IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

ONISS SIOMARA VARGAS ISTAMO,

Petitioner,

v.

ORLANDO PEREZ, in his official capacity as Warden of the Laredo Processing Center,

MIGUEL VERGARA, in his official capacity as Field Office Director of the Harlingen Field Office, Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security, and

PAMELA BONDI, in her official capacity as Attorney General of the United States Department of Justice;

Respondents.

REPLY IN SUPPORT OF THE PETITION FOR A WRIT OF HABEAS CORPUS

Case No.: 5:25-cv-00186

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INTRODUCTION

The government's response confirms, rather than undermines, Petitioner Oniss Vargas Istamo's entitlement to release under the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. Ms. Vargas Istamo has been detained well beyond the presumptively reasonable six-month period following her removal order in March 2025. She was granted withholding of removal to her home country Colombia, and has no tie to or citizenship in any other country. And indeed she has received no indication that her removal to any other country is reasonably foreseeable. She has thus provided good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.

The government does not meaningfully contest that showing. Instead, it relies on an uncorroborated declaration describing a single, four-month-old inquiry to Costa Rica and a bare assertion that there is "no indication" Costa Rica will refuse to issue travel documents. That speculative assertion—unsupported by any confirmation from Costa Rica, any follow-up, or any concrete progress—cannot justify Ms. Vargas Istamo's continued detention.

Furthermore, the government's effort to divert the Court's attention to potential procedures that might follow after identification of a third country is both irrelevant and unpersuasive. The Court has already required advance notice of any third-country transfer, and the government has neither identified a country that has agreed to accept Ms. Vargas Istamo nor provided any other notice of third-country removal. In any event, the government's own description of those procedures underscores that, even if a third country were identified, additional proceedings would further delay removal—reinforcing that there is no significant likelihood of removal in the reasonably foreseeable future.

Finally, the government's purported "motion for summary judgment" presents no obstacle to release. Even accepting, without conceding, the government's assertions, release is warranted,

so the government's "motion for summary judgment" as to her wrongful detention claims is no impediment to release, lacks merit, and should be denied. And Ms. Vargas Istamo will timely oppose the government's remaining arguments about procedures for third-country removal under the applicable rules.

ARGUMENT

I. Ms. Vargas Istamo is Entitled to Release, and the Government's Minimal Arguments to the Contrary Have No Merit.

Ms. Vargas Istamo is entitled to the protection of the INA and the Due Process Clause of the Constitution, which limit the government's detention of a non-citizen. *See* Dkt. 1 (Emergency Petition for a Writ of Habeas Corpus) at ¶¶ 34–47. There is no likelihood of Ms. Vargas Istamo's removal in the reasonably foreseeable future, much less a significant likelihood, and the Court should order Ms. Vargas Istamo released.

A. The Government Has Failed to Rebut Ms. Vargas Istamo's Showing that She is Entitled to Release.

Ms. Vargas Istamo has been detained for nearly eight months since the Immigration Court issued the removal order. Dkt. 1 at ¶ 26. This far exceeds the initial 90-day detention period permitted by the INA. 8 U.S.C. § 1231(a). Accordingly, she may be detained only for so long as reasonably necessary to achieve removal, and a presumption of reasonableness attaches only for up to six months of detention. *Clark v. Suarez Martinez*, 543 U.S. 371 (2005); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Given that the six-month period has passed, the relevant consideration is whether there is "good reason to believe that there is no significant likelihood of removal in the foreseeable future." *Zadvydas*, 533 U.S. at 699–701; *see also Alexis v. Sessions*, No. H-18-1923, 2018WL5921017, at *7 (S.D. Tex. Nov. 13, 2018) (citing *Zadvydas*, 533 U.S. at 682) ("[P]ostremoval detention under § 1231(a)(6) for longer than six months is presumptively unreasonable."). Ms. Vargas Istamo has carried her burden on this point, and the government has

not rebutted that showing. Demonstrating that the "presumptively reasonable six-month period has expired" is sufficient to satisfy Ms. Vargas Istamo's burden. *Pham v. Bondi*, No. 2:25-cv-01835, 2025 WL 3122884, at *1 (W.D. Wash. Nov. 7, 2025); *see also Iakubov v. Figueroa*, No. CV-25-03187-PHX-KML (JZB), 2025 WL 2640218, at *2 (D. Ariz. Sep. 15, 2025) (petitioner's detention for six months and eighteen days satisfied petitioner's burden under *Zadvydas*). In addition, the Immigration Court's order does not designate any countries for Ms. Vargas Istamo's removal other than her home country Colombia, and she does not have legal residence (or other legal status) in any other country, which also weighs in her favor towards satisfaction of her burden. *Misirbekov v. Venegas*, No. 1:25-cv-00168, 2025 WL 2450991, at *1 (S.D. Tex. Aug. 15, 2025) (finding petitioner provided good reason to believe there was no significant likelihood of removal where he could not be removed to home country due to withholding of removal and did not have ties or citizenship to any other country). Because Ms. Vargas Istamo has satisfied her burden, the burden shifts to the government to rebut her showing.

The government has not rebutted Ms. Vargas Istamo's showing. Its contention is that (i) Ms. Vargas Istamo did not satisfy her burden to show "good reason" that there is no significant likelihood of removal in the reasonably foreseeable future, and (ii) that even if she did, the government rebutted the showing by reaching out to Costa Rica in July. Neither of these arguments has merit.

First, the government alleges that Ms. Vargas Istamo did not satisfy her burden to demonstrate no significant likelihood of removal in the reasonably foreseeable future, because she purportedly advanced "unsupported arguments and speculation" in support of her burden. Dkt. 12 (Respondents' Response to Petitioner's Writ of Habeas Corpus and Motion for Summary Judgment) at 6–7. For this proposition, the government cites a single case, *James v. Lowe*, which

is nowhere similar to the facts and circumstances here. *See* No. 3:23-CV-1862, 2024 WL 1837216 (M.D. Pa. Apr. 26, 2024). In *James*, the petitioner was denied asylum and withholding of removal and ordered removed to his home country Dominica. *Id.* at *3. He also had a lengthy criminal record and, upon transfer from federal prison to ICE detention, sought release on his assertion that "it could take 'years' to receive travel documents" from Dominica and that "ICE/DHS only deported a total of 5 immigrants to the country of Dominica in 2022." *Id.* (cleaned up). But the court noted that the petitioner made these allegations "without any evidence, support, or citation." *Id.* He also "provide[d] no context for" his claim of five deportees to Dominica in 2022, "*e.g.*, how many noncitizens were awaiting removal to Dominica in the United States in 2022." *Id.* On that record, the petitioner "failed to establish 'good reason to believe' that there is not a 'significant likelihood of removal in the reasonably foreseeable future.'" *Id.* (citation omitted). Further, the court in *James* noted that, even if the petitioner had carried his burden, the respondent had rebutted such showing by providing evidence that ICE had consistently attempted to effectuate the petitioner's removal, including numerous communications with Dominica, and evidence that ICE, "importantly, [had] received a response that final approval is pending." *Id.* at *4.

Here, in contrast, Ms. Vargas Istamo's arguments are not speculative. They are supported by her first-hand knowledge of the facts that show there is no reasonably foreseeable likelihood of removal—facts that are fully consistent with the government's own asserted facts. *See* Dkt. 1-1 (Order of the Immigration Judge); Dkt. 1-2 (Declaration of Oniss Siomara Vargas Istamo) at ¶¶ 3–4. And as explained further below, the government has not provided sufficient evidence to rebut Ms. Vargas Istamo's showing that there is good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.

In *Zadvydas*, the Supreme Court rejected the Fifth Circuit's conclusion that "Zadvydas'

detention did not violate the Constitution because eventual deportation was not 'impossible,' good-faith efforts to remove him from the United States continued, and his detention was subject to periodic administrative review." 533 U.S. at 685. And on remand, the Fifth Circuit confirmed that a petitioner need not demonstrate that removal is impossible, but only that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 285 F.3d 398, 404 (5th Cir. 2002) (noting that "when Zadvydas filed his habeas petition he had been in INS custody more than six months after the expiration of the removal period" and "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink") (quotations omitted). Ms. Vargas Istamo has been in detention for nearly eight months since the Immigration Judge entered an order of removal, and has provided good reason to believe there is no significant likelihood of removal in the foreseeable future. The government's attempt to analogize to *James v. Lowe* is inapt, and its argument that Ms. Vargas Istamo has failed to meet her burden under *Zadvydas* is unpersuasive.[1]

Second, the government claims that, even if Ms. Vargas Istamo has met her burden, it has successfully rebutted that showing by purportedly initiating an attempt to remove Ms. Vargas Istamo to Costa Rica. Dkt. 12 at 7. For this assertion, the government relies exclusively on the uncorroborated and inaccurate Gonzalez Declaration. *See id.* But even if the facts in the Gonzalez

[1] The government's suggestion that Ms. Vargas Istamo's return to the U.S. in September 2024 somehow "demonstrates an inability or unwillingness to comply with removal orders" or has any relevance here, Dkt. 12 at 6, is wrong. Not only does the government disregard that, upon her return to the U.S., Ms. Vargas Istamo was *granted* relief because of the persecution she suffered in Colombia after her initial removal, but even accepting the government's inaccurate position, the government disregards that the relevant inquiry concerns the likelihood of removal. *See, e.g.*, *Duong v. Tate*, No. CV H-24-4119, 2025 WL 933947, at *3 (S.D. Tex. Mar. 27, 2025) ("Even detainees who pose a flight risk or a danger to the community may not be detained indefinitely if their removal is not substantially likely to occur in the reasonably foreseeable future.").

Declaration are accepted as true, the record shows that Ms. Vargas Istamo should be released.[2]

The Gonzalez Declaration includes only two references concerning any potential removal of Ms. Vargas Istamo to Costa Rica: (i) that a request to Costa Rica to accept Ms. Vargas Istamo was submitted on July 1, 2025 (over four months ago), and (ii) that "there is no indication that Costa Rica will refuse to issue a travel document." Dkt. 12-2 at ¶¶ 13, 17; *accord* Dkt. 12 at 3–4. As to the first assertion, the government cites no case law to support its assertion that a single request to a country to accept a noncitizen—made more than four months ago—is sufficient to demonstrate that the noncitizen is significantly likely to be removed in the reasonably foreseeable future. Indeed, case law is to the contrary. *See Trejo v. Warden of ERO El Paso Montana*, No. EP-25-CV-401, 2025 WL 2992187, at *5–6 (W.D. Tex. Oct. 24, 2025) (holding that respondents cannot satisfy their burden solely by requesting that countries accept the petitioner); *Iakubov v. Figueroa,* No. CV-25-03187-PHX-KML (JZB), 2025 WL 2731355, at *1 (D. Ariz. Sept. 25, 2025) (holding that the government had not met its burden where there were no responses from three countries that ICE contacted and no explanation from ICE as to whether responses would be forthcoming); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 3033732, at *2 (S.D. Tex. Oct. 29, 2025) (holding that, where there were no responses from two countries the government

[2] Officer Gonzalez's declaration contains several mischaracterizations of facts. First, Officer Gonzalez asserts that Ms. Vargas Istamo has been served with multiple documents regarding her continued detention, Dkt. 12-2 (Declaration of Supervisory Detention and Deportation Officer Alfredo Gonzalez, Jr.) at ¶¶ 12, 14, 16, but Ms. Vargas Istamo asserts in her declaration that she has not received any information regarding her ongoing detention, Dkt. 1-2 at ¶¶ 13–14. Second, Officer Gonzalez asserts that a Request for Acceptance of Alien was submitted to the government of Costa Rica in July 2025. Dkt. 12-2 at ¶ 13. While this may be true, the government has not included a copy of this request form with its response, and Ms. Vargas Istamo has not received any information regarding a country that would accept her. Dkt. 1-2 at ¶ 14. Finally, Officer Gonzalez asserts that Ms. Vargas Istamo has been detained since March 31, 2025, Dkt. 12-2 at ¶ 3, but this ignores Ms. Vargas Istamo's prior detention at the Laredo Processing Center as of September 2024, with continued detention since then. *See* Dkt. 1-2 at ¶¶ 5–10.

contacted, and one country had denied the petitioner's acceptance, the government's "lack of progress in removing [p]etitioner makes removal unlikely in the foreseeable future").

As to the second assertion, pointing to "no indication that Costa Rica will refuse to issue a travel document" cannot satisfy the government's burden either. *See Johnson v. Young*, No. 12-cv-2339, 2012 WL 1571938, at *2 (W.D. La. Feb. 11, 2013) (holding that the government failed to show that significant likelihood of removal to petitioner's home country was reasonably foreseeable where it "argue[d] only that the [home country's] Consulate 'ha[d] not refused' to issue travel documents"), *adopting report and recommendation*, 2013 WL 1571272 (Apr. 12, 2013); *see also Balouch v. Bondi*, No. 9:25-CV-216, 2025 WL 2871914 (E.D. Tex. Oct. 9, 2025) (holding that the mere potential for petitioner to be placed on a removal flight in coming weeks was insufficient evidence of a significant likelihood of removal). A lack of action or communication from Costa Rica does not establish a significant likelihood of removal in the reasonably foreseeable future. This is all the more true given that four months have passed without the Costa Rican government responding to ICE's request. *See Zavvar v. Scott*, No. 25-2104, 2025 WL 2592543, at *7 (D. Md. Sep. 8, 2025) (finding that a lack of response from third countries for over two months weighed against likelihood of removal in the foreseeable future).

B. The Government's Other Arguments Fail to Respond to the Current Posture.

The government attempts to side-step the primary issue at stake—Ms. Vargas Istamo's entitlement to release—by focusing on the type of process that she would be provided after a third country had agreed to accept Ms. Vargas Istamo. But this Court has already ordered that the government "notify Petitioner's counsel and the Court of any anticipated or planned transfer or removal of Petitioner outside of the Southern District of Texas, including notice of a designated country of removal, at least ten (10) days before any such transfer." Dkt. 5 (Order) at 2–3. The government does not contest that requirement and has not provided any such notice to date.

As such, the government's arguments about procedures it would follow if it were to pursue removal are unresponsive to Ms. Vargas Istamo's request for release. The government cites *Munaf v. Geren*, 553 U.S. 674 (2008), and *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), *cert. denied*, 559 U.S. 1005 (2010), asserting that "the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee." Dkt. 12 at 8. But that is not the issue before this Court. The government has not identified any viable third country that has agreed to accept Ms. Vargas Istamo, much less provided any assessment regarding a likelihood of persecution or torture if Ms. Vargas Istamo were removed there.

The government also argues that Ms. Vargas Istamo's due process rights are protected by DHS guidance regarding third-country removal. Dkt. 12 at 9. But, again, those protections apply to the removal process only *after* the government receives confirmation that a third country agrees to accept Ms. Vargas Istamo.[3] *See id.* In the absence of any confirmed third country of removal for nearly eight months, Ms. Vargas Istamo should not remain detained indefinitely.

Moreover, the due process protections that would attach in the event the government were to pursue removal, by the government's own account, further demonstrate that removal is unlikely in the reasonably foreseeable future and reinforce Ms. Vargas Istamo's entitlement to release now. *See Villanueva v. Tate*, 2025 WL 2774610, at *10 (S.D. Tex. Sep. 26, 2025) ("[A]ny efforts to remove [petitioner] to a third country would likely be delayed by proceedings contesting his

[3] The government's response indicates that, after it receives notice of a confirmed country of removal that has agreed to accept Ms. Vargas Istamo, she will receive an opportunity to be heard that complies with due process requirements for presenting a fear claim (such opportunity to be heard could include, for example, an opportunity to be interviewed by an asylum officer regarding her fear of return, subject to review by an immigration judge of any negative determination as set out in 8 C.F.R. § 208.30). *See* Dkt. 12 at 9 (stating that the DHS March Guidance "confirms that Petitioner will be notified of a third country removal and afforded an opportunity to assert a fear claim"); *id.* at 10 (stating that "the March Guidance affords Petitioner an opportunity to present a fear claim prior to removal to any third country").

removal to the third country finally identified.") (citing *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025) (finding relevant to the reasonably foreseeable analysis that, "even if ICE identified a third country, [p]etitioner . . . would be entitled 'to seek fear-based relief from removal to that country,' which would require 'additional, lengthy proceedings'")).

II. The Government's Other Attempts To Distract from the Merits of Ms. Vargas Istamo's Claim for Release Have No Merit.

A. The Court Has Jurisdiction to Release Ms. Vargas Istamo.

The government raises jurisdiction, *see* Dkt. 12 at 7, but does not contest the Court's jurisdiction to release Ms. Vargas Istamo.[4] Indeed, the Court's jurisdiction over habeas petitions contesting prolonged detention is well established. Specifically, federal district courts have jurisdiction to review detention "insofar as that detention presents constitutional issues, such as those raised in a habeas petition." *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005); *see also Zadvydas*, 533 U.S. at 678 ("[H]abeas proceedings are available as a forum for statutory and constitutional challenges to post-removal-period detention.").

B. The Government's "Motion for Summary Judgment" Is No Impediment to Release.

The government purports to file a motion for summary judgment as part of its response. Ms. Vargas Istamo reserves all rights to timely oppose that motion under the schedule and process for summary judgment oppositions.[5] Meanwhile, the Court can and should order Ms. Vargas

[4] The government argues only that the Court "lacks jurisdiction to review Petitioner's due process claim." Dkt. 12 at 7. As discussed further in Part II.B below, Ms. Vargas Istamo will address the government's arguments regarding the due process claim in her opposition to the government's motion for summary judgment.

[5] Per the Court's Procedures in Civil Cases, responses by the non-movant to an opposed motion must be filed within 21 calendar days of the motion. As the government's "Motion for Summary Judgment" was filed on November 6, 2025, Ms. Vargas Istamo's response to that motion is due on November 28, 2025 (in light of the federal holiday on day 21).

Istamo's immediate release.

The government's "motion for summary judgment" cannot overcome or postpone Ms. Vargas Istamo's clear right to release. As discussed above, even accepting the government's assertions as true, her detention is unlawful because the government has not met its burden to show a significant likelihood of removal in the reasonably foreseeable future. *See* Part I.

The government's assertions are also legally deficient to support summary judgment in the government's favor. The government submits a faulty declaration that fails threshold requirements;[6] the declaration is uncorroborated and untested; and the government fails to show there is no genuine dispute about its assertions. Indeed, although the government cites the standard for summary judgment in its "Standard of Review," it nowhere even suggests that it meets that standard. For any and all of these reasons, the government's "motion for summary judgment" is no impediment to Ms. Vargas Istamo's clear right to release.

With respect to the government's arguments regarding due process for any third-country removal, they too cannot secure summary judgment for the government, for similar and additional reasons that Ms. Vargas Istamo will address in her forthcoming opposition.

CONCLUSION

Petitioner Oniss Simoara Vargas Istamo respectfully requests that the Court grant her release for the reasons set forth in her Petition and this reply.

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[6] Declarations in support of a motion for summary judgment must be sworn and based on personal knowledge. *See* Fed. R. Civ. P. 56(c)(4). An unsworn declaration may support a motion for summary judgment only if the statements therein are both made "under penalty of perjury" and verified as "true and correct." 28 U.S.C. § 1746; *see Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300, 1306 (5th Cir. 1988) ("[Petitioner] never declared her statement to be true and correct; therefore, her affidavit must be disregarded as summary judgment proof."). Officer Gonzalez's affidavit does not attest that his statements are "true and correct." Indeed, his declaration contains several mischaracterizations and inaccuracies, including as to the date Ms. Vargas Istamo was first detained and the communications and documentation Officer Gonzalez allegedly had and shared with Ms. Vargas Istamo. *See supra* note 1.

Dated: November 13, 2025

/s/ Micah Doak

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CERTIFICATE OF SERVICE

I certify that on the 13th day of November, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and that Respondents Miguel Vergara, Kristi Noem, and Pamela Bondi were served via PACER through the email address of their Counsel of Record at Lance.Duke@usdoj.gov.

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