

MISAEL YOVANNI GARCIA AVALOS,
Petitioner,

WARDEN, Florida Soft South Side Detention Center,
Garret J. Ripa, ICE ERO MIAMI FIELD OFFICE,
Kristy Noem, SECRETARY,
U.S. DEPARTMENT OF HOMELAND SECURITY,
Pam Bondi, ATTORNEY GENERAL
OF THE UNITED STATES,
Respondents.

**PETITIONER'S REPLY
TO GOVERNMENT'S OPPOSITION
TO WRIT OF HABEAS CORPUS**

Respondents' opposition rests on two flawed premises: (1) that this Court lacks jurisdiction over Petitioner's detention challenge, and (2) that detention is categorically permissible for six months regardless of whether removal is realistically foreseeable. Both propositions are incorrect.

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

Respondents argue that this Court lacks jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9). That argument fails because Petitioner does not challenge his removal order or the Government's authority to remove him. Rather, he challenges the legality of his continued detention. The Supreme Court has repeatedly recognized that challenges to immigration detention remain cognizable in *habeas* petitions. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Section 1252(g) applies narrowly to discretionary decisions to "commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). It does not bar review of the legality of detention. Similarly, § 1252(b)(9) does not preclude claims that are independent of removal proceedings. Petitioner's claim does not seek review of his removal order but rather challenges the constitutionality and statutory basis of his detention. Such claims fall outside the jurisdiction-stripping provisions and remain reviewable under § 2241.

The Eleventh Circuit has made clear that jurisdiction-stripping provisions must be interpreted narrowly and do not eliminate *habeas* jurisdiction over detention claims that are independent of removal proceedings. See *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006) (holding that § 1252 does not preclude review of claims independent of removal proceedings). See also *GuoXing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013).

Petitioner does not challenge his removal order. He challenges his continued detention. That claim remains squarely within this Court's jurisdiction under 28 U.S.C. § 2241.

II. RESPONDENTS MISAPPLY ZADVYDAS AND IGNORE THE ABSENCE OF A REALISTIC PROSPECT OF REMOVAL

Respondents rely on *Zadvydas* to argue that detention is “presumptively reasonable” for six months. That reliance is misplaced. The six-month presumption articulated in *Zadvydas* is not a categorical authorization for detention in all cases. Rather, detention is permissible only for a period “reasonably necessary to bring about that alien’s removal.” *Zadvydas*, 533 U.S. at 689. The touchstone is whether removal is reasonably foreseeable.

Here, Respondents concede that Petitioner cannot be removed to Mexico, the country designated in his removal order, because he was granted withholding of removal. Instead, they assert that Petitioner is in a “third country removal posture” and that ICE is “seeking a travel document” from an unidentified country. This admission undercut Respondents’ position. There is no identified receiving country, no evidence of acceptance by any country, and no timeline for removal. Detention based on speculative future removal to an unspecified third country is not “reasonably necessary” to effectuate removal.

Courts have consistently recognized that detention cannot be justified where removal is not realistically foreseeable. See *Clark v. Martinez*, 543 U.S. 371 (2005). The Government cannot rely on the six-month presumption while simultaneously conceding that removal is uncertain and contingent on unknown future events.

III. RESPONDENTS' RELIANCE ON AKINWALE, SONG, AND GOZO IS MISPLACED

Respondents rely on *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894 (11th Cir. 2013), and *Gozo v. Napolitano*, 309 F. App'x 344 (11th Cir. 2009), to argue that Petitioner's challenge is premature. Those cases are materially distinguishable.

First, *Akinwale* involved a removable alien with a criminal conviction who was subject to removal to a clearly identified country—Nigeria—and who failed to present any evidence that removal was not reasonably foreseeable. The Eleventh Circuit emphasized that the petitioner had not “present[ed] any facts indicating that the INS is incapable of executing his removal... and that his detention will, therefore, be of an indefinite nature.” *Akinwale*, 287 F.3d at 1052. This case at hand presents the opposite circumstance. Here, Respondents concede that Petitioner cannot be removed to the country designated in his removal order due to a grant of withholding of removal. Instead, Respondents assert only that Petitioner is in a “third country removal posture” and that ICE is “seeking a travel document” from an unidentified country. Unlike in *Akinwale*, there is no identified destination, no acceptance by any country, and no evidence that removal is reasonably foreseeable.

Second, *Song* likewise involved a petitioner whose removal was not only foreseeable but was delayed by his own conduct. The court noted that the petitioner had conspired to sabotage his removal and was removable based on an aggravated felony conviction. *Song*, 516 F. App'x at 899. Under those circumstances, continued detention fell squarely within the statutory framework of 8 U.S.C. § 1231(a)(6). No such facts are present here. Petitioner has no criminal history, has complied with ICE supervision, and has not obstructed removal. His inability to be

removed to Mexico arises from a lawful grant of withholding of removal, not from any act of noncompliance. Respondents contend that Petitioner “failed to comply” with his removal. This assertion is unsupported and misleading. Petitioner was granted withholding of removal to Mexico. As a matter of law, he cannot be removed to that country. Any alleged “failure” to comply with removal to Mexico reflects legal impossibility, not willful noncompliance.

There is no evidence that Petitioner has obstructed removal or failed to cooperate with ICE. To the contrary, the record reflects that he has consistently complied with ICE supervision and has no criminal history. Detention under 8 U.S.C. § 1231(a)(1)(C) is therefore unwarranted.

Third, *Gozo* involved an alien removable on criminal grounds under 8 U.S.C. § 1227(a)(2), for whom detention beyond the removal period is expressly contemplated by statute. 309 F. App’x at 346. The court’s analysis in *Gozo* rests on statutory provisions applicable to criminal aliens and does not address the situation presented here, where removal to the designated country is legally barred and no alternative country has been identified.

In sum, each of the cases cited by Respondents involved circumstances in which removal was either clearly foreseeable or delayed by the petitioner’s own conduct. In contrast, this case involves detention premised on speculative third-country removal, with no identified destination and no evidence of imminent removal.

Under *Zadvydas v. Davis*, detention is permissible only for the period “reasonably necessary to bring about that alien’s removal.” 533 U.S. 678, 689 (2001). Where, as here, removal is not presently foreseeable, detention is not authorized, even if the six-month period has not yet elapsed.

Accordingly, Respondents' reliance on *Akinwale*, *Song*, and *Gozo* does not support dismissal of the Petition.

IV. RESPONDENTS' RELIANCE ON BARRIOS AND MESKINI IS MISPLACED

Respondents' reliance on *Barrios v. Ripa* No. 1:25-CV-22644, 2025 WL 2280485 (S.D. Fla. Aug. 8, 2025) and *Meskini v. Attorney General* No. 4:14-CV-42-CDL, 2018 WL 1321576 (M.D. Ga. Mar. 14, 2018) is inapposite. Those cases address a materially different issue: whether prior periods of detention may be aggregated to trigger the six-month presumption under *Zadvydas*. They do not stand for the proposition that detention is lawful whenever it falls within a newly commenced removal period, regardless of whether removal is reasonably foreseeable.

In *Barrios*, the court rejected the argument that prior detention could be aggregated with a subsequent detention period to create an automatic constitutional violation. Similarly, *Meskini* cautioned against treating *Zadvydas* as a "permanent 'Get Out of Jail Free Card'" based solely on past detention. Petitioner advances no such argument here. Petitioner does not rely on prior detention to satisfy the *Zadvydas* six-month presumption. Nor does he contend that past detention alone renders current detention unlawful. Instead, Petitioner's claim is grounded in the present reality that his detention is not reasonably related to effectuating removal. That distinction is dispositive.

Unlike in *Barrios* and *Meskini*, Respondents here concede that Petitioner cannot be removed to the country designated in his removal order and that removal depends on speculative third-country efforts. Respondents identify no receiving country, no acceptance by any country, and no timeline for removal. Under *Zadvydas*, the relevant inquiry is not whether detention is newly commenced, but whether removal is reasonably foreseeable: “Once removal is no longer reasonably foreseeable, continued detention is no longer authorized.” *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

That principle applies regardless of whether detention is the first or a subsequent period of custody. Indeed, Respondents’ position would allow the Government to reset the constitutional clock simply by re-detaining an individual—even where removal remains speculative. That result is inconsistent with *Zadvydas*, which prohibits detention untethered from a realistic prospect of removal. Because Petitioner challenges the current lack of a foreseeable removal pathway, rather than relying on prior detention, *Barrios* and *Meskini* do not apply.

V. DETENTION CANNOT BE JUSTIFIED BY RESETTING THE REMOVAL CLOCK

Respondents’ argument implicitly assumes that each new period of detention resets the constitutional analysis. It does not. The Supreme Court in *Zadvydas* tied detention authority to the purpose of removal, not to the passage of time in isolation. *Zadvydas*, 533 U.S. at 689. Where, as here, removal is not reasonably foreseeable due to the absence of an identified receiving country and the need for speculative third-country arrangements, detention cannot be justified merely because it has recently begun. To hold otherwise would permit indefinite detention through successive re-detentions, precisely the result *Zadvydas* forbids.

Accordingly, Respondents' reliance on *Barrios* and *Meskini* does not support denial of the Petition.

VI. DETENTION BASED ON SPECULATIVE THIRD-COUNTRY REMOVAL IS ARBITRARY AND UNLAWFUL

Respondents' reliance on potential third-country removal underscores the arbitrariness of Petitioner's detention. ICE acknowledges that it is "seeking a travel document to affect {Petitioner's} removal to a 3rd country." Yet Respondents identify no country willing to accept Petitioner, nor any concrete steps that would render removal imminent. Detention cannot be justified by hypothetical possibilities. The Due Process Clause requires that civil detention bear a reasonable relation to its purpose. *Zadvydas*, 533 U.S. at 690. Where removal is speculative, detention ceases to serve its intended purpose and becomes punitive.

VII. THIRD-COUNTRY REMOVAL REQUIRES PROCESS AND CANNOT SUPPORT DETENTION

Even assuming *arguendo* that third-country removal is theoretically possible, it is not immediate and requires legal and procedural safeguards. The Supreme Court in *Jama v. ICE*, 543 U.S. 335 (2005), addressed the authority to remove to third countries, but did not eliminate the requirement that detention remain tied to a realistic prospect of removal. Courts have also recognized that individuals must have an opportunity to challenge removal to a third country. *See Khouzam v. Att'y Gen.*, 549 F.3d 235, 253 (3d Cir. 2008).

Detention during an indefinite and uncertain third-country search process is not reasonably related to removal and therefore violates due process.

VIII. DETENTION VIOLATES THE DUE PROCESS CLAUSE

Civil detention must be reasonably related to its purpose and cannot be punitive. As the Supreme Court explained: “[T]he Due Process Clause... forbids arbitrary deprivations of liberty.” *Zadvydas*, 533 U.S. at 690. Here, detention serves no legitimate purpose: (1) Removal to Mexico is barred; (2) No third country has been identified; (3) No timeline for removal exists; (4) Petitioner poses no danger; (5) Petitioner is not a flight risk. Under these circumstances, detention is arbitrary and unconstitutional.

IX. CONCLUSION

Respondents’ position rests on the premise that detention is permissible for six months regardless of whether removal is realistically possible. That is not the law. *Zadvydas* requires that detention bear a reasonable relationship to removal. Where removal is speculative, as it is here, based on an undefined and uncertain third-country process, detention is not authorized. Nor do *Akinwale*, *Song*, or *Gozo* support Respondents’ position. Those cases involved identifiable removal pathways or delays caused by petitioners. This case involves neither. It involves detention untethered from any realistic prospect of removal. The Constitution does not permit such detention.

For these reasons, the Petition should be GRANTED and Petitioner should be immediately RELEASED.

Respectfully submitted,



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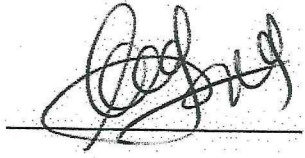
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that this reply was electronically served on Sean P. Keefe, Esquire, U.S. Assistant United States Attorney.

A handwritten signature in black ink, appearing to read 'Lourdes Guiribitey', written over a horizontal line.

Lourdes Guiribitey, Esquire

A handwritten date 'April 1, 2026' written in black ink over a horizontal line.

Date