

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

**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE IN
OPPOSITION OF WRIT OF HABEAS CORPUS**

Petitioner, Jelili Qudus, by and through counsel, respectfully submits this Reply to Respondent's Opposition. Respondent's filing fails to rebut the constitutional violations raised in the Petition and relies on misstatements of law, incomplete factual assertions, and procedural arguments that do not bar relief. For the reasons below, the Court should grant the writ.

I. Respondents Misconstrue the Habeas Standard and Ignore the Constitutional Violations at Issue

Respondents' opposition rests on an unduly narrow—and legally incorrect—interpretation of the habeas standard. The Supreme Court has long held that habeas relief is appropriate whenever a petitioner is “in custody in violation of the Constitution or laws of the United States.” 28 U.S.C. § 2241(c)(3). Respondents' attempt to reframe the inquiry as discretionary, or as limited to mere administrative error, is contrary to the statute's plain text and controlling precedent. When a petitioner demonstrates a constitutional defect, the Court's intervention is not optional; it is required.

Respondents do not meaningfully engage with the constitutional violations raised in the Petition. Instead, they advance a ripeness argument that is unsupported by any cited authority. They assert—without a single case reference—that Petitioner's constitutional challenge is not ripe until he has been detained for six months post-order and removal is not reasonably foreseeable. This standard appears nowhere in the governing law.

Moreover, Respondents' position ignores critical, undisputed facts:

1. Petitioner was detained in 2008 for approximately 95 days.
2. Following that detention, ICE's Office of Supervision and Enforcement (OSUP) determined that Petitioner should be released on an Order of Supervision.

3. Petitioner has remained on supervised release for more than 17 years.
4. Supervised release is granted only to individuals who are not flight risks, who pose no danger to the community, and whose removal is not reasonably foreseeable in the immediate future.

These facts directly undermine Respondents' ripeness argument. ICE already made the relevant determinations in 2008: Petitioner was non-violent, not a danger, not a flight risk, and not removable in the reasonably foreseeable future. Those findings are the very criteria set forth in 8 C.F.R. § 241.1 for release under supervision.

Once a noncitizen has been placed on supervised release, ICE may not simply re-detain him without due process. The regulations require that OSUP provide notice that revocation is being considered, identify the alleged violation, and afford the individual an opportunity to demonstrate that no violation occurred or that re-detention is unwarranted. Respondents do not dispute that none of these steps occurred here. They identify no notice, no interview, no opportunity to respond, and no procedural safeguard whatsoever.

Petitioner qualified for supervised release under the regulatory criteria, and nothing in Respondents' opposition suggests that those criteria have changed. What has changed is only ICE's unilateral decision to re-detain him—without notice, without process, and without legal justification.

Because Respondents fail to address the constitutional violations at the heart of this case, and because their ripeness argument is unsupported by law or fact, their opposition cannot stand.

In 2008, Petitioner served approximately 95 days in ICE custody before being released on an Order of Supervision. Respondents now assert—without citation to any authority—that they are permitted to detain a noncitizen for “six months,” as though this were an automatic entitlement. That premise is both unsupported and inapplicable. The six-month presumption discussed in *Zadvydas* applies only to initial post-order detention, not to re-detention following years of successful supervision.

Respondents fail to acknowledge the governing legal standard for re-detention. Once an individual has been released under supervision, ICE may not simply arrest and detain him again as though the prior release never occurred. Re-detention is not a continuation of the original detention; it is a new deprivation of liberty that triggers new procedural obligations. ICE must provide notice that revocation of supervision is being considered, identify the alleged violation, and afford the individual an opportunity to contest the basis for re-detention. This notice must be provided at least 30 days before any intended re-detention.

Respondents do not dispute that none of these procedures occurred here. Petitioner attended his annual check-in as required—accompanied by counsel—

and was arrested without warning, without explanation, and without any prior notice that revocation was being considered. If Petitioner were even remotely a flight risk, he would not have appeared for his check-in, particularly in the current climate of heightened immigration enforcement. His voluntary appearance underscores the absence of any risk of flight or danger.

Petitioner's conduct over the past 17 years further confirms this. Since his sole conviction in 1995, Petitioner has lived an exemplary life. He has no subsequent criminal history, has been a consistent provider for his family, a caretaker for his elderly parent, a faith leader, and an active contributor to his community—including feeding the homeless. Nothing in his conduct suggests any basis for re-detention.

Respondents attempt to justify their actions by invoking *Zadvydas v. Davis*, but their reliance on that case is misplaced. *Zadvydas* involved a single, continuous period of post-order detention of a noncitizen with a lengthy criminal history. It did not involve re-detention after years of successful supervision. The factual distinctions are stark. Petitioner has only one conviction from nearly three decades ago, was previously detained for 95 days, and was released after ICE determined he was not violent, not a danger, and not a flight risk. Respondents' insinuation that he is now a flight risk is contradicted by the record and by his consistent compliance with supervision for nearly two decades.

Moreover, Respondents misinterpret *Zadvydas* itself. The Supreme Court did not hold that a detainee must wait six months before seeking habeas relief, nor that ICE automatically receives six months of detention. The six-month period is a presumptive guide, not a mandatory waiting period. Nothing in *Zadvydas* requires a noncitizen to endure six months of detention before challenging its legality.

Even if Respondents' misreading were accepted, the six-month presumption expired decades ago. Petitioner's final order of removal became administratively final on June 20, 1997. Under *Zadvydas*, the presumptively reasonable period of detention expired six months later, on December 16, 1997—twenty-eight years ago. The removal period does not restart simply because ICE chooses to re-detain someone who has already been released. See 8 U.S.C. § 1231(a)(1)(B); *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*); *Bailey v. Lynch*, 2016 WL 5791407, at 2 (*D.N.J. Oct. 3, 2016*).

Thus, Petitioner's current detention is not entitled to any presumption of reasonableness.

The habeas inquiry under § 1231(a)(6) is straightforward: the Court must determine whether the detention exceeds the period reasonably necessary to secure removal. *Zadvydas*, 533 U.S. at 699–700. Once removal is no longer reasonably foreseeable, continued detention is unlawful. Respondents have been unable to

remove Petitioner for 28 years. Their own declaration—submitted after re-detention—admits that Petitioner’s country of origin cannot verify his identity.

At the time of filing, Petitioner has been re-detained for more than 74 days. When combined with the 95 days he served in 2008, his total post-order detention now stands at 169 days—approaching the outer limit of the 180-day presumptively reasonable period recognized in *Zadvydas*. Furthermore, Petitioner has been in supervised release for 17 years. Respondents’ lack of progress, lack of concrete information, and lack of a viable plan for removal cannot establish that removal is reasonably foreseeable.

Petitioner’s continued detention is therefore unconstitutional and violates 8 U.S.C. § 1231. As *Zadvydas* makes clear, noncitizens—even those with final orders of removal—retain constitutional protections. 533 U.S. at 693. Respondents’ attempt to sidestep those protections by mischaracterizing this re-detention as a continuation of initial custody is legally untenable.

II. ICE HAS NOT AFFORDED PETITIONER PROCEDURAL DUE PROCESS

Respondents assert that Petitioner was afforded “Procedural Due Process” during his *post*-detention custody. Yet Respondents provide no facts whatsoever describing *when, how, or in what manner* any such process was afforded. They do not identify a date of notice, the content of any notice, the existence of an informal interview, or any procedural step required under 8 C.F.R. § 241.4(l). Instead, they

rely on generic quotations from unrelated cases without tying a single factual assertion to Petitioner's circumstances.

Respondents' silence on these mandatory procedural safeguards is not a minor oversight—it is a constitutional defect that goes to the core of the legality of Petitioner's re-detention. Courts have repeatedly ordered immediate release where ICE failed to provide legally sufficient notice of revocation or the required informal interview. See *Zhu v. Genalo*, No. 25-cv-06523, 2025 WL 2452352, at *9 (W.D.N.Y. 2025).; *E.M.M v. Almodovar*, No 25-cv-08212, 2025 WL 3077995 (S.D.N.Y. 2025), at *6; *Funes Gamez v. Francis*, No 25-cv-7429, 2025 WL 3263896, at *24–25 (S.D.N.Y. 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 at 170 (W.D.N.Y. 2025). Respondents' failure to identify **any** procedural step taken here places this case squarely within that line of authority.

Under 28 U.S.C. § 2241(c)(3), federal courts have jurisdiction to order the release of any person held “in violation of the Constitution or laws or treaties of the United States.” This includes noncitizens detained in violation of ICE's own regulations. See *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *17–21 (W.D.N.Y. May 2, 2025). Because Respondents have failed to demonstrate that Petitioner received any of the procedural protections mandated by § 241.4(l) or

the Due Process Clause, his re-detention is unlawful and warrants immediate release.

III. Respondents' Re-Detention of Petitioner Is Inconsistent with 8 U.S.C. § 1231(a)(6)

Respondents contend that Petitioner's current detention is lawful under 8 U.S.C. § 1231(a)(6). That assertion is both incomplete and inconsistent with the statutory framework. Section 1231(a)(6) permits detention beyond the removal period only where an individual is a danger to the community or unlikely to comply with the order of removal. Respondents have not established either condition.

Petitioner was issued an Order of Supervision in 2008. To be granted supervised release in the first instance, ICE must determine that the individual is not a flight risk, not a danger, and likely to comply with all reporting requirements. Petitioner met those criteria then, and his conduct over the past seventeen years confirms that he continues to meet them now. He is a 57-year-old religious leader with fragile health who cares for his elderly parent. He has appeared for every ICE check-in without fail. A person with even a remote intention to abscond would not voluntarily present himself to ICE year after year—particularly in the current enforcement climate.

The statutory text underscores this point. Section 1231(a)(6) provides:

“An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title, or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period...”

Respondents have never asserted—let alone supported with facts—that Petitioner is a danger to the community, a flight risk, or noncompliant with his Order of Supervision. To the contrary, the very issuance of supervised release in 2008 reflects ICE’s determination that Petitioner was not a danger and not a flight risk. Nothing in the record suggests that any of those findings have changed.

Moreover, Respondents have failed to identify any violation of the conditions of supervision that would justify re-detention. At no point prior to Petitioner’s arrest—or even immediately upon taking him into custody—did ICE advise him of the reason his supervision was being revoked. The absence of any stated basis for revocation further confirms that Respondents cannot meet the statutory prerequisites for detention under § 1231(a)(6).

Because Respondents have not shown that Petitioner poses a danger or is unlikely to comply with removal, their reliance on § 1231(a)(6) is misplaced. Petitioner’s re-detention is inconsistent with the statute and therefore unlawful.

IV. Petitioner Does Not Concede That Adjustment of Status Is Impossible

Respondents acknowledge that Petitioner is the beneficiary of an approved I-130 filed by his U.S. citizen child. Yet they incorrectly assert that Petitioner has conceded he is ineligible to obtain permanent residency. He has made no such concession. Petitioner was unaware of the options available to adjust status and relied detrimentally on the erroneous advice of prior counsel. Only after retaining new counsel did Petitioner learn that he had viable avenues to overcome the inadmissibility arising from his 1995 conviction.

Petitioner has since filed a Writ of Error Coram Nobis challenging that conviction (Exhibit A) and independently meets all criteria for a waiver of inadmissibility under INA § 212(h) (Exhibit B). Either remedy—if granted—would eliminate the sole impediment to adjustment of status. Thus, Respondents' suggestion that adjustment is categorically unavailable is both factually and legally incorrect.

This case also raises a broader constitutional question: whether a noncitizen subject to a final order of removal and released on an Order of Supervision is entitled to due process when the government elects—at its discretion—to revoke that release. The answer is unequivocal. Noncitizens, even those subject to final removal orders, retain constitutional rights. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Courts have consistently held that ICE must comply with the procedural safeguards set forth in 8 C.F.R. § 241.4(l) before revoking an Order of Supervision. Where ICE fails to provide legally sufficient notice of revocation, an informal interview, or both, courts have ordered immediate release. See *Zhu v. Genalo*, No. 25-cv-06523, 2025 WL 2452352, at *9 (W.D.N.Y. 2025); *E.M.M v. Almodovar*, No. 25-cv-08212, 2025 WL 3077995, at *6 (S.D.N.Y. 2025); *Funes*, 2025 WL 3263896, at *24–25; *Ceesay*, 781 F. Supp. 3d 137 at 170 (W.D.N.Y. 2025).

Petitioner has been on supervised release for seventeen years. During that time, he has complied with every reporting requirement, maintained a stable residence, and demonstrated unwavering cooperation with ICE. Against this backdrop, ICE’s sudden re-detention—without notice, without explanation, and without identifying any violation of supervision—is speculative, unsupported, and constitutionally infirm.

V. The Balance of Equities Strongly Favors Petitioner and the Public Interest

The public interest is best served by ensuring the constitutional rights of persons within the United States are upheld.” *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 demonstrated above, the abrupt and unexplained

re-detention of Petitioner violates federal law, ICE’s own regulations, and the Due Process Clause. Courts have long recognized that “there is generally no public interest in the perpetuation of unlawful agency action,” and that “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 the United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up).

Here, the equities overwhelmingly favor Petitioner. His detention—after seventeen years of flawless compliance with supervision—has shifted from regulatory to punitive. Respondents have offered no constitutionally adequate justification for continuing to deprive him of liberty. Petitioner’s ongoing detention inflicts irreparable constitutional harm, violates his Fifth Amendment rights, and serves no legitimate governmental purpose.

The public interest is not advanced by detaining a 57-year-old religious leader with fragile health who has complied with every requirement imposed upon him for nearly two decades. It is advanced by ensuring that the government follows the law, respects due process, and refrains from arbitrary and unlawful detention. Because Respondents cannot justify Petitioner’s re-detention under any statutory or constitutional standard, the balance of equities and the public interest weigh decisively in favor of granting relief.

REQUEST FOR RELIEF

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

- 1) Grant Petitioner's Writ of Habeas Corpus
- 2) 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.
- 3) 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.
- 4) 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.
- 5) Grant such other and further relief as the Court deems just and proper.

Dated this 5th day of January, 2026.

Respectfully submitted,

/s/Brenda M. Villalpando
BRENDA M. VILLALPANDO
Villalpando Law Firm, PLLC
1119 N. Virginia St.
El Paso, Texas 79902
T: 915-307-3496
bvillalpando@villalpandolaw.com