**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF KANSAS**

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| FERNANDO GONZALEZ GUTIERREZ,<br><br>Petitioner,<br><br>vs.<br><br>C. CARTER, Warden, FCI-Leavenworth, SAMUEL OLSON, ICE Field Office Director, TODD LYONS, ICE Acting Director, KRISTI NOEM, DHS Secretary, and PAMELA BONDI, Attorney General,<br><br>Respondents. | ) | Case No. 5:25-cv-03233-JWL |

**RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE**

This matter is before the Court on the petition of Fernando Gonzalez Gutierrez ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained at FCI Leavenworth in Leavenworth, Kansas, pending removal from the United States. In compliance with the Court's Order to Show Cause, Doc. 3, C. Carter, Warden, FCI-Leavenworth; Samuel Olson, ICE Chicago Field Office Director; Todd Lyons, ICE Acting Director; Kristi Noem, Secretary of the Department of Homeland Security; and Pamela Bondi, Attorney General of the United States, (collectively "Respondents") respectfully submit this response.

**STATEMENT OF FACTS**

The following facts are part of the Declaration of Katherine Peralta Vargas, Deportation Officer ("DO") for Enforcement and Removal Operations ("ERO"), Immigration and Customs Enforcement ("ICE"), of the Department of Homeland Security ("DHS"). Exhibit 1, Peralta Vargas Decl. ¶¶ 1-3. Petitioner is a native and citizen of Mexico. *Id.* ¶ 5. On or about February 23, 2023, Petitioner was paroled into the United States at the Deconcini Port of Entry in Nogales,

Arizona. *Id.* ¶ 6. On November 30, 2023, Petitioner was convicted in the United States District Court for the District of Arizona for the offense of Importation of Methamphetamine in violation of 21 U.S.C. § 952(a), 21 U.S.C. § 960(a)(1), and 21 U.S.C. § 960(b)(3). *Id.* ¶ 7. Petitioner was sentenced to a prison term of 27 months. *Id.*

On or about November 6, 2024, Petitioner was taken into ICE custody after his release from federal custody. *Id.* ¶ 8. On November 6, 2024, DHS issued a Notice to Appear ("NTA") charging Petitioner as inadmissible to the United States pursuant to sections 212(a)(7)(B)(i)(II), 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(C) of the Immigration and Nationality Act ("INA"); 8 U.S.C. §§ 1182(a)(7)(B)(i)(II), 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(C). *Id.* ¶ 9. On or about January 13, 2025, Petitioner filed an application for relief from removal with the Immigration Court. *Id.* ¶ 10.

On March 31, 2025, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief. *Id.* ¶ 11. No appeal was taken of the Immigration Judge's decision by either party. *Id.* Since the Immigration Judge's order, DHS has attempted to procure Petitioner's removal to Canada, Guatemala, and Peru, with no success. *Id.* ¶ 16. On or about August 6, 2025, a Notice to Alien of File Custody Review was served on Petitioner. *Id.* ¶ 17. On or about September 25, 2025, Petitioner was served with a Notice of Removal, informing him of ICE's intention to remove him to El Salvador. *Id.* ¶ 18.

On or about October 31, 2025, ERO served Petitioner with a Decision to Continue Detention following a review of his custody status. *Id.* ¶ 19. On November 19, 2025, DO Peralta Vargas reached out to ICE Removal and International Operations for an update on removal efforts to El Salvador. *Id.* ¶ 20. DO Peralta Vargas was advised that El Salvador does not ordinarily accept third country removals, unless the alien has contacts there. *Id.* ICE will continue its efforts to

identify alternative countries to which Petitioner can be removed and will update the Court on any further developments in this matter. *Id.* ¶ 21.

**ARGUMENT**

"The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal." *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, *6 (D. Kan. July 13, 2020) (citation omitted). To obtain habeas corpus relief, a petitioner must demonstrate that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

Upon the entry of a final removal order, "the Attorney General 'shall detain the alien' during the 90-day removal period established under 8 U.S.C. § 1231(a)(2)." *Zhiriakov*, 2020 WL 3960442, at *8 (citations omitted). "Generally, the government is required to remove the alien held in its custody within the 90-day removal period." *Garcia Uranga v. Barr*, No. 20-3162-JWL, 2020 WL 4334999, *4 (D. Kan. July 27, 2020) (citing 8 U.S.C. § 1231(a)(1)(A)-(B)). Nevertheless, "[i]f removal cannot be carried out within the removal period, inadmissible aliens may be detained beyond the removal period under certain circumstances." *Id.* (citing 8 U.S.C. § 1231(a)(6)).

Specifically, "the detention of an alien subject to a final order of removal for up to six months is presumptively reasonable in view of the time required to accomplish removal." *Zhiriakov*, 2020 WL 3960442, at *8 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). "Beyond that period, if the alien shows that there is 'no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.'" *Garcia Uranga*, 2020 WL 4334999, at *4 (quoting *Zadvydas*, 533 U.S. at 701). "The six-month presumption" thus "does not mean that every alien must be released after that time, but rather an alien may be detained 'until it has been determined that there is no significant likelihood

of removal in the reasonably foreseeable future.'" *Zhiriakov*, 2020 WL 3960442, at *8 (quoting *Zadvydas*, 533 U.S. at 701).

As a general matter, if an alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien [last] resided[.]" *Id.* 8 U.S.C. § 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005).

Here, Petitioner argues that removal is unlikely because he has not yet been removed and because removals to third countries were not common in prior fiscal years. Pet., Doc. 1, ¶ 37, 40. But, this is not "good reason to believe" there is no significant likelihood of removal in the reasonably foreseeable future. *See Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, *3 & n.32 (M.D. Pa. Oct. 2, 2024) (citing favorably an order noting that "the fundamental basis of petitioner's argument appears to be that his removal is unlikely simply because it has not occurred to this point") (alteration omitted). Regardless of efforts to execute third country removals in prior years, ICE has acted diligently by attempting to remove Petitioner to four countries other than Mexico—with continuing efforts ongoing. Exhibit 1, Peralta Vargas Decl., ¶¶ 16, 18, 20, 21.

In the same vein, a "mere delay does not trigger the inference that an individual will not be removed in the reasonably foreseeable future because 'the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals.'" *Dusabe v. Jones*, No. 24-464, 2024 WL 5465749, at *4 (W.D. Okla. Aug. 27, 2024) (alteration and citation omitted). Even when the Government "has not identified a specific

date by which it expects a travel document to issue," it remains true that "uncertainty as to when removal will occur does not establish that detention is indefinite." *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, *4 (W.D. Wash. May 10, 2024). Stated differently, "[s]peculation and conjecture are not sufficient to carry [Petitioner's] burden, 'nor is a lack of visible progress' in his removal sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future." *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, *3 (S.D. Tex. Oct. 21, 2024) (citation omitted).

In sum, Petitioner has not provided competent evidence to show that removal to a country other than Mexico is unlikely. "Because ICE is still actively pursuing" Petitioner's removal "and his detention furthers Congress's goal of ensuring his presence for removal," Petitioner is not entitled to release under *Zadvydas*." *Bains v. Garland*, No. 2:23-cv-00369-RJB-BAT, 2023 WL 3824104, *4 (W.D. Wash. May 16, 2023).

**CONCLUSION**

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 2025, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrants:

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