GREEN | EVANS-SCHROEDER, PLLC
130 W. Cushing Street
Tucson, AZ 85718
Tel. (520) 882-8852
Fax (520) 882-8843

Jesse Evans-Schroeder | Arizona Bar No. 027434
Email: jesse@arizonaimmigration.net

Attorney for Petitioner
Vladimir Kaborda

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Vladimir KABORDA Petitioner, v. John E. CANTU, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Fred FIGUEROA, Warden of Eloy Detention Center; Todd LYONS, Acting Director, Immigration and Customs Enforcement and Removal Operations. Respondents.	Case No. 2:25-cv-03781-DJH-ESW **PETITIONERS REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Respondents' opposition misses the mark. Petitioner has been under a final order of removal for nearly twelve years, and the United States has been unable to remove him to Belarus because that country has refused to accept him. His removal period is long-expired. His recent detention—initiated without any new evidence that removal has become more likely—is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Respondents ignore the prolonged and futile history of removal efforts and the agency's own regulatory violations, which, separately and together demonstrate that Petitioner's continued detention is unreasonable, unlawful, and unconstitutional.

ARGUMENT

I. Respondents' "Six-Month Rule" Argument Misstates Zadvydas

Respondents' claim that they are entitled to detain Petitioner for at least six months and at any time is incorrect. *See* Dkt. 10, at 6. *Zadvydas* does not create a mandatory six-month detention period; it identifies six months as a presumptively reasonable period for removal efforts after the 90-day statutory "removal period" has run. *See* 8 U.S.C. § 1231(a)(1)-(2); *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). That statutory period begins when the order of removal becomes final—here, in 2013—and has long since expired. *See Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198 (D.N.J. June 13, 2025) ("The removal period begins on the latest of three dates: (1) [t]he date the order of removal becomes administratively final; (2) if the removal order is judicially reviewed and the court orders a stay of removal, the date of the court's final order; and (2) "if the alien is detained or confined (except in an immigration context) the date the alien is released from detention or confinement.""), *citing* 8 U.S.C. § 1231(a)(1)(B)(i-iii). Nothing in the statute or *Zadvydas* authorizes a new "removal period" every time ICE decides to

detain or re-detain someone years after their removal order.

Moreover, Respondents overlook that they already exercised—and exhausted—the statutory "removal period" when Petitioner was first ordered removed in 2013. The government chose not to detain him during that period, and its failure to effectuate removal then does not entitle it to a new six-month grace period now. The six-month presumption in *Zadvydas* exists to give the government a reasonable opportunity to accomplish removal, not to grant recurring windows of automatic detention. As one court recently observed, the six-month period under *Zadvydas* "is a presumption" and does *not* permit detention simply because the six-month window has not elapsed; to interpret it otherwise "would condone detention in cases where removal is not reasonably foreseeable … so long as it did not exceed six months." *Cruz Medina v. Noem*, No. 1:25-cv-01768-ABA at *11–12, 2025 LEXIS 466326 (D. Md. Aug. 11, 2025). Having already enjoyed more than a decade to obtain travel documents without success—during which Petitioner faithfully attended regular check-ins and made efforts to effectuate his removal--ICE cannot credibly claim that renewed detention in 2025 is "necessary to complete removal." The statute and *Zadvydas* safeguard the public's interest in efficient, time-limited removal—not perpetual custody of individuals the government cannot deport.

Belarus has consistently refused to issue travel documents. Petitioner's declaration—uncontested by the government—shows that both ICE and Petitioner have made repeated, unsuccessful attempts to secure travel documents over the last twelve years. Dkt. 7-1. Exh. A. Following ICE's detention of Petitioner on September 17, 2025, the agency made no contact with the Belarusian embassy until October 15, 2025. Dkt. 10-1, ¶ 15. ICE detained Petitioner without travel documents, delayed any request for a month, and still lacks them today. *Id.* These

circumstances are functionally identical to those in *Zadvydas*, where further detention was found unlawful.

II. Respondents' Delay and the Futility of Removal Undermine Any Claim of Reasonable Foreseeability

ICE's conduct in this case demonstrates futility, not diligence. Petitioner was detained in September 2025 even though ICE did not possess travel documents, had not confirmed Belarus's willingness to accept him, and—by Respondents' own admission—did not even contact the Belarusian Embassy until a month later. Dkt. 10-1, ¶¶ 13-15. This sequence reveals not a good-faith effort at removal, but a detention-first, investigate-later approach that *Zadvydas* rejects. The government cannot detain a noncitizen merely to determine whether removal might someday be possible.

That inaction is dispositive. When the government's own conduct shows an absence of diligence or an institutional stalemate with the receiving country, continued detention is unauthorized. *See, e.g., Abdi v. Duke*, 280 F. Supp. 3d 373, 387 (W.D.N.Y. 2017), *citing Demore v. Kim*, 538 U.S. 510, 531 (2003) ("were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary to inquire whether the detention is not to facilitate deportation, or to protect against flight risk or dangerousness, but to incarcerate for other reasons"). Here, Respondents have presented no documentary evidence—as required by this Court's order—showing that Belarus has issued travel documents to any similarly situated individuals, or that diplomatic conditions have changed since the last twelve years of failed efforts. In the absence of such evidence, the record supports only one inference: removal is not reasonably foreseeable.

Respondents cannot use their own delay and speculation to restart the six-month removal

clock. The relevant inquiry under *Zadvydas* is not how long Petitioner has been detained, but whether removal is realistically attainable at all. After more than a decade of failure, and no proof of progress, it plainly is not.

III. Respondents Violated the Regulations Governing Post-Order Custody Review

ICE's decision to revoke Petitioner's release and re-detain him implicates two distinct and mandatory regulatory frameworks. Despite this Court's order to address both, Respondents have addressed only one--8 C.F.R. § 241.13. Under 8 C.F.R. § 241.4(l)(1)-(3), ICE was required to provide written notice of the reasons for revocation and to conduct an informal interview affording Petitioner an opportunity to respond. Separately, because removal to Belarus has been futile for over a decade, ICE was required to conduct a post-order custody review under 8 C.F.R. § 241.13, including the informal interview required by § 241.13(i)(3). ICE's failure to comply with either regulatory scheme renders the detention procedurally invalid and arbitrary and capricious under the APA. *See Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

Courts have repeatedly held that when ICE fails to follow its own regulations in revoking release, the resulting detention is unlawful, and release must be ordered. *See, e.g., Perez-Escobar v. Moniz*, No. 25-CV-11781-PBS, 2025 U.S. Dist. LEXIS 141725, at *8 (D. Mass. July 24, 2025). As in *Perez-Escobar*, Petitioner here received no meaningful notice or opportunity to respond when his release was revoked. The government has not asserted any timeline for removal, any likelihood of obtaining travel documents, or any "changed circumstances" that could have justified revocation or continued detention. Absent compliance with these regulations, ICE's decision to detain Petitioner is procedurally invalid and his continued custody unlawful.

While Respondents do not address § 241.4(l) in their response, they apparently concede a violation of Petitioner's rights under § 241.13(i). Dkt. 10, at 7-8 ("[T]he failure to provide

Petitioner with an informal interview ...is harmless error.") The assertion that the filing of a habeas petition "cures" that violation misunderstands the law. Habeas is a remedy for unlawful detention; it does not substitute for agency compliance with binding regulations. Agencies must follow their own procedural rules. *See Khamba v. Albarran*, No. 1:25-cv-01227 (JLT), 2025 U.S. Dist. LEXIS 205312, at *7 (E.D. Cal. Oct. 17, 2025), *citing Accardi*, 347 U.S. at 268. This is particularly true where the government has not provided any evidence that removal to Belarus has become any more likely than it was for the past twelve years.

IV. Respondents Misconstrue the Court's Order and the Nature of Habeas Review

This Court's Order to Show Cause required Respondents "to show cause why the Petition should not be granted, and Petitioner should be released from immigration detention," supported by a "deliniat[ion]" of "the process by which respondents purported to revoke Petitioner's order of supervision," "documentary evidence," and, if applicable, "affidavits signed under penalty of perjury." Dkt. 6, at 3.

Rather than comply by addressing the 8 C.F.R. § 241.4(l)(1)-(2), delineating the process by which the order of supervision was purportedly revoked, or providing documentary evidence, Respondents devote two pages of their eight page reply to the *Winter* factors governing preliminary injunctions. That framework is irrelevant. The Court did not order briefing on equitable relief—it ordered the government to justify the legality of detention. Under 28 U.S.C. § 2241, the burden rests with Respondents to establish that custody remains lawful, not with Petitioner to satisfy equitable balancing tests. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) ("Habeas is not an exercise in equitable discretion; it is an inquiry into legality."). Their reliance on *Winter* distracts from that mandate and fails to provide the evidentiary showing the Court explicitly required.

CONCLUSION

For twelve years, the government has been unable to remove Petitioner to Belarus. Its latest detention effort—unsupported by new evidence, delayed by its own inaction, and marred by procedural violations—falls squarely within the unlawful, indefinite detention condemned by *Zadvydas*. Respondents' reliance on the Winter standard only underscores their inability to justify custody under 28 U.S.C. § 2241.

Because Respondents have failed to show a significant likelihood of removal in the reasonably foreseeable future and failed to comply with the Court's directive to substantiate their actions with evidence, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus.

Executed on this 23rd day of October, 2025 in Tucson, Arizona.

Respectfully submitted,

/s/Jesse Evans-Schroeder
Jesse Evans-Schroeder
GREEN EVANS-SCHROEDER
Attorney for Petitioner