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December 10, 2025

BY ECF
The Honorable Chief Renée Marie Bumb, U.S.D.J.
U.S. District Court for the District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

Re: *Vazquez-Colocho v. Soto, et al.*, No. 25-17601
Answer to § 2241 Petition

Dear Chief Judge Bumb:

This Office represents Respondents in this habeas matter filed by Petitioner Ronald Ernesto Vasquez-Colocho, a noncitizen challenging the legality of his detention by U.S. Immigration and Customs Enforcement ("ICE"). We write in response to the petition, ECF No. 1, which the Court should dismiss or deny for the reasons below.

I. Factual Background

Petitioner, a native of El Salvador, is subject to a final order of removal. Pet. ¶ 15. He entered the United States in 2015 without inspection. *Id.* ¶ 13. Petitioner was briefly detained and released on an order of recognizance to the custody of a family relative pending his removal proceedings. *Id.* On March 21, 2015, Petitioner was served with a notice to appear charging him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") and designating him as a noncitizen who entered without inspection or parole. *Id.* ¶ 14, Ans. Ex. A, Notice to Appear. On March 26, 2018, an immigration judge ordered Petitioner removed to El Salvador. Pet. ¶ 15. On August 11, 2025, Petitioner was arrested by ICE for removal purposes. *Id.* ¶ 16.

On August 27, 2025, Petitioner filed a motion to reopen his removal proceedings and a motion to stay his removal with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 17. On September 10, 2025, the BIA denied the motion to stay removal. *Id.* ¶ 18. On September 23, 2025, Petitioner filed a petition for review and motion for stay of removal with the Third Circuit. *Id.* ¶ 19. On that same date, the Third Circuit

temporarily granted Petitioner's petition and stayed removal until such time a full panel could consider the motion. *Id.* ¶ 20. Petitioner has been detained for approximately four months.

II. Removal and Detention under 8 U.S.C. § 1231(a)(6)

Where, as here, an alien is subject to a final order of removal, there is a 90-day "removal period," during which the government "shall" remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). There are at least three potential outcomes if the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). And third, the government may further detain certain categories of aliens, including those "inadmissible" under 8 U.S.C. § 1182, as Petitioner is here. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this third category is often referred to as the "post-removal-period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

The INA does not set a limit on how long detention in the "post-removal-period" can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court in *Zadvydas* held that the government may only detain aliens in the post-removal-period for the time "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). And, the Supreme Court clarified, a six-month period of detention is "presumptively reasonable." *Id.* at 701. "After this 6-month period, once the alien 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." *Id.*

III. Argument

Petitioner cannot show that his detention under § 1231(a)(6) is unlawful. As a threshold matter, Petitioner's four-month detention complies with *Zadvydas*. Based on *Zadvydas*, any challenge to a post-removal-order detention by an alien who has been detained "for less than six months must be dismissed as premature." *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021); *see also Luma v. Aviles*, No. 13-6292 (ES), 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2014) ("To state a claim under *Zadvydas*, the presumptively reasonable six-month removal period must have expired at the time the Petition was filed; any earlier challenge to post-removal-order detention is premature and subject to dismissal."); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008) (same; collecting cases). Accordingly, *Zadvydas* recognized that ICE is entitled to the current

timeframe of Petitioner's detention to work through the diplomatic and logistical steps required to remove someone to their native country. *But see Tadros v. Noem*, No. 25-4108 (EP), 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (rejecting argument that *Zadvydas* claim was premature and holding that timing of *Zadvydas* six-month period began when order of removal became final not when redetained).

Further, to the extent Petitioner argues that the *Zadvydas* six-month period began to run when his order of removal became final, not when he was detained, Respondents respectfully disagree. The clock on the six month presumptively reasonable period does not start when the order of removal becomes final; rather, it counts when ICE detains the Petitioner after the order is final. "Most district courts" recognize this accrual event:

> [Petitioner] is confusing the 90–day "removal period" under 8 U.S.C. § 1231(a)(1)(A), which began when his order of removal became final in 2006, *see id.* § 1231(a)(1)(B), with the six-month "presumptively reasonable period of detention" under *Zadvydas*, 533 U.S. at 701, 121 S. Ct. 2491, which could not have begun until he was detained by ICE in 2015. This result is compelled not only by the language of *Zadvydas* but also by its logic. It is the prospect of indefinite "detention" that led the Supreme Court to create the six-month presumption. *Id.* at 682, 121 S. Ct. 2491; *see also id.* at 689, 121 S. Ct. 2491 (read "in light of the Constitution's demands," § 1231(a)(6) "does not permit indefinite detention"); *Beckford*, 168 F. Supp. 3d at 536 ("In *Zadvydas*, the Supreme Court was presented with the challenge of reconciling [the] apparent authorization of indefinite detention [under § 1231(a)(6)] with the Fifth Amendment's prohibition against depriving a person of their liberty without due process."). Delays in effecting the deportation of a non-detained alien do not implicate the alien's liberty interests and thus do not raise the same "serious constitutional concerns." *Zadvydas*, 533 U.S. at 682, 121 S. Ct. 2491.

Callender v. Shanahan, 281 F. Supp. 3d 428, 435–36 (S.D.N.Y. 2017).[1] Accordingly, Petitioner is still within the 6-month time frame, and has been detained for about four months.

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[1] *See also id.* at n.7 ("[T]he district courts have come to inconsistent conclusions [about *Zadvydas* accrual] . . . however, most district courts have concluded—as does this Court—that *Zadvydas* meant what it said: six months is the presumptively reasonable period of 'detention' after the entry of a final order of removal."); *Rodriguez–Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. Sept. 22, 2017) ("Petitioner's contention that the *Zadvydas* clock runs while he is not in custody defies common sense."); *Chun Yat Ma v. Asher*, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012) ("Petitioner first argues that the time period for analyzing his detention under *Zadvydas* begins from when his removal order became final, rather

Petitioner points only to the Third Circuit's order that temporarily granted Petitioner's petition and stay of removal until such time as a full panel could consider the motion to substantiate his claim that he should be released from detention. *See* Pet. ¶¶ 21-22. There is no indication here that the El Salvador Consulate will not, or cannot, provide travel documents. That Petitioner has not been removed yet does not mean they will not occur in the reasonably foreseeable future. Moreover, Petitioner has provided no evidence of his own mandatory efforts to obtain travel documents from the El Salvador Consulate or explain why those documents cannot be had. *Cf. Joseph v. United States*, 127 F. App'x 79, 81 (3d Cir. 2005) (rejecting *Zadvydas* claim and noting, "Alva has produced no documentary evidence, however, from either the Antiguan Embassy or anyone connected with the Antiguan government to substantiate his contention that travel documents will not be issued in the reasonably foreseeable future."); *Resil v. Hendricks*, No. 11-2051, 2011 WL 2489930, at *5 (D.N.J. June 21, 2011) ("*Zadvydas* does not save an alien who fails to provide requested [information necessary] to effectuate his removal.").

The Court should deny Petitioner's claim without prejudice and permit him to file another petition at a future time. We thank the Court for its attention to this matter.

Respectfully submitted,

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U.S. Deputy Attorney General

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Chief of Staff to the Deputy Attorney General
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than the date of his detention. The Court disagrees . . . Detention is the core issue in *Zadvydas*, and Petitioner was not detained until May 9, 2011," five years after his order of removal became final in 2006).