UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSE ALBERTO AYALA ZALDIVAR,

Petitioner,

v. Case No. 2:26-cv-01562-SPC-KRH

MARKWAYNE MULLIN, et al.,

Respondents.
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PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, JOSE ALBERTO AYALA ZALDIVAR, by and through undersigned counsel, respectfully files this Reply to Respondents' Opposition to the Petition for Writ of Habeas Corpus and states as follows:

Respondents attempt to recast this matter as one involving willful obstruction of removal under 8 U.S.C. § 1231(a)(1)(C), thereby attempting to justify continued detention by asserting that Petitioner himself is solely responsible for the inability to effectuate removal. That characterization materially misstates both the facts and the law.

Petitioner's response to the attempted transfer to Mexico was not an act of bad-faith obstruction intended to frustrate lawful removal. Rather, it was a fear-based refusal arising from being transported for removal to a third country that is

not his country of nationality, where he has no citizenship, no lawful immigration status, no family support, no established ties, and no assurances regarding lawful entry, protection, or safety.

The Government's own position in similar cases since approximately February 2026 acknowledges that Mexico has generally not accepted non-Mexican third-country removals absent the individual's voluntary agreement to enter Mexico. Thus, the issue is not that Petitioner obstructed a completed and legally certain removal process, but rather that removal depended entirely upon Petitioner's voluntary consent to enter a third country.

Respondents' supplemental declaration is equally notable for what it omits. The declaration states that Petitioner was among a group of individuals who declined to disembark during an attempted transfer to Mexico, but it fails to explain the critical distinction between circumstances where Mexico has affirmatively accepted an individual for lawful admission and circumstances where ICE is merely attempting voluntary third-country transfer.

Upon information and belief, where Mexico has formally agreed to accept a non-Mexican national, ICE coordinates established procedures with Mexican authorities so that lawful admission may occur through recognized channels, including processing necessary to permit lawful entry. Here, however, Respondents do not assert that Mexico formally accepted Petitioner, do not state

that Mexican authorities authorized his lawful admission, do not state that lawful travel documentation or entry authorization existed, and do not establish that Petitioner had any lawful right to enter Mexico.

That omission is significant. The reasonable inference is that Mexico had not affirmatively agreed to accept Petitioner through established diplomatic channels and that ICE instead sought Petitioner's voluntary participation in what amounted to a self-executed third-country departure. A fear-based refusal under those circumstances cannot fairly be characterized as obstruction under 8 U.S.C. § 1231(a)(1)(C), because Petitioner was not frustrating a completed lawful removal process; rather, he declined to voluntarily enter a third country without lawful assurances of admission, protection, or status.

Section 1231(a)(1)(C) applies where a noncitizen acts in bad faith to prevent lawful removal. It does not authorize indefinite detention whenever an individual expresses legitimate fear regarding transfer to a third country that has not formally accepted him. Respondents cannot transform uncertainty regarding third-country acceptance into a claim that Petitioner alone is responsible for his detention. If removal depends entirely upon Petitioner's willingness to voluntarily relocate to a country that has not formally accepted him, then removal is, by definition, speculative rather than reasonably foreseeable under *Zadvydas v. Davis*.

Respondents' supplemental declaration merely concludes, without meaningful factual support, that removal remains reasonably foreseeable. That conclusory assertion is insufficient. The declaration does not establish that Mexico formally accepted Petitioner, that lawful admission had been secured, that valid documentation existed, or that removal will realistically occur in the reasonably foreseeable future. Mere speculation about possible future attempts does not satisfy the Government's burden.

Respondents further argue that the Petition was premature because it was filed before the expiration of six months from Petitioner's most recent detention. Even assuming arguendo that Respondents' preferred counting method applies, that argument is now moot. Habeas corpus evaluates the legality of present detention, not merely the circumstances existing on the date of filing.

Moreover, Respondents' attempt to reset the detention clock ignores the extraordinary facts of this case. Petitioner was previously detained following his final order of removal and then released under an Order of Supervision for approximately twenty-three years after the Government was unable to effectuate removal. His recent re-detention does not erase the longstanding reality that the Government has been unable to remove him for decades.

A brief attempt to pursue third-country removal through voluntary entry into Mexico does not suddenly transform removal into a significantly likely

outcome. To the contrary, it reinforces the speculative nature of Respondents' position. If removal were genuinely imminent and legally secured, Respondents would be able to demonstrate formal acceptance and a lawful removal pathway rather than reliance upon voluntary third-country consent.

Civil immigration detention must bear a reasonable relationship to its regulatory purpose. Once removal becomes speculative, continued detention loses its lawful justification and becomes punitive in nature. The Government has failed to establish a significant likelihood that Petitioner's removal will occur in the reasonably foreseeable future, particularly where third-country removal depends entirely upon voluntary cooperation and no definitive lawful removal mechanism has been demonstrated.

WHEREFORE, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus, order Petitioner's immediate release under reasonable conditions of supervision, and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Yaritssa Plasencia
Yaritssa Plasencia, Esq.
Florida Bar No. 1021659
Great American Law Firm PLLC
100 Frandorson Circle, Suite 202C
Apollo Beach, Florida 33572
Telephone: (407) 929-9292

greatamericanlaw@gmail.com
Counsel for Petitioner