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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Zakari Fofana,  
Petitioner,

v.

**ROSE THOMPSON**, Warden, Karnes County Immigration Processing Center; **MIGUEL VERGARA**, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; **TODD M. LYONS**, Acting Director of Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary, U.S. Department of Homeland Security; **UNITED STATES DEPARTMENT OF HOMELAND SECURITY**; **PAMELA BONDI**, U.S. Attorney General; **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**, *in their official capacities*.

Respondents.

Case No. 5:25-cv-01842-JKP

**REPLY TO RESPONDENTS'  
OPPOSITION TO PETITION FOR  
WRIT OF HABEAS CORPUS**

1 **REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS  
CORPUS**

Petitioner timely files this reply to Federal Respondents' Response in Opposition to Habeas Corpus.

**I. FACTS AND PROCEEDURAL HISTORY**

Petitioner Zakari Fofana (hereinafter "Mr. Fofana") is a 39-year-old man from Benin who was granted withholding of removal in 2020, due to harm he faced due to his sexuality in Benin. He has lived in the U.S. without any criminal history since then, has attended all his ICE check-ins, has kept his work permit updated, and has kept a steady job. Without notice or explanation, over five years after his final administrative order, Mr. Fofana was detained at an ICE check-in November 3, 2025. He has been held since then at Karnes County Immigration Processing Center, suffering mental and physical health issues.

On December 5, 2025, Petitioner, with undersigned pro bono counsel, filed a Motion to Reopen his asylum case, since he learned the Immigration Court had denied him asylum based on overruled law. Petitioner's undersigned pro bono counsel also instructed him to ask to speak with his attorney prior to signing any ICE documents. Petitioner's Motion to Reopen remains pending.

On December 11, 2025, an ICE officer at Karnes asked Mr. Fofana to sign a document in order to obtain a travel document. Mr. Fofana said he needed to speak with his lawyer first. Exh. A.

On December 12, 2025, Mr. Fofana spoke with undersigned pro bono counsel. She said he could sign the document. Since that date, Mr. Fofana has not been approached again to sign the travel document or had another meeting with ICE. Ex. A. He is willing to sign the

1 travel document. Ex. A. When he learned from undersigned pro bono counsel January 8 that he should contact ICE to express his willingness, he messaged them immediately and has not yet received a reply. Ex. A.

On December 14, Mr. Fofana's undersigned pro bono counsel emailed a list of countries where Mr. Fofana also fears due to his sexual orientation, to request a fear interview if ICE proposed to send him to one of these countries. Ex. A. In turn ICE asked him, through undersigned pro bono counsel, via email to provide any countries where he wanted to go and his family and friend contacts there, but Mr. Fofana did not have any countries he does not fear where he also has friend or family contacts, so he did not name any. Ex. A. The ICE agent replied that they would attempt to send him to any country, including those on his fear list. Ex. A. Mr. Fofana has anxiety from the harm he faced in Benin, and his mental and physical health have been deteriorating in detention. Ex. A. He has developed insomnia and chronic stomach problems, which he believes is linked to the food. Ex. A. Mr. Fofana is suffering in detention, and the government, five years and six months after issuing his removal order, refuse to release him.

ICE has provided no indication of any country they know of that is willing to take Mr. Fofana. Ex. A.

## II. ARGUMENT

### A. **There is no lawful justification for Mr. Fofana's detention far past the removal period**

Respondents in their reply acknowledge that Mr. Fofana's removal order became final in June 2020, over five-and-a-half years ago, and that they are holding Mr. Fofana past his removal period. They state that under 8 U.S. C. § 1231, the removal period can be extended in a least

1 three circumstances, and the Respondents specifically mention the following circumstances: if the individual presents a flight risk, is a danger to the community, or if there is a “significant likelihood of removal in a reasonably foreseeable future.” *See Glushchenko v. U.S. Dep’t of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021); *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6)); *see also Zadvydas v. Davis*, 533 U.S. 678, 680 (2001).

Mr. Fofana is not a flight risk or danger to the community: he has attended every ICE check-in, renewed his work permit, worked diligently and built community in Austin since 2020, and never been arrested.

**B. *Zadvydas* does apply to Mr. Fofana’s case**

Respondents argue that Mr. Fofana’s claim is not ripe under *Zadvydas*, but that is not the case. Under *Zadvydas*, the Court held that the key factor in continuing detention is whether removal is “‘reasonably foreseeable” and if it is not, the court “‘should hold continued detention unreasonable and no longer authorized,” while if it is reasonably foreseeable, the court” should consider the risk of the alien’s committing further crimes as a factor potentially justifying continued confinement.” *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court thus indicated that because not all removals were reasonably foreseeable in the first 90 days post-order, the “removal period,” detention up to six months after the order was issued was presumptively constitutional since the government was presumably still handling steps to effect the removal. *Id.* Therefore, “after the 6-month period, once an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must furnish evidence sufficient to rebut that showing.” *Id.*

1 The Court in *Zadvydas* did not anticipate Mr. Fofana's circumstances: that an individual living in the U.S. five-and-a-half years after a final order, who has complied with all immigration requirements, broken no laws, been a valued worker, and contributed to his local community, would be re-detained, after Respondents have not found a country to deport him to for this long. However, the *Zadvydas* Court prioritized Due Process and freedom from unwarranted detention. *Id.* Thus, Mr. Fofana falls within the category of *Zadvydas* post-order relief.

**C. Mr. Fofana's removal is not reasonably foreseeable in the near future**

Whether this Court determines Mr. Fofana's detention meets the six-month post-order detention period or not, he is entitled to habeas relief since his removal is not reasonably foreseeable in the near future. This is evident from the amount of time that has passed since his removal order was issued, and the lack of Respondents' plan to send Mr. Fofana to a third country.

Over five-and-a-half years have passed since Mr. Fofana's removal order became final in June 2020. Respondents have had over five-and-a-half years to find Mr. Fofana a country that will take him, and they have never mentioned one. In their reply, Respondents do not mention any country nor timeline. They blame Mr. Fofana for asking to speak with his lawyer before signing a document he did not understand, but they never approached Mr. Fofana again after his request to consult his counsel, indicating they have not been able or willing to find another country to send him. Exh. A.

**D. Mr. Fofana's detention is a violation of Due Process**

1 Mr. Fofana's unexpected detention five-and-a-half years after he received withholding of removal is a violation of the Due Process Clause of the Constitution. Mr. Fofana has been compliant with ICE throughout the past five-and-a-half years, and they have never proposed to deport him, so he did not know it was even a possibility. Exh. A. Mr. Fofana has been building his life and community for the past five years in Austin, and ICE has still given no justification for his re-detention at his check-in. Respondents detained Mr. Fofana for no reason, other than seeking to detain more people. Meanwhile, third-country removals have happened rarely in the past year, and "with the exception of Mexico, which has taken large numbers of non-Mexicans from elsewhere in the Western Hemisphere, third-country removals have happened at small scale, with each country taking at most a few hundred deportees."<sup>1</sup> Mr. Fofana is a dedicated Austin community member who has suffered tremendously in his home country already, and his detention has further harmed his mental and physical health. He has no reasonably foreseeable likelihood of removal, he is not a flight risk, and his health is at risk in detention. His detention is thus a violation of Due Process.

### CONCLUSION

Mr. Fofana has the fundamental liberty right to release from detention, given that he is being detained years after the removal period ended, Respondents have no reasonably foreseeable plan to remove him to a third country, he is neither a flight risk nor a danger to the community, and his mental and physical health are suffering. Petitioner thus respectfully requests that this Court grant his Petition for Writ of Habeas Corpus.

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<sup>1</sup> *What are third-country removals? Understanding their use in immigration policy*, American Immigration Council, December 5, 2025, <https://www.americanimmigrationcouncil.org/fact-sheet/what-are-third-country-removals-factsheet/>.



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Certificate of Service

I, Meredith Hoffman, certify that I served Federal Respondents electronically, since I have confirmed that Federal Respondents' counsel participates in CM/ECF.

/s/ Meredith Hoffman  
1/12/2026