

**MEMORANDUM OF LAW IN SUPPORT OF PETITION
OF WRIT OF HABEAS CORPUS PURSUANT TO 28
U.S.C. § 2241**

5:26-cv-16-DCB-BWR

Name: ROBERTO ALEJANDRO BETANCOURT ROJAS

Alien Registration No.: A-

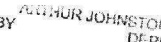
Pro Se Petitioner-Detained

Detention Center: Adams County Correctional Center

Address: 20 Hobo Forks Rd, Natchez, MS 39120

SOUTHERN DISTRICT OF MISSISSIPPI
BY

JAN 20 2026

BY 
ARTHUR JOHNSTON
DEPUTY

INTRODUCTION

1. Petitioner, **ROBERTO ALEJANDRO BETANCOURT ROJAS**, petitions this Court for a writ of habeas corpus to remedy Petitioner's indefinite detention by Respondents. Petitioner submits this Memorandum of Law in Support of the Petition for a Writ of Habeas Corpus.
2. As the Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), noncitizens cannot be detained indefinitely if the government is unable to carry out their removal. Instead, detention after a final order of removal is authorized only when removal is reasonably foreseeable. As a guide to courts, the Court in *Zadvydas* established a presumption that detention after a final order of removal was permissible for six months. Detention after a final order may be unlawful even when six months have not passed, particularly if it is clear that the United States will not be able to effect a noncitizen's removal. But after that six-month period, once a noncitizen 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." And the longer a noncitizen has been detained, the stronger the government's showing must be.
3. Petitioner is entitled to release under the framework of *Zadvydas* unless the government promptly demonstrates that there is a significant likelihood of removal in the reasonably foreseeable future.
4. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. See 28 U.S.C. § 2243 (stating that an order to show cause why a petition for a writ of habeas corpus should be denied is returnable "within three days unless for good cause additional time, not exceeding twenty days, is allowed").
5. In order to permit full judicial review of the claims herein and requested relief, Petitioner respectfully requests that the Court order Respondents not to transfer Petitioner outside the jurisdiction of this Court pending consideration of this Petition.

STATEMENT OF FACTS

6. Petitioner, **Roberto Alejandro Betancourt**, A# [REDACTED] is a native and citizen of Venezuela currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Adams County Correctional Center, Mississippi.

7. Petitioner has been in ICE custody **continuously since July 14, 2025**, following the completion of a state criminal sentence. He has remained detained without release since that date.

8. On **February 22, 2024**, an Immigration Judge issued a final order of removal against Petitioner. At the same time, the Immigration Judge **granted Petitioner protection under the Convention Against Torture ("CAT")**, in the form of **deferral of removal**, after finding that Petitioner would more likely than not face torture if returned to Venezuela.

9. Since his detention, Petitioner has been transferred multiple times between ICE detention facilities across several states, including but not limited to:

- Baker County Facility, Florida
- Louisiana ICE Processing Center
- Port Isabel Service Detention Center, Texas
- Valley Detention Center, Texas
- Otay Mesa Detention Center, California
- El Paso Processing Center (ERO El Paso / Camp East Montana), Texas
- Alexandria Staging Facility, Louisiana
- Adams County Correctional Center, Mississippi

LEGAL STANDARD AND GOVERNING LAW

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”) §§ 101-507, 8 U.S.C. § 1101-1537, amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-1570.

12. This Court has jurisdiction under 28 U.S.C. § 2241, the Suspension Clause, U.S. Const. art. I § 9, cl. 2, and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and Petitioner’s custody is in violation of the Constitution, laws, or treaties of the United States. See *Zadvydas v. Davis*, 533 U.S. 678 (2001). This Court may grant relief under 28 U.S.C. § 2241 (habeas corpus), 5 U.S.C. § 702 (establishing the right of review for a person suffering a legal wrong due to agency action), and 28 U.S.C. § 1651 (All Writs Act).

13. The Due Process clause applies to all persons in the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. In *Zadvydas*, the Supreme Court emphasized, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical lies at the heart of the liberty that [the Due Process] Clause protects.” 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Court noted, “[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem.” *Id.*; see also *Plyer v. Doe*, 457 U.S. 202, 210 (1982) (“Aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.”).

14. Under 8 U.S.C. § 1231(a)(2), noncitizens subject to final orders of removal “shall” be detained during the first 90 days—the “removal period”—and they “shall” be removed during that period under § 1231(a)(1). Under 8 U.S.C. § 1231(a)(6), the government “may” continue detention beyond the 90-day removal period if a noncitizen falls within certain broad categories of removability or is determined “to be a risk to the community or unlikely to comply with the order of removal.” 8 U.S.C. §1231(a)(6).

15. In *Zadvydas*, the Supreme Court construed 8 U.S.C. §1231(a)(6) to authorize detention only where it is significantly likely that removal will occur in the reasonably foreseeable future, in order to avoid the serious due process concerns that would be presented by permitting detention for an indefinite period of time. *Zadvydas*, 533 U.S. at 701. After a noncitizen meets his or her initial burden to show that no such likelihood of removal exists, the burden shifts to the Government to “respond with evidence sufficient to rebut [the alien’s] showing.” *Id.* at 701.

16. Courts have rejected conclusory claims by ICE agents which claim, without submitting concrete factual information about scheduled flights or repatriation agreements, that removal is imminent. “[A] theoretical possibility of eventually being removed does not satisfy the government’s burden once the removal period has expired and the petitioner establishes good reason to believe his removal is not significantly likely in the reasonably foreseeable future.” *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020) (internal quotation marks and citation omitted). “[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, [a] Court certainly cannot conclude that [a] removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.” *Id.* at *5 (internal quotation marks and citation omitted). See also,

Gomez Barco v. Witte, No. 6:20-CV-00497, 2020 WL 7393786 (W.D. La. Dec. 16, 2020) (ordering release of a petitioner who was detained longer than six months because ICE had not been able to secure necessary travel documents, noting that the ICE officer “clearly has no factual basis for his ‘belief’ that there is no foreseeable impediment to Petitioner’s removal or that her removal is imminent,” and that there was no foundation for the “expectation” that the COVID-19 related travel restrictions in place would soon be lifted); **Balza v. Barr**, No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) (same).¹

In granting Ms. Balza’s release, the court considered and rejected a conclusory declaration by a local ICE Assistant Field Officer that removal was imminent. *Id.* at *5. In **Alexis v. Smith**, the petitioner, Mr. Alexis, had been in detention for almost a year and subject to a removal order for over a year. An ICE official testified to an informal agreement that permitted removals but acknowledged that there were far fewer removals to Haiti in the aftermath of the 2010 hurricane. The Haitian government had an issue with identity documents and it was unknown when that would be resolved. The magistrate did not credit ICE’s vague statements that it was “endeavoring to rectify the issue” and concluded there was no end in sight for detention, and recommended release. The District Court Judge agreed and ordered release. ICE then released Mr. Alexis on an Order of Supervised release.

¹ Other district courts in the Fifth Circuit and elsewhere have similarly granted habeas relief when the noncitizen has shown that there is no significant likelihood of removal in the reasonably foreseeable future. See, e.g., **Carreno v. Gillis**, No. 5:20-cv-44-KS-MTP, 2020 WL 8366735 (S.D. Miss. Dec. 16, 2020) (granting habeas relief to petitioner detained for approximately sixteen months due to a lack of diplomatic relations with Venezuela); **Ali v. Dep’t of Homeland Sec.**, 451 F. Supp. 3d 703 (S.D. Tex. 2020) (granting habeas relief to petitioner initially detained for three years, released and detained again for four months when petitioner could not be removed due to travel restrictions to Pakistan); **Sharifi v. Gillis**, No. 5:20-cv-5-DCB-MTP, 2020 WL 7379211 (S.D. Miss. Oct. 9, 2020) (granting habeas relief to petitioner detained for seventeen months after Iranian officials failed to respond to a travel document request for more than seven months).

and moved to get the judgment vacated on mootness, which it was. However, this does not invalidate the reasoning and conclusions of the Magistrate Judge and District Court Judge on this subject, and this case is still informative and persuasive to the body of law on this subject. *Alexis v. Smith*, No. CIV.A. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011), report and recommendation adopted, No. CIV.A. 11-0309, 2011 WL 3954945 (W.D. La. Sept. 6, 2011), vacated, No. CV 11-0309, 2011 WL 13386020 (W.D. La. Sept. 15, 2011).

17. Courts in this District have—pursuant to *Zadvydas*—released individuals who have been detained for over six months. See, e.g., *Gomez Barco*, 2020 WL 7393786 (ordering release of an immigrant detainee who was a native and citizen of Venezuela who was detained longer than six months because ICE had not been able to secure necessary travel documents); *Balza*, 2020 WL 6143643, at *5 (ordering release of petitioner and noting that “[a]fter more than a year of detention, Petitioner’s removal need not necessarily be imminent, but it cannot be speculative”) (internal quotation marks omitted).

18. Under *Zadvydas*, courts have found that there is no significant likelihood of removal and granted relief where:

- No country will accept the petitioner. See, e.g., *Jabir v. Ashcroft*, No. 03-2480, 2004 WL 60318 (E.D. La. Jan. 8, 2004) (granting habeas relief to petitioner detained for more than fourteen months after numerous countries refused to repatriate the petitioner).²

- The petitioner’s country of origin refuses to issue a travel document. See, e.g., *Alexis v. Smith*, No. 11-0309, 2011 WL 3924247 (W.D. La. Aug. 3, 2011) (granting habeas relief to petitioner detained for approximately one year due to the Haitian government rejecting the quality of identity documents provided); *Fermine v. Dir.*

² See also *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019) (ordering release of petitioner detained fourteen months after petitioner showed “that the countries with which he has any affiliation will not accept him”); *Yusupov v. Lowe*, No. 4:CV-06-1804, 2007 WL 5063231 (M.D. Pa. Jan. 12, 2007); *Abel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418 (M.D. Pa. 2004) (ordering release of petitioner detained approximately two years after refusal of several countries to accept petitioner).

of *Immigr. & Customs Enf't*, No. 2:06-cv-1378, 2007 WL 2284606 (W.D. La. May 25, 2007) (granting habeas relief to petitioner detained for fifteen months due to Trinidad's refusal to issue travel documents); *Lyadah v. Gonzales*, No. 06-1208, 2006 WL 3933850 (W.D. La. Dec. 18, 2006) (granting habeas relief to petitioner detained nineteen months because Nigeria refused to issue travel documents due to petitioner's HIV status).³

- There is no removal agreement between the United States and a country. In these scenarios, courts have found that the lack of a formal agreement regarding repatriation, lack of diplomatic relationship, and lack of a functioning government support a finding that there is no significant likelihood of removal. See, e.g., *Ngusse v. Gonzales*, No. 06-1382, 2007 WL 708615 (W.D. La. Mar. 1, 2007) (granting habeas relief to petitioner detained for approximately one year because the United States did not have a repatriation agreement with Ethiopia and Ethiopia would not issue travel documents because one of petitioner's parents was not Ethiopian).⁴

- There is either no response from a country designated for removal or a significant delay in receiving a response. See, e.g., *Uwineza-Amaha v. Gillis*, 5:19-cv-104-DCB-MTP, 2020 WL 3424988 (S.D. Miss. June 23, 2020) (granting habeas relief to petitioner detained thirteen months where there was no response from Venezuelan officials).⁵

³ See also *Kau Baream of Immigr. & Customs Enf't*, No. B-07-197, 2008 WL 11462867, at *8 (S.D. Tex. June 24, 2008) (ordering release of petitioner detained twelve months after Senegal "refused to issue Ka a travel document because he d[id] not have proper identity documentation"); *Moreira v. Gonzales*, No. CIV.A CV-05-588 A, 2006 WL 3861972 (W.D. La. Nov. 2, 2006) (granting habeas relief to petitioner detained for three years because Cape Verde advised that it would not accept the petitioner for repatriation); *Khan v. Gonzales*, 481 F. Supp. 2d 638 (W.D. Tex. 2006).

⁴ See also *Gomez Barco*, 2020 WL 7393786; *Islam v. Kane*, No. CV-11-515-PHX-PGR (LOA), 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011) (ordering release of petitioner detained ten months where petitioner presented evidence that Bangladesh is one of fifteen countries identified by ICE as least likely to issue travel documents"); *Carreno*, 2020 WL 8366735; *Simond Kangel v. Gillis*, No. 5:19-cv-118-DCB-MTP, 2020 WL 723328 (S.D. Miss. Sept. 2, 2020) (granting habeas relief to petitioner detained for sixteen months due to a lack of diplomatic relations with Venezuela); *Abdulle v. Gonzales*, 422 F. Supp. 2d 774 (W.D. Tex. 2006) (concluding that the petitioner met the burden to show removal was not reasonably foreseeable after being detained for more than one year when an injunction restricted the government's ability to remove the petitioner to Somalia).

⁵ See also *Sharifi*, 2020 WL 7379211; *Aung v. Barr*, No. 20-CV-681-LJV, 2020 WL 4581465 (W.D.N.Y. Aug. 10, 2020); *Edwards v. Barr*, No. 4:20cv350-WS-MAF, 2020 WL 6747737 (N.D. Fla. Oct. 14, 2020); *Rudi v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319 (W.D.N.Y. July 14, 2020); *Rodriguez Del Rio v. Price*, No. EP-20-CV-00217-FM, 2020 WL

• ICE fails to take action to secure travel documents for a prolonged period. See, e.g., *Senor*, 401 F. Supp. 3d at 430–31 (granting habeas relief after ICE initially requested travel documents but where “there [wa]s no indication from the record that anyone ha[d] taken any further action in the eight months since that time . . . to facilitate *Senor*’s receipt of the necessary travel documents”).⁶

19. As the length of detention grows, the period of time that would be considered the “reasonably foreseeable future” shrinks. See, e.g., *Zadvydas*, 533 U.S. at 701 (stating that as the length of time in detention grows “what counts as the ‘reasonably foreseeable future’ conversely would have to shrink”); *Senor*, 401 F. Supp. 3d at 430 (“‘[T]he passage of time combined with’ the ‘government [being] no closer to . . . repatriating [a detainee] than they were once they first took him into custody’ [is] sufficient to meet that ‘initial burden.’”); *Lawrikow*, 2009 WL 2905549, at *12.
20. Petitioner’s continued detention is unlawful, and Petitioner is unlikely to be removed in the reasonably foreseeable future. Therefore, Petitioner’s detention violates the statute and **Petitioner** is entitled to immediate release.
21. Petitioner’s detention also violates the Due Process Clause. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—from

7680560 (W.D. Tex. Nov. 3, 2020); *Singh v. Whitaker*, 362 F. Supp. 3d 93 (W.D.N.Y. 2019); *Butt v. Holder*, No. CA 08–0672–CG–C, 2009 WL 1035354 (S.D. Ala. Mar. 19, 2009) (holding that petitioner met his initial burden where he was held in ICE custody for more than ten months after the issuance of his removal order with no indication from the Pakistani Embassy that travel documents would be issued); *Lawrikow v. Kollias*, No. CV–08–1403–PHX–GMS (LOA), 2009 WL 2905549 (D. Ariz. July 27, 2009); *Reid v. Crawford*, No. 06–02436 PHX JWS (MEA), 2007 WL 1063413 (D. Ariz. Jan. 31, 2007); *Gui v. Ridge*, No. 3CV031965, 2004 WL 1920719 (M.D. Pa. Aug. 13, 2004); *Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290 (N.D. Ill. Apr. 28, 2003).

⁶ See also *Chun Yat Ma v. Asher*, No. C11–1797 MJP, 2012 WL 1432229, at *4 (W.D. Wash. Apr. 25, 2012) (ordering petitioner’s release where the government failed “to provide any documentation of efforts . . . to effectuate removal . . . [for] nearly six months”).

government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. See *id.* (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to the community. *Id.* Petitioner’s prolonged civil detention, which has lasted well beyond the end of the removal period, and which is likely to continue indefinitely, is no longer reasonably related to the primary statutory purpose of ensuring imminent removal. Thus, Petitioner’s detention violates Petitioner’s right to due process.

ARGUMENTS

A. Petitioner's Continued Detention Violates the Due Process Clause

Petitioner was taken into ICE custody on July 14, 2025, and has remained continuously detained since that date. "As of January 13, 2026, Petitioner has been detained for approximately **183 consecutive days**, exceeding the presumptively reasonable six-month period established in *Zadvydas v. Davis*, 533 U.S. 678 (2001)."

During this period, Petitioner has been transferred repeatedly among multiple ICE facilities across several states, including Baker County Detention Facility, Louisiana ICE Processing Center, Alexandria Staging Facility, Port Isabel Service Detention Center, Otay Mesa Detention Center, ERO El Paso/Camp East Montana, Valley Detention Center and Adams County Correctional Center and These transfers have not resulted in meaningful progress toward removal and have instead prolonged detention.

Petitioner was granted CAT protection in the form of Deferral of Removal pursuant to a final order dated February 22, 2024, and therefore cannot be removed to Venezuela. To date, ICE has not secured a third country willing to accept Petitioner under lawful, stable, and safe conditions, and there is no evidence that removal is reasonably foreseeable in the near future.

B. Petitioner's Detention Has Become Indefinite Under *Zadvydas v. Davis*

Under *Zadvydas v. Davis*, once detention becomes prolonged, the burden shifts to the government to demonstrate that removal is significantly likely to occur in the reasonably foreseeable future. ICE cannot meet that burden in this case.

Petitioner is subject to a final order of removal with a deferral of removal under the Convention Against Torture (CAT). This protection legally bars the United States from removing Petitioner to Venezuela, his country of nationality, due to the substantial risk of torture.

This legal prohibition is not temporary or discretionary. Unless and until CAT protection is lawfully terminated, removal to Venezuela is categorically barred.

ICE has not identified any third country that is willing to accept Petitioner under conditions consistent with CAT protections. Despite months of detention and multiple transfers between facilities, the government has been unable to effectuate removal.

The absence of a viable receiving country confirms that removal is not significantly likely in the reasonably foreseeable future.

Petitioner's repeated transfers between detention facilities across several states further demonstrate the speculative nature of any alleged removal plan. Such transfers reflect administrative uncertainty rather than a concrete or imminent removal effort.

Because ICE cannot demonstrate a significant likelihood of removal in the reasonably foreseeable future, continued detention is unlawful under *Zadvydas* and violates due process. Petitioner is therefore entitled to release under appropriate conditions of supervision.

C. Petitioner Is Not a Flight Risk Nor a Danger to the Community

ICE cannot justify Petitioner's continued detention by alleging that he is either a flight risk or a danger to the community. Civil immigration detention is not punitive, and continued confinement requires individualized, current, and lawful justification.

Petitioner is not a flight risk. He has fully complied with all immigration and criminal proceedings, has not attempted to evade authorities, and has consistently cooperated with the government. Petitioner has no incentive to abscond, as he is seeking lawful release under supervision and has family ties within the United States.

Moreover, Petitioner has expressed willingness to comply with any reasonable conditions of release imposed by the Court or ICE.

Although Petitioner has a criminal conviction, that fact alone does not justify prolonged or indefinite civil detention. The Supreme Court has made clear that immigration detention may not be used as punishment.

Petitioner has served his criminal sentence and is subject to supervision conditions under state law. ICE has made no individualized finding that Petitioner presently poses a danger to the community sufficient to justify continued detention.

Even if ICE had concerns regarding supervision, such concerns can be addressed through reasonable conditions of release, including reporting requirements, electronic monitoring, or bond. Continued detention is not the least restrictive means available and therefore violates due process.

Because Petitioner is neither a flight risk nor a danger to the community, and because less restrictive alternatives are available, ICE cannot lawfully justify his continued detention. Continued confinement under these circumstances violates fundamental principles of due process.

D. Less Restrictive Alternatives to Detention Are Available

Even where the government asserts concerns related to supervision, continued detention is not justified when less restrictive alternatives are available. Due process requires that civil detention be narrowly tailored and not excessive in relation to its purpose.

ICE has numerous less restrictive alternatives available to ensure compliance, including release on an order of supervision, periodic reporting requirements, electronic monitoring, or any other reasonable conditions deemed appropriate by the Court.

Petitioner is willing to comply with all reasonable conditions of release, including regular reporting, travel restrictions, and any other supervision measures required by ICE or ordered by the Court.

Because these alternatives are available and sufficient to address any supervisory concerns, continued detention is not the least restrictive means of achieving the government's objectives. Prolonged detention under these circumstances violates due process.

Accordingly, Petitioner's continued detention is unlawful where less restrictive alternatives are readily available and have not been meaningfully considered.

RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order his immediate release from ICE custody under appropriate conditions of supervision.

Petitioner further requests that the Court order his release subject to reasonable conditions, including reporting requirements or other noncustodial supervision measures deemed appropriate, as less restrictive alternatives to detention are available.

Petitioner also requests that this Court order ICE not to transfer him outside the jurisdiction of this Court while this Petition is pending, as such transfers would interfere with the Court's jurisdiction and Petitioner's ability to litigate this matter.

Petitioner respectfully requests any other relief this Court deems just and proper.

CONCLUSION

Petitioner's continued detention has become prolonged and indefinite in violation of the Due Process Clause of the Fifth Amendment and the standards established in *Zadvydas v. Davis*. Because there is no significant likelihood of removal in the reasonably foreseeable future, and because less restrictive alternatives to detention are available, the Petition for Writ of Habeas Corpus should be granted.

Respectfully submitted,

Roberto Alejandro Betancourt Rojas

Signature:



A#



Adams County Correctional Center
20 Hobo Forks Rd, Natchez, MS 39120