UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION

Israel Godinez Perez,	X	
Petitioner,	X	
	X	
v.	X	
	X	Case No.:
Kristi Noem, Secretary, Department of	X	2:25-cv-429-JES-NPM
Homeland Security; **Garrett Ripa**, Field Office	X	
Director, U.S. Immigration and Customs	X	
Enforcement, Office of Enforcement and Removal	X	
Operations, Miami, Florida,	X	
Respondents.	X	
_____/		

RESPONSE TO DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

The government has filed a motion to dismiss the Complaint, arguing a lack of subject matter jurisdiction. As is discussed in more detail below, subject matter jurisdiction over Petitioner's claim is neither precluded by statute nor by case-law. As such, Petitioner respectfully requests that this Court deny the motion to dismiss.

A. Factual and Procedural Background

Petitioner is a native and citizen of Mexico who initially entered the United States without inspection. The Department of Homeland Security ("Department") initiated administrative removal proceedings against Petitioner when it issued a Form I-862, Notice to Appear ("NTA"), alleging that he was subject to removal in

violation of 8 U.S.C. §1182(a)(6)(A)(i).[1] An Immigration Judge ("IJ") ordered Petitioner's removal on September 24, 2010, but granted his application for withholding of removal to Mexico in accordance with 8 U.S.C. §1231(b)(3).[2]

For nearly fifteen (15) years following entry of the order discussed above, Petitioner has remained in the United States and the Department appears to have made absolutely no effort to either detain him, seek any alternate country to which he could be removed or to otherwise make any attempt to effectuate the administratively final "order of deportation" entered against him. *See* 8 U.S.C. §1101(a)(47) (defining "order of deportation").

Promising a program of "mass deportations," Donald Trump was inaugurated as the 47th President of the United States on January 20, 2025. Within a few months, Petitioner was stopped for unknown reasons by the Florida Highway Patrol on or about April 27, 2025 and thereafter taken into the Department's custody where he continues to remain detained.

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[1] "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible."

[2] An alien can be granted political asylum in the United States upon establishing that he or she has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. *See* 8 U.S.C. §1101(a)(42)(A); 8 U.S.C. §1258(a). An alien granted asylum can eventually apply for permanent resident status in the United States. 8 U.S.C. §1159(b). An alien must generally file an asylum request within one year of the alien's arrival. 8 U.S.C. §1258(a)(2)(B). Withholding of removal is similar to asylum in that the alien must establish that any fear of returning to the alien's country of nationality of last habitual residence is on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §1231(b)(3). Different from asylum applications, however, a higher burden of proof exists to establish eligibility for this benefit. Asylum applicants must establish the requisite fear by a preponderance of the evidence while an applicant for withholding of removal must establish that it is more likely than not that he or she would be persecuted if returned to the country at issue. Moreover, withholding of removal provides no means of permitting the alien to file for permanent resident status within the United States.

On or about May 22, 2025, Petitioner filed a Complaint with the U.S. District Court seeking a writ of habeas corpus to challenge what he claims is his indefinite detention. On June 30, 2025, Defendants filed a Motion to Dismiss. This response follows.

DISCUSSION

A. Federal Rule of Civil Procedure 12(b)(1)

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (internal citations omitted). Petitioner concedes that he bears the burden of establishing this Court's jurisdiction to hear a claim. Id.

B. Provisions governing detention of aliens following entry of an administratively final "order of deportation"

The Immigration and Nationality Act ("INA" or "Act") provides as follows:

> (a) Detention, release, and removal of aliens ordered removed
>
> (1) Removal period
>
> (A) In general
>
> Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

The INA further describes whether an alien can be detained following expiration of the 90-day "removal period" set forth above. Specifically, 8 U.S.C. §1231(a)(3) provides that

> "[i]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien-
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> (A) to appear before an immigration officer periodically for identification;
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> (B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;
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> (C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and
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> (D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien."

Finally, §1231(b)(6) provides that

> "[a]n alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3)."

In addition, the Department has implemented a number of regulations providing additional guidance on how the statutory provisions cited above are to be implemented. Two regulations are if significant import here, 8 C.F.R. §241.4 and 8 C.F.R. §241.13.

Section 241.4 sets forth a process applicable to any alien who is detained for the purpose of executing an "order of deportation." With respect to aliens granted withholding of removal, the regulation provides that "[a]liens granted withholding of removal under [8 U.S.C. §1231](b)(3) ... who are otherwise subject to detention are subject to the provisions of this part 241." 8 C.F.R. §241.4(b)(3).

Section 241.4 describes a system through which the Department is required to (1) notify an alien subject to detention in accordance with §1231(a)(1) of its custody determination; (2) consider evidence provided by the alien in support of a request that the alien be released; and (3) provide periodic review of these determinations through efforts made both in the location where the alien is detained and through assistance provided by U.S. Immigration and Customs Enforcement's ("ICE") Headquarters Post-Order Detention Unit (HQPDU). *See* 8 C.F.R. §241.4(c).

Section 241.13 describes "determination[s] of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future." Specifically,

> "[t]his section establishes special review procedures for those aliens who are subject to a final order of removal and are detained under the custody review procedures provided at § 241.4 after the expiration of the removal period, where the alien has provided good reason to believe 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."

The regulations further tie §241.13 to the procedures described in §241.4 by stating that

> "Section 241.4 shall continue to govern the detention of aliens under a final order of removal, including aliens who have requested a review of the likelihood of their removal under this section, unless the Service makes a determination under this section that there is no significant likelihood of removal in the reasonably foreseeable future. The Service may release an alien under an order of supervision under §241.4 if it determines that the alien would not pose a danger to the public or a risk of flight, without regard to the likelihood of the alien's removal in the reasonably foreseeable future."

C. The INA does not preclude subject matter jurisdiction herein

The Government argues that the INA divests this Court of any subject matter jurisdiction to consider the claims made in the Complaint. ECF. Doc. 11 at 4. Two provisions, Respondents argue, preclude consideration of the merits of Petitioner's claim.

Section 1252(g) of Title 8 provides that

> "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."

The scope of this jurisdiction limiting provision was discussed in Reno v. Amer.-Arab Anti-Discrim. Comm., 525 U.S. 471 (1999). Writing for the majority, Justice Scalia concluded that this provision should be interpreted narrowly, adding that "[i]t is implausible that the mention of three discrete events along the road to

deportation was a shorthand way of referring to all claims arising from deportation proceedings." Id. at 471. Here, Petitioner does not seek judicial review of any of the three "discreet actions" mentioned in §1252(g). Rather, Petitioner seeks review of the lawfulness of Respondents' decision to detain him indefinitely pending execution of the outstanding order of deportation entered by the IJ, an aspect of his removal proceedings that is in no way shielded from judicial review by operation of this provision of the INA. *See also* Canal A Media Holding, LLC v. USCIS, 964 F.3d 1250, 1257-1258 (11th Cir. 2020) ("when asking if a claim is barred by §1252(g), courts must focus on the action being challenged...").

Section 1252(b)(9) of Title 8 provides that

> "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact."

Commonly referred to as the "zipper clause," the Eleventh Circuit has determined that this provision "applies only '[w]ith respect to review of an order of removal...'" Madu v. U.S. Att'y Gen., 470 F.3d 1262, 1267 (11th Cir. 2006). Like Petitioner herein, the alien in Madu was detained by the Department following entry of an order of deportation and sought his release through a petition for writ of habeas corpus. Like the alien in Madu, Petitioner herein does not seek judicial review of the order of deportation entered against him and merely seeks to

challenge his ongoing and indefinite detention. Notwithstanding the government's suggestion that "Godinez Perez challenges the Government's execution of his final removal order to stop the removal process," this Court is not precluded from exercising its authority to consider the claims made in these proceedings by virtue of §1252(b)(9). ECF Doc. 11 at 7. Nowhere in the Complaint does Petitioner make any argument that the order of deportation entered against him is anything other than lawful or that the Department has every right to execute that order in accordance with applicable law.

D. Petitioner can lawfully challenge his indefinite detention through the instant petition seeking a writ of habeas corpus

As this Court is not precluded from exercising its authority to review the claim herein through application of any jurisdiction stripping provision, Petitioner submits that the claim set forth in the Complaint is ripe for judicial intervention.

i. The Government's suggestion that Petitioner's claim is premature lacks merit

Petitioner begins this portion of the discussion with an observation that the Motion to Dismiss appears intent on obfuscating the actual issue at the heart of Petitioner's claim. A casual review of the Motion to Dismiss makes evident an attempt to convince this tribunal that the Department is simply doing what it is Congressionally authorized to do by the INA and its implementing regulations and that Petitioner must remain detained while ICE works on finding a means through which to execute the outstanding order of deportation.

On or about September 24, 2010, an IJ issued the order of deportation at issue herein. Petitioner notes that the Department's representative waived the agency's right to appeal that order such that this order of deportation became administratively final upon issuance. *See* 8 U.S.C. §1101(a)(47)(B). Although 8 U.S.C. §1231(a)(1)(A) mandates that "the Attorney General shall remove the alien from the United States within a period of 90 days," the Department failed to comply with this requirement and instead appears to have taken no action whatsoever in accordance with its statutory obligation therein. This fact distinguishes Petitioner's claim from those discussed in cases interpreting the extent to which an alien can remain detained following expiration of the "removal period" as defined at §1231(a)(1)(A). Interestingly enough, however, the Department now asks this Court to conclude that any claim herein is "premature." ECF Doc. 11 at 7.

In Zavydas v. Davis, 533 U.S. 678 (2001), the Supreme Court considered habeas claims filed by two aliens against whom a final order of deportation had been entered as a result of each individual's criminal record. One such individual had previously been admitted to the United States as a permanent resident, but his country of nationality remained in question. This individual's parents were both Lithuanian citizens, but the alien had been born in a displaced persons camp located in Germany following the end of hostilities during World War II.. Neither Lithuania nor Germany would issue a travel document to assist the Government in effectuating the outstanding

order of deportation.[3] This individual was detained in the Department's custody upon entry of the order of deportation against him and continued to remain detained beyond the applicable "removal period." Id. at 684-685.

The other individual described in Zadvydas was born in Cambodia and had likewise attained lawful permanent resident status in the United States. Despite the non-existence of any repatriation treaty between Cambodia and the United States, this individual's continued detention appears to have been based on the Department's assessment that the alien was unlikely to maintain any conditions placed on his release from detention. This individual was also detained in the Department's custody upon entry of an order of deportation against him and continued to remain detained beyond the applicable "removal period." Id. at 686.

The issue presented in Zadvydas involved considering whether any limitation restricts the Government's ongoing detention of an alien following expiration of §1231(a)(1)(A)'s "removal period." While the Government argued that the statutory language included no inherent restriction as to how long an alien could remain detained following expiration of the "removal period," Justice Breyer concluded that

> "[i]n our view, the statute, read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. It does not permit indefinite detention." Id. at 689.

[3] The Supreme Court's opinion also includes details regarding a failed attempt to secure a travel document permitting this individual to be removed to his spouse's country of nationality.

Moreover, Justice Breyer wrote that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem,"[4] noting that "[t]he civil confinement here at issue is not limited, but potentially permanent."[5] Id.

Ultimately, the operative holding in Zadvydas rests upon the proposition that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." Id. at 699. More importantly,

> "[w]hether a set of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority. The basic federal habeas corpus statute grants the federal courts authority to answer that question." Id.

Justice Breyer further concluded that

> "[i]n answering that basic question, the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. Id. at 699-700.

The Government, however, reads Zadvydas in support of its argument that "this case is clearly premature." ECF Doc. 11 at 9. Petitioner's claim herein has *nothing* to do with the period of time during which he has been detained. Rather, what Petitioner is challenging is his claim that his detention is indefinite as there appears to exist no set of facts or circumstances upon which the Government can convince this tribunal

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[4] Id. at 689.
[5] Id. at 691.

that Petitioner's removal is reasonably foreseeable. Nevertheless, the Government's position herein continues to be that Petitioner must sit in a detention facility while it engages in the efforts required to effectuate his outstanding order of deportation. While ICE makes evident that this is an objective it "is actively working toward,"[6] no detailed description of its efforts has yet been proffered beyond a single piece of paper relating to its request for issuance of a travel document made through a Guatemalan Consular office made *after* he was detained and *after* the initiation of these proceedings. ECF Doc. 11, Exhibit 2.[7]

Again, Justice Breyer addressed the very same concerns in Zadvydas. The Court stated that

> "[w]e recognize, as the Government points out, that review must take appropriate account of the greater immigration related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive INS efforts to enforce this complex statute, and the Nation's need to 'speak with one voice' in immigration matters. But we believe that courts can take appropriate account of such matters without abdicating their legal responsibility to review the lawfulness of an alien's continued detention." (internal citation omitted). Id. at 700.

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[6] ECF Doc. 11 at 11.

[7] Petitioner notes that this single piece of paper is a notification sent to Petitioner that ICE intends on effectuating the order of deportation by removing him to Guatemala. The pertinent regulation, however, instructs ICE as follows: "[t]he district director shall continue to undertake appropriate steps to secure travel documents for the alien both before and after the expiration of the removal period. If the district director is unable to secure travel documents within the removal period, he or she shall apply for assistance from Headquarters Detention and Deportation, Office of Field Operations. The district director shall promptly advise the HQPDU Director when travel documents are obtained for an alien whose custody is subject to review by the HQPDU. The Service's determination that receipt of a travel document is likely may by itself warrant continuation of detention pending the removal of the alien from the United States." 8 C.F.R. §241.4(g)(2). Moreover, "[i]n making a custody determination, the district director and the Director of the HQPDU shall consider the ability to obtain a travel document for the alien. If it is established at any stage of a custody review that, in the judgment of the Service, travel documents can be obtained, or such document is forthcoming, the alien will not be released unless immediate removal is not practicable or in the public interest." 8 C.F.R. §241.4(g)(3).

ii. Petitioner's case is distinguishable from the aliens described in Zadvydas v. Davis

Despite the factual scenario presented herein being distinguishable from the aliens discussed in Zadvydas, the Government argues that the Court can ignore these fundamental differences and simply follow the guidance provided therein. Unlike the first individual described in Zadvydas, Petitioner's nationality is readily apparent. Unlike the second individual discussed in Zadvydas, there is nothing to indicate that the lack of a repatriation treaty between the United States and some third country is what rests at the heart of the Government's inability to effectuate Petitioner's order of deportation. Unlike the efforts taken by the Department to effectuate the orders of deportation entered against both aliens described in Zadvydas, the current record reflects no action having ever been taken to effectuate Petitioner's order of deportation *before* the initiation of proceedings challenging the alien's ongoing detention.

In so stating, Petitioner concedes that this Court lacks the authority to judicially review any action taken by the Department to execute the outstanding order of deportation. Notwithstanding, the sole effort made by the Department to execute this order was taken on or about June 1, 2025 when it requested a travel document from Guatemala. This action occurred more than thirty (30) days *after* Petitioner first came within the Department's custody. Moreover, it would appear that such action was taken to provide the Department with some basis to defend the instant petition seeking a writ of habeas corpus filed some ten (10) days *before* the request for issuance of a travel document was made to the Guatemalan Consular Office.

The long and short of Petitioner's claim in these proceedings is that ICE must operate in such a way so as to avoid the violation of an alien's Constitutional rights inherent in the Fifth Amendment's guarantees of both substantive and procedural Due Process. Petitioner takes no issue with the Department's efforts to effectuate his outstanding order of deportation. But this does not require that this tribunal ignore the fact that ICE has for nearly fifteen (15) years done *nothing* to execute this order. Within this same period of time, ICE has made but one request for issuance of a travel document and that request was refused. At best, the Government has made clear its intent to *begin* making such efforts now that Petitioner is detained within its custody without providing any record of any ongoing or consistent efforts like those described in Zadvydas. Simply stated, ICE provides this tribunal with absolutely no basis upon which to conclude, yet alone believe, that there exists any reasonably foreseeable likelihood that he will ever be removed.

Rather than granting dismissal as requested by the Government, Petitioner suggests that the Motion to Dismiss makes clear the need to ensure judicial intervention into the Department's claim of its ongoing efforts to effectuate the outstanding order of deportation. Unfortunately, the Government's work thus far has been to shoot first and to only ask questions later. Instead of maintaining some concern for avoidance of what reasonably appears to be Petitioner's ongoing and indefinite detention, the Government asks the District Court to avoid the clear indication of the possible Constitutional violations as described in the Complaint. Just as Justice Breyer made clear in Zadvydas, District Courts maintain the requisite

authority to review the Department's actions in this regard and the dismissal of these proceedings at this stage would only encourage the Administration to prolong what can only be described as a continuing violation of Petitioner's Constitutional rights through his indefinite detention.

iii. Judicial intervention at this stage is not precluded solely because Petitioner has not remained detained in excess of the presumptively reasonable period described in Zadvydas v. Davis

The Motion to Dismiss posits that "[b]efore the time limit runs, neither Zadvydas nor any other binding precedent permit a challenge based on reasonable foreseeability of removal." ECF Doc. 11 at 12. Interestingly, the Government cites Akinwale v. Ashcroft, 287 F.3d 1050 (11th Cir. 2002), in support of this portion of its argument. Nonetheless, Akinwale is both consistent with the holding in Zadvydas and is factually distinguishable from the scenario presented in these proceedings.

The alien described in Akinwale is a Nigerian national who had previously been admitted for permanent residence and against whom a final order of deportation was entered while the alien was incarcerated in State custody. Following the alien's release from incarceration, the Department assumed custody. The alien thereafter filed a petition for writ of habeas corpus approximately four (4) months thereafter and prior to the expiration of the presumptively reasonable period of post-order custody described in Zadvydas. Id. at 1051.

As has been argued throughout these proceedings, the question presented involve Petitioner's claim of indefinite detention based on a lack of any evidence even suggesting the existence of a significant likelihood of removal in the reasonably

foreseeable future. At each step along the way, however, the Department seeks to turn the discussion back to the presumptively reasonable period described in Zadvydas because doing so avoids considering whether any likelihood of removal in the foreseeable future *currently* exists. While the Department's position may be that any detention of an alien in anticipation of even a remote possibility that the outstanding order of deportation can be effectuated is sufficient to avoid judicial intervention, this is patently inconsistent with the jurisprudence provided in Zadvydas and its progeny.

iv. The Government's remaining arguments misconstrue the means through which a District Court can review the Constitutionality of Petitioner's indefinite detention

Without explaining how, the Motion to Dismiss argues that the burden is placed on Petitioner to show that there is no significant likelihood he will not be removed within the reasonably foreseeable future. ECF Doc. 11 at 12. Yet this directly conflicts with the Supreme Court's majority opinion in Zadvydas v. Davis, *supra* at 699, that

> "[w]hether a set of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority. The basic federal habeas corpus statute grants the federal courts authority to answer that question."

In an attempt to support its position, the Government suggests that dismissal is warranted because Petitioner "made no allegations on any efforts to cooperate with ICE apart from a bare conclusory statement." ECF Doc. 11 at 13. While the Department is correct that Petitioner has an ongoing obligation to cooperate with any efforts made by the Department to effectuate the order of deportation, no allegations have been made that Petitioner has either been asked for said

cooperation or has in some way refused to cooperate in this regard. Despite the Department's suggestion that it is Petitioner who must come forward and take the lead in applying for a travel document or otherwise finding a third country to which he can be removed, the pertinent statutory and regulatory provisions place this burden squarely on the Department. *See e.g.* 8 U.S.C. §1231(b)(2)(A) (allowing an alien to designate a country to which to be removed, but requiring that the Attorney General "shall remove the alien"); 8 U.S.C. §1231(b)(2)(C) (allowing the Attorney General to disregard a country designated by the alien for removal); 8 U.S.C. §1231(b)(2)(D) (allowing the Attorney General to remove an alien to an alternate country); 8 U.S.C. §1231(b)(2)(E) (allowing the Attorney General to remove an alien to a number of additional countries if all other alternatives fail).

With that said, the Government is on the right track when it mentions that "there are no factual allegations whether [Petitioner] made any good-faith efforts to assist in his removal." ECF Doc. 11 at 14. This is exactly the type of fact-intensive inquiry that a petition seeking a writ of habeas corpus seeks to develop during the process of litigating the matter before the District Court. However, Petitioner has made sufficient allegation in the Complaint that he is unaware of any likelihood of his removal to any third country in the foreseeable future. Under the circumstances presented, and consistent with Zadvydas, the need for judicial intervention to ensure the Department's compliance with Petitioner's Constitutional rights to be free from indefinite detention is manifest. For purposes of this response, Petitioner can only assume that the Department has no immediate

intent to release him from custody pending its receipt of a third country travel document and this is readily sufficient to provide this tribunal with every reason to maintain its review of the Department's actions in this regard.

Petitioner concedes that the Department is clearly authorized by the INA to find a third country to which he can be removed in accordance with the order of deportation entered against him. What Petitioner challenges herein is his indefinite detention pending issuance of an appropriate travel document. Zadvydas instructs that any indefinite detention is Constitutionally infirm and that this infirmity becomes increasingly more significant in the absence of any reasonable likelihood of removal in the foreseeable future. Petitioner submits that the Department had no plan in place to find a willing third country that would assist it in effectuating the order of deportation at any time before he was brought within the Department's custody and that no such plan currently exists.

Nevertheless, the Department has argued to this tribunal that it is working on Petitioner's case and that he must remain detained. To the extent that any reasonable likelihood of Petitioner's removal in the foreseeable future exists, denying the Motion to Dismiss and requiring the Department to file an Answer to the Complaint will provide it an opportunity for this Court to review its response to Petitioner's claims herein. Not only is Petitioner's claim as set forth in the Complaint one that should involve the Court's intervention, Petitioner submits that the only way to ensure the protection of his Constitutional right to be free from indefinite detention is through the denial of the pending Motion to Dismiss.

CONCLUSION

WHEREFORE, Petitioner respectfully requests the following:

1. That the Court enter an order denying the Motion to Dismiss;
2. That the Court enter an order requiring Defendants to submit an Answer to the Complaint;
3. That the Court take any further action it seems just and proper under the circumstances presented;

Dated: August 4, 2025

Respectfully submitted,

/s/ David Stoller /s/
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CERTIFICATE OF SERVICE

I, David Stoller, certify that on August 4, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to:

Kevin Huguelet, Assistant United States Attorney
2110 First Street, Suite 3-137
Ft. Myers, Florida 33901

/s/ David Stoller /s/
David Stoller, Esquire
Attorney for Petitioner