

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LUIS MIGUEL BUZZI-RODRIGUEZ,

Case No. 2:26-cv-638-SPC-NPM

Petitioner,

v.

TODD M. LYONS, et al.,

Respondents.

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PETITIONER'S REPLY TO RESPONDENTS' RESPONSE

Petitioner, LUIS MIGUEL BUZZI-RODRIGUEZ, by and through undersigned counsel, respectfully submits this Reply to Respondents' Response and states as follows:

Respondents' opposition is premised on conjecture rather than competent evidence and fails to address the dispositive issue before this Court: whether there exists a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. The record establishes that no such likelihood exists.

Petitioner does not possess a passport or any valid travel document. Respondents rely on a Notice of Removal purporting to designate Mexico as the country of removal, yet they provide no evidence that Mexico has agreed or is

likely to accept Petitioner. A unilateral notice of intent, without confirmation from a receiving country, is insufficient to satisfy the Government's burden. In practice, similarly situated individuals particularly those of advanced age and with significant medical conditions have been transported to the Texas-Mexico border only to be refused entry and returned to ICE custody. Respondents offer no individualized evidence demonstrating that Petitioner's removal will be effectuated under materially different circumstances.

Petitioner had already been detained for a substantial period of time. This delay demonstrates the absence of diligence in pursuing removal. Prior to the filing of the instant habeas petition, Petitioner had no communication with any deportation officer or ICE official regarding his removal, nor was there any indication that his case was under active review. These facts strongly suggest that, absent judicial intervention, Petitioner's detention would have continued without meaningful progress toward removal. Such circumstances further confirm that removal is not being pursued in a manner consistent with a reasonably foreseeable timeline.

Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), once a detainee provides good reason to believe that removal is not reasonably foreseeable, the burden shifts to the Government to demonstrate otherwise. Petitioner has satisfied this burden.

Respondents, however, have failed to present any concrete, non-speculative evidence establishing a realistic prospect of removal.

Respondents' reliance on the duration of Petitioner's current detention, viewed in isolation, is misplaced. This argument disregards the full procedural history of this case. Petitioner was previously detained following his 2016 removal order, and removal was not effectuated. Instead, he was released under an Order of Supervision, with which he fully complied for nearly a decade. The present detention therefore represents a second attempt by ICE to effectuate removal, and once again, removal has proven not feasible. The Constitution does not permit the Government to subject an individual to successive periods of detention where removal is not realistically attainable.

Petitioner's deteriorating medical condition further underscores the absence of any realistic prospect of removal. During his current detention, Petitioner has suffered from an active eye infection, a persistent cough since January, and a febrile illness lasting several days for which he was not evaluated by medical staff for approximately ten days. He also experienced chest and abdominal pain requiring overnight medical observation, resulting in a new diagnosis of gastroesophageal reflux disease or a possible gastric ulcer and the administration of daily medication. Additionally, Petitioner is experiencing depression and significant, rapid weight loss. These acute conditions are compounded by his

documented chronic medical issues, including serious cardiovascular, pulmonary, and metabolic conditions. In light of his age and declining health, removal particularly to a third country such as Mexico is not only unlikely but medically impracticable.

As of the date of this filing, Petitioner has been in ICE custody for approximately ninety days, thereby exceeding the statutory removal period set forth in 8 U.S.C. § 1231(a)(1). Upon the expiration of that period, the Government is required to assess whether continued detention is warranted or whether less restrictive alternatives may be implemented. The governing statutory and regulatory framework contemplates release under an Order of Supervision where removal cannot be effectuated. Here, Respondents have failed to demonstrate that continued detention is necessary or justified. There is no evidence that removal is likely in the reasonably foreseeable future, nor is there any evidence that less restrictive measures would be ineffective.

To the contrary, Petitioner's history establishes that release under supervision is both appropriate and effective. Petitioner previously complied with all conditions of his Order of Supervision for nearly ten years without incident. This demonstrated compliance establishes that Petitioner is neither a flight risk nor a danger to the community. Respondents identify no intervening facts that would justify a different conclusion. The revocation of supervision was undertaken solely

in an effort to effectuate removal, not in response to any violation or misconduct by Petitioner.

I. THIS COURT HAS JURISDICTION OVER PETITIONER'S HABEAS CLAIM

Respondents contend that this Court lacks jurisdiction pursuant to 8 U.S.C. §§ 1252(g) and 1252(b)(9). This argument is unavailing.

Petitioner does not challenge his underlying removal order, nor does he seek review of the Government's discretionary decision to execute that order. Rather, Petitioner challenges the legality and duration of his continued detention. Such claims fall squarely within the scope of habeas jurisdiction under 28 U.S.C. § 2241.

The Supreme Court has made clear that federal courts retain jurisdiction to review challenges to post-removal-order detention. *Zadvydas*, 533 U.S. at 687–88. The Eleventh Circuit has likewise recognized that jurisdiction-stripping provisions do not bar challenges to the lawfulness of detention itself, as distinct from challenges to removal proceedings.

Accordingly, this Court has jurisdiction to adjudicate Petitioner's claims.

II. CONTINUED DETENTION VIOLATES THE INA AND THE FIFTH AMENDMENT

Respondents' reliance on the six-month presumption referenced in *Zadvydas* is misplaced. That presumption is not a rigid or mandatory waiting period, but rather a guideline subject to case-specific analysis. Courts retain the authority to determine, based on the totality of the circumstances, whether removal is reasonably foreseeable.

Here, removal is not reasonably foreseeable. Petitioner lacks travel documents, there is no evidence that any country will accept him, prior removal efforts have failed, and his medical condition continues to deteriorate. Under these circumstances, continued detention no longer bears a reasonable relationship to its intended purpose effectuating removal and has instead become punitive in nature, in violation of the Due Process Clause of the Fifth Amendment.

Importantly, this is the second time Petitioner has been detained by ICE pursuant to the same final order of removal. During the initial period of post-removal detention, ICE was unable to effectuate removal and ultimately released Petitioner under an Order of Supervision, which he complied with for nearly ten years. The present detention reflects a renewed attempt to accomplish the same removal that previously could not be carried out.

When these periods of detention are considered in the aggregate, Petitioner has effectively been subjected to more than six months of post-removal-order detention without successful removal. While some courts have declined to

formally aggregate detention periods, others have recognized that the constitutional concerns underlying *Zadvydas* cannot be avoided through successive cycles of detention. See, e.g., *Ly v. Hansen*, 351 F.3d 263, 271–72 (6th Cir. 2003) (rejecting “indefinite detention” through procedural delay and emphasizing reasonableness of detention); *Sopo v. U.S. Attorney General*, 825 F.3d 1199, 1217 (11th Cir. 2016), vacated on other grounds, recognizing that prolonged detention must be evaluated for reasonableness under due process principles; see also *Zadvydas*, 533 U.S. at 690 (detention must remain reasonably related to its purpose).

The relevant inquiry is not confined to an artificially segmented timeline, but rather whether detention, in reality, has exceeded the period reasonably necessary to effectuate removal. Where, as here, the Government has already failed once to accomplish removal and presents no new evidence that removal is now likely, continued detention cannot be justified by simply restarting the clock.

To permit such a result would allow indefinite detention through repeated cycles of confinement, a result squarely foreclosed by *Zadvydas*. Accordingly, Petitioner’s continued detention particularly when viewed in light of his prior detention under the same removal order exceeds the constitutionally permissible period and violates both the Immigration and Nationality Act and the Fifth Amendment.

CONCLUSION

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

Respectfully submitted,

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