

Dkt. No. 21-4. Petitioner, by counsel, then requested that an IJ review his denied fear screening interview. *See* Dkt. No. 16-5.

4. Finally, more than three months after Petitioner's arrest and re-detention, on September 8, 2025, Respondents confirmed that they intended to remove Petitioner to Mexico on September 12, 2025. Dkt. No. 15.

5. Petitioner moved for a Temporary Restraining Order on September 9, 2025. Dkt. No. 16. On September 10, 2025, this Court entered a 14-day Temporary Restraining Order, enjoining Respondents from removing Petitioner prior to carrying out the IJ review of the denied fear screening interview. Dkt. No. 18.

6. Petitioner filed his Motion for Preliminary Injunction on September 12, 2025, Dkt. No. 20. After briefing and argument, this Court granted a Motion for Preliminary Injunction on October 2, 2025, finding that Petitioner has a due process right to an IJ review of his denied USCIS fear interview. Dkt. No. 26. The Court ordered "that Respondents and all of their officers, agents, servants, employees, attorneys, successors, assigns, and persons acting in concert or participation with them are hereby ENJOINED from removing Petitioner from the continental United States until seven (7) days after an Immigration Judge reviews Petitioner's denied Reasonable Fear Interview, and only if the Immigration Judge affirms such denial." *Id.* at 31.

7. Twenty-two days after this Court's Order, and 171 days after his re-detention, Respondents have not scheduled Petitioner for an IJ hearing, nor have they even committed to do so. *See* Ex. A. Respondent remains detained at the Webb County Detention Center, with no movement on his immigration case. Nor have Respondents sought to stay this Court's preliminary injunction order, here or at the Court of Appeals.

Argument

By ten days after the date of filing this motion, Petitioner will have been detained for 181 days since his arrest and re-detention on May 6, 2025. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (recognizing a 180-day presumption of reasonableness for detention pursuant to 8 U.S.C. § 1231(a)(6)). As the Supreme Court explained in *Zadvydas*, immigration detention must be “nonpunitive in purpose and effect.” 533 U.S. at 690. The only permissible purposes for immigration detention under 8 U.S.C. § 1231(a)(6) are to carry out the removal order and to prevent danger to the community. *Id.* The former reason evaporates where removal “is no longer practically attainable,” *id.*; and Respondents have not relied on the latter reason to justify Petitioner’s detention here.

The Supreme Court’s interpretation of 8 U.S.C. § 1231(a)(6) “limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. *Zadvydas* directs the habeas court to “ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* at 699. And while detention during deportation and removal proceedings is a valid aspect of the deportation process, *see Demore v. Kim*, 538 U.S. 510, 523 (2003), such “civil detention of a removeable noncitizen violates the Constitution if it is punitive.” *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1078 (N.D. Cal. 2024), citing *Wong Wing v. United States*, 163 U.S. 228, 237-38 (1896).

Here, since the date of this Court’s preliminary injunction order, Respondents have not acted in a reasonable manner to remove Petitioner to Mexico. The regulations controlling the Reasonable Fear Interview process—which this Court recognized do not directly apply to Petitioner, but nonetheless provide the most relevant analogy to Petitioner’s current circumstances for the purposes of a due process analysis, *see* Dkt. No. 26 at 22—require that an IJ review be

carried out within ten days of referral, absent exceptional circumstances. 8 C.F.R. § 1208.31(g). More than double that amount of time has now elapsed. *See also* 8 C.F.R. § 1003.42(e) (requiring IJ reviews of denied Credible Fear Interviews “to the maximum extent practicable within 24 hours, but in no case later than 7 days[.]”).

Respondents are detaining Petitioner in order to remove him to Mexico; no other country has been designated for removal. This Court has enjoined Respondents from removing Petitioner to Mexico without an IJ review of his denied fear screening interview. And under *Zadvydas*, Respondents may not permissibly detain Petitioner for any reason other than to effectuate removal.

Accordingly, Petitioner respectfully requests that this Court order Respondents either to carry out the IJ screening within ten days, by November 3, 2025—which will mark Petitioner’s 181st day of detention—or alternatively to release Petitioner pending any further immigration proceedings.

Respectfully submitted,

Date: October 24, 2025

//s// Simon Sandoval-Moshenberg
Simon Sandoval-Moshenberg, Esq.
Attorney-in-charge
S. D. Tex. Bar no. 3878128
Virginia State Bar no. 77110
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, VA 22030
Telephone: (703) 352-2399
Facsimile: (703) 763-2304
ssandoval@murrayosorio.com

CERTIFICATE OF SERVICE

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.

Respectfully submitted,

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//s// Simon Sandoval-Moshenberg
Simon Sandoval-Moshenberg, Esq.
Attorney-in-charge
S. D. Tex. Bar no. 3878128
Virginia State Bar no. 77110
Murray Osorio PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, VA 22030
Telephone: (703) 352-2399
Facsimile: (703) 763-2304
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