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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 FIRST AMENDED 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 that ICE remove his ankle monitor and discontinue his enrollment in the Intensive Supervision Assistance Program ("ISAP"). Further, on October 30, 2025, DHS filed an appeal of the immigration judge's order granting O.C.G. a bond of $4,000, which he posted on October 3, 2025. *See* ECF 45-3, IJ Bond Order; *see also* Reply Exh. 1, DHS Notice of Appeal. O.C.G. urges the Court to order that, if DHS's bond appeal is granted, any future detention as a result of the bond revocation would violate *Zadvydas.*

Respondents do not contest and therefore concede that the ankle monitor and ISAP enrollment are contrary to the immigration judge's bond order. *See* ECF 45, First Amended Petition at ¶ 51–53, 45, 47, 53. The Court should therefore grant Respondent's request for an order finding that those additional impositions continue to render him in custody and are unlawful. *See Orellana Juarez v. Moniz,* --- F. Supp. 3d ----, 2025 WL 1698600 at *2, *5–8 (D. Mass. May 2025) (ICE's imposition of a 24/7 ankle GPS monitor and enrollment in the ISAP program rendered petitioner "in custody" for habeas purposes because the 24/7 electronic tracking, geographic limits, curfew, and threat of re-detention "significantly compromise[d]" his liberty, akin to parole or probation and ICE lacked authority to impose restrictions beyond those set by an Immigration Judge).

Respondents contest O.C.G.'s request for habeas relief. In their answer, Respondents assert (at 7) 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 8)

that the reopening of removal proceedings means that his detention is not "indefinite." But the facts and law establish the opposite: O.C.G. has been subject to a final order of removal, and thus in the removal period, for a period much longer than the six months that *Zadvydas* presumes to be legal, he continues to have significant infringements on his liberty that render him in government custody because of the imposition of the 24/7 GPS ankle monitor and ISAP requirements, and Respondents have no way in the reasonably foreseeable future to remove O.C.G. to Mexico. This Court must order ICE to remove the unlawful ankle monitor, revoke ISAP enrollment, and prevent any future detention if the bond appeal is sustained.

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. *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, while the government agrees (at 6) that O.C.G. is subject to a reinstated removal order, they argue (at 7–8) that the removal period began when O.C.G. was paroled back into the U.S. on June 5, 2025 following his unlawful removal. The government provides no authority for their position (at 8), and it is not compatible with a reading of the plain language of the statute. O.C.G.'s removal period began on the date that his removal order became administratively final, March 27, 2024. ECF 14, Sealed Exh. 1, ¶6. Nowhere does the text of 8 U.S.C. § 1231(a)(1)(B) allow for the removal period to be erased and restarted when a person enters and exits detention.

Likewise, the reopening of O.C.G.'s withholding-only proceedings has no effect on when his removal period began. When a person with a reinstated order of removal 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.

Likewise, both *Guzman-Chavez* and *Padilla-Ramirez v. Bible* explicitly rejected the government's contention (at 7) that the 180-day Zadvydas clock should start "when ICE paroled Petitioner back into its custody on June 5, 2025. "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 began on March 27, 2024. See Exh 1. at ¶ 9; see also 8 U.S.C. § 1231(a)(1)(B)(i). Respondents do not contest and therefore conceded that O.C.G.'s temporary stay of removal in his *Riley v. Bondi* petition for review pending at the Ninth Circuit temporarily tolled the removal period and it began again once the stay was lifted on September 26, 2025.

Even if this Court were to agree with Respondents that O.C.G. has not been subject to the removal period for 180 days, the Supreme Court "'did not say that the six-month presumption is irrebuttable, and there is nothing inherent in the operation of the presumption … that requires it to be rebuttable.'" *Munoz-Saucedo*, -- F. Supp. 3d --, 2025 WL 1750346, at *7-8 (D.N.J. June 24, 2025) (citing *Cesar v. Achim,* 542 F. Supp. 2d 897, 903 (E.D Wis. 2008)). Rather, "the presumption scheme merely suggests that the burden the detainee must carry within the first six months of post-order detention is a heavier one than after six months has elapsed." Id.; *see also Trinh v Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical prohibition on claims challenging detention less

than six months."); *Ali v. DHS*, 451 F. Supp 3d 703, 708 (S.D. Tex. 2020) ("Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.")

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

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 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 8) that *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008) is controlling and that "Petitioner must demonstrate a reasonable likelihood of *indefinite* detention caused by the government's inability to find a country to remove him to" and that the uncertainty regarding timeline "does not render his detention indefinite in the sense the Supreme Court found constitutionally problematic in *Zadvydas*." ECF 46 at pp. 8 (citing *Prieto-Romero,* 534 F.3d at 1063). 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; Respondents make no avowal that Mexico is the only country where they will attempt to remove O.C.G., nor do they explain why they failed to try and attempt to designate Mexico during his initial withholding-only proceedings and instead only attempted to designate that country after O.C.G.'s return the U.S. was compelled by court order. *See D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM Doc. 132 (D. Mass. May 23, 2025), His case is therefore

much more similar to *Nadarajah v. Gonzales,* 443 F.3d 1069 (9th Cir. 2006), where the Board of Immigration Appeals twice awarded asylum and protection under the Convention Against Torture and petitioner's detention continued for over five years while the government appealed the outcome of these agency proceedings. *Id.* at 1071, 1081. The Ninth Circuit held that Nadarajah had successfully demonstrated that there was no significant likelihood of his removal in the reasonably foreseeable future, because as a result of the asylum and CAT findings, he could not be removed to Sri Lanka and no other country has been designated to which Nadarajah might be removed, "thus forming a "powerful indication of the improbability of his foreseeable removal." *Id.* at 1081–82. While the government has *attempted* to designate Mexico, no immigration judge has allowed DHS to designate that county, and O.C.G. has made a strong showing that such a designation is unlikely: in August, DHS asylum officer interviewed O.C.G. and found that he has a credible fear of persecution in Mexico. ECF 14, Sealed Resp. Exh. 1 ¶ 17; ECF 14, 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. ECF 14, 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, if they cannot convince an immigration judge to allow them to remove O.C.G. to Mexico, there is nothing stopping Respondents 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 not reasonably foreseeable. He 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.

c. This Petition has no overlapping requests with the *D.V.D.* litigation and there are no impediments that prevent the Court from granting the requested relief

The government argues (at 5) that, to the extent that any argument brought before this Court is duplicative of those in the *D.V.D.* litigation, the Court should decline to entertain them. Although O.C.G. would dispute whether this Court could consider any overlapping relief and assert that it could if necessary, that argument is not necessary because there is no pending request before this Court in the present petition that overlaps with the *D.V.D.* decision. There, the district court ordered DHS to provide the following procedural protections to non-citizens facing removal to third countries:

> (1) provide written notice to the alien—and the alien's immigration counsel, if any—of the third country to which the alien may be removed, in a language the alien can understand;
>
> (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for CAT protections;
>
> (3) move to reopen the proceedings if the alien demonstrates "reasonable fear"; and
>
> (4) if the alien is not found to have demonstrated "reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for that alien to seek to move to reopen immigration proceedings to challenge the potential third-country removal.

D.V.D. v. U.S. Dep't of Homeland Sec., 778 F. Supp. 3d 355, 392–93 (D. Mass.).

Here, after his release, O.C.G. withdrew his prior alternative request to compel the government to provide notice and an opportunity to contest removal to any third country. Withholding-only removal proceedings have been reopened. Therefore, none of the requested claims for relief here overlap with those in *D.V.D.*

3. Conclusion

For all these reasons, O.C.G. respectfully requests that this Court order ICE to remove the unlawful ankle monitor, revoke his ISAP enrollment, prevent any future detention if DHS's bond appeal is sustained, and order any other remedy that the Court deems just and necessary.

Dated: November 6, 2025

Respectfully submitted,

By *s/ Laura Belous*