UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MANUEL AMADEU DE BARROS GOMES LOPES,

Petitioner,

v.

SARA MIRON BLOOM, in her official capacity as Acting United States Attorney for the District of Rhode Island; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PATRICIA HYDE, in her official capacity as Acting Field Office Director of Enforcement and Removal Operations for U.S. Immigration and Customs Enforcement; and MICHAEL NESSINGER, in his official capacity as Warden of Donald W. Wyatt Detention Facility,

Respondents.[1]

Civil Action No.
1:25-cv-51-MSM-LDA

DEFENDANTS' MOTION TO DISMISS PETITION FOR HABEAS CORPUS

As of today, Petitioner Manuel Amadeu De Barros Gomes Lopes, a Cabo Verdean citizen twice convicted of charges arising from the same attempted killing, has been detained for eight months and one week in Rhode Island on a valid deportation order dating from 2009. Last month, he filed a habeas corpus petition in this Court challenging his post-removal detention on only one ground—that there is no significant likelihood of his deportation in the reasonably foreseeable future.

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1 The U.S. Attorney's Office does not represent Mr. Nessinger.

The government has substituted various officials in the case caption under Federal Rule of Civil Procedure 25(d), even as the Acting United States Attorney is not a proper party to this case. *Cf. Vasquez v. Reno*, 233 F.3d 688, 693 (1st Cir. 2000) (concluding that the Attorney General of the United States is not "as a general rule" the proper respondent to a habeas petition) ("'The writ . . . shall be directed to the person having custody of the person detained.'") (quoting 28 U.S.C. § 2243).

Zadvydas v. Davis, 533 U.S. 678, 682 (2001). But Cabo Verde issued a travel document for the Petitioner on February 21, 2025, and his removal has been scheduled and is imminent. The United States of America, on behalf of the Defendants, therefore moves the Court to dismiss the petition under Federal Rule of Civil Procedure 12(b)(6).

I. Standard of review

In assessing a motion under Federal Rule of Civil Procedure 12(b)(6), the Court: (a) must ignore allegations comprising only "legal labels or conclusions or merely rehash[ing] cause-of-action elements"; (b) must take allegations of "non-conclusory, non-speculative facts as true and draw all reasonable inferences in the plaintiff's favor"; and (c) may "consider information attached to or incorporated into the complaint and facts susceptible to judicial notice." *Harper v. Rettig*, 46 F.4th 1, 5 (1st Cir. 2022) (cleaned up). Such materials include documents filed with and generated by administrative agencies. *See, e.g., Winzler v. Toyota Motor Sales U.S.A., Inc.*, 681 F.3d 1208, 1213 (10th Cir. 2012) ("The contents of an administrative agency's publicly available files, after all, traditionally qualify for judicial notice, even when the truthfulness of the documents on file is another matter."); *Jefferson v. Gates*, No. CA 09-537 ML, 2010 WL 2927529, at *1 n.2 (D.R.I. July 2, 2010) (same), *R&R adopted by*, 2010 WL 2927528 (D.R.I. July 22, 2010).

Federal Rule of Civil Procedure 12(b)(6) compels dismissal of complaints that fail to allege a plausible legal and factual basis for the relief requested. *E.g., Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561-562 (2007). Pleadings containing only "naked assertion[s]" without "further factual enhancement" are deficient. *Id.* at 557; *Berner v. Delahanty*, 129 F.3d 20, 25 (1st Cir. 1997).

The Court must liberally construe Petitioner's *pro se* filing and apply "less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *see also* Fed. R. Civ. P. 8(e). But Petitioner's *pro se* status

does not relieve him from complying with procedural and substantive law. *See Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997) (citing *Eagle Eye Fishing Corp. v. U.S. Dep't of Commerce*, 20 F.3d 503, 506 (1st Cir. 1994)).

II. Legal background

Under federal statute, non-citizen petitioners subject to final removal orders and who have been convicted of certain crimes—like the Petitioner—"may be detained beyond the [90-day] removal period." 8 U.S.C. § 1231(a)(6). The statute's purpose is twofold: to "assur[e] the alien's presence at the time of removal" and to protect the community. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690, 699 (2001) (construing 8 U.S.C. § 1231(a)(6)). The statute, however, imposes no limitation on the time for such detention. *See, e.g., G.P. v. Garland*, 103 F.4th 898, 900 (1st Cir. 2024) (affirming dismissal of habeas petition).

The federal courts, however, have imposed an "implicit reasonable time limitation" on such detentions—that is, "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 682, 689 (cleaned up). In *Zadvydas*, the Supreme Court has held that detention of six months is presumptively reasonable, and has stated expressly that detentions may exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* at 701. Courts within this Circuit have found detentions ranging from 16 to 27 months reasonable. *See, e.g.*,

- *Lafortune v. Mayorkas*, No. 1:22-cv-11624-DJC (D. Mass. Apr. 20, 2023) (ECF 16) (habeas relief denied despite detention exceeding **19 months**);
- *Alphonse v. Moniz*, No. CV 21-11844-FDS, 2022 WL 279638 at *9 (D. Mass. Jan. 31, 2022) (same);
- *Dos Santos v. Moniz*, No. CV 21-10611-PBS, 2021 WL 3361882, at *4 (D. Mass. May 18, 2021) ("mandatory detention [exceeding **16 months**] . . . has not been unreasonably prolonged");
- *cf. Martinez Lopez v. Moniz*, No. CV 21-11540-FDS, 2021 WL 6066440, at *5 (D. Mass. Dec. 22, 2021) (detention **over 13 months** did not independently warrant a bond hearing);

- *Silva v. Moniz*, No. 20-cv-12255-DJC (D. Mass. Oct. 28, 2021) (ECF 26) (denying *Reid* claim brought by petitioner detained for **27 months**).

U.S. Department of Homeland Security ("DHS") regulations provide that DHS conduct periodic post-removal order custody reviews to determine whether an individual subject to a final order of removal should continue to be detained. *See* 8 C.F.R. § 241.4. These operative regulations, post-dating *Zadvydas*, track that case's holding. An individual held during the post-removal period may seek release by showing that "there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." *Id.* at § 241.13(a).

Sufficient evidence that rebuts a petitioner's belief "that there is no significant likelihood of removal in the reasonably foreseeable future" justifies detentions exceeding six months and supports the denial of petitions like the Petitioner's. *See, e.g., Zadvydas*, 533 U.S. at 701.

III. The Petition

Petitioner is in custody at the Donald W. Wyatt Detention Facility ("Wyatt") in Central Falls, Rhode Island. ECF 1 at 2 (first and sixth paragraphs). He filed his petition against the following persons in their official capacities: the U.S. Attorney for the District of Rhode Island; the DHS Secretary; Immigration and Customs Enforcement ("ICE") Field Office Acting Director Patricia Hyde; and Michael Nessinger, Wyatt's warden. ECF 1 at 2 (seventh paragraph) & 3 (first-third paragraphs).

The Petitioner is subject to a valid removal order. ECF 1 at 2 (sixth paragraph); Ex. 1 ¶ 4 (Decl. of Gerald Edwards (Feb. 28, 2025)[2]). He was convicted (or pleaded guilty) in December 1999 in Massachusetts state court proceeding of armed

[2] Mr. Edwards has held multiple positions within DHS over the last 14 years. His current position is Detention and Deportation Officer for the Headquarters Removal Management Division of ICE. Ex. 1 ¶ 2.

assault with intent to murder and sentenced to three years of incarceration. ECF 1 at 2 (fourth paragraph); *cf.* ECF 1-7 at 7 ¶ IV & at 10 ¶¶ L, M; ECF 1-8 at 2; ECF 1-9 at 2. For the same underlying conduct, he was convicted (or pleaded guilty) a second time, in September 2006, in Massachusetts federal court for assault in aid of racketeering and was sentenced to five years of incarceration, from which was deducted his state sentence and 18 months he awaited trial in federal court. ECF 1 at 2 (fourth paragraph); ECF 1-5 at 3; *cf.* ECF 1-7 at 8 ¶¶ VII & VIII & at 10 ¶¶ I-K; ECF 1-8 at 2; ECF 1-9 at 2. In one of the Petitioner's own statements about his criminal conduct, he contends, "No one was injured." ECF 1-5 at 3. He also cites a decision by the U.S. Court of Appeals for the First Circuit affirming the conviction a co-defendant in his federal case. That decision summarizes the Petitioner's violent crime[3]—a summary he admits is "more reliable" than the related police report. ECF 1-7 at 10 ¶ K.

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[3] *United States v. Brandao*, 539 F.3d 44, 48-49 (1st Cir. 2008) (bold emphases added to identify the conduct of Petitioner here):

> On the night of May 14, 1999, Jimmy Gomes's brother Alcides Depina was walking towards Gomes's home in Brockton when he noticed an Acura driving slowly towards him with its lights off. A **man in a blue jogging suit emerged from the passenger side of the car and ran towards Depina. As Depina ran away, he saw a red beam shining over his shoulder and heard multiple gunshots. Depina managed to reach Gomes's house safely, and the shooter ran back towards the car.**
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> Within minutes, the police responded to calls about the shooting and detained a black Acura at a nearby gas station. Police officers took Depina to the gas station to make a field identification. There, **Depina confirmed that the police had detained the black Acura and the man in the blue track suit that had earlier chased him. The man in the track suit turned out to be Stonehurst member Manuel "J" Lopes.** Depina also identified the driver of the vehicle as Angelo Brandao, whom he knew because their mothers were acquainted.
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> **Police arrested Brandao and Manuel Lopes and impounded the Acura. A police officer conducting an inventory search of the car at the station house discovered a 9mm Ruger with an attached laser sight concealed behind a panel in the glove compartment. The gun was loaded and the safety was off. Three ballisticians later determined that the gun had been used in**

The Petitioner's order of removal became final in July 2009; he was initially detained; and, since March 2010 (mooting a habeas petition he filed in February 2010), he has been released under supervision. ECF 1 at 2 (fourth paragraph); *see also* Ex. 1 ¶ 4 (concerning 2009 removal order). ICE took him back into custody on June 25, 2024, and his detention has continued following two interceding reviews. ECF 1 at 3 (fifth paragraph); *see also* Ex. 1 ¶ 4.

The sole ground of his petition invokes *Zadvydas*—that he is "not significantly likely to be removed in the reasonabl[y] foreseeable future, or at all for that matter." ECF 1 at 4 (second paragraph). As grounds, the petition contends only that "the Cape Verde Consulate has notified ICE that it will not accept Petitioner's removal to Cape Verde." ECF 1 at 4 (second paragraph). The Petitioner attached three letters from Cabo Verde's Boston consulate dated January 6, 2009; April 6, 2010; and February 21, 2017. ECF 1-3; *see also* ECF 1-7 at 9 ¶¶ F-H. Each declined to issue travel documents, but all pre-date the Petitioner's current detention by years. And, in a January 14, 2025, letter to DHS, the Petitioner conceded that, during his ongoing detention, "I've witnessed a lot of Cape Verdeans being deported . . . ." ECF 1-10 at 2.

IV. Argument

The Court should deny the petition because—as the attached declaration shows—Cabo Verde has recently issued a travel document for the Petitioner (on February 21, 2025) and his actual removal from the United States is imminent. Ex. 1 ¶¶ 4-5. This reinforces information the Petitioner supplied—that he has observed fellow Cabo Verdeans' deportations ("a lot") during his current detention. His petition also concedes that the government has "an interest in detaining [him] in order to effectuate removal . . . ." ECF 1 (first full paragraph).

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the Depina shooting, the Dias shooting, and another shooting in which two Stonehurst members attacked a Wendover member.

Because Petitioner's removal *is* significantly likely to occur in the reasonably foreseeable future, the Court should dismiss the petition. *Zadvydas*, 533 U.S. at 701; *Podoprigora v. Chadbourne*, No. CIV.A. 03-420 T, 2004 WL 725057, at *4 (D.R.I. Mar. 2, 2004) (Hagopian, M.J.) (R&R recommending dismissal of habeas petition to which no objection was apparently filed) ("Considering that the government is continuing to remove the petitioner, and considering that the government has continuously taken steps to secure his departure from this land, the petitioner, at this time, has not demonstrated that his removal is not in the reasonably foreseeable future.").

The government's showing refutes the petition's cited grounds in support of the Petitioner's release. The only factual support that the Petitioner cites are years-old documents from Cabo Verdean officials declining to issue travel documents. And the Petitioner's cited case law presents circumstances in which—unlike here—there was insufficient evidence that removal was imminent. *E.g.*, Order (Apr. 15, 2002) (ECF 22), *Zhou v. Ashcroft*, No. 3:01-cv-00863-EMK-LQ (M.D. Pa. Apr. 15, 2002) (ECF 22) (granting habeas petition). Indeed, one of the Petitioner's cited authorities reinforces the government's motion. In *Shefqet v. Ashcroft*, the district court only conditionally granted the petition, and gave the government an additional month—on top of the more than 17 months the petitioner had been detained—either to deport the petitioner or release him. No. 02 C 7737, 2003 WL 1964290, at *1, *4 (N.D. Ill. Apr. 28, 2003).

ICE, moreover, has granted the Petitioner due process during his detention through periodic custody reviews consistent with federal regulation after which ICE continued his detention. *See generally* 8 C.F.R. § 241.4; ECF 1-5, 1-6, 1-8, 1-9.

V. Conclusion

Because Cabo Verde has issued a travel document for the Petitioner and the government expects to remove the Petitioner within the forthcoming weeks, the

Petitioner has failed to establish that his removal is not significantly likely in the reasonably foreseeable future. His petition should, therefore, be denied.

Local Civil Rule 7(c) Statement

The government does not seek oral argument on this motion.

Dated: March 3, 2025

Respectfully submitted,

SARA MIRON BLOOM, in her official capacity as Acting United States Attorney for the District of Rhode Island; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PATRICIA HYDE, in her official capacity as Acting Field Office Director of Enforcement and Removal Operations for U.S. Immigration and Customs Enforcement; and MICHAEL NESSINGER, in his official capacity as Warden of Donald W. Wyatt Detention Facility,

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CERTIFICATE OF SERVICE

I hereby certify that, on March 3, 2025, I filed the foregoing document through this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Federal Rule of Civil Procedure 5(b)(2)(E) and Local Rule Gen 304.

As of this date, the government also will have mailed a copy of this filing (once it includes the Court's ECF header) to the Petitioner c/o Donald W. Wyatt Detention Center, 950 High Street, Central Falls, RI 02863.

/s/ Kevin Bolan
KEVIN BOLAN
Assistant United States Attorney