UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JEAN DUPONT, Petitioner v. HAMILTON MESERVE, et al., Respondents.	No. 2:25-cv-00593-JAW

PETITIONER'S AMENDED[1] TRAVERSE TO RESPONDENT'S RETURN AND RESPONSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, Jean Dupont,[2] respectfully submits this Traverse to Respondents' Return and Response, in support of his Petition for a Writ of Habeas Corpus. Mr. Dupont has now been in detention in Maine county jail for *271 days* since his order of removal became final. Based on the threat of political persecution, an Immigration Judge granted him withholding of removal from Rwanda, the country of his nationality and the *only* country specified in his order of removal. Even now, after more than eight months, the only evidence the Government offers regarding foreseeability of removal is a declaration that, in July of 2025, "it was recommended that ERO seek removal to neighboring countries, including the Democratic Republic of Congo, Burundi, and Tanzania," with no specific information about efforts to remove Mr. Dupont. Dkt. 13, Decl. of AFOD Chan at ¶ 20. The Court need not look further. Respondents have fallen well short of meeting their heavy burden under *Zadvydas* to show that there is a "significant likelihood of

[1] Petitioner submitted a similar version of this filing on an expedited basis on the morning of December 8, 2025, to ensure that the Court had Petitioner's positions on key issues before a conference scheduled for that afternoon. Petitioner files this amended filing to correct typographical errors, provide missing pincites, and make a limited number of minor substantive clarifications, so that the Court has a more precise version of Petitioner's filing in advance of the oral argument scheduled for December 23, 2025.

[2] Pursuant to District of Maine Local Rule 10(d), the Petitioner proceeds under the pseudonym Jean Dupont and will file a motion to proceed under pseudonym by no later than Monday, December 15, 2025.

removal in the reasonably foreseeable future." *Zadvydas v. Davis,* 533 U.S. 678, 699–701 (2001). Therefore, "continued detention is no longer authorized by the statute." *Id.* at 699. The Court should grant a writ of habeas corpus, declare that Respondents have failed to meet their burden to show that there is a significant likelihood of removal in the reasonably foreseeable future, and order that Mr. Dupont be released immediately and not re-detained without a pre-detention hearing sufficient to meet the strict dictates of due process—including notice and an opportunity to be heard—on whether there is a significant likelihood of Mr. Dupont's removal in the reasonably foreseeable future.

PROCEDURAL HISTORY

On Monday, November 24, 2025, Mr. Dupont filed a verified petition for a writ of habeas corpus. Dkt. 1, Petition for Writ of Habeas Corpus (the "Petition"). Mr. Dupont included with the Petition a copy of his March 13, 2025, removal order. Dkt. 1-1, Final Removal Order. Mr. Dupont also filed a motion for a temporary restraining order barring his removal from the District of Maine during the pendency of the habeas proceedings. Dkt. 4, Motion for TRO.

Under the statute, the Respondents return would have been due "within three days" unless extended for "good cause." 28 U.S.C. § 2243. The Parties promptly conferred and Mr. Dupont agreed to consent to an extension of Respondents' deadline to file a return until Wednesday, December 3, 2025, to allow Respondents nine days, including six business days, to respond. On Tuesday, November 25, 2025, following a brief status conference, the Court issued orders granting the motion for temporary restraining order and requiring Respondents to show cause by the date consented to by Mr. Dupont. Dkt. 8, Order on Motion for TRO; Dkt. 9, Order to Show Cause. On Wednesday, December 3, 2025, following further conferral, the Respondents filed an unopposed motion to continue the return deadline until noon the following day. Dkt. 10, Unopposed Motion

to Continue Deadline. The Court granted the motion. Dkt. 11, Order Granting Motion to Continue Deadline.

On Thursday, December 4, 2025, the Respondents filed a Return and Response, including unverified, unsworn legal and factual arguments, Dkt. 12 ("Return"), a sworn declaration from Keith Chan, the Assistant Field Office Director ("AFOD") for the Boston Field Office of U.S. Immigration and Customs Enforcement ("ICE"), Dkt. 13 ("Decl. of AFOD Chan"), and a March 30, 2025 memorandum regarding third country removals issued by Respondent Kristi Noem, Dkt. 13-1 ("March 30, 2025 Guidance on Third Country Removals"). AFOD Chan's declaration provides that "[o]n or about July 9, 2025, it was recommended that ERO seek removal to neighboring countries, including the Democratic Republic of Congo, Burundi, and Tanzania," but provides no further specific information about attempts to remove Mr. Dupont from the country. Decl. of AFOD Chan at ¶ 20.

On December 8, 2025, Mr. Dupont filed an earlier version of this Traverse of the Respondents' return, in support of his Petition. Dkt. 15. To respond to AFOD Chan's assertion regarding Tanzania, Burundi, and the Democratic Republic of Congo ("DRC"), Mr. Dupont provided as an exhibit a sworn declaration from Savitri Arvey, the Director of Refugee and Immigrant Rights Research and Analysis at Human Rights First. Exhibit 1, Dkt. 16, Decl. of Savitri Arvey ("Arvey Decl."). Today, December 10, 2025, Mr. Dupont files this Amended Traverse. *See infra* at 1 n.1.

STANDARD OF REVIEW

Habeas corpus is "an adaptable remedy," not a "static, narrow, formalistic" one. *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). Its "precise application and scope" vary "depending upon the circumstances." *Id.*

The U.S. Supreme Court has not promulgated procedural rules specific to habeas petitions under 28 U.S.C. § 2241.[3] But the civil habeas statutes themselves provide substantial guidance for district courts presiding over habeas proceedings under 28 U.S.C. § 2241. Under 28 U.S.C. § 2242, the petition "shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf." 28 U.S.C. § 2242. So long as it is not apparent from the face of the petition that the Petitioner is not entitled to relief, the Court must then either "award the writ or issue an order directing the respondent to show cause why the writ should not be granted." 28 U.S.C. § 2243. If the Court issues an order to show cause, the respondent must file a "return," which the petitioner may then "traverse[]." 28 U.S.C. § 2243. Facts verified in the petition "may be taken as true, unless denied by the return," *Whitten v. Tomlinson*, 160 U.S. 231, 242 (1895), and facts adduced in the Return may be accepted as true unless they are not supported by evidence or controverted by the Petitioner's Traverse, 28 U.S.C. § 2248. Unless the filings "present only issues of law," the Petitioner is then entitled to an evidentiary hearing. 28 U.S.C. § 2243.

Against this backdrop, the Court should review the factual record as developed in verified statements in the Petition, sworn statements by AFOD Chan provided with the Return, and the additional declaration provided as an exhibit to his Traverse, determine if there are any material factual disputes, and, if not, promptly issue a decision on the petition as a matter of law. *See Walker v. Johnston*, 312 U.S. 275, 284 (1941) (explaining habeas procedure by which "the facts on which the opposing parties rely" are exhibited in "the petition, the return, and the traverse," and, based on this record, "the court may find that no issue of fact is involved" and decide the petition as a

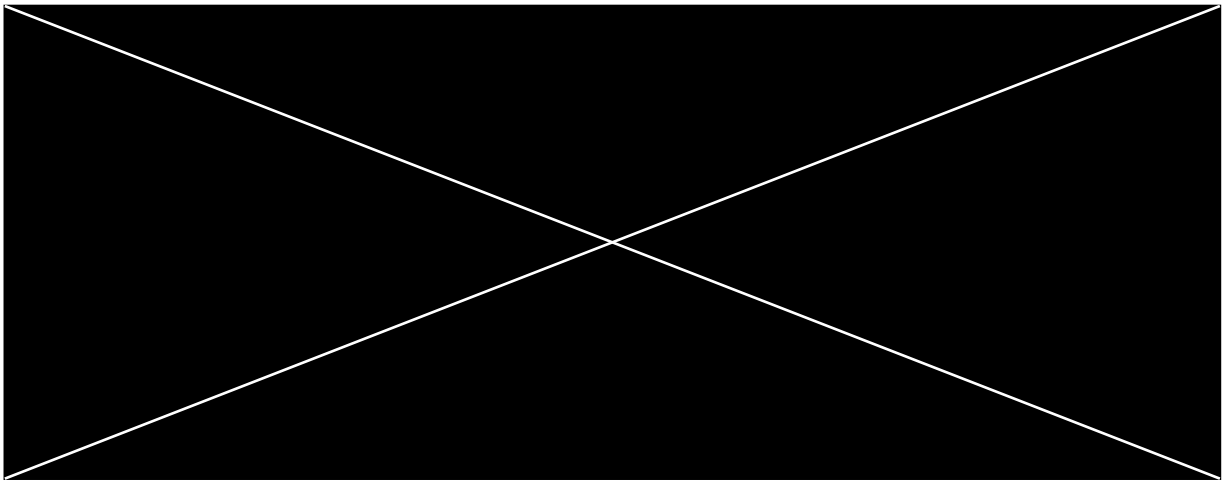
[3] The separate rules it has promulgated for habeas proceedings under 28 U.S.C. § 2254 provide that a Court "*may* apply any or all of these rules" when hearing a habeas petition under 28 U.S.C. § 2241, but it is not mandatory. Rules Governing Section 2254 Cases in the U.S. District Courts, 28 U.S.C. § 2254 app. (current version) ("Rules Governing Section 2254 Cases" or "Fed. § 2254 R."), at R. 1(b) (emphasis added); *see also Barnard v. United States*, No. 1:23-cv-00257-JAW, 2023 WL 6557912, at *1 (D. Me. Sept. 13, 2024) (citing Fed. § 2254 R. 1(b)). A Court hearing a habeas petition under 28 U.S.C. § 2241 "*may*" also apply "[t]he Federal Rules of Civil Procedure" where they do not conflict with the civil habeas statutes. Fed. § 2254 R. 1(b), 12 (emphasis added).

matter of law). If the Court determines that there are material factual disputes, Mr. Dupont is entitled to a promptly scheduled evidentiary hearing. *See Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1315 (11th Cir. 2019) ("It is well established that a court may not decide a habeas corpus petition based on affidavits alone when there are factually contested issues."); *Preiser v. Rodriguez*, 411 U.S. 475, 498 (1973) (explaining that "seeking immediate release or a speedier release from confinement" is "the heart of habeas corpus").

THE FACTUAL RECORD

1. Facts adduced in the Petition and the Return.

The Petitioner, Jean Dupont, is a [redacted] from Rwanda. Petition at ¶ 1; *see also* Decl. of AFOD Chan at ¶ 6. [redacted]



Afraid that his persecution and torture by [redacted] would continue and escalate, Mr. Dupont applied for and received a nonimmigrant F-1 student visa to study in the United States and traveled to the U.S. in 2022. *Id.* at ¶¶ 27–28; Decl. of AFOD Chan at ¶ 7. He moved to Maine and diligently pursued his studies, earning an Associate's Degree in [redacted] in the spring of [redacted] Petition at ¶¶ 29–30. He then enrolled at the [redacted] to pursue a Bachelor's Degree in Computer Science in the fall of [redacted] *Id.* at ¶ 31.

On January 5, 2025, the South Portland Police arrested Mr. Dupont on allegations that he had been involved in a fight that occurred in the early morning hours of January 1, 2025, at a New Year's Eve party in South Portland's Redbank Village neighborhood. *Id.* at ¶ 35. Petitioner was charged with aggravated assault and aggravated reckless conduct. Decl. of AFOD Chan at ¶ 9. He had never been charged with or accused of committing a crime before. Petition at ¶ 34.

On January 6, 2025, a Maine judge granted Mr. Dupont release on bail on a secured bond. *Id.* at ¶ 37. Mr. Dupont posted bond and was released from state criminal custody. *Id.* at ¶¶ 38–40. On January 7, 2025, ICE Enforcement and Removal Operations ("ERO") officers took Mr. Dupont into federal civil immigration custody. Decl. of AFOD Chan at ¶ 10. ICE ERO made a determination that he was removable under 8 U.S.C. § 1227(a)(1)(B). *Id.* That statute provides that a noncitizen who has been admitted to the U.S.—as Mr. Dupont was admitted to the U.S. on a non-immigrant F-1 student visa—is nonetheless deportable if the noncitizen is "present in the United States in violation of [the Immigration and Nationality Act ("INA")] or any other law of the United States." 8 U.S.C. § 1227(a)(1)(B).

DHS initiated removal proceedings against Mr. Dupont. Petition at ¶ 42; Decl. of AFOD Chan at ¶¶ 11–12. In late February of 2025, while those proceedings were still ongoing, ICE transferred Mr. Dupont to the Two Bridges Regional Jail in Wiscasset, Maine ("Two Bridges"). Petition at ¶ 44; Decl. of AFOD Chan at ¶¶ 14. On March 13, 2025, following a final individual hearing, an Immigration Judge ordered Mr. Dupont removed to Rwanda, but then granted withholding of removal based on a finding that his life or freedom would be threatened there because of the threat of political persecution against him. Dkt. 1-1, Final Removal Order; 8 U.S.C. § 1231(b)(3)(A) (providing legal basis for statutory withholding of removal); 8 C.F.R. § 208.16(b) (providing noncitizen's burden of proof for establishing eligibility for statutory withholding of

removal). In the removal order that issued, the Immigration Judge refrained from ordering Petitioner removed to any other country "in the alternative." Dkt. 1-1, Final Removal Order. Both Petitioner and DHS waived appeal and the removal order and the grant of withholding of removal became administratively final that day. Dkt. 1-1, Final Removal Order; Petition at ¶ 48; Decl. of AFOD Chan at ¶ 15.

Historically, ICE has generally released noncitizens from detention after an Immigration Judge grants them statutory withholding of removal. Petition at ¶¶ 48, 63. ICE Directive 16004.1, which has been in place since at least April of 2000, establishes a policy favoring a noncitizen's release in these circumstances. *Id.* at ¶ 63 (citing to four different documents constituting or referring to different versions of ICE Directive 16004.1).

Going against that long-standing policy, ICE continued to detain Mr. Dupont. Petition at ¶¶ 48, 50, 63; Decl. of AFOD Chan at ¶¶ 16–18. On about June 15, 2025, 94 days after Mr. Dupont's removal order became administratively final, ICE ERO conducted a 90-day Post Order Custody Review under 8 C.F.R. § 241.4 and decided to continue detaining Mr. Dupont. Decl. of AFOD Chan at ¶ 17. On about September 8, 2025, 179 days after Mr. Dupont's removal order became administratively final, ICE ERO performed a personal interview of Mr. Dupont for his Post Order Custody Review. Decl. of AFOD Chan at ¶ 19. On about September 29, 2025, 200 days after Mr. Dupont's removal order became administratively final, ICE ERO purports to have "initiated the 180-day [Post Order Custody Review] for Mr. Dupont." Decl. of AFOD Chan at ¶ 21. ICE ERO states that the review "remains pending at this time" but provides no information about what has happened with this process since September 29, 2025 or when it will reach a

decision. *Cf. id.* As of today, 273 days after his removal order became administratively final, Mr. Dupont remains detained by ICE at Two Bridges. *See* Petition at ¶ 9; Decl. of AFOD Chan at ¶ 21.

In the weeks after Mr. Dupont's removal order became final and he was granted withholding of removal to Rwanda, ICE ERO officials claimed to Mr. Dupont that they were checking whether certain specific third countries would receive him, but they have not made any such claims since August. Petition at ¶¶ 54–55.

According to AFOD Chan, "ERO began efforts to secure documents to a third country" "[o]nce the Petitioner's removal order became final" and "continues to do so," Decl. of AFOD Chan ¶¶ 16, 20. The only specific information Respondents provide regarding these efforts is AFOD Chan's statement that, "on or about July 9, 2025, it was recommended that ERO seek removal to neighboring countries, including the Democratic Republic of Congo, Burundi, and Tanzania." *Id.* at ¶ 20.

2. Facts from the Traverse responding to assertions in the Return.

The declaration provided as an exhibit to this Traverse to respond to AFOD Chan's declaration explains that the declarant Ms. Arvey is the Director of Refugee and Immigrant Rights Research and Analysis at Human Rights First and has eight years of prior experience researching the intersection of U.S. immigration policy and foreign policy in roles with the U.N. High Commissioner for Refugees, the Women's Refugee Commission, and the University of California San Diego Center for U.S.-Mexico Studies. Arvey Decl. at ¶ 1.

In her current role at Human Rights First, Ms. Arvey oversees Human Rights First's ICE Flight Monitor, a project that "uses publicly available aviation data to monitor and document flights by which [ICE] transports the people it detains," including deportation flights. *Id.* at ¶ 4. It has tracked over 40,000 flights since 2020. *Id.*

Ms. Arvey attests, "ICE Flight Monitor's data indicates that the vast majority of removal flight only carry individuals expelled or deported from the United States to their own country of nationality." *Id.* Human Rights First uses "information on removal destinations with media reports, communications with attorneys and family members, and observations from trusted partner organizations" to "identify[] whether a removal flight falls within the small proportion of removal flights that carry individuals expelled or deported from the United States to a third country—a country other than their country of nationality." *Id.* at ¶ 5.

Regarding Tanzania and Burundi, Ms. Arvey states that "ICE Flight Monitor has not identified any U.S. removal flights at all to either country in 2025," let alone any third country removal flights. *Id.* at ¶ 7. Regarding the DRC, the declaration states that "ICE Flight Monitor has identified only two U.S. removal flights that made stops in the country," and none carrying out third country removals. *Id.* at ¶ 8.

ARGUMENT

1. Mr. Dupont is entitled to release under 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*.

a. The burden-shifting framework for post-removal detention period under 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*.

The provision of the INA codified at 8 U.S.C. § 1231(a) governs the "detention, release, and removal of aliens ordered removed" to another country. It establishes a 90-day "removal period" during which a noncitizen who has been ordered removed to another country is subject to what is colloquially referred to as "mandatory detention," to allow time for the government to effectuate removal. 8 U.S.C. § 1231(a)(1)(A)–(B) (providing that the government "shall remove the alien from the United States within a period of 90 days" after a removal order becomes administratively final); § 1231(a)(2) (providing that, "[d]uring the removal period," the

government "shall detain the alien."[4] The statute provides only limited circumstances—none applicable here—where the 90-day removal period may be extended. 8 U.S.C. § 1231(a)(1)(C) (providing for the removal period to be "extended beyond a period of 90 days" only where—unlike in the instant case, in which Mr. Dupont may not legally be removed to Rwanda—a noncitizen improperly acts to frustrate removal).

At the expiration of the removal period, the statute generally provides for the release of noncitizens subject to terms of supervision, allowing continued detention only on a limited, discretionary basis. 8 U.S.C. § 1231(a)(6) (providing that a noncitizen "may be detained beyond the removal period, and, if released, shall be subject to . . . terms of supervision"); § 1231(a)(3) (providing that "[i]f the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision"); *Zadvydas*, 533 U.S. at 697 (holding that the use of the word "may" in 8 U.S.C. § 1231(a)(6) "suggests discretion" but not "unlimited discretion"). Applying the canon of constitutional avoidance, *Zadvydas* interpreted 8 U.S.C. § 1231(a)(6) to permit detention after the removal period only where additional detention is "reasonably necessary to secure removal." *Id.* at 699. Where there is not a "significant likelihood of removal in the reasonably foreseeable future," "continued detention is no longer authorized by the statute." *Id.* at 699–701.

Under the statute as interpreted by *Zadvydas,* only an additional 90 days beyond the removal period—180 days total after a removal order becomes administratively final—is "presumptively reasonable." *Id.* at 701. After that time, if "the alien provides good reason to

[4] Even during this period of time, the term "mandatory detention" is a misnomer, given the "deep-rooted nature" of prosecutorial discretion in our system of law. *United States v. Texas*, 599 U.S. 670, 683 & n.4 (2023) (cleaned up). This is especially so in cases, like this one, involving noncitizens granted fear-based relief from removal to their country of nationality. *See* Petition at ¶¶ 49, 63 (discussing and providing citations to ICE Directive 16004.1, under which the Government itself has long held that noncitizens granted fear-based relief from removal by an Immigration Judge should generally be released from detention even during the 90-day removal period, because detention in that context is often not reasonably related to the statute's purpose of effectuating removal).

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.* And "as the period of prior [post-removal-order] confinement grows, what counts as the 'reasonably foreseeable future' . . . shrink[s]." *Id.* Thus, after 180 days, the government bears the burden of disproving a detained person's showing of "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*; *see also Clark v. Martinez*, 543 U.S. 371, 378–379 (2005) (holding that this burden applies universally in all cases involving post-order noncitizens).

The Government's burden to justify continued detention is a heavy one. *See id.* at 386; *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 40 (1st Cir. 2021) (explaining that, under the Due Process Clause, the government must generally justify detention by clear and convincing evidence where the government has "ample and better access to evidence" regarding the elements at issue). The government's mere belief or unsubstantiated assertion that someone will be removed in the reasonably foreseeable future is not enough to satisfy this burden. *See, e.g., Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019) ("[I]f [ICE] has no idea of when it might reasonably expect [petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future").

b. The Petitioner has met his low burden to provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future and the Government has failed to meet its high burden to rebut that showing.

Mr. Dupont has met his low burden to show good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future and Respondents have failed to produce evidence sufficient to even generate a genuine dispute of material fact that it has rebutted Mr. Dupont's initial showing.

As an initial matter, there is no dispute that Mr. Dupont's removal order became administratively final on March 13, 2025. Accordingly, there is likewise no dispute that Respondents have detained Mr. Dupont for 273 days following his final order of removal—two months and 27 days after the six-month presumptively reasonable period expired. Return at 4; Decl. of AFOD Chan at ¶ 15; *Zadvydas*, 533 U.S. at 701.

Because Mr. Dupont is undisputedly beyond that six-month period, he carries only a low initial burden to point to good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. A noncitizen may meet this low initial burden by showing that the government has not informed him of any removal plans, *see Cruz Medina v. Noem*, 794 F.Supp.3d 365, 379 (D. Md. Aug. 11, 2025), or by showing that the government has not provided an expected date or timeframe for removal. *Aung v. Barr*, No. 20-cv-681-LJV, 2020 WL 4581465, at *3-4 (W.D.N.Y. Aug. 10, 2020); *Freeman v. Watkins*, No. B-09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009).

Based on the verified facts in his Petition alone, Mr. Dupont has done both: he asserted (and Respondents did not meaningfully dispute) that the Government has not identified any date, timeframe, or plan for his removal. Petition at ¶¶ 54-55. Further, unlike in *Zadvydas* itself, Mr. Dupont has been granted withholding of removal and can under no circumstances be removed to his country of nationality, the only country that has any legal obligation to accept him. Final Order of Removal; *see also infra* at 13–14.

But the Government has utterly failed to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 702. Beyond general, vague statements that the Government is trying to remove Mr. Dupont, the only fact that Respondents present regarding their removal efforts with any specificity is as follows:

> On or about July 9, 2025, it was recommended that ERO seek removal to neighboring countries, including the Democratic Republic of Congo, Burundi, and Tanzania. ERO has continued to seek Petitioner's removal to a third country.

Decl. of AFOD Chan at ¶ 20. Even taking this barebones passive assertion at its word,[5] it falls far short of rebutting Petitioner's initial showing. As the *Zadvydas* Court emphasized, what matters is not whether or not the government is attempting removal, but how likely those efforts are to be successful. *Zadvydas*, 533 U.S. at 702. And Respondents have alleged no facts to show that their ostensibly meager efforts are likely to bear fruit.

In particular, Respondents' inability to provide a timeframe for Petitioner's removal is fatal. As another District Court within the First Circuit recently explained, "[a] 'chance' of removal within an unspecified period of time is not the same as a significant likelihood of removal in the reasonably foreseeable future." *Siguenza v. Moniz*, No. 25-cv-11914-ADB, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) (granting writ of habeas corpus and ordering *Zadvydas* petitioner released when federal government respondents stated that they were "working with" several countries and there was a "chance" the petitioner would be removed to them); *Poeuv v. Smith*, 169 F. Supp. 3d 297, 300 (D. Mass. 2016) (rejecting government's motion to dismiss when it was "unclear how much additional time will pass" or whether "Cambodia is likely to approve Petitioner's repatriation"). Respondents also cannot identify a country that is actually likely to accept Petitioner. That is likewise fatal. *See id.* In addition, Respondents have failed to produce any "evidence about removals of similarly situated noncitizens," despite being on notice that such noncitizens exist—further emphasizing their inability to remove Petitioner. *Siguenza*, 2025 WL 2734704, at *3; Petition at ¶ 57.

[5] It is unclear who recommended that ERO pursue this course of action, what their authority is, how or whether they will ensure that ERO adopts this recommendation, and who at ERO received the recommendation.

Indeed, Respondents' evidence falls short of even the "conclusory" statements other courts have rejected. *Rudiuk v. Garland*, No. 3:25-cv-2600-BTM-SBC, 2025 WL 3211555, at *1 (S. D. Cal. Nov. 17, 2025) (granting writ of habeas corpus and ordering *Zadvydas* petitioner's immediate release where "[t]he [g]overnment's sole contention in response is that Petitioner is likely to be removed to a third country"). Nowhere in Respondents' response or affidavit do they assert that Petitioner's removal is actually reasonably likely in the foreseeable future, or that any specific country is likely to accept him.

Although the government's failure to meet its burden would be sufficient for the Court to order release, Petitioner's Traverse further demonstrates that the government cannot remove him in the reasonably foreseeable future. The government has—in vague, passive terms—identified three countries as candidates for possible removal: Tanzania, Burundi, and the DRC. But there has not been a single flight carrying third-country nationals to Tanzania, Burundi, or the DRC during this U.S. presidential administration. Arvey Decl. at ¶ 6. Tanzania and Burundi have not accepted any U.S. removal flights at all in 2025. *Id.* at ¶ 7. The DRC has accepted some deportees on two flights that also stopped in other African countries, but only Congolese nationals—not people from third countries like Mr. Dupont. *Id.* at ¶ 8. The government's inability to show that these countries have historically accepted people like Petitioner is further evidence that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future. *See C.M.S. v. Oddo*, No. 3:25-cv-00216, 2025 WL 3442697, at *2 (W.D. Penn. Dec. 1, 2025).

Mr. Dupont has met his low burden, Respondents have failed to meet their high burden to rebut it, and Petitioner must be released from detention.[6]

[6] Respondents also cannot meet their burden because even if Burundi, Tanzania, or DRC were willing to issue Mr. Dupont travel papers, Mr. Dupont has a profound fear of persecution, torture, and refoulement to Rwanda if he were forcibly removed to any of these countries, which he asserts here. The possibility of removal to any of these countries

c. The nature of Mr. Dupont's charges do not justify his continued indefinite detention.

Respondents assert that Petitioner's criminal charges "bear noting" in evaluation of his *Zadvydas* claim and weigh against release. *See* Return at 4. But that is not true; under *Zadvydas*'s construction of the statute, it cannot be considered at all. *Geegbae v. McDonald*, No. 10-10852-JLT, 2010 WL 4292734 (D. Mass. Nov. 1, 2010) (allowing release under *Zadvydas* for petitioner with domestic assault conviction); *Bernik v. Bondi*, No. C25-957-RSM-SKV, 2025 WL 2638625, (W.D. Wash. Aug. 15, 2025) (ordering same for petitioner with second degree murder conviction); *Kamyab v. Bondi*, 2025 WL 2918081 (W.D. Wash. 2025 Aug. 5, 2025) (ordering same for petitioner with multiple kidnapping convictions and one robbery conviction); *Phan v. Warden of Otay Mesa Detention Facility*, No. 25-cv-022369-AJB-BLM, 2025 WL 3141205 (S.D. Cal. Nov. 10, 2025) (ordering same for petitioner with conviction for "grand theft relating to identity theft"); *Al-Sadoon v. Lynch*, 586 F.Supp.3d 713 (E.D. Mich. 2022) (ordering release for petitioner with "a decades-long 'rap sheet' with at least 28 arrests"); *Barco v. Witte*, No. 6:20-cv-00497, 2020 WL 7393924 (W.D. La. Nov. 19, 2020) (ordering same for petitioner with recent conviction of "several felony charges").

Respondents do not even try to justify Mr. Dupont's indefinite detention based on alleged special dangerousness or other special circumstances specified by regulation, *see* 8 C.F.R.

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is even more remote based on that well-supported fear, because Mr. Dupont is likely to prevail in his alternative claim in this Petition that he is entitled to due process on his fear of removal to these countries. *See infra* at 20–22. He then would be likely to prevail in proceedings required to adjudicate his fear-based claims, given that all three countries are in states of severe political unrest, share a border with Rwanda, and present a high likelihood of persecution, torture, and refoulement for third-country deportee Rwandans. To take one example, Burundi is in a state of political tension and even violent conflict with Rwanda, creating a highly dangerous environment for any Rwandan national there. Human Rights Watch, Burundi: Events of 2024, *available at* https://www.hrw.org/world-report/2025/country-chapters/burundi (providing that, in December of 2024, Burundi's president announced that he was suspending diplomatic ties with Rwanda, closing the border between the two nations, and would begin deporting Rwandan citizens, and that on January 11, 2024, he stated that "We don't need Rwandans here, and even those who were on our territory, we chased them out").

241.14(f), and therefore any such argument has been waived. In any event, that contention fails as a matter of law for two separate reasons.

First, federal appellate courts have rejected attempts to justify indefinite detention based on special dangerousness classifications. While the regulations the government promulgated shortly after the *Zadvydas* decision in 2001 purport to provide for continued detention of a narrowly defined category of individuals determined to be "specially dangerous," 8 C.F.R. § 241.14(f), multiple circuit courts have invalidated those regulations as inconsistent with the statute, since *Zadvydas* specifically interpreted it to *only* allow analysis of the reasonable foreseeability of removal. *Tran v. Mukasey*, 515 F.3d 478, 484 (5th Cir. 2008) (upholding grant of writ of habeas corpus, rejecting government's argument that 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas* allows continued detention of a noncitizen whose removal is not reasonably foreseeable if the noncitizen is found under 8 C.F.R. § 241.14(f)(1) to be specially dangerous due to a mental illness, and holding that the statute only permits analysis of the reasonable foreseeability of removal); *Tuan Thai v. Ashcroft*, 366 F.3d 790, 798 (9th Cir. 2004) (same, and explaining that, read in proper context, *Zadvydas*'s discussion of key due process cases striking down statutes that purported to permit indefinite detention based on special dangerousness "merely restat[ed] settled constitutional principles" under the Due Process Clause and did not "create[] a 'harm-threatening mental illness exception" to its general holding that that 8 U.S.C. § 1231(a) only permits analysis of the reasonable foreseeability of removal").

The only federal circuit court decision finding 8 C.F.R. § 241.14(f) to be valid, *Hernandez-Carrera v. Carlson*, 547 F.3d 1237 (10th Cir. 2008), avoided following *Zadvydas*'s interpretation of 8 U.S.C. § 1231(a) only by deferring to the regulation under *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984). *Hernandez-Carrera*, 547 F.3d at 1244–1249. *Chevron* has since been overturned.

Loper Bright Ent. v. Raimondo, 603 U.S. 369, 412–13 (2024). Following *Loper Bright*, there is no basis not to follow *Zadvydas*'s interpretation of the statute. *See id.* Further, even as *Hernandez-Carrera* erroneously departed from *Zadvydas*, it emphasized the strict procedural protections provided by 8 C.F.R. § 241.14(f) and the narrowness of the "small segment of particularly dangerous individuals" to whom it applied. *Hernandez-Carrera*, 547 F.3d at 1251.[7]

Second, Respondents fail to allege—much less prove—that they have complied with the stringent substantive limitations and procedural safeguards required by due process and the government's own regulations in order to justify post-removal period detention on these grounds. To meet the "specially dangerous" standard that would apply if 8 C.F.R. § 241.14(f)(1) were valid, the government must show by clear and convincing evidence that the individual has committed a crime of violence, *and* that due to a mental condition or personality disorder they are likely to engage in future violent acts, *and* that no conditions of release can reasonably ensure the public's safety. *Id.* § 241.14(f)(1). Respondents have not even attempted to satisfy this standard. For instance, there is not a shred of evidence in the record on the second of these elements, that Mr. Dupont has a mental condition or personality disorder that renders him likely to engage in violence, and there is ample evidence rebutting the third element, that no conditions of release could reasonably ensure the public's safety. *See, e.g.*, Petition at ¶ 34 (Mr. Dupont has no other criminal history aside from the current charges against him); ¶ 51 (Mr. Dupont has an unblemished disciplinary record at Cumberland County Jail and Two Bridges); ¶ 33 (Petitioner is a diligent and

[7] The only other federal circuit decision finding that any other provision of 8 C.F.R. § 241.14 to be valid, *Hassoun v. Searls*, 968 F.3d 190 (2d Cir. 2020), does not help Respondents either. It upheld an entirely different regulatory provision, 8 C.F.R. § 241.14(d), because that provision deals with a narrow issue, not at issue here, that *Zadvydas* expressly avoided: "'consider[ing] terrorism or other special circumstances where special arguments might be made for forms of preventive detention and for heightened deference to the judgments of the political branches with respect to matters of national security.'" *Hassoun*, 968 F.3d at 199 (quoting *Zadvydas*, 533 U.S. at 696). Further, *Hassoun* itself relies heavily on *Chevron*, finding only that 8 C.F.R. § 241.14(d) is a "reasonable" interpretation of the statute entitled to agency deference, not that it is the best reading of the statute. *Hassoun*, 968 F.3d at 200. Under *Loper Bright*, that is no longer a valid analytical approach. 603 U.S. at 400.

gifted computer science student with broad support in the community); ¶ 37 (a Maine judge granted Mr. Dupont bail, necessarily finding under Maine law that there were conditions of release that could reasonably ensure the public's safety).

d. Ongoing internal custody reviews do not justify Mr. Dupont's indefinite detention.

Respondents mistakenly point to the existence of ongoing internal custody reviews as a basis for continuing Mr. Dupont's indefinite incarceration. Return at 4-5. In *Misigaro*, the Court denied habeas relief without prejudice based on "a variety of factors" including that "Petitioner filed his Petition immediately following expiration of the presumptively reasonable detention period," and "the pendency of an administrative review process that should conclude shortly, presumably by year's end." *Misigaro v. Hyde*, No. 2:25-CV-00538-LEW, 2025 WL 3140715, at *3 (D. Me. Nov. 10, 2025). Here, unlike in *Misigaro*, eight-and-a-half months had passed since Mr. Dupont's removal order became final when he filed this petition over two weeks ago. And here, unlike in *Misigaro*, Mr. Dupont's 90-day Post-Order Custody Review (POCR) is not pending; it already concluded in June 2025, with a determination denying release. Return at 3 (citing Chan Decl. at ¶ 17); *see also* 8 C.F.R. § 241.4 (setting out procedures and standards for POCR reviews). Although Respondents state that an administrative review process for Mr. Dupont "remains pending," Return at 3, that is not the initial 90-day POCR but rather a later 180-day POCR review. Further, *Misigaro* is premised in part on the Court's finding that the administrative review "should conclude shortly, presumably by year's end," *Misigaro*, 2025 WL 314071, when the petitioner there will have been detained for eight months and five days, less time than Mr. Dupont was detained when he first filed his Petition over two weeks ago.

Finally, deference to the POCR review process cannot be reconciled with the statute or with the requirements of the Due Process Clause. Requiring Mr. Dupont to remain in indefinite detention months after his presumptively reasonable removal period has expired, simply on the

basis of an ongoing administrative custody review process, is flatly inconsistent with *Zadvydas*. The initial POCR occurs 90 days after the final removal order, and by Respondents' own admission Mr. Dupont's 180-day POCR review began in September 2025 and is still pending nearly four months later. Return at 3 (citing Chan Decl. at ¶¶ 18–19, 21). If the mere pendency of one of these recurring internal custody reviews were enough to prevent release from indefinite detention under *Zadvydas*, then detention could be endlessly extended. In any event, POCRs lack even basic procedural safeguards such as the opportunity to be heard before a neutral decision-maker, cross-examine witnesses, have counsel present argument on their behalf, create a contemporaneous record of proceedings, or appeal an erroneous determination. *See* 8 C.F.R. § 214.4. This rubber-stamp custody review process does not meet the minimum requirements of due process. *See Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011) (holding that POCR procedures under 8 C.F.R. § 241.4 do not meet minimum due process requirements); *Zadvydas*, 533 U.S. 678 (noting that "the Constitution may well preclude granting an administrative body unreviewable authority to make determinations implicating fundamental rights"); *see generally Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976).

Finally, to the extent Respondents suggest that Mr. Dupont must remain in indefinite detention while he exhausts administrative remedies in the form of additional internal custody reviews, that is flatly wrong. As another Maine District Court judge held in a recent habeas matter on behalf of a detained noncitizen, "because exhaustion is not required by statute in this particular context [of 2241 habeas proceedings], the Court must weigh the Government's argument against the more permissive common-law exhaustion standard," *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2783642, at *3 (D. Me. Sept. 30, 2025) (cleaned up). "Where, as here, the petitioner may suffer irreparable harm, exhaustion requirements may be excused," and

"[s]uch irreparable harm may be established where a petitioner will be incarcerated or detained pending the exhaustion of administrative remedies." *Id.* (cleaned up) (citing, *inter alia*, *Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) and *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988, at *5 (D. Mass. Aug. 14, 2025). Mr. Dupont has already been incarcerated for nearly nine months since his removal order became final, and the government has utterly failed to establish that there is a significant likelihood of his removal in the reasonably foreseeable future. *See infra* at 9–14. As in *Chiliquinga*, Mr. Dupont "is facing a potentially indefinite period of unlawful detention" and is not required to exhaust administrative remedies before seeking habeas relief from this Court. *See* 2025 WL 2783642, at *3.

2. The Court need not address Mr. Dupont's alternative claim regarding third-country removal, because Respondents have not shown significant likelihood of foreseeable removal to any third country.

Perhaps to detract from their lack of evidence to meet their burden under the statute as interpreted by *Zadvydas*, Respondents spend the vast majority of their response on Mr. Dupont's alternative count regarding third-country removal. Return at 5–21. But the Court need not address those arguments now. Mr. Dupont pled Count III "in the alternative," seeking relief related to attempted third-country removal only "if Respondents were able to establish a significant likelihood that Petitioner will be removed to a third country in the reasonably foreseeable future." Petition at 19 ("Claim for Relief," ¶ 9); *see also* Petition at 17–18 ("Count Three, in the Alternative"). Respondents have utterly failed to establish that significant likelihood, as discussed above. Therefore, it is unnecessary for the Court to address Mr. Dupont's alternative third-country removal claim at this time. If, at a later date, Respondents assemble additional evidence that they contend establishes a significant likelihood of removal to a third country in the reasonably foreseeable future, such as travel documents to a specific third country, then Mr. Dupont asks that

this Court provide an opportunity for the parties to fully brief the third-country removal claim and the jurisdictional arguments that the Government has raised.

In the event the Court determines that it needs to address the third-country removal issue now, Mr. Dupont provides the following preview of his arguments and requests an opportunity for full briefing on a schedule to be set by the Court.

First, the INA does not strip the Court of jurisdiction to hear Mr. Dupont's third-country removal claim. Although Respondents spend nearly ten pages arguing that a laundry-list of statutory provisions do so, *see* Return at 5–14, those arguments can be readily dispensed with. Since the announcement of the March 30, 2025 Guidance on Third Country Removals, multiple courts have considered due process challenges concerning third-country removal procedures. None of these courts has concluded that it lacks jurisdiction to hear these claims. *See, e.g., Sagastizado v. Noem*, No. 5:25-CV-00104, 2025 WL 2957002, at *9–13 (S.D. Tex. Oct. 2, 2025) (expressly rejecting the same jurisdictional arguments Respondents raise here, and finding petitioner likely to succeed on "claim that he cannot be removed to a third country without sufficient notice and a meaningful opportunity to raise a claim"); *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *6 (W.D. Wash. Nov. 17, 2025); *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21, 2025); *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *6 (E.D. Cal. Sep. 18, 2025). The same is true here.

Second, on the merits, the Due Process Clause requires that Mr. Dupont be provided reasonable notice of the country to which he will be removed and an opportunity to present claims for various forms of protection from removal. In recent months, court after court has held that ICE's third-country removal process, as memorialized in the March 30, 2025 Guidance on Third

Country Removals, violates due process. *See infra* at previous paragraph. As one of these recent cases cogently explained:

> To begin, the policy requires no notice if ICE intends to remove a noncitizen to a third country that has provided diplomatic assurances the Department of State deems credible. Where no assurances exist, the policy violates Kumar's rights by permitting ICE to notify him of the intended country of removal "mere hours before placement on a plane" without notifying his counsel, stating the intended date of removal, or advising him of his right to apply for fear-based protections. Even if Kumar affirmatively expresses a fear of removal to the designated county, the Government's policy is to conduct a reasonable fear interview "within 24 hours of referral," giving him "mere hours or a day or two" to contact counsel, research conditions in the designated country, and prepare for the interview. The Court agrees this policy fails to provide Kumar the notice and opportunity to be heard that due process demands.

Kumar, 2025 WL 3204724, at *4 (internal citations omitted) (noting the "overwhelming authority" against ICE's third-country removal policy and collecting cases).

3. **This case is ripe for decision without further delay or proceedings. In the alternative, the Court should promptly schedule an evidentiary hearing.**

An evidentiary hearing is not necessary to resolve this petition and grant Mr. Dupont the relief to which he is entitled under *Zadvydas* and the Due Process Clause: immediate release from government custody. *See Walker*, 312 U.S. at 284 (explaining habeas procedure by which "the facts on which the opposing parties rely" are exhibited in "the petition, the return, and the traverse," and based on this record "the court may find that no issue of fact is involved" and decide the petition as a matter of law); *Wright v. Dickson*, 336 F.2d 878, 881 (9th Circuit. 1964) (explaining that evidentiary hearing is unnecessary "if it appears from undisputed facts disclosed by the petition, the response to the order, and the answer, if any, that as a matter of law petitioner is entitled to discharge or that as a matter of law he is not").[8] This is particularly so because full relief

[8] It is no bar that Mr. Dupont's Petition was verified by his attorney rather than himself; habeas petitions maybe signed and verified by "someone acting in [the petitioner's] behalf." 28 U.S.C. § 2242. "Thus, a habeas petitioner's attorney can sign and verify the petition for petitioner." *Lucky v. Calderon*, 86 F.3d 923, 925 (9th Cir. 1996); *accord Mack v. Baker*, No. 3:12-cv-00104-RCJ-VP, 2014 WL 5341728, at *1 (D. Nev. Oct. 20, 2014).

on Counts I and II of Mr. Dupont's Petition will require an order not just for release, but also for pre-detention notice and an opportunity to be heard on whether conditions have changed such that there is a significant likelihood of removal in the reasonably foreseeable future. *See N.D.N. v. Bondi*, 1:25-c-v-01587-DAD-SCR, 2025 WL 3251102 (E.D. Cal. Nov. 21, 2025); *Saephanh v. Andrews*, 1:25-cv-01668-DAD-SCR, 2025 WL 3467791 (E.D. Cal. Dec. 3, 2025)

However, if this Court determines that there is a material factual dispute, Mr. Dupont requests that the Court schedule an evidentiary hearing promptly as required by the federal statutes governing habeas petitions. *See* 28 U.S.C. §§ 2241 et seq.; *see also Preiser*, 411 U.S. at 498.

CONCLUSION

The Respondents are detaining Petitioner in violation of 8 U.S.C. § 1231(a)(6) and the guarantees of the Due Process Clause. This Court should grant him a writ of habeas corpus ordering his immediate release and enjoining Respondents from re-detaining him absent pre-detention notice and an opportunity to be heard on whether conditions have changed such that there is a significant likelihood of removal in the reasonably foreseeable future.

Respectfully submitted this 10th day of December, 2025.

Jean Dupont,

By and through his Counsel,

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CERTIFICATE OF SERVICE

I hereby certify that on the date below, I electronically filed the foregoing document, a Notice of Supplemental Information, via the Court's CM/ECF system.

Signed this 8th day of December, 2025,

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