UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SIGIFREDO MEDELLIN MARTINEZ	)	
Petitioner-Plaintiff,	)	
v.	)	**Civ. No.5:25-cv1319**
PAMELA JO BONDI, United States Attorney General;	)	
KRISTI LYNN NOEM, Secretary of the United States Department of Homeland Security;	)	
TODD M. LYONS, Acting Director of United States Immigration and Customs Enforcement;	)	
SYLVESTER M. ORTEGA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement	)	
BOBBY THOMPSON Warden, South Texas Detention Center	)	
UNITED STATES DEPARTMENT OF HOMELAND SECURITY;	)	
Respondents-Defendants.	)	

PETITIONER'S REPLY TO THE GOVERNMENT'S OPPOSITION AND REQUEST FOR INTERIM RELEASE PENDING HABEAS

INTRODUCTION

The government has filed its "Federal Response in Opposition" (ECF No. 10), arguing (i) the TRO seeks the same ultimate relief as the petition; (ii) CAT does not bar third-country removal; and (iii) detention is presumptively lawful because it has been approximately fifty days and due process was satisfied.

Despite the government's arguments, Petitioner maintains that the Motion for Temporary Restraining Order and/or Injunctive Relief ("TRO/PI") is a narrow, interim measure focused on supervised release, contending that the immediate removal alleged by the government is not reasonably foreseeable and that mandatory procedures have been overlooked. Accordingly, (i) the Government's assertion that Petitioner's TRO seeks the same ultimate relief is incorrect; (ii) the contention about third-country removability is a non-issue Petitioner does not advance; and (iii) the response mischaracterizes the governing standard by treating detention as a purely temporal question rather than the evidence-based foreseeability test under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

ARGUMENT

I. The TRO/PI preserves the status quo; it is not "ultimate relief."

Consistent with the TRO/PI standard the Government itself cites—that such relief is "ordinarily aimed at temporarily preserving the status quo," *Foreman v. Dallas Cty.*, 193 F.3d 314, 323 (5th Cir. 1999)—the relief sought here is interim and preserves the parties' pre-dispute posture: Petitioner's six-year status quo (2019–2025) on an Order of Supervision with full compliance. Indeed, interim release does not moot habeas and is the proper request. This position is unequivocally confirmed by longstanding federal precedent. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (habeas jurisdiction fixed at filing; later release does not moot).

Hensley v. Municipal Court, 411 U.S. 345, 351–53 (1973) (release on recognizance with conditions is "custody"). The holding in *Zadvydas* confirms federal precedent support for Petitioner's immediate release: When continued incarceration under § 1231(a)(6) is "unreasonable and no longer authorized," supervised release is the correct interim posture. *Zadvydas* 533 U.S. 699–702 (2001).

Here, Petitioner's TRO/PI simply restores the status quo, supervised release. *Foreman v. Dallas Cty.*, 193 F.3d 323. That is not final relief; it preserves the controversy while the Court decides the merits and labeling restoration it as "ultimate relief" misstates the remedy.

II. Petitioner's removal is legally possible, but the record here shows third-country removal is not reasonably foreseeable.

On this record, the Government offers assurances of removal, not evidence. The government is correct, The United States Department of Homeland Security ("DHS") "may" remove Petitioner to another country beside Mexico where torture is not likely. 8 C.F.R. § 1208.17(b)(2). Yet there is no evidence DHS that intends to exercise this authority. It has not named a destination country, not obtained acceptance, not initiated third-country travel-document processing, and not requested Petitioner's assistance with such documents as its own rules require. *See* 8 C.F.R. § 241.13(e)(2) (DHS shall advise the alien of efforts needed "to assist in securing travel documents … for … a third country"); 8 C.F.R. § 241.5(a)(2) (supervision condition to "continue efforts to obtain a travel document and assist" DHS). Even if it had begun the process, the regulations require it to invoke the reasonable-fear framework if it targets an alternative country of removal (Asylum Officer screening with IJ review). *See* 8 C.F.R. §§ 208.31(a), (c), (g); 1208.31(a), (c), (g). Because DHS has not taken the basic steps its framework

presupposes, there is no evidentiary basis to find a significant likelihood of removal in the reasonably foreseeable future.[1] Can seek" is not "can remove"; *Zadvydas* demands the latter.

Under *Foreman*, the proper course is to preserve the status quo—temporary restoration to supervised release—while the Court adjudicates the habeas petition under *Zadvydas.*

III. The 8 U.S.C. § 1231 removal period began in 2019 not 50 days ago as the Government contends.

Under § 1231(a)(1)(B), the "removal period" begins on the latest of: (i) the date the removal order becomes administratively final; (ii) if judicial review is sought and a stay is entered, the date the reviewing court's order becomes final; or (iii) the date the noncitizen is released from non-immigration detention. CAT withholding in 2019 did not vitiate the final order; it barred removal to Mexico. No judicial stay is at issue, and there was no intervening non-immigration confinement. The removal period, therefore, began in 2019, and the six-month *Zadvydas* presumption has long since elapsed. 533 U.S. at 699–702; *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 & n.4 (11th Cir. 2002) (clock keyed to § 1231 removal period; tolling only if the alien's actions impede removal under § 1231(a)(1)(C)). The burden is now on the Government to demonstrate removal in the foreseeable future, and the Government has presented nothing to meet that burden.

Even if the Government insists on a "new clock" from August 2025, the presumption does not insulate present detention when the record shows no realistic prospect of removal in the near term. *Zadvydas*, 533 U.S. at 701–02. Petitioner was detained for several months in 2019,

[1] Petitoner's reiterates that The Supreme Court recognized evidence that in 2017 only **1.6%** of individuals granted withholding were removed to another country, and the Court's discussion acknowledges that point. *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021). (emphasis added) That Court-recognized reality dovetails with this case's record: the Government's hopes are conjectural, not evidence of a near-term removal.

then lived under supervision without incident through 2025, and was re-detained in September 2025. Throughout those years DHS never secured a receiving country. The Government answers that detention is constitutional because it has been only "approximately fifty days," and that due process was satisfied (ECF No. 10 at 3–5). The governing law, however, is an evidence-based foreseeability test, not a stopwatch, and "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas* at 701–02. Applied here, the multi-year record of removal efforts (or lack thereof) —paired with the ongoing CAT bar to Mexico—compresses what can plausibly be "foreseeable." Therefore, the bare fact of "50 days" detention on this record shows no significant likelihood of removal in the reasonably foreseeable future, and continued detention is unlawful.

REQUESTED ORDER

Petitioner respectfully requests an order directing immediate release under supervision pursuant to 8 U.S.C. § 1231(a)(3), restoring the prior Order of Supervision on reasonable conditions. This relief is without prejudice to DHS seeking modification upon a material change supported by evidence of an identified receiving country and concrete travel-document progress.

Dated: November 5, 2025

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CERTIFICATE OF SERVICE

I certify, in accordance with the rules of this Court, I filed the foregoing via the Court's CM/ECF system, which will send notice to all registered counsel of record.

Dated: November 5, 2025

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