

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Fort Myers Division

CASE NO: 2:26-cv-671-JES-NPM

FIDEL BORGES SANCHEZ,
(A-)

Petitioner,

v.

WARDEN, *Florida Soft Side South Detention
Center*, et. al.,

Respondents.

_____))
**PETITIONER'S, FIDEL BORGES SANCHEZ, REPLY TO RESPONDENTS'
RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, FIDEL BORGES SANCHEZ, (hereinafter "BORGES SANCHEZ") hereby files his Reply to Respondents' Response to Petitioner's Writ of Habeas Corpus Petition, and in support thereof states as follows:

INTRODUCTION

Petitioner, BORGES SANCHEZ, respectfully requests this Court grant his Petition for Writ of Habeas Corpus. Respondents attempt to frame this case as a routine post-removal-period detention governed by *Zadvydas v. Davis*, 533 U.S. 678 (2001), and argue that the Petition is "premature." That framing is incorrect. This case is not about the mere passage of time. It is about the Government's inability to effectuate removal despite years of opportunity, a failed removal attempt, and the absence of any meaningful likelihood of removal in the reasonably foreseeable future. Further, Respondents' jurisdictional arguments improperly attempt to collapse

a pure detention challenge into a challenge to removal proceedings, contrary to controlling precedent. For the reasons set forth below, the Petition should be granted.

ARGUMENT

A. 8 U.S.C. § 1252(g) does not bar review of Petitioner's Habeas Corpus Petition.

Respondents' reliance on 8 U.S.C. § 1252(g) is misplaced because Petitioner does not challenge the Government's discretionary decision to commence removal proceedings. Rather, Petitioner challenges the legal authority and constitutionality of his continued detention without release or a proper bond hearing. 8 U.S.C. § 1252(g) does not bar review of independent detention claims. Habeas petitions challenging the legality of immigration detention fall outside the scope of § 1252(g) because such petitions do not seek to halt or invalidate removal proceedings, but instead contest the conditions and statutory basis of custody. Petitioner is only asking this Court for an order requiring that his detention comply with the governing statutory framework and constitutional requirements. Accordingly, § 1252(g) does not deprive this Court of jurisdiction to consider Petitioner's claims.

B. 8 U.S.C. § 1252(b)(9) does not bar review of Petitioner's Habeas Corpus Petition.

Petitioner is bringing forth a distinct and independent challenge to the legality of his detention, specifically the Government's reliance on an improper statutory framework to detain him without access to a bond hearing. 8 U.S.C. § 1252(b)(9) applies to cases wherein a review of an order of removal is sought. It does not bar habeas jurisdiction over claims that are collateral to removal, such as unlawful detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 293–95 (2018) (holding that § 1252(b)(9) did not bar jurisdiction over detention challenges where petitioners were not seeking review of removal orders). To bar review of Petitioner's claims under § 1252(b)(9) would effectively make claims of prolonged detention unreviewable. *See Id.* at 293.

Accordingly, § 1252(b)(9) does not deprive this Court of jurisdiction to adjudicate Petitioner's claims.

C. Petitioner's Continued Detention is a Deliberate Disregard to his Serious Medical Needs and the Conditions of Confinement Require Immediate Release.

Petitioner's continued detention is unlawful and unconstitutional, and this Court should order his immediate release on his own recognizance. First, Petitioner's detention no longer serves any legitimate statutory purpose under 8 U.S.C. § 1231. The Government has failed to demonstrate that his removal is significantly likely in the reasonably foreseeable future. As set forth in the Petition, Petitioner remained in the United States for over six years following his removal order without being removed, complied with supervision, and was only recently re-detained. Moreover, the Government has already attempted and failed to remove him, and no evidence establishes that removal is now realistically achievable. Under *Zadvydas v. Davis*, once removal is not reasonably foreseeable, continued detention is no longer authorized by statute or the Constitution.

Second, Petitioner's severe and deteriorating medical condition independently renders his continued detention unconstitutional. As detailed in the Petition, Petitioner suffers from multiple serious conditions, including: Advanced diabetes with severe complications, loss of sensation and circulation issues, prior amputations due to diabetic complications, progressive vision loss, including loss of vision in one eye, persistent chest pain, dizziness, and shortness of breath, risk of permanent blindness without surgical intervention. These are not routine conditions, rather, they are progressive, degenerative, and life-threatening.

While detained, his condition has worsened, including missed insulin, delayed treatment, and risk of permanent blindness. More specifically, Petitioner was denied insulin for multiple days, causing dangerously elevated blood sugar levels, medical staff administered insulin without

proper monitoring, increasing risk of harm, he missed a scheduled eye surgery due to transfers between facilities, he has suffered progressive vision loss that may become permanent, he has experienced falls due to dizziness and visual impairment, and he has required hospital transport for acute symptoms. This is classic evidence of systemic medical mismanagement, not isolated error.

Critically, the issue is not simply whether ICE can attempt to improve care. The problem is structural. Petitioner has already been transferred multiple times, disrupting care, necessary procedures have already been delayed or denied, and his condition has worsened despite being in custody. Given these circumstances, release is not only appropriate, it is necessary. The Government has been repeatedly placed on notice of these conditions yet has failed to ensure adequate care. When the Government detains an individual and then fails to provide necessary medical treatment, it violates the Fifth Amendment's prohibition against deliberate indifference to serious medical needs.

The Government has confined a medically fragile individual, deprived him of consistent and adequate care, and allowed his condition to deteriorate to the point of irreversible harm. The Constitution does not permit civil detention under conditions that threaten life and limb. Where detention ceases to serve its purpose and instead becomes a vehicle for harm, this Court has both the authority and the obligation to intervene.

D. Petitioner's Continued Detention is Unlawful Under 8 U.S.C. § 1231 and the Fifth Amendment of the United States.

Petitioner's continued detention is unlawful under both the governing statute—8 U.S.C. § 1231—and the Due Process Clause of the Fifth Amendment. While the Government attempts to rely on the presumptive six-month period discussed in *Zadvydas v. Davis*, that reliance is misplaced where, as here, the record demonstrates that removal is not reasonably foreseeable and

detention no longer bears a reasonable relation to its purpose. Petitioner has met and exceeded his burden under *Zadvydas*. The record establishes that: ICE issued a notice of removal to Mexico; Petitioner was transported for removal; The removal effort failed, and Petitioner was returned to the United States. Courts consistently recognize that a failed removal attempt is strong evidence that removal is not reasonably foreseeable.

Furthermore, Petitioner is a Cuban national. As set forth in the Petition: Removals to Cuba are historically limited; Diplomatic constraints frequently delay repatriation; and Removal logistics are uncertain and inconsistent. These are not abstract concerns, they are well-recognized realities. The Government presents no evidence that repatriation to Cuba is currently available, Cuba will accept Petitioner, or removal can be effectuated within any foreseeable timeframe.

Finally, there are no adequate procedural safeguards in place to justify Petitioner's continued detention. He has been denied any meaningful opportunity to obtain a bond hearing or individualized review of his custody. Due process does not permit prolonged civil detention without requiring the Government to justify that detention through clear and convincing evidence before a neutral decisionmaker. Taken together, these facts present a compelling case for immediate release. Petitioner's detention is no longer tied to any legitimate governmental purpose, places him at serious medical risk, and violates both statutory and constitutional limits on civil detention. Accordingly, this Court should grant the Petition and order Petitioner's immediate release on his own recognizance, or, at a minimum, impose appropriate conditions of supervision.

CONCLUSION

For the foregoing reasons, Petitioner is entitled to relief because his continued detention without an individualized bond hearing or alternatively, immediate release, is not authorized by the governing statutory framework and violates due process. Accordingly, the Court should grant Petitioner's, FIDEL BORGES SANCHEZ, petition and grant any other relief deemed just and proper.

Dated: April 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2026, a true and correct copy of the foregoing was electronically filed with the Clerk of Court and served via the CM/ECF system on all counsel or parties of record.

By: /s/ Mariela E. Cano
Mariela E. Cano, Esq.