IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SOTO VILCHEZ, Jorge Luis *Petitioner*, v. **Pamela Bondi,** et al., *Respondents*.	Civil No.: 25-cv-03234-JWL

INTRODUCTION

Petitioner, Jorge Luis Soto Vilchez, was granted withholding of removal on April 23, 2025. Yet despite this order granting him relief from removal, he remains in immigration custody over 8 months later – after more than a year in custody, with no end in sight. His primary argument is that release is appropriate because his removal is not reasonably foreseeable. Nothing in Respondents' response undermines that claim. And since Respondents filed their response, an immigration judge established that, while the Department of Homeland Security "designated" Mexico as a country of removal under 8 U.S.C. § 1231(b)(2)(E)(ii), Mexico may still refuse to allow Mr. Soto Vilchez to be deported there. And neither DHS nor the immigration court designated any other third country to which Mr. Soto Vilchez may be removed. Accordingly, this Court should order Mr. Soto Vilchez's release. [1]

[1] Mr. Soto Vilchez withdraws his request for declaratory relief from this Court in Count III of his Petition. ECF 1 ¶ 101-110, Prayer for Relief ¶ 6.

ARGUMENT

I. Mr. Soto Vilchez is entitled to release under *Zadvydas* as he faces indefinite detention, and his removal is not reasonably foreseeable.

In *Zadvydas*, the Supreme Court held that the statute governing the post-removal period, 8 U.S.C. § 1231, does not authorize the Attorney General to detain a noncitizen indefinitely, but only for the period "reasonably necessary to secure the [noncitizen's] removal." *Zadvydas v. Davis*, 533 U.S. 678 (2001). There is a "presumptively reasonable detention period of six months in which to accomplish removal." *Anduaga-Colin v. Bondi*, No. 25-3151-JWL, 2025 WL 2926546 at *2 (D. Kan. Oct. 15, 2025). Once the six-month period expires, and once the noncitizen "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." *Zadvydas*, 533 U.S. at 701.

A noncitizen bringing a *Zadvydas* challenge need not show "the absence of any prospect of removal" but merely that removal is not reasonably foreseeable. *Id.* at 702. The *Zadvydas* court also recognized that "as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701; *see also Anduaga-Colin*, 2025 WL 2926546 at *2 (recognizing continued detention eight months after the entry of a final order of removal as "a significant period of time beyond the six-month presumptively reasonable period in which to accomplish removal.").

Mr. Soto Vilchez has presented "good reason to believe that there is no significant

likelihood of [his] removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. He has a final grant of withholding of removal to Venezuela, which prevents his removal to that country, and which became administratively final on April 23, 2025. ECF 1-1; 4-2 ¶¶ 11, 13. "Petitioner has now been detained for more than eight months since the beginning of the removal period, a significant period beyond the presumptively-reasonable period of six months, during which time officials have been unable to locate a third country to which to remove him." *Hussein v. Bondi*, No. 25-3240-JWL, 2026 WL 21247 at *2 (D. Kan. Jan. 5, 2026). Mr. Soto Vilchez does not have citizenship, legal status, or any connections with another country that might make his removal to an alternative country likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E). Respondents have denied that any notice of intent to remove him to any other country exists. ECF 1-13 at 24; ECF 1 ¶ 45; *see also Gonzalez Gutierrez v. Carter*, No. 25-3233-JWL, ___ F.Supp.3d ___, 2025 WL 3454295 at *2 (D. Kan. Dec. 2, 2025) (noting similar facts "hardly demonstrate officials' diligence with respect to petitioner's removal"). And Respondents' declaration failed to identify any other possible alternative country. ECF 4-2. While DHS designated Mexico as a country of removal, the immigration judge clarified that there is no reason to believe that Mexico has actually accepted Mr. Soto Vilchez, or that they would accept Mr. Soto Vilchez. *See* Exh. O, Declaration of Olivia Abrecht.[2]

[2] Contemporaneously with this Traverse, Mr. Soto Vilchez files a motion for this Court to accept the official Digital Audio Recording ("DAR") of the hearing held in Mr. Soto Vilchez's immigration court case on January 6, 2025. No official transcript of immigration court proceedings is created unless and until an appeal is filed with the Board of Immigration Appeals, and therefore no official transcript of Mr. Soto Vilchez's proceedings exists.

Further evidencing the government's unreasonable delay is the fact that ICE failed to perform its post-order custody review in Mr. Soto Vilchez's case. *See infra* Section II.

Respondents claim that, because Mr. Soto Vilchez sought a stay of removal from the immigration court, requesting that he not be removed to Mexico without notice and an opportunity to respond, he has not met his initial burden. ECF 4 at 12-13. Not so. On September 12, 2025, an officer showed Mr. Soto Vilchez a document that Petitioner believed to be a notice that Respondents intended to remove him to Mexico. Mr. Soto Vilchez refused to sign the document and asserted fear of return to Mexico. ICE later denied that it had in its possession any notice of intent to remove him to Mexico. ECF 1-13 at 24; ECF 1 ¶ 45 ("I do not see a Notice of Removal."). In this Court and in immigration court, Respondents provide no evidence that they obtained travel documents, requested permission from Mexico to send Mr. Soto Vilchez there, or even created a notice that they intended to remove Mr. Soto Vilchez to Mexico. They have provided no evidence of any concrete steps taken to remove Mr. Soto Vilchez. ECF 4-2. The lack of evidence speaks volumes and is sufficient to meet Mr. Soto Vilchez's initial burden.

As this Court has previously held, in many cases, Respondents cannot meet their burden to provide evidence sufficient to rebut Mr. Soto Vilchez's showing by relying on "boilerplate statements," without detail or other evidence, in a declaration. *Anduaga-Colin v. Bondi*, No. 25-3151-JWL, 2025 WL 2926546 at *2 (D. Kan. Oct. 15, 2025); *see also Gutierrez*, 2025 WL 3454295, at *2-3. Yet, that is precisely what Respondents seek to do here. ECF 4-2 ¶¶ 16, 22. Unlike the case Respondents rely on, the declaration submitted here does not even state what country Respondents have attempted to remove Petitioner to,

let alone what steps Respondents have taken to effect such removal. ECF 4 at 14 (quoting *Reyna-Salgado v. Noem*, No. 25-3172-JWL, ECF 6 at 4 (D. Kan. Oct. 3, 2025); *see* ECF 4-3 (denying petition where petitioner conceded that officials made attempts to remove him to three countries). Indeed, this Court has found declarations with more detail insufficient with regularity. *See, e.g.*, *Hussein*, 2026 WL 21247 at *2 (declaration listed Canada and Malaysia as potential countries of removal).

On January 7, 2026, Respondents filed a notice of supplemental authority, citing two cases from this Court. ECF 8. Neither case helps Respondents. In *Rustami v. Noem*, the petitioner filed his habeas petition prior to the end of the six-month period of detention that the *Zadvydas* court held is presumptively reasonable. No. 25-3160-JWL, 2025 WL 3760744 at *2-3 (D. Kan. Dec. 30, 2025). This Court found that, at the time of the decision, the petitioner's detention had lasted only "slightly" longer than six months, and therefore was not unreasonable. *Id.* This Court has held, though, that the more than 8 months that have passed since the start of the removal period is a significant amount of time for there to be no movement on attempts to remove a petitioner. *Hussein*, 2026 WL 21247 at *2. And in *Amra*, the petitioner did not comply with attempts to obtain a travel document. *Amra v. Olson*, No. 25-3222-JWL, 2025 WL 3684264 at *2 (D. Kan. Dec. 19, 2025). Respondents make no representation that Mr. Soto Vilchez has similarly obstructed removal efforts by any unlawful means.

Mr. Soto Vilchez's immigration court motion to pursue protection from removal to a third country (ECF 1-2) does not create cause for a different outcome, despite Respondents' claims. ECF 4 at 8-10. Because the ultimate grant of country-specific

protection from persecution or torture in Mexico sought by Mr. Soto Vilchez in these proceedings "does not disturb the final order of removal," *see Nasrallah v. Barr*, 590 U.S. 573 (2020), his detention is unlawful under the *Zadvydas* framework. *Cf. Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2286-87 (2021) (holding that noncitizens in administrative withholding-only proceedings are detained under U.S.C. § 1231(a)(6)). Mr. Soto Vilchez's motion was submitted out of an abundance of caution because Respondents claim they may remove Mr. Soto Vilchez in as little as six hours, and without providing him an opportunity to pursue protection from persecution or torture.[3] Before the immigration court, Respondent seeks only withholding of removal or CAT protection as to Mexico and neither party seeks to relitigate the removal order or grant of withholding as to Venezuela. Indeed, Respondents' position in this case seems to contradict the position taken in its memoranda and in other litigation about DHS's authority to remove people without following the procedures in the INA. *See* Exh. P, DHS memoranda (allowing only withholding and CAT, not asylum, for individuals who they seek to remove to a third country); *cf. RAICES v. Noem*, 793 F.Supp.3d 19, at 79-86 (D.D.C. 2025) (discussing Respondents' attempts to create a separate "212(f) Direct Repatriation" and "212(f) Expedited Removal" procedures that required removal orders with only the opportunity to seek deferral of removal under the CAT).

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[3] Petitioner apologizes for the non-functioning links in his Petition. ECF 1 ¶¶ 9 n.2, 11 n.3 (providing links to DHS, Guidance Regarding Third Country Removals, March 30, 2025 [hereinafter "March ICE Memo"] and ICE, Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025) [hereinafter "July ICE Memo"]). He attaches Respondents' memoranda as an exhibit to this traverse. Exh. P.

Respondents' attempts to limit the amount of time that "counts" toward Mr. Soto Vilchez's period of detention is also not persuasive. It is undisputed that Mr. Soto Vilchez has been detained continuously in DHS's custody since December 2024, and that more than 8 months have passed since the conclusion of Mr. Soto Vilchez's removal proceedings. ECF 1 at ¶¶ 32, 36; ECF 4-2 at ¶¶ 8, 11. Indeed, Mr. Soto Vilchez's ongoing detention can only be attributed to Respondents' delays. Respondents do not dispute that DHS did not designate any country of removal besides Venezuela in Mr. Soto Vilchez's removal proceedings. ECF 1 at ¶ 35. The IJ, accordingly, ordered removal only to Venezuela and simultaneously ordered Respondents not to remove Mr. Soto Vilchez to Venezuela. *Id.* It is further undisputed that DHS then did not meet its July deadline to review Mr. Soto Vilchez's ongoing custody. ECF 1 at ¶ 46; ECF 4 at ¶ 19. Finally, Mr. Soto Vilchez has diligently pursued protection from removal to persecution or torture upon notice that he potentially could be removed to a third country. As established in his petition, a detained noncitizen may not seek protection from any theoretical third country until *the government* has *affirmatively designated* that country for removal. ECF 1 at ¶ 78. Despite DHS being on notice since September 17, 2025, that Mr. Soto Vilchez sought clarity about what country DHS intends to remove Mr. Soto Vilchez to, ECF 1-10 at 6, only this week did DHS even designate another country besides Venezuela.[4] Exh. O. And it still refuses to provide evidence that Mr. Soto Vilchez could be removed to Mexico. Indeed, the reason DHS claims it may remove Mr. Soto Vilchez to a third country is only because Mr. Soto

[4] Mr. Soto Vilchez does not concede that Mexico was properly designated under the INA and has preserved his objection in immigration court.

Vilchez has a final order of removal, which remains undisturbed. If Respondents' arguments succeed, then individuals who fear persecution in a third country could remain indefinitely detained while DHS refuses to provide *any* notice to people of its intent to remove them to potential persecution. That is not the standard.

Respondents take statutory language out of context to claim that 8 U.S.C. § 1231(a)(1)(C) allows for the extension of the removal period in this case. ECF 4 at 10-11. But they cite no case law interpreting the language in that manner. For good reason. Section 1231(a)(1)(C) states in its entirety:

> The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

Read in context, this provision does not apply to engagement in the legal process to seek mandatory protection from persecution or torture. *Cf. Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) (balancing petitioner's right to "explore avenues of relief" against engaging in dilatory tactics to stall deportation and compel release from detention). Mr. Soto Vilchez is entitled to raise legitimate defenses to removal; such challenges to his removal, standing alone, cannot undermine his claim that detention has become unreasonable. *See Hernandez v. Decker*, No. 18-CV-5026 (ALC), 2018 WL 3579108, at *9 (S.D.N.Y. July 25, 2018) ("the mere fact that a noncitizen opposes his removal is insufficient to defeat a finding of unreasonably prolonged detention, especially where the Government fails to distinguish between bona fide and frivolous arguments in opposition"). Indeed, that Mr. Soto Vilchez's motions were granted undermines any argument they were made in bad faith. *Singh v.*

Choate, No. 19-cv-00909-KLM2019, WL 3943960 at *6 (D. Colo. Aug. 21, 2019). The out-of-circuit cases Respondents rely on do not say otherwise. *Gozo v. Napolitano* was decided more than a decade before the Supreme Court determined in *Johnson* that detention during withholding proceedings was governed by 8 U.S.C. § 1231, rather than pre-removal detention under § 1226. 309 Fed. Appx. 344 (11th Cir. 2009). In *Lawal v. Lynch*, 156 F.Supp.3d 846, 849 (S.D. Tex. 2019), the petitioner had received multiple notices of failure to cooperate in his removal, starting three months after he was taken into ICE custody. Respondents here provide no notice that they have considered Mr. Soto Vilchez to violate any requirement to cooperate. *See* ECF 4-2. Finally, in *Roman v. Garcia*, the district court denied the petition not because of any "tolling" but because it determined that "there is a significant likelihood that her removal is reasonably foreseeable once withholding-only proceedings end." *Roman v. Garcia*, No. 6:24-CV-01006, 2025 WL 1441101, at *3 (W.D. La. Jan. 29, 2025), *report and recommendation adopted sub nom. Lobaton v. Garcia*, No. 6:24-CV-01006, 2025 WL 1440056 (W.D. La. May 19, 2025). Here, Respondents provide no evidence that Mr. Soto Vilchez's removal would *actually* occur to Mexico or any third country.

ICE's failure to follow its own regulations by not conducting a post-order custody review during the removal period, and its failure to serve that review on Mr. Soto Vilchez further cautions against any tolling of the removal period in this case. *See, infra II.*

II. Due process requires Mr. Soto Vilchez's release.

As Respondents concede, ECF 4 at 18, their sole justification for the ongoing detention—with no end in sight—of Mr. Soto Vilchez is for them to find a third country to

remove him. This concession, and the conclusions that flow from it, require Mr. Soto Vilchez's release under due process principles.

First, Respondents' claim that a constitutional challenge is no different from a statutory challenge is inaccurate. ECF 1 ¶ 55 (citing *Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019)). Mr. Soto Vilchez has been detained for more than 12 months and counting with no access to an independent determination about whether his detention is related to any legitimate government purpose. The Government concedes that it failed to follow its regulations by delaying a post-order custody review ("POCR") in Mr. Soto Vilchez's case, and it does not contest his assertion that they did not serve him with the decision from the POCR.[5] Mr. Soto Vilchez's 180-day POCR has also not been completed, and Respondents provide no evidence that it has.

The failure to properly conduct post-order custody reviews is, itself, a violation of the regulations and Mr. Soto Vilchez's due process rights. 8 C.F.R. § 241.4(d) (stating that post-order custody decisions "shall be provided to the detained" noncitizen); *see also Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641- 42 (D. Mass. 2018) (finding that failure to follow the post-order custody review regulations may constitute a violation of the noncitizen's procedural due process rights); *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 388-402 (W.D.N.Y. 2009) (finding that DHS failed to follow the post-order custody

[5] Indeed, Respondents emailed Petitioner's counsel with a copy of a POCR, dated October 8, 2025, which claimed service was effectuated on Mr. Soto Vilchez in April 2025 – five months before the document was even created. That document is attached to this filing at Exhibit Q. The purported POCR provides no additional information about the basis for DHS's decision to continue detention of Mr. Soto Vilchez.

review regulations, in violation of Petitioner's due process rights, and ordering release); *Rodriguez Del Rio v. Price*, No. EP-20-CV-00217-FM, 2020 WL 7680560, at *4 (W.D. Tex. Nov. 3, 2020). DHS has not "cured" this violation by providing defective claims of compliance months after Mr. Soto Vilchez was forced to file motions in immigration court and a habeas petition in federal court. Here, ICE's failure to follow its own regulations for months merits his release.

III. Mr. Soto Vilchez Resolves Respondents' Complaints About Mr. Soto Vilchez's Petition.

Without first raising their concerns with Petitioner, and citing 28 U.S.C. § 2242, Respondents claim that Mr. Soto Vilchez's habeas petition is not properly submitted. ECF 4 at 24-26. As Respondents concede, it is not clearly required that petitions filed under 28 U.S.C. § 2241 be signed and verified by the Petitioner. However, Petitioner provides a verification, *see* Exh. N, and a declaration from his counsel, Olivia Abrecht, *see* Exh. O, with this Traverse.

Respondents' further arguments as to the contents of Mr. Soto Vilchez's filings are misplaced because they either raise concerns that their own filings also present, mischaracterize the content of the Petition, or are otherwise not a factual dispute. ECF 4 at 26. First, Respondents claim that Mr. Soto Vilchez's statements that are "true and correct to the best of [his] knowledge" somehow undermines his declarations. *Id.* But the declaration Respondents submitted with their response contains a similar clarification that the statements made in the declaration "are true and correct to the best of my knowledge, information, and belief." ECF 4-2. Respondents do not cite any authority for the

proposition that statements made with the certification that they are "true and correct to the best of one's knowledge" would be an improper verification.

> Respondents next claim that Mr. Soto Vilchez cannot have personal knowledge that:(1) It is "incredibly rare" for the United States to remove aliens to third countries, ECF 1 ¶¶ 13, 58; (2) no third country candidate (including Mexico) "could plausibly prevent" refoulement to Venezuela, *id.* ¶¶ 13, 76, 105; (3) comparable aliens have suffered "illegal repatriation," *id.* ¶ 13; (4) an email sent by a DO means "the process of third-country removal" for Petitioner was permanently "stopped," *id.* ¶¶ 45, 77; (5) an OSUP "would be sufficient" to ensure Petitioner remains available for removal, *id.* ¶¶ 64, 91, 100; and (6) the credible fear process for any third country for Petitioner will take "months if not years" to complete. *Id.* ¶¶ 79, 105.

ECF 4 at 25.

Notably, Respondents do not dispute that (1), (2), (3), (5), or (6) are factually incorrect or provide any evidence to rebut them. ECF 4. Number (4) is a red herring – Mr. Soto Vilchez need not show that their attempts are "permanently" stopped and never did use the word "permanent." ECF 1 ¶¶ 45, 77. He only need show – and did show – reason to believe that his removal is not likely in the reasonably foreseeable future.

Regarding (5), Mr. Soto Vilchez can state that he would comply with the terms of his release, and therefore an OSUP would be "sufficient" to ensure his presence at the moment of removal. Respondents provide no evidence that an OSUP would not be sufficient. However, counsel for Mr. Soto Vilchez, Olivia Abrecht, also corroborates what multiple courts have found – OSUP orders are sufficient to ensure the presence of individuals like Mr. Soto Vilchez.

Finally, Ms. Abrecht's declaration addresses the other four statements, which, again, Respondents do not dispute. Exh. O.

CONCLUSION

None of Respondents' arguments prove sufficient to justify Mr. Soto Vilchez's ongoing, unlawful detention in immigration custody. Because Mr. Soto Vilchez's ongoing detention violates the Due Process Clause and the INA, this Court should grant his Petition and order his immediate release.

Dated: January 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2026, the foregoing was electronically filed with the clerk of the court by using the CM/ECF system which will send a notice of filing to all CM/ECF participants for this case, including:

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