UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Frank Marrero-Rivera

Petitioner

V. Case No. **3:26-cv-180- DCG**

PAMELA BONDI, ET.AL.;

Defendants-Respondents

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PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully submits this reply and states as follows:

I. Respondents' Reliance on *Zadvydas* is Misplaced

Respondents' opposition relies on the premise that Petitioner's detention is lawful because the presumptively reasonable six-month period referenced in *Zadvydas v. Davis*, 533 U.S. 678 (2001), has not elapsed. That argument misstates both the governing legal standard and the allocation of burdens under *Zadvydas*.

The Supreme Court established two related but distinct evidentiary frameworks. When a detainee challenges detention before the presumptively reasonable six-month period has run, the detainee must show that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas,* 533 U.S. at 699–701. After six months, the detainee's burden is lighter: he need only provide good reason to believe removal is not significantly likely, at which point the burden shifts and the government must rebut that showing with evidence. *Id.* at 701.

Respondents assume, without analysis, that the stricter pre-six-month standard applies. But *Zadvydas* itself did not resolve when the six-month period begins to run in circumstances such as those present here, and courts have recognized that there is, at minimum, a reasonable basis to conclude that the six-month period runs continuously from the start of the removal period (i.e. after the order of removal becomes final--8 U.S.C. § 1231(a)(1)(B).), even if the noncitizen is not detained for that entire time. See, e.g., *Zavvar v. Noem*, 2025 WL 2592543, at *4 D. Md. Sept. 8, 2025) (collecting cases); *Puertas-Mendoza v. Noem,* 2025 WL 3142089, at *3(W.D. Tex. Oct. 22, 2025)*; see also Gomez-Simeon v. Bondi,* No. SA-25-CV-01460-JKP, 2025 WL 3470872, at *4 (W.D. Tex. Nov. 24, 2025). Accordingly, there is a substantial legal basis to conclude that Petitioner need only show good reason to believe his removal is not reasonably foreseeable.

In any event, this Court need not resolve that question because Petitioner satisfies even the more demanding standard. Under either formulation, the dispositive inquiry remains whether removal is significantly likely in the reasonably foreseeable future. Respondents have not met their burden of demonstrating that it is.

Respondents rely solely on a declaration asserting that removal to Mexico is being pursued. Conclusory assertions of ongoing efforts, however, do not establish foreseeability. Respondents provide no travel document, no acceptance confirmation, no removal date, and no proof that any country has agreed to receive Petitioner.

To the contrary, the record indicates that removal is not realistically attainable. Petitioner has been informed that Mexico has already declined to accept him, along with numerous similarly situated detainees. That fact directly undermines Respondents' claim that removal is foreseeable. Courts routinely hold that detention becomes unlawful where removal is not realistically attainable because no country will accept the detainee. See *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 52 (D.D.C. 2002).

Respondents' reliance on Petitioner's criminal history does not alter the analysis. Other Courts have made clear that detention under 8 U.S.C. § 1231(a)(6) remains subject to constitutional constraints regardless of criminal history. *Ly v. Hansen*, 351 F.3d 263, 271-72 (6th Cir. 2003); see also *Diouf v. Napolitano,* 634 F.3d 1081, 1091 (9th Cir. 2011). Detention beyond the removal period is authorized only in situations where the government's interest in an alien's continued detention is particularly strong: in the cases of (1) aliens with a highly contagious disease that is a threat to public safety; (2) aliens detained on account of serious adverse foreign policy consequences of release; (3) aliens detained on account of security or terrorism concerns; and (4) aliens determined to pose a special danger to the public. 8 C.F.R. § 241.14(b-d), (f); *See also Hernandez-Carrera v. Carlson,* 547 F.3d 1237, 1253 (10th Cir. 2008). The determinative question is whether removal is realistically achievable, not whether Petitioner has prior convictions.

Nor does Petitioner's post-filing transfer defeat jurisdiction. In *Ex parte Endo* and *Griffin v. Ebbert,* the immediate-custodian rule for Habeas Petitions was relaxed. In *Ex parte Endo*, the Supreme Court found that jurisdiction persisted after a § 2241 petitioner was transferred outside of a district so long as an individual controlling the custody was within the district. *Ex parte Endo*, 323 U.S. 283, 304-07 (1944). In *Griffin v. Ebbert*, the petitioner had been transferred at least six times before the Fifth Circuit issued its decision. *Griffin v. Ebbert,* 751 F.3d 288, 289, 290 n.1 (5th Cir. 2014). The Fifth Circuit found that the sequence of transfers between jurisdictions had the same effect as "play[ing] forum games" or intentionally "moving Griffin so that his filing could not catch up" and stated that the "claim should not be delayed any further." *Id.* at 290. Jurisdiction attaches upon filing, and a subsequent transfer cannot divest this Court of authority to determine the legality of detention. *See also Lee v. Wetzel,* 244 F.3d 370, 375 (5th Cir. 2001). This Court has already declined to issue an order enjoining Respondents from moving the Petitioner which supports the Court's confidence in continued jurisdiction.

In sum, regardless of which evidentiary standard applies, Respondents have failed to demonstrate that removal is significantly likely in the reasonably foreseeable future. Because detention that no longer serves its regulatory purpose becomes unconstitutional, continued detention here violates § 1231 as construed in *Zadvydas* and the Due Process Clause.

II. Failure To Comply With Regulatory Revocation Procedures

Respondents' detention of Petitioner is independently unlawful because it was not carried out in accordance with the governing regulations for revocation of an Order of Supervision ("OSUP"). Federal regulations require that when the government seeks to revoke release under supervision in order to re-detain a noncitizen subject to a final order of removal, it must follow specified procedural steps, including notice of revocation and an opportunity to respond. See 8 C.F.R. § 241.13(i)(2)–(3); § 241.4(l). These procedural protections are not discretionary; they are mandatory safeguards governing the lawful exercise of detention authority.

Here, no such revocation procedures were followed. Petitioner's immigration counsel submitted a Freedom of Information Act request, and on January 21, 2026, received the agency's response. The produced records contain no notice of revocation, no revocation decision, and no documentation reflecting that Petitioner's release under supervision was ever formally rescinded.

Yet despite the absence of any revocation determination, Petitioner was arrested and detained pursuant to a standard Form I-200 administrative arrest warrant, and not a revocation of OSUP.

This sequence of events demonstrates that Respondents detained Petitioner without first executing the legally required revocation of his supervised release. The regulations contemplate that revocation is a prerequisite to re-detention, not a post hoc justification. Detaining an individual who remains subject to an active order of supervision, without formally revoking that status through the required procedures, exceeds the authority conferred by § 1231 and its implementing regulations.

An agency must comply with its own binding regulations, and failure to do so renders its actions unlawful. Where detention is imposed in violation of mandatory regulatory procedures, that detention cannot be sustained as a lawful exercise of executive authority. Because Respondents have not shown that Petitioner's supervised release was ever properly revoked, his present confinement is ultra vires and violates due process.

This defect provides an independent basis for relief regardless of whether Respondents can establish foreseeability of removal. Even assuming removal were possible, detention carried out without adherence to governing procedures is unlawful and cannot stand.

Accordingly, the Court should grant the writ and order Petitioner's release.

CONCLUSION

For these reasons, Petitioner respectfully requests that the Court grant the writ of habeas corpus and order his release under appropriate conditions of supervision, or alternatively grant such relief as the Court deems just and proper.

Respectfully submitted,

/s/Bonnie Smerdon
Bonnie Smerdon
Florida Bar #123933
22966 Overseas Highway
Cudjoe Key, FL 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com

CERTIFICATE OF SERVICE

I certify that on February 13, 2026, I filed the foregoing Petitioner's Reply In Support Of Petition For Writ of Habeas Corpus using the Court's CM/ECF system, which will serve all counsel of record who are registered CM/ECF users.

/s/Bonnie Smerdon
Bonnie Smerdon
Florida Bar #123933
LUCE LAW PLLC
22966 Overseas Highway
Cudjoe Key, FL 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com

Attorney for Petitioner