UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FARUK ATIK ADIR, *Petitioner*, v. RAFAEL VERGARA, Warden of Adams County Correctional Center. *Respondent.*	No. 5:25-cv-123-DCB-BWR

PETITIONER'S REPLY

Petitioner Faruk Atik Adir hereby files this Reply to Respondent's Response, Doc. 13, to his Verified Petition for a Writ of Habeas Corpus, Doc. 1. Mr. Adir's petition is due to be granted because his post-removal order detention has exceeded six months, and he has shown "good reason to believe that there is no significant likelihood of [his] removal in the reasonably foreseeable future," *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), which the government has failed to rebut. Because the material facts in this matter are not in dispute, no evidentiary hearing or further proceedings are necessary, and this Court should grant Mr. Adir's petition forthwith, ordering his immediate release from ICE custody.[1]

[1] Mr. Adir objects to the Court's decision to terminate all respondents named in his petition with the exception of Respondent Vergara, the warden of the privately-operated U.S. Immigration and Customs Enforcement ("ICE") detention facility where Mr. Adir is currently detained. *See* Doc. 3 at 2. The petition also named several official-capacity federal officials: the ICE New Orleans Field Office Director, the Acting ICE Director, the Secretary of the Department of Homeland Security, and the U.S. Attorney General ("Federal Respondents"). Doc. 1 at 1. In *Rumsfeld v. Padilla*, the Supreme Court expressly left open "the question whether the Attorney General is a proper respondent to a habeas petition filed by an alien detained pending deportation." 542 U.S. 426, 436 n.8 (2004). While several circuit courts have split on the question both before and after *Padilla*, the Fifth Circuit has not ruled on the question. This Court should find that one or more of the Federal Respondents are also proper respondents here, as only they possess the power and legal authority to effectuate a court order requiring Mr. Adir's release. *See, e.g., Masingene v. Martin*, 424 F. Supp. 3d 1298, 1302 (S.D. Fla. 2020) (holding that ICE field office director "overseeing the contract facility where the petitioner is detained" was the proper respondent in immigration habeas petition as "the local warden cannot release ICE detainees without ICE's express authorization"). Indeed, the sole evidence

I. Mr. Adir Has Met His Initial Burden Under *Zadvydas*

Mr. Adir has carried his initial burden of showing "good reason to believe" that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701; *see Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). As of December 6, 2025, Mr. Adir's post-removal order detention has exceeded six months. Under the Supreme Court's holding in *Zadvydas*, Mr. Adir's detention is therefore no longer presumptively reasonable. *Andrade*, 459 F.3d at 543; *Zadvydas*, 533 U.S. at 701. "After this 6–month period, once the [non-citizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. The burden has now shifted to the government because Mr. Adir has provided good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.

First, Mr. Adir has shown that his removal to Turkey, the only country where he has citizenship, is not only unlikely but forbidden because an immigration judge granted him withholding of removal to Turkey. Doc. 1 ¶¶ 28–29; Exhibit 1, Declaration of Faruk Atik Adir ("Adir Decl.") ¶ 7; *see Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025) ("The United States acknowledges that Abrego Garcia was subject to a withholding order forbidding his removal to El Salvador, and that the removal to El Salvador was therefore illegal.").

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the government furnished in support of their response is a declaration from a supervisory ICE official, Doc. 13-1, since "the warden of the detention facility . . . cannot provide meaningful answers to important factual and legal questions[.]" *Masingene*, 424 F. Supp. 3d at 1302 (*citing Calderon v. Sessions*, 330 F. Supp. 3d 944, 953 (S.D. N.Y. 2018)). Nonetheless, in light of the fact the United States Attorney's Office for this District has entered an appearance in this case and filed a response on behalf of Respondent Vergara, any order from this Court compelling Mr. Adir's release or requiring other actions or decisions by federal officials will presumably be conveyed to Federal Respondents or other relevant officials within the federal government by Respondent's Counsel, and thus, in a practical sense, an order against Respondent Vergara can lead to complete relief for Mr. Adir.

Next, though ICE has made it clear that it would *like* to deport Mr. Adir to a third country, *see* Doc. 1 ¶ 37, Mr. Adir has shown that his removal to a third country in the reasonably foreseeable future is also unlikely. He does not have ties to any third country. *Id.* ¶ 34; Adir Decl. ¶ 9. And according to his Verified Petition and the attached sworn declaration, Mr. Adir has not received any concrete information from ICE about any possible third-country removal since ICE's May 2025 "notice" of its intent to remove him to Spain. Doc. 1 ¶ 33; Adir Decl. ¶¶ 10-17. The government admits that Spain never responded to ICE's request. Doc. 13 at 2. As Mr. Adir has shown, there is good reason to believe that the government has absolutely no plan for removing him to a third country.

Mr. Adir has carried his initial burden of showing good reason to believe he will not be removed in the reasonably foreseeable future, and the burden of proof has thus shifted to Respondent. *See McKenzie v. Gillis*, No. 5:19-CV-139-KS-MTP, 2020 WL 5536510, at *2 (S.D. Miss. July 30, 2020), *report and recommendation adopted as modified*, No. 5:19-CV-139-KS-MTP, 2020 WL 5535367 (S.D. Miss. Sept. 15, 2020) (finding petitioner met his initial burden where he showed he had fully cooperated with ICE's removal efforts and that there was "little chance" of ICE obtaining travel documents because of his lack of identifying documents from the United Kingdom, the country of removal); *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *7 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (finding petitioner met his initial burden where he showed that, after seven months, Venezuelan officials had not provided travel documents for removal or even assurances that they were forthcoming); *Davis v. Gonzales*, 482 F. Supp. 2d 796, 801 n.2 (W.D. Tex. 2006) ("[I]t is clear from *Zadvydas* . . . that the [noncitizen] need only provide 'good reason' to believe there is no significant likelihood of removal in the

reasonably foreseeable future, at which point the burden shifts to the Government to rebut this presumption." (citations omitted)).

II. The Government Has Failed to Rebut Mr. Adir's Showing that His Removal Is Unlikely

The burden now rests with the government "to respond with *evidence* sufficient to rebut" Mr. Adir's showing that his removal is unlikely. *Zadvydas*, 533 U.S. at 701 (emphasis added); *McKenzie*, 2020 WL 5536510, at *2. The government has failed to do so here, asserting nothing more than bare allegations of its "incessant efforts" to secure Mr. Adir's removal to a third country—consisting, apparently, of one long-unanswered request to Spain and three unsuccessful internal communications from a regional ICE office to ICE headquarters for assistance. *See* Doc. 13 at 2. This falls far short of the government's burden under *Zadvydas*.

First, there is no dispute here that there is no significant likelihood of Mr. Adir's removal to Turkey, his home country, in light of the Immigration Judge's order granting him withholding of removal from Turkey. *See* Doc. 1 ¶¶ 28–29; Doc. 13 at 4 (acknowledging that "Petitioner cannot return to his home country"); *Abrego Garcia*, 145 S. Ct. at 1018 (stating that deportation of petitioner to the country from which he was granted withholding of removal would be "illegal").

Nor can the government credibly claim that Mr. Adir is likely to be deported to Spain. Nearly seven months have elapsed since ICE issued Mr. Adir a "Notice of Removal" to Spain. *See* Doc. 1 ¶¶ 32–33; Doc. 1-2. Around that same time, ICE purportedly sent its first request to the Spanish consulate to accept Mr. Adir for deportation. *See* Doc. 13 at 2 & n.2. That request, and two subsequent ones, have gone unanswered. *See id.*; Declaration of Charles Ward, Doc. 13-1 ("AFOD Ward Decl."), ¶¶ 9-12. Mr. Adir has not received any additional information or updates from ICE regarding removal to Spain. Adir Decl. ¶ 10. At this point, Spain's monthslong nonresponse can be taken as a "no," and in any event ICE appears to have abandoned their attempts

to deport Mr. Adir there. *See* AFOD Ward Decl. ¶ 12 (stating that "after receiving no response from Spain, [ICE Enforcement and Removal Operations (ERO)] Oakdale [Sub-Field Office] sent a request to ERO Headquarters for assistance with a third country removal").

Finally, the government has failed to allege—much less prove—that it has taken any specific steps toward securing Mr. Adir's lawful removal to any other third country. Instead of coming forward with evidence—*e.g.*, of a travel document or approved flight arrangements, or at the very least of ongoing, promising negotiations with one or more countries that may be willing to accept Mr. Adir—the government merely asserts that ICE is engaged in "incessant efforts," "continuous actions," and "repeated efforts to . . . facilitate the Petitioner's removal in a timely manner." Doc. 13 at 2, 4. But the only "efforts" and "actions" the government claims to have taken are a handful of failed or unanswered internal inquiries. The only evidence the government presents in support of its response—a declaration from a mid-level ICE supervisory officer—states that the ICE ERO Oakland Office has sent three requests to ICE ERO headquarters in Washington, DC for assistance with a possible third country removal. AFOD Ward Decl. ¶¶ 12, 14–15. Like the requests to Spain, it seems as though the requests to ICE headquarters have also gone completely unanswered. *See id.* Indeed, ICE's declarant openly acknowledges that "ERO has not received a response from any third country stating it would accept Petitioner." *Id.* ¶ 16.

Speculation by ICE regarding the vague and remote possibility of Mr. Adir's eventual removal to an unspecified third country is insufficient to meet the government's burden. As this Court explained in a prior case, "a theoretical possibility of eventually being removed does not satisfy the government's burden once the removal period has expired and the petitioner establishes good reason to believe his removal is not significantly likely in the reasonably foreseeable future." *McKenzie*, 2020 WL 5536510, at *3 (alterations and citation omitted). Similarly, ICE's mere belief

that it will eventually succeed in deporting Mr. Adir is not enough. *See id.* ("Neither ICE's *belief* that Petitioner will be removed nor the information provided by Respondent satisfy the government's burden to rebut Petitioner's showing that he will not be removed in the foreseeable future."). While the government may not be required to show that Mr. Adir's deportation is certain or imminent, something more concrete is required in terms of both timeline ("reasonably foreseeable future") and outcome ("significant likelihood of removal"). *See Barco v. Witte*, No. 6:20-CV-00497, 2020 WL 7393924, at *4 (W.D. La. Nov. 19, 2020) ("Petitioner's removal need not necessarily be imminent, but it cannot be speculative." (citation omitted)), *report and recommendation adopted*, 2020 WL 7393786 (W.D. La. Dec. 16, 2020). Otherwise, the core language in *Zadvydas* would be rendered meaningless and unenforceable.

Here, ICE admittedly "has no idea of when it might reasonably expect [Mr. Adir] to be repatriated" (or deported to a third country); therefore, "this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *McKenzie*, 2020 WL 5536510, at *3 (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Accordingly, Mr. Adir is entitled to release under *Zadvydas*.

III. Mr. Adir's Physical and Mental Health Are Declining Due to His Prolonged Detention and Separation from His Family

The government's decision to detain Mr. Adir for almost a year and counting is causing increasingly grave impacts on his physical and mental health and his family's wellbeing. Mr. Adir has developed a large sore on his back since arriving at Adams that required surgical cleaning and medication. Adir Decl. ¶ 18. The sore recently reopened, causing several days of intense pain that made it painful to lie down on his back and very hard to sleep or rest. *Id.* He is experiencing anxiety, memory loss, and difficulty sleeping. *Id.* ¶ 19. The anguish of being subjected to indefinite detention for many months despite being granted relief from removal is taking a particularly hard

toll on Mr. Adir. *Id.* ("My detention has impacted my mental health. I miss my family and worry about them. I know that they need me, and I am anxious that I will be detained forever."). Mr. Adir's family—U.S. lawful permanent residents who live in [redacted]—are also suffering in his absence. His wife is growing increasingly worried about his health, and his older son recently started going to therapy and is being prescribed medication for anxiety and depression. *Id.* ¶ 20. Mr. Adir has repeatedly requested that ICE release him and allow him to reunite with his family; ICE has denied those requests. *Id.* ¶¶ 6, 11, 13.

IV. Conclusion

The government is detaining Mr. Adir in violation of his rights under 8 U.S.C. § 1231 and the Due Process Clause. Because there is no material factual dispute in this matter, an evidentiary hearing is not required, *see United States v. Tubwell*, 37 F.3d 175, 179 (5th Cir. 1994), and this court can decide this matter on the papers without further briefing or proceedings. In keeping with the Great Writ's purpose as a "swift, flexible, and summary" remedy for claims of unlawful government detention, *Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973) (citing 28 U.S.C. § 2243), and in light of Mr. Adir's worsening mental and physical health and the harmful impact of his detention on his family, this Court should grant a writ of habeas corpus forthwith, ordering Respondent to immediately release Mr. Adir from custody.

Dated: December 8, 2025

Respectfully submitted,

s/ Jessica Vosburgh

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CERTIFICATE OF SERVICE

I hereby certify that on today's date, I filed a copy of the foregoing document along with any attachments using the court's CM/ECF system, which will cause notice to be served electronically to all parties.

s/ Jessica Vosburgh

Counsel for Petitioner