UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

Case Number: 26-cv-20395-BB

CESAR MORALES ANDRADE,

Petitioner,

v.

MIAMI ICE FIELD OFFICER DIRECTOR,

in her official capacity, et al.

Respondents.

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PETITIONER'S TRAVERSE

Petitioner respectfully submits this traverse in response to the Respondents' return [ECF No. 4] filed on January 26, 2026, and Respondent's amended return [ECF No. 5] filed on January 27, 2025. Because the available record of Petitioner's detention is extensive, Petitioner requests a hearing regarding any outstanding factual disputes and oral argument regarding what habeas relief may be available or appropriate. Petitioner's detention has become unreasonably prolonged after more than twenty months in Respondents' custody, and he requests either immediate release or a constitutionally adequate bond hearing. Although Petitioner here primarily will address the foreseeability of removal under existing Supreme Court precedent, even the line of cases cited by Respondents suggest by strong implication that an alternate due process analysis is available under exceptional circumstances in which a bond hearing would be proper. *Johnson v. Arteaga-Martinez,* 213 L.Ed 2d 125, 142 S. Ct. 1827, 1828 (2022) ("The Government also notes that as-applied constitutional challenges remain available to address "exceptional" cases."); *Castaneda*

v. Perry, 95 F.4th 750, 761 (4th Cir. 2024) ("We will therefore assume—but expressly do not decide—that as applied due process challenges to § 1231 detentions may proceed outside the Zadvydas framework when the alien presents, as a threshold matter, exceptional circumstances warranting that departure.") Petitioner's petition therefore in the alternative preserves his request for a bond hearing under a traditional balancing test framework, *see Mathews v. Eldridge*, 424 U.S. 319, 323 S. Ct. 893 (1976), as would be appropriate for an exceptional case.

As a preliminary matter, Respondents wrongly rely on cases such as *Rodriguez v. Meade*, 20-cv-24382 (S.D. Fla. 2020) and *Dominguez-Martinez v. Noem*, 25-cv-25280 (S.D.Fla. 2025) as if they shed much light on the instant case. These cases presented vastly different factual backgrounds. A cursory review shows that *Rodriguez* dealt with a habeas petitioner who had been detained for about a month at the time his temporary restraining order motion was denied. *Rodriguez v. Meade*, 20-cv-24382 (S.D. Fla. 2020) (D.E. 23). That case also never reached a decision on the merits because it was dismissed as moot. *See id.* (D.E. 33.) It was also decided before the statutory framework (post-order detention under 8 U.S.C. 1231) and statutory eligibility for bond of persons in withholding only proceedings were settled at the Supreme Court. *See Johnson v. Arteaga-Martinez,* 213 L.Ed 2d 125, 142 S. Ct. 1827 (2022). *Dominguez Martinez v. Noem* dealt with a habeas petitioner detained for about half the time that Petitioner here has spent in detention, whose case was already near its conclusion at the Eleventh Circuit of Appeals, and who challenged his designation as subject to the reinstatement of his removal order in the first place. *Dominguez-Martinez v. Noem*, 25-cv-25280 (S.D.Fla. 2025) (D.E. 7). Those circumstances are absent here. Petitioner has been detained for twenty months, and he faces countless months or years of appeals while awaiting a decision on his claim for protection from deportation to Honduras, where several of his family members have been ruthlessly murdered.

Due to the legal complexity and voluminous record in his case, the Immigration Judge presiding over proceedings has not yet even issued a decision. Petitioner respectfully requests that this Court award habeas relief and especially highlights a recent case in which the U.S. District Court for the Southern District of Georgia awarded habeas relief to someone detained during a comparable timeframe while in withholding-only proceedings. *See Ambrosi v. Warden of Folkston ICE Processing Ctr.* No. 5:25-cv-13 2025 WL 2772500 (S.D. Ga. Sept. 29, 2025).

HABEAS RELIEF IS AVAILABLE TO PETITIONERS IN WITHHOLDING-ONLY PROCEEDINGS PURSUANT TO *ZADVYDAS V. DAVIS*

The Supreme Court has held that noncitizens in withholding-only proceedings are not statutorily entitled to a bond hearing under 8 USC §1231(a). *Johnson v. Arteaga-Martinez,* 213 L.Ed 2d 125, 142 S. Ct. 1827, 1828 (2022). However, the Court did not foreclose as-applied constitutional challenges to prolonged detention for persons in withholding-only proceedings. *Id* at 1832-34; *see also Cabrera Galdamez v. Mayorkas*, No. 22 CIV.9847, 2023 WL 1777310, at *9 (S.D.N.Y Feb. 6, 2023) (holding that after sixteen months, a habeas petitioner in withholding-only proceedings was entitled to a bond hearing). The Supreme Court has set forth sharp constitutional constraints as to the length of post-order detention. *Zadvydas v. Davis* 533 U.S. at 701. The Court held that the post-order detention statute, 8 USC §1231(a)(6), does not authorize detention after six months when "there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701.What counts as "reasonably foreseeable" narrows as the length of detention increases. *Id.* at 701 ("And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink."). In *Zadvydas*, the Supreme Court rejected the government's argument that its immigration powers permit it to detain noncitizens indefinitely after issuance of

a removal order. *Id.* at 695. Petitioner is subject to post-order detention under 8 USC §1231. But because of the "serious constitutional problem" posed by indefinite detention, the Supreme Court limited a noncitizen's detention to "a period reasonably necessary to bring about that noncitizen's removal from the United States." *Id.* at 689.

1231(a)(2) authorizes a 90-day period of mandatory post-final-removal-order detention, during which ICE is supposed to effectuate removal. This 90-day period is known as the "removal period" and generally starts once a final order of removal has been entered. *See* § 1231(a)(1)(B). Those who are not removed within the 90-day removal period should be released under conditions of supervision, such as periodic reporting and other reasonable restrictions. *See* § 1231(a)(3). The government, however, may continue to detain certain noncitizens beyond the 90-day removal period if there is a special justification for continued detention stemming from, *inter alia*, criminal convictions, or security concerns. *See* § 1231(a)(6). No assertion of special dangerousness or risk to public safety can credibly be made here.

The Supreme Court in *Zadvydas* rejected the government's argument that it can detain noncitizens with final orders of removal indefinitely. *Id.* at 695. The Supreme Court held conversely that the statute permitting post-removal order detention, 8 U.S.C. § 1231(a), is intended to facilitate the actual removal of the noncitizen from the United States and thus cannot be read to permit indefinite detention where there is no significant likelihood that the noncitizen will be removed in the reasonably foreseeable future, as is the case for Petitioner. If a detained person acts to prevent his removal pursuant to 8 USC §1231(a)(1)(c), his removal period is tolled, and he is prevented from asserting that his removal is not foreseeable. *See* 8 USC §1231(a)(1)(C) ("(t)he removal period shall be extended beyond a period of 90 days and

the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.)

But as is well established in the pre-order detention context, seeking relief from removal does not toll the removal period nor should it otherwise prejudice habeas petitioners. *See Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) ("[A]ppeals and petitions for relief are to be expected as a natural part of the process. An alien who would not normally be subject to indefinite detention cannot be so detained merely because he seeks to explore avenues of relief that the law makes available to him."). To conclude that the pursuit of litigation or appeals renders the corresponding increase in time of detention reasonable, would "effectively punish [a habeas petitioner] for pursuing applicable legal remedies." *See Oyedeji v. Ashcroft* 332 F. Supp. 2d 747, 753 (M.D.Pa. 2004). Nor has the government here claimed that pursuit of withholding-only proceedings has such an effect.

Similarly, in the post-order detention context, pursuit of legal relief from removal does not toll the removal period, nor should it otherwise prejudice the habeas petitioner. *See D'Alessandro v. Mukasey*, 628 F.Supp.2d 368 (W.D.N.Y 2009). The Supreme Court held in *Zadvydas* that § 1231(a)(6) does not authorize detention after six months when "there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. What counts as "reasonably foreseeable" narrows as the length of detention increases. *Id.* at 701 ("And for detention to remain reasonable, as the period of prior post removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink."); *see Adu v. Bickham*, Case No. 7:18-CV-103, 2018 WL 6495068 (M.D. Ga Dec. 10, 2018), *report &*

recommendation adopted (determining that for a petitioner who has been detained for five years, one month was to be considered the "reasonably foreseeable future."). In a habeas case before the Middle District of Georgia, the court declined to penalize a habeas petitioner for utilizing legal remedies available to him, rejecting the government's argument that "delays caused by administrative proceedings—and judicial review of them—should be counted against Petitioner." *Adu v. Bickham*, Case No. 7:18-CV-103, 2018 WL 6495068, at *3 (M.D. Ga Dec. 10, 2018), *report & recommendation adopted*, 2018 WL 6495068, at *3. Here, Petitioner's post-order detention has lasted for twenty months, far exceeding the baseline six months described in *Zadvydas*. His removal is far from likely in the reasonably foreseeable future, due to: (1) the protracted and indefinite duration of his withholding-only proceedings, and (2) the potential for an outcome in which Petitioner cannot be removed. As Petitioner's experience shows, withholding-only proceedings can sometimes take years to wind through immigration court, especially in complex cases, and, of course, noncitizens seeking relief from a removal order cannot be removed while pursuing the humanitarian protection they seek.

Additional appeals could extend the resolution of the case years further. For this reason, an ultimate determination of relief, let alone actual removal, is far from being "significantly likely" in a "reasonably foreseeable" timeframe. *See Adu*, 2019 WL 6495068, at *4 (granting habeas relief where "Respondents cannot point to a clear endpoint for his detention.") The Western District of New York held that the resolution of a pending appeal of a denied motion to reopen was too remote and granted relief under *Zadvydas*. *D'Alessandro. v. Mukasey*, 628 F. Supp. 2d 368, 405 (W.D.N.Y 2009).

The same logic would apply here. In *Zadvydas*, the Court made clear that the presumptively reasonable period of detention under § 1231(a)(6) is six months. 533 U.S. at 701.

The longer detention continues, the less it bears a "reasonable relation" to any valid government purpose. *Id.* at 690. Petitioner's good-faith litigation of his relief does not bear on whether his removal is significantly likely in the reasonably foreseeable future. The Eleventh Circuit has stated decisively that good faith litigation should not result in the waiver of due process rights. *See Sopo v. U.S. Attorney General*, 825 F.3d 1199 (11th Cir. 2016) (analyzing prolonged pre-order detention and clarifying, "[w]e are not saying that [noncitizens] should be punished for pursuing avenues of relief and appeals."); *see also Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) ("A[noncitizen] who would not normally be subject to indefinite detention cannot be so detained merely because he seeks to explore avenues of relief that the law makes available to him."); *Oyedeji v. Ashcroft* 332 F. Supp. 2d 747, 753 (M.D. Pa. 2004) (observing that prolonged detention on the sole basis of good-faith litigation of appeals would "effectively punish [a habeas petitioner] for pursuing applicable legal remedies."). Petitioner requests on this basis that he be awarded a writ of habeas corpus finding that his removal is not reasonably foreseeable and directing Respondents to release him under reasonable conditions of supervision or award him a bond hearing as a matter of due process.

Respectfully submitted, Dated: January 29, 2026

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