UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Laredo Division

ISRAEL ADONAY SAGASTIZADO SANCHEZ, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	Civil Action No. 5:25-cv-104

Reply Memorandum in Support of
Petition for Writ of Habeas Corpus
and in Opposition to Respondents' Motion to Dismiss

Petitioner Israel Adonay Sagastizado Sanchez hereby submits this reply memorandum in support of his Petition for Writ of Habeas Corpus (Dkt. No. 1), and in opposition to Respondents' Motion to Dismiss (Dkt. No. 7).

Procedural History

1. Petitioner, a native and citizen of El Salvador, entered the United States without inspection. Some time thereafter he was apprehended by U.S. Immigration and Customs Enforcement ("ICE"), who served Petitioner with a Notice to Appear on June 11, 2018. *See* Dkt. No. 24-1 (Notice to Appear). The Notice to Appear designated El Salvador as the only country of removal. *Id.*

2. Petitioner filed an I-589 application for asylum and withholding of removal on July 12, 2021. *See* Dkt. No. 24-2 (filestamped I-589 application, first page only).

3. On February 22, 2024, the Immigration Judge ("IJ") denied Petitioner's application for asylum, ordered Petitioner removed to El Salvador, and granted withholding of removal as to

El Salvador. Dkt. No. 1-1. The IJ's order does not indicate why Petitioner's asylum application was denied, but it is reasonable to suppose that it was because of failure to apply within one year of arrival in the United States, *see* 8 U.S.C. § 1158(a)(2)(B); withholding of removal has no such time restriction, *see* 8 U.S.C. § 1231(b)(3). At no time during the proceedings before the IJ was Mexico named as a possible country of removal.

4. Prior to this year, an order of withholding of removal practically guaranteed that the recipient would be allowed to remain in the United States indefinitely. *Johnson v. Guzman Chavez*, 594 U.S. 523, 552-53 (2021) ("Studies have also found that, once withholding-only relief is granted, the alien is ordinarily not sent to another, less dangerous country. Rather, the alien typically remains in the United States for the foreseeable future. . . . only 1.6% of noncitizens granted withholding-only relief were ever actually removed to an alternative country." (Breyer, J., dissenting)).[1]

5. For this reason, on May 6, 2024, Petitioner was released from ICE custody on an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3). Dkt. No. 7-4.

6. On May 6, 2025, Petitioner's Order of Supervision was revoked and he was re-detained, in order to remove him to Mexico. Dkt. No. 7-5. Several months went by without Respondents making any apparent progress on that removal.

7. This action was filed on June 25, 2025. Dkt. No. 1.

8. On July 17, 2025, Petitioner filed a Motion to Reopen with the Immigration Court, for the purposes of seeking withholding of removal to Mexico, along with an emergency motion for stay of removal. *See* Dkt. No. 24-3 (Emergency Motion to Reopen), Dkt. No. 24-4 (Emergency

[1] This 1.6% figure includes, for example, dual nationals who are only granted withholding of removal as to one of their countries of citizenship.

Motion to Stay). On July 18, 2025, the IJ granted a temporary stay of removal. *See* Dkt. No. 24-5 (Order of the IJ, July 18, 2025).

9. On August 1, 2025, the IJ denied the Motion to Reopen and dissolved the temporary stay. *See* Dkt. No. 24-6 (IJ orders dated Aug. 1, 2025). The only reason given by the IJ was as follows: "Removal to a third country is governed by the provisions of INA Section 241(b). In addition, issues raised in the motion to reopen are currently subject to litigation in various federal courts. The motion to reopen is denied." *Id.*

10. On August 15, 2025, Petitioner, by counsel, expressed fear of removal to Mexico and requested a Reasonable Fear Interview ("RFI") to ICE. *See* Dkt. No. 16-1 at ¶ 3; Dkt. Nos. 16-2, 16-3.

11. On August 19, 2025, Petitioner filed a Motion to Reconsider with the IJ. *See* Dkt. No. 24-7. The Motion to Reconsider argued that "[t]he IJ held that the Immigration Court may not, or need not, grant such a Motion to Reopen because the issues 'are currently subject to litigation in various federal courts.' But in that very litigation, before the federal district court in Texas, the U.S. Department of Justice is arguing that Respondent may only bring his claim for withholding of removal before an IJ. Accordingly, the IJ's ruling denying Respondent's Motion to Reopen—aside from creating an impossible catch-22 wherein no adjudicator has jurisdiction to consider Respondent's request for withholding of removal to Mexico—contradicts the official legal position of the Attorney General." *Id.* at 5 (internal citations omitted).

12. On August 20, 2025, the IJ denied the Motion to Reconsider. *See* Dkt. No. 24-8 (Immigration Judge order dated Aug. 20, 2025). The sole reason given by the Immigration Judge was, "The Respondent was considered for withholding of removal, and relief was granted. The

statutory scheme contemplates third country removal by the Department [of Homeland Security]. The court finds no error of law or fact. The motion to reconsider is denied." *Id.*

13. After receiving the referral from ICE, U.S. Citizenship and Immigration Services ("USCIS") Petitioner's RFI interview was carried out on August 29, 2025. *See* Dkt. No. 16-1 at ¶ 4; Dkt. No. 16-6. Petitioner, by counsel, then requested that an IJ review his denied RFI. *See* Dkt. No. 16-5.

14. Also on August 29, 2025, Petitioner appealed the IJ's decisions denying his Motion to Reopen to the Board of Immigration Appeals ("BIA"). *See* Dkt. No. 24-9 (filestamped EOIR-26). The BIA has yet to issue a briefing schedule on the appeal.

15. On September 8, 2025, Respondents confirmed that they intended to remove Petitioner to Mexico on September 12, 2025. Dkt. No. 15.

16. Petitioner moved this Court for a Temporary Restraining Order on September 9, 2025. Dkt. No. 16. On September 10, 2025, this Court entered a 14-day Temporary Restraining Order, enjoining Respondents from removing Petitioner prior to carrying out the IJ review of the denied RFI. Dkt. No. 18.

17. Also on September 10, 2025, Petitioner moved the BIA for an emergency stay of removal. *See* Dkt. No. 24-10 (file-stamped BIA Emergency Motion for Stay of Removal). The BIA has yet to rule on the stay of removal.

18. Petitioner filed his Motion for Preliminary Injunction on September 12, 2025, Dkt. No. 20. After briefing and argument, this Court granted a Motion for Preliminary Injunction on October 2, 2025, finding that Petitioner has a due process right to an IJ review of his denied USCIS fear interview, and prohibiting Respondents from removing Petitioner from the United States until seven days after such review. Dkt. No. 26.

Legal Standard

Respondents move to dismiss under Fed. R. Civ. P. 12(b)(1), 12(b)(6). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist. . . . In examining a Rule 12(b)(1) motion, the district court is empowered to consider matters of fact which may be in dispute. Ultimately, a motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (internal citations omitted).

Under Rule 12(b)(6), to the contrary, a complaint may be dismissed for "failure to state a claim upon which relief may be granted." In the Fifth Circuit, a 12(b)(6) motion "is viewed with disfavor and is rarely granted." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). The court is required to construe the complaint liberally in favor of the plaintiff, and takes all facts pleaded in the complaint as true. *See Campbell v. Wells Fargo Bank*, 781 F.2d 440, 442 (5th Cir. 1986). To state a claim for relief, a plaintiff must "nudge[ ] their claim across the line from conceivable to plausible" by pleading "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Argument

I. This Court has jurisdiction to hear Petitioner's claims challenging his detention, challenging the revocation of his Order of Supervision, and challenging his removal to Mexico without due process.

This Court has already disposed of Respondents' arguments that 8 U.S.C. §§ 1252(g), (b)(9), and (a)(5) deprive this Court of jurisdiction to hear Plaintiff's claims challenging his removal to Mexico without further due process. Dkt. No. 26 at 11-12. As the Court explained, "Sagastizado

does not ask the Court to review the Executive Branch's decision to remove him. Instead, he challenges the post-removal process he has been afforded." *Id.* at 11. *See also Abrego Garcia v. Noem*, 777 F. Supp. 3d 501. 515 (D. Md. 2025), *aff'd*, 145 S.Ct. 1017 (holding that § 1252(g) did not bar judicial review of the legal question of whether the government exceeded its legal authority in sending the petitioner to El Salvador in violation of the withholding-of-removal statute); *Santamaria Orellana v. Baker*, 2025 WL 2841886, at *7 (D. Md. Oct. 7, 2025) ("Section 1252(a)(5) . . . bars district court review of 'an order of removal' and thus is not applicable here because Santamaria Orellana is not challenging the removal order[.]").

Respondents' jurisdiction-stripping arguments fare no better when applied to Petitioner's detention-related claims. In *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001), the Supreme Court explained that notwithstanding Section 1252(g), "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." As the Fifth Circuit explained, Section 1252(g) "does not bar courts from reviewing an alien detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to 'execute removal orders' and thus does not implicate section 1252(g)." *Cardoso v. Reno*, 216 F.3d 512, 516-17 (5th Cir. 2000). Likewise, the Supreme Court subsequently held that 8 U.S.C. § 1252(b)(9) does not strip habeas jurisdiction over challenges to detention. *Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018). *See also J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) ("[W]hile [Sections 1252(a)(5) and 1252(b)(9)] limit how immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose all judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeals.").

For the foregoing reasons, Respondents' Motion to Dismiss pursuant to Fed. R. Civ. P.

12(b)(1) should be denied.

II. Petitioner's claims under *Zadvydas* should not be dismissed, as it remains yet unknown whether Respondents may lawfully remove him to Mexico, and Respondents appear to have no other plans for removal.

When an individual is ordered removed, 8 U.S.C. §1231(a) permits the government to detain them during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). With two exceptions not relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). The 90-day removal period is tolled and extended only if "the alien 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." 8 U.S.C. § 1231(a)(1)(C). The statute contains no other provision for pausing, re-initiating or refreshing the removal period after the 90-day clock to zero.

After the removal period expires, the government may continue to detain certain noncitizens. 8 U.S.C. § 1231(a)(6). However, this broad authority is subject to an important constitutional limitation, which the Supreme Court has read into the statute: detention beyond the removal period is permissible only where reasonably related to a legitimate government purpose, namely, securing the noncitizen's physical removal from the United States. *Zadvydas*, 533 U.S. at 682. Where there is no possibility of removal, detention presents due process concerns because "the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Id.* at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *Id.* at 689. Because the *Zadvydas* Court understood Congress to have recognized that not all removals can be accomplished in 90 days, the Court established a rebuttable presumption that six months could be deemed a "presumptively reasonable period," after which the burden shifts to the

government to justify continued detention by means of evidence if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Petitioner's first, second and third claims for release argue that under *Zadvydas*, neither due process nor 8 U.S.C. § 1231(a)(6) permit his continued detention unless there exists a significant likelihood of removal in the reasonably foreseeable future. Respondents seek dismissal of this claim, first arguing that it was filed prematurely, since six months have not yet elapsed since his re-arrest on May 6, 2025; and second arguing that it is significantly likely he will be removed to Mexico. The first argument fails on the law, and the second argument is simply too factually uncertain at the present to require dismissal of these claims.

A. This habeas petition, filed more than five years after the expiration of the removal period, is not premature.

1. The removal period has not reset due to re-detention.

Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) commenced upon Petitioner's final IJ order on February 22, 2024, and expired on May 22, 2024; the 180-day presumptively reasonable period under 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas* expired over a year ago on August 20, 2024. Respondents' contention that Petitioner's habeas claim is premature because he has not spent a cumulative 180 days in ICE detention since his removal order misreads the statute and *Zadvydas*.

First, the plain text of the statute makes clear that the 90-day removal period has not reset in this case. As 8 U.S.C. § 1231(a)(2)(B) states,

> **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.

In other words, once the 90-day removal period has run, the only thing that can reset it to its beginning is (i) a new administratively final removal order; (ii) a final order from a reviewing Court of Appeals that had previously entered a stay of removal; or (iii) the noncitizen's release from criminal detention or confinement. None have occurred here.

Additionally, 8 U.S.C. § 1231(a)(1)(C) provides the only reason for the removal period to be tolled: "if the alien 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." Again, this did not occur here.

For this reason, courts agree that re-detention for the purpose of removal, without more, does not reset the removal period. *See, e.g.*, *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019), *R&R adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019), citing *Bailey v. Lynch*, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) ("The removal period does not restart simply because an alien who has previously been released is taken back into custody.").

Respondents contend that the removal period must be re-started because a new third-country of removal, Mexico, has now been designated.[2] But 8 U.S.C. § 1231(b)(2) shows that option was available to Respondents all along, including during the initial removal period in 2024; their unilateral decision not to try it then, and to try it now, does not reset or toll the statutory removal period, since it is not an occurrence listed in 8 U.S.C. § 1231(a)(2)(B), (C).

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[2] Under Respondents' view of the 180-day clock, if the government releases a noncitizen from custody after 181 days on a finding that he cannot be removed to country A, then re-arrests him the following morning in order to attempt removal to country B, the holding of *Zadvydas* does not allow him to file a habeas corpus petition until he spends *another* 181 days in detention. With 195 countries on earth, if the government could simply reset the removal period by designating yet another one of them, this would completely devastate the holding of *Zadvydas*.

Second, while "[t]he question of whether the six-month period has expired is not clearly answered by *Zadvydas*," *Zavvar v. Scott*, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025), the reasoning of *Zadvydas* explains why the 180-day period does not reset simply because a noncitizen is re-detained. As the *Zadvydas* court explained, the basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. In so doing, the habeas court "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." *Id.* at 699-700. Under *Zadvydas*, after 180 days have elapsed since the removal order, even one day of additional detention could be unreasonable if not justifiable by the statute's basic purpose of assuring the noncitizen's presence at the moment of removal.

Because the *Zadvydas* Court understood Congress to have recognized that not all removals can be accomplished in 90 days, the Court allowed an additional 90 days of detention as a "*presumptively* reasonable period," *id.* at 701 (emphasis added). But a presumption is just that, and does not mean that a habeas petitioner *must* be detained for a total of six months. Of course, the government is entitled to 180 days to try to effectuate removal, but Respondents' argument that each of those 180 days only counts if spent behind bars presupposes that removal efforts can take place only while a noncitizen is detained. Although this is current ICE practice, thus explaining why Respondents arrested Petitioner *before* determining whether Mexico might issue travel documents, it is certainly not a legal requirement. Here, Respondents had a full year to work on removal, with Petitioner on supervision throughout. As the District of Maryland explained in *Zavvar*:

> *Zadvydas* contemplated only the situation in which a noncitizen was continuously detained from the issuance of the removal order while efforts to execute the removal were ongoing, and did not directly address the situation presented here, where a noncitizen was not detained upon the issuance of the removal order, remained on release for 17 years, and only then was subjected to post-removal order detention for the first time. This distinction is significant because *Zadvydas* appears to have sought to balance the length of time a noncitizen would be held in detention against the need to afford the Government some time immediately following the issuance of the removal order to make and execute arrangements for removal. Because some if not most of those arrangements, such as securing approval from a foreign country to remove an individual to that nation, can likely be pursued even while the noncitizen is on release, that balance may well differ in circumstances where, before the period of detention began, the Government had a period of time . . . to make the arrangements for removal. Thus, there is, at a minimum, a reasonable argument that the six-month period runs continuously from the beginning of the removal period, even if the noncitizen is not detained throughout that period.

2025 WL 2592543 at *3 (internal citations omitted). *See also Tadros v. Noem*, No. 25-cv-4108 (EP), 2025 WL 1678501, *3 (D.N.J. June 13, 2025) ("The 90-day removal period under 8 U.S.C. § 1231(a)(1)(B) was triggered [when the grant of relief under the CAT became administratively final]. Tadros was released two days later."); *Alam v. Nielsen*, 312 F. Supp. 574, 581-82 (S.D. Tex. 2018) (rejecting the argument that the Section 1231(a)(1)(A) removal period restarts when a noncitizen is re-detained for the purposes of removal); *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025), citing *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025).

The unpublished Fifth Circuit case cited by Respondents, *Agyei-Kodie v. Holder*, 418 Fed. Appx. 317 (5th Cir. 2011), does not hold to the contrary. In *Agyei-Kodie*, by the time the Fifth Circuit ruled, fewer than 180 days had elapsed after the petitioner was ordered removed; here, this case was filed over a year after the removal order. The Fifth Circuit did not hold, and has never held, that the entirety of the 180-day period must be spent in custody, or that only days spent in custody count towards the clock. Nor has the Court of Appeals ever had occasion to decide whether a *re*-detention resets the 180-day clock, since such re-detentions were previously so rare.

For the foregoing reasons, this Court should find that the 90-day Section 1231(a)(1) removal period, and the additional 90-day Section 1231(a)(6) post-removal period, both expired in 2024, and did not reset upon Petitioner's re-detention on September 16, 2025.

2. The *Zadvydas* presumption of reasonableness may be rebutted within the initial 180-day period of detention.

Moreover, even if the *Zadvydas* six-month presumptively reasonable period only counts days spent behind bars in detention, that presumption of reasonableness would still be nonetheless rebuttable prior to that period's expiration. *Zadvydas* does not prohibit the filing of a habeas petition for 180 days, it merely gives the government a *presumption* that 180 days' worth of detention is reasonable. 533 U.S. 678, 701 (recognizing a "presumptively reasonable period of detention"). *See Munoz-Saucedo v. Pittman*, No. 1:25-cv-2258-CPO, 2025 WL 1750346, at *10 (D.N.J. Jun. 24, 2025). *Zadvydas* did not announce a bright-line prohibition on challenges prior to the six-month mark. *Id.* at *10 (citing *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) and *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008)). Rather, "the presumption scheme merely suggests that the burden the detainee must carry within the first six months . . . is a heavier one than after six months has elapsed." *Cesar*, 542 F. Supp. 2d at 903-04. *See also Zavvar*, 2025 WL 2592543 at *5 (rejecting the concept of an unrebuttable presumption before six months of detention have elapsed).

The District of Maryland recently considered the question of whether the *Zadvydas* presumption was rebuttable, and held that it was. *Medina v. Noem* ("*Medina I*"), 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) ("But regardless of which *type* of presumption applies to a *Zadvydas* claim, which this Court need not decide, what *Zadvydas* did make clear was that it was adopting a presumption—not a conclusive bar to adjudication of whether continued detention is authorized that lifts only after six months have elapsed."). The *Medina I* court explained that the

presumption of reasonableness was merely the "default." *Id.* "But if a petitioner 'claim[s] and *prove[s]* . . . that his removal is not reasonably foreseeable'—including during the six-month period—the petitioner 'can overcome that presumption' and detention is no longer authorized." *Id.*, citing *Munoz-Saucedo*, 2025 WL 1750346 at *6. *See also Zavvar*, 2025 WL 2592543 at *6 ("[E]ven if the presumption is not rebuttable in the standard situation under which, as in *Zadvydas*, the six-month period consisted of continuous detention beginning on the date of the removal order, it must be rebuttable when, as here, the noncitizen was not initially detained and there was thus a substantial pre-detention period during which Respondents could have arranged for the removal.").

The District of New Jersey also agreed in *Munoz-Saucedo* that the presumption of reasonableness is rebuttable within the initial 180 days: "Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from challenging the reasonableness of his detention before such time." 2025 WL 1750346 at *5. The *Munoz-Saucedo* court went on to explain, "Although some courts have read *Zadvydas* as creating a bright-line rule—one that effectively allows the government to detain a person for at least six months without judicial review, even if there was no possibility of removal—a close reading of *Zadvydas* does not support that interpretation. . . . The Court described the six-month mark as a 'guide,' not a rigid threshold. The Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption that requires it to be irrebuttable." *Id.* (internal citations omitted). The *Munoz-Saucedo* court concluded, "Thus, the *Zadvydas* presumption . . . is rebuttable. The presumption of reasonableness is the default, but if a person 'can prove' that his removal is not reasonably foreseeable, then she can overcome that presumption. In practical terms, before the six-month period elapses, the government bears no burden to justify detention, and the petitioner must claim and prove, that his removal is not

reasonably foreseeable." *Id.* at *6 (internal citations omitted). *See also Ali v. DHS*, 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, . . . and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits."); *Hoang Trinh*, 333 F. Supp. 3d at 994 ("The six-month *Zadvydas* presumption is just that—a presumption . . . not a prohibition on claims challenging detention less than six months." (internal quotation marks omitted)); *Cesar*, 542 F. Supp. 2d at 903 ("The *Zadvydas* Court did not say that the presumption is irrebuttable."); *Cordon-Salguero*, slip op. at 32-35; *Ortega v. Kaiser*, 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025).

For the foregoing reasons, this Court should not credit Respondents' argument that this petition was filed prematurely.

B. The evidence in the record does not establish a significant likelihood that Petitioner will be removed in the reasonably foreseeable future.

Just over a year ago, on May 6, 2024, Respondents concluded that they could not remove Petitioner from the United States, and placed him on an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3). Dkt. No. 7-4. Now, Respondents are still prohibited from sending Petitioner to his native El Salvador; their only plan for removal is to send him to Mexico. But it is not yet known whether removal to Mexico will be legally permissible: this Court has now ordered a due process hearing in front of an Immigration Judge, Dkt. No. 26, which has not yet been scheduled. If the Immigration Judge reverses the finding of the USCIS asylum officer and finds that Petitioner *does* have a valid fear of persecution or torture upon removal to Mexico, then Respondents would be left with no plan to remove Petitioner from the United States, and his claim under *Zadvydas* would have to be granted. *See Medina I*, 2025 WL 2306274, at *10 ("The *Zadvydas* analysis is inherently dynamic, on multiple dimensions, as reflected in the open questions identified above. The Court need not and will not speculate on what would need to change to render a potential future evidentiary

record sufficient to entitle Mr. Cruz Medina to habeas relief. At least in some circumstances, the mere passage of time may suffice, as reflected in *Zadvydas* itself . . . . New information regarding the status of removal efforts or immigration proceedings may also bear on the analysis, or the converse, i.e., if the government brings forward nothing to indicate that a substantial likelihood of removal subsists . . . the Court will retain jurisdiction and, on a monthly basis, the parties shall file supplemental submissions." (Internal citations omitted.)).

For this reason, Respondents' Motion to Dismiss Petitioner's *Zadvydas* claim should be denied.

III. Due process does not allow Respondents to deport Petitioner to Mexico without an Immigration Judge review.

Petitioner's fourth claim for relief argues that "Respondents intend to remove Petitioner to Mexico, which will in turn remove Petitioner back to El Salvador, without adequate notice and opportunity to be heard, thus violating his procedural due process rights under the Fifth Amendment to the U.S. Constitution." Dkt. No. 1 at ¶ 43. This Court has already found Petitioner likely to succeed on the merits of his claim that Respondents' current procedures—a USCIS interview that results in a check-the-box form, with nothing more—are insufficient under the *Mathews v. Eldridge* test, and that due process requires review before a neutral magistrate in the form of an Immigration Judge.[3] Dkt. No. 26. Since this Court's preliminary injunction ruling a week ago, the District of Maryland has also followed this Court's ruling. *Medina v. Noem* ("*Medina II*"), 2025 WL 2841488, *6 (D. Md. Oct. 7, 2025) (citing this Court's preliminary injunction ruling to find that "Petitioner has a substantial likelihood of success on his claim that the Due Process Clause entitles him to review by

[3] Petitioner contends that under governing law, this review must include the issue of chain refoulement. In other words, even if Mexico may not itself mistreat Petitioner, it would promptly re-deport Petitioner to El Salvador, where it has already been determined that he would be persecuted.

an immigration judge of the asylum officer's negative reasonable fear determination—the same procedure that would apply if he were the subject of a reinstated removal order or had been convicted of an aggravated felony.").

For the reasons stated in this Court's preliminary injunction order, the Court should find for Petitioner on this count, and issue a permanent injunction.

Conclusion

For the foregoing reasons, this Court should deny Respondents' Motion to Dismiss.

Respectfully submitted,

Date: October 9, 2025

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

Date: October 9, 2025

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