

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

ELIAS SERRANO-MENJIVAR,

Petitioner

v.

GRANT DICKEY, et al,

Respondents,

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Civil Action No. 4:25-cv-05856

**PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE TO PETITION FOR WRIT
OF HABEAS CORPUS**

Petitioner, Elias Serrano-Menjivar, by and through undersigned counsel, files this Reply to Respondents’ Response, and respectfully shows the Court as follows:

**I. THE GOVERNMENT MISCHARACTERIZES THE NATURE OF PETITIONER’S
CLAIM**

Respondents frame this case as a routine post-order Zadvydas challenge brought “too early.” That framing is wrong.

Petitioner does not seek release merely because six months have elapsed. He challenges arbitrary re-detention after years of successful supervision, without any individualized custody determination, and without a lawful nexus to effectuating removal.

That claim is ripe the moment detention becomes unreasonable and unauthorized, not six months later.

The Supreme Court has never held that habeas jurisdiction is unavailable before six months. To the contrary, Zadvydas establishes a presumption, not a waiting period, and expressly

leaves room for earlier relief where detention lacks statutory justification. See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

II. PETITIONER'S DETENTION IS NOT AUTHORIZED BY INA §1231

Respondents rely entirely on INA §241 / 8 U.S.C. §1231, but ignore its core limitation: detention must be reasonably related to removal.

Here, it is not.

Key undisputed facts from the record:

- Petitioner has lived under an Order of Supervision since 2019, fully compliant for over six years
- ICE made an affirmative determination for years that he could be safely supervised.
- ICE re-detained him only after he voluntarily appeared for a routine check-in.
- No new criminal conduct.
- No flight.
- No individualized custody review.
- No explanation—other than “we can.”

That is not lawful post-order detention. It is purely discretionary incarceration untethered from removal, which §1231 does not permit.

Courts in this District have repeatedly held that sudden re-detention after long-term supervision requires heightened justification—especially where the Government cannot articulate danger, flight risk, or necessity.

III. THE “SIX-MONTH” ARGUMENT IS A STRAW MAN

The Government argues the request for relief is “premature” because Petitioner has not been detained for six months.

That argument fails for three reasons:

A. Zadvydas Does Not Create a Safe Harbor for Arbitrary Detention

The six-month period is presumptively reasonable, not automatically lawful. Detention may still violate due process before six months where it is:

- arbitrary,
- punitive,
- or disconnected from removal.

Nothing in *Zadvydas* authorizes ICE to jail a compliant, supervised individual simply because the calendar allows it.

B. The Government Bears the Burden Once Detention Loses Its Purpose

Once detention no longer serves removal, continued incarceration violates the Fifth Amendment, regardless of duration. See *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 336 (S.D. Tex. 2020).

Here, ICE offers no evidence explaining why supervision suddenly became insufficient after six years.

C. This Case Is Not About “Delay”—It Is About Authority

Respondents claim removal was delayed only because of this habeas filing. That argument is legally backwards.

A detainee does not “cause delay” by seeking judicial review of unlawful custody. Filing habeas corpus cannot retroactively justify detention that was unlawful when imposed. Courts reject this argument routinely.

IV. “IMMINENT REMOVAL” IS NOT A GET-OUT-OF-HABEAS CARD

The Government asserts it “manifested” Petitioner for removal on December 23, 2025, but pulled him due to this case

That proves Petitioner’s point.

- ICE chose to detain him before removal was scheduled.
- ICE chose to jail him without a custody review.
- ICE cannot now claim urgency to justify detention that was arbitrary from the outset.

Moreover, courts have repeatedly held that a theoretical ability to remove does not justify detention absent lawful process.

If imminent removal alone were sufficient, Zadvydas would be meaningless.

V. DUE PROCESS VIOLATIONS REMAIN UNANSWERED

Notably, Respondents do not meaningfully respond to Petitioner’s due-process claims:

- No individualized custody determination.
- No hearing.
- No findings of danger or flight risk.
- No explanation for re-detention after years of compliance.

Civil detention without process violates the Fifth Amendment. Period.

VI. RELIEF IS WARRANTED

This Court has broad authority under 28 U.S.C. §2241 to remedy unlawful custody.

Given the undisputed facts, the appropriate relief is:

- Immediate release, or
- At minimum, release under supervision pending removal.

Continued detention serves no lawful purpose and inflicts ongoing constitutional harm.

CONCLUSION

Respondents ask this Court to bless incarceration based solely on the passage of time and agency discretion. The Constitution requires more.

The Petition should be GRANTED, and Petitioner should be immediately released from ICE custody.

Respectfully submitted,

/s/ Matthew R. Mendez

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CERTIFICATE OF SERVICE

On January 9, 2026 Counsel for Plaintiff served a copy of the attached TRO via email, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States, at USATXS.CivilNotice@usdoj.gov.

/S/ Matthew Mendez
Matthew Mendez

01/09/2026
Date