id.* Importantly,"[t]he lone opinion" of one Supreme Court Justice "does not carry the precedential weight of a United States Supreme Court opinion." *Stanfield v. Brookshire Grocery Co.*, 761 F. Supp. 29, 30 (W.D. La. 1991); *see also Hunt v. Polk Cnty., Iowa*, 551 F. Supp. 339, 343 n.2 (S.D. Iowa 1982) ("It cannot, of course, be presumed that [Chief] Justice Rehnquist's in-chambers opinion represented the views of anyone but himself.").

On appeal, the Government amplifies the district court's overbroad reading of *Wisconsin Right to Life*, asserting that "the Supreme Court has 'consistently stated' that the power to issue an injunction under 28 U.S.C. § 1651 'is to be used sparingly.'" Appellees' Br. at 17 (quoting *Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401, 1403 (2012) (Sotomayor, J., in chambers)). The Government supports this argument with a citation to four cases that it characterizes as decisions by the Supreme Court. In fact, however, each cited case is an in-chambers opinion issued by a single Supreme Court Justice to deny a request for an injunction brought by a non-prevailing party whose request for an injunction pending appeal had already been denied by a lower court. *See Hobby Lobby*, 568 U.S. at 1403 (Sotomayor, J., in chambers); *Wis. Right to Life*, 542 U.S. at 1306 (Rehnquist, C.J., in chambers); *Brown v. Gilmore*, 533 U.S. 1301, 1301–02 (2001) (Rehnquist, C.J., in chambers); *Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers).

As Justice Sotomayor explained in the *Hobby Lobby* case the Government relies on here, the requested injunctive relief at issue in those in-chambers opinions would not simply preserve the status quo but would instead "grant[] judicial intervention that has been withheld by lower courts." 568 U.S. at 1403 (quoting *Respect Me. PAC v. McKee*, 562 U.S. 996, 996 (2010)). Justice Sotomayor explained that a single Circuit Justice considering a request for an injunction in these circumstances will do so sparingly and will only grant the requested injunction if the legal rights at issue are indisputably clear. *See id.*

However, the in-chambers opinions cited by the Government do not set forth a universally applicable standard for courts to consider in evaluating a request for an injunction under the All Writs Act. As we have explained, "[t]he All Writs Act, 28 U.S.C. § 1651, grants a district court expansive authority to issue 'all writs necessary.'" *Tooele Cnty. v. United States*, 820 F.3d 1183, 1186 (10th Cir. 2016) (quoting § 1651(a)). This expansive authority may be limited by other statutes or by policy considerations, particularly when granting the requested relief would implicate the decisions or authority of other courts. *See, e.g.*, *id.* at 1186 (holding that the All Writs Act's expansive authority is limited by the Anti-Injunction Act, 28 U.S.C. § 2283, which "generally prohibits federal courts from enjoining state-court suits"); *Hobby Lobby*, 568 U.S. at 1403 (Sotomayor, J., in chambers) (explaining that a single Supreme Court Justice considering a request to "grant[] judicial intervention that has been withheld by lower courts," should exercise this power sparingly (quoting *Respect Me. PAC*, 562 U.S. at 996)); *J. Publ'g. Co. v. Mechem*, 801 F.2d 1233, 1235 (10th Cir. 1986) (holding that we "ha[ve] jurisdiction to issue a writ of mandamus pursuant to the All Writs Act, 28 U.S.C. § 1651(a)" but "will not issue mandamus against a district court unless it has clearly abused its discretion"). But different standards apply in different contexts, and a court's authority to grant an injunction under the All Writs Act is likely to be at its most expansive when such an injunction will not implicate the authority or decisions of other courts.

In *Werner v. State of Utah*, 32 F.3d 1446 (10th Cir. 1994) (per curiam), for instance, we considered two different issues that both arose under the All Writs Act.

Id. at 1447–49. First, the petitioner appealed from the district court's denial of his request for a writ of mandamus under the All Writs Act. *See id.* at 1447–48. In resolving this issue, we explained that a litigant must meet a demanding standard to receive a writ of mandamus under the All Writs Act, and we affirmed the district court's decision to deny relief based on our conclusion that the petitioner had not satisfied this standard. *See id.* at 1447–48; *see also J. Publ'g Co.*, 801 F.2d at 1235. Second, we considered sua sponte whether "to impose restrictions on future filings in this court by [the] petitioner commensurate with our inherent power to enter orders necessary or appropriate in aid of our jurisdiction under § 1651." *Werner*, 32 F.3d at 1448 (internal quotation marks omitted). In evaluating this second issue, which did not implicate the district court's authority and was not governed by the stricter standards applicable to requests for mandamus relief, we simply asked whether the proposed injunction satisfied the statutory standard of necessity or appropriateness. *See id.* at 1448–49. Thus, even though both of these issues arose under the All Writs Act, we did not apply the same standards to evaluate them. *See id.* at 1447–49. Rather, based on the different contexts in which these issues arose, our analysis of them was governed by different standards. *See id.*

We accordingly agree with the Eastern District of New York's persuasive explanation in *In re Stabile*, 436 F. Supp. 2d 406 (E.D.N.Y. 2006), that the standard discussed in *Wisconsin Right to Life* and similar in-chambers opinions is "misplaced" in the context of a district court's decision to issue an injunction under the All Writs Act. *Id.* at 416. A single Supreme Court Justice sitting alone in his or her capacity as

a Circuit Justice and considering a request for "an injunction pending appeal barring the enforcement of an Act of Congress" has the authority to grant such an injunction under the All Writs Act, but a Justice should do so "only in the most critical and exigent circumstances." *Id.* (quoting *Wis. Right to Life*, 542 U.S. at 1306). However, a district court's authority to grant an injunction under the All Writs Act, although "derived from the same [statute]," involves "an entirely different context." *Id.* There is no basis in either the statute or caselaw to conclude that the district court's consideration of a request for an All Writs Act injunction is "subject to the same stringent standard enunciated in *Wisconsin Right to Life*." *Id.*; *see also Monaghan v. Sebelius*, 931 F. Supp. 2d 794, 804 n.2 (E.D. Mich. 2013) (explaining that "the Supreme Court's extraordinary writ standard . . . is much more stringent than that used for a preliminary injunction"). Rather, the generally applicable "legal standard is simply whether the order is 'necessary or appropriate in aid of jurisdiction' and 'agreeable to the usages and principles of law.'" *In re Stabile*, 436 F. Sup. 2d at 416 (quoting *Sheet Metal Contractors Ass'n v. Sheet Metal Workers' Int'l Ass'n*, 157 F.3d 78, 84 (2d Cir. 1998)); *see also* 28 U.S.C. § 1651(a) ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."); *Werner*, 32 F.3d at 1448–49 (applying this general statutory standard to decide whether to enjoin an abusive litigant from proceeding pro se in this court without advance permission).

The district court therefore erred in holding that Mr. Abedi had the "burden to show that the law indisputably permits" the injunctive relief he requested. ROA Vol. I at 119. The district court should instead have evaluated whether the injunction requested by Mr. Abedi was "necessary or appropriate in aid of [the court's] jurisdiction[] and agreeable to the usages and principles of law," 28 U.S.C. § 1651(a), which is all that is required in this context. *See In re Stabile*, 436 F. Supp. 2d at 416.

The district court's explanation for denying this request for injunctive relief also implicated another issue that is likely to arise again on remand. Therefore, although we remand for the district court to reevaluate this request under the correct legal standard, we briefly pause to provide further guidance on this issue. Specifically, the district court reasoned that it likely lacked jurisdiction to temporarily enjoin Mr. Abedi's removal from the country based on 8 U.S.C. § 1252, which provides in part that "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter." 8 U.S.C. § 1252(a)(5). The district court cited our holding in *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266 (10th Cir. 2018), that § 1252's jurisdiction-stripping provisions "apply to 'indirect challenges to the merits of a removal order.'" App. Vol. I at 119 (quoting *Gonzalez-Alarcon*, 884 F.3d at 1274). And the court concluded that "an injunction prohibiting the government from removing [Mr. Abedi] would effectively constitute a challenge to the government's authority to remove [him]." *Id.*

However, § 1252 is not implicated by a request for a temporary injunction to stay a detainee's removal during the pendency of a habeas proceeding challenging the legality of the detention without contesting the underlying removal order. Importantly, we did not hold in *Gonzalez-Alarcon* that district courts cannot consider any issues related to a removal order whatsoever; rather, we held that a district court cannot consider issues that either directly or indirectly challenge the "merits" of a removal order. 884 F.3d at 1274. But Mr. Abedi is not seeking to challenge the merits of his removal order. His claims are grounded in "some inherent problem with the detention itself," not in the removal order. *Id.* at 1275 (quotation marks omitted). His request for a temporary injunction to maintain the status quo while the legality of his detention is litigated would thus say nothing about the merits of his removal order. Accordingly, § 1252 does not bar the district court from granting the requested relief.

We therefore reverse and remand the district court's denial of Mr. Abedi's request for an injunction to prevent his removal from the United States while his habeas petition is pending. On remand, the district court should reconsider this request in accordance with the legal standards set forth in this opinion.

C. Regulatory Violations

On the merits of the case, Mr. Abedi seeks habeas relief and a declaratory judgment on the grounds that the Government violated its regulations governing the revocation of release for a noncitizen who has been ordered removed from the country and then released under an order of supervision. Specifically, he contends the

Government violated 8 C.F.R. §§ 241.4(*l*) and 241.13(i) by failing to provide him with an informal interview at which he could contest the revocation of his release.

In response, the Government argues that Mr. Abedi's release was revoked solely pursuant to 8 C.F.R. § 241.4 and that this regulation did not require the Government to provide Mr. Abedi with an informal interview. The Government also argues that any regulatory violation was harmless because Mr. Abedi was not prejudiced by the lack of an interview.

For the reasons discussed below, we conclude that Mr. Abedi's release from detention was governed by 8 C.F.R. § 241.13 and that the Government violated the due process protections established in this regulation by failing to provide Mr. Abedi with a prompt informal interview when it revoked his release. We further conclude that this due process violation entitled Mr. Abedi to declaratory and habeas relief. We therefore reverse the district court's denial of relief to Mr. Abedi on this issue.

1. Legal Background

The statute relevant to Mr. Abedi's habeas claims, 8 U.S.C. § 1231, establishes a ninety-day "removal period" for the government to remove noncitizens subject to an order of removal from the United States. 8 U.S.C. § 1231(a)(1)(A). The statute provides that the removal period will begin on the latest of the following dates:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order.

> (iii) If the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.

§ 1231(a)(1)(B).

During the ninety-day removal period, the government is required to detain the noncitizen. *See* § 1231(a)(2)(A). Following the expiration of the removal period, "the Government 'may' detain only four categories of people," specifically: "(1) those who are 'inadmissible' on certain specified grounds; (2) those who are 'removable' on certain specified grounds; (3) those it determines 'to be a risk to the community'; and (4) those it determines to be 'unlikely to comply with the order of removal.'" *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–79 (2022) (quoting 8 U.S.C. § 1231(a)(6)). "Individuals released after the removal period remain subject to terms of supervision." *Id.*

The regulatory framework governing the release of noncitizens subject to § 1231(a)(6) is set forth in 8 C.F.R. § 241. Two different subsections of this regulation define the circumstances in which a noncitizen subject to an order of removal may be released after the removal period expires. Subsection 241.4 provides that a noncitizen may be released under an order of supervision if either the Director of the Headquarters Post-order Detention Unit ("HQPDU") or "a majority of the Review Panel members" make favorable findings on several specified factors, such as the likelihood that the noncitizen will remain nonviolent if released. 8 C.F.R. § 241.4(e); *see also* § 241.4(f). However, a noncitizen may instead be released based on a determination "that there is no significant likelihood that [the noncitizen] can be

removed in the reasonably foreseeable future." 8 C.F.R. § 241.4(b)(4). In such cases, the decision to release the noncitizen will not be conducted according to the custody review procedures set forth in 8 C.F.R. § 241.4; instead, this decision will be carried out "pursuant to the procedures provided in 8 [C.F.R. §] 241.13." *Id.* Thus, although § 241.4 establishes one mechanism by which a noncitizen may be released after the removal period has expired, the separate mechanism established in § 241.13 applies when the decision to release a noncitizen is specifically based on the unlikelihood of the noncitizen's removal in the reasonably foreseeable future.

If the determination has been made under § 241.13 that the noncitizen is unlikely to be removed from the country in the reasonably foreseeable future, then the specific provisions of this subsection will govern that noncitizen's release. Thus, § 241.4 is inapplicable to a noncitizen who has been granted release under § 241.13. *See* § 241.4(b)(4) ("The custody review procedures in this section do not apply after the Service has made a determination, pursuant to the procedures provided in 8 [C.F.R. §] 241.13, that there is no significant likelihood that [a noncitizen] under a final order of removal can be removed in the reasonably foreseeable future."); § 241.13(b) ("Section 241.4 shall continue to govern the detention of [noncitizens] under a final order of removal, including [noncitizens] who have requested a review of the likelihood of their removal under this section, *unless* the Service makes a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future." (emphasis added)).

Subsection 241.13 accordingly sets forth its own procedures for revoking a release granted under this subsection, which are distinct from the procedures that govern the revocation of release under § 241.4. When a noncitizen is released pursuant to § 241.4, the following provisions govern the revocation of that release:

> (1) ***Violation of conditions of release.*** Any [noncitizen] described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such [noncitizen] who violates the conditions of an order of supervision is subject to the penalties described in [8 U.S.C. § 1253(b)]. Upon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release or parole. The [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.
>
> (2) ***Determination by the Service.*** The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody [a noncitizen] previously approved for release under the procedures in this section. A district director may also revoke release of [a noncitizen] when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:
>
> > (i) The purposes of release have been served;
> >
> > (ii) The [noncitizen] violates any condition of release;
> >
> > (iii) It is appropriate to enforce a removal order or to commence removal proceedings against [a noncitizen]; or
> >
> > (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate.
>
> (3) ***Timing of review when release is revoked.*** If the [noncitizen] is not released from custody following the informal interview provided for in paragraph (l)(1) of this section, the HQPDU Director shall schedule the review process in the case of [a noncitizen] whose previous release or parole from immigration custody pursuant to a decision of either the district director, Director of the Detention and Removal Field Office, or Executive

> Associate Commissioner under the procedures in this section has been or is subject to being revoked. The normal review process will commence with notification to the [noncitizen] of a records review and scheduling of an interview, which will ordinarily be expected to occur within approximately three months after release is revoked. That custody review will include a final evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release. Thereafter, custody reviews will be conducted annually under the provisions of paragraphs (i), (j), and (k) of this section.

8 C.F.R. § 241.4(*l*).

But when a noncitizen is released from detention following a determination that the noncitizen is not significantly likely to be removed within the reasonably foreseeable future, the provisions of § 241.13(i) apply instead. This subsection is similar to § 241.4(*l*), but it differs in some key respects and is more tailored to the specific situation at issue in a § 241.13 release: the likelihood of removal within the reasonably foreseeable future. Specifically, this subsection provides:

> (1) ***Violation of conditions of release***. Any [noncitizen] who has been released under an order of supervision under this section who violates any of the conditions of release may be returned to custody and is subject to the penalties described in [8 U.S.C. § 1253(b)]. In suitable cases, the HQPDU shall refer the case to the appropriate U.S. Attorney for criminal prosecution. The [noncitizen] may be continued in detention for an additional six months in order to effect the [noncitizen]'s removal, if possible, and to effect the conditions under which the [noncitizen] had been released.
>
> (2) ***Revocation for removal.*** The Service may revoke [a noncitizen]'s release under this section and return the [noncitizen] to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future. Thereafter, if the [noncitizen] is not released from custody following the informal interview provided for in paragraph (h)(3) of this section, the provisions of § 241.4 shall govern the [noncitizen]'s continued detention pending removal.
>
> (3) ***Revocation procedures.*** Upon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release. The Service will

> conduct an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i).[9]

Subsection 241.13(i) thus establishes the mechanism by which the agency can reverse its earlier determination that the noncitizen is unlikely to be removed in the reasonably foreseeable future. And this mechanism specifically requires the government to notify a noncitizen in these circumstances "of the reasons for revocation of his or her release" and to "promptly" provide the noncitizen with "an

[9] Section 241.13(i)(2) seems to contain a drafting or scrivener's error. It refers to "the informal interview provided for in paragraph (h)(3) of this section." 8 C.F.R. § 241.13(i)(2). However, paragraph (h)(3) consists in its entirety of the following sentence: "The Service may, in the exercise of its discretion, grant employment authorization under the same conditions set forth in § 241.5(c) for [noncitizens] released under an order of supervision." *Id.* § 241.13(h)(3). On the other hand, paragraph (i)(3) specifically defines how the government should conduct informal interviews for noncitizens who were released pursuant to this subsection. *Id.* § 241.13(i)(3). Based on the language and context of these provisions, we conclude that the reference to paragraph (h)(3) is a scrivener's error, and we construe it as a reference to paragraph (i)(3) instead. *See Lexington Ins. Co. v. Precision Drilling Co.*, 830 F.3d 1219, 1223 (10th Cir. 2016) (explaining that courts may invoke the scrivener's error doctrine when a "seemingly clearly worded statute[]" contains an error that "is so 'unthinkable' that any reasonable reader would know immediately both (1) that it contains a 'technical or ministerial' mistake, and (2) the correct meaning of the text" (quoting Antonin Scalia & Bryan A. Garner, Reading Law 235, 237–38 (2012))); *see also Mitchell v. Comm'r of Internal Revenue*, 775 F.3d 1243, 1249 (10th Cir. 2015) ("In interpreting the relevant regulations, we apply the same rules we use to interpret statutes.").

initial informal interview" at which the government must allow the noncitizen to present any evidence or information pertinent to the government's stated reasons for the revocation of release. *Id.*

If the government determines at the conclusion of this required review process "that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future," then at that point "the provisions of § 241.4 shall govern the [noncitizen's] continued detention pending removal." § 241.13(i)(2); *see also* § 241.4(b)(4) ("[I]f the Service *subsequently determines*, because of a change of circumstances, that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future . . . , the [noncitizen] shall again be subject to the custody review procedures under [§ 241.4]." (emphasis added)). But § 241.4 does not come into play again unless this determination has been made following the required revocation review procedures established in § 241.13(i)(2). Thus, the government cannot move a noncitizen from the § 241.13 category to the § 241.4 category without first following the process set forth in § 241.13(i). *See* § 241.13(i)(2).

2. Applicable Regulation

We first consider the parties' arguments regarding which regulation or regulations apply to the Government's revocation of Mr. Abedi's order of supervised release. Mr. Abedi argues that the Government violated both 8 C.F.R. §§ 241.4(*l*) and 241.13(i) by failing to provide him with an informal interview at which he could contest his re-detention. He notes that the Notice of Revocation states that he was re-

detained pursuant to "8 C.F.R. § 241.4/8 C.F.R. § 241.13," and he thus treats both sections as applying to his situation. App. Vol. I at 93. In response, the Government argues that Mr. Abedi's release was revoked solely under 8 C.F.R. § 241.4 and that this regulation requires an informal interview only when the noncitizen has violated the conditions of his release.

The record makes clear that Mr. Abedi was released in 2002 under the special review procedures of § 241.13 rather than the separate process established in § 241.4. He was released without a formal custody review and without any agency findings on the § 241.4 factors. Instead, the explanation given for his release was that immigration officials had "been unable to remove [him] from the United States." App. Vol. I at 35. Thus, his release could only have been legally authorized under § 241.13. *Compare* § 241.4(e) to § 241.13(g). Moreover, the Government's June 2025 Notice of Revocation, which refers to a change in the possibility of removal to a third country, is consistent with the understanding that he was released under § 241.13 rather than § 241.4. We accordingly conclude that Mr. Abedi was released pursuant to § 241.13 rather than § 241.4.

Therefore, pursuant to the regulatory scheme described above, Mr. Abedi's release could be revoked only under the process established in § 241.13(i) for the revocation of a release granted under this subsection. *See* § 241.13(i)(2). The separate review process for the revocation of a release granted under § 241.4 is simply

inapplicable to a release granted under § 241.13.[10] *See* § 241.4(l)(2) ("The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody [a noncitizen] previously approved for *release under the procedures in this section*." (emphasis added)); § 241.4(b)(4) ("The custody review procedures in this section do not apply after the Service has made a determination, pursuant to the procedures provided in 8 [C.F.R. §] 241.13, that there is no significant likelihood that [a noncitizen] under a final order of removal can be removed in the reasonably foreseeable future."); § 241.13(i)(2) (setting forth the mechanism by which the government "may revoke [a noncitizen's] *release under this section* . . . if, on account of changed circumstances, the [government] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." (emphasis added)).

The Government quotes certain language from §§ 241.4 and 241.13 out of context to argue that the revocation of any order of supervision—whether the noncitizen was released pursuant to § 241.4 or § 241.13—is initially governed by § 241.4(*l*) and that the revocation review process set forth in § 241.13(i) applies only after the noncitizen makes an affirmative showing that he or she remains unlikely to be removed in the reasonably foreseeable future. But this argument is inconsistent

[10] Because we conclude that § 241.4's separate review process is inapplicable to the revocation of Mr. Abedi's release under § 241.13, we do not address the parties' arguments regarding whether § 241.4(1)(2) also requires the government to provide an informal interview to noncitizens whose supervised release is revoked under this subsection.

with the full text of these subsections and with the regulatory structure as a whole. As discussed above, each subsection sets forth its own procedures for the revocation of a release granted under that subsection, and the Government cannot move a noncitizen released under § 241.13 from the § 241.13 category to the § 241.4 category without following the specific procedural mechanisms established in § 241.13(i).

Moreover, the Government's interpretation of the regulation would effectively nullify § 241.13(i). According to the Government, § 241.13(i)'s mechanism by which immigration authorities can reverse an earlier determination regarding the unlikelihood of removal is triggered only after the noncitizen has somehow already shown—without the procedural protections provided in § 241.13(i)—that the noncitizen remains unlikely to be removed in the reasonably foreseeable future. If the noncitizen already made this showing, however, then the procedural framework established in § 241.13 would be unnecessary. And the Government does not explain why the specific procedural process by which a noncitizen can make this showing would not be invoked until after the noncitizen has already made this showing by some other unknown means. Thus, if we were to accept the Government's reading that § 241.13(i)'s revocation procedures apply only after the noncitizen has already refuted the Government's position that removal is now likely to occur in the reasonably foreseeable future, the procedure set forth in § 241.13(i) would be rendered superfluous. We therefore reject this argument and instead read the provisions so that each has practical effect. *See Time Warner v. Everest Midwest Licensee*, 381 F.3d 1039, 1050 (10th Cir. 2004) ("As with statutory construction, in

interpreting regulations, we strive to construe the text so that all of its provisions are given effect and no part is rendered superfluous.”).

In sum, based on the regulatory structure, text, and purpose of §§ 241.4 and 241.13, we conclude that because Mr. Abedi was released under § 241.13, his release could be revoked only pursuant to the procedural framework established in § 241.13(i). We therefore hold that § 241.13(i) is the pertinent regulation for purposes of this appeal, and we do not further address the parties’ arguments regarding § 241.4.

3. Prompt Interview Requirement

When the government revokes a release that was granted under § 241.13, it must “promptly” conduct an informal interview at which the noncitizen can present information and evidence relevant to the revocation of release. *See* § 241.13(i). Here, the Government does not dispute that it did not conduct an informal interview of Mr. Abedi until, at a minimum, more than six months after revoking his order of supervision. Nevertheless, the Government argues that Mr. Abedi could not establish a violation of § 241.13(i)’s prompt interview requirement because he filed his habeas petition after only four weeks of detention, and there was no basis for concluding after “less than a month” that the Government would never “promptly” interview him.[11] Appellees’ Br. at 28.

[11] Mr. Abedi was detained on the morning of Monday, June 23, 2025, and he filed his habeas petition on Monday, July 21, 2025. Thus, although it is technically correct to characterize the length of his detention as “less than a month,” Appellees’

As an initial matter, the Government provides no explanation or support for its contention that the district court could consider only the time that elapsed before Mr. Abedi filed his habeas petition, rather than the entire time in which Mr. Abedi went without an interview. But even assuming without deciding that the Government's timeframe were correct, we nevertheless hold that the Government violated § 241.13(i) by failing to provide Mr. Abedi with the prompt interview required by this regulation.

The word "promptly" is not defined in the regulation. We therefore interpret it "as taking [its] ordinary, contemporary, common meaning." *Sunnyside Coal v. Dir., Off. of Workers' Comp.*, 112 F.4th 902, 910 (10th Cir. 2024) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)).

Merriam-Webster defines "promptly" to mean "in a prompt manner," "without delay," and "very quickly or immediately." *Promptly*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/promptly (last accessed Aug. 7, 2026). Black's Law Dictionary defines "promptly" as "Quickly; without delay," and "As soon as practicable." *Promptly*, Black's Law Dictionary (12th ed. 2024). Black's Law Dictionary then notes that "[c]ontext is all-important," with courts particularly focusing on avoiding the "loss of rights" through their interpretation of this term. *Id.*

Here, we must decide what the word "promptly" means in the context of the procedural process required for the government to revoke a noncitizen's release and

---

Br. at 28, the record reflects that he had been detained for a full four weeks when he filed his habeas petition.

hold the noncitizen in immigration detention. In deciding this issue, we take guidance from the Supreme Court's decision in *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), in which the Court considered what the word "promptly" means in the context of the procedural process required for the government to arrest an individual without a warrant and hold the individual in pretrial detention.

The Court's decision in *McLaughlin* flowed from an earlier Supreme Court case, *Gerstein v. Pugh*, 420 U.S. 103 (1975), in which the Court "held that the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest." *McLaughlin*, 500 U.S. at 47. As the Court explained in *McLaughlin*, its decision in *Gerstein* was an "attempt[] to reconcile important competing interests." *Id.* at 52. "On the one hand, States have a strong interest in protecting public safety by taking into custody those persons who are reasonably suspected of having engaged in criminal activity, even where there has been no opportunity for a prior judicial determination of probable cause." *Id.* But "[o]n the other hand, prolonged detention based on incorrect or unfounded suspicion may unjustly 'imperil a suspect's job, interrupt his source of income, and impair his family relationships.'" *Id.* (quoting *Gerstein*, 420 U.S. at 114). The Court in *Gerstein* "sought to balance these competing concerns by holding that [s]tates 'must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before *or promptly after* arrest.'" *Id.* (quoting *Gerstein*, 420 U.S. at 125). The Court further reasoned that state

governments should be prepared to satisfy this prompt hearing requirement, as the police cannot permissibly arrest a suspect without probable cause and thus there will ordinarily be "no need for further investigation before the probable cause determination can be made." *Gerstein*, 420 U.S. at 120 n.21.

In *McLaughlin*, however, the Court concluded that *Gerstein*'s "vague" standard of promptness had "not provided sufficient guidance." 500 U.S. at 56. The Court therefore granted certiorari to resolve a circuit split "as to what constitutes a 'prompt' probable cause determination under *Gerstein*." *Id.* at 50.

The *McLaughlin* Court "answer[ed] that question by recognizing that *Gerstein* struck a balance between competing interests." *Id.* at 55. Taking these competing interests into account, the Court concluded that "a jurisdiction that provides judicial determinations of probable cause within [forty-eight] hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*." *Id.* at 56. The Court explained that a hearing that takes place within forty-eight hours may nonetheless violate *Gerstein*'s promptness requirement "if the arrested individual can prove that his or her probable cause determination was delayed unreasonably," but the Court cautioned courts to "allow a substantial degree of flexibility" in evaluating whether a delay of less than forty-eight hours was unreasonable. *Id.* at 56.

"Where an arrested individual does not receive a probable cause determination within [forty-eight] hours," however, then "the calculus changes." *Id.* at 57. "In such a case, the arrested individual does not bear the burden of proving an unreasonable delay." *Id.* Instead, "the burden shifts to the government to demonstrate the existence

of a bona fide emergency or other extraordinary circumstance." *Id.* And neither an intervening weekend nor the need to consolidate various pretrial proceedings will qualify as an extraordinary circumstance under this test. *Id.*

The promptness requirement at issue in this case arises from a similar context and raises similar concerns to the promptness requirement at issue in *Gerstein* and *McLaughlin*. Like the pretrial detention procedures at issue in *Gerstein* and *McLaughlin*, the revocation-of-release procedure set forth in § 241.13(i) seeks to balance important competing interests. On one hand, the government has an interest in detaining noncitizens who have violated the conditions of their release or who have a significant likelihood of being removed from the country in the reasonably foreseeable future. *See* § 241.13(i). On the other hand, the re-detention of a noncitizen who did not violate the conditions of his release and is unlikely to be removed in the reasonably foreseeable future "may unjustly 'imperil [his] job, interrupt his source of income, and impair his family relationships,'" *McLaughlin*, 500 U.S. at 52 (quoting *Gerstein*, 420 U.S. at 114). Thus, like the Supreme Court's *Gerstein* decision, this regulation seeks to balance these competing interests by mandating a prompt proceeding at which the detained individual may challenge the basis for his detention. *See* § 241.13(i)(3); *Gerstein*, 420 U.S. at 118–20, 123–25.

Furthermore, just as the police cannot permissibly arrest a suspect unless they have reason to believe they have probable cause, *see Gerstein*, 420 U.S. at 120 n.21, immigration officials cannot permissibly revoke a release granted under § 241.13 unless they have reason to believe either that the noncitizen violated the conditions of

his release or "that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." § 241.13(i). Thus, in both cases the government should be prepared to conduct the procedural process to allow the detainee to contest his detention "without delay" and "very quickly or immediately," consistently with the generally understood meaning of the term "promptly." *See Promptly*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/promptly (last accessed Aug. 7, 2026); *Promptly*, Black's Law Dictionary (12th ed. 2024); *see also Gerstein*, 420 U.S. at 120.

While we recognize important differences between these scenarios, our interpretation of the term "promptly" in § 241.13(i)(3) takes guidance from the Supreme Court's interpretation of the identical term in a similar context in *McLaughlin*. And although we do not decide in this appeal whether § 241.13(i)(3)'s requirement for an interview to be conducted "promptly" would trigger the same forty-eight-hour test that the Supreme Court adopted for prompt probable cause determinations in *McLaughlin*, we are confident that the time that expired here easily establishes that the Government did not promptly conduct Mr. Abedi's interview.[12] Thus, "the burden shifts to the government to demonstrate the existence of a bona

[12] We reach the same conclusion whether we measure the elapsed time based on the Government's requested calculation (considering only the four weeks that elapsed between Mr. Abedi's re-detention and his filing of this habeas petition), the three months that elapsed before the district court entered its order denying habeas relief, or the six-plus months that actually elapsed before an interview seems to have eventually occurred.

fide emergency or other extraordinary circumstance" justifying the delay. *See McLaughlin*, 500 U.S. at 57.

Here, the Government has made no attempt to justify the lengthy delay. It provides no explanation as to why it could not have interviewed Mr. Abedi within the four weeks that elapsed before he filed his habeas petition or the three months that elapsed before the district court ruled on the petition. Instead, the Government simply asks this court not to hold it to any "particular time frame" for compliance with the important procedural safeguards set forth in 8 C.F.R. § 241.13. Appellees' Br. at 27. But accepting this argument would render the promptness requirement meaningless and would effectively insulate the agency's administrative action from judicial review, contrary to our "presumption in favor of judicial review of administrative action," *Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1189 (10th Cir. 2014) (quoting *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 348 (1984)); *see also Dekovic v. Rubio*, 169 F.4th 1002, 1013 (10th Cir. 2026) ("[T]his result would vitiate the Administrative Procedure Act, which establishes mechanisms for judicial review of agency decisions and further requires courts to compel agency action that has been unlawfully withheld or unreasonably delayed." (internal quotation marks omitted)).

Accordingly, we hold that the Government violated its regulations by failing to "promptly" provide Mr. Abedi with an informal interview and opportunity to be heard on its reasons for revoking his release. *See* § 241.13(i)(3).

4. Prejudice

The district court concluded that Mr. Abedi was not entitled to relief based on any violation of the pertinent regulations because he had "not explained how such violations prolonged his detention or caused him any other prejudice." App. Vol. II at 224. The court reasoned that "[t]his litigation of the habeas petition has afforded [Mr. Abedi] ample opportunity to state his position and to learn the Government's position in return." *Id.* Thus, because Mr. Abedi was able to hire an attorney and file a habeas petition, the court held that the Government's violation of his due process rights was harmless.

As we now explain, however, the Government's failure to comply with § 241.13(i) was per se prejudicial, thus warranting habeas relief without the need for an additional showing of prejudice. And even if Mr. Abedi was required to make a showing of prejudice, the fact that he was denied his due process rights while he remained in detention is enough to show prejudice. His ability to contest his unlawful detention through litigation does not render harmless his detention without due process.

a. Per se prejudice

An agency's regulations are legally binding on the agency, "as [the agency] is 'expected to render a decision in accord with its own collective belief.'" *Ramos v. Bondi*, 155 F.4th 1154, 1165 (10th Cir. 2025) (quoting *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266 (1954), *superseded by statute on other grounds as stated in DHS v. Thuraissigiam*, 591 U.S. 103 (2020)); *see also Steenholdt v. FAA*,

314 F.3d 633, 639 (D.C. Cir. 2003) ("The *Accardi* doctrine requires federal agencies to follow their own rules, even gratuitous procedural rules that limit otherwise discretionary actions.").

When an agency fails to comply with regulations that establish procedural protections for individuals, this failure may constitute per se prejudice, negating the need for the plaintiff to make any additional showing of prejudice to be entitled to relief. In *Accardi*, for instance, the Supreme Court reversed the lower courts' denial of a habeas petition brought by a noncitizen who alleged that the government failed to apply the proper procedures in deciding to deport him. 347 U.S. at 266–68. In so holding, the Court indicated that no showing of prejudice was required for the immigrant to receive habeas relief. *See id.* To the contrary, the Court specifically noted that the petitioner might on remand "still fail to convince the Board [of Immigration Appeals] or the Attorney General, in the exercise of their discretion, that he is entitled to suspension [of deportation proceedings]." *Id.* at 268. Nevertheless, the Court held that the petitioner was entitled to habeas relief. *Id.* The Court explained that even if the petitioner failed on remand to convince the agency of the merits of his arguments, "at least he will have been afforded that due process required by the regulations in such proceedings." *Id.*

The Supreme Court likewise indicated in *Vitarelli v. Seaton*, 359 U.S. 535 (1959), that an individual may be entitled to relief based solely on the government's failure to comply with regulatory procedures established to protect individuals' due process rights. In *Vitarelli*, the government terminated the plaintiff from federal

employment for purported national security reasons. *Id.* at 536–37. Based on the plaintiff's job position and status, the government could have summarily terminated his employment without explanation, and in such a case it would not have been required to provide him with any process to contest his termination. *Id.* at 539. But because the government chose to terminate him for security reasons, it was required to comply with the procedural standards established in the pertinent regulations for such a termination. *Id.* As the Court explained, the government, "[h]aving chosen to proceed against [the plaintiff] on security grounds, . . . was bound by the regulations which [it] had promulgated for dealing with such cases, even though without such regulations [it] could have discharged [the plaintiff] summarily." *Id.* at 539–40. And because the proceedings provided to the plaintiff "fell substantially short of the requirements of the applicable departmental regulations," the Court concluded that the plaintiff was entitled to reinstatement of his employment. *Id.* at 545. In so holding, the *Vitarelli* Court rejected the government's argument that "even if the dismissal of September 10, 1954, was invalid, [the plaintiff was] not entitled to reinstatement by reason of the fact that he was at all events validly dismissed in October 1956." *Id.* Based on the government's "departures from departmental regulations," which went beyond mere "procedural irregularities," the plaintiff was entitled to reinstatement even if the government's compliance with the procedural regulations would not have saved his employment. *Id.* at 540; *see also id.* at 545–46.

The Supreme Court has clarified in subsequent cases "that not every promulgated regulation is of such a nature that a violation should invalidate agency

action." *Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171, 176 (3d Cir. 2010) (citing *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532 (1970)). But the Court has explained that, "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). And "[a] court's duty to enforce an agency regulation is most evident when compliance with the regulation is mandated by the Constitution or federal law." *United States v. Caceres*, 440 U.S. 741, 749 (1979). Thus, for example, the Court has "held invalid a deportation ordered on the basis of statements which did not comply with the Immigration Service's rules requiring signatures and oaths, finding that the rules were designed 'to afford [the noncitizen] due process of law' by providing 'safeguards against essentially unfair procedures.'" *Id.* (quoting *Bridges v. Wixon*, 326 U.S. 135, 152–53 (1945)).

Accordingly, "when an agency promulgates a regulation protecting fundamental statutory or constitutional rights of parties appearing before it, the agency must comply with that regulation." *Leslie*, 611 F.3d at 180. And in such cases, "[f]ailure to comply will merit invalidation of the challenged agency action without regard to whether the alleged violation has substantially prejudiced the complaining party." *Id.*

The Government does not contest that its failure to comply with a regulation that establishes due process safeguards may be per se prejudicial. Instead, the

Government argues only that Mr. Abedi waived this argument because he "failed to raise and develop an *Accardi* claim." Appellees' Br. at 32.

We conclude, however, that Mr. Abedi sufficiently raised this argument before the district court. The Government's argument relies on the fact that Mr. Abedi did not mention *Accardi* by name in the district court proceedings. As Mr. Abedi argues, however, "*Accardi* is not a pleading trap; it is the basic rule that agencies must follow their own binding procedures." Reply Br. at 15. And although Mr. Abedi's habeas petition did not refer to *Accardi* by name, he invoked the "operative *Accardi* point" that "agencies may not promise process and then withhold it when liberty is at stake." *Id.* at 15–16. Mr. Abedi argued in his habeas petition that "[w]hen the government fails to comply with its own federal regulations, as it did when it revoked Mr. Abedi's release in violation of its own procedures, the action should be found invalid." App. Vol. I at 23. He supported this argument with citations to two different cases in which courts recognized the general principle that, "[i]n cases where the immigration agency failed to adhere to its own regulations, and the regulations in question were derived from and intended to bolster constitutional principles, . . . relief is automatically warranted, and the [noncitizen] need not show prejudice." *Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004); *see also Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) ("[W]here an immigration 'regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute,' like the opportunity to be heard, 'and ICE fails

to adhere to it, the challenged action is invalid.'" (quoting *Waldron v. INS*, 17 F.3d 511, 518 (2d Cir. 1993))).

Moreover, in his reply to the Government's argument that he was not prejudiced by any alleged due process violation, Mr. Abedi responded that a violation by the Government of its own regulations "is not harmless." App. Vol. II at 11. He cited several cases in support of this proposition, and he specifically quoted one court's holding that "these regulations are intended to provide due process in that they are fairly construed to be part of a procedural framework designed to ensure the fair processing of an action affecting an individual, such that when they are not followed, *prejudice is presumed*." *Id.* at 16 (emphasis added) (quoting *Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025)).

We accordingly hold that Mr. Abedi did not waive his argument that the Government's violation of its regulations was presumptively prejudicial. And we further hold that the Government's failure to abide by the procedural requirements of § 241.13 "involve[d] more than mere . . . procedural irregularities," *Vitarelli*, 359 U.S. at 540. Rather, the Government failed to comply with "a regulation protecting fundamental statutory or constitutional rights of parties appearing before it." *Leslie*, 611 F.3d at 180; *see also Caceres*, 440 U.S. at 749 (noting that the Court had previously invalidated a deportation order because the government failed to comply with regulatory "rules [that] were designed 'to afford [the noncitizen] due process of

law' by providing 'safeguards against essentially unfair procedures'" (quoting *Bridges*, 326 U.S. at 152–53)).

The Government's failure to comply with a regulation protecting Mr. Abedi's due process rights thus "merit[s] invalidation of the challenged agency action without regard to whether the alleged violation has substantially prejudiced [him]." *Leslie*, 611 F.3d at 180; *see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) ("In sum, because ICE did not follow its own regulations in deciding to re-detain Ceesay, his due process rights were violated, and he is entitled to release. And even if that were not so, he still would be released because he was not afforded even the minimal due process that protects everyone—citizens and noncitizens—in the United States.").

b. Prejudice in fact

Moreover, even if the Government's failure to comply with the procedural due process safeguards established in § 241.13(i)(3) were not per se prejudicial, we would nevertheless hold that Mr. Abedi was prejudiced because he was held for months in detention without the ability to contest the basis for his detention or to otherwise be heard. The lack of process was itself an injury. *See Rector v. City & Cnty. of Denver*, 348 F.3d 935, 943 (10th Cir. 2003) ("Parties may suffer injury in fact from defective procedures even if, at the end of the day, they would not have prevailed on the merits.").

We are unpersuaded by the district court's conclusion that Mr. Abedi's ability to file a habeas petition cured any prejudice flowing from the Government's failure

to provide him with the administrative process to which he was entitled. As our sister circuits have explained, "[t]he bare existence of optional habeas corpus review does not, of itself, alleviate due process concerns." *Doe v. Gallinot*, 657 F.2d 1017, 1023 (9th Cir. 1981). "Habeas can be at most a backstop—a failsafe mechanism, not the sole process available." *J.R. v. Hansen*, 803 F.3d 1315, 1326 (11th Cir. 2015). "[T]his makes good sense because habeas review occurs only if a petitioner asks for it; it is in no way the type of [consistent] review that due process requires." *Id.* And as a practical matter, it is unrealistic to expect detained noncitizens—many of whom cannot afford an attorney, lack legal backgrounds, and "speak English as a second language or not at all"—to file habeas petitions when their due process rights are denied. Br. for Rocky Mountain Immigr. Advoc. Network as Amicus Curiae Supporting Petitioner at 24; *see also Gallinot*, 657 F.2d at 1023 ("No matter how elaborate and accurate the habeas corpus proceedings . . . may be once undertaken, their protection is illusory when a large segment of the protected class cannot realistically be expected to set the proceedings into motion in the first place."). Indeed, although "there were approximately 38,000 immigrants in detention at the end of fiscal year 2024[,] . . . court statistics show that just 448 habeas petitions were filed on behalf of [immigration] detainees in calendar year 2024." *Daley v. Ceja*, 158 F.4th 1152, 1164 (10th Cir. 2025). The remote possibility of habeas review in the weeks, months, or years after a noncitizen's release has been revoked under § 241.13 thus cannot conceivably cure the harm caused by the agency's failure to "promptly"

provide the noncitizen with the immediate administrative due process required by this regulation.

Moreover, as Mr. Abedi argues, the district court's reasoning, if accepted, would "convert protective regulations into aspirational suggestions and would incentivize noncompliance by shifting the burden and cost of the process to federal courts and incarcerated petitioners." Reply Br. at 17. It "would hollow out the protections [the agency] itself codified and would predictably increase federal habeas litigation by making the courthouse the first place a detainee can be heard." *Id.* And "[a] post-hoc opportunity to submit briefs in federal court is not the same as a prompt administrative interview designed to test the factual basis for detention before months of liberty are lost." *Id.* As Mr. Abedi contends, "[p]rocess delivered months later is not 'process' in the constitutional sense; it is a retrospective justification attempt." *Id.* at 18.

We therefore hold that the existence of a possible remedy in habeas corpus did not render harmless the Government's failure to comply with § 241.13(i)'s requirement of a prompt informal interview at which Mr. Abedi could contest the basis for the revocation of his release. The district court therefore erred in dismissing Mr. Abedi's requests for declaratory and habeas relief based on this regulatory violation.

D. Zadvydas

In his habeas petition, Mr. Abedi additionally sought declaratory and habeas relief pursuant to the Supreme Court's decision in *Zadvydas*, which discussed the

limits of permissible detention under 8 U.S.C. § 1231(a)(6). *See* 533 U.S. at 684–86. The district court denied Mr. Abedi's *Zadvydas* claims in its order denying habeas relief, and Mr. Abedi challenges that ruling on appeal. We agree that the district court applied the wrong legal standard in evaluating these claims, and we therefore reverse and remand for further proceedings in the district court.

1. Legal Background

In *Zadvydas*, the Court considered how long a noncitizen subject to a final order of removal may be detained under 8 U.S.C. § 1231(a)(6). 533 U.S. at 684–86. The government there argued that the statute permitted it to indefinitely detain noncitizens following the expiration of their removal periods. *Id.* at 689. The Supreme Court rejected this argument, however, holding that "the statute, read in light of the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Id.* Thus, if a noncitizen's detention "exceeds a period reasonably necessary to secure removal," this detention is "no longer authorized by statute," and the noncitizen must be released under an order of supervision. *Id.* at 699–700. Likewise, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. The Court explained that any other interpretation of the statute would risk "a serious constitutional threat." *Id.*

The Court further concluded that federal courts have the authority pursuant to their habeas jurisdiction to decide "[w]hether a set of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure

removal," which "is determinative of whether the detention is, or is not, pursuant to statutory authority." *Id.* "[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699–700. "And if removal is reasonably foreseeable, the habeas court should consider the risk of the [noncitizen] committing further crimes as a factor potentially justifying confinement within that reasonable removal period." *Id.* at 700.

To make it easier for habeas courts to determine when a noncitizen's detention is "no longer authorized by statute," the Court adopted a six-month "presumptively reasonable period of detention," analogous to the forty-eight-hour period of presumptively reasonable pretrial detention that it adopted in *McLaughlin* to resolve the question of how "promptly" a prompt probable cause determination must be made. *Id.* at 699, 701; *see also McLaughlin*, 500 U.S. at 56–58. The Court considered adopting a ninety-day presumption—coterminous with the current statutory removal period—but the Court ultimately concluded that a longer presumptive period was appropriate because not "all reasonably foreseeable removals could be accomplished in [ninety days]." *Zadvydas*, 533 U.S. at 701. On the other hand, the Court concluded that the presumptively reasonably period of detention should not extend beyond six months—the length of the former statutory removal period—because "Congress previously doubted the constitutionality of detention for more than six months." *Id.*

The Court explained that this six-month presumption of reasonable detention did "not mean that every [noncitizen] not removed must be released after six months." *Id.* But the Court explained that a noncitizen may not be detained under

§ 1231(a)(6) if "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* "And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

2. Analysis

The primary dispute in this case revolves around the question of how to calculate *Zadvydas*'s six-month period of presumptively reasonable detention. As the Government notes in its appellate brief, "district courts are split on which time should 'count' when calculating the presumptively reasonable six-month period." Appellees' Br. at 41. "Three competing approaches focus on (1) only the time spent in the most recent period of detention (the 'latest detention' approach); (2) the time spent in the most recent period of detention plus any time previously spent in detention (the 'aggregated detention' approach);" and (3) the time that has elapsed since the removal period was triggered. *Id.* The Government urges us, like the district court, to follow the first approach, which it contends "best fits with the reasoning of *Zadvydas*." *Id.* at 47. Notably, in accepting this argument, the district court reasoned that each re-detention must trigger a new six-month presumption of reasonableness because any other interpretation of the *Zadvydas* presumption "would automatically make any re-detention of a previously-released [noncitizen] unreasonable." App. Vol. II at 223.

We conclude, however, that the third approach identified in the Government's brief is most consistent with *Zadvydas* and that this approach, properly understood,

does not trigger the concern raised by the district court. Therefore, for the reasons discussed below, we hold that *Zadvydas*'s six-month presumption applies only to the first six months that elapse after the removal period is triggered.

The Government effectively asks us to treat *Zadvydas* as establishing a resettable six-month grace period that applies to any period of immigration detention, permitting the Government to detain a noncitizen for any number of repeated six-month stints so long as these periods of detention are separated by some moment of freedom. But the Supreme Court in *Zadvydas* did not describe the six-month presumption as a standalone rule that applies to any period of immigration detention. *See* 533 U.S. at 700–01. Rather, the Court adopted the six-month presumption to address the question of how long the government may reasonably detain a noncitizen after the noncitizen's removal order becomes final. *See id.* And we see no basis in the Court's reasoning for adopting a new six-month presumption of reasonableness applicable to any period of detention that occurs after the removal period has expired.

As discussed above, the *Zadvydas* Court first considered adopting a presumptively reasonable detention period of ninety days, coterminous with the current statutory removal period, but it ultimately settled on a six-month presumption in recognition of the reality that not "all reasonably foreseeable removals could be accomplished in [ninety days]." *Id.* at 701. Notably, the Court derived this six-month presumption from an earlier version of the removal statute that included a six-month removal period. *See id.* at 698, 701; *see also* 8 U.S.C. § 1252(c) (1982). This earlier six-month removal period—like the current removal period—applied only to the

initial time period after an order of removal became final, without any provision for tolling or retriggering. *See* 8 U.S.C. §§ 1252(c) and (d) (1982); *see also* 8 U.S.C. § 1231. Nothing in the Court's explanation of its reasons for recognizing this six-month period of presumptively reasonable detention suggests that this six-month period, unlike the six-month removal period on which it was based, would be retriggered every time a noncitizen was detained. *See* 533 U.S. at 700–01.

Moreover, the primary reason for the six-month *Zadvydas* presumption—the reality that arranging a noncitizen's removal may take longer than the current ninety-day removal period—does not apply to periods of re-detention that occur months, years, or decades after the removal order has become final. *See id.* at 701. The Court in *Zadvydas* "sought to balance the length of time a noncitizen would be held in detention against the need to afford the Government some time immediately following the issuance of the removal order to make and execute arrangements for removal." *Zavvar v. Scott*, Civil Action No. 25-2104-TDC, 2025 WL 2592543 (D. Md. Sept. 8, 2025) (citing *Zadvydas*, 533 U.S. at 701). But "some if not most of those arrangements, such as securing approval from a foreign country to remove an individual to that nation, can likely be pursued even while the noncitizen is on release." *Id.* Thus, the balance that the Court struck in *Zadvydas* would be dramatically different "in circumstances where, before the period of detention began, the Government had a period of time"—indeed, more than two decades in Mr. Abedi's case—"to make the arrangements for removal." *Id.*

The Government contends, however, that *Zadvydas* requires us to recognize a new six-month period of presumptively reasonable detention every time a re-detention occurs because any contrary holding would cause a noncitizen to be deemed "instantly subject to unreasonable and indefinite detention" when the government revokes the noncitizen's release. Appellees' Br. at 47 (quoting *Roe v. Oddo*, No. 3:25-cv-128, 2025 WL 3030692, at *7 n.8 (W.D. Pa. Oct. 30, 2025)). The district court agreed with this argument, reasoning that treating the six-month presumption as applying only to the first six months after the removal period is triggered "would automatically make any re-detention of a previously-released [noncitizen] unreasonable" and thus "prohibit the eventual removal of [a noncitizen] once released." App. Vol. II at 223.

However, this conclusion rests on a misunderstanding of both the Court's decision in *Zadvydas* and the nature of rebuttable presumptions. *Zadvydas* does not establish a bright-line rule under which the first six months of immigration detention are always acceptable and any detention after that point is automatically impermissible. Instead, *Zadvydas* holds that federal courts should exercise their habeas jurisdiction to decide whether a noncitizen is being detained "within, or beyond, a period reasonably necessary to secure removal." 533 U.S. at 699. Because the reasonableness of detention under § 1231(a)(6) is measured "primarily in terms of the statute's basic purpose, namely, assuring the [noncitizen's] presence at the moment of removal," a habeas court should hold that "continued detention [is] unreasonable and no longer authorized by statute" whenever the court determines that

"removal is not reasonably foreseeable." *Id.* at 699–700. "And if removal is reasonably foreseeable, the habeas court should consider the risk of the [noncitizen's] committing further crimes as a factor potentially justifying confinement within that reasonable removal period." *Id.* at 700. This inquiry "will often call for difficult judgments," and *Zadvydas* therefore established a presumption of reasonableness for detention during the first six months after a removal order becomes final. *Id.* at 700–01. But "the [six]-month presumption [the Court] described in *Zadvydas* is just that—a presumption." *Clark v. Martinez*, 543 U.S. 371, 387 (O'Connor, J., concurring) (citation omitted).

Indeed, the Court specifically analogized the six-month presumption of reasonableness in *Zadvydas* to the forty-eight-hour presumption of reasonableness in *McLaughlin. See Zadvydas*, 533 U.S. at 701; *see also McLaughlin*, 500 U.S. at 56–57. As discussed above, the forty-eight-hour *McLaughlin* presumption does not establish a bright-line rule under which the first forty-eight hours of pretrial detention are always acceptable and any subsequent detention is automatically impermissible. *See* 500 U.S. at 56–57. Instead, *McLaughlin* establishes a presumption of reasonableness when an arrested individual receives a probable cause determination within forty-eight hours of the arrest. *Id.* The detainee may rebut this presumption by "prov[ing] that his or her probable cause determination was delayed unreasonably," but the timing of a probable cause determination that occurs within forty-eight hours will be presumed reasonable in the absence of such a showing. *Id.* at 56. After forty-eight hours have elapsed without a probable cause determination, however, "the

calculus changes." *Id.* at 57. The burden then "shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance," and detention for longer than forty-eight hours without a probable cause determination will be deemed unreasonable unless the government satisfies this burden. *Id.* Thus, *McLaughlin*'s forty-eight-hour presumption period does not instantly and automatically invalidate any pretrial detention that extends beyond this period; instead, the expiration of the forty-eight-hour period simply shifts the burden from the detainee to the government to establish the reasonableness of the delay. *See id.* at 56–57.

The six-month presumption in *Zadvydas* operates similarly, although not identically. *See* 533 U.S. at 701. During the first six months after an order of removal becomes final, the noncitizen's detention is presumed reasonable. *See id.* The noncitizen may rebut this presumption by showing that "removal is not reasonably foreseeable" and thus "continued detention [is] unreasonable and no longer authorized by statute," but the detention is presumed reasonable in the absence of such a showing. *Id.* at 699–700. After six months have elapsed, however, the calculus changes. *See McLaughlin*, 500 U.S. at 57. Detention after this point is no longer presumed reasonable, and a federal habeas court may therefore no longer rely on this presumption of reasonableness in determining whether the "circumstances amount[] to detention within, or beyond, a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. Instead, the district court must conduct a case-specific

analysis to conclude whether the detention meets the *Zadvydas* reasonableness standard absent this presumption.

The six-month presumption period therefore does not instantly and automatically invalidate any immigration detention that extends longer than six months or that begins more than six months after the removal period has become final. *See id.* at 701. The government is simply no longer entitled to a presumption of reasonableness for any detention that occurs outside of the initial six-month period following the removal order becoming final. *See id.*

The district court consequently erred in interpreting *Zadvydas* to create a new six-month period of presumptively reasonable detention every time a noncitizen is detained. And because the district court relied on this incorrectly applied presumption of reasonableness to deny Mr. Abedi's *Zadvydas* claims, it did not conduct the required case-specific analysis to determine whether Mr. Abedi's re-detention was reasonably necessary to secure his removal or whether his removal was reasonably foreseeable. We therefore remand for the district court to conduct this analysis in the first instance.

III. CONCLUSION

For the foregoing reasons, we DENY the Government's motion to dismiss the appeal as moot. We AFFIRM in part and REVERSE and REMAND in part the district court's order denying temporary injunctive relief to Mr. Abedi. And we REVERSE and REMAND the district court's order denying Mr. Abedi's requests for declaratory and habeas relief for further proceedings in accordance with this opinion.

No. 25-3179, *Abedi v. Carter, et al.*
EID, J., dissenting.

Kaveh Abedi has been released from immigration detention. His habeas petition is therefore moot, and no mootness exception applies. Accordingly, I would dismiss this appeal.

I.

The majority holds that this appeal survives Abedi's release because it falls within the mootness exception for wrongs capable of repetition yet evading review. I disagree. Abedi bears the burden of establishing that exception, and he cannot carry it.

As the name implies, this exception has two requirements: (1) the case must "'evade review' because 'the duration of the challenged action is too short to be fully litigated prior to its cessation or expiration,'" and (2) the case must be "'capable of repetition,' such that 'there is a reasonable expectation that the same complaining party will be subjected to the same action again.'" *Fleming v. Gutierrez*, 785 F.3d 442, 445–46 (10th Cir. 2015) (quoting *Chihuahuan Grasslands All. v. Kempthorne*, 545 F.3d 884, 892 (10th Cir. 2008)). The exception is "narrow," and it "is only to be used in exceptional situations." *Jordan v. Sosa*, 654 F.3d 1012, 1034–35 (10th Cir. 2011) (quotations omitted). And "[t]o avail himself of the exception, a plaintiff must

establish" both requirements. *Ind v. Colo. Dep't of Corr.*, 801 F.3d 1209, 1215 (10th Cir. 2015).

II.

Abedi has not established that his re-detention is capable of repetition. His release was based, in part, upon the recommendation of "two local immigration officials . . . [who] did not believe the petitioner's removal was imminent." *Abedi v. Carter* (*Abedi II*), No. 26-3012, 2026 WL 482329, at *3 (D. Kan. Feb. 20, 2026); *see also id.* (noting that immigration officials "were unable to remove petitioner to [Turkey or the United Arab Emirates]," the only third-country destinations identified during this litigation). This recommendation strongly cuts against Abedi's argument that there is "a reasonable expectation" that he will be re-detained, as a prerequisite for revoking his current order of supervision is a determination by immigration officials that there "is a significant likelihood that the [noncitizen] will be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2) (2026).[1] True, the recommendation is not "binding on other government officials." Maj. Op. at 20. But a binding recommendation (or court order) is not required. To hold otherwise would improperly flip the burden onto the government.

While the majority invokes *Turner v. Rogers*, 564 U.S. 431 (2011), the facts of *Turner* are remarkably different from those in the case at hand. In *Turner*, the

[1] Abedi's order of supervision could also be revoked if he violates the conditions of his release. 8 C.F.R. § 241.13(i)(1). But such a revocation would be due to Abedi's own misconduct, which "we decline to assume" will occur. *Ind*, 801 F.3d at 1216.

proponent of the exception had been subjected to civil contempt proceedings five times prior to the contempt proceeding that was litigated up to the Supreme Court; and he was further subjected to two additional proceedings by the time the Court handed down its ruling. *See id.* at 436, 440. Here, by contrast, Abedi's order of supervision was not revoked in the twenty-plus years prior to this appeal; he has not been re-detained in the six months since his release from immigration detention; and there is no evidence before us suggesting that the government plans to re-detain him any time soon.

The majority also relies on a handful of cases where noncitizens were re-detained after obtaining habeas relief. But the operative question is whether "there is a reasonable expectation that *the same complaining party* will be subjected to the same action again." *Fleming*, 785 F.3d at 445 (emphasis added) (quotation omitted). Re-detentions of other petitioners, in different postures and on different removal records, shed little light on whether Abedi will be subject to the same action again. *Cf.* Reply in Support of Mot. to Dismiss at 5 (noting that Abedi has only identified eight re-detentions out of the "thousands of [ ] immigration [habeas] actions filed over the past few years").

III.

Abedi's release from immigration detention mooted his appeal, and Abedi has not shown that the exception for wrongs capable of repetition yet evading review applies. I therefore respectfully dissent.[2]

[2] Because Abedi has not shown that this action is capable of repetition, I do not consider whether it evades review, nor do I address the merits.