UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

NELSON JOSE ALEXANDRE FILHO, Petitioner,	)	
v.	)	**Case No. 5:26-cv-03050-JWL**
C. CARTER, et al., Respondents.	)	

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

Petitioner Nelson Jose Alexandre Filho respectfully replies to Respondents' Opposition to Petitioner's Writ of Habeas Corpus ("Respondents' Opposition") filed on April 6, 2026. Doc. 7.

UPDATE REGARDING PETITIONER'S SITUATION

At the time Petitioner filed his Petition for Writ of Habeas Corpus, his appeal before the Board of Immigration Appeals ("BIA") regarding the denial of his Motion to Reopen remained pending. The BIA dismissed that appeal on March 20, 2026.

Subsequently, on April 7, 2026, Petitioner filed a Petition for Review with the United States Court of Appeals for the First Circuit (Case no. 26-1363), which remains pending.

Pursuant to First Circuit Local Rule 18.0, a temporary stay of removal was automatically entered on April 8, 2026, staying Petitioner's removal for ten business days. Accordingly, Petitioner was not removed as anticipated on or about April 15, 2026, and remains in ICE custody. The stay was ultimately denied on April 17, 2026, but the Petition for Review remains pending, and can affect Respondent's ability to reopen his case and pursue adjustment of status.

ARGUMENT

i. Petitioner is still subject to prolonged detention.

Petitioner has now been detained for over seven months without being removed or released. He has not received an individualized custody hearing before a neutral decisionmaker to assess whether his continued detention is justified based on flight risk or danger to the community.

Respondents' argument rests entirely on the speculative assertion that Petitioner will be removed in the reasonably foreseeable future. Once Petitioner has shown that removal is not significantly likely in the reasonably foreseeable future, the burden shifts to Respondents to produce sufficient evidence to rebut that showing. *See, e.g., Singh v. Taylor*, --- F. Supp. 3d ----, 2026 WL 360913, at *1 (W.D. Tex. Feb. 9, 2026) (Government's representation that "Petitioner is currently pending rescheduling for the next India charter flight which is currently a date to be determined" was insufficient under *Zadvydas* where it provided no timeframe for when that flight might occur).

Respondents have failed to meet that burden. Further, Respondents failed to meaningfully engage with Petitioner's legal arguments or provide any concrete evidence demonstrating that detention is even necessary for such removal.

Under 8 U.S.C. § 1231(a)(6), detention beyond the 90-day removal period is permitted only for the purpose of effectuating removal. As the Supreme Court made clear in *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), once removal is no longer reasonably foreseeable, continued detention is no longer authorized.

Here, despite Respondents' representations, removal has not occurred. Petitioner remains detained while his Petition for Review is pending before the First Circuit (Case no. 26-1363).

Critically, Respondents have failed to provide any justification for why Petitioner must remain detained. They have not alleged, let alone demonstrated, that Petitioner poses a danger to the community or a flight risk. This omission is particularly significant given the prolonged nature of his detention, as continued custody without any individualized justification raises serious due process concerns.

Nor have Respondents addressed whether removal could be effectuated through less restrictive means. Immigration and Customs Enforcement routinely employs alternatives to detention, including orders of supervision, electronic monitoring such as ankle bracelets, regular reporting requirements, and coordination of voluntary departure logistics. Thousands of noncitizens comply with such conditions without being subject to prolonged physical detention, including in post-final order contexts under orders of supervision pursuant to 8 U.S.C. § 1231(a)(3).

There is no indication that Petitioner could not similarly be released under appropriate supervision while ICE coordinates any potential removal. Continued detention, therefore, is not reasonably related to effectuating removal and is unnecessarily restrictive. Detention that is not necessary to secure removal is impermissible under § 1231(a)(6).

As the Supreme Court recognized, "freedom from imprisonment… lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. While the government has an interest in enforcing immigration laws, it may not do so at the expense of fundamental fairness and due process. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025).

In light of the length of detention, the lack of any individualized justification, the availability of less restrictive alternatives, and the ongoing legal proceedings that may materially

affect Petitioner's removability, Petitioner's continued detention no longer bears a reasonable relation to the purpose of effectuating removal and exceeds the statutory limits of 8 U.S.C. § 1231(a).

It should also be noted that if Petitioner's Petition for Review is granted and his case is reopened, he would be immediately eligible to apply for adjustment of status as an immediate relative of a U.S. citizen. Because he was admitted with a visa, the only barrier to lawful permanent resident status is the existence of the removal order. This further undermines any claim that removal is inevitable or reasonably foreseeable.

CONCLUSION

Petitioner respectfully asks this Court to grant his Petition for Writ of Habeas Corpus and order his immediate release subject to appropriate terms of supervision.

Date: April 22, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed using the Court's CM/ECF system this 22nd day of April, 2026, which sent notice of such filing to all parties receiving electronic notice.

/s/ James D. Jenkins
Attorney for Petitioner