

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

[REDACTED],

Petitioner,

v.

RAFAEL VERGARA, Warden of Adams
County Correctional Center,

Respondent.

No. 5:25-cv- [REDACTED]-DCB-BWR

**PETITIONER’S RESPONSE TO RESPONDENT’S SUPPLEMENTAL NOTICE AND
DECLARATION**

Petitioner [REDACTED] has been detained for nearly double the presumptively lawful six-month period established by the Supreme Court in *Zadvydas*. The government has had a year to arrange for Mr. [REDACTED]’s removal to a third country and failed to do so. Respondent’s late-breaking announcement last week of an alleged—and since cancelled—plan to deport Mr. [REDACTED] to the Central African Republic, in a region experiencing an active, deadly Ebola outbreak, does not suddenly render his removal substantially likely in the reasonably foreseeable future. This Court should not allow Mr. [REDACTED]’s already unlawful indefinite detention to continue one day longer.¹ The Court should order Mr. [REDACTED]’s immediate release.

¹ Mr. [REDACTED] renews his objection, Doc. 16 at 1 n.1, to the Court’s decision to terminate all respondents named in his petition with the exception of Respondent Vergara, the warden of the privately-operated U.S. Immigration and Customs Enforcement (“ICE”) detention facility where Mr. [REDACTED] is currently detained. *See* Doc. 3 at 2. The petition also named several official-capacity federal officials, which we refer to here as the Federal Respondents. Doc. 1 at 1. In *Rumsfeld v. Padilla*, the Supreme Court expressly left open “the question whether the Attorney General is a proper respondent to a habeas petition filed by an alien detained pending deportation.” 542 U.S. 426, 436 n.8 (2004). While several circuit courts have split on the question both before and after *Padilla*, the Fifth Circuit has not ruled on the question. This Court should find that one or more of the Federal Respondents are also proper respondents here, as only they may possess the power and legal authority to effectuate a court order requiring Mr. [REDACTED]’s release. *See, e.g., Masingene v. Martin*, 424 F. Supp. 3d 1298, 1302 (S.D. Fla. 2020) (holding that ICE field office director “overseeing the contract facility where the petitioner is detained” was the proper respondent in immigration habeas petition as “[t]he local warden cannot release ICE detainees without ICE’s express

FACTUAL AND PROCEDURAL DEVELOPMENTS

On May 5, Mr. ██████ filed a motion to expedite adjudication of his habeas petition. Doc. 19. On April 22, May 13, and May 19, Mr. ██████ counsel asked Respondent’s counsel for any updates on his case and received no updates from Respondent’s counsel. *See* Ex. 1 (emails with Resp.’s counsel). On May 20, 2026, the day of the Court’s status conference regarding Mr. ██████ motion to expedite, Respondent’s counsel reported to Mr. ██████’s counsel and the Court *for the first time* that Mr. ██████ had been slated for removal to the Central African Republic (“CAR”), and that the removal flight was cancelled due to the deadly Ebola outbreak in Central Africa.² Mr. ██████ himself was never informed by ICE—indeed, other than the government’s filing in this habeas case, still has not been informed—of the plan to remove him to CAR. *See* Ex. 2, Supplemental Declaration of ██████ [hereinafter “█████ Supp. Decl.”] ¶ 6.

On May 21, 2026, Respondent filed a declaration from Emmanuel Espinal, an Acting Unit Chief within ICE headquarters. Doc. 21-1. That declaration confirms that the United States has entered into a third-country removal agreement with CAR in April or May 2026. *Id.* ¶ 5. Mr. Espinal states that Mr. ██████ was “accepted” for removal by CAR and that ICE intended to remove him on May 26, 2026. *Id.* ¶ 6. The declaration does not state when Mr. ██████ was accepted for removal to CAR, but it was presumably after Mr. ██████ filed his motion to expedite

authorization”); Order, *Carmona Sanchez v. Vergara, et al.*, No. 5:26-cv-00046-DCB-BWR (S.D. Miss. Feb. 5, 2026), ECF No. 8 (maintaining ICE Field Office Director as respondent in habeas petition filed by petitioner detained by ICE in Adams). Indeed, the only evidence the government has furnished in this case are declarations from two ICE officials, Docs. 13-1 & 21-1, since “the warden of the detention facility . . . cannot provide meaningful answers to important factual and legal questions[.]” *Masingene*, 424 F. Supp. 3d at 1302 (*citing Calderon v. Sessions*, 330 F. Supp. 3d 944, 953 (S.D.N.Y. 2018)). Nonetheless, as Mr. ██████ has previously noted, Doc. 16 at 1 n.1, an order from this Court directed to Respondent Vergara can, in a practical sense, lead to complete relief for Mr. ██████.

² Notably, Acting Unit Chief Emmanuel Espinal’s declaration only states that the flight was cancelled “for reasons outside of ICE’s control.” Doc. 21-1 ¶ 8. However, during the May 20, 2026 status conference, Respondent’s counsel informed the Court and Mr. ██████’s counsel that the flight was cancelled due to “health concerns” in CAR. When Mr. ██████’s counsel stated on the record that this must be the Ebola outbreak in CAR and other Central African nations, Respondent’s counsel did not correct her.

adjudication on May 5, which was just one day after the United States determined that CAR’s diplomatic assurances were credible. *See id.* ¶ 5; *see generally id.* Mr. Espinal’s declaration says nothing about further plans or efforts to remove Mr. ██████. *See generally id.*

ARGUMENT

I. Mr. ██████ Has Met His Initial Burden Under *Zadvydas*

A. *Zadvydas*’s Burden-Shifting Framework

In *Zadvydas v. Davis*, the Supreme Court imposed a burden-shifting framework on indefinite detention claims under 8 U.S.C. § 1231. *See* 533 U.S. 678, 701 (2001). After a petitioner has been detained beyond the presumptively reasonable six-month period and “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.* Thus, the detained noncitizen “bears the initial burden of proof in showing that no such likelihood of removal exists.” *Gonzalez-Rondon v. Gillis*, No. 5:19-CV-109-DCB-MTP, 2020 WL 3428983, at *1 (S.D. Miss. June 23, 2020) (quoting *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006)). While something “more than mere speculation and conjecture” or “[c]onclusory statements” is required, *id.*, this is only a *prima facie* showing—the initial burden on the petitioner is not an exceedingly heavy one. *See Zadvydas*, 533 U.S. at 702 (noting that winning release does not require a showing that removal is “impossible”). This makes sense in light of the “serious constitutional concerns” undergirding the *Zadvydas* Court’s interpretation of § 1231, 533 U.S. at 682, as well as the stark asymmetries between detained noncitizens and the government in terms of access to information about ICE’s removal efforts and U.S. diplomatic relations, which is further complicated by the difficulty of proving a negative—*i.e.*, that removal is *not* substantially likely and reasonably foreseeable. *See Lopez v. Paulk*, No.

7:26-CV-00029-WLS-ALS, 2026 WL 961948, at *7–8 (M.D. Ga. Apr. 6, 2026) (citing, *inter alia*, *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013), regarding detained noncitizens’ extremely limited “ability to collect evidence,” and *Elkins v. United States*, 364 U.S. 206, 218 (1960), noting that “as a practical matter it is never easy to prove a negative”).

Information regarding the “the circumstances of [a petitioner’s] status or the existence of the particular individual barriers to” deportation can suffice to meet this initial burden. *Gonzalez-Rondon*, 2020 WL 3428983, at *1. These “particular [] barriers” can include public health and political crises in the receiving country that inject uncertainty into ICE’s willingness or ability to deport someone there. In *Aguilar Sanchez v. Gillis*, for example, this Court held that the petitioner had demonstrated “good reason to believe” that his removal was unforeseeable where he had been detained for over a year and his home country, Venezuela, was not currently accepting flights due to the COVID-19 pandemic, despite ICE’s claims that it “believes Petitioner’s removal will be imminent once the borders are reopened.” No. 5:19-CV-113-DCB-MTP, 2020 WL 4810985, at *2 (S.D. Miss. June 18, 2020), *report and recommendation adopted*, 2020 WL 4803280 (S.D. Miss. Aug. 18, 2020). ICE’s past failed attempts to deport an individual petitioner can also support the required showing under *Zadvydas*, even when ICE claims it is in the process of scheduling additional flights. *See, e.g., Olya v. Garite*, No. EP-25-CV-00083-DCG, 2025 WL 3254931, at *5 (W.D. Tex. Oct. 14, 2025) (holding that petitioner had met her burden under *Zadvydas* “[i]n light of [her] protracted detention” and the government’s past failed attempts to remove her on scheduled flights to Iran).

After a *Zadvydas* petitioner has made the initial showing, “the Government must respond with evidence sufficient to rebut the [petitioner’s] showing.” *Gonzalez-Rondon*, 2020 WL 3428983, at *1 (quoting *Zadvydas*, 533 U.S. at 701). As detention grows more prolonged, due

process requires an increasingly exacting burden on the government to justify continued detention: “as the period of prior post removal confinement grows, what counts as the reasonably foreseeable future conversely would have to shrink.” *Id.* (quoting *Zadvydas*, 533 U.S. at 701). Courts—including this one—tend to view post-order detention lasting a year or more with particularly deep suspicion. *See, e.g., Aguilar Sanchez*, 2020 WL 4810985, at *3; *Jobe v. Acuna*, No. CV 25-1391, 2026 WL 775928, at *2 (W.D. La. Mar. 3, 2026), *report and recommendation adopted*, No. CV 25-1391, 2026 WL 772631 (W.D. La. Mar. 18, 2026).

B. There is Good Reason to Believe That Mr. ██████ Removal to the Central African Republic is Neither Likely Nor Foreseeable

Mr. ██████ will not likely be removed to CAR at all, much less in the reasonably foreseeable future. First, Mr. ██████ cannot be removed to CAR right now because there is an active Ebola outbreak in multiple central African nations bordering CAR.³ The death toll is mounting with over 250 suspected or confirmed deaths and over 1,000 suspected cases as of May 27.⁴ This strain of the Ebola virus is the fast spreading “Bundibugyo” version of the virus, “which has no approved vaccines or treatments.”⁵ This variant first appeared in the Democratic Republic of the Congo before spreading to neighboring Uganda, and there is a “high risk of regional spread due to intense cross border population movement, mining related mobility, insecurity in affected areas, weak infection prevention and control measures[.]”⁶ The Africa Centres for Disease Control recently increased its risk level for ten countries in the region,

³ *See supra* note 2; Myah Ward, *Trump administration temporarily pauses deportation flights to Congo amid Ebola outbreak*, Politico (May 21, 2026), <https://www.politico.com/news/2026/05/21/trump-administration-temporarily-pauses-deportation-flights-to-congo-amid-ebola-outbreak-00932722>.

⁴ U.S. Centers for Disease Control and Prevention, *Ebola Outbreak: Current Situation* (May 28, 2026), <https://www.cdc.gov/ebola/situation-summary/index.html>.

⁵ Gareth Iacobucci, *Ebola outbreak: 139 dead as WHO warns of “scale and speed” of spread in central Africa*, The British Medical Journal (May 20, 2026), <https://www.bmj.com/content/bmj/393/bmj-2026-834685.full.pdf>.

⁶ *Id.*

including CAR, emphasizing that these countries “now face potential exposure alongside DR Congo and Uganda.”⁷ The United States has issued travel advisories and even invoked its authority under the Public Health Service Act, 42 U.S.C. § 265 (commonly referred to as “Title 42”), to summarily exclude people from impacted countries from entering the United States.⁸ Experts warn that this Ebola outbreak could last for months, or even years.⁹

Courts have acknowledged that public health emergencies may render otherwise foreseeable removal unforeseeable. During the COVID-19 pandemic, courts across the country granted *Zadvydas* relief to detained people facing similarly indefinite detention due to the pandemic’s impact on the government’s ability to remove them. *See, e.g., Aguilar-Sanchez*, 2020 WL 4810985, at *2; *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) (“As the situation worsens both in the United States and in Pakistan and government[s] extend restrictive measures accordingly, there is no significant likelihood that the Government will be able to remove Petitioner to Pakistan in the foreseeable future. With no significant likelihood of removal in the foreseeable future, Petitioner’s detention, the sole purpose of which was to effectuate imminent removal, no longer serves its intended purpose, and thus, is unreasonable.”); *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020) (“Neither

⁷ Ayodeji Adegboyega, *Africa on edge as Ebola outbreak threatens 10 countries and triggers global alarm*, Business Insider Africa (May 24, 2026), <https://africa.businessinsider.com/local/markets/africa-cdc-warns-10-countries-at-risk-as-congo-ebola-outbreak-worsens/kfyg1kx>; *see also id.* (“The crisis is unfolding in one of Africa’s most volatile regions, where armed conflict, weak state control and porous borders are complicating efforts to track infections and isolate patients.”).

⁸ U.S. Dep’t of State, Travel Advisories, Central African Republic, <https://travel.state.gov/en/international-travel/travel-advisories/central-african-republic.html>; Ctrs. for Disease Control, CDC Statement on the Use of Public Health Travel Restrictions to Prevent the Introduction of Ebola Disease into the United States (May 18, 2026), <https://www.cdc.gov/ebola/situation-summary/title-42-order.html>.

⁹ Lynsey Chutel, Ephrat Livni, Yan Zhuang, *Ebola Outbreak in Central Africa Could Last Months*, *W.H.O. Says*, N.Y. Times (May 19, 2026), <https://www.nytimes.com/2026/05/19/world/africa/ebola-outbreak-deaths-congo-who.html> (quoting World Health Organization representative stating that “The last outbreak in this area took two years”).

ICE's belief that Petitioner will be removed, nor the information provided by Respondent, satisfy the government's burden to rebut Petitioner's showing that he will not be removed in the foreseeable future. The Court agrees with Petitioner's contention that although ICE is usually able to get travel documents and remove detainees to Venezuela, the lack of diplomatic relations between the United States and Venezuela, and worldwide travel restrictions due to the global COVID-19 pandemic, make it nearly certain that ICE will not be able to do so for the foreseeable future."). Where a public health crisis with an unknowable trajectory, scope, and end point is impeding removal plans, detention cannot lawfully continue indefinitely.

Moreover, to Petitioner's counsel's knowledge, the Government has not yet deported a single third-country national to CAR. Indeed, the agreement with CAR has not yet even been in effect for a month. *See* Doc. 21-1 ¶ 5. The Government's plan to deport Mr. ██████ to CAR has already been canceled once, and Respondent's supplemental declaration from Emmanuel Espinal offers no concrete plan in place to reschedule his removal to CAR or elsewhere. *See id.* Unlike many other boilerplate declarations submitted by ICE declarants in *Zadvydas* habeas cases, neither Mr. Espinal nor ICE Assistant Field Office Director Ward were willing to even include a conclusory statement regarding the foreseeability of Mr. ██████ removal. *See generally id.*; Doc. 13-1.

Additionally, Mr. ██████ fears for his life and freedom in CAR, *see* ██████ Supp. Decl. ¶ 13, and thus is entitled under United States and international treaty obligations to seek protection from removal there. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2026 WL 521557, at *16-17, 35 (D. Mass. Feb. 25, 2026). First, Mr. ██████ faces likely violence, torture, and persecution in CAR and fears that CAR will simply send him back to Turkey, where according to an Immigration Judge he has demonstrated that it is more likely than not that his life

or freedom would be threatened. *See* Doc. 1-1; 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 208.16. This phenomenon, referred to as “chain refoulement,” is already happening to third-country deportees sent to other African nations. *See, e.g., Mbaba v. Perez*, No. 5:26-CV-00070, 2026 WL 917484, at *11 (S.D. Tex. Feb. 13, 2026) (granting petitioner’s request for a preliminary injunction based on her argument, *inter alia*, that “the risk of chain-refoulement following her removal to a third country is particularly high” given that Equatorial Guinea, the country where the government sought to deport her, “has reportedly refouled *eight out of the nine* third-country removees it has received under the new third country removal policy” (emphasis in original) (record citations omitted)); *D.V.D.*, 2026 WL 521557, at *14–15 and *32 n.82 (explaining the concept of indirect or chain refoulement and providing recent examples, including from an African nation that had given diplomatic assurances to the United States).¹⁰

Mr. █████ risks further persecution by the Turkish government in CAR, as Turkey and CAR maintain diplomatic relationships and Turkish officials maintain a presence in CAR through a network of state-owned schools. As the Court is aware, Mr. █████ fled Turkey after he was targeted, arrested, and persecuted for his peaceful association with the Gülen Movement. Doc. 1 ¶¶ 17-21. The Gülen movement previously created a network of schools around the globe, but in the wake of a 2016 coup attempt, the ruling party of Turkish President Erdogan “expanded a witch-hunt against Gülen followers worldwide, asking several countries to close down Gülen-affiliated schools and institutions as well as to detain and extradite teachers,

¹⁰ *See also* Sarah Sherman-Stokes, *Outsourcing Deportation: The Expansion of Third Country Removal*, Law & Political Economy Project (May 28, 2026), <https://lpeproject.org/blog/outsourcing-deportation-the-expansion-of-third-country-removal/> (explaining that many third-country deportees “have been chain refouled, or coerced into accepting chain refoulement, as a condition of release from foreign prisons[] . . . often despite US court orders previously finding these individuals would be persecuted or tortured” in their home countries).

businessmen and their families who sympathize with the movement.”¹¹ In February 2023 the Turkish Maarif Foundation, “a state-run education body” signed a memorandum of understanding with the CAR to “take over schools in the country affiliated with the Gülen movement[.]” *Id.* The Turkish Maarif Foundation has taken over 200 schools in numerous countries, which caused “[m]any Turkish teachers working at those schools [to flee] their host countries, fearing arrest or extradition to Turkey, and sought refuge in Europe, the United States or Canada.”¹² Mr. [REDACTED] specifically fears being sent to CAR as the Turkish Maarif Foundation, a state agency that was specifically “created to take over educational institutions abroad previously affiliated with the faith-based Gülen movement,” has a presence in CAR controlling multiple educational institutions. *Id.* In CAR he risks being identified as a part of the Gülen movement, turned over to Turkish officials, and sent back to Turkey for persecution and torture.

In addition to the specific risks Mr. [REDACTED] faces by being associated with the Gülen movement in CAR, he would be subject to general violence, disease, medical neglect, and unrest in CAR. The U.S. Department of State itself has had a “Level 4 Do Not Travel” advisory in place for the CAR since January 15, 2026.¹³ The State Department advises against travel to CAR due to risk of “unrest, crime, kidnapping, landmines, health, and terrorism.”¹⁴ The State Department says that “[a]rmed groups and opposition forces control large areas of the country. They regularly kidnap, injure, or kill civilians.”¹⁵ It also warns that “[m]edical services in the Central African

¹¹ *Turkish Maarif Foundation to take over Gülen-linked schools in Central African Republic*, Turkish Minute (Feb. 14, 2023), <https://www.turkishminute.com/2023/02/14/turkish-maarif-foundation-take-over-gulen-linked-school-in-central-african-republic/>.

¹² *State Funding for Turkish Maarif Foundation surges to record levels*, Turkish Minute (Jan. 22, 2026), <https://turkishminute.com/2026/01/22/state-funding-for-turkish-maarif-foundation-surges-to-record-levels/>.

¹³ U.S. Dep’t of State, Travel Advisories, Central African Republic, *supra* note 8.

¹⁴ *Id.*

¹⁵ *Id.*

Republic are extremely limited. There is no adequate medical treatment available for routine and emergency procedures.”¹⁶ Mr. ██████ was recently prescribed Lexapro, a medication used to treat depression and anxiety. ██████ Supp. Decl. ¶ 14; *see also* Doc. 16-1 (██████ Declaration) ¶¶ 18–19 (describing other physical and mental health complications). If removed to CAR, Mr. ██████ would not have access to this medically necessary mental health medication.

Because of the ongoing public health crisis in Central Africa, the government’s utter lack of a plan to remove him after the May 26 flight was cancelled, and Mr. ██████’s right to seek protection from removal to CAR, Mr. ██████ has met and exceeded his initial burden of showing “good reason to believe” that he is not substantially likely to be removed in the reasonably foreseeable future to the Central African Republic. Respondent must now rebut that showing.

C. There Is No Significant Likelihood of Mr. ██████ Removal to Any Other Country

The prospects for Mr. ██████’s removal to some country other than CAR or Turkey is even less likely, and does not rise above the level of pure conjecture and speculation. With the exception of CAR and, earlier, Spain (which is no longer on the table and was likely never a real option, *see* Doc. 13-1 ¶¶ 9-12), the government has not identified any other country where it may attempt to send Mr. ██████, much less made the necessary arrangements to actually deport him there. Again, the window of “what counts as the reasonably foreseeable future” continues to “shrink” as Mr. ██████’s “period of prior post removal confinement [continues to] grow[.]” *Gonzalez-Rondon*, 2020 WL 3428983, at *1 (quoting *Zadvydas*, 533 U.S. at 701). Respondent’s choice to pivot at this late stage to an extreme and previously rarely-used option like third-country removal does not expand “the reasonably foreseeable future.” The Court should require concrete evidence demonstrating that the necessary elements—an agreement with a third

¹⁶ *Id.*

country, a valid travel document, notice to Mr. ██████ and a meaningful opportunity for him to raise fear-based claims as to that country, and a scheduled removal flight—instead of simply allowing the government to repeatedly raise the specter of third-country removal in order to justify Mr. ██████’s lengthy confinement.

The government’s most recent evidentiary submission, Mr. Espinal’s declaration, contains no mention of a new plan to remove Mr. ██████ now that the May 26 flight to CAR has been cancelled. *See* Doc. 21-1. Thus, the government has come forward with *no* evidence that removal *to any country* is substantially likely in the reasonably foreseeable future. Especially in light of Mr. ██████’s year of post-order detention, the government cannot satisfy its burden by again making vague claims regarding the foreseeability of third-country removal without giving this Court concrete, specific, and time-bound assurances, supported by evidence, to back up those claims. *See, e.g., Rodriguez Romero v. Ladwig*, No. 25-1106-JWD-EWD, 2026 WL 321437, at *15 (M.D. La. Feb. 6, 2026) (“There are no travel documents, there is no evidence of any informal acceptance, no suggestion that Mexico regularly accepts similarly situated [non-Mexican] deportees, or even evidence that Respondents have made any affirmative steps toward obtaining travel documents for these Petitioners.”); *Azzo v. Noem*, No. 3: 25-CV-03122-RBM-BJW, 2025 WL 3535208, at *4 (S.D. Cal. Dec. 10, 2025) (DHS did not satisfy its burden where it was “still in the process of identifying third countries that may be willing to accept Petitioner for removal,” but had “not even identified a third country to which they plan to remove Petitioner, much less submitted a travel document or provided an estimate for how long it would take this unidentified third country to respond”); *Martinez-Marino v. Sheriff of Baker Cnty.*, No. 3: 25-CV-854-JEP-MCR, 2026 WL 681812, at *5 (M.D. Fla. Mar. 11, 2026) (similar).

II. Mr. [REDACTED] Has Not Acted to Prevent His Removal

Mr. [REDACTED] cooperation is not in dispute in this case, and there is no basis to suspend his removal period—which has long since expired—under the post-order detention statute. Pursuant to § 1231, the government typically has 90 days—referred to as the “removal period”—from the date a final order of removal is entered to carry out a noncitizen’s deportation. 8 U.S.C. § 1231(a)(1)(A). Detention during that initial 90-day period is mandatory. *See id.* § 1231(a)(2)(A). Mr. [REDACTED]’s post-order detention has already lasted 359 days—nearly *quadruple* the length of the removal period. *See* Doc. 1 ¶ 30; [REDACTED] Supp. Decl. ¶ 5. Under certain limited circumstances, the removal period can be extended or suspended. *See* 8 U.S.C. § 1231(a)(1)(C) (requiring extension of removal period when a noncitizen “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal”). Detention during this time is permitted but not required. *Compare* 8 U.S.C. § 1231(a)(1)(C) (using permissive “may” language to describe government’s detention authority during suspension of removal period) *with id.* § 1231(a)(2)(A) (government “shall detain” during initial removal period).

While the Fifth Circuit has not yet ruled on the question, one district court in this circuit that recently analyzed the statutory provision in depth has noted that engaging in the sort of conduct that triggers § 1231(a)(1)(C) may also suspend *Zadvydas*’s six-month clock, or at least impact courts’ analysis of whether a noncitizen has made the required “good reason to believe” showing regarding the likelihood and foreseeability of removal. *See Glushchenko v. United States Dep’t of Homeland Sec.*, 566 F. Supp. 3d 693, 705–06 (W.D. Tex. 2021); *see also, e.g., Gonzalez v. Gills*, No. 20-60547, 2022 WL 1056099, at *1 (5th Cir. Apr. 8, 2022) (unpub.) (concluding that petitioner’s acts of providing false and conflicting information about his identity

hindered his removal, and thus he was not entitled to relief under *Zadvydas*). But the burden to allege and prove a failure to cooperate rests on the government, not a detained habeas petitioner; and the government may be required to prove “by clear and convincing evidence” some form of bad-faith, “intentional or deliberate conduct” on the part of the petitioner that actually deprived the government of their ability to carry out the removal. *Glushchenko*, 566 F. Supp. 3d at 709.

Here, Respondents have not come forward with any evidence or even allegations that Mr. [REDACTED] has engaged in any conduct that would trigger a suspension of the removal period under § 1231(a)(1)(C). *See generally* Docs. 13, 13-1, 21, 21-1. Nor could they. First, Mr. [REDACTED] affirmatively states in the attached declaration, submitted under penalty of perjury, that he has never acted to prevent his removal. [REDACTED] Supp. Decl. ¶ 9. Second, up until just a few days ago, the government’s removal “efforts,” to the extent they existed at all, did not involve Mr. [REDACTED]: he was never asked to fill out a travel document request, speak with consular officials, or cooperate in any other way with the government’s alleged efforts to secure his removal to a third country. *Id.* ¶ 8. To date, ICE has not even informed or communicated directly with Mr. [REDACTED] regarding their intention to deport him to the Central African Republic. *Id.* ¶ 6. It is undisputed here that Mr. [REDACTED] has not engaged in any of the sort of intentional, bad-faith obstructive conduct that would justify a suspension of the removal period. Finally, because Mr. [REDACTED]’s deportation to Turkey, Central African Republic, or any other country is not foreseeable or even possible at this time, nothing he has done or failed to do could have actually *caused* the government’s inability to deport him for almost a year and counting. *See Glushchenko*, 566 F. Supp. 3d at 709 (“the non-compliance must deprive the government of documents necessary to effectuate a departure from the United States or otherwise prevent the alien's removal from the United States subject to an order of removal”).

CONCLUSION

Mr. [REDACTED] is entitled to immediate release under *Zadvydas*. After his release, the government may continue its efforts to secure his removal to a third country, and must subject him to appropriate conditions of supervision, *see* 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.5, but they can no longer justify his continued confinement based on the uncertain and remote prospects of his eventual removal to the Central African Republic or some other, as-yet-unnamed third country.

The Court has all the evidence it needs to order Mr. [REDACTED]'s release today, but should the Court wish to hear testimony from Mr. [REDACTED], he is prepared to testify and requests the opportunity to do so by videoconference from Adams or in the Natchez courthouse, due to a medical condition that makes longer transport in shackles particularly difficult. Moreover, should the Court wish to receive live testimony, Mr. [REDACTED] requests the opportunity, *inter alia*, to cross-examine Respondent's declarant, Emmanuel Espinal.

Dated: May 29, 2026

Respectfully submitted,

s/ Jessica Vosburgh

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CERTIFICATE OF SERVICE

I hereby certify that on today's date, I filed a copy of the foregoing document along with any attachments using the court's CM/ECF system, which will cause notice to be served electronically to all parties.

s/ Jessica Vosburgh

Counsel for Petitioner

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From: [Mayer, Gregg \(USAMSS\)](#)
To: [Korbin Felder](#); [Middleton, Keesha \(USAMSS\)](#)
Cc: [CJ Sandley](#); [Jessica Vosburgh](#); [Ben W. Thorpe](#); [Ibrahim Qatabi](#)
Subject: RE: [EXTERNAL] Fwd: Activity in Case 5:25-cv-[REDACTED]-DCB-BWR [REDACTED] v. Vergara et al Set/Reset Hearings
Date: Tuesday, May 19, 2026 1:29:59 PM
Attachments: [image001.png](#)

CAUTION: External Email.

Good afternoon,

I'll join Keesha in her office so you will just have to dial her number. Thanks for checking on that. We do not consent to the Magistrate Judge. We are working on an update and will correspond as soon as we have it.

Thanks so much, and talk to you tomorrow, -Gregg

Gregg Mayer
Assistant United States Attorney
Southern District of Mississippi
501 E. Court Street
Suite 4.430
Jackson, MS 39201
(601) 965-4480



From: Korbin Felder [REDACTED]
Sent: Tuesday, May 19, 2026 12:29 PM
To: Middleton, Keesha (USAMSS) [REDACTED]; Mayer, Gregg (USAMSS) [REDACTED]
Cc: CJ Sandley [REDACTED]; Jessica Vosburgh [REDACTED]; Ben W. Thorpe [REDACTED]; Ibrahim Qatabi [REDACTED]
Subject: Re: [EXTERNAL] Fwd: Activity in Case 5:25-cv-[REDACTED]-DCB-BWR [REDACTED] v. Vergara et al Set/Reset Hearings

Thank you Ms. Middleton. We will call you at that number tomorrow morning. I see that AUSA Mayer entered an appearance, I've added him on the email as well. Should we dial a different number for him? If so, please let us know the number.

We know your office has plenty of habeas petitions pending, would respondents consent to Magistrate Judge jurisdiction in this matter? As well, do let us know if the Government has or does receive any additional updates today on Mr. Adir's status.

Sincerely,
Korbin

On Thu, May 14, 2026 at 9:33 AM Middleton, Keesha (USAMSS)

[REDACTED] wrote:

Korbin,

Good morning! Please call me at 601-973-2802. I have no updates at this time.

Respectfully,

Keesha D. Middleton
Assistant United States Attorney
Affirmative Civil Enforcement and Healthcare Fraud Coordinator
e-Litigation Coordinator-Civil Division
United States Attorney's Office | Southern District of Mississippi
501 East Court Street, Suite 4.430, Jackson, MS 39201
[REDACTED]

T: (601) 973-2802 | C: (601) 874-0795 | F: (601) 965-4035



From: Korbin Felder [REDACTED]
Sent: Wednesday, May 13, 2026 11:41 AM
To: Middleton, Keesha (USAMSS) [REDACTED]
Cc: CJ Sandley [REDACTED]; Jessica Vosburgh [REDACTED]; Ben W. Thorpe [REDACTED]; Ibrahim Qatabi [REDACTED]
Subject: [EXTERNAL] Fwd: Activity in Case 5:25-cv-[REDACTED]-DCB-BWR [REDACTED] v. Vergara et al Set/Reset Hearings

Hello AUSA Middleton,

Good morning. Petitioner's counsel can call your office next Wednesday morning to add you before calling chambers. If this works for you please provide a good number to reach you.

As well, has the government been able to get any updates as to Mr. [REDACTED] status?

Thank you,
Korbin Felder

----- Forwarded message -----

From: <cmecfhelpdesk@mssd.uscourts.gov>

Date: Wed, May 13, 2026 at 11:11 AM

Subject: Activity in Case 5:25-cv-[REDACTED]-DCB-BWR [REDACTED] v. Vergara et al Set/Reset Hearings

To: <Courtmail@mssd.uscourts.gov>

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

Southern District of Mississippi

Notice of Electronic Filing

The following transaction was entered on 5/13/2026 at 11:10 AM CDT and filed on 5/13/2026

Case Name: [REDACTED] v. Vergara et al

Case Number: [5:25-cv-\[REDACTED\]-DCB-BWR](#)

Filer:

Document Number: No document attached

Docket Text:

Set Hearing: Telephone Conference set for 5/20/2026 at 09:30 AM before Magistrate Judge Bradley W. Rath. Counsel for Plaintiff will place the call to Judge Rath's Chambers (228-563-1755) with all necessary counsel on the line. (AB)

5:25-cv-[REDACTED]-DCB-BWR Notice has been electronically mailed to:

Benjamin W. Thorpe - PHV [REDACTED]

Caitlin Sandley - PHV [REDACTED]
[REDACTED]

Donald Korbin Felder [REDACTED]

Jessica Myers Vosburgh - PHV [REDACTED]
[REDACTED]

Keesha D. Middleton-Federal Gov [REDACTED]
[REDACTED]

5:25-cv-[REDACTED]-DCB-BWR Notice has been delivered by other means to:

From: [Korbin Felder](#)
To: [Middleton, Keesha \(USAMSS\)](#)
Cc: [CJ Sandley](#); [Jessica Vosburgh](#); [Ben W. Thorpe](#); [Ibrahim Qatabi](#)
Subject: 5:25-cv-[REDACTED]-DCB-BWR; [REDACTED] v. Vergara
Date: Wednesday, April 22, 2026 5:45:39 PM
Attachments: [image001.png](#)

CAUTION: External Email.

Hello AUSA Middleton,

I hope you are well. I'm writing to ask if the Government has any update as to Mr. [REDACTED] status?

As well, please let us know if the Government would be amicable to meeting sometime soon to discuss potential resolutions of this case.

Thank you,
Korbin

On Wed, Dec 3, 2025 at 10:36 AM Korbin Felder [REDACTED] wrote:

Hi Keesha,

Thank you for the response. Please let us know if you have any availability next week to meet briefly.

Thanks,
Korbin

On Tue, Dec 2, 2025 at 9:34 AM Middleton, Keesha (USAMSS) [REDACTED] wrote:

Korbin,

Good morning! Yes, I do remember you.

I am not aware of any authority that requires the government's position on you filing a reply. I believe that decision to allow you to do so, as well as the timing, is up to the Court.

Unfortunately, I don't have any time available this week.

Respectfully,

Keesha D. Middleton

Assistant United States Attorney

e-Litigation Coordinator-Civil Division

United States Attorney's Office | Southern District of Mississippi

501 East Court Street, Suite 4.430, Jackson, MS 39201

[REDACTED]

T: (601) 973-2802 | C: (601) 874-0795 | F: (601) 965-4035



From: Korbin Felder [REDACTED]
Sent: Monday, December 1, 2025 1:01 PM
To: Middleton, Keesha (USAMSS) [REDACTED]
Cc: CJ Sandley [REDACTED]; Jessica Vosburgh [REDACTED] Ben W. Thorpe [REDACTED]; Ibrahim Qatabi [REDACTED]
Subject: [EXTERNAL] 5:25-cv-[REDACTED]-DCB-BWR; [REDACTED] v. Vergara

Hi Ms. Middleton,

I hope this email finds you well. I am emailing to introduce myself as counsel for Mr. [REDACTED]. We've met while I was a clerk for Judge Reeves a couple years ago.

We are emailing to let you know that later today we will file a motion seeking leave to reply to the Government's response. We will request a reply deadline of next Monday December 8. Do you have any opposition to the request for leave to reply?

As well, myself and co-counsel would like to know if you have availability this week to meet, via call or zoom conference, to discuss this matter with counsel for Mr. [REDACTED]?

Thank you,

Korbin Felder

Counsel for Petitioner [REDACTED]

--

D. Korbin Felder

Justice Fellow, Southern Regional Office

601-228-6101

[REDACTED]

Center for Constitutional Rights | Justice takes a fight.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

[REDACTED],

Petitioner,

v.

RAFAEL VERGARA, Warden of Adams
County Correctional Center,

Respondent.

No. 5:25-cv- [REDACTED]-DCB-BWR

SUPPLEMENTAL DECLARATION OF [REDACTED]

1. My name is [REDACTED] I am a native and citizen of Turkey.
2. I am currently detained in ICE custody at the Adams County Correctional Center in Natchez, Mississippi.
3. My wife and two young sons are U.S. lawful permanent residents (green card holders) who live in Athens, Georgia. I would reunite and reside with them if I am released from ICE custody.
4. I have been in ICE detention for over 16 months, since January of last year.
5. Over a year ago, on May 6, 2025, the Immigration Judge granted me withholding of removal to Turkey. I did not appeal the Immigration Judge's order.
6. No official from ICE or Adams has ever mentioned anything to me about removal to the Central African Republic.
7. The only country that ICE ever told me they were trying to send me to was Spain, but that was a year ago, and I learned from a declaration that an ICE official filed in this case that Spain never responded.

8. ICE has never asked me to fill out a travel document request, speak with consular officials, or take any other steps to assist in my removal to a third country.
9. I have never acted to prevent my removal. How could I, when ICE has not asked me to do anything and has told me nothing about their efforts to deport me?
10. I have not spoken to an ICE official at all since approximately early February 2026.
11. Before I was informed through my attorneys, I had no idea that ICE said that I was scheduled to be deported to the Central African Republic on or around May 26.
12. I have no connections to the Central African Republic. I have never been there and I do not know anyone there.
13. I am afraid I will face torture and persecution in the Central African Republic for many reasons, including because there are credible reports of the Turkish Intelligence Agency finding members of the Gülen Movement, of which I am a part, and taking them back to Turkey to persecute and torture them.
14. I am continuing to suffer physical and mental health problems in detention. I was recently prescribed Lexapro, a medication used to treat depression and anxiety, and I have been scheduled to begin mental health counseling.
15. I am willing to comply with all conditions of my release, including reporting to ICE regularly.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746(1) that the foregoing is true and correct to the best of my knowledge.

Executed this the 27th day of May, 2026 in Natchez, Mississippi.

[REDACTED]

[REDACTED]

INTERPRETER DECLARATION

I, Cansu Kaptaner, swear and certify under penalty of perjury under the law of the United States that I am fluent in both Turkish and English and that I read the preceding declaration in Turkish with Petitioner [REDACTED], who affirmed the truth of its contents.

Signed this 27th day of May, 2026.

A handwritten signature in black ink, appearing to read 'C/Kaptaner', is written over a solid black horizontal line.

Cansu Kaptaner