UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Reza ZAVVAR	)	
	)	
	)	Case No.1:25-cv-02104-TDC
	)	
Petitioner,	)	
	)	
v.	)	
	)	
NIKITA SCOTT, ET. AL.	)	
	)	
	)	
Respondents.	)	
	)	

PETITIONER'S RESPONSE TO THE GOVERNMENT'S ANSWER AND MOTION TO DISMISS OR STAY

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I. INTRODUCTION

The question for this court is whether Petitioner Reza Zavvar is properly detained by the Respondents and whether his removal is reasonably foreseeable justifying his detention.

Mr. Zavvar has resided in the United States since 1985. In 1994 and 1998, Mr. Zavvar was convicted of misdemeanor possession of marijuana. Due to these convictions, Mr. Zavvar was placed into removal proceedings by the Department of Homeland Security as he was returning from a trip abroad in 2004. He was charged with inadmissibility under 8 U.S.C. §1182(a)(2)(A)(i)(II) as an individual convicted of an offense related to a controlled substance. Those proceedings continued for nearly three and a half years until Mr. Zavvar and the department of Homeland Security reached an agreement that Mr. Zavvar would abandon his claim to his continued permanent residence and accept an order of removal with removal withheld to his native Iran under 8 U.S.C. §1231(b)(3). The immigration judge entered his order on October 11, 2007. The Petitioner was not detained during those proceedings and was never placed on supervised release. Since 2007, Mr. Zavvar has resided in Maryland, been employed, and avoided any type of criminal entanglement. On June 28, 2025, he was walking his dog when armed officers of the Department of Homeland Security apprehended him outside his home.[1]

Mr. Zavvar was taken by DHS officials to the Baltimore Holding Cell, where he was informed that he was going to be removed, but would first be transferred to Texas. In the

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[1] Petitioner's arrest and detention take place against the backdrop of the United States military action against Iran on June 22, 2025 where hundreds of Iranian nationals were arrested by U.S. immigration authorities. *See* Kellen McGovern Jones, "Trump Border Czar: 200+ Iranian Nationals Arrested as Regime Executes Alleged Spies." The Dallas Express, July 4, 2025. Attached as EXHIBIT

government's filing, the Respondents assert that, on July 1, 2025 the Petitioner was served with two documents indicating that the Respondents intended to deport him to Australia or to Romania. The documents filed with the court on July 11 indicate that the Petitioner refused to sign them. The Petitioner declares and affirms that these documents were never personally served on him. Mr. Zavvar remains detained in Port Isabel, Texas and it remains unclear what steps, if any, the Respondents are taking to seek his removal to Australia or Romania.

II. LEGAL STANDARDS

8 U.S.C. §1231 governs detention after the entry of a final order of removal. Under 8 U.S.C. §1231(a)(1), the Department of Homeland Security shall detain individuals ordered removed during the "removal period," which is the 90 days immediately post entry of a final order of removal. During that time, the DHS "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 "the date the order of removal becomes administratively final." 8 U.S.C. §1231(a)(1)(B)(i). After the removal period has ended, the DHS may continue to detain certain groups of individuals pursuant to 8 U.S.C. §1231(a)(6). However, such detention is subject to the important constitutional limitation that detention beyond the removal period is permissible only where the reasonably related to a legitimate government purpose, specifically, the individual's physical removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

When there is no possibility of removal, detention presents due process concerns because "the need to detain the noncitizen to ensure their availability for future removal proceedings is 'weak or nonexistent;" *Id.* at 690-92. Detention is lawful only when "necessary to bring about that individual's removal." *Id.* at 689. However, because the *Zadvydas* court understood that Congress surely recognized that not all removals could be accomplished in 90 days, the Court

established a rebuttable presumption that six months could be deemed a "presumptively reasonable period" for removal. The Court arrived at the six-month period in *Zadvydas* by noting that Congress had shortened the removal period from 6 months to 90 days and added 8 USC 1231(a)(6) because of doubts over the constitutionality more than 6 months of detention. *Id.*

After that point, the *Zadvydas* Court found, that if a noncitizen provides a "good reason to believe that there is not a significant likelihood of removal in the reasonably foreseeable future," the government must provide the noncitizen with an opportunity for release. *Id.* at 701.

III. ARGUMENT

1. Respondent is being detained beyond the six month presumptively reasonable period of post final order detention in 8 U.S.C. §1231(a)(6)

a. The Removal Period expired in 2007 and the additional three months of presumptively reasonable detention expired in 2008.

The government concedes that the 90-day removal period has long since expired, but claims that it may hold the Petitioner for up to six months pursuant to 8 U.S.C. §1231(a)(6) as the Petitioner was found inadmissible under 8 U.S.C. §1182(a). *See* ECF 13 at 13. The Respondents elide past the fact that the six months of presumptively reasonable detention included 90 days of detention during the removal period and that, if 8 U.S.C. §1231(a)(6) allows anything on its own, it is no more than 90 days beyond the mandated detention of the removal period. The government, however, provides no explanation why the full six-month period has not run. Multiple courts, including one in this District, have held that the additional three months of presumptively reasonable detention runs immediately following the removal period.

In *Cordon-Salguero v. Noem*, Civ. No, GLR-25-1626, ECF No. 20 (D,Md., June 18, 2025) (copy attached), the district court found that the additional 90 days of detention posited by

8 U.S.C. §1231(a)(6) ran directly from the expiration of the removal period. Thus, in *Cordon Salguero*, the district court interpreted the 6-month period as immediately following the entry of the final order of removal. The district court found not only that the 90-day removal period had expired but so had the additional ninety days of 8 U.S.C. §1231(a)(6). Both clocks had fully run before the government detained Mr. Cordon-Salguero.

Likewise, in *Tadros v. Noem*, No. 25-cv-4108 (EP), 2025 WL 1678501 (D.N.J. June 13, 2025) (copy attached) the district court for the District of New Jersey considered the case of Karem Tadros, an Egyptian man ordered removed but granted deferral of removal to Egypt in April 2009, when Tadros was released from ICE custody. Tadros remained free from custody from April 2009 until May 7, 2025, when ICE arrested him. Tadros challenged his continued detention and argued that the 90-day statutory removal period and the six month presumptively reasonable period for additional removal efforts have long since passed and that there is no significant likelihood of his removal in the reasonably foreseeable future rendering his continued detention impermissible. The government argued, as they do here, that Tadros' presumptively reasonable six months of detention only began when he was taken into custody in May 2025. The court found that the six month presumptively reasonable period had already run long before ICE assumed custody.

> Tadros has the better argument under *Zadvydas*. 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. Tadros's release suggests he was determined not to present a flight risk, and that the Government was unlikely to find a third country to accept him in the reasonably foreseeable future. Further, Tadros has demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing a third country for his removal. Respondents' sole statement that "ICE has been making efforts to facilitate Petitioner's removal to a country other than Egypt" is insufficient to rebut the presumption established by Tadros.

Tadros at 3.

Respondents' cited cases, at ECF 13, page 12, none of which are controlling on this Court, do not militate to the contrary. *See Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331 (D. Mass. 2017) (removal period extended by four years due to noncitizen seeking and obtaining stays of removal, through March 2017; habeas petition filed only three and a half months after expiration of removal period, on July 13, 2017); *Julce v. Smith*, 2018 WL 1083734, at *5 (D. Mass., Feb. 27, 2018) (court's *ipse dixit* that "[b]ecause only three months have elapsed, a claim under *Zadvydas* is premature at best," but without any analysis); *Farah v. Atty'Gen.*, 12 F.4th 1312, 1332 (11th Cir. 2021) (applying 8 U.S.C. § 1231(a)(1)(B)(ii), holding limited to "the detention of an alien whose removal has been stayed pending a final order from the reviewing court"). Moreover, even if the *Zadvydas* six month presumptively reasonable period only counts those days in detention, that presumption of reasonableness would still be nonetheless rebuttable prior to the period's expiration. *See Munoz-Saucedo v. Pittman*, No. 1:25-cv-2258-CPO, Dkt. No. 24 at *10 (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.

b. The evidence in the record establishes that there is no significant likelihood that Petitioner will be removed in the reasonably foreseeable future.

Under the analysis as articulated in *Cordon-Salguero* and *Tadros*, the presumptively reasonable period of detention for Mr. Zavvar concluded on April 11, 2008, six months after the entry of the final order of removal on October 11, 2007. It was not until seventeen years after the

expiration of the presumptively reasonable period of detention that the Respondents elected to take the Petitioner into custody. There is nothing reasonable about allowing an individual to remain free from custody, reside in a community in Maryland with his family, work and live a quiet life and then suddenly arresting him 17 years later and stating that the government now intends to execute the order entered in October 2007. But, more importantly, there is no indication that Mr. Zavvar's removal is at all foreseeable. The government may not remove him to his country of nationality of Iran but now claims to seek his removal to Australia and/ or Romania, two countries where Mr. Zavvar has never lived, has no family, nor has even visited. First, as stated earlier, Mr. Zavvar disputes that he was served with these notices of removal. Second, the government has offered nothing more than these single sheets of paper prepared by DHS indicating that they intend to remove the Petitioner to Australia or Romania. The Respondents have not shown any documentation evidencing travel documents, efforts to obtain travel documents, communications from these receiving countries that they will accept deportees from the U.S. The Petitioner has no ties to Romania and /or Australia, making his removal there highly unlikely.

The Petitioners cannot meet the burden of proof to show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadyydas,* 533 U.S. at 701. Since the 90-day removal period and the 180-day presumptively reasonable post-removal- period detention elapsed eight years prior, Respondents lacked legal basis to re-detain Petitioner absent newly obtained means to actually remove him from the United States, which, again, they do not claim. *See You v. Nielsen*, 321 F. Supp. 3d 451, 462 (S.D.N.Y. 2018) (after the removal period, where a noncitizen is released on supervision, he cannot be re-detained except upon a finding of danger to the community or flight risk); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 502

(S.D.N.Y. 2009) ("because the removal period and any presumptively reasonable detention period has expired, and the removal period was not tolled pursuant to § 1231(a)(1)(C), this Court finds that the Respondents are without statutory authority to detain Farez-Espinoza.").

Petitioner has met his burden under *Zadvydas* to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and Respondents have failed to "respond with evidence sufficient to rebut that showing." 533 U.S. at 701. Continued detention is impermissible under the statute, and the writ of habeas corpus should issue.

2. This case should not be dismissed due to the class action in *DVD v. DHS*

a. While courts may dismiss or stay individual litigation where the petitioner is a member of a class action, a court should not dismiss claims that are outside the class action.

The Respondents' argument that this action should be dismissed due to Petitioner's membership in the *D.V.D.* class in *D.V.D. v. D.H.S.,* ECF 118, 64 and 6-1 Civ. 25-16076-BEM (D. Mass. April 18 and May 21, 2025), should also be rejected by the court. While the Fourth Circuit has upheld the dismissal or stay of an individual action that involve parties or issues that overlap with those in a pending class action, the 4th Circuit did not endorse dismissal of allegations that go beyond those in the class action. *Horns v. Whalen,* 922 F.2d 835 (4th Cir 1991). *See, Pride v. Correa*, 719 F.3d 1130 (9th Cir. 2013) ("[A] district court may not 'dismiss those allegations of [the] complaint which go beyond the allegations and relief prayed for in the [the class action].'") Moreover, in considering whether a dismissal or a stay of an individual action when there is a similar class action, the "determining factors should be equitable in nature, giving regard to wise judicial administration." *Brewer v. Swinson*, 837 F.2d 802, 804. (8th Cir. 1998).

b. Since Petitioner challenges his detention and makes claims beyond the scope of the *DVD v. DHS* class action, dismissal is not warranted.

The government's request to dismiss this action ignores key differences between the Petitioner's claim and the claims at issue in *DVD* as well as the inability of the *DVD* litigation's resolution to afford relief to the petitioner. The *DVD* preliminary injunction was stayed by the U.S. Supreme Court. Thus, without this litigation, the Petitioner could be removed before the legality of the third country removal procedures at issue in *DVD* can be adjudicated. In addition, in this litigation, the Petitioner seeks to enjoin Respondents from failing to provide a meaningful opportunity to seek withholding of removal prior to third country removal.[2] Third, the plaintiffs in DVD did not seek release from detention as the Petitioner does.

Petitioner asks the Court to be afforded the opportunity to seek such a review elsewhere, whether through a process like the one outlined by the *D.V.D.* injunction (now stayed), or before an immigration judge or the agency. Because Petitioner raises separate claims (regarding his detention) and seeks separate relief (namely release), the Court maintains classic habeas jurisdiction.

c. The Petitioner would not oppose a stay if the court determines that Petitioner's claim is foreclosed by *DVD v. DHS*.

Should the court be inclined to defer to the litigation in *DVD,* this court should stay these proceedings, leaving the prohibition of removal in place, until there is a resolution of the *DVD* nationwide class action.

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[2] Plaintiffs in *D.V.D.* did not seek classwide injunctive relief with respect to withholding of removal due to 8 U.S.C. § 1252(f)(1), which bars courts from "enjoin[ing] or restrain[ing] the operation of" specified provisions of the INA, including 8 U.S.C. § 1231, "other than with respect to the application of such provisions to an individual [noncitizen] against whom proceedings under such part have been initiated."

3. 8 U.S.C. §1252(g) does not preclude jurisdiction over Petitioner's detention.

Respondents' statutory jurisdictional arguments are equally inapposite to a habeas corpus petition challenging detention, not removal. *Zadvydas* held that notwithstanding 8 U.S.C. § 1252(g), "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." 533 U.S. at 688. Likewise, the Supreme Court subsequently held that 8 U.S.C. § 1252(b) does not strip habeas jurisdiction over challenges to detention. *Jennings v. Rodriguez*, 583 U.S. 281, 292-93 (2018).

IV. CONCLUSION

For the foregoing reasons, Petitioner has met his burden of showing that his detention lacks any factual basis, since Respondents have not shown a significant likelihood of removal in the reasonably foreseeable future. The writ of habeas corpus should be issued, and this Court should order that Respondent be released from detention forthwith.

Dated: July 24, 2025

Respectfully submitted,

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Reza Zavvar, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 24th day of July, 2025.

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