IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FABIAN LAYTON VARGAS, Petitioner, -against- KRISTI NOEM, in her official capacity as Acting Secretary of Homeland Security; PETE R. FLORES, in his official capacity as Commissioner of the U.S. Customs and Border Protection; and RICARDO WONG, in his official capacity as Field Office Director of the ICE ERO Chicago, C. Carter in his official capacity as WARDEN of FCI Leavenworth, Respondent.	Case No. 25-3155-JWL

PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE

Petitioner Fabian Layton Vargas, through counsel, respectfully submits this Traverse and renews his request that the Court grant the habeas petition and order his immediate release. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the government must demonstrate a significant likelihood of removal in the reasonably foreseeable future—a standard not met here. Once six months have passed after a final removal order, if the noncitizen offers good reason to believe removal is unlikely to occur soon, the burden shifts to the government to present evidence to the contrary. If it cannot, release is required. While the *Zadvydas* Court declined to fix an exact time limit for what counts as the "reasonably foreseeable future," it emphasized that the longer detention continues, the less foreseeable removal becomes.

Respondents acknowledge that Mr. Vargas remains detained at FCI–Leavenworth under a final order of removal with CAT deferral to Colombia; that his detention has extended well beyond

the six-month presumptive period; that ICE conducted a post-order custody review in April 2025; and that in July 2025 ICE asked the RIO unit to explore potential third-country removal. Yet, to date, Respondents do not identify any accepting country, any pending travel document, any itinerary, or any concrete diplomatic assurance. Instead, they rely on generalized assertions that ICE "reached out" and "continues to inquire" about unspecified third countries and, alternatively, that they *could* seek to lift CAT deferral to Colombia at some indefinite point. That is speculation, not evidence of a "significant likelihood of removal in the reasonably foreseeable future." These concessions confirm that Mr. Vargas faces indefinite detention without a realistic prospect of removal.

ARGUMENT

I. RESPONDENTS' CONTINUED DETENTION OF MR. VARGAS IS UNLAWFUL UNDER *ZADVYDAS* AND ITS PROGENY.

Zadvydas establishes a rebuttable presumption of reasonableness for six months. After that, once the noncitizen provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the Government must rebut with evidence. Here, detention has long surpassed the presumptive six-month limit. The Government points to no accepting country, no requested or approved laissez-passer, no consular dialogue with any identified nation, and no target date for removal—only that ICE "continues to inquire." That does not satisfy the Government's evidentiary burden.

Respondents rely on general cases about delay and "ongoing efforts," but those decisions are inapposite where, as here, ICE has identified **no** concrete removal path despite many months and a CAT deferral that forecloses Colombia absent termination. Their authorities do not convert indefinite detention into lawful detention based on naked possibilities.

Respondents are right that CAT deferral is country-specific; DHS may seek removal to a third country *that will accept the person*. But that principle helps only if DHS identifies a real third-country option. Here, DHS has none. The record shows only that ICE "reached out" in July 2025; there is no acceptance, no document, and no plan. Speculation that some country *might* accept Mr. Vargas eventually is precisely the conjecture *Zadvydas* rejects. Without a concrete destination, detention is functionally indefinite. Respondents have failed to produce any evidence showing that Vargas's removal is significantly likely.

II. Respondents Have Failed to Comply with 8 C.F.R. § 241.13, as Confirmed by This Court in *Liu v. Carter*

Respondents cite the April 2025 POCR and routine custody reviews under §241.4 as "process." But once the six-month mark is surpassed and removal is not significantly likely, 8 C.F.R. §241.13 governs. That regulation requires a focused likelihood-of-removal determination and written consideration of evidence the noncitizen submits bearing on the foreseeability of removal, not mere box-checking under §241.4. Respondents' own description shows no §241.13-compliant interview, analysis, or decision addressing the dispositive question—especially given CAT deferral to the only identified nationality country and the absence of any accepting third country.

Their attempt to distinguish *Liu v. Carter*, Case No. 25-3036-JWL (D. Kan. June 17, 2025) is unpersuasive. Respondents emphasize different facts in Liu (revocation of release). But what matters here is the same regulatory command: when removal is not reasonably foreseeable, ICE must follow §241.13's procedures and cannot rely on generic "we're trying" assertions. Their own filing confirms the lack of concrete progress beyond a July 2025 inquiry. In *Liu*, this Court held that ICE violated § 241.13 by revoking release without an interview, notice, or proof of changed circumstances. The Court rejected ICE's argument that an increase in removals to China

established likelihood of removal, finding such generalized claims insufficient without evidence tied to the petitioner's circumstances. Here, the government's case is even weaker. It cannot cite a country willing to accept Vargas, any active travel document request, or any changed circumstance specific to him. If speculative "increases in removals" were not enough in *Liu*, ICE's bare statement that it "asked RIO to inquire" falls far short.

Respondents are mistaken in treating the April 2025 POCR under § 241.4 as sufficient. Section 241.13 explicitly governs where, as here, the noncitizen raises the issue of indefinite detention. While § 241.4 reviews continue in the background, they cannot substitute for the specific determinations required under § 241.13. Indeed, the regulation says that § 241.4 "shall continue to govern … unless the Service makes a determination under this section that there is no significant likelihood of removal." 8 C.F.R. § 241.13(c). In other words, DHS must actually grapple with the *Zadvydas* standard and either show a likelihood of removal or release the detainee. Respondents have done neither.

CONCLUSION

Because Respondents have not demonstrated a significant likelihood of removal in the reasonably foreseeable future and have failed to comply with § 241.13, Mr. Vargas's continued detention is unlawful. Petitioner respectfully asks the Court to Grant the writ and order Petitioner's immediate release and any such other and further relief as is just and proper.

Respectfully submitted,

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Dated: September 24, 2025

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2025, I electronically filed the foregoing **Petitioner's Traverse to Respondents' Response** with the Clerk of the Court using the CM/ECF system, which will provide notice to all registered parties, including:

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