UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Karem Tadros, *Petitioner*, v. Kristi Noem, *et al.*, *Respondents.*	Civ. No. 2:25-cv-4108-EP (Padin, J.)

REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

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Introduction

Respondents' memorandum, and the declaration and evidence filed in support thereof, establish that they are currently detaining Petitioner for no reason whatsoever. Petitioner was granted deferral of removal to Egypt *sixteen years ago* and has been at liberty on an Order of Supervision ever since, with no violations and no further criminal arrests. Respondents disclaim any effort to commence legal proceedings to lift that order of deferral of removal so that Petitioner can be removed to Egypt. Respondents correctly point out that Petitioner can be removed to any third country that will accept Petitioner for removal, but only after the conclusion of further legal proceedings as to that third country; those third-country removal proceedings must commence with the designation of a specific country, and Respondents have designated no such country, precisely because no such country exists. In sum, Respondents have yet to identify any factual basis for Petitioner's arrest and detention; a full four weeks after arresting Petitioner, they are still in the process of determining *whether* he might be removable to a third country, which determination they should have made *before* arresting and placing him behind bars. Petitioner's detention violates the law, and the writ of habeas corpus should issue.

Facts

The following facts are uncontested, having been established by Plaintiff's Petition for Writ of Habeas Corpus (Dkt. No. 1), which was verified by Petitioner

(Dkt. No. 3-1). None are controverted by Respondent's declarant or the documents Respondents filed with their Answer (Dkt. No. 7-1). This Court ordered that Respondents "shall electronically file with the Answer certified copies of the administrative record and all other documents relevant to Petitioner's claims," Dkt. No. 2 at 3; accordingly, this Court may presume that any document not filed by Respondents in Dkt. 7-1 does not exist as part of the administrative record.

1. Petitioner was granted deferral of removal as to Egypt on April 7, 2009—sixteen years ago. Dkt. No. 1 at ¶ 18; Dkt. Nos. 1-1, 1-2; Dkt. No. 7-1 at ¶ 7. He was placed on an Order of Supervision two days later. Dkt. No. 7-1 at ¶ 8.

2. Petitioner did not commit any violations in the 16 years since winning a final order of deferral of removal. Dkt. No. 3-1 at ¶ 4.

3. Respondents arrested Petitioner at his house without forewarning on May 7, 2025. Dkt. No. 3-1 at ¶ 5. They provided no explanation. Id.; Dkt. No. 1-5.

4. At no time prior to Petitioner's arrest on May 7, 2025 did Respondents ask Petitioner to take any specific steps to assist in his removal. Dkt. No. 7-1 at ¶¶ 9-10, and attachments to Dkt. No. 7-1 (showing that the only paperwork given to Petitioner post-dated his arrest on May 7, 2025).

5. Even after his arrest on May 7, 2025, Petitioner has not been served with any "Notice of Failure to Comply" pursuant to 8 C.F.R. § 241.4(g)(5)(ii), nor has he been interviewed pursuant to 8 C.F.R. § 241.4(l)(1). *Id.*

6. Respondents concede that while Petitioner's final order of deferral of removal remains in place, they cannot remove him to Egypt. Dkt. No. 7-1 at ¶ 11; *see also* Dkt. No. 7 at 19. Respondents furthermore concede, *id.*, that they cannot and will not remove Petitioner to any third country without providing him notice and an opportunity to apply for protection as to that third country, as required by the preliminary injunction in, *D.V.D. v. U.S. Dep't of Homeland Sec'y*, 2025 WL 1142968 (D. Mass., Apr. 18, 2025).[1]

7. At the time Respondents arrested Petitioner, and now four weeks later, Respondents have identified no third country willing to accept Petitioner for removal. Dkt. No. 7-1 at ¶ 11; *see also* Dkt. No. 1 at ¶ 19, 25; Dkt. No. 1-5.

8. There are no articulable facts that lead Respondents to reasonably conclude that any other country will likely accept Petitioner for removal. Dkt. No. 1 at ¶¶ 17, 25; Dkt. No. 3-1 at ¶ 3. The sum total of evidence provided by Respondents that they will be successful at removing Petitioner is one sentence: "Based on Petitioner's final removal order, ICE has been making efforts to facilitate Petitioner's

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[1] Taking these concessions at face value and in good faith, Petitioner hereby requests leave of court pursuant to Fed. R. Civ. P. 41(a)(2) to voluntarily dismiss without prejudice his claims related to unlawful removal (the Second, Third and Fourth Causes of Action, Dkt. No. 1 at ¶¶ 30-39). Should Respondents attempt to remove Petitioner in violation of law and in violation of their factual representations in the sworn affidavit, Dkt. No. 7-1 at ¶ 11, Petitioner will seek emergency relief from this Court and will request leave to revive these causes of action.

removal to a country other than Egypt." Dkt. No. 7-1 at ¶ 11.

Legal Standard

"Under 28 U.S.C. § 2241, a district court may exercise jurisdiction over a habeas petition when the petitioner is in custody and alleges that his custody violates the Constitution, laws, or treaties of the United States." *Rabah K. R. v. Russo*, 2022 WL 326994, at *2 (D.N.J. Feb. 3, 2022).

An individual granted deferral of removal is ordered removed from the United States, but that individual cannot be removed to the country from which their removal has been deferred, 8 C.F.R. § 1208.17(a), unless such deferral is subsequently terminated by means of further legal proceedings, 8 C.F.R. § 1208.17(d). Such individual may be removed to any third country, but only if the government of such country "will accept the alien into that country[.]" 8 U.S.C. § 1231(b)(2)(E)(vi). Before such removal can take place, the government must provide the individual with notice and an opportunity to apply for protection as to that other country as well. *D.V.D.*, 2025 WL 1142968.

When an individual is ordered removed, 8 U.S.C. §1231(a) permits the government to detain them during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). With two exceptions not relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). The 90-day removal period is tolled and extended only if "the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). The statute contains no provision for re-initiating the removal period or refreshing the 90-day clock to zero after it has expired.

After the removal period expires, the government may continue to detain certain noncitizens, including noncitizens with aggravated felony convictions. 8 U.S.C. § 1231(a)(6). However, this broad authority is subject to an important constitutional limitation, which the Supreme Court has read into the statute: detention beyond the removal period is permissible only where reasonably related to a legitimate government purpose, namely, securing the noncitizen's physical removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). Where there is no possibility of removal, detention presents due process concerns because "the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Id.* at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *Id.* at 689. Because the *Zadvydas* Court understood Congress to have recognized that not all removals can be accomplished in 90 days, the Court established a rebuttable presumption that six months could be deemed a "presumptively reasonable period," after which the burden shifts to the government to justify continued detention by means of evidence if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Argument

I. Respondents' jurisdictional arguments lack force where the Supreme Court has authorized habeas corpus petitions on this posture.

Since Petitioner has dismissed his removal-related claims, *see supra* n.1, Respondents concede the jurisdictional bars under 8 U.S.C. §§ 1252(b)(9), (g) do not bar Petitioner's claim under *Zadvydas*, 533 U.S. at 678. *See* Dkt. No. 7 at 18 n.5 ("The *Zadvydas* claim is not subject to the jurisdiction-stripping provisions discussed above. . . . Accordingly, Respondents seek dismissal of Count I for lack of habeas jurisdiction and on the merits, but not based on § 1252."). And with good reason: *Zadvydas* held that notwithstanding Section 1252(g), "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." 533 U.S. at 688. Likewise, the Supreme Court subsequently held that 8 U.S.C. § 1252(b)(9) does not strip habeas jurisdiction over challenges to detention. *Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018).[2]

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[2] With regards to the removal-related claims, Petitioner notes that 8 U.S.C. § 1252 does not strip jurisdiction over a challenge to a removal where such removal is explicitly barred by the statute. *See, e.g.*, *Abrego Garcia v. Noem*, 2025 WL 1021113 (4th Cir. Apr. 7, 2025), aff'd, *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025). "Where the Attorney General totally lacks the discretion to effectuate a removal

II. Petitioner's detention is not lawful under 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*.

A. This habeas petition, filed sixteen years after the expiration of the removal period, is not premature.

Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A), and the 180-day presumptively reasonable period under 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas*, expired 16 years ago. Petitioner was released on an Order of Supervision two days into the 90-day removal period, and was not re-detained for another 16 years. Dkt. 7-1 at ¶¶ 8-9. Respondents' contention that Petitioner's habeas claim is premature because he has not spent a cumulative 180 days behind bars in ICE detention since his removal order misreads *Zadvydas*.

As *Zadvydas* explained, after the 90-day removal period ends, the government "'may' *continue to detain* an alien who still remains here or release that alien under supervision." 533 U.S. at 683 (emphasis added). The Supreme Court's decision put limits on the option of continuing to detain—the detention could only *continue* for

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order, §1252(g) is simply not implicated." *Arce v. United States*, 899 F.3d 796, 801 (9th Cir. 2018). Section 1252(g) therefore does not erase jurisdiction over challenges to the "lawfulness" of a removal, *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023), including challenges that arise under "statutes," *Bowrin v. INS*, 194 F.3d 483, 488 (4th Cir. 1999), and challenges that are "constitutional" in nature, *Madu v. Attorney General*, 470 F.3d 1362, 1368 (11th Cir. 2006). *See also Enriquez-Perdomo v. Newman*, 54 F.4th 855, 865 (6th Cir. 2022) (§1252(g) is inapplicable "when a removal order is not subject to execution").

"a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. But the decision does not curtail the rights of those already previously subjected to the latter option, having been released under supervision.

The basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. In so doing, the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700. This is a present-tense analysis looking forward to what is likely to happen in the reasonably foreseeable future, not a past-tense analysis as to how long the detention has lasted and for what reasons. *Contra Diop v. ICE*, 656 F.3d 221 (3d Cir. 2011) (for noncitizens in *pending* immigration proceedings, the length of past detention and the reasons that detention has become prolonged are dispositive to the due process analysis); *Chavez-Alvarez v. Warden, York County Prison*, 783 F.3d 469 (3d Cir. 2015) (same). Under *Zadvydas*, after 180 days have elapsed since the start of the removal period, even just one additional day of post-removal-period detention could be found unreasonable if not justifiable by the statute's basic purpose of assuring the noncitizen's presence at the moment of removal.

Because the *Zadvydas* Court understood Congress to have recognized that not all removals can be accomplished in 90 days, the Court established that six months could be deemed a "*presumptively* reasonable period," *id.* at 701 (emphasis added). But a presumption is just that, and this does not mean that a habeas petitioner *must* be detained for a total of six months, spread over 16 years, as if it were a matter of punching enough holes on a punchcard to earn a free sandwich. Of course, the government is entitled to 180 days to try to effectuate removal, but Respondents' argument that each one of those 180 days only counts if it was spent behind bars presupposes that removal efforts can take place only while a noncitizen is detained. Although this may well be current ICE *practice*, thus explaining why Respondents arrested Petitioner *before* attempting to figure out whether and where they might be able to remove him, it is certainly not the law. Respondents have had 16 years to work on removal, with Petitioner on an Order of Supervision throughout.

Respondents' cited cases, Dkt. No. 7 at 14-15, do not hold to the contrary. In *Jaime F. v. Barr*, 2020 WL 2316437 (D.N.J. May 11, 2020), the petitioner filed his petition just 76 days after his removal order became final; in any event, the court carried out the likelihood-of-removal analysis and found that the petitioner failed on the merits. Likewise, in *Di Wang v. Carbone*, 2005 WL 2656677 (D.N.J. 2025), petitioner filed his petition less than six months after the commencement of the removal period. *See also Kevin A.M. v. Warden, Essex Co. Corr. Fac.*, 2021 WL 4772130 (D.N.J. Oct. 12, 2021) (habeas corpus decision rendered 20 days after removal period commenced); *Luma v. Aviles*, 2014 WL 5503260 (D.N.J. Oct. 29, 2014) (habeas corpus decision rendered 111 days after removal period commenced). In all four of those cases, the petitioner was in custody continuously from the date the removal period began through the date of decision. None of those decisions shed light on a case where the habeas petition was filed 16 years after the removal order became final, and the petitioner was re-detained for no apparent factual reason.

For the foregoing reasons, this Court should not credit Respondents' argument that this petition was filed prematurely, and should find jurisdiction over the matter and determine the merits of the habeas petition under *Zadvydas*.

B. The undisputed facts establish no significant likelihood that Petitioner will be removed in the reasonably foreseeable future.

Respondents do not contest Petitioner's central contention in this case that he cannot lawfully be removed from the United States because there is no country on earth that will accept him. *See* Dkt. No. 1 at ¶¶ 17, 19, 22, 25. Petitioner has therefore met his burden of proof to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Respondents' only response to this consists of one conclusory sentence: "Based on Petitioner's final removal order, ICE has been making efforts to facilitate Petitioner's removal to a country other than Egypt." Dkt. No. 7-1 at ¶ 11. The affiant makes no effort to specify what those efforts consist of, nor whether or when they may bear fruit; Respondents' evidentiary submission, Dkt. 7-1 at pp.4-

10, contains no evidence of any such efforts. In other words, four weeks after arresting a man at his home, Respondents are still looking for a country that might accept Petitioner for removal, they don't know whether they'll find one, they don't have any specific reason to believe they *will* find one, but they haven't given up hope that they *might* find one. This does not suffice to meet the government's burden to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. *See also Singh v. Whittaker*, 362 F. Supp. 3d 93, 101-102 (W.D.N.Y. 2019) (finding petitioner's continued detention unreasonable where the court was left to guess "whether deportation might occur in ten days, ten months, or ten years.").

Since the 90-day removal period and the 180-day presumptively reasonable post-removal-period detention have already elapsed 16 years prior, Respondents lacked legal basis to re-detain Petitioner absent evidence that he was a danger to the community or a flight risk, or that they had newly obtained means by which to remove him from the United States (which they do not claim, *see* Dkt. No. 7-1). *See You v. Nielsen*, 321 F. Supp. 3d 451, 462 (S.D.N.Y. 2018) (after the removal period, where a noncitizen is released on an Order of Supervision, he cannot be re-detained except upon a finding of danger to the community or flight risk); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 502 (S.D.N.Y. 2009) ("because the removal period and any presumptively reasonable detention period has expired, and the removal period was not tolled pursuant to § 1231(a)(1)(C), this Court finds that the

Respondents are without statutory authority to detain Farez-Espinoza.").

Petitioner has met his burden of proof under *Zadvydas* to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and Respondents have failed to "respond with evidence sufficient to rebut that showing." 533 U.S. at 701. Continued detention is impermissible under the statute, and the writ of habeas corpus should issue.

C. Petitioner did not fail to cooperate in obtaining travel documents, and 8 U.S.C. § 1231(a)(1)(C) is not implicated here.

Respondents' main substantive defense is that by failing to cooperate with his removal, Petitioner violated 8 U.S.C. § 1231(a)(1)(C), thus extending the removal period and defeating his claim under *Zadvydas*. This argument lacks any evidentiary support in the record, is belied by the facts of the case, and is not legally sound.

Respondents' memorandum contends that "the failure to provide copies of travel document requests from alternate countries was the basis for the revocation of his supervision release. *See* Notice of Revocation." Dkt. 7 at 17. But Respondents' evidentiary filing, at Dkt. 7-1, does not contain any document entitled "Notice of Revocation," nor a "Notice of Failure to Comply," nor any other document evidencing any such basis for revocation.[3] Nor does Respondents' affiant claim any

[3] Again, this Court ordered that Respondents "shall electronically file with the Answer certified copies of the administrative record and all other documents

such basis for revocation, *see* Dkt. 7-1 at ¶ 9. In fact, Respondents did not provide the Court with *any documentation whatsoever* pre-dating the May 7, 2025 re-arrest of Petitioner; there is no evidentiary basis for the statement that Respondents *ever* asked Petitioner to request travel documents from alternate countries, much less to conclude that Petitioner unreasonably refused such request.[4] *See also* Dkt. 7 at 3 (Respondents' Statement of Facts makes no mention of any requests to Petitioner prior to his re-arrest on May 7, 2025). The standard under 8 U.S.C. § 1231(a)(1)(C)—that "the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal"—is not met on this evidentiary record.

To the contrary, in the three cases cited by Respondents, Dkt. No. 7 at 16, the

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relevant to Petitioner's claims," Dkt. No. 2 at 3; accordingly, this Court may presume that any document not filed by Respondents in Dkt. 7-1 does not exist as part of the administrative record.

[4] It is evident that such requests would have been futile. Again, there is no third country on earth that will accept Petitioner for removal; after four weeks of trying, Respondents have not been able to identify even one. It would be an exercise in meaningless bureaucratic futility for Petitioner, an Egyptian national with a drug trafficking conviction, to request travel documents from the embassy of France or Japan or Uruguay just to check a box; absent a direct request from ICE, Petitioner had no reason to think he needed to do so. Petitioner's failure to solicit travel documents from random third countries to which he has no claim to citizenship or residence, has not causally prevented his removal.

petitioners had executable orders of removal to their countries of citizenship, and removal was frustrated only by their refusal to sign paperwork necessary to obtain travel documents therefrom. Likewise, in *Bailey v. Lynch*, 2016 WL 5791407 (D.N.J. Oct. 3, 2016), also cited by Respondents (Dkt. No. 7 at 17), the petitioner actively frustrated his removal by lying to his native country's consulate about his place of birth. These cases have no bearing where Petitioner cannot be removed to his country of citizenship, has never been asked to sign paperwork seeking travel documents to any other specific country, and no reason exists to believe that any other specific country would issue such travel documents even if paperwork had been signed.

Respondents furthermore violated regulations as well as the statute. 8 C.F.R. § 241.4(l)(1) allows an Order of Supervision to be revoked only where the noncitizen "violates the conditions of release."[5] No such violation is found on the evidence here. That regulation goes on to provide, "Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole." This did not happen here. Finally, the regulation provides, "The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an

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[5] Although Respondents attempt to justify the failure to serve Petitioner with a Notice of Failure to Comply under 8 C.F.R. § 241.4(g)(5)(ii), see Dkt. 7 at 17 n.4, this subsection governs a denial of release, not a revocation of release. In any event, no such notice was provided to Petitioner. Respondents' justification—that Petitioner violated 8 U.S.C. § 1231(a)(1)(C)—holds no water, as explained above.

opportunity to respond to the reasons for revocation stated in the notification." Here, the limited evidence concerning an interview, Dkt. No. 7-1 at p.9, is ambiguous at best, and does not defeat Petitioner's contention that he has been given no explanation of the basis of his detention. Dkt. No. 3-1 at ¶ 5.

Absent a specific violation of the conditions of release, only specific high-level ICE officials are able to revoke an Order of Supervision, and the regulation does not purport to allow delegation of this authority. 8 C.F.R. § 241.4(l)(2). Here, none of the documents were signed by an Executive Associate Commissioner or a District Director. Nor does the evidence show the determination required by 8 C.F.R. § 241.4(l)(2)(i) - (iv). *See generally* Dkt. 7-1.

Several federal district courts have held that where ICE revokes an Order of Supervision without following the procedures set forth in these regulations, such revocation violates due process and the post-removal-period statute. *See Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025) (finding violations of statute, regulations, and due process where ICE revoked Order of Supervision and detained noncitizen without advance notice and opportunity to be heard); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (same). As the District Court in *Rombot* explained, "the argument that the removal period was extended and detention was therefore justified under section 1231(a)(1)(C) is foreclosed by Rombot's Order of Supervision, where ICE made the decision not to deport him before the removal period expired: 'Because [ICE] has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision ....'" 296 F. Supp. 3d at 386-87.

For the foregoing reasons, no evidence supports Respondents' contention that Petitioner violated his Order of Supervision, nor that his detention is justified because he refused to assist or acted to prevent his own removal; they have identified no requests with which he failed to comply. Nor does the evidence support the contention that Petitioner's Order of Supervision was duly revoked because an authorized high-level ICE official made the determination required by regulations. Finally, the evidence shows that Petitioner has not been given the required due process interview to afford him an opportunity to respond to the reasons for revocation. Accordingly, the party that failed to comply with legal requirements was not Petitioner but Respondents, who utterly ignored the regulatory procedures required to revoke an Order of Supervision.

Conclusion

For the foregoing reasons, Petitioner has met his burden of showing that his detention lacks any factual basis, since there is no country to which Respondents claim he will be removed in the reasonably foreseeable future. The writ of habeas corpus should issue, and this Court should order that Respondents be released from detention forthwith and placed on an Order of Supervision.

Respectfully submitted,

/s/ Marisol Gonzalez Date: June 3, 2025

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I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

/s/ Marisol Gonzalez

Date: June 3, 2025

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