

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JOSE HERNANDEZ LOPEZ,)
Petitioner,)
)
 v.)
)
KRISTI NOEM, ET AL.,)
Respondents.)

Case No. CIV-26-00051-PRW

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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NOW COME Respondents Kristi Noem, United States Secretary of Homeland Security; U.S. Department of Homeland Security (DHS); Pamela Bondi, Attorney General of the United States; Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE); and Josh Johnson, Field Office Director of Enforcement and Removal Operations (ERO) Dallas, Texas, (collectively, the “Federal Respondents”) who, for response to the Petition for Writ of Habeas Corpus [Doc. 1] and the Court’s Order [Doc. 7] directing them to respond, respectfully submit that the Court should deny the Petition.¹ Further responding, the Federal Respondents submit the following:

Brief in Response

A. The Court may dismiss the Petition for its failure to make a short and plain statement of the claims:

A court may apply the Federal Rules of Civil Procedure to habeas corpus proceedings. *See, e.g.*, Rule 12, Rules Governing Section 2254 Cases; *Castro v. Noem*, No. 1:25-CV-01129 KWR-LF, 2025 WL 3226973, at *2 (D.N.M. Nov. 19, 2025) (a court may apply the Federal Rules of Civil Procedure in a § 2241 immigration habeas action “to the extent they are not inconsistent with the habeas rules”). To state a claim, a pleading

¹ The Federal Respondents note that the Court’s Order [Doc. 7] of January 16, 2026, directs the Clerk to send the order and a copy of the Petition [Doc. 1] to the Office of the United States Attorney for the Western District of Oklahoma (USAO WD OK). The Court’s Order [Doc. 7] was marked received by USAO WD OK on January 22, 2026, but a copy of the Petition [Doc. 1] was not enclosed. USAO WD OK followed up with the Court, and the 74-page Petition [Doc. 1] and its accompanying 139-page Appendix [Doc. 1-1] were received by USAO WD OK on January 27, 2026. The Federal Respondents make this filing on the deadline set by the Court, but to the extent that this response may not adequately address all of Petitioner’s arguments in his 213-page filing, the Federal Respondents trust that the Court will direct them to supplement their response.

must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Honorable David L. Russell recently explained:

This requirement “establishes a ceiling (the complaint must be no more than ‘a short and plain statement’) and not a floor (the complaint must at least be a ‘short and plain statement’).” *Toevs v. Reid*, 267 F. App’x 817, 818-19 (10th Cir. 2008) (internal quotation marks omitted). “Something labeled a complaint but written more as a press release, prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint.” *Mann v. Boatright*, 477 F.3d 1140, 1148 (10th Cir. 2007) (internal quotation marks omitted). Indeed, a complaint is “an improper and impermissible place for the tedious and burdensome aggregation of prospective evidence, for the rehearsal of tendentious arguments, or for the protracted recitation and explanation of legal authority putatively supporting the pleader’s claim for relief.” *Trump v. New York Times Co.*, No. 8:25-CV-2487-SDM-NHA, 2025 WL 2680597, at *2 (M.D. Fla. Sept. 19, 2025). Rather, a complaint is “a mechanism to fairly, precisely, directly, soberly, and economically inform the defendants...of the nature and content of the claims.” *Id.*

Boismier v. Oklahoma State Bd. of Educ., No. CIV-25-1297-R, 2025 WL 3143285, at *1 (W.D. Okla. Nov. 10, 2025).

The 80-page complaint in *Boismier* was “needlessly long-winded,” contained irrelevant material, and included “a level of evidentiary detail that [was] unnecessary” at the pleading stage of the case. *Id.* Judge Russell ordered the complaint stricken but provided that the plaintiff could “file an Amended Complaint that complies with Rule 8 within fourteen days of the date of the order.” *Id.*

Mr. Hernandez Lopez blasts through the Rule 8(a)(2) ceiling. He presents a 213-page filing: the 74-page Petition [Doc. 1] plus its accompanying 139-page Appendix [Doc. 1-1] consisting of nine unmarked exhibits. *See* Fed. R. Civ. P. 10(c) (a written instrument filed as an exhibit to a pleading is a part of the pleading for all purposes); *ECF Policies &*

Procedures Manual, § II.A.4.a (“a. Exhibits and attachments that are filed electronically shall be submitted as separate attachments to the document and shall be clearly labeled with the appropriate exhibit number (*i.e.*, Exhibit 1, Exhibit 2)....”) and § II.A.4.b (“b. An appendix of exhibits and attachments may be filed as a separate document Exhibits must be submitted as described in § II.A.4.a. above.”).

The Federal Respondents are entitled to fair notice of Mr. Hernandez Lopez’s claims and the grounds upon which those claims are brought. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Instead, Petitioner presents at tedious length arguments and data with no apparent relevance to his case.

For example, his petition offers statistics such as these:

40. Annually, millions of foreign nationals arrive at United States Ports of Entry (POEs)³⁶ seeking entry.³⁷ In 2022 for example, DHS granted approximately 97 million admissions into the U.S., with an estimated 45 million of those admissions being nonimmigrants who were issued an I-94.³⁸ The majority of these individuals present facially valid non-immigrant visas, such as B-1/B-2 visitor, F-1 student, or H-1B temporary worker visas.³⁹

³⁶ The term “POE” is used throughout this brief as a short hand reference to any time or place designated by the attorney general for the admission of aliens.

³⁷ (*See Ex. 1 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022, Alice Ward, Office of Homeland Security Statistics, U.S. Dept. of Homeland Security.*)

³⁸ (*Id.*)

³⁹ (*Id.*)

⁴⁰ *See generally* 8 U.S.C. § 1182(a).

Petition [Doc. 1] at 24-25 (cleaned up). (Petitioner’s footnote 37 directs, “*See Ex. 1 — Annual Flow Report [etc.]*,” but his Appendix [Doc. 1-1] designates “Ex. # 1” as an 82-

page transcript from *Jennings v. Rodriguez*, Supreme Court Case No. 15-1204.)

He inserts in his pleading an “earlier version” of form I-860, prominently marked “SAMPLE”. *Id.* at 27. Petitioner demonstrates the “way ... things appear” on a Notice to Appear (NTA) with a credible fear determination. *Id.* at 34. Not on *his* NTA, because Petitioner’s NTA does not include that determination. *See* Pet. Appx. [Doc. 1-1] at 122.

Courtesy of Petitioner’s filing and an embedded chart, the reader learns that in November 2025 there was a family-sponsored “first preference” for 23,400 unmarried sons and daughters of U.S. citizens (plus any numbers not required for the “fourth preference”); that spouses and children of permanent residents make up 77% of the overall “second preference” limitation, of which 75% are exempt from the per-country limit; and that unmarried sons and daughters (21 years of age and older) of permanent residents constitute 23% of the overall “second preference” limitation. *Id.* at 47. It also appears that family-sponsored preferences may be “oversubscribed” for applicants from mainland China, India, Mexico, and the Philippines. *Id.*

How are such data relevant to the claims of Petitioner, a citizen of El Salvador? To the Federal Respondents it is not clear (or, in the vernacular of Rule 8(a), “plain”), but such statistical details are among the “allegations of fact set forth in the [147] preceding paragraphs” incorporated by reference in Petitioner’s Count I. Petition [Doc. 1] at 71, ¶ 148. And in Count II. *Id.* at 72, ¶ 151. And in Count III. *Id.* at 73, ¶ 155.²

² One particular “allegation of fact” strikes a discordant note. Discussing the Fourth Amendment, Petitioner writes, “*Given the clarity of law in this area, the point need not be belabored.* That being said ...” Petitioner then proceeds to argue that “it does merit pointing out” that his position “is supported” by the fact that in *Dep’t of Homeland Security*

Petitioner designates three different submissions as Exhibit 1, making citations to: (1) “Ex. 1 ICE Detainee Locator,” *id.* at 13, n. 4; (2) “Ex. 1 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022,” *id.* at 24, n. 37; and (3) “Ex. 1 – Transcript of Oral Arguments in *Jennings v. Rodriguez*,” *id.* at 49, n. 83. The significance of the other exhibits in his Appendix [Doc. 1-1] — which includes a full-page portrait of Marcelo Gomes, a volleyball player from Milford, Massachusetts, *id.* at 115 — is not evident or plain, but perhaps there is some expectation on Petitioner’s part that the Court will read through his exhibits and discern arguments supporting his claims. *Cf. Seeley v. Whitney*, No. 25-1031, 2025 WL 2651076, at *2 (10th Cir. Sept. 16, 2025) (a district court is not required locate or cross-reference documents to infer the grounds for a party’s claim); *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005) (a court “cannot take on the responsibility of ... searching the record” on behalf of a litigant); *Roska ex rel. Roska v. Peterson*, 328 F.3d 1230, 1246 (10th Cir. 2003) (without a specific reference, a court will not search the record on a party’s behalf) (citing *Gross v. Burggraf Constr. Co.*, 53 F.3d 1531, 1546 (10th Cir.1995) (citing *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir.1991) (“Judges are not like pigs, hunting for truffles buried in briefs.”))).

In this Court, briefs in support of summary judgment shall not exceed 30 pages without leave of court, and there is a 25-page limit for all other briefs. LCvR7.1(e). Mr. Hernandez Lopez’s filing obviously is not a brief in support of a motion, but the local rule’s

v. Thuraissigiam, 591 U.S. 103 (2020), the “alien there only made it 25-yards into the U.S. before being detained.” Petition [Doc. 1] at 62, ¶ 123 (emphasis added). Petitioner appears to assert a Fifth Amendment due process claim (*see* Petition [Doc. 1] at 72-73, Count II), but no Fourth Amendment claim is evident.

page limits provide context for assessing his filing. The Petition [Doc. 1] alone is more than twice as long as allowed for a brief in support of summary judgment, and almost three times as long as allowed for briefs in support of other motions.

The Federal Respondents accept that a certain measure of flexibility may be afforded to a § 2241 petition, particularly given the exigencies of habeas litigation and the liberty interests at stake. However, Mr. Hernandez Lopez’s pleading reflects no apparent effort to present concise claims or to limit the exhibits to matters that are germane to the case. Discussing Rule 8, one court has explained that counsel should “submit straightforward pleadings that are clear, poignant, and understandable.” *George v. Wenhaven, Inc.*, No. ST-12-CV-34, 2012 WL 5270924, at *2 (V.I. Super. Sept. 29, 2012) (internal quotation marks omitted); *see also Seeley*, 2025 WL 2651076, at *1 (quoting the magistrate judge’s recommendation, the Tenth Circuit affirmed a dismissal where the plaintiff had “failed to explain, in a clear, concise, and understandable way” the basis for his claims). This Court would be well within its rights to require Petitioner, who is represented by counsel, to present a short and plain statement of his claims, not the 213-page thicket of statistics, graphs, flowcharts, forms, transcripts, photographs, news articles and the like, ostensibly but not plainly supporting his claims for habeas corpus relief.

B. The Court should deny Petitioner’s demands for habeas corpus relief.

At page 71 of the Petition [Doc. 1], three claims begin to emerge. Each of the claims “incorporates by reference” everything that precedes it, but the Federal Respondents understand the essential nature of the claims to be as follows:

- In Count I, Petitioner indicates that “8 U.S.C. § 1225(b)(2) does not apply to all

noncitizens residing in the United States who are subject to the grounds of inadmissibility.” Petition [Doc. 1] at 72, ¶ 149. He alleges, “The continued detention of Petitioner, ... on the purported basis of being detained under § 1225(b)(2), violates the INA as well as the U.S. Constitution.” *Id.*, ¶ 150.

- Count II alleges a violation of due process under the Fifth Amendment: “The government’s detention of Petitioner without a bond redetermination hearing to determine whether she [sic] is a flight risk or danger to others violates her [sic] right to due process.” *Id.* at 73, ¶ 154; *see also id.* at 72, ¶ 152 (citing “U.S. Const. amend. V”).
- In Count III, Petitioner alleges that ICE violated a “process set forth by 8 U.S.C. § 1226 or 8 C.F.R. § 1003.19.” *Id.* at 73, ¶ 156. Count III contends that ICE violated “its own regulations” and committed a “statutory violation.” *Id.* (Count III header; text effects removed).

1. The Court should deny Petitioner’s statutory claims in Counts I and III.

a. The INA’s jurisdiction-channeling and -stripping provisions bar the claims.

This Court may not properly consider Petitioner’s statutory challenges because the INA channels to federal courts of appeals challenges arising from actions taken to remove an alien. Congress has provided a means for aliens to challenge the statutory provision that DHS/ICE relies on to detain and remove them. Specifically, the INA provides that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review. 8 U.S.C. § 1252(a)(5). Review of a final order includes review of “all questions of law and fact, *including interpretation and application of constitutional and statutory provisions*, arising from any action taken or proceeding brought to remove an alien from the United States.” *Id.* § 1252(b)(9) (emphasis added). The decision to begin removal proceedings and the filing of a Notice to Appear (*see* Pet. Appx. [Doc. 1-1] at 122: NTA filed November 17, 2025) may be reviewed by a court of appeals in the appeal of a final order of removal. Such a decision is not subject to review by this Court. *See Acxel*

S.Q.D.C. v. Bondi, 2025 WL 2617973, at *3 (D. Minn. Sept. 9, 2025) (“1252(b)(9) consolidates all questions of law and fact, including constitutional and statutory challenges, arising from removal proceedings into one petition for review—the review of a final removal order before a circuit court of appeals.” (cleaned up)).

Congress also limited what types of claims courts may review. Specifically, 8 U.S.C. § 1252(g) states that, except as otherwise provided in Section 1252, “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by [DHS] to *commence* proceedings, *adjudicate* cases, or *execute* removal orders against any alien under this chapter.” (emphasis added). That bars challenges to the *basis on which* DHS chooses to start removal proceedings. *See Alvarez v. U.S. Immigr. & Customs Enf’t*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars [courts] from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents [courts] from considering whether the agency should have used a different statutory procedure to initiate the removal process.”).

Accordingly, Congress in §§ 1252(a)(5) and (b)(9) established a process for aliens like Mr. Hernandez Lopez to challenge the basis on which ICE seeks to detain and remove them. That process is in, and reserved to, the appropriate court of appeals. Furthermore, in §§ 1252(b)(9) and (g), Congress deprived district courts of jurisdiction to review an alien’s challenge to the decision about the basis of removal proceedings. This Court lacks jurisdiction to hear Petitioner’s statutory challenges to the removal proceedings.

b. Petitioner is an applicant for admission.

In the Immigration and Nationality Act (INA), Congress established rules governing

when certain aliens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of “applicants for admission,” a category of aliens. Section 1225 defines an “applicant for admission” as any “*alien present in the United States who has not been admitted* or who arrives in the United States.” 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines “admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” *Id.* § 1101(a)(13)(A). In other words, an applicant for admission is an alien who (1) is present in the United States and did not lawfully enter the country *or* (2) is arriving in the United States.

Petitioner fits into the first category. An alien who is “present in the United States and concedes he has never been admitted ... fits neatly into the definition of an ‘applicant for admission.’” *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344, at *3 (W.D. Okla. Jan. 6, 2026). Petitioner admits that “he entered into the United States, without authorization, on July 18, 2008.” Petition [Doc. 1] at 9, ¶ 1; *see also id.* at 14, ¶ 15 (“Petitioner ... entered the U.S. without inspection.”). Furthermore, he incorporates into his pleading evidence that when he entered the United States, he was “not then admitted or paroled after inspection by an Immigration Officer.” Pet. Appx. [Doc. 1-1] at 122.

c. Petitioner may be detained and is not entitled to a bond hearing.

Applicants for admission are placed in removal proceedings through: (1) expedited removal under § 1225(b)(1); or (2) regular removal proceedings under § 1225(b)(2).

Section 1225(b)(1) describes two categories of applicants for admission who are subject to expedited removal proceedings. The first category includes those aliens who are

arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).³ *Id.* § 1225(b)(1)(A)(i). The second category includes those aliens who have “not been admitted or paroled into the United States,” who have not “affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility,” and who also are inadmissible under Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II). Aliens within the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and “shall be detained” until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).⁴

Section 1225(b)(2) “serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). Under § 1225(b)(2)(A), all other applicants for admission who are “not clearly and beyond a doubt entitled to be admitted” shall be detained for removal proceedings under 8 U.S.C. § 1229a. Thus, § 1225(b)(2)(A) generally provides for detention during full removal proceedings for aliens who are applicants for admission, but who do not fall within one of the two categories described in § 1225(b)(1) (*i.e.*, arriving aliens and other aliens subject to expedited removal). Section 1225 does not provide a bond hearing for aliens detained under that provision.

³ Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

⁴ Depending on the circumstances, an alien who is ordered removed under Section 1225(b)(1)(A)(i) but who is not removed within 90 days of the removal order, *may* be released under an order of supervision. 8 U.S.C. § 1231(a)(3).

d. Section 1226 does not apply to Petitioner.

While § 1225 applies to applicants for admission, § 1226 covers more generally all aliens (including, for example, legal permanent residents, stowaways, and others who are *not* applicants for admission), even if the alien has not yet encountered or been examined by an immigration officer. Thus, § 1226 provides procedures for detention and removal of a broader class of aliens.

Section 1226(a) provides that if the Secretary of Homeland Security issues a warrant, regardless whether there was prior interaction or examination by an immigration officer, an alien may be arrested and detained “pending a decision on whether the alien is to be removed from the United States.”⁵ The section is a means of effectuating detention prior to any examination by an immigration officer. Following arrest, and subject to certain restrictions, the alien may be examined and remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers can release such an alien if he demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If not released by an immigration officer, the alien can request a custody redetermination by an immigration judge before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

Within that broader category of all aliens, § 1226(c)(1) pertains to the mandatory detention of aliens who have had certain interactions with the criminal justice system. *See*

⁵ Statutory references in the INA to the Attorney General have been described as “a legal artifact,” and the term “Attorney General” should be read to mean the “Secretary of Homeland Security.” *Awe v. Napolitano*, 494 F. App’x. 860, 862 n. 3 (10th Cir. 2012).

8 U.S.C. 1226(c) (“The Attorney General shall take into custody *any* alien who--”) (emphasis added). To this end, lawful permanent residents — *i.e.*, those who *have been admitted* to the United States and are *not* applicants for admission — may be subject to this mandatory detention provision. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Nielsen v. Preap*, 586 U.S. 392 (2019) (lawful permanent resident detained pursuant to § 1226). It also reaches other noncitizens who are *not* applicants for admission, such as noncitizens admitted erroneously but who are nevertheless deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i).

In summary, § 1225 only applies to applicants for admission and requires examination by an immigration officer, while § 1226 more generally applies to *all* aliens, even if not yet encountered or examined by immigration officers. While there is some overlap between the provisions, that is consistent with the broad purposes of the INA, the different means and remedies necessary to effectuate those purposes, and the discretion afforded the Executive to do so.

2. Count II, Petitioner’s due process claim, is unsupported and premature.

Demore v. Kim, 538 U.S. 510 (2003) held that mandatory detention pending removal from the United States does not violate due process. Detention during deportation proceedings is “a constitutionally valid aspect of the deportation process.” *Id.* at 523.

The detainee in *Demore* challenged his detention without an individualized bond hearing under § 1226(c). That provision, much like § 1225(b)(2)(A), mandates detention in certain circumstances while removal proceedings are pending. *Id.* at 527-28. The detainee in *Demore* argued that such detention was indefinite and thus violated the Due

Process Clause. The *Demore* Court rejected that premise. Under § 1226(c), detention has “a definite termination point,” *i.e.*, when the “removal proceedings are completed[.]” *Id.* at 529. Thus, an alien in removal proceedings is not subject to indefinite detention.

Federal law authorizes Mr. Hernandez Lopez’s detention. He “entered the U.S. without inspection,” Petition [Doc. 1] at 14, ¶ 15, but the power to admit or exclude an alien is a sovereign prerogative. The Government therefore possesses the power to set the procedures to be followed while determining whether an alien should be admitted or excluded from the United States. *Thuraissigiam*, 591 U.S. at 139. Detention “assur[es] the alien’s presence at the moment of removal.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). In this context, courts “must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive ... efforts to enforce” the INA, and “the Nation’s need to ‘speak with one voice’ in immigration matters.” *Id.* at 700.

References to *Zadvydas* are interspersed throughout Mr. Hernandez Lopez’s filing. *See* Petition [Doc. 1] at 13, n. 8; at 19; at 63; etc. *Zadvydas* affords him no relief.

The petitioners in *Zadvydas* faced the prospect of indefinite detention. One was born in a displaced persons camp in Germany in 1948, to Lithuanian parents. Germany refused to accept him because he was not a German citizen. Lithuania refused to accept him because he was neither a citizen nor a permanent resident. And efforts to remove him to the Dominican Republic, his wife’s home country, proved unsuccessful. *Id.* at 684.

The other petitioner was born in Cambodia. His family fled that country when he was two years old, and they spent years in refugee camps in Thailand and the Philippines

before arriving in the United States. As an adult, he was ordered removed, but Cambodia had no repatriation treaty with the United States and refused to accept him. *Id.* at 685-86.

Mr. Hernandez Lopez does not allege that he faces institutional barriers to removal or barriers unique to him of the types faced by the petitioners in *Zadvydas*. Moreover, *Zadvydas* held that post-removal-period detention for up to 6 months is presumptively reasonable. “After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701.

Mr. Hernandez Lopez was detained on November 17, 2025, and he filed suit on January 13, 2026. Petition [Doc. 1] at 14, ¶ 15. Any *Zadvydas* claim he may intend to bring is premature. *See, e.g., Nguyen v. Bondi*, Case No. CIV-25-01204-JD, Order [Doc. 20 therein] (W.D. Okla. Dec. 31, 2025) (a petition filed 47 days after the detention began was premature under 8 U.S.C. § 1231 and *Zadvydas*); *Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773 (W.D. Okla. Dec. 18, 2007) (a § 2241 petition claiming that the petitioner’s detention was contrary to *Zadvydas* and violated his right to Fifth Amendment due process, filed approximately four months after custody began, was premature and failed to state a *prima facie* claim for habeas relief); *Ali v. Barlow*, 446 F. Supp. 2d 604, 609 (E.D. Va. 2006) (“[C]ourts are consistent in their dismissal of claims made prior to the expiration of the six-month presumptively reasonable period.”).

To prevail on his Fifth Amendment claim, Petitioner must show that his detention is not rationally related to a legitimate governmental purpose, or that the conditions of his detention are excessive in relation to that purpose. *Bahadorani v. Bondi*, No. CIV-25-

1091-PRW, 2025 WL 3048932, at *5 (W.D. Okla. Oct. 31, 2025). Detention is rationally related to assuring an alien's presence at the moment of removal. *Zadvydas*, 533 U.S. at 699. The Court's conclusion in *Bahadorani* is applicable here: "Without (a lot) more factual development, Petitioner cannot make a showing satisfactory to this Court to demonstrate his Fifth Amendment rights have been injured." 2025 WL 3048932, at *5.

3. Count III's claim of a regulatory violation does not afford habeas relief.

Within Count III, Petitioner claims that his detention violates not only a statute, 8 U.S.C. § 1226, but also a regulation, 8 C.F.R. § 1003.19. That regulation fleshes out the procedures for "[c]ustody and bond determinations made by the service" and "review[] by an Immigration Judge." 8 C.F.R. § 1003.19(a).

"Habeas relief is reserved for errors constitutional in scale." *Bahadorani*, 2025 WL 3048932, at *4. The writ is not meant to address procedural errors. *Sunal v. Large*, 332 U.S. 174, 179, (1947). Count III vaguely alleges a violation of "the process set forth" in § 1003.19(a). Petition [Doc. 1] at 73, ¶ 156. A process violation is not a proper basis for the "extraordinary remedy" of habeas corpus relief. *See Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) ("The writ of habeas corpus is an extraordinary remedy that guards only against extreme malfunctions in the state criminal justice systems.") (internal quotation marks and citation omitted); *Gomez-Arias v. U.S. Immigr. & Customs Enf't*, No. 20-CV-00857-MV-KK, 2020 WL 6384209, at *2 (D.N.M. Oct. 30, 2020) ("As release from custody is an extreme remedy, Congress has circumscribed its use by the courts.").

Respectfully submitted this 29th day of January, 2026.

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