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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

SAUL CONCHAS-VALDEZ, <i>Petitioner,</i> v. JEREMY CASEY, Facility administrator at the Imperial Regional Detention Facility, GREGORY J. ARCHAMBEAULT, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, and PAM BONDI, U.S. Attorney General.	CIVIL CASE NO.: 25-CV-2469- DMS Traverse in Support of Petition for Writ of Habeas Corpus
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INTRODUCTION

1. The Government provides no evidence that Mr. Conchas-Valdez will be deported to a third country in the reasonably foreseeable future.

In its Return to Petition, the government claims that there is a significant likelihood that Mr. Conchas-Valdes will be deported to a third country. However, the government has taken minimal steps to effectuate such a removal, has offered no timeline for carrying out such removal, and has provided no information about any countries to which it seeks to remove him. Other than the vague statements that “ERO is actively working to locate a third country for resettlement to effect Petitioner’s removal to a third country,” the government has provided no information about the steps it has taken to deport Mr. Conchas-Valdez to a third country. Doc. 4-2 ¶ 5. In effect, the government is asking this Court to sign off on ICE’s indefinite detention of Mr. Conchas-Valdez in violation of Due Process, the Immigration and Nationality Act, and Department of Homeland Security (DHS) regulations.

Mr. Conchas-Valdez was granted deferral of removal on February 19, 2025. According to Supervisory Detention and Deportation Officer Concepcion Arredondo, it was not until more than two months later, on April 30, 2025, that the San Diego Enforcement and Removal Operations (ERO) submitted resettlement requests to the Removal Management Division (RIO) Detention and Deportation Officers (DDOs), who have primary responsibility for locating third countries and securing travel documents to effectuate third country resettlements. Doc. 4-2 ¶5. The government offers no explanation for the two-month delay in beginning the process to seek third country removal, nor does it provide details as to which countries it has identified as appropriate for third country removal. ERO submitted two follow up requests, on May 12 and almost four months later on September 4. Again, the government fails to provide details about where ICE is seeking to remove Mr.

Conchas-Valdez, why the process is moving so slow, or whether RIO received responses from any of the countries to which they reached out. Despite Mr. Conchas-Valdez's repeated requests regarding his continued detention, he has been provided minimal information over the past seven months, having been told only that the government is seeking to deport him to a third country and that "headquarters denied release." Doc. 1-2, ¶7.

As explained in the Petition, the government's burden under *Zadvydas* has two components, a success component ("significant likelihood of removal") and a timing component ("in the reasonably foreseeable future"). The government's only attempt to meet that burden rests on a declaration from Officer Arredondo. Doc. 4-2. She claims that ICE "is actively working to locate a third country for resettlement to effect Petitioner's removal to a third country" and that DHS leadership and the Department of State are "working on a pathway for removing the Petitioner to an alternate country and that the process remains ongoing." Officer Arredondo's declaration is the entirety of the government's attempt to establish the significant likelihood of removal and does not meet either *Zadvydas* prong.

A. DDO Arredondo does not assert that third-country removal will happen in the reasonably foreseeable future.

First and foremost, DDO Ramirez does not assert that removal will happen in the reasonably foreseeable future, or even offer any suggestion of a timeline for when removal will occur. The government provides no evidence for where ICE is seeking to remove Mr. Conchas-Valdez nor about how long removal might take. The government provides no statistics, no estimations, no anecdotal evidence, no nothing beyond the vague statements that they are "working on a pathway for removing Petitioner to an alternate country." Doc. 4-2 ¶5.

The government has therefore “made no attempt to demonstrate that [Mr. Conchas-Valdez’s] removal – to [a third country] – would be accomplished within a reasonable time, as *Zadvydas* requires.” *Toma v. Adducci*, 535 F. Supp. 3d 651, 659 (E.D. Mich. 2021). That is fatal. “[D]etention may not be justified on the basis that removal to a particular country is likely at some point in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future. *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *6. (W.D.N.Y. Jan. 2, 2019).

Courts have routinely granted habeas petitions where, as here, the government does not establish *Zadvydas*’s timing element. *See, e.g., Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020), *report and recommendation adopted*, No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) (“[A] theoretical possibility of eventually being removed does not satisfy the government’s burden[.]”); *Eugene v. Holder*, No. 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) (“While Respondents contend Petitioner *could* be removed to Haiti, it has not been shown that it is significantly likely that Petitioner *will* be removed in the *reasonably foreseeable* future.”); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D. Pa. 2004) (granting petition because even if “Petitioner’s removal will ultimately be effected . . . the Government has not rebutted the presumption that removal is not likely to occur in the reasonably foreseeable future”); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the government had not provided any “evidence . . . that travel documents will be issued in a matter of days or weeks or even months”).

A speedy removal is especially unlikely given ICE’s apparent lack of diligence up to this point. After Mr. Conchas-Valdez was granted deferral of removal under CAT, ICE allowed Mr. Conchas-Valdez to languish in detention for over 2

months before initiating any efforts to remove him elsewhere. San Diego ERO submitted a resettlement request on April 30, followed up on May 12, and then waited another four months to follow up on September 2, 2025. Doc. 4-2 ¶5. At that point, RIO responded that the “Department of Homeland Security leadership and the Department of State are working on a pathway for removing the Petitioner to an alternate country and the process remains ongoing.” Doc. 4-2 ¶5. To this day, no one from ICE, the Detention and Removal Office, or ERO has visited Mr. Conchas-Valdez to seek his assistance in effectuating his removal or explain to him what is happening in his case. Doc. 1-2, p. 2-4. “This lack of effort only reinforces the conclusion that the Petitioner’s removal is not likely to occur in the reasonably foreseeable future.” *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002). This Court should not make Mr. Conchas-Valdez bear the cost of these minimal efforts by keeping him in detention while ICE “works on a pathway for removing” him.

Thus, the government’s lack of timing evidence alone is sufficient to grant the petition.

B. The government provides no evidence that success is likely, and *Zadvydas* squarely holds that ICE’s good faith efforts do not themselves justify detention.

Timing aside, the government provides no evidence that ICE will ever succeed in removing Mr. Conchas-Valdez to a third country.

First, the government’s only evidence about the likelihood of success is a vague statement from DDO Arredondo that, “ERO is actively working to locate a third country for resettlement to effect Petitioner’s removal to a third country.” Doc. 4-2 at ¶ 5. But *Zadvydas* requires the government to meet its burden “with evidence,” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)—not vague statements. The government “cannot rest on a bald assertion that removal is foreseeable with no

supporting evidence.” *Gonzalez-Rondon v. Gillis*, No. 5:19-CV-109-DCB-MTP, 2020 WL 3428983, at *2 (S.D. Miss. June 23, 2020); *see also Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009) (refusing to accept “conclusions and hopes that removal will be effected in the foreseeable future”).

Evidence is particularly important here, because it is far from obvious why DDO Arredondo thinks any other country will accept Mr. Conchas-Valdez. The government fails to state the countries with whom RIO has communicated regarding Mr. Conchas-Valdez’s removal and what response it has received as well as the specifics around what steps ICE has taken to remove Mr. Conchas-Valdez. And without knowing these facts, this Court cannot meaningfully evaluate whether ICE is likely to succeed.

Second, even if ICE has engaged in good faith efforts to remove Mr. Conchas-Valdez, the government cannot detain someone just because ICE is still making good faith efforts to remove them. In fact, the petitioner in *Zadvydas* appealed a “Fifth Circuit h[olding] [that] [the petitioner’s] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit’s good-faith-efforts standard “demand[ed] more than our reading of the statute can bear.” *Id.*

Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does not turn on the degree of the government’s good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner’s detention turns on whether and to what extent the government’s efforts are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a

probability of success in such possibilities.” *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Thus, Mr. Conchas-Valdez’s habeas petition should be granted on the basis that removal to a third country is not reasonably foreseeable.

2. The government fails to address Mr. Conchas-Valdez’s arguments that the government has violated 8 C.F.R. §241.4 and Due Process

The government fails to address Mr. Conchas-Valdez’s argument that his detention violates 8 C.F.R. §241.4 and Due Process. In his Petition, Mr. Conchas-Valdez argued that to determine whether Mr. Conchas-Valdez’s detention remains justified, ICE is required to conduct post-order custody reviews at 90 days and 180 days. 8 C.F.R. §241.4. Under 8 C.F.R. §241.4(d), “a copy of any decision by the District Director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner to release or to detain an alien shall be provided to the detained alien. A decision to retain custody shall briefly set forth the reasons for the continued detention.” Mr. Conchas-Valdez has not been provided with a custody review or any notification regarding his custody status apart from being informed “headquarters denied your release.” Doc. 1-2, ¶7. Moreover, he has not been served with any “notices, decisions, or other documents in connection with custody reviews. Doc. 102, p. 2-4; *See* 8 C.F.R. 241.4(d)(2). Mr. Conchas-Valdez has likewise not been provided the opportunity to demonstrate that he is not a danger to the community or to the safety of other persons or a significant risk of flight pursuant to 8 C.F.R. §241.4 (d)(1).

Mr. Conchas-Valdez also argued that the failure to provide custody reviews violates *Mathews v. Eldridge*, because there is no indication that the government followed any of the legally required procedures to determine that Mr. Conchas-Valdez should remain in custody. 424 U.S. 319 (1976). “The fundamental

requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 333.

The government simply ignores these arguments. It offers no evidence that it conducted any custody reviews, much less the custody reviews required by statute. The government focuses entirely on its argument that it has the legal authority to detain Mr. Conchas-Valdez because it intends to deport him at some unknown date in the future to some unknown country. This court should thus find that ICE’s prolonged detention of Mr. Conchas violates the INA, DHS regulations as well as due process. Prolonged civil detention violates due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Zadvydas* at 690-91; *Foucha*, 504 U.S. at 81-83; *Kansas v. Hendricks*, 521 U.S. at 346, 364-69 (1997); *United States v. Salerno*, 481 U.S. 739, 750-752 (1987).

Conclusion

For these reasons, the Court should grant the petition and order Mr. Conchas-Valdez’s immediate release.

Respectfully Submitted,

Dated: September 26, 2025

/s/ Cassandra Lopez