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**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY**

HORACIO MUNOZ-SAUCEDO,
Petitioner,

v.

YOLANDA PITTMAN, et al.,
Respondents.

CASE NO: 1:25-CV-2258

(O'Hearn, J.)

ELECTRONICALLY FILED

**PETITIONER'S RESPONSE TO RESPONDENT'S SUPPLEMENTAL
BRIEF**

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PRELIMINARY STATEMENT

Petitioner Horacio Munoz remains detained by Immigration and Customs Enforcement (ICE), despite the fact that his detention “no longer bears a reasonable relation to the purpose” of effectuating his removal from the United States, in violation of 8 U.S.C. § 1231 and the Due Process Clause of the Constitution. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This Court requested supplemental briefing on Petitioner’s argument that his “removal is not reasonably foreseeable because there is no country in the world to which he may be removed.” May 6, 2025 Order (Doc. No. 13). Respondents’ brief and evidentiary submissions confirm that this statement is true. The Department of Homeland Security (DHS) has repeatedly attempted to find a third country to accept Mr. Munoz with no success. Currently, the government’s primary option for Mr. Munoz’s removal is Guatemala, which has already declined to accept him, Nusom Decl. (Doc. No. 20-1), at ¶ 9, and is currently not “accepting migrants from other nationalities.” Williams Decl. (Doc. No. 20-2), at ¶ 14. Therefore, the government has not identified any country that is willing to accept Mr. Munoz now, and thus has not taken even the first step of providing notice to Mr. Munoz or his counsel pursuant to *D.V.D. v. U.S. Department of Homeland Security*. Williams Decl. at ¶ 11 (noting that ICE will not provide such notice until the government of Guatemala agrees to accept Mr. Munoz); *see* No. 25-10767, 2025 WL 1142968 (D. Mass. Apr. 18, 2025). As such, Mr. Munoz’s removal is not

reasonably foreseeable in the near future. Therefore, the Court should grant Mr. Munoz's petition and order his release until the government can actually remove him.¹

ARGUMENT

I. Mr. Munoz's Detention Is Unlawful, and the Court Can Grant Relief Now

As discussed in Mr. Munoz's reply brief, *Zadvydas* created a "presumption" that detention is legal for six months post-order. 533 U.S. at 701. It did not make that presumption irrebuttable. *Clark v. Martinez*, 543 U.S. 371, 387 (2005) (Justice O'Connor, concurring) ("[T]he 6-month presumption we described in *Zadvydas* [...] is just that—a presumption."); *see* Pet. Reply (Doc. No. 12), at 13-14. Like other presumptions, this rule serves to promote "uniform administration" without

¹ Pursuant to the Court's May 6 Order, this brief addresses only the issues discussed by Respondents in their supplemental brief dated May 19, 2025. However, Mr. Munoz notes several recent decisions relevant to other issues in this case that were not discussed in the prior briefing. *See Ozturk v. Hyde*, -- F. 4th --, No. 25-1019, 2025 WL 1318154 (2d Cir. 2025), at *5-6 (applying the unknown custodian rule and finding that the local field office director was likely the petitioner's immediate custodian while she was in transit); *Khan Suri v. Trump*, No. 1:25-cv-480, 2025 WL 1310745 (E.D. Va. May 6, 2025) (applying the unknown custodian rule and an exception to the district of confinement rule and finding jurisdiction where the petitioner filed in his prior district of confinement while in transit to another district); *Ceesay v. Kurzdorfer*, -- F. Supp.3d --, No. 25-cv-267, 2025 WL 1284720 (W.D.N.Y. May 2, 2025) (exercising jurisdiction and finding that ICE violated its own regulations and due process in revoking the petitioner's supervised release).

foreclosing the possibility of relief after a shorter period of time. *Zadvydas*, 533 U.S. at 680; see *C'ty of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991) (“This is not to say that the probable cause determination in a particular case passes constitutional muster simply because it is provided within 48 hours. Such a hearing may nonetheless violate *Gerstein* if the arrested individual can prove that his or her probable cause determination was delayed unreasonably.”). “The Supreme Court in *Zadvydas* did not explicitly preclude a noncitizen from challenging his detention prior to the end of the presumptively reasonable six-month period.” *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018).

Respondents fault Mr. Munoz for relying on non-binding case law on this point, but the cases they cite are also non-binding district court and out-of-circuit decisions. Resp. Supp. Br. (Doc. No. 20), at 8-9 & n.1. This is because the Third Circuit Court of Appeals has not yet considered this precise issue. However, *Zadvydas*’s statutory holding serves to protect noncitizens like Mr. Munoz from being unconstitutionally deprived of their liberty without sufficient justification. 533 U.S. at 690; see also *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“[T]he Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them. Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.”).

Therefore, the Third Circuit’s constitutional decisions about immigration detention without a bond hearing are instructive.

Specifically, in *German Santos v. Warden Pike County Correctional Facility*, the Court confirmed that detention under 8 U.S.C. § 1226(c) may become unconstitutional, but declined to impose a bright-line rule. 965 F.3d 203, 210-211 (3d Cir. 2020) (following prior decisions that “explicitly declined to adopt a presumption of reasonableness or unreasonableness of any duration”). Instead, it held that the constitutional reasonableness inquiry is “highly fact-specific” and instructed courts to consider the individual factors of each case. *Id.*

The same logic applies in the context of § 1231 detention. *See Guerrero-Sanchez v. Warden York C’ty Prison*, 905 F.3d 208, 222 (3d Cir. 2018) (holding that people detained under § 1231(a)(6) have the same due process rights as those detained under § 1226), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). Courts must make a fact-specific determination to answer the “basic question” of whether detention has become unreasonable, in violation of both the statute and the Constitution. *See Zadvydas*, 533 U.S. at 699.

On the facts of this case, Mr. Munoz’s detention is unreasonable and therefore violates due process as well as the statute. *See Zadvydas*, 533 U.S. at 682. Respondents’ suggestion that he must remain detained for thirty-three more days before this Court can adjudicate his claim, despite the fact that there is no likelihood

that he will be removed within that time period, endorses an “arbitrary deprivation of liberty” that “the Due Process Clause prohibits.” *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring); *contra* Resp. Supp. Br. at 9. In light of the “fact-dependent” nature of the reasonableness inquiry, the Court should reject Respondents’ attempt to impose a formalistic bright-line rule and should assess now whether Mr. Munoz’s removal is reasonably foreseeable. *See Diop v. ICE/Homeland Security*, 656 F.3d 221, 235 (3d Cir. 2011), *abrogated in part and other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018).

II. Mr. Munoz’s Removal Is Not Reasonably Foreseeable

Respondents’ supplemental brief aptly summarizes Petitioner’s claim that his removal is not reasonably foreseeable because:

(1) he cannot be deported to Mexico because he has withholding of removal to Mexico; (2) “ICE has historically managed to remove only a tiny fraction of non-citizens granted withholding or CAT to alternative countries; (3) ICE was unable to secure travel documents or identify an alternate country during the 90-day period; and (4) any removal to an alternate third country now “would require additional, lengthy proceedings.”

Resp. Supp. Br. at 10. Far from being “speculative and conclusory” as Respondents suggest, these are all facts that Respondents have not meaningfully contested. To the contrary, the declarations now provided by Respondents confirm Mr. Munoz’s arguments and show that “there is no significant likelihood of removal in the

reasonably foreseeable future.” *See Zadvydas*, 533 U.S. at 701. *Contra* Resp. Supp. Br. at 7, 10-14.

Respondents do not contest that Mr. Munoz is a national and citizen of Mexico with no ties to any other country, or that Mexico was the only country designated for removal by the immigration court. *See* Pet., Exh. 4, IJ Order (Doc. No. 1-6). Mr. Munoz was granted protection from removal to Mexico due to his sexual orientation. *Id.* He spent his initial removal period in detention, while the DHS tried to effectuate his deportation. Nusom Decl. at ¶ 6.

The declaration from Deportation Officer (DO) Jason Nusom informs that the DHS made initial efforts to deport Mr. Munoz to Guatemala, the Dominican Republic, and Honduras in 2023. *See id.* at ¶ 8-12. After the Guatemalan and Dominican governments declined to accept Mr. Munoz, and the Honduran government did not respond, Mr. Munoz was released. *Id.*

According to Supervisory Detention and Deportation Officer (SDDO) Williams, the DHS renewed its efforts to find a third safe country for Mr. Munoz’s deportation on April 9, 2025, following Mr. Munoz’s re-detention. Williams Decl. at ¶ 8. Since April, SDDO Williams has contacted the governments of Canada, Honduras, and Guatemala. *Id.* ¶ 9-14. Canada and Honduras did not respond. *Id.* ¶ 13. The most recent communication from the Guatemalan government indicated that the consulate has not “received instructions about accepting migrants from other

nationalities.” *Id.* ¶ 14. Therefore, ICE has made no more progress in identifying a third country of removal than it did in 2023 during Mr. Munoz’s initial period of post-order detention, and Respondents’ assertion that his removal is likely is speculative. Resp. Supp. Br. at 13.

Respondents’ argument rests entirely on the assertion “that ICE is actively engaged in continuing efforts to effectuate Petitioner’s third-country removal.” Resp. Supp. Br. at 15. But what is most critical is that those efforts have not been fruitful to date, and thus do not suggest that removal is likely to occur in the foreseeable future. Unlike in cases cited by Respondents where acceptance by the country of removal was confirmed but the issuance of the travel document was delayed, here, no government has indicated willingness to accept Mr. Munoz. Resp. Supp. Br. at 11-12; *compare Salad v. Dep’t of Corr.*, No. 3:25-CV-00029-TMB-KFR, 2025 WL 732305, at *6 (D. Alaska Mar. 7, 2025) (concluding that there was no significant likelihood of removal in the reasonably foreseeable future where the deportation “depend[ed] on the occurrence of multiple unguaranteed future events”) *with Castellanos v. Holder*, 337 F. App’x 263, 268 (3d Cir. 2009) (denying relief where there were no obstacles to the non-citizen’s deportation to his country of citizenship but for a stay of removal order issued by the federal court); *Barenboy v. Att’y Gen.*, 160 F. App’x 258, 260 (3d Cir. 2005) (the Embassy of the country of birth confirmed that the non-citizen was eligible to apply for a citizenship); *James*

v. Lowe, No. 23-1862, 2024 WL 1837216, at *3 (M.D. Pa. Apr. 26, 2024) (the Consulate of the country of citizenship advised DHS “that travel documents will be issued following approval from their capital”); *Rene v DHS*, No. 06-336 (JAG), 2007 WL 708905, at *2 (D.N.J. Mar. 5, 2007) (delay was caused by the non-citizen’s failure to submit appropriate form for the issuance of the passport from his country of citizenship).

Furthermore, Respondents repeatedly acknowledge that Mr. Munoz is subject to an injunction issued in *D.V.D. v. DHS*, which requires ICE to provide written notice to noncitizens before deporting them to a third country so that the noncitizens have a meaningful opportunity to seek protection from removal to that country. *See* Resp. Br. (Doc. No. 9) at 30-31; Resp. Supp. Br. at 6. The fact that Mr. Munoz’s counsel has not received such notice confirms that ICE may not deport Mr. Munoz to any third country at the moment.

Moreover, the only country Respondents have identified as a potential deportation destination is Guatemala, which is reported to be unsafe for members of the LGBTQ community like Mr. Munoz. *See* U.S. Department of State, 2023 *Country Reports on Human Rights Practices: Guatemala* (Apr. 22, 2024) (“Violence against LGBTQI+ persons remained a persistent issue... LGBTQI+ activists and gay and transgender individuals often experienced police abuse”). Therefore, Mr. Munoz is very likely to utilize his right to seek protection from removal to Guatemala. Thus,

as he has argued, lengthy additional proceedings will be necessary before he can be removed. *See* Resp. Supp. Br. at 10.

Therefore, Mr. Munoz is exactly in that “removable-but-unremovable limbo” mentioned by Respondents. *See* Resp. Supp. Br. at 10; *see also Jama v. ICE*, 543 U.S. 335, 347 (2005). All the facts in the record support the conclusion that he cannot be removed at this time. *See Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019) (“In analyzing the likelihood of removal, courts consider a variety of factors, including the existence of a repatriation agreement with the target country, the target country’s prior record of accepting removed aliens, and specific assurances from the target country regarding its willingness to accept an alien.”). Therefore, the Court should order his release pursuant to *Zadvydas*.

Lastly, Respondents allege that Mr. Munoz failed to make good faith efforts to assist in his removal, *see* Resp. Supp. Br. at 4-6 & n.2, because he did not provide communications with “Embassies and Consulates” of unspecified countries, even though the DHS’s attempts to secure the deportation to third countries were unsuccessful. However, they concede that Mr. Munoz has never refused to cooperate with ICE in the removal process. *Id.* at n.2. He completed all necessary paperwork during his initial detention period, reported to the ICE office as required, and updated his address. Critically, the Notice of Revocation of Release references Mr. Munoz’s

obligation to provide correspondence “from a *designated country willing to accept [his] admittance.*” See Pet., Exh. 6 (Doc. No. 1-8). As Respondents’ evidence confirms, except for Mexico, no other country currently falls under this definition. Therefore, while Respondents complain that Mr. Munoz placed “the burden solely on the government to find an alternate third country for removal,” they make no realistic suggestion about what Mr. Munoz could have done to identify such a country where the U.S. government’s efforts to do so through diplomatic channels have been unsuccessful. Resp. Br. at n.2; *see generally* Williams Decl.

In sum, Mr. Munoz established that there is no “significant likelihood of removal in the reasonably foreseeable future” and, therefore, his detention is unlawful. *Salad*, 2025 WL 732305, at *4 (“A noncitizen may only be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.”).

CONCLUSION

For the foregoing reasons, Mr. Munoz respectfully requests that the Court grant his petition for writ of habeas corpus or, in the alternative, issue a temporary restraining order or preliminary injunction ordering his immediate relief pending further proceedings.

Dated: May 23, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers, and that on May 23, 2025, she served a copy of the attached

**REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS
CORPUS AND OPPOSITION TO MOTION FOR TRO**

and the attached exhibits, by electronic service pursuant to Local Rule 5.2 to the following individuals:

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