Case No. 25-3254-JWL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JUAN CARLOS MARTINEZ MARTINEZ
Petitioner, Pro Se

V.

UNITED STATES IMMIGRATION
and CUSTOMS ENFORECEMENT; and,
C. CARTER, Warden, FCI-Leavenworth
Respondents,

IN SUPPURT OF PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241)

I. INTRODUCTION

Petitioner respectfully submits this Traverse in reply to Respondents' Return. Respondents' argument mischaracterizes both factual posture of this case and governing law. Properly understood, Petitioner's continued detention is unconstitutional and unlawful under Zadvydaz v. Davis, the Fifth Amendment and longstanding civil-detention principles.

Petitioner, Juan Carlos Martinez Martinez, has been continuously detained since May 8th, 2025, post-removal-order, for a period exceeding one hundred and eighty days. Crystal Carter, Warden at FCI Leavenworth and his immediate custodian is located in this district (Kansas). The Writ of Habeas Corpus is brought under 28 U.S.C. § 2241 challenging the lawfulness of continued detention post-removal order. Respondents' Return fails to rebut Petitioner's showing that his continued detention violates 8 U.S.C. § 131(a)(6) as interpreted by Zadvydas v. Davis, 533 U.S. 678 (2001), and violates substantive due process. Instead, the government relies on speculative future removal, failed third-country negotiations, and the amount of days (or months) elapsed since six months of detention.

II. RESPONDENTS' MISCHARACTRIZE THE PROCEDURAL POSTURE AND LEGAL FRAMEWORK

On page 4 of Respondents' Response, Respondents state: "Although Ground One is styled as a claim under 8 U.S.C. § 1231(a)(6) and Ground Two is styled as a Fifth Amendment due process claim, the reality is that both claims are covered by Zadvydas." Respondents attempt to collapse all constitutional claims into Zadvydas while simultaneously minimizing the extraordinary length and posture of Petitioner's detention. This approach fails.

At the conclusion of proceedings on May 8, 2025, the Immigration Judge ordered Petitioner removed but simultaneously granted Petitioner's application for relief. This posture is critical. Petitioner is not an alien subject to an uncontested, executable final order, but an individual whose removal authority exists only in theory and has proven unworkable in practice. As the Supreme Court emphasized, immigration detention is civil, not punitive, and its constitutionality depends on its reasonable relation to a legitimate government purpose. "A statute permitting indefinite detention of an alien would raise a serious constitutional problem." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

III. RESPONDETS MISAPPLY ZADVYDAS AND THE BURDEN-SHIFTING FRAMEWORK

A. Petitioner Has Made the Required Initial Showing

Respondents incorrectly argue that Petitioner must prove certainty of non-removal. That is not the standard. Under Zadvydas, once detention exceeds six-months, Petitioner need only provide *"good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." Zadvydas, 533 U.S. at 701.

Petitioner has met and exceeded this burden.

B. ICE's Documented Failures Demonstrate Lack of Foreseeable Removal

Respondents argue that Petitioner's detention is lawful because they unsuccessfully attempted removal to Canada, Guatemala and Costa Rica and On page 3 of the Respondents' Response, the Government states: "ERO has continued to follow up with Removal and International Operations ("RIO") headquarters to inquire about other potential countries to which Petitioner could be removed." (citation modified). This argument confirms that removal is not reasonably foreseeable.

The undisputed facts show:
June 2, 2025 Canada refused removal
June 3, 2025 Guatemala refused removal
July 7, 2025 Costa Rica refused removal

These are not speculative obstacles. They are formal sovereign refusals. Courts repeatedly hold that multiple failed attempts to third countries strongly support a Zadvydas claim. "Repeated refusals by foreign governments to accept the alien constitute strong evidence that removal is not reasonably foreseeable." Lema v. INS, 341 F.3d 853, 856 (9th Cir. 2003).

Respondents' assertion that ICE is "still actively pursuing" removal does not alter this reality. Zadvydas explicitly rejected the idea that ongoing diplomatic efforts alone justify continued detention. "The prospect of indefinite detention is not cured by the fact that the Attorney General may someday find a country willing to accept the alien." Zadvydas, 533 U.S. at 699

C. Petitioner Has Fully Cooperated Throughout Detention

Under § 1231(a)(1)(c), detention may be extended only if the noncitizen acts to prevent removal. When cooperation exists, continued detention is unlawful: "Where an alien has cooperated fully and removal is not foreseeable, continued detention exceeds statutory authority." Rajigah v. Conway, 268 F. Supp 2d 159, 165 (E.D.N.Y. 2003)

The Petitioner believes that once the "Detainee" shows facts indicating no realistic removal (over six months and no non-cooperation being the cause etc.), the Respondents must produce competent evidence of an destination. The Petitioner believes that he has shown enough to trigger that burden.

IV. RESPONDETS' RELIANCE ON SLIGHTLY LONGER THAN SIX MONTHS IS LEGALLY IRRELEVANT

Respondents argue that Petitioner's detention is merely "slightly longer than the presumptive six-month period." (Respondents' Response, Page 5). This argument misunderstands the six-month presumption. The six-month period is not a safe harbor for the government; it is a trigger point for heightened scrutiny. "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." Zadvydas, 533 U.S. at 701

Here, removal has affirmatively failed, and detention continues with no concrete destination, no timeline. and no meaningful prospect of success. Courts consistently reject the argument that mere passage of time is irrelevant when practical removal barriers exist.

A. Zadvydas Does Not Require a Substantial Excess Over 180 Days

Respondent next argue that even if 180 days have elapsed ("As of the date of this filling, Petitioner's detention has only lasted sixteen days longer than the presumptively lawful six-month period.") (Respondent's Response, Page 5), detention exceeding the benchmark by only "sixteen days longer" is insufficient to shift the burden to the government. This argument misunderstands the Supreme Court's framework. Zadvydas establishes six months as the point at which detention becomes presumptively unreasonable, not as a minimum grace period during which constitutional concerns are suspended. 533 U.S. at 701.

Once the six-month threshold is crossed, the burden shifts to the government to show that removal is significantly likely in the reasonably foreseeable future. There is no requirement that detention exceed six month by a particular margin before constitutional scrutiny applies.

B. The Government's Argument Would Nullify the Presumption

If Accepted, Respondents' logic would create an ever-moving goalpost:

30 days beyond 180 is when Zadvydas becomes applicable
16 days beyond 210 days is too short before Zadvydas becomes applicable
60 days is borderline

Such an approach would transform the Zadvydas presumption into an illusory protection, contrary to Supreme Court intent. Courts routinely recognize that even brief periods beyond six months are sufficient to trigger the burden shift when government cannot show concrete progress toward removal.

V. THE GOVERNMENT HAS FAILED TO SHOW REMOVAL IS LIKELY IS THE REASONABLY FORESEEABLE FUTURE

Even assuming arguendo that detention slightly beyond 180 days requires additional scrutiny, Respondent has failed to meet its burden.

A. Speculative or Conclusory Assertion Are Insufficient

Under Zadvydas, the Government must provide specific, non-speculative evidence that removal is likely in the reasonably foreseeable future. General references to ongoing efforts pending communication, or theoretical cooperation does not satisfy this standard. Here, Respondent has offered no:

Travel document issuance timeline
Confirmation of acceptance by the receiving country
Scheduled removal date
Evidence resolving known barriers to removal

Absent such proof, continued detention becomes indefinite, which the constitution forbids.

B. Continued Detention Serves No Legitimate Purpose

The Supreme Court made clear that once removal is no longer reasonably foreseeable, detention ceases to serve its civil purpose and becomes punitive. Zadvydas, 533 U.S. at 690. At this stage, supervision under conditions of release is the constitutionally required alternative.

C. CAT PROTECTION FOR MEXICO MAKES REMOVAL TO HOME COUNTRY LEGALLY IMPOSSIBLE

Petitioner has relief under the Convention Against Torture (CAT) which respect to Mexico. Removal to his home country is therefore legally barred. Courts recognize that when removal to the country of origin is prohibited, the government bears a heightened burden to show realistic third-country removal; "When removal to the country of origin is barred, the likelihood of removal depend entirely on the willingness of a third country to accept the alien." Lema v. INS 341 F.3d 853, 856 (9th Cir. 2003).

In addition, the Petitioner's removal consists of ICE of having the obligation to identify an "alternative country" where the Petitioner will have the same terms and conditions as stated on his granted "Withholding of Removal" status. ICE must find a country that will guarantee that the Petitioner will not be tortured, deprived of his freedom, or will face any type of danger. The designated country for removal must also guarantee that Petitioner will not be removed and deported back to Mexico while his status remains and his deportation to his country is suspended indefinitely. As of today, ICE has not found a country with these conditions within the 6 months (almost 9 months as of writing this Response) the courts consider reasonable to effectuate removal, therefore proving that travel documents have not been secured for a prolonged period.

Respondents have not identified any third country that has agreed to accept Petitioner.

VII. THE PETITION IS NOT PREMATURE

A. Zadvydas Does Not Require to Wait Beyond Six Months to Seek Relief

Respondents first argues that the petition is "less than six months after his detention under § 1231(a)(6) began" (Respondents' Response, Page 5), because the appeal period purportedly extends the Zadvydas presumptive period to 210 days. This argument is legally incorrect. In Zadvydas, the Supreme Court held that detention becomes presumptively unreasonable after six months, at which

point continued detention requires justification. 533 U.S. at 701. The Court did not condition habeas review on the exhaustion of appeal periods, nor did it create an automatic extension beyond on administrative finality theories.

Critically, Zadvydas establishes a reasonableness inquiry, not a bright-line rule barring review before some artificially extended date. Habeas jurisdiction exists once detention becomes prolonged and potentially indefinite.

B. The Government's 210 Days Theory Has No Basis in Zadvydas

Respondents' claim that removal is not "final" until 30 days after an order and therefore the six-month period begins later is unsupported by Zadvydas or the INA. Courts have consistently rejected attempts to redefine the start of the six-month clock to avoid judicial scrutiny. The relevant inquiry is not administrative finality but whether detention has become prolonged and indefinite in practice, especially where removal efforts are stalled.

Allowing DHS to delay habeas review by manipulating procedural timelines would eviscerate the constitutional safeguard recognized in Zadvydas. "Detention becomes unreasonable when removal is no longer practically attainable, regardless of how diligently ICE claims to be working." Hernandez v. Lynch, 2016 WL 7116611, at *5 (D. Mass. Dec. 6, 2016).

VIII. RESPONDENTS HAVE NOT REBUTTED PETITIONER'S SHOWING

A. "continuing to look" Is Not Evidence of Foreseeable Removal

Respondents' claim of "rebutted" is solely based on ICE's continued inquiries with headquarters. On page 3 (and continued to page 4) of the Respondents' Response, the Government states: "ERO has continued to follow up with Removal and International Operations ("RIO") headquarters to inquire about other potential countries to which Petitioner could be removed on near monthly basis." This is insufficient as a matter of law.

"General assertions that ICE continues to make efforts to remove an alien do not satisfy the governments' burden absent evidence of a realistic prospect of success." Abdi v. Nielsen, 287 F. Supp. 3d 327, 334 (W.D.N.Y 2018). Respondents identify no country currently willing to accept Petitioner, no travel document in progress, and no anticipated timeline. That is not rebuttal; it is speculation.

B. Bains v. Garland Is Distinguishable

Respondents' reliance on Bains v. Garland is misplaced. In Bains, the Court emphasized specific, ongoing diplomatic progress and concrete removal prospects. Here, the record shows the opposite: formal denials from multiple countries.

Courts routinely distinguish cases like Bains where removal channels remain open from cases like this one where every identified option has closed.

IX. Respondents Erroneously Dismiss Petitioner's Independent Due Process Claim

Respondents argue that Ground Three fails because Petitioner "never develops" a procedural due process claim. This is incorrect.

A. Prolonged Civil Detention Independently Violate Due Process

Even where Zadvydas doe not compel immediate release, due process imposes independent limits on prolonged civil detention. "Freedom from imprisonment lies at the heart of liberty protected by the Due Process Clause." Zadvydas, 533 U.S. at 690

Petitioner has been detained long after the justification for civil confinement has eroded (almost 9 months as of writing of this Traverse), without any meaningful custody review tailored to the length and futility of detention.

B. Detention No Longer Serves Its Asserted Purpose

The sole permissible purpose of post-order detention is facilitation of removal. Demove v. Kim, 538 U.S. 510, 527 (2003). When removal is not reasonably foreseeable, continued detention becomes punitive, violating due process regardless of statutory authorization. "Civil detention that is excessive in relation to its purpose violates due process." Jackson v. Indiana, 406 U.S. 715, 738 (1972).

X. THE DISTRICT OF KANSAS HAS AUTHORITY TO ORDER IMMEDIATE RELEASE

Federal Courts in this district routinely order conditional release where Zadvydas violations exist. Supervised release under an Order of Supervision is the appropriate remedy.

XI. CONCLUSION NAD REQUEST FOR RELIEF

Petitioner's detention has exceeded the six-month presumptive limit established by Zadvydas. The petition is not premature. As of writing of this Traverse, its been almost 9 months since the Order of Removal was entered (May 8th, 2025). The burden has shifted to the government, and Respondent has failed to meet that burden. Continued detention therefore violates due process.

For the foregoing reasons, Petitioner respectfully requests that the Court:

1) Grant the Petition for Writ of Habeas Corpus;
2) Order Petitioner immediate release from ICE custody under reasonable conditions of supervision;
3) Enjoin Respondents from continued detention absent concrete evidence of imminent removal;
4) Grant any further relief the Court deems just and proper.

XII. VERIFICATION

I Juan Carlos Martinez Martinez, declare under penalty of perjury under the laws of the United States that I am the Petitioner in above-entitled action; that I have read the foregoing Traverse to Respondents' Response and know the contends, therefore; and that the same is true and correct to the best of my knowledge, information, and belief.

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01-06-26

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