

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division**

EDIN PORTELA-HERNANDEZ

Petitioner,

v.

KRISTI NOEM, Secretary of Homeland Security, *et al*

Respondents.

Case No. 1:25-cv-1633-BAH

PETITIONER'S SUPPLEMENTAL MEMORANDUM

IN OPPOSITION TO MOTION TO DISMISS

I. Introduction

On May 20, 2025, ICE re-detained Petitioner Mr. Edin Portela-Hernandez after over five years of compliant release under an Order of Supervision. No hearing was held. No notice was provided. No new facts were presented to justify re-detention. This act violated both the Fifth Amendment's guarantee of procedural due process and the Fourth Amendment's protection against unreasonable seizures.

II. The Re-Detention Violated Procedural Due Process and Warrants Habeas Relief

The unilateral revocation of Mr. Portela-Hernandez's release violates the foundational requirement of procedural due process: the government may not deprive a person of liberty without notice and an opportunity to be heard. This principle is particularly critical where the deprivation results from sloppy or erroneous administrative processes, as has become a chronic problem in the immigration enforcement context.

A. *Mathews v. Eldridge* Balancing Supports Relief

The Supreme Court's framework in *Mathews v. Eldridge*, 424 U.S. 319 (1976), guides whether due process was afforded:

1. Private Interest: Mr. Portela-Hernandez had been under supervision for over five years, living in the open, complying with ICE, married, and operating a successful small business. He had developed a settled expectation of liberty. Courts have recognized that liberty interests deepen over time when a person consistently complies with terms of supervised release.
2. Risk of Erroneous Deprivation: The risk here was not just high—it was realized. Mr. Portela-Hernandez was re-detained without individualized review, without notice of any violation or change in risk, and without a bond hearing or access to a neutral decisionmaker.

This risk is compounded by ICE's history of unreliable and inaccurate records and opaque custody determinations, often made based on outdated, incorrect, or undocumented assumptions.

B. ICE's Pattern of Misinformation and Data Failures Heightens the Constitutional Concern

Mr. Portela-Hernandez's re-detention cannot be viewed in isolation. It is part of a broader institutional failure of accuracy and transparency within DHS and ICE custody practices. Multiple federal courts, including those in *D-V-D- v. Garland*, have cataloged systemic flaws in ICE's custody information and case tracking, where noncitizens were detained under the wrong legal authority, individuals were listed as removed or detained in countries they had never entered, and detention decisions were based on flawed or contradictory data. The *D-V-D-* litigation demonstrated that ICE's recordkeeping has at times been so poor as to frustrate judicial review

and undermine even basic procedural protections.

Here, there is no indication that any meaningful review of Mr. Portela-Hernandez's file occurred prior to re-detention. Instead, ICE acted based on bureaucratic discretion divorced from facts, exactly the kind of institutional malfunction the Constitution is designed to check.

C. The Government's "Unclean Hands" Militate Toward Habeas Relief

The equitable doctrine of unclean hands applies when a party seeking to deprive another of liberty has itself acted improperly or unfairly. While traditionally used in civil equity, the principle is deeply rooted in constitutional habeas law: courts are not required to defer to agency action where that agency is the source of the error or procedural failure.

In this case, as the Court correctly pointed out at oral argument, ICE previously determined Mr. Portela-Hernandez was not a danger or flight risk, and released him. It took no steps to re-detain him after he won withholding of removal in 2020, but then (inexplicably?) reversed course in May 2025 without explanation, factual justification, or procedural guardrails. It relied on a pattern of inaccurate public data and recordkeeping well-documented in similar class action litigation.

This is a classic case of an agency acting with unclean hands — asserting detention power over an individual based on its own opaque, erroneous, and unreviewable conduct. Courts must decline to uphold detentions that flow from such flawed exercises of discretion, especially where the detained person bears no responsibility for the agency's internal failure.

D. Due Process Demands Judicial Oversight Where Agency Process Is Absent or Broken

ICE's detention actions must be justified by a rational basis, compliance with its own regulations (e.g., 8 C.F.R. § 241.4), and the availability of review through immigration court or a bond process. None of those existed here. Without any process to challenge the deprivation of liberty, the only constitutional recourse is habeas. The agency's failure to maintain accurate records and abide by transparent procedures only intensifies the need for this Court's intervention.

In sum, the government's own conduct — its failure to document a basis for re-detention, its years of non-enforcement, and its broader track record of misinformation in similar cases — creates both constitutional and equitable imperatives for relief.

III. ICE's Re-Detention of Mr. Portela-Hernandez Was an Unreasonable Seizure Under the Fourth Amendment

A. The Fourth Amendment Applies to Civil Immigration Arrests and Detentions

The Fourth Amendment protects "[t]he right of the people to be secure in their persons... against unreasonable searches and seizures." While immigration proceedings are civil in nature, courts have consistently held that the Fourth Amendment constrains government action in this context — especially when it comes to physically detaining individuals.

Civil status does not render the Fourth Amendment inapplicable. As discussed in *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014), the Constitution protects all persons in the United States — including noncitizens — from government seizures that lack individualized suspicion or process. The *Morales* court found that the plaintiff, a U.S. citizen wrongfully detained by ICE, had stated a valid claim under the Fourth Amendment because there was no reasonable basis for her arrest. The same logic applies to re-detention of individuals previously released under supervision and found not to be dangerous or a flight risk.

Some courts have applied Fourth Amendment principles to immigration-related arrests and re-detentions, holding that such seizures must be justified by individualized suspicion and are subject to constitutional scrutiny.

B. Re-Detention Without New Information or Process Is Per Se Unreasonable

Even assuming ICE's initial decision to release Mr. Portela-Hernandez in 2020 was discretionary, its choice to re-detain him in 2025 without any new facts or individualized risk assessment constituted a second seizure under the Fourth Amendment — one that must independently satisfy constitutional standards.

The reasonableness of a seizure depends on the existence of individualized suspicion, the necessity of immediate detention, and whether the seizure was arbitrary or pretextual. Here, ICE re-detained Mr. Portela-Hernandez without new evidence, without asserting that he had violated his supervision conditions, and without any process, hearing, or bond review.

Under the principles reaffirmed in *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011), such re-detentions must be justified by new information and are subject to judicial oversight. Moreover, in *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court reiterated that civil immigration detention must be reasonably related to its purpose — namely, ensuring the removal of the noncitizen or protecting the public. Detaining someone indefinitely, or arbitrarily, with no evidence of danger or flight risk, is constitutionally suspect.

C. The Re-Detention Here Was a Classic Unreasonable Seizure

There are no facts in the record showing that ICE reconsidered Mr. Portela-Hernandez's

risk level, initiated a Post-Order Custody Review under 8 C.F.R. § 241.4, issued him a reasonable fear interview (at least initially until June 20 when the Supreme Court temporarily stayed the *D-V-D-* procedure), found new information suggesting noncompliance or threat, or issued a new administrative warrant or record supporting the arrest. ICE simply acted on bureaucratic impulse on orders from the White House, re-detaining Mr. Portela-Hernandez five years after his compliance began, without explanation. Under Fourth Amendment jurisprudence, this is an unreasonable seizure — conducted without probable cause, individualized suspicion, or judicial oversight.

D. The Fourth Amendment Requires Habeas Relief Where Seizures Are Arbitrary and Unreviewable

Because there was no hearing, no individualized determination, and no immigration court involvement in the May 20, 2025 re-detention, no other avenue for relief exists. The only available remedy to challenge this unconstitutional seizure is through habeas corpus.

Courts retain inherent power under 28 U.S.C. § 2241 to review whether a deprivation of liberty occurred in violation of the Fourth or Fifth Amendments. Where the government acts without transparency or record — and provides no mechanism for internal or administrative challenge — federal habeas is not just appropriate, but essential.

IV. Habeas Relief Is Still Available Despite Absence of Statutory Bond Procedures

A. The Constitution Requires More Than the Bare Minimum of a Regulatory Framework

The government's position — that the Post-Order Custody Review (POCR) process in 8 C.F.R. § 241.4 suffices — ignores that regulatory compliance does not satisfy constitutional due

process if that process fails to offer a meaningful opportunity to be heard. As the Supreme Court held in *Mathews*, procedural due process is flexible, and requires more than rote adherence to agency rules — it requires a process reasonably tailored to the nature of the liberty deprivation.

Here, re-detention after years of compliance — without any fresh evidence, notice, or a neutral adjudicator — constitutes a new and severe deprivation of liberty. The POCR process is: non-adversarial, purely internal, and lacks meaningful access to counsel, judicial review, or evidentiary standards. Thus, it does not meet the constitutional floor, especially when a person is re-seized after years of lawful release.

2. Courts Have Required Additional Process Even Where the Statute Is Silent

In *Diouf*, the Ninth Circuit held that even though § 1231(a)(6) does not provide for bond hearings, due process nonetheless requires one for individuals facing prolonged detention. The court emphasized: "An individualized bond hearing is constitutionally required... even in the absence of express statutory authority." *Id.* Although *Diouf* has not been adopted circuit-wide, it reflects a constitutional limitation on ICE's power, where the statute is silent but the liberty deprivation is substantial. Similarly, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court read the statute narrowly to avoid serious constitutional problems, recognizing that indefinite detention — even for someone ordered removed — requires at least a showing of likelihood of removal in the reasonably foreseeable future.

3. Habeas Available to Challenge the Constitutionality of the Detention, Not Just Statutory Process

Habeas corpus under 28 U.S.C. § 2241 remains available precisely when the existing statutory framework is constitutionally insufficient. The Supreme Court has repeatedly affirmed

that habeas is the appropriate vehicle to test the lawfulness of executive detention (*Boumediene v. Bush*, 553 U.S. 723 (2008)), the lack of process in post-removal detention (*Zadvydas*), and the factual basis for continued detention, where the administrative scheme offers no real remedy.

Because Mr. Portela-Hernandez's re-detention was not based on any new violation or danger, occurred without a neutral decisionmaker, and had no available hearing or appeal, he has no avenue within the statutory framework to test the lawfulness of his re-seizure. That is exactly when habeas becomes not just available, but essential.

4. ICE's Own Conduct Undermines the Argument for Deference

Moreover, when the government detains someone based on mistake or misinformation (as seen in D-V-D-), abandons enforcement of removal for five years, and then reverses course without explanation it cannot credibly argue that a minimal internal review is constitutionally sufficient.

While the statute and regulations may not provide for a bond hearing or adversarial review before re-detention, the Constitution does. Where the government re-detains a person after years of release, without cause or hearing, and without access to an immigration judge, the post-order custody review process is insufficient. Habeas corpus remains the only forum capable of testing the legality and constitutionality of that deprivation of liberty.

V. **Re-Detention Is Unlawful Under *Zadvydas* and *Clark* Because Removal Is Not Reasonably Foreseeable**

In *Zadvydas*, the Supreme Court held that detention under 8 U.S.C. § 1231(a)(6) is constitutionally permissible only as long as removal is reasonably foreseeable. The Court established a six-month presumptive limit, after which the burden shifts to the government to show

that removal is significantly likely to occur in the reasonably foreseeable future. In *Clark v. Martinez*, 543 U.S. 371 (2005), the Court extended this principle to all noncitizens subject to post-final-order detention under § 1231(a)(6), emphasizing that continued detention without a realistic prospect of removal is impermissible.

The government argues that Edin's detention is lawful because it falls within the six-month presumptive period identified in *Zadvydas*. But that presumption is not a safe harbor. It applies only where there is a real prospect of removal. Here, there is none.

At the time of Mr. Portela-Hernandez's re-detention on May 20, 2025, ICE failed to initiate the process for a Reasonable Fear Interview (RFI), though it was required to at that time. *That* is a violation that remains unresolved. Since the stay, it has taken no steps to resume the interview or initiate removal proceedings. There is thus no ongoing removal process, no pending travel arrangements, and no current pathway to removal.

This situation falls squarely within the rule articulated in *Zadvydas* and *Clark*: where there is no significant likelihood of removal in the reasonably foreseeable future, detention must end. The fact that fewer than six months have passed since re-detention is irrelevant. The governing standard is not simply temporal, but functional — whether removal is realistically likely to occur. Here, it plainly is not.

Moreover, the government itself is the source of the present impasse. ICE halted the RFI process and has taken no action to reinstate it. It cannot now detain Mr. Portela-Hernandez on the grounds that his removal is imminent, when it has made that removal legally and procedurally impossible. The government cannot invoke the six-month presumption from *Zadvydas* while simultaneously refusing to engage in the procedures necessary to effectuate removal.

This is not a case where removal has been delayed due to intransigence by a foreign government or logistical delays beyond DHS control. Rather, it is a situation in which DHS has unilaterally declined to proceed with removal, while continuing to detain an individual indefinitely. That is precisely the kind of executive overreach *Zadvydas* and *Clark* were intended to prevent.

Accordingly, continued detention under § 1231(a)(6) violates the Due Process Clause and must end. Because no other statutory mechanism exists to challenge the legality of this detention, habeas corpus under 28 U.S.C. § 2241 remains the appropriate and necessary remedy.

VI. Conclusion and Prayer for Relief

For more than five years, Mr. Portela-Hernandez lived peacefully and lawfully under supervision. He complied with all terms of release, established strong community ties, and posed no flight risk or danger. His abrupt and unexplained re-detention on May 20, 2025, occurred without any hearing, factual basis, or lawful justification. It violated both the Fourth and Fifth Amendments.

There is no ongoing removal process, and no reasonable prospect of removal in the foreseeable future. ICE has terminated the only procedural mechanism — the Reasonable Fear Interview — that could lawfully initiate removal. Yet it continues to detain Mr. Portela-Hernandez indefinitely, without judicial oversight, in direct contravention of the principles established in *Zadvydas v. Davis* and *Clark v. Martinez*.

The administrative custody review framework does not provide an adequate substitute for judicial process. There is no bond hearing, no neutral decisionmaker, and no meaningful

opportunity to contest the deprivation of liberty. Habeas corpus under 28 U.S.C. § 2241 is not only available — it is essential. Mr. Portela-Hernandez respectfully requests that this Court:

1. Declare that his continued detention violates the Due Process and Fourth Amendment protections of the U.S. Constitution;
2. Order his immediate release from ICE custody; or
3. In the alternative, require the government to provide a written justification for his re-detention, and conduct a prompt custody redetermination hearing before a neutral adjudicator;
4. Restore the Reasonable Fear Interview process that is a legal prerequisite to removal.

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