

**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 EMERGENCY MOTION TO ENFORCE ORDER TO SHOW CAUSE
(SAME DAY EXPEDITED RULING AND IMMEDIATE RELEASE REQUEST)**

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 Emergency Motion to Enforce Order to Show Cause (Doc. 7).

FACTUAL BACKGROUND

On September 12, 2025, Petitioner was taken into immigration custody, where he remains. *See* Doc. 5, Exhibit (Ex.) 4(a). In 2006, Petitioner was ordered removed by an

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.

immigration judge. *See* Doc. 5, Ex. 2 and 3. He remains in detention pursuant to the removal order from 2006 until he is removed from the United States. Petitioner has yet to serve six (6) months of immigration detention under 8 U.S.C. § 1231, while U.S. ICE makes efforts to remove Petitioner from the United States.

On December 4, 2025, U.S. ICE decided against Petitioner's release from detention because he was a flight risk and poses a danger to the community. *See* Doc. 7, pages 19-22. Petitioner's prior actions to not leave the United States at the time his visa expired or after being ordered deported and his committing aggravated felonies while in the United States were all considered to be important factors by ICE in deciding to continue to detain him until he is removed from the United States. *Id.* at page 19.

There are some questions about when Petitioner was informed of ICE's decision on his continued detention. However, from a legal perspective, service of paperwork of ICE's decision on Petitioner does not impact his continued detention under federal statute or case law.

ICE further explained that it was seeking his removal to Zimbabwe, Petitioner's country of citizenship. *Id.* at page 19. To that end, the District of New Mexico United States Attorney's Office is seeking information from ICE as to its efforts to remove Petitioner to Zimbabwe. Unfortunately, we have not received that information (*e.g.*, ICE emailed Zimbabwe's State Department on X date and was told X,Y,Z related to the removal), information that will become more relevant after Petitioner has been held in detention under 8 U.S.C. § 1231 for more than six (6) months. Undersigned counsel will update the Court once more information on his removal is provided to the District of New Mexico United States Attorney's Office by ICE.

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

U.S. ICE evaluated whether to continue to detain Petitioner within 90 days of his

Detention in September 2025. *Id.* However, Petitioner’s well-documented non-compliance with U.S. immigration laws (*i.e.*, flight risk) and criminal history resulted in his continued detention. *Id.* Furthermore, Petitioner being found with marijuana, illegal under U.S. and Texas law, at the time of his immigration detention, *see* Doc. 6, Ex. 1, raises additional concern about Petitioner’s ability to comply with U.S. law, immigration or otherwise, if he were to be released pending removal.

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 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).

CONCLUSION

The Court should deny the Petition for Writ of Habeas Corpus (Doc. 1) and the Emergency Motion to Enforce Order to Show Cause (Doc. 7) because Petitioner has not been detained longer than six (6) months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 17, 2026, I filed the foregoing pleading electronically through the CM/ECF system, and a true copy was mailed by first-class mail to:

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/s/ Scott C. Jansen 2/17/26
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