

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ABDIKARIM ADAN OMAR,	)	
	)	
Petitioner,	)	C/A No.
	)	3:26-cv-267
v.	)	
MARY DE ANDA-YBARRA, <i>in her official capacity</i> as	)	
Field Office Director of Enforcement and Removal	)	
Operations, El Paso Field Office, Immigration and	)	PETITIONER'S
Customs Enforcement; Warden of ERO El Paso Camp	)	REPLY
East Montana;	)	
	)	
TODD M. LYONS, <i>in his official capacity</i> as Acting	)	
Director, Immigration and Customs Enforcement, U.S.	)	
Department of Homeland Security;	)	
	)	Agency #
KRISTI NOEM, <i>in her official capacity</i> as Secretary,	)	
U.S. Department of Homeland Security;	)	076 418 976
	)	
and	)	
	)	
PAMELA JO BONDI, <i>in her official capacity</i> as	)	
Attorney General of the United States;	)	
	)	
Respondents.	)	
_____	)	

Introduction

Respondents claim that Petitioner's detention is presumptively reasonable simply because his total detention time has amounted to less than six months. *See* ECF Doc. 4. However, Petitioner's six month presumptively reasonable detention period ended September 7, 2006. Respondents revoked Petitioner's order of

supervision and detained him years after his final order of removal without warning. Respondents neglect to argue any significant likelihood of removal in the reasonably foreseeable future. They give no factual explanation that constitutes “changed circumstances” that permit them to revoke Petitioner’s release and re-detain him. Petitioner’s detention is unlawful, and the Court must grant this Petition.

REPLY ARGUMENT

I. RESPONDENTS VIOLATED THEIR OWN REGULATIONS IN REVOKING PETITIONER’S ORDER OF SUPERVISION.

Respondents’ ability to revoke the Order of Supervision is governed by specific regulations, and government agencies are required to follow their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Respondents have not done so here, and the lack of evidence provided by Respondents makes that abundantly clear.

Respondents do not assert that Petitioner’s re-detention was prompted by violations of the conditions of his supervised release. Respondents only claim Petitioner has not met the detention requirements of *Zadvydas v. Davis*, 533 U.S. 678 (2011). Respondents provide no basis for why Petitioner was detained at the time of his re-detention. *See generally* ECF Doc. 4.

a) Respondents have failed to meet their burden to establish that “changed circumstances” justified the revocation of release.

ICE may re-detain a noncitizen released on an Order of Supervision “in order to effect removal in the reasonably foreseeable future or where the alien refuses to comply with the conditions of release.” *See* 8 C.F.R. § 241.13(h)(4). The regulation permitting re-detention in order to effect removal in the reasonably foreseeable future states that ICE may “return the alien to custody if, on account of **changed circumstances**, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2) (emphasis added). “Petitioner may **only** be re-detained if he violates a condition of release, or ‘changed circumstances’ demonstrate a ‘significantly likelihood that [he] may be removed in the reasonably foreseeable future.’” *Ashqar v. LaRose*, 2019 WL 1793000, at *11 (N.D. Ohio Mar. 26, 2019) (emphasis added).

To revoke a noncitizen’s release under 8 C.F.R. § 241.13, ICE must “determine[]” that “on account of changed circumstances,” there “is a significant likelihood that the [noncitizen] will be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The agency must consider factors that include, but are not limited to,

the history of the alien’s efforts to comply with the order of removal, the history of the Service’s efforts to remove aliens to the country in question or to third countries, including the ongoing nature of the Service’s efforts to remove this alien and the alien’s assistance with those efforts, the reasonably foreseeable results of those efforts, and the

views of the Department of State regarding the prospects for removal of aliens to the country or countries in question.

8 C.F.R. § 241.13(f).

“[T]he regulations at issue in this case place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future.” *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (“it is the Service's burden to show a significant likelihood that the alien may be removed”). These circumstances must have changed **before** the Service re-detain. *See* 8 C.F.R. § 241.13(i)(3). Respondents have not met their burden here.

If ICE elects to revoke a noncitizen's release under 8 C.F.R. § 241.13(i)(2), the noncitizen must “be notified of the reasons for revocation of his or her release,” and ICE must “conduct an initial informal interview **promptly** after [the noncitizen's] return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3) (emphasis added). The determination as to whether a non-citizen like Petitioner can be re-detained must be based on “(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.” *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (quoting 8 C.F.R. § 241.13(i)(2)). Respondents

served Petitioner a notice of his revocation eleven days after his redetention. See ECF Doc. 4, at 3. Respondents have provided no evidence that an interview has occurred. *See generally id.* Additionally, Respondents have not provided the notice revoking Petitioner's order of supervision.

As Respondents have provided no evidence detailing the reasons for this revocation, we are left to speculate on an empty record. All purported violations of occurred nearly five years or more prior to his re-detention. *See* ECF Doc. 4, at 3; Respondents' Exh. A. While Respondents' claimed to have called and sent letters to Petitioner regarding his check-ins, they provide no evidence that these were the correct numbers or addresses to reach Petitioner. There is no evidence of certified mail of these letters; they did not go to Petitioner's home to verify it was the correct address. It is not clear given this record that Petitioner was even aware he needed to report.

Furthermore, Respondents have not provided the notice they served to Petitioner on January 21, 2026, eleven days after his re-detention. *See generally* ECF Doc. 4. On February 18, 2026- thirty-nine days after Petitioner's re-detention, Respondents' claim they offered Mexico as "the option of removal." *See* ECF Doc. 4, at 3; Respondents' Exh. A, ¶ 24. However, they provide no evidence that Mexico would be willing to accept Petitioner. Respondents' state they are working with the Deportation Officer for Somalia "to explore further removal options." *See* ECF Doc.

4, at 3; Respondents' Exh. A, at ¶ 28. This collaboration is not sufficient to show changed circumstances. *See Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *9 (S.D. Tex. Oct. 16, 2025) (citing *Roble v Bondi*, 2025 WL 2443453 at *4) (finding Government didn't meet its burden of showing changed circumstances by "bare fact that ICE officials ... requested third-country removal assistance from ICE headquarters").

This mere averment of Counsel does not provide Petitioner or the Court with notice "as to *what* changed circumstances exist such that [his] removal [was] now significantly likely in the reasonably foreseeable future" *at the time they detained him*. *See Roble*, 2025 WL 2443453, at *3. There is a difference "between the 'reasons for revocation' mentioned in 8 C.F.R. § 241.13(i)(3) and the *categories* of revocation listed in 8 C.F.R. § 241.13(i)(1) and (2)." *Sarail A. v. Bondi*, No. 25-CV-2144 (ECT/JFD), 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). There is no tolerance for manufacturing reasons after disregarding any regulatory responsibility.

Even if Respondents are attempting to perfect removal to a third country, Respondents must provide Petitioner with sufficient notice of the new designation and the opportunity to assert a claim for protection consistent with 8 U.S.C. § 1231(b)(3). "And even if ICE were to identify a country that would accept Petitioner, 'any efforts to remove [him] to a third country would likely be delayed

by proceedings contesting his removal to the third country finally identified.”
Aguilar v. Noem, No. 25-CV-03463-NYW, 2025 WL 3514282, at *4 (D. Colo. Dec. 8, 2025) (quoting *Villanueva v. Tate*, 2025 WL at *10). “When a petitioner ‘likely will have the opportunity to seek further relief from the Immigration Court, and then potentially file appeals from any adverse rulings,’ the circumstances ‘further demonstrate[] that removal is not likely in the reasonably foreseeable future.’”
Shengelia v. Ortega, No. 5:25-CV-1545-JKP, 2025 WL 3654368, at *4 (W.D. Tex. Dec. 16, 2025) (quoting *Zavvar*, 2025 WL 2592543).

Respondents’ regulatory violations are clear, and Petitioner’s detention is unlawful. This Court should grant the Petition and order Petitioner’s immediate release.

b) Respondents failed to follow regulatory revocation procedures in revoking Petitioner’s release.

Beyond the utter lack of factual explanation of the alleged “changed circumstances,” Respondents violated the regulations in numerous other ways.

Respondents did not provide Petitioner with notice “[u]pon revocation” for the reasons of revocation, 8 C.F.R. § 241.13(i)(3) (emphasis added), as they admit they served a revocation letter to Respondent on January 21, 2026. *See* ECF Doc. 4, at 3.

Respondents also failed to promptly provide Petitioner an informal interview as required by 8 C.F.R. § 241.13(i)(3). This delay violates the regulatory requirement for a “prompt” interview. *See* 8 C.F.R. § 241.13(i)(3).

Respondents failed to provide Petitioner with a meaningful opportunity to respond to the reasons for revocation stated in the notice, in violation of 8 C.F.R. § 241.13(i)(3). Petitioner could not possibly respond when given nothing to respond to.

II. RESPONDENTS ARE VIOLATING PETITIONER’S RIGHT TO DUE PROCESS.

“[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.” *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 157 (W.D.N.Y. 2025). Respondents violated their own regulations. *See supra* § II. Respondents attempt to place the burden on Petitioner in contravention with regulations and caselaw. *See id.* Respondents were provided the opportunity to show why there is a significant likelihood of removal in the reasonably foreseeable future, as the law requires them to, and yet Respondents have provided no evidence or arguments on the matter. Respondents’ actions violate Petitioner’s right to due process, and the Court should grant this Petition.

III. PETITIONER'S CONTINUED DETENTION IS UNREASONABLE UNDER *ZADVYDAS*.

Petitioner's continued detention is unreasonable under *Zadvydas*. Petitioner already served the 90-day removal period in custody in 2006, *see* ECF Doc. 4, at 3, and *Zadvydas* applies to the circumstances of re-detention. *See, e.g., Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18 (S.D. Tex. Dec. 23, 2025); *Momennia v. Bondi*, No. 5:25-cv-01067-J, Doc. No. 18, at 18 n8 (W.D. Okla. Oct. 15, 2025); *Qui v. Carter*, 2025 WL 2770502, at *4 (D. Kan. Sept. 26, 2025) (explaining, in re-detention case, that "petitioner's release is warranted under the Supreme Court's *Zadvydas* framework").

a) The removal period does not reset upon re-detention.

The removal period does not reset simply because a noncitizen is re-detained. "[T]here is no language in 8 U.S.C. § 1231 or in *Zadvydas* to support the contention that the presumption of reasonable detention resets at the time a noncitizen is re-detained after being released on an order of supervision." *Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at 13 (S.D. Tex. Dec. 23, 2025) (citing numerous cases).

The removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). Therefore, once the 90-day removal period has run, the only thing that would reset it to the beginning is a new administratively final removal order, a final order from a reviewing Court of Appeals that had previously entered a stay of removal, or a noncitizen's release from criminal detention or confinement. *Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at 12 (S.D. Tex. Dec. 23, 2025) (first citing 8 U.S.C. § 1231(a)(1)(B); and then citing *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019), *R&R adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019) (citing *Bailey v. Lynch*, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016)) (“The removal period does not restart simply because an alien who has previously been released is taken back into custody.”)).

It is not disputed that Petitioner's order of removal became administratively final on September 7, 2006, *see* ECF Doc. 4, at 3, and none of the other subsections of the statute apply here. Therefore, the 90-day removal period has run.

b) The 180-day presumptively reasonable period under Zadvydas has run.

Continued detention beyond the 90-day removal period is limited to a “period reasonably necessary to bring about that alien's removal from the United States.” *Zadvydas*, 533 U.S. at 689. “[F]or the sake of uniform administration in the federal courts,” the Court in *Zadvydas* recognized that six months of detention is “presumptively reasonable.” *Id.* at 701. “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.*

The *Zadvydas* 180-day period runs from the date of the final order and does not reset or require time-in-custody. *See Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at 13 (S.D. Tex. Dec. 23, 2025) (“Based on a plain reading of 8 U.S.C. § 1231(a)(1)(A) and the Supreme Court’s reasoning in *Zadvydas*, Mrs. Zhu’s six-month period of presumptively reasonable detention expired in April of 2009, six months after her removal order became administratively final. Therefore, Mrs. Zhu’s current detention is not presumed to be reasonable.”). Numerous cases,¹ as well as common sense, reject Respondents’ assertion that the 180-day *Zadvydas* clock should automatically reset every time a noncitizen is released from custody on an Order of Supervision. If Respondents’ interpretation wins out, Respondents should simply release noncitizens at 179 days of custody for a 24-hour period before re-detaining the noncitizen. This sort of gamesmanship would be rewarded and prevent

¹ *See, e.g., Zadyvdas*, 533 U.S. at 701; *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) (“ICE’s decision to re-detain a noncitizen . . . who has been granted supervised release is governed by ICE’s own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.”); *Va V. v. Bondi*, No. 25-CV2836 (LMP/JFD), slip op. at *6-12 (D, Minn. Aug. 11, 2025) (holding that until ICE proved it had a travel document allowing for immediate deportation, it failed to demonstrate changed circumstances justifying redetention of an individual under 8 C.F.R. § 241.13(i)).

Zadvydas claims from ever arising. It is unlikely the Supreme Court intended such a result.

The presumptively constitutional period of detention here has long passed. Petitioner's final order of removal was entered on September 7, 2006, and 180 days from that date was March 6, 2007. Petitioner was released on an order of supervision after the required 90 days on January 25, 2007. *See* ECF Doc. 4, at 3. In fact, Petitioner was released 142 days after his September 7, 2006, removal order. Petitioner then lived under that order of supervision for nearly twenty years before being re-detained on January 10, 2026. Petitioner's most recent detention has now passed 47 days, totaling 189 days in detention. Respondents "could have been making the required travel arrangements or securing approval from other countries throughout that time, and the presumption of reasonable detention 'differ[s] in circumstances where, before the period of detention began, the Government had a period of time . . . to make the arrangements for removal.'" *Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at 13 (S.D. Tex. Dec. 23, 2025) (citing *Zavvar v. Scott*, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025)). The 180-day clock passed long ago, and Petitioner should be released.

c) Alternatively, the presumption of reasonable detention is rebuttable.

Even if the *Zadvydas* six-month presumptively reasonable period only counts days spent behind bars during the current period of detention, that presumption of

reasonableness *is still rebuttable* prior to that period's expiration. *See Zhu v. Noem*, No. 5:25-cv-00239, Doc. No. 18, at 13 (S.D. Tex. Dec. 23, 2025).²

Petitioner's removal is not reasonably foreseeable. Respondents have already decided this numerous times over the last twenty years and have brought forth no evidence to support their sudden change of course. Respondents have repeatedly recognized over the last twenty years that Petitioner removal was either not possible

² *See also Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008) ("Nothing about [the *Zadvydas*] scheme supports the conclusion drawn by many courts that the presumptive legality of detention within the first six months is irrebuttable."); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 395 (D.N.J. 2025) ("Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from challenging the reasonableness of his detention before such time."); *Medina v. Noem*, 794 F. Supp. 3d 365, 375 (D. Md. 2025) ("The reasoning in *Zadvydas* suggests that before the six-month period expires, the burdens of production and persuasion remain with a person who has been detained, to establish that removal is not reasonably foreseeable."); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) ("Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional."); *Sagastizado v. Noem*, 2025 WL 2957002, at *13 n.3 (S.D. Tex. Oct. 2, 2025) (rejecting this argument on the ground that there is no "controlling precedent or legal support to indicate that six months must have elapsed at the time of filing" and concluding that the six-month period is a rebuttable not preclusive presumption); *Villanueva v. Tate*, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025) ("nothing in *Zadvydas* precludes a challenge to detention before the presumptively constitutional time period has elapsed"); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D. N.J. 2025) (recognizing that the *Zadvydas* presumption is rebuttable and that "[t]o hold otherwise would condone detention in cases where removal is not reasonably foreseeable or even functionally impossible, so long as it did not exceed six months." (citations omitted)).

or otherwise impracticable, and, as set forth above, Respondents have offered no evidence to show a change of circumstances. Petitioner's removal is not reasonably foreseeable, and he must be released.

CONCLUSION

The Court must conclude that Petitioner's detention is unlawful and that his release is appropriate under 28 U.S.C. § 2241(c)(3). The 180-day presumptively reasonable period had run nearly two decades ago. Furthermore, Petitioner has been detained a total of 189 days since the date of his removal order. Petitioner respectfully requests that the Court grant his petition and order his immediate release.

Respectfully submitted,

/s/ David L. Wilson

February 26, 2026

David L. Wilson

Minnesota Attorney Bar ID #0280239

Wilson Law Group

3019 Minnehaha Avenue

Minneapolis, Minnesota 55406

Tel: (612) 436-7100

Email: dwilson@wilsonlg.com

Admitted to the Western District of Texas

Attorney for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 26, 2026, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ David L. Wilson
David L. Wilson
Attorney for Petitioner