

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HYWORTH RUTANHIRA,

Petitioner,

v.

Case No. 2:26-cv-00130-MLG-JMR

**PAMELA BONDI, Attorney General of the
United States, KRISTI NOEM, Secretary,
Department of Homeland Security, TODD M.
LYONS, Acting Director, United States Immigration
and Customs Enforcement, MARY DE ANDA-
YBARRA, Field Office Director, Enforcement and
Removal Operations, United States Immigration
and Customs Enforcement, WARDEN, Otero
County Processing Center,**

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents, the United States Attorney General, the Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”)(collectively “Respondents”)¹, hereby submit this Response to Petitioner’s Writ of Habeas Corpus (Doc. 1).²

FACTUAL BACKGROUND

Petitioner is a citizen of Zimbabwe. *See* Exhibit (Ex.) 1, I-213 dated September 12, 2025. Petitioner originally entered the United States in 1999 with legal status, an F2 non-immigrant visa, which expired at some point, and he did not leave the United States or otherwise gain new

¹ The undersigned does not represent Dora Castro, Warden, Otero County Processing Center, as Otero is a private facility, and Warden Castro is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply equally to Warden Castro.

² Federal Respondents were served with the Petition (Doc.1) and Order for Service and to Show Cause (Doc. 4) on January 29, 2026. Respondents were ordered to file a response within 10 days of receipt of service of the Petition. *See* Doc. 4. Thus, the United States’s response is timely.

legal status. *Id.* In 2006, following conviction for an aggravated felony (and he has other criminal history concerns), an immigration judge ordered Petitioner to be removed from the United States. *Id.*, *see also*, Ex. 's 2 and 3. Petitioner did not leave the United States. Fast forward to 2025, Petitioner and a companion were stopped by the U.S. Border Patrol at the Sierra Blanca Border Patrol Checkpoint (Texas) on Interstate 10 in Texas. *See* Ex. 1. U.S. Border Patrol found marijuana in the Penske truck that they were driving/riding in, and marijuana remains illegal under both United States and Texas criminal code. As such, they were both arrested for marijuana possession. *Id.* Identification checks on Petitioner revealed that he did not leave the United States in 2006 as ordered by an immigration judge. *Id.*

On September 12, 2025, Petitioner was taken into immigration custody, where he remains. *See* Ex. 4. Petitioner has yet to serve 6 months of immigration detention, while U.S. ICE makes efforts to remove Petitioner from the United States.

Legal Argument: Petitioner's *Habeas Corpus* Petition is Premature under 8 U.S.C. § 1231 and *Zadvydas v. Davis*

It is well established that detention is a constitutionally valid aspect of the deportation process. *See generally Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Indeed, Congress has made clear that a removable alien may be detained during his asylum proceedings, during removal proceedings and after he receives an order of removal that becomes final. *See* 8 U.S.C. §§ 1225, 1226, 1231. "An alien is not adjudged deportable until an order enters concluding that the alien is deportable or ordering deportation, and such an order is not final until affirmed by the Board of Immigration Appeals or until the time expires for seeking review." *Demore v. Kim*, 538 U.S. 510, 542 n. 3 (2003)(Justices Souter, Stevens, Ginsburg *concurring* (*internal citation omitted*)).

However, once an alien becomes subject to an administratively final removal order, the authority for his detention shifts to 8 U.S.C. § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528-29 (2021); *see also* 8 U.S.C. § 1231(a). While awaiting removal, detention is mandatory. *See* 8 U.S.C. § 1231(a)(2). Under 8 U.S.C. § 1231(a)(1)(A), the Attorney General has a 90-day removal period to remove the alien subject to the removal order; however, 8 U.S.C. § 1231(a)(1) and (2) also provide for detention beyond 90 days. In *Zadvydas*, the United States Supreme Court recognized that removal is not always possible within 90 days and held that detention up to six (6) months is constitutionally presumptively reasonable, and that detention beyond six (6) months is permitted under a balancing test. *Zadvydas*, 533 U.S. at 682-683, 701-702. Since Petitioner’s detention has not exceeded six (6) months, there is no legal authority for this Court to grant Petitioner relief. *See also, Abedi v. Carter*, 2025 WL 3209009 at *1 (D. Kan. October 6, 2025)(“Thus, because petitioner has only been detained since June 2025, a period of less than four months, his detention remains presumptively reasonable under *Zadvydas*.”); *Juan Carlos Rodriguez, Applicant v. D. CEJA, Warden*, 2024 WL 6994875 at *4 (D. Col. August 12, 2024)(citing numerous cases with similar facts and results); *Khai Nguyen v. Pamela Bondi*, 2025 WL 4114231 at 2 (W.D. Okla. December 31, 2025).³

CONCLUSION

The Court should deny the Petition for Writ of Habeas Corpus (Doc. 1) as Petitioner has not been detained longer than six (6) months. For this reason, the Court should deny or dismiss the petition (Doc. 1).

³ Petitioner’s character letters are only relevant, if at all, in a future immigration court proceeding, should he file for relief from the removal order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 10, 2026, I filed the foregoing pleading electronically through the CM/ECF system, and a true copy was mailed by first-class mail to:

LEGAL MAIL
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/s/ Scott C. Jansen 2/10/26
SCOTT C. JANSEN
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