IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ALLAN MICHEL DIAZ-CRUZ, Petitioner, -against- KRISTI NOEM, in her official capacity as 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, Crystal Carter in her official capacity as WARDEN of FCI Leavenworth, Respondent.	Case No. 25-3162-JWL

PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE

Petitioner has now been held in post-order detention for more than nine months following the Immigration Judge's December 17, 2024 order granting relief. DHS offers only conclusory assertions that it is "attempting" to remove Mr. Diaz-Cruz to unspecified "third countries," without identifying a single accepting country, a single pending travel document request, a single embassy contact, a target date, or any concrete removal plan. That is not enough under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Once detention passes six months, the government must present evidence showing a "significant likelihood of removal in the reasonably foreseeable future." It has not.

Compounding the problem, DHS's own paperwork shows delayed custody reviews and no meaningful consideration of alternatives to detention. Respondents assert that "Petitioner's latest File Custody Review occurred in November 2024" and rely on that to argue periodic review "alleviates any due process concerns." But that November 2024 review occurred **before** the

Immigration Judge's December 17, 2024 final order. The Rangel Declaration confirms that DHS made no discernible progress from the time the Immigration Judge's order became final on December 17, 2024 until August 15, 2025, when ERO finally served Petitioner with a "Decision to Continue Detention." On this record, the Court should grant the petition and order immediate release.

ARGUMENTS

I. The Government's Conclusory "Third-Country" Assertions Do Not Meet Its Burden Under *Zadvydas*.

Respondents argue that Counts I and II are "covered by *Zadvydas*" and that if Petitioner cannot prevail under the statute, he cannot prevail under the Constitution. That is incorrect. The Supreme Court in *Zadvydas*, grounded its holding squarely in the Fifth Amendment's Due Process Clause, interpreting § 1231(a)(6) in light of constitutional limits. Thus, far from being redundant, the statutory and constitutional claims are intertwined: the statute cannot be read to authorize indefinite detention precisely because due process forbids it.

After six months, a noncitizen need only provide "good reason to believe" there is no significant likelihood of removal in the reasonably foreseeable future, shifting the burden to DHS to rebut with evidence—not speculation. 533 U.S. at 701. Petitioner has met the initial showing (9+ months of detention, no travel docs, no accepting country, and a final order barring removal to Honduras). DHS's rebuttal consists of generic statements that it is trying to find a third country. That falls short. Respondents rely on general cases about delay and "ongoing efforts," but those decisions are inapposite as here DHS names no third country willing to accept Petitioner. Saying "we're trying" is not proof of likely removal "in the reasonably foreseeable future," and it cites no pending travel document requests, embassy responses, or flight holds—only bare assertions. Courts routinely reject such conclusory showings under *Zadvydas*.

DHS floats the idea that it "could" seek to lift the IJ's deferral as to Honduras. But DHS has not filed such a motion, and "could" is speculative. *Zadvydas* demands evidence of likely removal, not hypothetical litigation DHS has not even initiated. DHS further argues that delay alone does not prove impossibility. True—but here we have more than delay: a final legal bar to removal to Honduras plus a total absence of any identified accepting third country after many months. That combination defeats the "reasonably foreseeable" standard. *Zadvydas*, 533 U.S. at 701–02.

Respondents' own exhibits show a 90-day review in November 2024, followed by a "Decision to Continue Detention" not served until August 15, 2025. That timing—as well as the absence of any individualized explanation tied to flight risk, danger, or actual removal prospects —underscores that DHS has not performed the kind of robust, periodic reviews that might otherwise mitigate due-process concerns. At a minimum, the lack of timely, substantive review reinforces that continued detention is no longer reasonable.

II. DHS's Custody Reviews Do Not Cure the Due Process Violation.

Respondents contend that Post-Order Custody Reviews ("POCRs") under 8 C.F.R. § 241.4 provide sufficient process, citing a November 2024 File Custody Review and an August 15, 2025 Decision to Continue Detention. But this argument collapses under the weight of the record. First, the November 2024 review predated the IJ's December 17, 2024 final order. At that point, Petitioner remained detained under § 1226. That review cannot possibly satisfy DHS's obligations under § 1231, which governs post-order detention. Second, there was no review at all from December 2024 through August 15, 2025—a gap of eight months. This failure to conduct timely, periodic reviews directly violates DHS's own regulations and underscores the absence of meaningful process. And once detention extends beyond the six-month mark with no significant

likelihood of removal, 8 C.F.R. § 241.13—not § 241.4—governs. Respondents cannot rely on outdated § 241.4 reviews to justify detention that has already crossed into the § 241.13 framework. Third, the August 2025 "Decision to Continue Detention" is boilerplate and conclusory. It cites no evidence that removal is significantly likely in the reasonably foreseeable future, and it fails to consider less restrictive alternatives such as supervised release. A rote form issued months late cannot satisfy due process. Courts have consistently rejected the notion that paper reviews without substantive findings or alternatives alleviate constitutional concerns.

In short, DHS's claimed "reviews" are illusory. Far from curing the constitutional defect, they highlight it: Petitioner has endured prolonged detention without timely, individualized, or meaningful review of whether continued confinement is justified.

CONCLUSION

Because Respondents have not demonstrated a significant likelihood of removal in the reasonably foreseeable future and have failed to comply with its own regulations, Mr. Diaz-Cruz'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,

/s/ Maya Y. King

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2025, I electronically filed the foregoing Petitioner's Traverse to Respondents' Response to § 2241 Petition and Order to Show Cause with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record for Respondents:

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