

UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ALISHER NORBOEV,

Petitioner,

-against-

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); MARCOS CHARLES, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; ALEJANDRO N. MAYORKAS, Secretary, U.S. Department of Homeland Security; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; and PAM BONDI, in her official capacity as Attorney General of the United States, the WARDEN of CIMARRON CORRECTIONAL FACILITY, in their official capacity as custodian of petitioner, THE WARDEN OF THE FACILITY WHERE PETITIONER IS CURRENTLY DETAINED, in his or her official capacity as custodian of Petitioner

Case No.: CIV-26-00107-SLP

Respondents.

**PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner respectfully submits this Reply in further support of the Petition for a Writ of Habeas Corpus ("Petition") and in Reply to Respondents' opposition. In essence, Respondents in

their opposition argue that the Petition should be dismissed because Petitioner's post-final-order immigration detention is expressly authorized by 8 U.S.C. § 1231(a) and complies with due process. They contend the Petition improperly "repackages" generalized due-process and bond-hearing demands that exceed the narrow scope of habeas relief. Additionally, Respondents contend that the Petition is premature under *Zadvydas v. Davis* because Petitioner filed it well before the 6 month presumptively reasonable detention period had elapsed, and therefore cannot meet his burden to show that removal is not reasonably foreseeable. Finally, Respondents argue that the Court lacks jurisdiction over challenges to Respondents' detention and enforcement decisions.

For the reasons that follow, the Court should grant the relief requested by the Petitioner in his Petition.

A. Petitioner does not fall under "post-final order detention category".

Initially, Respondents argue that Petitioner is subject to mandatory post-final-order detention under 8 U.S.C. § 1231. As a threshold matter, post-final-order detention under 8 U.S.C. § 1231 refers to DHS's authority to detain a noncitizen after a removal order becomes administratively final but before removal is executed. However, in the case at bar no removal order was issued as of the date of the Petition/this Reply, and, in fact, Petitioner's upcoming master hearing is scheduled for February 6, 2026 (attached hereto as **Exhibit A** is a copy/screenshot from the ECAS portal, demonstrating that Petitioner's master hearing is scheduled for February 6, 2026). It goes without saying that a removal order can only become final after an Immigration Judge issues an order of removal and either the time to appeal expires or the BIA affirms it. Before the master hearing, the Immigration Court has not even reached the stage

where removability is adjudicated, let alone ordered (see *Arias Chupina v. Holder*, 570 F.3d 99, where the court held that an order of removal is final upon either the affirmance by the BIA of the immigration judge's order or the expiration of the time to appeal the immigration judge's order to the BIA; also see *Moreira v. Mukasey*, 509 F.3d 709 where the court affirmed that an order of removal becomes final when the BIA affirms the immigration judge's finding of removability or when the time for appealing the immigration judge's decision has expired). Importantly, 8 USCS § 1101 states, in pertinent part, that a removal order becomes final upon the earlier of a determination by the BIA affirming the order or the expiration of the period in which the alien is permitted to seek review of the order by the BIA.

Accordingly, because no Immigration Judge has issued a removal order in Petitioner's case, and because Petitioner remains in ongoing removal proceedings with a master calendar hearing scheduled for February 6, 2026, as was stated above, there is no administratively final order of removal as a matter of law. DHS/Respondents therefore lack any authority to detain Petitioner under 8 U.S.C. § 1231, and Respondents' attempt to characterize his custody as post-final-order detention is meritless. Instead, as was set forth in the Petition, Petitioner's January 2026 unjustified and unlawful re-detention falls under the pre-final-order detention of 8 U.S.C. § 1226, which does not permit arbitrary or unexplained re-apprehension of a noncitizen previously released and in full compliance with immigration supervision. Because Petitioner was re-detained without an individualized custody determination/bond hearing, without notice, and without access to a neutral adjudicator, his continued confinement violates both the INA and the Fifth Amendment's Due Process Clause, and cannot be sustained under the post-final-order detention regime invoked by Respondents.

Petitioner in his Petition makes sufficient allegations to establish that Petitioner's re-detention was unlawful and unconstitutional, as it occurred in the absence of a final order of removal, without statutory authority under 8 U.S.C. § 1231, and without the individualized procedural safeguards required under 8 U.S.C. § 1226 and the Fifth Amendment. The Petition alleges that ICE re-apprehended Petitioner nearly three years after his initial release, despite his full compliance with all immigration requirements, lack of criminal history, and absence of any flight risk or danger to the community, and detained him without notice, explanation, or a prompt custody determination (see e.g. Petition ¶¶ 11, 23-25) . It is respectfully submitted that there is nothing "general" about these allegations, as they provide sufficient detail and specificity to warrant the relief requested by the Petitioner, either immediate release from detention or, in the alternative, a bond hearing, and Respondents did not rebut or meaningful address these allegations. For that reason, the Petition should be granted, as Respondents' attempt to justify detention under § 1231 is legally and factually baseless, and Petitioner is entitled to immediate relief.

B. The Petition Is Not Premature, and the Zadvydas Six-Month Framework Does Not Apply to Pre-Final-Order Detention Under § 1226.

Next, Respondents argue that "The Petition Is Premature Under Zadvydas Because Petitioner Has Not Been Detained for Six Months". However, Petitioner in his Petition does not even invoke the six-month presumptively reasonable detention period established in that case. *Zadvydas* addresses the constitutional limits on post-removal-order detention under § 1231 and establishes that such detention becomes presumptively unreasonable after six months when removal is not reasonably foreseeable. As explained above, Petitioner is not subject to post-final-

order detention under § 1231 because no removal order has been issued in his case. Petitioner remains in pre-final-order detention under 1226, with a master calendar hearing scheduled for February 6, 2026.

C. This Court Has Jurisdiction Under 28 U.S.C. § 2241.

Finally, Respondents argue that this Court lacks jurisdiction to hear the petitioner's challenge to Respondents' detention or re-detention because 8 U.S.C. § 1252 purportedly bars district courts from reviewing decisions to execute removal orders. However, this issue has been resolved by this Court on numerous occasions in favor of habeas corpus petitioners. For example, in Vasquez v. Grant, No. CIV-25-1377-D, 2026 U.S. Dist. LEXIS 14661, at *8 (W.D. Okla. Jan. 27, 2026), the Court rejected respondents' argument that 8 U.S.C. §1252(g) deprived it of jurisdiction. Section 1252(g) limits judicial review only for claims challenging the Attorney General's decisions to commence proceedings, adjudicate cases, or execute removal orders. In *Vasquez* the Court reasoned that because petitioner did not challenge any of these actions but instead contested the legality of his detention under §§1225(b)(2)(A) and 1226(a), the court held that §1252(g) does not bar consideration of the petition. The court relied on, *inter alia*, *Jennings v. Rodriguez* and several recent district court decisions, emphasizing that §1252(g) must be read narrowly to cover only the three specific actions it mentions. As such, because Petitioner is challenging the legality of his detention rather than the Attorney General's decisions to commence, adjudicate, or execute removal proceedings, §1252(g) does not deprive the court of jurisdiction, and the district court is fully authorized to consider the petition.

In yet another matter, Cruz-Hernandez v. Noem, No. CIV-25-1378-D, 2026 U.S. Dist. LEXIS 107, at *7-8 (W.D. Okla. Jan. 2, 2026), the Court similarly held that because petitioner

challenged the legal question of whether he is subject to mandatory detention under § 1225(b)(2) (A) or detention under § 1226(a), and did not challenge the decision to commence proceedings, adjudicate cases, or execute removal orders, § 1252(g) did not jurisdictionally bar consideration of the petition.

In the case at bar, the circumstances are substantively identical to those in *Vasquez v. Grant*, *Cruz-Hernandez v. Noem*, and *Zhidong Li v. Grant*. Like the petitioners in those matters, Petitioner does not challenge the Attorney General's decision to commence removal proceedings, adjudicate his case, or execute a removal order. Rather, Petitioner challenges the legality of his detention itself, specifically, whether Respondents had statutory authority under § 1226 to re-detain him nearly three years after his initial release, without notice, without an individualized custody determination, and without any demonstrated basis for concluding that he poses a flight risk or danger to the community. Just as in *Vasquez*, *Cruz-Hernandez*, and *Zhidong Li*, Petitioner's argues that his detention is governed by § 1226(a), which requires individualized process and a bond hearing. This question does not implicate any of the three grounds protected by § 1252(g), namely the decision to commence proceedings, adjudicate cases, or execute removal orders. As this Court has consistently held in the aforementioned cases, § 1252(g) does not bar habeas review of such claims. As such, this Court is fully authorized under 28 U.S.C. § 2241, the Suspension Clause, and 28 U.S.C. § 1331 to adjudicate Petitioner's challenge to the legality of his detention, and the Petition should be granted.

CONCLUSION

For the foregoing reasons, the Court should grant the relief requested by Petitioner in his Petition.

Dated: February 3, 2026
Port Washington, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diana Rubin", is written over a horizontal line.

Diana Rubin, Esq.
NY Bar Reg. No. 520-2627
Attorney for Petitioner
ALISHER NORBOEV
3 Main St.,
Port Washington, NY 11050
Tel (212) 603-9334
Fax (516) 272-4171