

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

SERRANO-MENJIVAR, ELIAS	§	
<i>Petitioner,</i>	§	
	§	
v.	§	Civil No. 4:25-cv-05856
	§	
GRANT DICKEY, Warden, et al.,	§	
<i>Respondents.</i>	§	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPIS

The Government files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. 1). As explained below, Petitioner’s claim for habeas relief should be denied because he is lawfully detained, and he is ready to be removed.

THE NATURE AND STAGE OF THE PROCEEDING

On December 5, 2025, Elias Serrano-Menjivar (Petitioner) filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (the “Petition”), and temporary restraining order, contesting his detention pending the execution of his removal order. He claims that his detention violates the Due Process Clause of the U.S. Constitution and Immigration and Nationality Act. Dkt. 1 ¶¶ 24-41. The Court ordered Respondents file a response by December 30, 2025. Dkt. 5.

AUTHORITY BY WHICH PETITIONER IS HELD AND RELEVANT BACKGROUND

Petitioner is being detained pursuant to a final removal order. Petitioner was ordered removed in May 2019, but was released due to a lack of detention space. Ex. 1 ¶ 9. On November 13, 2025, ERO Houston encountered Petitioner at the Houston Field Office, upon interview ERO arrested Petitioner. *Id.* On December 8, 2025, United States Citizenship and Immigration Services (USCIS) issued Petitioner a negative fear finding. *Id.* Petitioner requested an Immigration Judge review. *Id.* On December 15, 2025, the immigration judge concurred with USCIS fear

determination. *Id.* On December 21, 2025, ERO Houston manifested Petitioner for removal from the United States with a removal date of December 23, 2025. *Id.* Petitioner was pulled from this manifest due to his pending habeas petition. *Id.*

ARGUMENT AND AUTHORITIES

I. Petitioner's Custody is Lawful.

Petitioner's detention is lawful because (1) he fails to show that the length of his detention is unreasonable under the *Zadvydas* framework; and (2) ICE is ready to remove Petitioner.

A. Petitioner's habeas petition is premature, and Petitioner's detention is lawful.

The statutory provision governing Petitioner's detention is 8 U.S.C. § 1231, which applies once an alien is ordered removed. Under this section, the Department of Homeland Security must physically remove him from the United States within a 90-day removal period. 8 U.S.C. § 1231. But, even after the 90-day removal period expires, ICE has the discretion to continue detention for certain aliens. 8 U.S.C. § 1231.

Further, the Attorney General has promulgated regulations to establish and implement a formal administrative process to review the custody of aliens, like Petitioner, who are being detained subject to a final order of removal, deportation, or exclusion. 8 C.F.R. § 241, *et seq.* Under the regulations, post-order aliens who remain detained beyond the removal period may present to ICE their claims that they should be released from detention because there is no significant likelihood that they will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(d). Unless and until ICE determines that there is no significant likelihood of removal in the foreseeable future, the alien will continue to be detained, and his detention will continue to be governed by the post-order detention standards. 8 C.F.R. § 241.13(g)(2).

Here, Petitioner was detained on November 13, 2025. Ex. 1 ¶ 9. He has not even been held for 90 days, let alone six months. Therefore, Petitioner's habeas petition is not ripe, and should be denied.

B. Petitioner's detention is also lawful under *Zadvydas*.

The length of Petitioner's detention is not unconstitutional because his removal is imminent and was only delayed due to this habeas petition.

A petitioner may challenge continued detention under the framework established by the U.S. Supreme Court in *Zadvydas v. Davis*, which held that detention may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In a challenge to detention under *Zadvydas*, the petitioner must "provide [] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The Government must then respond with evidence sufficient to rebut that showing. *Id.* The Supreme Court further emphasized that the six-month presumption does not mean that every alien not removed must be released after six months. *Id.* "To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* As an initial matter, the six-month presumption is tolled if the petitioner has caused the delay in removal. *See Lawal v. Lynch*, 156 F. Supp. 3d 846, 854 (S.D. Tex. 2016). "Cases in other circuits that have considered the question recognize equitable tolling to extend the six-month period to detain an alien who has been ordered removed and who files litigation challenging the validity of the removal order." *Id.* (collecting cases). When a petitioner fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006) (acknowledging the petitioner's initial burden

of proof where claim under *Zadvydas* was without merit because it offered nothing beyond the petitioner's conclusory statements suggesting that removal was not foreseeable).

On November 13, 2025, ERO Houston encountered Petitioner at the Houston Field Office, upon interview ERO arrested Petitioner. Ex. 1 ¶ 9. On December 8, 2025, United States Citizenship and Immigration Services (USCIS) issued Petitioner a negative fear finding. *Id.* Petitioner requested an Immigration Judge review. *Id.* On December 15, 2025, the immigration judge concurred with USCIS fear determination. *Id.* On December 21, 2025, ERO Houston manifested Petitioner for removal from the United States with a removal date of December 23, 2025. *Id.* Petitioner was pulled from this manifest due to his pending habeas petition. *Id.*

The Agency is prepared to remove Petitioner and was only delayed by this habeas petition. Therefore, this Court should deny the habeas so the Agency may proceed with the removal. Ultimately, Petitioner's detention pending removal comports with the letter of the law and is outside the scope of *Zadvydas*.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied.

Respectfully Submitted,

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that on December 30, 2025, the foregoing pleading was filed with the Court through the Court's CM/ECF system on all parties and counsel registered with the Court CM/ECF system.

/s/Ariel N. Wiley
Ariel N. Wiley
Assistant United States Attorney