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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

O.C.G.,

Petitioner-Plaintiff,

v.

Fred Figueroa, et al.

Respondents-Defendants.

Case No. 2:25-cv-03048-SHD-DMF

PETITIONER'S REPLY TO ANSWER TO PETITION FOR HABEAS CORPUS

1. Introduction

Petitioner O.C.G. respectfully files the instant reply brief to urge the Court to grant his petition for habeas corpus and order his release from ICE custody. In this matter, the following facts are uncontested:

- O.C.G. was initially arrested and issued a Notice and Order of Expedited Removal on March 27, 2024. Decl. of Ema Peru, Sealed Resp. Exh. 1 ¶ 6. He was removed subject to that order on April 2, 2024. *Id.* at ¶ 7.
- On May 5, 2024, O.C.G. re-entered the U.S. and Customs and Border Protection authorities detained him pursuant to a Notice of Intent/Decision to Reinstate Prior Removal Order. *Id.* at ¶ 8. On May 7, 2024, O.C.G. was taken into ICE custody and placed at the Eloy Detention Center. *Id.* at ¶ 9.
- O.C.G. voiced a fear of return to Guatemala and established a reasonable fear of persecution or torture in Guatemala. *Id.* at ¶ 12. His case was then referred to the immigration judge for withholding only proceedings. *Id.*
- The immigration judge granted O.C.G. withholding of removal to Guatemala on February 19, 2025. *Id.* at ¶ 13. On February 21, 2025, ICE removed O.C.G. to Mexico. *Id.* at ¶ 14.

The following facts about O.C.G.'s removal have been found by the District Court in the *D.V.D. v. Dept. of Homeland Security*, 1:25-cv-10676-BEM Doc. 132 (D. Mass. 2025) (attached as Exh. 1 here).

- O.C.G. voiced a fear of Mexico while in removal proceedings before the immigration judge and described in detail the violence he experienced while in Mexico. Exh. A at 4. The government's attorney stated that Guatemala was the only country designated for removal. *Id.* at 5.
- Two days after being granted withholding of removal, and with no advanced warning, O.C.G. was put on a bus and sent to Mexico. *Id.* According to O.C.G., he begged the officers to let him call his attorney but was refused. *Id.*
- While the Department of Homeland Security had initially provided a sworn declaration stating that O.C.G. had stated he was not afraid of Mexico, they later had to retract that statement. *Id.*
- In Mexico, O.C.G. was given the option of being detained indefinitely while trying to obtain asylum there, the same country where he had previously been kidnapped and sexually assaulted, or of being sent back to Guatemala— "the very country from which an immigration judge awarded him withholding from removal due to the risk of persecution that he faced." *Id.* at 5.
- While in Guatemala, O.C.G. reported "living in constant fear of his attackers, being unable to leave the place where he is staying, not being able to rely on the police to protect him, and not being able to see his mother for fear of exposing her to violence." *Id.* (citations omitted).
- The court "found it likely that O.C.G.'s removal lacked due process. Indeed, at no point in this litigation have Defendants put forth an account of O.C.G.'s removal that

would comport with what this Court has found due process requires." *Id.* at 10 (citations omitted). The court ordered DHS to facilitate O.C.G's return to the U.S. *Id.*

The following facts are also uncontested:

- On June 5, 2025, ICE paroled O.C.G. back into the country and detained him again at the Eloy Detention Center. Decl. of Ema Peru, Sealed Resp. Exh. 1 ¶ 15.
- O.C.G. established a reasonable fear of persecution in Mexico. *Id.* at ¶ 16. ICE filed a Motion to Reopen on August 27, 2025 to try and designate Mexico as a country of removal. *Id.* at ¶ 18.

The documents submitted with O.C.G's reply in support of his Motion for Temporary Restraining Order or Preliminary Injunction establish that:

- O.C.G. did not oppose the Motion to Reopen; *see* Sealed Reply Exh. 1. The motion to reopen was granted and he had a hearing before the immigration judge on September 15, 2025; *see* Sealed Reply Exhs. 2 and 3.
- He has also filed a Petition for Review before the Ninth Circuit Court of Appeals pursuant to *Riley v. Bondi*, 606 U.S. ___ (2025), to preserve his ability to challenge third-country removal determinations made in removal proceedings, *see* Sealed Reply Exh. 4; *see also* Habeas Reply Exh. 1 (petition for review).

Respondents do not contest and therefore concede that O.C.G. was in the constructive custody of Respondents after he was unlawfully removed to Mexico and then in Guatemala. *See* Petition, Doc. 1 at ¶ 31. In their answer, Respondents assert (at 8) that O.C.G.'s habeas claim fails because "the government is within the presumptive six month period here" that Zadvydas allows. Respondents also assert (at 9) that the reopening of

removal proceedings means that his detention is not "indefinite." But the facts and law establish the opposite: he has been detained subject to a final order of removal for a period much longer than the six months that *Zadvydas* presumes to be legal and Respondents have no way in the reasonably foreseeable future to remove O.C.G. While O.C.G.'s facts are very unique to the circumstances of his case, *Zadvydas's* principles still apply: he has been detained for more than 180 days pursuant to a final removal order and because removal is no longer reasonably foreseeable, as O.C.G. has established, "continued detention is no longer authorized by statute." *Zadvydas v. Davis*, 533 U.S. at 699 (2001). This Court must order his release, and in the alternative, to prevent an unlawful removal to a third country, grant O.C.G.'s alternative claim for appropriate notice and an opportunity to assert fear.

2. Argument

a. O.C.G. Has Been Detained Subject to a Final Order of Removal For More than 180 Days

Under 8 U.S.C. § 1231(a), the government must remove a noncitizen within 90 days of a final order of removal, and detention during that period is mandatory. Afterward, detention under § 1231(a)(6) is permissible only so long as removal remains reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678 (2001). To avoid serious due process concerns, the Court construed the statute to prohibit indefinite detention and established a presumptively reasonable six-month period. *Id.* at 699–701. After six months, if the noncitizen provides good reason to believe removal is not significantly likely in the reasonably foreseeable future, the government must either rebut that showing or release

the person under supervision. *Id.* at 701. 8 U.S.C. § 1231(a)(1)(B) provides that 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.

Here, the removal period began 541 days ago on March 27, 2024 when O.C.G.'s order of removal became final. Sealed Response Exh. 1 at ¶ 6. He has been detained for 502 days subject to that removal order, since May 5, 2024. *Id.* at ¶ 8.

On July 30, 2025, O.C.G. filed a Petition for Review pursuant to *Riley v. Bondi,* 606 U.S. __, 2025 WL 1758502 (June 26, 2025). See Sealed Exh. 2., Petition for Review. In *Riley*, the Supreme Court held that the 30-day deadline for filing a Petition for Review at 8 U.S.C. § 1252(b)(1) is a nonjurisdictional claim-processing rule. *Id.* The Court did not rule on whether the rule is mandatory, i.e., applicable only subject to waiver and/or forfeiture by the Department of Justice, or also subject to equitable tolling by the courts of appeals. *Id.* O.C.G. filed the *Riley* petition for review to ensure that, if the Ninth Circuit found that the rule is not subject to equitable tolling, he would be able to have judicial review of any future determinations made in withholding-only proceedings. Along with that petition, O.C.G. previously requested on July 30, 2025 a temporary stay along with his petition for review to provide protection against unlawful third country removal, which the government opposed, and now that removal proceedings have been reopened, he has requested that the stay be lifted, which the government did not oppose. Sealed Exh. 3, Unopposed Motion to Lift Stay. Per 8 U.S.C. §1231(a)(1)(B), the removal

period is tolled until the stay is lifted, at which point it begins again under § 1231(a)(1)(B)(i). But even with that tolling, O.C.G. is long past the 180-day mark of post-final order detention.

b. Reopening Proceedings Does Not Alter O.C.G.'s Eligibility for Relief Under *Zadvydas*.

Respondents argue (at 8) that the Court should reset *Zadvydas's* clock back to zero when O.C.G. was paroled into the U.S. "and begin its calculation of his post-removal detention for purposes of Zadvydas" on June 5, 2025 and that (at 9) because O.C.G. "has chosen to exercise" his legal rights in reopened removal proceedings, he has prolonged his own detention.

The Supreme Court has already rejected this position. When a person with a reinstated order seeks protection through withholding of removal, immigration courts only consider whether the individual can be removed to a particular country, not whether they can be removed at all. *Johnson v. Guzman* Chavez, 594 U.S. 523, 524 (2021). "The removal order remains in full force, and DHS retains the authority to remove the alien to any other authorized country." *Id.* Because the validity of removal orders is not affected by the grant of withholding-only relief, the initiation of withholding-only proceedings does not render non-final an otherwise "administratively final" reinstated order of removal. *Johnson v. Guzman Chavez,* 594 U.S. at 540. Thus the reopening of O.C.G.'s removal proceedings has no effect on the finality of his removal order. And, with reinstated removal order, "the statutory text makes clear that § 1231, not § 1226, governs

[his] detention." *Id.* at 542. *Zadvydas* already held that indefinite detention under § 1231 is not permitted under the statute. 533 U.S. at 701 (2001).

The government argues (at 8) that the 180-day Zadvydas clock should start "when ICE paroled Petitioner back into its custody on June 5, 2025." However, both *Guzman-Chavez* and *Padilla-Ramirez v. Bible* explicitly rejected that contention: "a removal order undoubtedly is administratively final when it first is executed; if it is reinstated from its original date, it stands to reason that it retains the same administrative finality because section 1231(a)(5) proscribes any challenge that might affect the status of the underlying removal order." *Padilla-Ramirez v. Bible,* 882 F.3d 826, 831 (9th Cir. 2017). Thus, the removal period clock started ticking on March 27, 2024 and O.C.G. has been detained pursuant to that removal order since May 5, 2004 when DHS issued O.C.G. a Notice of Intent/Decision to Reinstate Prior Order and detained him pursuant to § 1231. See Exh 1. at ¶ 9; see also 8 U.S.C. § 1231(a)(1)(B)(i). While the time that the *Riley* stay has been in place tolled that clock[1], he has thus been detained long since the presumptive 180-day limit.

c. Respondents have not shown that O.C.G.'s removal is reasonably foreseeable.

After the presumptively reasonable 6–month period, once O.C.G. provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that

[1] Petitioner will file a supplemental notice before this Court once the Ninth Circuit lifts the temporary stay, per the unopposed motion to lift stay filed on September 19, 2025.

showing. *Zadvydas v. Davis*, 533 U.S. at 701 (2001). Respondents claim (at 10) that O.C.G.'s removal is reasonably foreseeable because they are "actively seeking to remove Petitioner and [have] a plan for doing so." However, "...as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* "A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Kane v. Mukasey*, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008) (superseded on mootness grounds by *Kane v. Mukasey*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008)). "[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, 2020 WL 4880158 (S.D. Miss. July 7, 2020), at *3.

Respondents argue (at 9) that *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008) is controlling and that the uncertainty regarding timeline "does not render his detention indefinite in the sense the Supreme Court found constitutionally problematic in Zadvydas." But Respondents omit the next sentence after the one the cite:

> Here there is no evidence that Prieto–Romero is unremovable because the destination country will not accept him or his removal is barred by our own laws…to the contrary, the government introduced evidence showing that repatriations to Prieto–Romero's country of origin, Mexico, are routine and that the government stands ready to remove Prieto–Romero as soon as judicial review is complete. *Id.* at 1063.

The Ninth Circuit rejected Prieto-Romero's arguments because he was impatient with the amount of time that the court took when determining the merits of his petition for review. *Id.* But here, Respondents do not dispute that O.C.G.'s removal to his country of

origin is "barred by our own laws"—the immigration judge has already forbidden removal to Guatemala. Respondents have reopened proceedings hoping to designate Mexico as an alternative country of origin. But if they fail, they can try and reopen again to designate yet another country. O.C.G. is stuck on a merry-go-round of removal proceedings with no definite end.

The other cases Respondents cite are likewise distinguishable. In *Adefemi v. Gonzalez,* No CIV.A 05-1861, 2006 WL 2052120, *2 (W.D. La. Mar. 7, 2006), the petitioner moved to reopen a final order, which would have rendered his removal order no longer final if granted. *Id.* If denied, the government had already obtained travel documents to execute the removal order to Nigeria, meaning that the removal was reasonably foreseeable. *Id.* Those facts and procedure were nearly identical in *Diaz-Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485 (W.D. La. Oct. 15 2019), where a woman with a removal order to Honduras had also to reopen proceedings and the government had previously obtained travel documents to her country of origin. The removal orders in *Adefimi* and *Diaz-Ortega* were not a reinstated final removal orders, as here, and there were no bars like withholding of removal at issue in those cases, whereas here O.C.G. cannot be removed to Guatemala. In *Singh v. Clark*, No. C06-1803-TSZ, 2007 WL 3046315 (W.D. Wash. Oct. 16, 2007), the petitioner was not yet in the removal period pursuant to 8 U.S.C. § 1231(a)(1)(B)(ii) because the Ninth Circuit has stayed his removal pending review of his removal order. Additionally, there we no bars like withholding of removal to ICE's removal of the petitioner, which the court found could happen after the Ninth Circuit decided the petition for review.

Here, the government states (at 1) that, right now, there is only one country for possible removal: Mexico. In August, DHS asylum officer interviewed O.C.G. and found that he has a credible fear of persecution in Mexico. Sealed Resp. Exh. 1 ¶ 17; Sealed Resp. Exh. 2 at pp. 8, 10. This is an unsurprising result; in Mexico, O.C.G. was kidnapped and raped, and fears that the same thing would happen if he were to return. Sealed Resp. Exh. 2, pp. 13-18. Reopening proceedings does not mean that O.C.G. can be removed to Mexico anytime soon. He will have multiple hearings before a decision is made. If he prevails, the government may appeal. If he loses, O.C.G. may need to do the same, and eventually pursue review by the Ninth Circuit Court of Appeals. *See Padilla-Ramirez* v. Bible, 882 F.3d 826, 830 (9th Cir. 2017) ("Although Padilla–Ramirez may seek judicial review of an adverse decision in his withholding-only proceedings, that review would be confined to the order relating to his application for withholding.") (*citing Andrade-Garcia* v. Lynch, 828 F.3d 829, 833 (9th Cir. 2016). Further, the government states (at 1) that Mexico is "currently" the only country to which they wish to remove O.C.G. If they cannot convince an immigration judge to allow them to do so, there is nothing stopping them from selecting another country. Given the months or possibly years of litigation before him, Respondents have not rebutted O.C.G.'s showing that his removal is reasonably foreseeable.

d. O.C.G.'s status as a named plaintiff in *D.V.D.* does not prevent the Court from requiring notice and an opportunity to voice fear of third country removal.

Respondents argue (at 6) that the Court should not consider O.C.G.'s alternate claim that Respondents cannot remove him to a third country without notice and an

opportunity to object. A sister court in this circuit recently addressed these same arguments in *Nguyen v. Scott*, -- F. Supp. 3d --, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025). The court relied upon *Pride v. Correa*, 719 F.3d 1130 (9th Cir. 2013) to find that the petitioner's claims were not barred. *Id.* at *20. The *Nguyen* court held that the petitioner "may bring his independent claim for injunctive relief because it is not duplicative of the [*D.V.D.*] litigation" and because "without that opportunity, Petitioner would be left 'powerless to petition the courts for redress' until the *D.V.D.* class action has been 'fully resolved.'" *Id.* at *21 (citing *Pride*, 719 F.3d 1137-38). The court also pointed out that:

> The Court also notes that Respondents' position contradicts the position they have taken in *D.V.D.* itself … [O]ne of the government's primary arguments against the injunction in *D.V.D.* is that there is a jurisdictional bar to classwide injunctive relief in that case. […] In other words, the government is arguing in *D.V.D.* that injunctive relief cannot be granted to the class, and may only be pursued (if at all) through individual cases, while arguing here that Petitioner's individual claim should be barred because his injunctive claims should be adjudicated as part of the *D.V.D.* class…The class certification order in *D.V.D.* does not prevent this Court from adjudicating Petitioner's claims regarding third-country removal.

Id. at *21. This Court should follow the detailed and thorough reasoning of the court in *Nguyen* and conclude that O.C.G.'s inclusion in *D.V.D.* does not preclude this Court from adjudicating his here, raised in the alternative to his request an order of release.

3. Conclusion

For all these reasons, O.C.G. respectfully requests that this Court grant the relief requested.

Dated: September 19, 2025

Respectfully submitted,

By s/ Laura Belous

Certificate of Service

I hereby certify that on the date below, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing on all CM/ECF registrants.

s/ Laura Belous
September 19, 2025
Laura Belous