IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Adriana Quiroz Zapata,

Petitioner

AGENCY FILE No. A[redacted]

Case No. **3:25-cv-0376-LS**

v.

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO SHOW CAUSE ORDER

MARY ANDA-YBARRA, Field Office Director, El Paso Field Office, Immigration and Customs Enforcement, MARTIN SARELLANO JR., Assistant Field Office Director, El Paso Field Office, Immigration and Customs Enforcement, TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary, U.S. Department of Homeland Security, PAMELA JO BONDI, Attorney General of the United States, *in their official capacities*.

Respondents.

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8 U.S.C. §1231(a) permits DHS-ICE to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). After the

expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that ICE shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be "released" if "subject to the terms of supervision" set forth in 8 U.S.C. § 1231(a)(3). Ms. Zapata has no such criminal record.

Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). "[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s][a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). **Additionally, cursory or pro forma findings of dangerousness or flight risk do not suffice to justify prolonged or indefinite detention**. *Zadvydas*, 533 U.S. at 691 ("But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.") Again, Petitioner, Ms. Zapata has no criminal record.

The purpose of detention during and beyond the removal period is to "secure[] the alien's removal." *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court "read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien's removal." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

As the Supreme Court explained, where there is no possibility of removal, immigration detention presents substantive due process concerns because "the

need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *See id.* at 689.

To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

Where a petitioner has provided "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701. Due deference is owed to the government's assessment of the likelihood of removal and the time it will take to execute removal. *Id.* at 700. **However, just as pro forma findings of dangerousness do not suffice to justify indefinite detention, pro forma statements that removal is likely should not satisfy the government's burden.**

The government may only rebut a detainee's showing that there is no significant likelihood of removal in the reasonably foreseeable future **with "evidence of progress**...in negotiating a petitioner's repatriation." *Gebrelibanos v. Wolf*, No. 20-cv-1575-WQH-RBB, 2020 U.S. Dist. LEXIS 185302, at *9 (S.D. Cal., Oct. 6, 2020) (citing *Kim v. Ashcroft*, 02cv1524-J(LAB) (S.D. Cal., June 2, 2003), ECF

No. 25 at 8 (citing *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)); *see also Carreno v. Gillis*, No. 5:20-cv- 44-KS-MTP, 2020 U.S. Dist. LEXIS 248926, at *5 (S.D. Miss., Dec. 16, 2020) (granting petitioner's habeas claim because the government failed to show that removal would be imminent after obtaining a travel document and failing to remove petitioner within the document's validity period) (emphasis added).

Factors courts consider in analyzing the likelihood of removal include "the existence of repatriation agreements with the target country, the target country's prior record of accepting removed aliens, and specific assurances from the target country regarding its willingness to accept an alien." *Hassoun v. Sessions*, 2019 WL 78984 at *4 (W.D.N.Y., Jan. 2, 2019) (citing *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436-37 (S.D.N.Y. 2017)); *see also Nma v. Ridge*, 286 F. Supp. 2d 469, 475 (E.D. Pa. 2003).

Other courts have denied habeas petitions primarily where the U.S. government has already procured petitioner's travel documents and only travel arrangements are outstanding, **which is not the case here**. *See Berhe*, 2019 WL 3734110 at *4 (denying Petitioner's habeas petition because "Eritrea has issued a travel document and Petitioner has presented no evidence to suggest there are other barriers to his removal"); *Tekleweini-Weldemichael v. Book*, No. 1:20-CV- 660-P, 2020 WL 5988894, at *5 (W.D. La., Sept. 9, 2020), *report and recommendation adopted*, No. 1:20-CV-660-P, 2020 WL 5985923 (W.D. La., Oct. 8, 2020) (denying without prejudice Petitioner's habeas petition because he possessed a travel document valid through December 19, 2020, and noting that he is not precluded from filing a new petition upon the expiration or cancellation of his travel document).

In their reply, Respondents confirm that as of today, not a single country is willing to accept this person, Petitioner, Ms. Zapata. So, it's like Zavvar (D. Md.) or Tadros (D.N.J.) or many other cases… but perhaps better, because the government concedes (as they must) that we are well past the six-month period in a Zadvydas claim. The government, the Respondents, have plenty of "desire" to deport Ms. Zapata, but no objective reason to believe that **any *particular* country** will accept her – in fact, Respondents are turning BACK to a country that already said no at this point, Mexico, after numerous repeated denials.

Conclusively, Ms. Zapata has made clear she has no history or likelihood in future of noncompliance with requests to report to ICE for any reason, and the government's subjective desire--the fact that THEY are working very hard to try to remove her--**is not the standard**; the standard is an objective one: **whether it is significantly likely to succeed**. Given that repeatedly, no country has accepted this woman, Ms. Zapata, our Petitioner, and she is a torture victim desperate to go home to her sister, niece, and fiancé in New Jersey, we sincerely hope that at long last, she will receive that opportunity. How long and how severe of health deterioration is necessary before this woman may be blessed with the respite of home? Accordingly, we hope the Court will remember that under Zadvydas, as the period of post-order detention increases, the window of time that constitutes a "reasonably foreseeable future" shrinks. Thus, the government's argument is that the *existence* of third-country removal means that no-one can win a Zadvydas claim ever, unless the government gives up and calls it a day, **and unfortunately, that's CLEARLY not the standard**. We simply ask for the standard to be adhered to, so that Ms. Zapata can finally, go home. Thank you.

Respectfully Submitted,

/s/ Lauren O'Neal
Lauren O'Neal, Esq.

Virginia State Bar No.: 91662

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

I represent Petitioner, Adriana Quiroz Zapata, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Motion to Amend under Rule 59(e), are true and correct to the best of my knowledge.

Dated this 16th day of October, 2025.

/s/ Lauren O'Neal
Lauren O'Neal, Esq.
Virginia State Bar No.: 91662