

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JOSE F.
AND ANDREW FUENTES

Petitioner,

KRISTI NOEM, *et al.*,
in their official capacities,

Respondents.

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Civil Action No. 1:25-cv-00091

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
AND
MOTION FOR SUMMARY JUDGMENT

In accordance with the Court's July 1, 2025, order, the Government¹ files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. 1) and moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. As explained below, Petitioner's claim for habeas relief should be denied because he is lawfully detained, he is scheduled to be removed in the near future, and he has received adequate medical care while in detention.

I. SUMMARY OF THE ARGUMENT

Jose F. is a Venezuelan national in the custody of Immigration and Customs Enforcement (ICE). On December 17, 2024, Jose F. arrived at a port of entry in Brownsville, Texas, as an applicant for admission where it was determined he was inadmissible and subject to expedited removal under INA §235(b)(1). However, an asylum officer determined he had a credible fear of

¹ As the Court previously noted, the proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

returning to Venezuela, and Jose F. was issued a notice to appear before an immigration judge. On June 13, 2025, an immigration judge denied his asylum claim and ordered his removal to Venezuela but deferred such removal under the Convention Against Torture. In accordance with federal law, Jose F. has remained in detention while ICE obtains the necessary travel documents and schedules his flight to another country where he is not likely to be tortured prior to the end of his removal period on September 13, 2025. During his time in detention, Jose F.'s medical needs have been adequately attended to. Thus, Petitioner has failed to show Jose F.'s detention amounts to a constitutional violation and his petition should be denied.

II. THE NATURE AND STAGE OF THE PROCEEDING

On April 18, 2025, Andres Fuentes, on behalf of his father, Jose F., filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (the "Petition"), contesting his father's continued detention "despite his severe medical conditions and his pending asylum application." Dkt. 1, p.1. He claims that his continued detention violates the Due Process Clause of the U.S. Constitution and the Convention Against Torture. *Id.* at p.2. The Court ordered a response to Petitioner's allegations by August 1, 2025. Dkt. 8.

III. AUTHORITY BY WHICH PETITIONER IS HELD

Petitioner is being detained pursuant to 8 U.S.C. § 1231(a)(1)(A) following a removal order to Venezuela that was deferred under the Convention Against Torture. *See* Exhibit 1, Amended Order of the Immigration Judge, dated July 17, 2025.

IV. RELEVANT BACKGROUND

As stated in the Petition, Jose F. is a 54-year-old Venezuelan national. Dkt.1 at ¶ 6. On December 17, 2024, Jose F. arrived at a Port of Entry in Brownsville, Texas, for his CBP One appointment. *Id.* at ¶ 7. Upon arrival, Customs and Border Patrol (CBP) determined he was an

“applicant for admission” as an “arriving alien” who was inadmissible under 8 U.S.C. § 212(a)(7)(A)(i)(I)² and processed for expedited removal under 8 CFR § 235.3/INA § 235(b)(1). *See* Exhibit 2, Determination of Inadmissibility. After claiming a fear of returning to Venezuela, Jose F. was given an interview with an asylum officer and found to have a credible fear of returning to Venezuela. *See* Exhibit 3, Form I-870. He was issued a Notice to Appear (NTA) on January 29, 2025. *See* Exhibit 4, Notice to Appear. A routine check of Jose F.’s name through various databases revealed he was wanted in Venezuela on criminal charges and, thus, was not a good candidate for release on parole pending his scheduled appearance. *See* Exhibit 5, Form I-213. Due to these security concerns, Jose F. was detained at El Valle Detention Facility.

On June 13, 2025, the immigration judge (IJ) who heard Jose F.’s case denied his application for asylum and ordered he be removed from the United States. *See* Exhibit 6, Order of Immigration Judge, dated June 13, 2025.³ However, the IJ ordered Jose F.’s removal be deferred under the Convention Against Torture. Jose F. waived his appeal of the order. *Id.*

V. STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only if the pleadings, along with evidence, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56(c). Once a motion has been made, the nonmoving

² “Except as otherwise specifically provided in this chapter, any immigrant at the time of application for admission—(I)who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 1181(a) of this title... is inadmissible.” 8 U.S.C. § 212(a)(7)(A)(i)(I).

³ The IJ’s order was later amended (*See* Exhibit 1) because the IJ neglected to include the required language that Petitioner be removed to the designated country of Venezuela.

party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to show the existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 322-23. If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Id.* at 322. Furthermore, “only *reasonable* inferences can be drawn from the evidence in favor of the nonmoving party.” *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 469 n.14 (1992) (emphasis in original) (quoting *H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1012 (2d Cir. 1989)).

VI. ARGUMENT

A. *Petitioner’s Custody is Lawful*

Jose F.’s detention is lawful because (1) the 90-day removal period has not lapsed; and (2) he fails to show that the length of his detention is unreasonable under the *Zadvydas*⁴ framework given his foreseeable removal.

1. Due to the recent removal order, Petitioner’s continued detention is lawful.

The statutory provision governing Petitioner’s detention is 8 U.S.C. § 1231, which applies once an alien is ordered removed. Under this section, DHS must physically remove him from the United States within a 90-day removal period,⁵ during which the government “*shall* detain the alien.” 8 U.S.C. § 1231(a)(2)(A) (emphasis added). However, even after the 90-day removal period expires, ICE has the discretion to continue detention for certain aliens. 8 U.S.C. § 1231(a)(6).⁶

Further, the Attorney General has promulgated regulations to establish and implement a formal administrative process to review the custody of aliens, like Jose F., who are being detained

⁴ *Zadvydas v. Davis*, 533 U.S. 678 (2001).

⁵ 8 U.S.C. § 1231(a)(1)(A).

⁶ Aliens, like Jose F., who was ordered removed and inadmissible under INA § 212(a) (e.g., an arriving alien who lacks valid entry documents). *See* 8 C.F.R. § 241.4(a).

subject to a final order of removal, deportation, or exclusion. 8 C.F.R. § 241, *et seq.* Under the regulations, post-order aliens who remain detained *beyond* the removal period may present to ICE their claims that they should be released from detention because there is no significant likelihood that they will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(d). Unless and until ICE determines that there is no significant likelihood of removal in the foreseeable future, the alien will continue to be detained, and his detention will continue to be governed by the post-order detention standards. 8 C.F.R. § 241.13(g)(2).

Here, Jose F. was ordered removed on June 13, 2025, and is lawfully detained until the end of his removal period on September 13, 2025.⁷ ICE is working diligently to secure Jose F.'s removal to a third country.⁸ If ICE is unable to remove Jose F. within the 90 days, it will complete the necessary custody reviews regarding his continued detention.

2. Petitioner's detention is also lawful under *Zadvydas*.⁹

The length of Petitioner's detention is not unconstitutional, particularly considering his upcoming removal. A petitioner may challenge continued detention under the framework established by the U.S. Supreme Court in *Zadvydas v. Davis*, which held that detention may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In a challenge to detention under *Zadvydas*, the petitioner must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The Government must then respond with evidence sufficient

⁷ See 8 C.F.R. § 241.3(a) ("Once the removal period defined in section 241(a)(1) of the Act begins, an alien in the United States will be taken into custody pursuant to the warrant of removal.").

⁸ Although Jose F.'s removal to Venezuela was deferred, he may still be removed to "another country where he or she is not likely to be tortured. See 8 CFR § 208.17(b)(2).

⁹ As a threshold matter, *Zadvydas* does not apply until after the end of Jose F.'s removal period on September 13, 2025. However, since Petitioner raised *Zadvydas* in his petition, Respondents are addressing it out of an abundance of caution.

to rebut that showing. *Id.* The Supreme Court further emphasized that the six-month presumption does not mean that every alien not removed must be released after six months. *Id.* “To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

However, a petitioner’s habeas petition fails under *Zadvydas* if it lacks specific allegations. When a petitioner fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006) (acknowledging the petitioner’s initial burden of proof where claim under *Zadvydas* was without merit because it offered nothing beyond the petitioner’s conclusory statements suggesting that removal was not foreseeable). In this case, the Petition fails to cite to any evidence, other than conclusory statements, that there is no significant likelihood of removal in the reasonably foreseeable future. In fact, the Petition never mentions removal, only stating that “[h]is continued detention under these circumstances amounts to a slow death sentence[.]” Dkt. 1 at ¶ 8B. This conclusion alone does not lead to a reasonable inference that Jose F. has no significant likelihood of removal in the foreseeable future.

B. *Jose F. is receiving adequate medical care, and his detention is lawful.*

At various points in his petition, Petitioner claims Jose F. should be released because he is not receiving adequate medical care in detention. This is factually incorrect. During his credible fear interview, Jose F. reported his only medical conditions to be “high blood pressure and diabetes.” See Exhibit 3 at ¶ 2.19. Since being detained, Jose F. has been receiving his medications and attending all his off-site appointments. See Exhibit 7, Declaration of Officer Ruben Ramirez. When necessary, Jose F. has received additional medical care. *Id.* Thus, Petitioner’s claim is without merit and should be dismissed.

VII. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus for Jose F. should be denied.

Dated: August 1, 2025

Respectfully submitted,

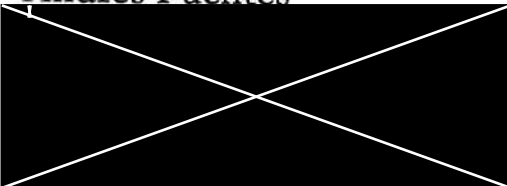
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CERTIFICATE OF SERVICE

I certify that on August 1, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system, and a certified copy was sent to:

Andres Fuentes



s/ Lander B. Baiamonte
Lander B. Baiamonte
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