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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Victor Alfonso Aguilar Olarte,

Petitioner,

vs.

David R. Rivas, Warden, et al.,

Respondents.

No. 2:25-cv-1662-PHX-JAT (ESW)

**Motion for Limited Discovery in
Support of Amended Petition for a Writ
of Habeas Corpus and Motion for a
Preliminary Injunction**

In his amended petition for a writ of habeas corpus, Mr. Aguilar asserts that he has been detained for more than six months by immigration officials, who have not yet succeeded in removing him to Colombia (his native country, because an immigration judge has forbidden it), or to any other third country (because no immigration judge has ordered removal to a third country and he has not had an opportunity to seek relief from removal to such a country). Accordingly, he contends, his continued detention by immigration officials violates the Fifth Amendment's Due Process Clause as interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, an alien who has been ordered removed from the United States may be detained only "during a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. After six months of post-removal-period detention, there arises a presumption that the detention is unlawful; however, even after that six-month period, "an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Mr. Aguilar contends that there is no likelihood of his removal in the reasonably foreseeable future because an immigration judge has granted him deferral of removal to Colombia and because he has not had proper notice and an

1 opportunity to contest removal to any other country. Accordingly, his detention in respondents'
2 custody violates the Fifth Amendment as interpreted in *Zadvydas*.

3 The allegations in the amended petition come primarily from counsel's interview with
4 Mr. Aguilar. Owing to his current custody status, Mr. Aguilar does not have access to documents
5 that may substantiate the allegations in the petition; as a result, many crucial facts in the petition
6 are alleged on information and belief. Respondents, however, are certain to have these
7 documents in their possession. Mr. Aguilar respectfully asks the Court to provide those
8 documents to his counsel so that he may further amend his petition as necessary.

9 Where "specific allegations before the court show reason to believe that the petitioner
10 may, if the facts are fully developed, be able to demonstrate that he is entitled to relief, it is the
11 duty of the court to provide the necessary facilities for an adequate inquiry." *Bracy v. Gramley*,
12 520 U.S. 899, 909 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). The facts as they
13 stand now are not fully developed, because the government presumably possesses information
14 that bears on whether Mr. Aguilar's *Zadvydas* claim and his due-process challenge to third-
15 country removal are likely to succeed. This information is likely contained in Mr. Aguilar's A-
16 file, or in other files or databases maintained by the Departments of Justice and Homeland
17 Security, to which neither he nor his present counsel have access. The relevant documents
18 include, but are not limited to, the following:

- 19 1. Mr. Aguilar's entire A-file;
- 20 2. A transcript (or, failing that, a recording) of any and all hearings in Mr. Aguilar's
21 case before the immigration courts that led to his being ordered removed to
Colombia and then granted deferral of removal to Colombia.
- 22 3. Any and all requests from ICE to the Embassies of Colombia, Argentina, Chile,
23 Peru, and any other third country pertaining to travel documents that would
24 "facilitate" Mr. Aguilar's removal to those countries, and any responsive or
25 related correspondence to or from the embassies of those countries pertaining to
these requests for travel documents.
- 26 4. Any and all documents relating to the periodic custody review described in 8
27 C.F.R. § 241.4(h)(1)–(5) for all periods of time that Mr. Aguilar has been in ICE
28 custody.

5. Any and all documents relating to the periodic custody review described in 8 C.F.R. § 241.4(i)(1)–(7) for all periods of time that Mr. Aguilar has been in ICE custody.
6. Any and all documents relating to any determination under 8 C.F.R. § 241.13 regarding whether there is a significant likelihood of removing Mr. Aguilar in the reasonably foreseeable future.

Mr. Aguilar respectfully asks the Court to order the government to furnish these documents to his counsel by the close of business on Monday, July 7, 2025. Mr. Aguilar has good cause for the Court to allow discovery. *Cf. Bracy*, 520 U.S. at 909 (guarantee of success on the merits of a habeas claim is not required for allowing discovery). The deportation officers responsible for assisting Mr. Aguilar in obtaining a passport or other travel documents have likely been privy to information about efforts to obtain those documents have been unsuccessful. On account of the fact that an immigration judge has granted deferral of removal to Colombia, and Mr. Aguilar has no known ties to any other country, it is doubtful that efforts to obtain those documents will be fruitful.

In sum, the discovery Mr. Aguilar is requesting may help him establish that there is no reasonable likelihood of his removal in the foreseeable future. This Court should grant the motion and order the government to provide the requested documents to Mr. Aguilar and his counsel.

A proposed order is being lodged herewith.

Respectfully submitted:

June 28, 2025.

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s/Keith J. Hilzendeger

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