

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

JELILI QUDUS,

PETITIONER.

v.

KRISTI NOEM, in her official capacity
as Secretary of Homeland Security;
TODD LYONS, in his official capacity
as the Acting Director of ICE; MARY
DE ANDA-YBARRA, in her official
capacity as U.S. Immigration and
Customs Enforcement, El Paso Field
Office Director

RESPONDENTS.

Civil Case No. EP-25-CV-00679-DB

EMERGENCY MOTION FOR IMMEDIATE RELEASE OF PETITIONER

Petitioner, Jelili Qudus, by and through counsel, respectfully moves for the Court's urgent intervention and seeks (1) an emergency temporary restraining order prohibiting Respondents from removing Petitioner from the United States while the habeas petition remains pending, and (2) an emergency order directing Petitioner's immediate release from immigration detention. This emergency relief is necessary to preserve the Court's jurisdiction and prevent irreparable harm.

I. BASIS FOR EMERGENCY RELIEF

- 1) The habeas petition remains pending, and the Court has already recognized the need to protect its jurisdiction by restricting Petitioner's transfer outside the El Paso Division of the Western District of Texas.
- 2) On December 17, this Honorable Court entered an Order to Show Cause directing Respondents to file, no later than December 23, an explanation as to why the writ should not be granted. Although the Court did not specify a time, Respondents waited until 10:49 p.m. on the day of the deadline to request additional time. This last-minute filing reflects that, as the Court's deadline arrived, Respondents were not prepared to provide the explanation the Court expressly required.
- 3) This posture is particularly troubling in a habeas matter. An extension request in this context is not a neutral procedural motion: it prolongs the deprivation of liberty while Petitioner remains imprisoned and the constitutional injuries alleged continue to accrue. Petitioner therefore respectfully moves for an emergency order directing his immediate release from immigration detention to prevent ongoing and irreparable harm.
- 4) The Court's prior order reflects an acknowledgment that Petitioner's physical presence within the jurisdiction is essential to the Court's ability to adjudicate the legality of his detention. Respondents' failure to meet the Court's

deadline—and attempt to cure that failure through a last-minute request—heightens, rather than diminishes, the urgency of ordering Petitioner’s release. Habeas jurisdiction depends on the Court’s ability to meaningfully review the legality of custody in real time. When the detaining authority cannot timely articulate a lawful basis for confinement and instead seeks delay while the petitioner remains detained, the risk that the Court’s eventual ruling will be undermined or rendered ineffectual becomes substantial.

- 5) Respondents assert that additional time is necessary due to errors in a verifying declaration—errors in a document that Respondents drafted, controlled, and produced. The declaration at issue was prepared internally by an ICE Assistant Field Office Director, an official within the very agency detaining Petitioner and fully aware of Petitioner’s A-Number and the correct spelling of his name. Respondents further represent that “Respondent’s sent over a declaration to undersigned late,” despite having been granted seven days by the Court to prepare and file a response
- 6) The declaration was transmitted toward the expiration of the Court-ordered timeframe, and the errors it contains—including the misspelling of Petitioner’s name and the insertion of an entirely different individual’s name in the title—underscore that Respondent did not begin preparing its response

until the last possible moment. These are not circumstances outside Respondent's control.

- 7) Respondents' declaration references various post-detention actions involving Petitioner, yet it is silent as to the central issue: the justification for arresting Petitioner and whether Petitioner was afforded notice prior to re-detention. Respondents do not assert that any re-notice of an intended violation was ever issued, nor do they claim that Petitioner committed any violations during the seventeen years he has been under supervision since 2008. Respondents' focus on post-detention events diverts attention from the pre-detention procedural failures—the constitutional harm created when Respondents disregarded required procedures.
- 8) Meanwhile, Petitioner—who suffers from compounding health issues—remains detained while Respondents seek additional time to correct mistakes of their own making. Petitioner has been held in the El Paso detention center for over sixty (60) days. Continued detention further prejudices a medically vulnerable individual whose freedom hangs in the balance.
- 9) New and material developments have arisen since the filing of the habeas petition. Petitioner has now filed a Writ of Error *Coram Nobis* (see Exhibit A) in federal court challenging the underlying conviction that formed the basis of the inadmissibility finding. He also provides long-term care for his elderly

parent, a lawful permanent resident, for whom he has been the sole caregiver for the past fifteen years. Petitioner is preparing to seek *sua sponte* reopening before the immigration court, supported by both the pending post-conviction filing and a qualifying waiver. Because either post-conviction relief or a statutory waiver would resolve the inadmissibility issue and reinstate Petitioner’s eligibility to adjust status—and because Petitioner is actively pursuing both—the government’s assertion that no viable pathway exists is unfounded. Meanwhile, the existing record demonstrates that continued detention is inflicting ongoing and compounding harm on Petitioner and his family. Immediate release is necessary to prevent further constitutional injury and to ensure the Court can adjudicate the habeas petition in a meaningful and effective manner.

II. LEGAL STANDARD

- 10) The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). “The proper legal standard for preliminary injunctive relief requires a party to demonstrate (1) ‘that he is likely to succeed on the merits, (2) that he is likely

to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20). If the first two factors are met, the third and fourth factors merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

- 11) Courts routinely issue TROs in habeas cases where continued detention threatens constitutional rights, impedes access to counsel, or undermines the Court’s ability to adjudicate the petition.

III. ARGUMENT

A. Continued Detention Is Causing Immediate and Irreparable Harm

- 12) Continued detention constitutes irreparable harm because it prevents meaningful access to counsel, exacerbates Petitioner’s serious medical conditions, and inflicts ongoing injury on his children, elderly mother, and community. Courts recognize that ongoing constitutional violations and prolonged detention without adequate procedural protections constitute irreparable harm. The harm that flows from the violation of Petitioner’s constitutional rights is irreparable. See *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013). The deprivation of an alien’s liberty is, in and of itself, irreparable harm. See *Opulent Life Church v. City*

of Holly Springs, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm is virtually presumed where an individual is detained without due process. *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (“[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process.”).

- 13) Irreparable harm is firmly established here. Constitutional violations permit a per se finding of irreparable harm. See *Conn. Dep’t of Env’tl. Prot. v. O.S.H.A.*, 356 F.3d 226, 231. Even beyond the constitutional dimension, detention is inflicting immediate, concrete, and irreversible harm.
- 14) Petitioner has lived in the United States for thirty-three (33) years. His family, community, medical care, and spiritual leadership are rooted here. Continued detention has already disrupted these ties in ways no later court order can fully repair.
- 15) Petitioner’s children—ages 2, 4, and 7, and an adult child age 26—are struggling with his absence. The youngest children have experienced bullying and emotional distress. Continued detention deprives them of emotional, financial, and developmental support.
- 16) Petitioner is the sole caregiver for his elderly mother, who cannot communicate in English and relies on him for daily care and stability. His

detention leaves her without a caregiver, placing her at immediate risk of neglect and harm.

- 17) Petitioner is a longstanding faith leader, and his congregation has been without stable leadership since his detention. His continued absence deprives the community of the spiritual guidance he has provided for decades.
- 18) Petitioner suffers from serious chronic medical conditions, including a chronic liver disorder, sickle cell trait, and chronic rheumatoid arthritis. Detention has significantly worsened his symptoms, and the facility lacks the consistent, specialized care required to manage his conditions safely. Continued detention places him at grave risk of rapid deterioration, liver failure, or cancer.
- 19) Petitioner also has an approved I-130 visa petition and is actively working to resolve the remaining issues necessary to pursue adjustment of status. He has now filed a Writ of Error *Coram Nobis* in federal court challenging the underlying conviction that formed the basis of the inadmissibility finding. In addition, Petitioner is preparing both a waiver of inadmissibility and a *sua sponte* Motion to Reopen. Continued detention severely impedes his ability to gather evidence, communicate with counsel, and pursue the relief for which he is statutorily eligible. Since the removal order was entered, Petitioner's circumstances have materially changed in

ways that significantly strengthen his eligibility for relief. He made multiple good-faith attempts to reopen his case through a joint motion, but those requests were denied. Having exhausted the administrative mechanism for reopening, Petitioner now turns to this Court to ensure that his materially changed circumstances receive full and fair consideration.

- 20) Petitioner’s detention is inflicting compounding, irreversible injuries—not only upon Petitioner, but upon his children, his elderly mother, and the faith community he serves. No later judicial ruling could undo the damage.

B. Petitioner Is Likely to Succeed on the Merits

- 21) The habeas petition raises substantial constitutional and statutory claims, including violations of the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1231(a), 8 C.F.R. § 241.4, and 8 C.F.R. § 241.13(i). The Court’s prior order to show cause reflects the seriousness of the issues presented and underscores that the claims warrant full judicial review. Section 1231 generally governs post-removal order detention, or detention of a noncitizen subject to a “final order of removal.” 8 U.S.C. § 1231. Pursuant to § 1231, once an immigration judge issues a removal order and that order becomes “final,” the Attorney General has ninety days to affect the detainee’s departure from the United States. *See* 8 U.S.C. § 1231(a)(1)(A); *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). In general, during this 90- day

removal period, the detainee must remain detained. 8 U.S.C. § 1231(a)(2). If the detainee is not removed within that 90-day period, she may then become eligible for supervised release. *See* 8 U.S.C. § 1231(a)(3). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered the extent of immigration officials’ authority to detain noncitizens post-removal order under 8 U.S.C. § 1231. The Supreme Court expressly stated that there is “nothing in the history of [§ 1231] that clearly demonstrates a congressional intent to authorize indefinite, perhaps permanent, detention. Consequently, interpreting the statute to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

22) The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Id.* at 682. Because the purpose of ongoing detention under 8 U.S.C. § 1231(a)(6) is to facilitate removal, in order to determine whether continued post-removal order detention is lawful, habeas courts must ask whether a petitioner’s removal is reasonably foreseeable. *Id.* at 699–700. “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). In answering whether a noncitizen’s removal is

reasonably foreseeable, the Supreme Court reemphasized: [T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. *Id.* at 699–700.

23) Here, Petitioner's detention is not reasonable under 8 U.S.C. Section 1231 (a)(6). In *Zadvydas*, the Supreme Court recognized a 6-month period of presumptively reasonable post-removal-order detention for noncitizens detained under 8 U.S.C. § 1231(a)(6). 533 U.S. at 701 (citations omitted). However, the Supreme Court also acknowledged that “[w]hether a set of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority” and it is the province of federal courts to answer that question. *Id.* at 699.

24) Where *Zadvydas* considered continuous post-removal detention, Petitioner raises his constitutional and statutory challenges in the context of being re-detained after being released on an order of supervision. Petitioner's six-month-presumptively reasonable period under *Zadvydas* expired on June

20, 1997, which is when the Board of Immigration Appeals dismissed Petitioner’s appeal. The plain text of the statute makes clear that the removal period has not reset in this case, and the reasoning of *Zadyvydas* explains why the 180- period does not reset simply because a noncitizen is re-detained. Once the 90-day removal period has run the only thing that would reset it to the beginning is a new administratively final removal order, a final order from a reviewing Court of Appeals that had previously entered a stay of removal, or a noncitizen’s release from criminal detention or confinement. 8 U.S.C. § 1231(a)(1)(B); *see also Diaz-Ortega v. Lund*, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019), *R&R adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019) (citing *Bailey v. Lynch*, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016)) (“The removal period does not restart simply because an alien who has previously been released is taken back into custody.”). Petitioner’s final order of removal was entered on June 20, 1997, and six months from that date was December 16, 1997. Therefore, the presumptively constitutional period of detention has long passed.

25) The reasoning of *Zadvydas* explains why the 180-day period—and therefore the presumption of reasonable detention—does not reset simply because a noncitizen is re-detained. In determining whether post-removal detention is reasonable, the habeas court “should measure reasonableness

primarily in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized.” *Zadvydas*, 533 U.S. at 680. While the Supreme Court in *Zadvydas* set six months as a reasonable time period of detention in which the Government can be presumed to be working to effectuate removal in good faith, there is no language in 8 U.S.C. § 1231 or in *Zadvydas* to support the contention that the presumption of reasonable detention resets at the time a noncitizen is re-detained after being released on an order of supervision. *See Sagastizado v. Noem (Sagastizado II)*, 2025 WL 2957002, at *7–8 (S.D. Tex. Oct. 2, 2025) (citing *Zavvar*, 2025 WL 2592543 at *4); *see also Tadros v. Noem*, 2025 WL 1678501, *3 (D.N.J. June 13, 2025); *Alam v. Nielsen*, 312 F.Supp.3d 574, 581–82 (S.D. Tex. 2018) (rejecting the argument that the Section 1231(a)(1)(A) removal period resets when a noncitizen is re-detained); *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (citing *Nguyen v. Hyde*, 2025 WL 1725791 (D. Mass. June 20, 2025)); *Villanueva v. Tate*, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025).

- 26) Here, Petitioner was issued a final order on June 20, 1997. He was released on an order of supervision, and then he lived under an order of supervision for 28 years before being re-detained at a routine ICE check-in in

2025. Respondents could have been making the required travel arrangements in those 28 years. the presumption of reasonable detention “differ[s] in circumstances where, before the period of detention began, the Government had a period of time . . . to make the arrangements for removal.” *See Zavvar*, 2025 WL 2592543 at *4. Based on a plain reading of 8 U.S.C. § 1231(a)(1)(A) and the Supreme Court’s reasoning in *Zadvydas*, Petitioner’s six-month period of presumptively reasonable detention expired in December 16, 1997, six months after his removal order became administratively final. Therefore, Petitioner’s current detention is not presumed to be reasonable.

27) The core responsibility of the habeas court in interpreting whether post-removal-order detention is authorized under § 1231(a)(6) is to “ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* In this case, Respondents have not been able to remove the Petitioner in 28 years and although, after Petitioner’s re-detention, Respondents declaration of Assistant Field Office Director Angel Garite shows that Petitioner’s removal is not foreseeable as his own country is unable to verify his identity. Petitioner has been detained for over 60 days. Officer Garite’s declaration states that DHS will continue to obtain travel documents for the Petitioner through traditional means. Nothing

in Respondents' declaration explain why the government did not explore these means while the Petitioner was under supervision. Petitioner has faithfully reported to all of his check-ins, he has a stable address, and has otherwise complied with all of the terms of his supervision. There is no indication that his detention was necessary to effectuate his removal while on supervision. Respondents lack of progress, concrete information, and plan to remove Petitioner is not sufficient to establish that his removal is reasonably foreseeable.

28) Petitioner's continued detention is unconstitutional and in violation of 8 U.S.C. §1231.

29) Lastly, Petitioner will also succeed on his argument that his detention was unlawful because ICE improperly revoked his Order of Supervision in violation of 8 C.F.R. §241.4(l). Respondents failed to abide by their own regulations and did not provide the Petitioner the due process that is required by the regulations.

C. The Balance of Equities Strongly Favors Petitioner and Public Interest

30) The "public interest is best served by ensuring the constitutional rights of persons within the United States are upheld." *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above,

the abrupt re-detention of Petitioner violates federal law and his due process rights. “There is generally no public interest in the perpetuation of unlawful agency action,” and “there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up).

- 31) Here, Petitioner’s continued detention violates his Fifth Amendment rights and far outweighs any burden Respondents would suffer.

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

- 1) Order Respondents to immediately release Petitioner from immigration detention and to resume his longstanding conditions of supervision, consistent with his prior reporting schedule since 2008. Petitioner completed his most recent ICE check-in on October 23, 2025, which led to the present detention, and his next scheduled check-in should occur in November 2026.
- 2) Order that ICE’s transportation of Petitioner to El Paso, Texas, and his subsequent return to Illinois shall not constitute a violation of the conditions of his Order of Supervision.

3) Order that any travel undertaken at ICE's direction—**including, but not limited to, transportation for detention, processing, or court-related purposes—shall be expressly deemed non-violative of any geographic restrictions contained in his Order of Supervision.

4) Grant such other and further relief as the Court deems just and proper.

Dated this 31th day of December, 2025.

Respectfully submitted,

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