

on or about December 20, 2016, as a B2 Temporary Visitor for Pleasure/Tourism. *Id.* ¶ 5. On September 14, 2020, his status was adjusted to that of a lawful permanent resident under section 245(a) of the Act. *Id.*

On November 9, 2023, the Petitioner was convicted in the Marion County Superior Court of Indianapolis, Indiana for the offense of Armed Robbery, in violation of Indiana Code § 35-42-5-1(a)(1). *Id.* ¶ 6. Petitioner was sentenced to a prison term of nine years with six years suspended. *Id.* On or about March 7, 2024, Petitioner was taken into ICE custody after his release on an Order of Recognizance pending an Armed Robbery probation violation. *Id.* ¶ 7.

On March 7, 2024, Petitioner was placed in removal proceedings through issuance of a Notice to Appear (“NTA”), charging him as removable to the United States pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(a)(6)(i). *Id.* ¶ 8. On or about June 24, 2024, Petitioner filed an application for relief with the Immigration Court. *Id.* ¶ 9. On March 17, 2025, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief. *Id.* ¶ 10. No appeal was taken of the Immigration Judge’s decision by either party. *Id.*

On or about March 25, 2025, DHS submitted Forms I-241, Acceptance of Alien, to Mexico, Guatemala, and El Salvador. *Id.* As of today, DHS has not received a response from these countries. *Id.* On or about June 9, 2025, DHS submitted Forms I-241, Acceptance of Alien, to Rwanda, Chad, Gabon, and Angola. *Id.* ¶ 16. As of today, DHS has not received a response from these countries. *Id.*

At or near 90 days post removal order, if an alien has not been removed, ERO conducts a File Custody Review, also known as a Post-Order Custody Review (“POCR”), to determine the necessity of continued custody. *Id.* ¶ 13. When conducting a 90-day POCR, some factors that are considered are the following: a detained individual’s flight risk, any danger the individual may

pose to his or her community, threat to national security, and whether there is significant likelihood of removal in the reasonably foreseeable future. *Id.* Based on this information, a recommendation will be made to management as to whether the individual should remain in custody. *Id.* Those managers, including the Supervisory Deportation and Detention Officer, Assistant Field Office Director, Deputy Field Office Director and the Field Office Director, will either concur in the assessment to continue detention or request release of the alien. *Id.*

On or about June 9, 2025, DHS completed a POCR and issued a Decision to Continue Detention, stating that ICE would continue with Petitioner's detention. *Id.* ¶ 17. On or about November 11, 2025, DHS conducted a 180-day POCR interview and sent the memo to HQ RIO for review. *Id.* ¶ 18. On December 26, 2025, HQ RIO reviewed the 180-day POCR memo and recommended ICE continue with Petitioner's detention as third country removal is likely in the foreseeable future. *Id.* ¶ 20. ICE will continue its efforts to effectuate Petitioner's removal 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 also Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 341 (2005).

Here, Petitioner was ordered removed from the United States on March 17, 2025, but Petitioner was granted withholding of removal to his home country. McCall Decl., ¶ 10. His removal period began on April 16, 2025, after expiration of the time allotted for appeal. 8 U.S.C.

§ 1231(a)(1)(B)(i); *see also* 8 C.F.R. § 1241.1(c). Petitioner now argues that his detention violates the Due Process Clause of the Fifth Amendment. Doc. 1, p. 6.

Petitioner asserts that because more than eight months have passed since the beginning of the removal period, his detention has become unreasonably indefinite and unlawful. *Id.* But, Petitioner presents no evidence that removal is unlikely beyond the fact that he has been granted withholding of removal and has not yet been successfully removed. This does not meet Petitioner's burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" as is required by *Zadvydas*. *See Zadvydas*, 533 U.S. at 701; *see also 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).

As recognized by the Supreme Court in *Zadvydas*, the "6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Zadvydas*, 533 U.S. at 701. Instead, "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); *see also Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *4 (W.D. Okla. Aug. 27, 2024), *report and recommendation adopted*, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025) ("But 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.')" (alteration and citation omitted); *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, *3 (S.D. Tex. Oct. 21, 2024) ("Speculation 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.”) (citation omitted).

Even if the Court accepted the premise that withholding of removal and detention lasting eight months alone “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” ICE has submitted requests to seven different countries during the eight-month period that Petitioner has been detained. McCall Decl., Exhibit 1, ¶ 20. And ICE is continuing its efforts to effectuate Petitioner’s removal. *Id.* ¶ 21. 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).

Moreover, the Supreme Court in *Zadvydas* rejected the Ninth Circuit’s conclusion that the government was required to release an alien from detention where “its conclusion may have rested solely upon the ‘absence’ of an ‘extant or pending’ repatriation agreement without giving due weight to the likelihood of successful future negotiations.” *Zadvydas*, 533 U.S. at 702. “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 certify that on December 31, 2025, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties. I further certify that I will cause a copy of the foregoing filing to be placed in the United States mail, postage prepaid, addressed to the following non-CM/ECF participant:

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