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

SIGIFREDO MEDELLIN MARTINEZ **Petitioner-Plaintiff,** **v.** **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.**	**Civ. No.5:25-cv1319**

PETITIONER'S REPLY TO THE GOVERNMENT'S OPPOSITION TO WRIT OF HABEAS CORPUS

INTRODUCTION

Under the Government's opposition (ECF No. 13), the record is straightforward: after six years of supervision without removal, The United States Department of Homeland Security ("DHS") and Immigration and Customs Enforcement ("ICE") revoked supervision on September 12, 2025, then—only after habeas was filed—began exploring third-country options. *See* ECF No. 13-1. Its own filing reports denials from Panama, Guatemala, and Honduras; a still-pending request to El Salvador; and a post-order custody review set for November 30, 2025. Those are assurances and process, not evidence of removability.[1]

The Government's brief organizes its position under three headings: (1) Removal Efforts—post-habeas outreach to four countries with three denials and El Salvador pending, plus a scheduled post-order custody review; (2) Petitioner, as an Applicant for Admission, Is Detained Until Removal on a Mandatory Basis Under 8 U.S.C. § 1225(b); and (3) *Zadvydas* Burden Not Met Because Less Than Six Months Have Elapsed and Regulatory POCRs Address Any Due-Process Concern.

Each point fails on this record and as a matter of law: the "removal efforts" show no acceptance, no travel documents, and no itinerary—assurances and process are not evidence of near-term removability under *Zadvydas v. Davis*, 533 U.S. 678 (2001); and the § 1225(b) theory is inapposite to post-final-order detention governed by § 1231(a)(6); the six-month presumption does not convert the reasonably-foreseeable-removal test into a stopwatch.

[1] Notable, the government's attached affidavit is not even from an individual who has direct knowledge of the progress made in the removal efforts. In paragraph four of the sworn statement, Deportation Officer Celestina Pena confirms she "obtained" the information from agency internal systems and not from direct knowledge of Petitioner's case.

ARGUMENT

I. The only concrete "removal efforts" began after habeas was filed and do not satisfy *Zadvydas*'s evidentiary standard.

ICE claims it revoked the Order of Supervision ("OSUP") on "changed circumstances," but never identifies what those circumstances were. *See* Gov't Resp. ("On September 12, 2025, ICE revoked Petitioner's [OSUP] on the basis of changed circumstances…"), ECF No. 13 at 2; Pena Decl. ("On September 12, 2025, Petitioner was served his revocation of…OSUP based on changed circumstances."), ECF No. 13-1 at 2. The declaration is silent as to what changed. Instead, it shows the first third-country steps began post-filing: "On October 30, 2025, [Enforcement and Removal Operations] ("ERO") interviewed Petitioner for ties to other countries… On October 30, 2025, ERO sought third country removal with Panama. Petitioner was denied acceptance by Panama that same day… Guatemala and Honduras declined… El Salvador has not yet responded to the request that ICE sent on November 4, 2025." ECF No. 13-1 at 2–3; . ICE also noticed a Post-Order Custody Review ("POCR") for November 30, 2025—again, a post-filing step. *Id.*

Zadvydas requires evidence-based foreseeability, not assurances or eleventh-hour activity: "After this 6-month period… the Government must respond with evidence sufficient to rebut [no-foreseeability]." And "[a]s the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future'… shrinks." 533 U.S. 701–02. DHS's own rule hardwires that inquiry: Headquarters Post-order Detention Unit ("HQPDU") must "advise the alien of the efforts he or she needs to make in order to assist in securing travel documents… for… a third country," and must consider "the history… of the Service's efforts… to third countries" and "the reasonably foreseeable results of those efforts." 8 C.F.R. § 241.13(e)(2), (f); see also § 241.5(a)(2) (order of supervision includes a duty to "continue efforts to obtain a travel document and assist" DHS). Here, after six years of Petitioner's compliance with the OSUP,

with no named destination, acceptance, processing, or itinerary, ICE first tried four countries after habeas was filed; three said no and one is pending. ECF No. 13-1 at 2–3. That is not the "evidence" *Zadvydas* demands to show significant likelihood of removal in the reasonably foreseeable future.

Related to *Zadvydas,* the allegations of the government's violations of the Accardi Doctrine remain unanswered and independently dispositive. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The Government does not address Petitioner's Accardi claims related to revocation of the OSUP. The revocation regulation uses mandatory language and assigns the decision to the authorized official, with reason-stated notice and a prompt informal interview. 8 C.F.R. § 241.4(l)(1)–(2). "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The omissions caused prejudice: they deprived Petitioner of the regulation's built-in opportunity to present six years of compliance to the actual decisionmaker to avert re-detention. That is an independent ground for relief.

II. The Government's 8 U.S.C. § 1225(b) theory is irrelevant in a post-final-order case governed by 8 U.S.C. § 1231

This is post-final-order detention following "Convention Against Torture" deferral to Mexico. The Government's own filing hinges removal on finding a third country and touts options under § 1231(b). *See* ECF No. 13 at 1–2 ("nothing prevents DHS from removing Petitioner to a third country… under 8 U.S.C. § 1231(b)(2)"). The question on detention, therefore, is the *Zadvydas* test under § 1231(a)(6): "Once removal is no longer reasonably foreseeable, continued detention is no longer authorized." 533 U.S. at 699; *see* Clark v. Martinez, 543 U.S. 371, 386–87 (2005) (same construction across § 1231(a)(6) detainees). The Government's pivot to § 1225(b)—claiming Petitioner is an "applicant for admission" detained

"until removal"—doesn't fit the post-order posture and cannot displace *Zadvydas*'s controlling constraint. *See* ECF No. 13 at 3–5.

Even if § 1225/§ 1226 were relevant, the trend cuts against the Government. The Government's expansive § 1225(b) theory has been rejected in a wave of 2025 district decisions addressing interior arrests of long-settled EWIs: "applicants for admission" detention under § 1225(b) does not apply where ICE picks up a noncitizen in the interior on an I-200 warrant and places the person into § 240 proceedings; instead, § 1226(a) governs and entitles the noncitizen to an IJ bond hearing. Many opinions grant habeas, enjoin transfers or re-detention without a bond hearing, and decline exhaustion because the dispute is a pure question of law.[2]

III. Detention under § 1231 and due process: the "50 days" frame ignores when the removal period began and what *Zadvydas* requires.

Under 8 U.S.C. § 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 deferral/withholding in 2019 did not vacate or stay the final order; it merely barred removal to Mexico. *See* 8 C.F.R. § 1208.17(b)(2). 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. *See Zadvydas v. Davis*, 533 U.S. 699–702 ("After this 6-month period… the Government must

[2] *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Lepe v. Andrews*, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Leon Espinoza v. Wofford*, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

respond with evidence… and as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future'… shrinks."); *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 significant likelihood of removal in the reasonably foreseeable future, and it has supplied no country acceptance, no travel-document processing, and no itinerary—only post-filing outreach and one pending request—insufficient under *Zadvydas*.

Even if the Government insists on a "new clock" from re-detention in September 2025 (arguing he has been detained "less than 90 days" and thus cannot shift the burden), the presumption does not insulate present detention where the record shows no realistic prospect of near-term removal. *Zadvydas*, 533 U.S. at 701–02. Petitioner was detained for several months in 2019, then lived under supervision without incident through 2025, and was re-detained in September 2025. Across those years DHS never secured a receiving country. The Government responds that detention is constitutional because it has been only "approximately fifty days" and that process was afforded (notice/interview), but its own filing admits the first third-country steps occurred after habeas was filed—Panama, Guatemala, and Honduras declined, and El Salvador is pending—with a POCR scheduled for November 30, 2025. Those are assurances and process, not evidence of near-term removability. *See* ECF No. 13 at 2–3, 7.

Even when DHS identifies a viable alternative country under 8 U.S.C. § 1231(b)(2), detention will necessarily be prolonged because removal cannot lawfully occur until the government completes a series of destination-specific steps it has not yet taken:

(i) Provide CAT process to the actual proposed country, including (where applicable) reasonable-fear screening and referral to an immigration judge for withholding-only proceedings, 8 C.F.R. § 208.31.

(ii) Adjudicate withholding/deferral against that country under the "more-likely-than-not" standard, considering all relevant evidence—past torture, the feasibility of internal relocation, and current country-conditions—before authorizing removal, 8 C.F.R. § 1208.16(c)(2)–(3).
(iii) If withholding is barred, determine eligibility for deferral of removal, 8 C.F.R. § 1208.17(a).
(iv) If it relies on diplomatic assurances, it must produce assurances that satisfy the specificity, reliability, and monitoring requirements of 8 C.F.R. § 1208.18(c).
(v) It must effectuate country selection and logistics consistent with the statutory hierarchy (advance consent not categorically required), 8 U.S.C. § 1231(b)(2).

Because the Board of Immigration Appeals ("BIA") has confirmed that CAT protection is adjudicated with respect to the designated third country itself, these procedures cannot be skipped when the destination changes, *Matter of A-S-M-*, 28 I. & N. Dec. 282 (B.I.A. 2021). Therefore, identifying an alternate country does not demonstrate removal will occur in a reasonable period. The Government, like its citizens, must follow established regulatory and statutory procedures.

In sum, the government's "fifty days" point does not resolve the *Zadvydas* inquiry. The question turns on an evidence-based foreseeability test that tightens as time and failed efforts accumulate. *Zadvydas*, 533 U.S. at 701–02. Applied here, the multi-year record of non-removal—paired with CAT's country-specific bar to Mexico—compresses what can plausibly be "foreseeable" now. Moreover, a pending request and a scheduled post-order custody review are not evidence of imminent removability. On this record, the government has not met its burden under *Zadvydas*, and continued detention under 8 U.S.C. § 1231(a)(6) is not authorized. *Id.* at 699–702.

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 10, 2025

s/Francisco Alvillar
Francisco Alvillar, TX Bar No. 24057742
Alvillar Law, PC
85 NE Loop 410, Suite 560
San Antonio, Texas 78216
(210) 525-0888 (phone)
(210) 568-4642 (fax)
francisco@al-pc.com

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 10, 2025

s/Francisco Alvillar
Francisco Alvillar, TX Bar No. 24057742
Alvillar Law, PC
85 NE Loop 410, Suite 560
San Antonio, Texas 78216
(210) 525-0888 (phone)
(210) 568-4642 (fax)
francisco@al-pc.com