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

GURMEET SINGH,	§	
	§	
Petitioner,	§	**Case No. 26-cv-155-DB**
	§	
	§	**REPLY IN SUPPORT OF PETITION**
v.	§	**FOR WRIT OF HABEAS CORPUS**
	§	
CURTIS TAYLOR, *et al.*,	§	
	§	
Respondents.	§	

INTRODUCTION

Respondents' Response (Dkt. 4) makes clear that the underlying circumstances of this case are different from what Petitioner reasonably believed when he filed his Petition (Dkt. 1), but the end result is the same: his prolonged detention has become unconstitutional.[1]

Respondents secured an expedited order of removal against Mr. Singh on December 11, 2024. They have therefore had nearly 14 months in which to remove him to India. Instead, they initially released him from custody for almost six months for no clear reason before suddenly re-detaining him under conditions of confinement that they do not dispute are horrific, again for no clear reason, given that after eight months of re-detention there is still no date scheduled for his removal.

Respondents contend that "ICE could show that removal is likely in the foreseeable future." Dkt. 4 at 6. But that is not the standard. Under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), there must be a *significant* likelihood of removal in the *reasonably* foreseeable future. And "as the period

[1] Petitioner incorporates here by reference the explanation contained in his Motion for Leave to File Amended Petition (Dkt. 5). Since the arguments contained in this Reply are substantially the same as would have been raised in an Amended Petition, if the Court reaches the arguments on the merits here, that motion would of course be moot.

of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* Here, after 14 months, it is not enough for the Government to say that Mr. Singh may eventually be removed. The Court should order his release on an appropriate order of supervision until such time as the Government is actually ready to deport him. *See id.* at 696.[2]

ARGUMENT

I. Because the Government has not shown that Mr. Singh's removal is significantly likely in the reasonably foreseeable future, his prolonged detention has become unconstitutional under *Zadvydas.*

A. For *Zadvydas* purposes, the Court should consider the entire post-removal period, not just the most recent period of re-detention.

In *Zadvydas* the Court noted that, following a removal order, there is "a subsequent 90-day statutory 'removal period,' during which the alien is normally held in custody." *Zadvydas*, 533 U.S. 682. After this 90-day period, the Court found that 8 U.S.C. § 1231 only authorizes detention for "a period *reasonably necessary* to secure the alien's removal." *Id.* (emphasis in original). The Court found that six months was a presumptively reasonable period of detention and that "[a]fter this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with

[2] Petitioner recognizes that ordinarily new arguments may not be raised for the first time in a reply brief, which is why Petitioner filed a motion for leave to amend the petition. However, where Respondents raise an issue for the first time in their response, courts have allowed new arguments in a reply. *See In re Gold Res. Corp. Sec. Litig.*, 776 F.3d 1103, 1119 (10th Cir. 2015) ("we make an exception when the new issue argued in the reply brief is offered in response to an argument raised in the [opposing party's] brief"); *Silver Mountain Dev., Inc. v. City of Silverton*, 2022 WL 17751700 (D. Or. Dec. 19, 2022), at *4 (court has "discretion to consider Plaintiff's response to Defendant's arguments that were raised for the first time in Defendants' opposition"). Since Respondents have already addressed the *Zadvydas* issue in their Response, there is no unfair surprise by responding to their arguments here; moreover, Petitioner has no objection to a sur-reply if the Court deems it necessary and appropriate.

sufficient evidence to rebut that showing." *Id.* at 701. And the longer the detention, the more the Government must put forward in order to justify prolonging it. *See id.*

Respondents initially argued that Mr. Singh's *Zadvydas* claim was premature (Dkt. 4 at 4); however, in a supplemental filing they now concede that his detention exceeds six months. Dkt. 6 at 1. Indeed, his most recent period of detention began on May 28, 2025, meaning that he has currently been detained for more than eight months. Dkt. 4-2 at ¶ 9. But in cases like this one, where a petitioner is initially released and then re-detained, district courts – including several in this circuit – have looked not only at the most recent re-detention, but instead have calculated the six-month presumptively reasonable period from the time the original removal order became final. *See, e.g., Abuelhawa v. Noem*, -- F. Supp. 3d – 2025 WL 2937692, at *4-5 (S.D. Tex. Oct. 16, 2025) (noting that "[m]ost courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated by a concern that the federal government could otherwise detain aliens indefinitely by continuously releasing and re-detaining them.") (collecting cases); *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (citing *Nguyen v. Hyde*, 2025 WL 1725791 (D. Mass. June 20, 2025) for the proposition that *Zadvydas*' "6-month presumption [is] not applicable where alien is 're-detained' after having been on supervised release")); *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *9-10 (W.D. La. Oct. 15, 2019) (removal period under *Zadvydas* did not restart when petitioner was re-detained); *see also S.F. v. Bostock*, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025) ("federal courts have refrained from applying the presumption of reasonableness under *Zadvydas* in re-detention cases like this one") (collecting cases).

The December 11, 2024 expedited removal order was not appealable and was final as of the time it was signed. *See, e.g., Cifuentes v. Soto*, 2026 WL 102970, at *3 (D.N.J. Jan. 14, 2026). Thus, the 90-day statutory removal period and the six-month presumptively reasonable *Zadvydas*

period had *already run* by the time Mr. Singh was re-detained on May 28, 2025. Therefore, the Court should consider not only the period since May 28, 2025, but the entire post-removal-order period since December 11, 2024, a period now of nearly 14 months, in determining whether Mr. Singh's continued detention is lawful and whether the Government has put forth enough evidence to meet its burden of justifying that detention.

B. Respondents have failed to submit evidence showing a significant likelihood of removal in the reasonably foreseeable future sufficient to overcome the presumed unreasonableness of Mr. Singh's 14-month-post-order detention.

As noted above, since nearly 14 months have passed since Mr. Singh's removal order became final, the Government's burden has commensurately increased to show that his removal is significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701; *Alexander v. Att'y Gen. U.S.*, 495 F. App'x 274, 275 (3d Cir. 2012) ("[T]he longer an alien is detained, the less he must put forward to obtain relief"); *Hassoun v. Sessions*, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019) ("[T]he government's burden becomes more onerous the longer an alien is detained, because it must show that removal will be effectuated sooner in the future.").

The only evidence submitted by Respondents is a declaration from ICE Assistant Field Office Director Angelo Garite (Dkt. 4-2). The declarant states that although Mr. Singh was re-detained on May 28, 2025, it was not until September 9, 2025 that he was "added … to a spreadsheet" of individuals needing travel documents. Dkt. 4-2 at ¶ 14. And as of two months later, November 6, no travel documents had been obtained, nor did ICE have a passport for Mr. Singh. *Id.* at ¶ 17. The declarant then says, somewhat vaguely, that "Houston ERO emailed Indian Travel Document information to Detention and Deportation Officer for review." *Id.* at ¶ 18. However, the declarant does not say when this was done, or what the outcome of the review was. Nor does the declarant state that a passport was ever obtained for Mr. Singh.

The declarant states that Respondents intended to put Mr. Singh on a flight on December 14, 2025, but failed to do so, without any precise explanation as to why, except that "Singh was unable to be transferred in timely manner to make it to the next destination." Dkt. 4-2 at ¶¶ 19-20. Finally, the declarant states that "Singh is currently pending rescheduling for the next India charter flight which is currently a date to be determined." *Id.* at ¶ 21. The declarant offers no indication how often such flights take place; it is impossible for the Court to say, based on the evidence before it, that any such flight might take place in the reasonably foreseeable future. In short, Respondents can point to no date, even an approximate one, by which Mr. Singh might actually be removed.

Given the 14-month period Respondents have already had to remove Mr. Singh, and considering the Government's higher burden after this extended period, the declaration falls short of proving that Mr. Singh's removal is "significantly" likely in the "reasonably" foreseeable future. *Zadvydas*, 533 U.S. at 701. Even if the Court assumes that Respondents have the proper travel documentation (which the declarant does not say), the declaration still begs the question of why Respondents did not remove Mr. Singh at any point between December 14, 2025 and the date this Court stayed removal, January 26, 2026, a period of more than six weeks. Since the declaration does not provide even an approximation of a date by which Mr. Singh might actually be removed, it is not possible to conclude that it is significantly likely to happen in the reasonably foreseeable future. *See, e.g., Ahrach v. Baltazar*, 2025 WL 3227529, at *5 n.11 (D. Colo. Nov. 19, 2025) (noting that unsubstantiated assertions are insufficient to satisfy the Government's burden); *see also S.F.*, 2025 WL 2841022, at *4 (declaration showing that petitioner "'could be a candidate' for the scheduled charter flight to Iran" did not meet burden). Given the complete lack of clarity as to why Mr. Singh has not been removed in 14 months and the uncertainty of when removal might occur, if ever, this Court should find that his continued detention is unlawful under *Zadvydas* until such

time as Respondents have the concrete ability and definite plans to remove him. *See Palma v. Gillis*, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020) ("[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.") (citing *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).

II. Respondents' apparent failure to comply with their own regulations further supports a grant of habeas relief.

Respondents' declaration indicates a number of deficiencies in compliance with applicable statutes and regulations, further supporting intervention by this Court.

First, under the expedited removal statute, 8 U.S.C. § 1225(b)(1), if an applicant indicates "an intention to apply for asylum" or "a fear of persecution," an immigration officer "shall refer the alien for [a credible fear] interview by an asylum officer." *Dos Santos v. Warden, Mesa Verde Detention Facility*, 2026 WL 249528, at *4 (E.D. Cal. Jan. 30, 2026) (citing §§ 1225(b)(1)(A)(i)-(ii)). If the noncitizen demonstrates a credible fear, he or she is taken out of expedited removal proceedings and put into full removal proceedings; conversely, if the officer determines there is no credible fear, the noncitizen may appeal that determination to an immigration judge. *Id.* Here, Respondents' declaration indicates that although Mr. Singh was taken into custody on May 28, 2025, and apparently asserted a fear of return to India, no credible fear interview was ever conducted. *See* Dkt. 4-2 at ¶¶ 9-11. On August 28, 2025 – after Mr. Singh had already been detained for three months in conditions that Respondents do not dispute are atrocious – he apparently gave up on Respondents ever giving him his credible fear interview and withdrew his asylum claim, presumably because he saw return to India as the only means out of the detention center. *See id.* at ¶¶ 12-13. In short, although it appears from Respondents' declaration that Mr. Singh had expressed a credible fear and a desire to apply for asylum, they failed to timely provide him with a credible

fear interview as required by law, unreasonably delaying the process until he gave up.

Second, Respondents appear to have failed to conduct post-order custody reviews at the 90-day and 180-day marks, as required by regulations. After the Court's decision in *Zadvydas*, "DHS promulgated regulations to implement the newly established constitutional constraints." *Bonitto v. Bureau of Immigr. & Customs Enforcement*, 547 F. Supp. 2d 747, 752 (S.D. Tex. 2008). Those regulations are codified at 8 C.F.R. § 241.4 and provide for reviews of a noncitizen's continuing detention after 90 days and again after 180 days. *See Bonitto*, 547 F. Supp. 2d at 752-53 (describing procedures).

The provisions for the 90-day review are set out in 8 C.F.R. § 241.4(h), which provides that the district director or Director of the Detention and Removal Field Office will conduct "a review of the alien's records and any written information submitted in English to the district director by or on behalf of the alien." In considering whether to release the noncitizen, the district director is required to consider the factors set out in § 241.4(f), which include the noncitizen's criminal record, mental health reports, evidence of rehabilitation, prior immigration violations and history, and other factors. If the district director decides to continue detention after the 90-day removal period, another review is mandated at the 180-day mark, the procedures for which are set out in § 241.4(i). Under these procedures, a "Review Panel" of two members is supposed to review the noncitizen's records and make a recommendation on release; if the Director of the Headquarters Post-Order Detention Unit (HQPDU) does not accept their recommendation, or if the panel does not recommend release, the Review Panel "shall personally interview the detainee." § 241.4(i)(3)(i). Following the interview, the Review Panel "shall issue a written recommendation that the alien be released or remain in custody." § 241.4(i)(5).

ICE's apparent failure to review Mr. Singh's custody appropriately is prejudicial. Prejudice

can be presumed because the custody-review regulations implicate fundamental liberty interests and due-process rights. *See Bonitto*, 547 F. Supp. 2d at 755-56. The regulations provide noncitizens with a discrete opportunity to obtain freedom from detention, and that opportunity has thus far been withheld from Mr. Singh. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). In *Bonitto*, the court found that "Respondent's failure to comply with the review procedures outlined in the applicable regulations violates Petitioner's procedural due process rights." 547 F. Supp. 3d at 755. As the court pointed out, "The Fifth Circuit has held that it is a denial of procedural due process for any government agency to fail to follow its own regulations providing procedural safeguards to persons involved in adjudicative processes before it." *Id.* (citing *Government of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970)). "Where individual interests are implicated, the Due Process clause requires that an executive agency adhere to the standards by which it professes its actions to be judged. The regulations involved here do not merely facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees. This Court must insist on DHS's compliance with the post-order custody regulations if Bonitto's detention is to remain constitutional." *Id.* at 756 (internal citations omitted).

There is no indication in the declaration that either of the required custody reviews was ever conducted. Petitioner is attaching hereto declarations submitted by Respondents in several other *Zadvydas* cases recently litigated by his undersigned counsel; in each of them, the declaration describes the post-order custody reviews, but here, by contrast, the declaration is glaringly silent on this point. *See* ECF No. 7-1 (three sample declarations, with relevant language highlighted). Courts have found that the Government's failure to comply with the required post-order custody

review process is a due-process violation warranting habeas relief. *See, e.g., Misirbekov v. Venegas*, 796 F. Supp. 3d 436, 439 (S.D. Tex. 2025) ("Detention beyond the removal period may be maintained only upon compliance with applicable process."). In *Misirbekov*, the court granted conditional habeas relief, ordering the required custody review to be conducted within sixty days; when it was not, the court granted release. *Id.* at 440; *Misirbekov v. Venegas*, 2025 WL 3033732, at *2 (Oct. 29, 2025) ("*Misirbekov II*") (granting release after noncompliance by Respondents).

Although, as argued above, Petitioner believes his continued detention nearly 14 months after his removal order is unlawful under *Zadvydas* and requires his immediate release on an order of supervision, if the Court disagrees, it should, at a minimum, order Respondents to timely provide Mr. Singh with a credible fear interview and a post-order custody review, and it should retain jurisdiction over this petition to order his release if Respondents do not comply.

CONCLUSION

Because Mr. Singh's detention has become unreasonably prolonged and the Government has failed to show that there is a significant likelihood of removal in the reasonably foreseeable future, this Court should order his immediate release on an appropriate order of supervision. In the alternative, the Court should, at a minimum, order Respondents to provide Mr. Singh with a credible fear interview and post-order custody review, as required by law.

Dated: January 31, 2026

Respectfully submitted,

/s/ James D. Jenkins
James D. Jenkins (MO #57258; WA#63234)
P.O. Box 6373
Richmond, VA 23230
Tel.: (804) 873-8528
jjenkins@valancourtbooks.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 31st day of January, 2026, which sent notice of such filing to all parties receiving electronic notice.

/s/ James D. Jenkins
Attorney for Petitioner