

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION**

DORIAN ABAD ABROSI,

*Petitioner,*

v.

WARDEN OF FOLKSTON ICE PROCESSING CENTER, *in their official capacity*; KRISTIN SULLIVAN, *in her official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Atlanta Field Office*; SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY, *in their official capacity*; and U.S. ATTORNEY GENERAL, *in their official capacity*,

*Respondents.*

Case No. CV 525-013

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY  
INJUNCTION**

## INTRODUCTION

Petitioner Dorian Abad Abrosi (“Mr. Abad”), a 53-year-old citizen of Ecuador who first entered the U.S. in the 1990s and has been married to a U.S. citizen for more than 25 years, remains in Immigration and Customs Enforcement (ICE) custody without bond after 20 months, despite winning protection from removal due to the high risk he will be persecuted in his country of origin. Mr. Abad’s continued detention under 8 U.S.C. § 1231(a)(6) is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Furthermore, under well-established Eleventh Circuit precedent, he is entitled to a bond hearing as a matter of due process. *See Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1212 (11th Cir. 2016). And finally, ICE has blatantly disregarded its own regulations and policy with respect to reviewing Mr. Abad’s custody, in violation of the Administrative Procedure Act (APA). Mr. Abad is likely to prevail on the merits of one or more of these claims raised in his habeas petition, Dkt. No. 1.

Mr. Abad’s prolonged detention without a bond hearing and after already winning his immigration case requires immediate relief. Mr. Abad is deeply ill. His Type 2 diabetes is causing him to deteriorate in custody due to the lack of a suitable diet and exercise, and he has several other medical conditions that require urgent intervention. If not promptly released, Mr. Abad fears he will die in custody, just as his friend died at the same detention center last year. Moreover, he continues to suffer irreparable harm each day he is deprived of his liberty without due process. Therefore, Mr. Abad moves for a temporary restraining order (TRO) or preliminary injunction (PI) and asks this Court to order his immediate release during the pendency of the habeas petition.

**STATEMENT OF FACTS**<sup>1</sup>

Mr. Abad has been detained at Folkston ICE Processing Center (“Folkston”) since June 2023, for approximately 20 months. He has never had a bond hearing at which an Immigration Judge (IJ) determined whether he is a danger to the community or flight risk.

On November 19, 2024, an IJ granted Mr. Abad “withholding of removal” under 8 U.S.C. § 1231(b)(3), finding that he would more likely than not be persecuted in Ecuador on account of his political opinion. Dkt. No. 1, Ex. 2. ICE noticed an appeal of the IJ’s decision to the Board of Immigration Appeals (BIA), and its brief on appeal is due on February 6, 2025. ICE has kept Mr. Abad detained pending its appeal, summarily denying a release request without reasoning at the end of December 2024. Dkt. No. 1, Ex. 3.

Independently of this release request, ICE was required to review Mr. Abad’s custody under 8 C.F.R. § 241.4 after 90 days of detention, again at 180 days of detention, and a third time at 540 days of detention. *See id.* § 241.4(c)-(k). ICE was also required to serve each of these custody review decisions on Mr. Abad and to personally interview Mr. Abad at least once prior to the 180-day review. *See id.* § 241.4(i). But Mr. Abad has never received any such custody decision or interview. Dkt. No. 1, Ex. 1 at ¶ 11. Neither has the ICE Atlanta Field Office reviewed Mr. Abad’s custody under ICE Directive 16004.1, which specifically mandates that the Field Office Director approve the continued detention of any non-citizen granted fear-based protection from removal. *See* Dkt. No. 1, Ex. 7.

Mr. Abad is 53 years old and has several serious medical conditions that have not been adequately treated at Folkston. He has Type 2 diabetes, hyperlipidemia, blindness in his right eye,

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<sup>1</sup>For a detailed factual summary of Mr. Abad’s case, please see the Statement of Facts in the habeas petition. Dkt. No. 1 at 5. In the instant Statement of Facts, counsel for Mr. Abad highlights facts most relevant to the motion.

and decaying teeth. Dkt. No. 1, Ex. 1 at ¶ 14; *see also* Dkt. No. 1, Ex. 4 at 3. He also has persistent pain in his right shoulder resulting from an assault during his journey to the United States and lasting for the entire 20 months he has been detained, and he currently has a hernia, both of which likely require an operation that ICE refuses to authorize. *Id.* at ¶ 15.

### **ARGUMENT**

Mr. Abad seeks a TRO or PI compelling his immediate release during the pendency of the habeas petition. To warrant preliminary relief, Mr. Abad must show “(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) [his] own injury outweighs the injury to the nonmovant; and (4) the injunction would not disserve the public interest.” *Haitian Refugee Center, Inc. v. Baker*, 949 F.2d 1109, 1110 (11th Cir. 1991).

Here, all four factors weigh in favor of a TRO or PI. First, Abad is likely to succeed on the merits of his habeas petition. Under *Zadvydas*, Mr. Abad’s continued detention is unlawful because the IJ’s grant of withholding of removal makes it highly unlikely that he will be removed to Ecuador in the reasonably foreseeable future. Under *Sopo*, Mr. Abad’s 20-month detention without a bond hearing is constitutionally unreasonable. And under the *Accardi* doctrine, ICE’s failure to review Mr. Abad’s custody pursuant to its own regulations and policy violates the APA.

Second, without injunctive relief, Mr. Abad is likely to suffer irreparable harm as his health continues to deteriorate. Mr. Abad has Type 2 diabetes, which has worsened over his time in detention, and he has several other conditions that remain untreated by ICE. Thirdly, no interested parties will be harmed by an injunction mandating Mr. Abad’s release, as ICE can easily release Mr. Abad on an Order of Supervision during the pendency of its BIA appeal and this habeas petition, and ICE could re-detain him at any time, if appropriate. Finally, no public interest is served by ICE’s indefinite detention of a 53-year-old man with serious medical concerns, no

criminal record for more than decade, and who has several U.S. citizen family members in need of his care.

**I. Mr. Abad is likely to prevail on the merits of his habeas petition.<sup>2</sup>**

**a. *Zadvydas* claim**

Mr. Abad's continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his home country of Ecuador because an IJ has granted him withholding of removal. It is difficult to determine when the BIA will rule on ICE's appeal and what the result will be. Without relief from this Court, Mr. Abad will be needlessly detained and separated from his family, potentially indefinitely.

After six months of post-removal order § 1231 detention, a non-citizen is entitled to relief under *Zadvydas* if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Though *Zadvydas* has traditionally been applied to non-citizens whose removal is hindered by practical barriers such as the inability to secure travel documents from the non-citizen's home country, the *Zadvydas* framework applies with equal force to non-citizens facing extensions of their detention due to ICE's unnecessary delays. *See Garcia Diaz v. Acuff*, 507 F. Supp. 3d 991, 997 (S.D. Ill. 2020) ("Because Garcia Diaz cannot be removed during the pendency of his withholding case, there is no significant likelihood that he will be removed in the reasonably foreseeable future."); *Quezada-Martinez v. Moniz*, No. 23-cv-12503, 2024 WL 1018451, at \*4 (D. Mass. Mar. 8, 2024) (finding no significant likelihood of removal when removal hinged on "outcome of several lengthy remand and appeal proceedings").

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<sup>2</sup>For more detailed arguments in support of Mr. Abad's claims for relief, please see the Argument section in the habeas petition. Dkt. No. 1 at 16.

The Supreme Court has analyzed the foreseeability of removal on a sliding scale. *See Zadvydas*, 533 U.S. at 701 (“[F]or detention to remain reasonable, as the period of prior post removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”). Mr. Abad has been detained for 20 months, more than *three times* the presumptively reasonable six-month detention period. *See D’Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 406 (W.D.N.Y. 2009) (“[After sixteen months] the reasonably foreseeable future has nearly shrunk to the point of being the present time.”). Thus, the burden will be on the Government in this case to show why Mr. Abad’s continued detention is reasonable after a grant of protection and after so much time.

Because Mr. Abad has been detained under § 1231 for 20 months and his removal is not reasonably foreseeable due to the IJ’s grant of withholding relief, he is likely to prevail on his claim for release under *Zadvydas*. Conditional release is the most common and appropriate remedy for a *Zadvydas* violation. *See Hassoun v. Sessions*, No. 18-cv-586, 2019 WL 78984, at \*8 (ordering release subject to “reasonable conditions of supervision” determined by Respondents). The only relevant factor in determining whether release is appropriate in this context is whether removal is reasonably foreseeable. *See Zadvydas*, 533 U.S. at 699-700 (“[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.”). Mr. Abad seeks now, as a preliminary remedy, what he will likely win upon full adjudication of the habeas petition: an order from this Court compelling his release from custody, subject to any conditions this Court deems appropriate.

**b. Due Process claim**

Mr. Abad is also likely to prevail on his claim for a constitutionally adequate bond hearing as a matter of due process. In *Johnson v. Arteaga-Martinez*, the Supreme Court expressly held that

“as-applied constitutional challenges [to § 1231 detention] remain available to address ‘exceptional’ cases.” 142 S. Ct. 1827, 1835 (2022). Following the Supreme Court’s instructions, courts have granted relief in these circumstances on at least two occasions. *See Michelin v. Oddo*, No. 3:23-cv-22, 2023 WL 5044929, at \*6-8 (W.D. Pa. Aug. 8, 2023) (holding that 18-month detention under § 1231(a)(6) without bond violated due process); *Cabrera Galdamez v. Mayorkas*, No. 22-cv-9847, 2023 WL 1777310, at \*4, \*9 (S.D.N.Y. Feb. 6, 2023) (holding that 16-month detention under § 1231(a)(6) without bond hearing violated due process). Those courts applied the balancing tests from their circuit court precedent on prolonged immigration detention. Mr. Abad’s claim is similarly likely to prevail under *Sopo*, the Eleventh Circuit’s balancing test.

Mr. Abad’s detention far exceeds the one-year cutoff described in *Sopo*, 965 F.3d at 217, and it is the same length as a non-citizen habeas petitioner recently granted relief by this Court. *See Dorley v. Normand*, No. 5:22-cv-62, 2023 WL 3620760, at \*3 (S.D. Ga. Apr. 3, 2023) (20 months). Virtually all of the delay in Mr. Abad’s case is attributable to the Government’s actions or inactions, and he is unlikely to be removed soon or ever because the IJ granted him protection from deportation. Meanwhile, he is detained in prison-like conditions at Folkston without adequate medical care for his numerous ailments.

Typically, this Court has ordered an IJ to conduct a bond hearing if it finds that detention without bond violates due process. But here, as a preliminary remedy based on the likelihood of success on the merits and urgent circumstances, Mr. Abad asks this Court to order his release pending future habeas proceedings, which will likely result in his release on bond.

**c. APA claim**

Even if this Court finds that Mr. Abad is not substantially likely to prevail on either his *Zadvydas* claim or his due process claim, his APA claim under the *Accardi* doctrine is irrefutable.

In Mr. Abad's case, ICE has failed to conduct *at least three* custody reviews expressly required under 8 C.F.R. § 241.4. Moreover, the Atlanta ICE Field Office has failed to review Mr. Abad's detention under ICE's long-standing policy requiring the Field Office Director to determine whether the continued detention of each non-citizen granted fear-based relief is justified by "exceptional circumstances." *See* Dkt. No. 1, Ex. 6. As a preliminary equitable remedy, Mr. Abad asks this Court to order Mr. Abad's release, given ICE's failure to follow its own rules and his obvious eligibility for release under those standards. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released.").

**II. Mr. Abad will likely suffer irreparable harm if preliminary relief is not granted.**

An injury is irreparable if "it cannot be undone through monetary remedies." *United States v. Jenkins*, 714 F.Supp.2d 1213, 1221 (S.D. Ga. 2008) (citations omitted). A movant need not show that they are currently experiencing irreparable harm, but rather that they are likely to suffer it during the pendency of the case, absent immediate relief. *See Mendoza v. Pascual*, No. 615-40, 2015 WL 2152837, \*6 (S.D. Ga. May 7, 2015) (finding that "irreparable harm will likely ensue" due to risk that father will abscond with child during proceedings and separate child from mother).

Mr. Abad is likely to suffer irreparable harm in the form of continued degradation of his health, and even possibly death. *See Gayle v. Meade*, 614 F. Supp. 3d 1175, 1205 (S.D. Fla. 2020) ("Petitioners have established they will suffer the irreparable harm of increased likelihood of severe illness and death if a preliminary injunction is not entered"). In addition to abnormally high cholesterol, Mr. Abad has Type 2 diabetes. Dkt. No. 1, Ex. 4 at 3. His A1c has fluctuated throughout his time in detention, reaching as high as 10.0, which is a highly dangerous level. Ex.

8, Medical Test Results at 1.<sup>3</sup> He has lately been experiencing severe stomach aches, indicating that his condition is worsening. Dkt. No. 1, Ex. 1 at ¶ 14. At Folkston, Mr. Abad is unable to maintain a diet suitable for managing his diabetes due to the prevalence of processed foods and lack of fruits and vegetables. *Id.* He is also unable to exercise sufficiently because he is confined to a cell for 22 hours a day, and lately he has not even been getting his brief outdoor recreation time due to the cold weather. *Id.* at ¶ 13.

Given Mr. Abad's age and inability to effectively manage his diabetes while detained, he faces a substantially heightened risk of death. *See* Ex. 9, Report on Type 2 Diabetes Mortality. Mr. Abad's friend at Folkston, who was of a similar age and with similar conditions, died there in April 2024, and Mr. Abad fears the same will happen to him.<sup>4</sup> At the same time, Mr. Abad has been experiencing serious pain from his shoulder injury and his hernia, yet ICE has not authorized an operation for either. Dkt. No. 1, Ex. 1 at ¶ 15; *see also* Ex. 4 at 3. Mr. Abad fears that the hernia will rupture, which can be fatal.<sup>5</sup>

The continued deprivation of Mr. Abad's constitutional rights also constitutes, or at the very least contributes to, the irreparable harm he will suffer. *See Gayle*, 614 F. Supp. 3d at 1205 ("Petitioners establish irreparable harm by alleging a deprivation of constitutional rights"). No right is more fundamental than the right to freedom from unreasonable government detention. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As explained above, Mr. Abad's prolonged detention without a bond hearing has become constitutionally unreasonable and therefore constitutes

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<sup>3</sup> NIH, *The A1C Test & Diabetes*, <https://www.niddk.nih.gov/health-information/diagnostic-tests/a1c-test#goal>.

<sup>4</sup> ICE, *Indian national in ICE custody dies in hospital* (April 17, 2024), <https://www.ice.gov/news/releases/indian-national-ice-custody-dies-hospital>.

<sup>5</sup> MDM, *What Happens if Inguinal Hernia Ruptures*, <https://mdm-communications.com/inguinal-hernia-ruptures/>.

irreparable harm in and of itself. *See* 11A Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). That Mr. Abad won protection from deportation, and that he only remains detained because ICE is appealing the IJ’s decision, further heightens the irreparable harm.

**III. The remaining factors weigh in favor of a TRO or PI.**

Respondents will not be harmed by a TRO or PI. If this Court orders Mr. Abad’s release pending adjudication of the habeas petition, it can impose any conditions that it deems appropriate. *See Zadvydas*, 533 U.S. at 700 (“[T]he [non-citizen]’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.”). These conditions may include an Order of Supervision, which ICE routinely issues to non-citizens granted withholding of removal and which Mr. Abad will likely receive in the future if the BIA dismisses ICE’s appeal. *See* Ex. 10, Order of Supervision Example. Moreover, Mr. Abad’s brother-in-law, who is a U.S. citizen and gainfully employed, has agreed to serve as his sponsor upon release, further mitigating any risk of flight. *See* Ex. 11, Sponsor Info. With these conditions in place, if this Court were to ultimately deny the habeas petition on full adjudication, or if the BIA were to vacate Mr. Abad’s grant of withholding (an unlikely outcome), then ICE could simply redetain Mr. Abad.

Finally, the public interest favors a TRO or PI. “As a practical matter, if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff.” *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994). Here, Mr. Abad has made a clear showing that he is likely to succeed on the merits of his habeas petition and that he will suffer

irreparable harm absent a TRO or PI. Mr. Abad is desperate to be reunited with his U.S. citizen wife, who has cancer and needs his support. Dkt. No. 1, Ex. 1 at ¶ 17. A noncitizen’s “right to rejoin [his] immediate family . . . ranks high among the interests of the individual.” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *see also* 8 U.S.C. § 1182(d)(11) (a “family unity” provision for the waiver of inadmissibility recognizing that “assur[ing] family unity” is in the public interest). The public interest thus lies in preventing Respondents from further violating Mr. Abad’s due process rights. This Court should therefore find that the balance of equities and public interest weigh in favor of granting Mr. Abad’s motion.

**CONCLUSION**

For the foregoing reasons, Mr. Abad is entitled to a TRO or PI enjoining his continued detention without a bond hearing and ordering his release pending adjudication of the habeas petition.<sup>6</sup>

Dated: February 5, 2025

Respectfully submitted,

/s/ Felix A. Montanez

/s/ Ian Austin Rose

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<sup>6</sup> Security is unnecessary here because, if this Court orders Mr. Abad’s release from custody, there are no foreseeable “costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). Mr. Abad therefore asks that this Court waive issuance of a bond.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I uploaded the foregoing Memorandum of Law in Support of the Motion for TRO or PI to this Court's CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

Dated: February 5, 2025

Respectfully submitted,

/s/ Felix Montanez