

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:25-CV-02205-WJM-STV

DENNIS AROSTEGUI-MALDONADO,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden of the Aurora Contract Detention Facility,

ROBERT GUADIAN, in his official capacity as Field Office Director, Denver, U.S.
Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

TODD LYONS, in his official capacity as Acting Director of Immigration and Customs
Enforcement,

PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE
TO ORDER TO SHOW CAUSE, ECF NO. 49**

Petitioner, Dennis Arostegui-Maldonado ("Mr. Maldonado"), through his *pro bono* counsel, hereby submits his Reply to Respondent's Response to Order to Show Cause, as follows:

I. Introduction

Mr. Maldonado was released from detention on August 27, after almost 21 months of confinement in the Aurora Facility, and seven contiguous months. Although Mr. Maldonado has obtained the temporary relief requested in his Petition, he now seeks permanent relief, given the questionable actions taken by ICE against him in the past and against others in similar

circumstances. ICE has detained him for years without reason to believe that he was a danger to our community or a flight risk. Mr. Maldonado seeks protection against unlawful detention in the future.

II. Supplementary Statement of Facts

We reaffirm the Statement of Facts set forth in the Petition, ECF No. 1, do not quarrel with the Statement of Facts set forth in the Response, incorporate herein this Court's Statement of Facts in its August 8, 2025 Order (the "Order"), and rely on additional facts presented in Mr. Maldonado's Amended Petition and Complaint, ECF No. 48. We submit the following additional facts.

On August 20, 2025, in compliance with the Order, an immigration judge held a custody hearing for Mr. Maldonado at the immigration court in Aurora, Colorado. On August 22, the immigration judge issued a Memorandum of Bond Decision and Order (the "Bond Order," attached as Exhibit A). In the custody hearing, the government was given the opportunity to prove, by clear and convincing evidence, that Mr. Maldonado's "release would pose a danger to people or property" or that Mr. Maldonado "poses a flight risk." Ex. A, 2. The government utterly failed to meet this burden. Other than a conviction for illegal re-entry to the United States in 2018, the government produced no evidence of a criminal history for Mr. Maldonado in the United States. Similarly, the government "did not meet its burden to prove by clear and convincing evidence that [Mr. Maldonado] would be a flight risk if released from custody." *Id.* Despite these findings and Mr. Maldonado's indigent status, the IJ set bond at an unreasonably high amount of \$10,000. Fortunately, a charitable non-profit organization posted this bond on August 26, 2025. Exhibit B, Record of Bond Payment Request in Case of Dennis Arostegui-

Maldonado. This bond was approved on August 27, 2025, and Mr. Maldonado was released that same day.

III. Mr. Maldonado Was Entitled To Immediate Release And Should Not Again Be Detained Without Further Order Of This Court

There are several reasons why Mr. Maldonado is entitled to this relief.

First, in our Petition, we argued in the alternative that Mr. Maldonado's due process claims should be resolved by a six-factor test applied by numerous courts in this District. ECF No. 1 at 22-30. Respondents did not address that argument in their Response. Nor did this Court consider it in denying the relief of immediate release. However, this Court did apply the six-factor test in ordering a bond hearing, holding that, on balance, those six factors warranted bond relief for Mr. Maldonado. This Court should now apply those six factors to affirm that Mr. Maldonado's detention is impermissible, particularly given an immigration judge has found he is neither a flight risk, nor a danger to the community. Mr. Maldonado requests that this Court permanently enjoin Respondents from again detaining Mr. Maldonado without further order of this Court or such other relief as this Court deems appropriate.

Second, in its Order, this Court correctly summarized the law as determined by *Zadvydas* as follows:

The Supreme Court held that § 1231(a)(6), "read in light of the Constitution's demands, . . . does not permit indefinite detention." *Id.* at 689. Rather, it "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Id.* The Court recognized a six-month period of detention as presumptively reasonable. *Id.* at 701. But, "after this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing."

Id. at 701. Here, Mr. Maldonado has provided “good reason to believe that there is no significant likelihood of removal” of Mr. Maldonado “in the reasonably foreseeable future.” The government has not submitted any evidence to rebut that showing. Mr. Maldonado has been *granted* withholding relief. The IJ’s Order is attached to the Petition, and presents irrefutable legal and factual bases for that decision. The government’s stated grounds for appeal are frivolous, and provide no basis for assuming that Mr. Maldonado *ever* will be removed from the United States. This is not a temporal issue; the government has simply not established that Mr. Maldonado will be removed *at any time* from the United States. Further, in the unlikely event that IJ’s Order is reversed by the Board of Immigration Appeals (“BIA”), the Tenth Circuit Court of Appeals or the United States Supreme Court, that would only be after months or years of further litigation, clearly in excess of the *Zadvydas* minimal standard, which is calculated from the date of the final order of removal, *not* the date of a final agency determination. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001) (“When an alien has been found to be unlawfully present in the United States and *a final order of removal has been entered*, the Government ordinarily secures the alien’s removal during a subsequent 90–day statutory “removal period””) (emphasis added). Moreover, the language in *Zadvydas* related to “indefinite” detention, relied on by Respondents, is dicta and is not found in the statute related to removal and detention, 8 U.S.C § 1231. Nor does it appear in the implementing regulations that were issued after *Zadvydas*, which clarified the steps for assessing whether removal is likely in the reasonably foreseeable future, 8 C.F.R. § 241.4.

Third, Respondents seek to deflect this argument by citing exclusively to *Soberanes v. Comfort*, 388 F.3d 1305 (10th Cir. 2004), the holding of which purports to allow a virtually

endless period of detention for immigrants subject to a final order of removal. But *Soberanes* has been distinguished by this very District Court in a manner that renders it inapplicable to the present case. In *Singh v. Choate*, 2019 U.S. Dist. LEXIS 141979, *14, Magistrate Judge Mix acknowledged the holding in *Soberanes*, but recited statistics as to the backlog of cases at the BIA (200,000), acknowledged the possibility of an appeal to the Tenth Circuit and concluded as follows: “All this amounts to the fact that [Petitioner’s] detention will definitely terminate at some point [referring to *Soberanes*], but that point is likely to be many months or years from now.” *Id.* at 15, 16. On the basis of that projected extended period of detention, relief was granted to the Petitioner. *See also, Singh v. Garland*, 2021 U.S. Dist. LEXIS 105133, *8 (D. Colo.) (refusing to apply *Soberanes* because the petitioner in *Soberanes* was being detained pursuant to § 1231 whereas the petitioner in *Singh* was being detained pursuant to § 1226(c), a mandatory detention statute, which is similar to the basis for Mr. Maldonado’s detention); *Alufyouny v. Chertoff*, (2006 U.S. Dist. Lexis 40854 *62) (criticizing *Soberanes* for “failing to acknowledge” the brief period of detention recognized by other courts).

IV. This Court Should Reaffirm Its Bond Order and Grant Further Relief

Mr. Maldonado has been released on bond but, contrary to Respondents’ argument, his entitlement to bond is not moot.

First, ICE could unlawfully re-detain Mr. Maldonado and, contrary to Respondents’ position, the grant of a bond does not dissolve the underlying claim for permanent protection against his unconstitutional detention and potential removal. ICE has a robust track record of re-detaining people, just like Mr. Maldonado, who had previously been granted bond without any basis for again stripping them of their liberty. *E.g., E.A. T.-B. v. Wamsley*, No. C25-1192-KKE,

2025 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025) (ICE’s arrest and redetention of petitioner without an individualized determination of flight risk or dangerousness “poses a significant risk of an erroneous deprivation of Petitioner’s liberty interest in continued release”); *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (“Petitioner’s redetention without any change in circumstances or procedure establishes a high risk of erroneous deprivation of his protected liberty interest.”); *see also Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *5 (N.D. Cal. July 17, 2025) (petitioner, who was released on bond, could not be re-detained without due process); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025) (“[P]ersons in [Petitioner’s] circumstances have a protectable liberty interest in remaining out of custody on bond pending further immigration proceedings”).

Second, ICE has detained Mr. Maldonado for almost two years without cause, and has engaged in highly publicized unconstitutional detentions and deportations of migrants, even those subject to and protected by withholding orders. *See, e.g., Abrego Garcia*, 604 U.S. ____ (2025) (recognizing the U.S. government’s acknowledgment that petitioner’s removal to El Salvador violated an immigration judge’s order and was illegal). In fact, this Court examined this potential unlawful conduct in granting a preliminary injunction preventing Mr. Maldonado’s unlawful removal. ECF No. 46 at 29 (detailing Respondents’ counsel’s assertion that “under the regulation and under statute, [Mr. Maldonado] could be removed to a third country” and noting the deportation officer’s inability to offer information about who is vulnerable to third country removals). Moreover, at the August 1, 2025, hearing, Mr. Maldonado’s counsel expressed

concern about the potential for a repeat of this type of unlawful conduct in Mr. Maldonado's case:

THE COURT: There's already an automatic stay of execution of the reinstated removal order; right? So, why isn't that enough to satisfy the concern -- legally satisfy the concern that petitioner would have of being removed unlawfully prior to or in violation of the termination of that stay?

MS. LUNN: Your Honor, had you asked me that question last year, my answer would be very different. I am terrified that he will be removed unlawfully like Kilmar Abrego Garcia.

...
He had a grant of withholding to El Salvador, and he was deported there and tortured in a prison.

...
And so my fear is that the same thing will happen to Mr. Maldonado.

...
THE COURT: So, effectively what you're telling me is that you have a concern that under this administration, the DHS and ICE will not follow the rule of law?

MS. LUNN: That is exactly what I'm saying.

See Exhibit C (partial transcript of August 1, 2025 Evidentiary Hearing, 95, 96).¹ Further relief is warranted. Respondents should be permanently enjoined from again detaining Mr. Maldonado unless they can establish to this Court, by clear and convincing evidence, that he has violated the terms of his bond order or is otherwise ordered detained by an immigration court. Given what Mr. Maldonado has endured, this would be a fair resolution of this issue.

WHEREFORE, this Court should grant Mr. Maldonado the permanent relief requested in the Petition in this Reply.

¹ Exhibit C is a rough draft transcript from the August 1, 2025 hearing. Mr. Maldonado does not offer Exhibit C as a verbatim recitation of the hearing. Instead, Exhibit C is offered to provide a general overview of the concerns Mr. Maldonado's counsel raised at the hearing.

Dated: September 4, 2025

DAVIS GRAHAM & STUBBS LLP

/s/ Thomas P. Johnson

Thomas P. Johnson
Nicholas Moskevich
Tara Lessar
3400 Walnut Street, Suite 700
Denver, CO 80205
Telephone: 303.892.9400
Facsimile: 303.893.1379
Email: tom.johnson@davisgraham.com
nick.moskevich@davisgraham.com
tara.leesar@davisgraham.com

Laura Lunn
ROCKY MOUNTAIN IMMIGRANT ADVOCACY
NETWORK
7301 N. Federal Blvd, Ste. 300
Westminster, CO 80030
Telephone: (720) 370-9100
Email: llunn@rmian.org

*Pro Bono Attorneys for Petitioner Dennis
Arostegui-Maldonado*