
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Bisser Lissitchev,

Petitioner,

v.

JUAN BALTASAR, Warden, GEO Group ICE
Processing Center;

ROBERT HAGAN, Director of the Denver Field
Office for U.S. Immigration and Customs
Enforcement;

TODD LYONS, Acting Director of U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, Secretary, U.S. Department of
Homeland Security;

PAMELA BONDI, U.S. Attorney General; and,
in their official capacities,

Respondents.

Case No.: 25-cv-3790-KAS

**EXPEDITED
CONSIDERATION
UNDER 28 USC § 1657(a)
REQUESTED**

**EVIDENTIARY HEARING
SET FOR JANUARY 6,
2026**

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS

Petitioner, Bisser Lissitchev, through counsel, now submits this traverse in accordance with 28 U.S.C. § 2248 in support of his petition for a writ of habeas corpus for the Court's consideration ahead of the hearing scheduled for January 6, 2026.

I. STATEMENT OF FACTS

Petitioner is a citizen of Bulgaria who was admitted to the United States on a nonimmigrant visa on January 18, 1999. ECF No. 7-1 ¶¶ 4-5. On May 23, 2005, the IJ granted Petitioner's application for withholding of removal as to Bulgaria, barring his removal to his country of origin. Ex. 1, Order Granting Withholding of Removal. No alternative country for removal was designated. *Id.*

Petitioner has lived in the United States since that time. He is married to a U.S. citizen. *See* Exs. 4, 5. He has two U.S. citizen children, ages 10 and 17. Ex. 6, Children's Birth Certificates.

On August 5, 2014, at Petitioner's request, ICE placed Petitioner on an Order of Supervision. ECF No. 1 ¶ 52; Ex. 3, Order of Supervision. The Order of Supervision details the conditions and warns that the violation of such conditions "may result in the revocation of your work authorization document and your being taken into ICE custody and criminally prosecuted..." *See id.* The Order of Supervision contains a handwritten log documenting Petitioner's check-ins with ICE. *Id.* The logs show that he checked in with ICE in person on April 17, 2025, as required. *Id.* At the time, the officer wrote that his next check-in would again require him to report in person on April 16, 2026. *Id.* There is no notation on the log, spanning 12 years, alleging that

he ever missed a check-in or otherwise was alleged to have violated the conditions of the Order of Supervision. *See id.*

The Department of Homeland Security issued Petitioner a still-valid employment authorization document. Ex. 2, EAD Valid to March 4, 2029.

Despite his next check-in on the Order of Supervision being set for April 16, 2026, ICE issued a letter requesting that Petitioner appear for an in-person check-in on November 8, 2025. See ECF No. 1 ¶ 54; ECF No. 7-1 ¶ 12. Petitioner appeared for his check-in as requested and was arrested.

Nowhere is it alleged that Petitioner violated the terms of his Order of Supervision. *See* Ex. 3, Order of Supervision; ECF No.7-1. ICE does not allege that they told Petitioner the basis for revoking an Order of Supervision. *See* ECF No. 7-1 ¶¶ 13-14. ICE does not assert that Petitioner was told his Order of Supervision was being revoked at all. *See id.*

According to ICE, the agency determined that Petitioner presents a significant flight risk. ECF No. 7-1 ¶ 12. There is no indication that Petitioner's *at least* decade-plus of appearing at ICE check-ins, his local U.S. citizen wife and children, his DHS-authorized employment history, or any other factors were considered when making the flight risk determination. *See id.*

Nearly two months since the arrest, there has been no indication that any progress has been made in identifying a third country to which Petitioner can be removed. ECF No. 7-1 ¶ 15 (December 26 declaration indicating that ICE is "working to evaluate and select" a third country for removal); ECF No. 11-1 ¶ 9 (January 2

declaration asserting “DHS ICE and the U.S. Department of State continue to work together on all requests to foreign governments for acceptance of Petitioner as a third country national”); ECF No. 12 ¶ 10 (stipulated facts providing that “Petitioner has not been informed of any third country being selected or considered for removal.”).

On November 22, 2025, Petitioner filed a Petition for a Writ of Habeas Corpus. ECF No. 1. On December 26, 2025, in response to this Court’s Order to Show Cause, ECF No. 4, Respondents filed a response, including a declaration from ICE Officer Zolock. ECF No. 7. This Court then scheduled an evidentiary hearing on January 6, 2026. ECF No. 8.

On January 2, 2026, Respondents filed a supplemental declaration by ICE Officer Blea. ECF No. 11-1. The Blea Declaration indicated that Petitioner had been scheduled for a custody review with ICE on January 12, 2025. ECF No. 11-1 ¶ 8. The Blea Declaration indicates that ICE and the Department of State “continue to work together on all requests to foreign governments for acceptance of Petitioner as a third country national.” *Id.* ¶ 9. The Declaration, signed January 2, 2025, does not state whether any requests have been made to third country governments or what the response from the foreign governments to any such request has been. *See id.* Also on January 2, 2026, the parties submitted stipulated facts. ECF No. 12.

Finally, on January 2, 2026, Respondents submitted an Expedited Motion to Vacate the January 6, 2026, Evidentiary Hearing. ECF No. 13. As reflected in Respondents’ Motion, Petitioner takes no position on Respondents’ request to vacate the hearing. ECF No. 13 ¶ 11. If the hearing is vacated, however, Petitioner urges

that the Court should award the writ immediately and order Petitioner's immediate release due to Respondents' failure to show cause as to why it should not be awarded. See ECF No. 4. Petitioner opposes Respondents' alternative request that the hearing be continued for a date after the January 12, 2025, custody review. ECF No. 13 ¶ 11.

II. ARGUMENT

A. Petitioner's detention being less than six months in duration does not render it lawful

Respondents' argument that Petitioner's detention is lawful merely because it has lasted less than two months, ECF No. 7 at 2, 4-8, fundamentally misreads both § 1231 and the constitutional framework articulated in *Zadvydas*. *Zadvydas* does not create a six-month entitlement to detain, nor does it establish a categorical rule that detention is lawful until that point. Rather, the Supreme Court held that detention under § 1231 is permissible only for "a period reasonably necessary to bring about the alien's removal from the United States," and only so long as it bears a reasonable relationship to that purpose. *Zadvydas v. Davis*, 533 U.S. 678, 689–90 (2001). The six-month period identified by the Court functions as a rebuttable presumption of reasonableness, not a minimum threshold that insulates detention from constitutional scrutiny. See *Id.* at 700–01.

The government's position also ignores the plain terms of the statute governing the removal period. Statute defines the removal period as the 90-day period following the date the removal order becomes final. 8 U.S.C. § 1231(a)(1)(B). That period ran in this case over two decades ago, shortly after the immigration judge issued a final

order of removal in 2005. Nothing in the statute suggests that the removal period resets whenever DHS elects to re-arrest a noncitizen, even years or decades later after a prolonged period of supervised release. To the contrary, § 1231(a)(3) expressly contemplates supervision after the 90-day period has expired, confirming that Congress understood the removal period to be a fixed window tied to finality of the removal order, not an endlessly renewable authorization to detain.

Logic reinforces the statutory text. If the government could restart the removal period simply by re-detaining a person after years of release, the temporal limits of § 1231 would be rendered meaningless. Such a reading would permit DHS to cycle individuals through brief releases and re-detentions, repeatedly invoking a “presumptively reasonable” period of custody untethered from any realistic prospect of removal. *Zadvydas* forecloses that result by holding that detention authority depends on whether removal is practically attainable, not on when the government chooses to take a person back into custody. 533 U.S. at 690–91.

Here, removal is not reasonably foreseeable. Petitioner has been granted withholding of removal as to Bulgaria, barring execution of removal to his country of citizenship. 8 U.S.C. § 1231(b)(3)(A). No alternative country of removal was designated in the removal order, and DHS has not reopened proceedings to designate a third country or afforded Petitioner notice and an opportunity to raise a fear-based claim as required by statute, regulation, and due process. *See* 8 U.S.C. § 1231(b)(2)(E)(vii); 8 C.F.R. § 1240.10(f); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009–11, 1019 (W.D. Wash. 2019). Where detention’s goal is no longer practically

attainable, detention no longer bears a reasonable relation to its purpose and violates due process. *Zadvydas*, 533 U.S. at 690.

Finally, the government's reliance on flight risk is foreclosed by *Zadvydas* itself. The Supreme Court held that preventing flight is a "weak or nonexistent" justification where removal is not reasonably foreseeable. *Id.* Petitioner's long-standing compliance with an Order of Supervision, his family ties, and the absence of any allegation of dangerousness further confirm that detention serves no legitimate, nonpunitive purpose. Because the removal period expired long ago and removal is not reasonably foreseeable now, the Constitution requires Petitioner's release notwithstanding the short duration of his current detention.

Nor should ICE's scheduling of a custody review for January 12, 2026, ECF No. 11-1 ¶ 8, cause this Court to delay in issuing the writ. The custody review is the regulatory process for a determination for whether ICE will maintain custody beyond the 90-day removal period. 8 C.F.R. § 241.4(a), (c)(1). That the upcoming custody review is tied to the removal period is confirmed by the notice given to Petitioner. ECF No. 11-3. The notice to Petitioner inaccurately defines the removal period at INA 241(a) [8 U.S.C. § 1231(a)] as 90 days from him *coming into ICE custody* with a final order. *Id.* In fact, as detailed above, statute carefully delineates the removal period as running from the date the removal order becomes administratively final and ICE cannot reset it by re-detaining a noncitizen years down the line. As such, the removal period-based custody review is inapposite and should not delay this Court in issuing the writ. His custody, bearing no reasonable relationship to efforts to remove him to

a third country, was unlawful from the date of his arrest at a check-in and remains unlawful now. As such, the Court should issue the writ forthwith and order Petitioner's immediate release.

B. Revocation of an Order of Supervision without complying with the law independently calls for release

Separately, Respondents' failure to comply with binding regulations governing the revocation of an Order of Supervision provides a standalone basis for granting the petition and ordering Petitioner's release. It is well established that detention is lawful only if the government complies with the Constitution, the statute, and its own regulations. *See United States v. Caceres*, 440 U.S. 741, 759–60 (1979); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). These principles apply with full force where, as here, agency action results in the deprivation of physical liberty.

The regulations strictly limit the circumstances under which an Order of Supervision may be revoked and detention resumed. *See* 8 C.F.R. § 241.4(l)(2); *id.* § 241.13(i). Those regulations are intended to provide due process protections to noncitizens released after the removal period has expired. *Minh Nhat Phan v. Noem*, 2025 U.S. Dist. LEXIS 201411, *8–9 (S.D. Cal. Oct. 10, 2025). Detention in violation of those regulatory safeguards is unlawful. *Id.* The government may not bypass these requirements and later attempt to cure the violation through post hoc custody reviews.

Here, ICE detained Petitioner without first revoking his Order of Supervision, without providing written notice, and without affording him any opportunity to be heard. No officer has alleged that Petitioner violated any condition of release, that the purposes of release had been served, or that any change in circumstances justified re-detention. *See* 8 C.F.R. § 241.4(l)(2). Nor has it been alleged that an officer empowered by the regulations to revoke release has taken such action. *Id.* (providing that the Executive Associate Commissioner or District Director are authorized to revoke release).

Petitioner complied with his Order of Supervision for years, appearing at every required check-in and maintaining valid employment authorization. Detention undertaken in the absence of regulatory compliance is detention without legal authorization.

Contrary to Respondents' assertion, unlawful detention of this kind is not remedied by belated process. ICE's decision to arrest and detain Petitioner marked the consummation of the agency's decision-making process and imposed immediate legal consequences, rendering it final agency action subject to judicial review. *See Bennett v. Spear*, 520 U.S. 154, 178 (1997); 5 U.S.C. § 704. Where detention itself violates binding regulations and due process, habeas relief is appropriate and necessary.

Because Respondents arrested and detained Petitioner in direct contravention of 8 U.S.C. § 1231, the implementing regulations, and the Due Process Clause, the detention must be set aside. The failure to lawfully revoke Petitioner's Order of

Supervision is an independent and sufficient ground for granting the writ and ordering Petitioner's immediate release.

III. CONCLUSION

Petitioner has now been detained away from his wife and children for 55 days. Removal to his country of origin is barred by order of the IJ and even in Respondents' filings, there is no stated progress on finding a third country for removal. This detention is without lawful justification. For the foregoing reasons and those articulated in his petition, Petitioner respectfully requests that the Court grant his petition for a writ of habeas corpus and end his unlawful detention with an order for immediate release.

Respectfully submitted this 2nd day of January, 2026,

/s/ Aaron C. Hall

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail address:

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