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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Frandy Joseph,

10 Petitioner,

11 vs.

12 David R. Rivas, Warden, et al.,

13 Respondents.
14

No. 2:25-cv-3754-PHX-DJH (CDB)

15 **Reply to Response to Order to Show**
16 **Cause**

17 In his habeas petition, Mr. Joseph contends that his present detention in immigration
18 custody is illegal because there is no significant likelihood that he will be removed from the
19 United States in the reasonably foreseeable future. (Dkt. #1 at 4-7 ¶¶ 15-23) *See Zadvydas v.*
20 *Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, once a detainee has been in custody with a final
21 order of removal for six months, a presumption arises that there is no such likelihood of
22 foreseeable removal. *Id.* at 701. Once the detainee makes this initial showing, it falls to the
23 government to “respond with evidence sufficient to rebut that showing. And for detention to
24 remain reasonable, as the period of prior postremoval confinement grows, what counts as the
25 ‘reasonably foreseeable future’ conversely would have to shrink. This 6-month presumption, of
26 course, does not mean that every alien not removed must be released after six months. To the
27 contrary, an alien may be held in confinement until it has been determined that there is no
28 significant likelihood of removal in the reasonably foreseeable future.” *Id.* And if “removal is not

1 reasonably foreseeable, the court should hold continued detention unreasonable and no longer
2 authorized by statute.” *Id.* at 699–700.

3 On November 20, 2025, this Court determined that Mr. Joseph had met his initial burden
4 of showing that his removal was not significantly likely in the reasonably foreseeable future. (Dkt.
5 #25 at 4) The Court also observed that respondents had not “provide[d] any specific allegations
6 or evidence showing the process that ICE has taken to remove Petitioner to Haiti.” (Dkt. #25 at
7 4) “There is no evidence from which the Court can conclude Petitioner’s removal is even
8 conceivable as there is no evidence they *have requested* that Haiti accept him. Respondents do
9 not me[e]t their burden to show that Petitioner’s removal to Haiti is likely to occur at all, much
10 less in the reasonably foreseeable future.” (Dkt. #25 at 4 (citing *Seretse-Khama v. Ashcroft*, 215 F.
11 Supp. 2d 37, 50 (D.D.C. 2002))) The Court also noted that respondents had “apparently decided
12 to request that Mexico accept Petitioner, even though they claim to be working expeditiously to
13 effectuate his removal to Haiti and seem certain of his removal there.” (Dkt. #25 at 5) The Court
14 noted that respondents had submitted no evidence “in support of that request” (removal to
15 Mexico). (Dkt. #25 at 5) The Court concluded that it was “inclined to find there is no significant
16 likelihood of removal in the reasonably foreseeable future and must order Petitioner’s release.”
17 (Dkt. #25 at 5) The Court ordered the government to show cause why Mr. Joseph should not be
18 released from custody. (Dkt. #25 at 5)

19 The government’s response shows that it is no closer to removing Mr. Joseph to *any*
20 country, including Mexico, than it was when this Court notified it that it was inclined to order
21 Mr. Joseph’s release from custody. It still maintains that “ICE-ERO intends to remove him to
22 Mexico” (Dkt. #27 at 5), and asserts that “ICE has taken active steps to remove any
23 impediments towards removing Petitioner to Mexico” (Dkt. #27 at 4). But it says nothing about
24 the steps that ICE has taken to effectuate this removal. This Court has already reviewed the
25 declarations of deportation officers Jorge Hernandez (Dkt. #27-1) and Concepcion Arredondo
26 (Dkt. #27-2) and found them wanting. Nothing in the declaration of deportation officer Chip
27 Yoder explains how respondents are any closer to removing Mr. Joseph to Mexico than Ms.
28

1 Arredondo had already explained. Most importantly, Mr. Yoder does *not* say that the Mexican
2 government has agreed to accept Mr. Joseph—a statutory prerequisite for removing him there.
3 See 8 U.S.C. § 1231(b)(2)(E)(vii) (listing the country of removal of last resort as “another
4 country whose government will accept the alien into that country”). Because respondents have
5 failed to comply with the statutory requirement of obtaining the approval of the Mexican
6 government, his removal to that country is not reasonably foreseeable.

7 The government points to Mr. Joseph’s criminal history as a “caution against ordering
8 release.” (Dkt. #27 at 5) But under Ninth Circuit law, the government cannot rely on Mr.
9 Joseph’s criminal record to argue against his *Zadvydas* claim. The Ninth Circuit has explained
10 how an alien’s criminal record may play into the lawfulness of continued, potentially indefinite
11 detention in immigration custody where there is no significant likelihood of removing an alien in
12 the reasonably foreseeable future. That court has specifically rejected the notion that
13 “*Zadvydas* contains an exception to the presumptive six-month rule for particularly dangerous
14 individuals where there are circumstances, such as mental illness, that help to create the
15 danger.” *Thai v. Ashcroft*, 366 F.3d 790, 794 (9th Cir. 2004). The “Government’s ability to
16 detain individuals is generally subject to the limitations imposed by the Due Process Clause. The
17 statement in *Zadvydas* that noncriminal detention by the Government is permissible only in
18 narrow nonpunitive circumstances was intended to illustrate what the Government is
19 generally *prohibited* from doing, and what it may in some circumstances be permitted to do. It did
20 not state what the Government is authorized to do under § 1231(a)(6).” *Thai*, 366 F.3d at 795.
21 The Court in *Zadvydas* explained that, in the civil (that is, nonpunitive) context, “preventive
22 detention based on dangerousness only when limited to specially dangerous individuals and
23 subject to strong procedural protections.” 533 U.S. at 691 (distinguishing *Kansas v. Hendricks*,
24 521 U.S. 346, 368 (1997), and *United States v. Salerno*, 481 U.S. 739, 747, 750–52 (1987)). But the
25 Court also concluded that there is “no sufficiently strong special justification here for indefinite
26 civil detention” based on danger—“at least as administered under” § 1231(a)(6). *Id.* at 690.

1 In particular, the Ninth Circuit has said that an alien as to whom there is no significant
2 likelihood of removal in the reasonably foreseeable future may not “be detained because he poses
3 a threat to the community due to his propensity for violence.” *Thai*, 366 F.3d at 797. The
4 government does not assert that Mr. Joseph poses a threat to national security, or suffers from
5 any mental illnesses that might render him especially dangerous, or has a particularly violent
6 criminal history. And a criminal record—even one that includes serious violent activity, such as
7 homicide (which Mr. Joseph’s does not)—does not *ipso facto* transform any alien into a national-
8 security threat that might justify detention even when there is no significant likelihood of removal
9 in the reasonably foreseeable future. *See id.* (quoting *Zadvydas*, 533 U.S. at 699). Rather, the
10 Ninth Circuit has read *Zadvydas* to “permit consideration of nothing more than the reasonable
11 foreseeability of removal.” *Id.* (quoting *Zadvydas*, 533 U.S. at 714 (Kennedy, J., dissenting)). In
12 sum, Mr. Joseph’s criminal record is no obstacle to granting his *Zadvydas* claim, because there is
13 no significant likelihood of his being removed to Haiti or Mexico in the reasonably foreseeable
14 future.

15 The Court should discharge the order to show cause and grant Mr. Joseph’s petition with
16 respect to the *Zadvydas* claim, combining a hearing on the preliminary injunction with a trial on
17 the merits as authorized by Fed. R. Civ. P. 65(a).

18 Respectfully submitted:

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