

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

DON KNIGHTS-LEE KEMBERLY LAFORTUNE)

A# )

Petitioner,)

v.)

WARDEN, Lewisburg Immigration Detention)
Facility;)
FIELD OFFICE DIRECTOR, Immigration and)
Customs Enforcement, Philadelphia Field Office:)
SECRETARY, U.S. Department of Homeland)
Security,)
DIRECTOR, U.S. Immigration and Customs)
Enforcement,)

CIVIL ACTION NO. 1:26-CV-00308

AGENCY CASE NUMBER:

A# 

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

1. Don Knights-Lee Kemberly LaFortune (“Mr. LaFortune”) is a noncitizen who has been detained by U.S. Immigration and Customs Enforcement (“ICE”) for well over six months following a final order of removal, with no significant likelihood of removal in the reasonably foreseeable future.

2. Mr. LaFortune is a citizen of Haiti, who was ordered removed, but was granted deferral of removal pursuant to the Convention Against Torture (CAT) to Haiti by an Immigration Judge on October 12, 2023. Neither party appealed this decision. Ex. A, B.

3. Mr. LaFortune is currently detained in Lewisburg, Pennsylvania, within the jurisdiction of this Court. Despite the passage of the statutory removal period and the six-month presumptively reasonable detention period recognized by the Supreme Court, ICE continues to detain Mr. LaFortune without a travel document, without a designated country willing to accept him, and without providing any concrete timeline for removal.

4. Mr. LaFortune is currently being held in federal immigration detention while ICE officials try to find a “third country” that will accept his deportation and transfer. A federal statute, 8 U.S.C. § 1231(a)(1)(A), gives the government three months to effectuate such removal; yet months later, the government has failed to do so and has failed to provide a date certain when such removal can be expected. Under 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas v. Davis*, 533 U.S. 678 (2001), continued detention under these circumstances violates both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

JURISDICTION AND VENUE

5. This action arises under the Immigration and Nationality Act of 1952 (“INA”), as amended, 8 U.S.C. § 1101 et seq., and the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. § 1651 (All Writs Act).

6. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(e) because Mr. LaFortune is detained in Lewisburg, Pennsylvania, within this District, and his immediate custodian is located here. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494–95 (1973).

PARTIES

7. Petitioner Don Knights-Lee Kemberly LaFortune is a noncitizen currently detained by ICE at the Lewisburg immigration detention facility.

8. Respondent Warden is the immediate custodian of Petitioner for purposes of this habeas action.

9. Respondent Field Office Director, ICE Philadelphia Field Office, is responsible for ICE detention and removal operations within this jurisdiction.

10. Respondent Secretary of Homeland Security and Respondent Director of ICE are responsible for the administration and enforcement of the immigration laws of the United States.

FACTUAL ALLEGATIONS

11. Mr. LaFortune is a native and citizen of Haiti, who entered the U.S. as a lawful permanent resident on or about September 9, 2013. Ex. A.

12. Mr. La Fortune was first detained by ICE on May 12, 2023. Ex. E.

13. On October 12, 2023, an Immigration Judge granted Mr. LaFortune deferral of removal under the Convention Against Torture (CAT) with respect to Haiti. Ex. B.

14. Mr. LaFortune was released from ICE custody on or about December 3, 2023, and was reporting to ICE under an Order of Supervision (OSUP). His release was revoked by ICE on or about March 14, 2025, because Mr. LaFortune was arrested on the same day. Ex. E. However, these charges were completely dismissed on April 7, 2025, because he had been charged in error. Ex. F. However, ICE has refused to release Mr. LaFortune from custody.

15. Mr. LaFortune's grant of deferral of removal pursuant to CAT bars his removal to Haiti. In the alternative, ICE has sought to remove Mr. LaFortune to Mexico, a country not designated by the Immigration Judge as a country of removal or alternate country of removal. Ex. K.

16. Mr. LaFortune has consistently expressed a fear of persecution and torture if removed to Mexico, including fear based on race, nationality, and status as a Haitian national. Ex. L.

17. DHS has failed to complete a reasonable fear interview despite repeated requests by Mr. LaFortune and his counsel to finalize this process. *Id.*

18. ICE has failed to conduct the 180-day custody review as required under the regulations, despite Mr. LaFortune's repeated requests.

19. In an effort to prevent his removal to Mexico, a country to which he has never been, has no ties, and to which he has expressed a fear of removal, Mr. LaFortune filed a motion to reopen his removal proceedings, as well as a stay of removal, with the Elizabeth, NJ Immigration Court. Both were denied. Ex. C.

20. Mr. LaFortune has filed an appeal of the denial of the motion to reopen, along with a stay of removal, with the Board of Immigration Appeals. Ex. D. Both remain pending, and therefore he is still under a final order of removal.

21. Mr. LaFortune remains detained while his appeal is pending, and ICE has advised him several times that his removal to Mexico is “imminent” while simultaneously failing to lawfully adjudicate his fear-based claims. Not have they attempted to remove him to an alternate third country, even though he has expressed that he would be willing to be removed to Canada or France.

22. Mr. LaFortune has now been detained well beyond 180 days—and nearly a year-- following the completion of removal proceedings, without a valid travel document and without any evidence that removal will occur in the reasonably foreseeable future.

23. ICE has not provided Mr. LaFortune with a date certain for removal, nor has it demonstrated concrete progress toward securing lawful removal to any country, despite the fact that Mr. LaFortune has asked to be removed to either Canada or France, both countries in which he has familial ties.

LEGAL BACKGROUND

LEGAL FRAMEWORK WITHHOLDING OF REMOVAL AND RELIEF UNDER THE CONVENTION AGAINST TORTURE.

24. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Non-citizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States. *See* 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal, *id.* § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16. To be granted CAT relief, a non-

citizen must show that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2). An applicant for CAT relief must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. *See id.* When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021).

25. Once withholding or CAT relief is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the withholding or CAT relief grant and the accompanying removal order become administratively final. *See id.* § 1241.1. When a non-citizen has a final withholding or CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2).

26. While ICE is authorized to remove non-citizens who were granted withholding or CAT relief to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country “of which the [non-citizen] is a citizen, subject, or national,” the country “in which the [non-citizen] was born,” or the country “in which the [non-citizen] resided” immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E). If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that country.¹ *See Jama v. ICE*, U.S. 335, 348 (2005) (“If [non-citizens] would face persecution or other mistreatment in the country designated under §

1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, see 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . .”); *Romero v. Evans*, 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) (“DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims.”), rev’d on other grounds, *Guzman Chavez*, 141 S. Ct. 2271. As a result of these restrictions and procedures, “only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country” in FY 2017. *Guzman Chavez*, 141 S. Ct. at 2295 (Breyer, J., dissenting).

II. DETENTION OF NON-CITIZENS GRANTED WITHHOLDING OF REMOVAL OR RELIEF UNDER THE CONVENTION AGAINST TORTURE.

a. Statutory Framework

27. 8 U.S.C. § 1231 governs the detention of non-citizens “during” and “beyond” the “removal period.” 8 U.S.C. § 1231(a)(2)-(6). The “removal period” begins once a non-citizen’s removal order “becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE “shall remove the [non-citizen] from the United States” and “shall detain the [non-citizen]” as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen “may be detained beyond the removal period” if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

28. To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. *Zadvydas* dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the [non-citizen]’s

removal from the United States.” *Id.* at 689. Six months of post-removal order detention is considered “presumptively reasonable.” *Id.* at 701. But the “*Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). “Within the six-month window,” the non-citizen bears the burden of “prov[ing] the unreasonableness of detention.” *Id.* After six months of detention, if there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the Government to justify continued detention. *Zadvydas*, 533 U.S. at 701; *see also Cesar*, 542 F. Supp. 2d at 903 (“[T]he presumption scheme merely suggests that the burden the detainee must carry within the first six months of [post-order] detention is a heavier one than after six months has elapsed”).

b. Regulations

29. DHS regulations provide that, before the end of the 90-day removal period that ensues upon a non-citizen’s removal order becoming final, the local ICE field office with jurisdiction over the non-citizen’s detention must conduct a custody review to determine whether the non-citizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must conduct a custody review before or at 180 days. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

30. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that

established “special review procedures” to determine whether detained non-citizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4’s custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when “the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future.” *Id.* § 241.4(i)(7).

31. Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE’s removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on “special circumstances,” it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is “specially dangerous.” *Id.* § 241.14(f).

32. Title 8 U.S.C. §1231(a) permits ICE to detain noncitizens during the “removal period,” which is defined as the 90-day period during which “the Attorney General shall remove the alien from the United States.” 8 U.S.C. §1231(a)(1)(A). In this case, pursuant to 8 U.S.C. § 1231(a)(2)(B)(i), the removal period began when Mr. LaFortune was detained by ICE. The “removal period” therefore expired in January 2024. Even assuming that the 90-day period starts running upon his re-detention in March 2025, he has now been detained for nearly 11 months, well beyond the 90-day removal period.

33. After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that ICE

shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be “released” if “subject to the terms of supervision” set forth in 8 U.S.C. § 1231(a)(3).

34. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas*, 533 U.S. at 701. “[W]here detention’s goal is no longer practically attainable, detention no longer ‘bear[s][a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Additionally, cursory or pro forma findings of dangerousness do not suffice to justify prolonged or indefinite detention. *Zadvydas*, 533 U.S. at 691 (“But we have upheld preventative detention based on dangerousness only when limited to especially dangerous individuals [like suspected terrorists] and subject to strong procedural protections.”)

35. The purpose of detention during and beyond the removal period is to “secure[] the alien’s removal.” *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court “read § 1231 to authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien’s removal.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

36. As the Supreme Court explained, where there is no possibility of removal, continued immigration detention presents substantive due process concerns because “the need to detain the noncitizen to ensure the noncitizen’s availability for future removal proceedings is “weak or nonexistent.” *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when “necessary to bring about that alien’s removal.” *See id.* at 689.

37. To balance these competing interests, the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a “reasonable period of detention” for noncitizens after a removal order. *Id.* at 700-01. The Court determined that six months’ detention could be deemed a “presumptively reasonable period of detention,” after which the burden shifts to the government to justify continued detention if the noncitizen provides a “good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

38. Where a petitioner has provided “good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701. Due deference is owed to the government’s assessment of the likelihood of removal and the time it will take to execute removal. *Id.* at 700. However, just as pro forma findings of dangerousness do not suffice to justify indefinite detention, pro forma statements that removal is likely should not satisfy the government’s burden.

39. The government may only rebut a detainee’s showing that there is no significant likelihood of removal in the reasonably foreseeable future with “evidence of progress...in negotiating a petitioner’s repatriation.” *Gebrelibanos v. Wolf*, No. 20-cv-1575-WQH-RBB, 2020 U.S. Dist. LEXIS 185302, at *9 (S.D. Cal., Oct. 6, 2020) (citing *Kim v. Ashcroft*, 02-cv-1524-J(LAB) (S.D. Cal., June 2, 2003), ECF No. 25 at 8 (citing *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)); *see also Carreno v. Gillis*, No. 5:20-cv-44-KS-MTP, 2020 U.S. Dist. LEXIS 248926, at *5 (S.D. Miss., Dec. 16, 2020) (granting petitioner’s habeas claim because the government failed to show that removal would be imminent after obtaining a travel document and failing to remove petitioner within the document’s validity period) (emphasis added).

40. Factors courts consider in analyzing the likelihood of removal include “the

existence of repatriation agreements with the target country, the target country's prior record of accepting removed aliens, and specific assurances from the target country regarding its willingness to accept an alien." *Hassoun v. Sessions*, 2019 WL 78984 at *4 (W.D.N.Y., Jan. 2, 2019) (citing *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436-37 (S.D.N.Y. 2017)); *see also Nma v. Ridge*, 286 F. Supp. 2d 469, 475 (E.D. Pa. 2003).

41. Other courts have denied habeas petitions primarily where the U.S. government has already procured petitioner's travel documents and only travel arrangements are outstanding, which is not the case here. *See Berhe*, 2019 WL 3734110 at *4 (denying Petitioner's habeas petition because "Eritrea has issued a travel document and Petitioner has presented no evidence to suggest there are other barriers to his removal"); *Tekleweini-Weldemichael v. Book*, No. 1:20-CV-660-P, 2020 WL 5988894, at *5 (W.D. La., Sept. 9, 2020), report and recommendation adopted, No. 1:20-CV-660-P, 2020 WL 5985923 (W.D. La., Oct. 8, 2020) (denying without prejudice Petitioner's habeas petition because he possessed a travel document valid through December 19, 2020, and noting that he is not precluded from filing a new petition upon the expiration or cancellation of his travel document).

42. Mr. LaFortune has been detained for more than 180 days following his final order of removal, beyond the 6-month period of presumptively reasonable detention. *Zadvydas*, 533 U.S. at 700-01. *See also Hassoun*, 2019 WL 78984, at *4; *Alexander*, 495 Fed. Appx. at 277. He cannot be removed to Haiti while his grant of deferral of removal remains in place, he has expressed a fear of being removed to Mexico, and cannot be removed there without completion of a reasonable fear interview, and ICE has made no attempts to remove him to his requested third countries. Under these circumstances, several more months of detention is unreasonable, as removal is not imminent.

43. In addition, federal regulations dictate that where ICE detains an individual under 8 U.S.C. § 1231(a)(6), an individualized determination must be carried out, with the following criteria taken into account:

- (1) The nature and number of disciplinary infractions or incident reports received when incarcerated or while in Service custody;
- (2) The detainee's criminal conduct and criminal convictions, including consideration of the nature and severity of the alien's convictions, sentences imposed and time actually served, probation and criminal parole history, evidence of recidivism, and other criminal history;
- (3) Any available psychiatric and psychological reports pertaining to the detainee's mental health;
- (4) Evidence of rehabilitation including institutional progress relating to participation in work, educational, and vocational programs, where available;
- (5) Favorable factors, including ties to the United States such as the number of close relatives residing here lawfully;
- (6) Prior immigration violations and history;
- (7) The likelihood that the alien is a significant flight risk or may abscond to avoid removal, including history of escapes, failures to appear for immigration or other proceedings, absence without leave from any halfway house or sponsorship program, and other defaults; and
- (8) Any other information that is probative of whether the alien is likely to—
 - (i) Adjust to life in a community,
 - (ii) Engage in future acts of violence,
 - (iii) Engage in future criminal activity,
 - (iv) Poses a danger to the safety of himself or herself or to other persons or to property, or
 - (v) Violate the conditions of his or her release from immigration custody pending removal from the United States.

8 C.F.R. § 241.4(f).

In Mr. LaFortune's case, this review has never been done, in clear violation of binding

regulations.

ARGUMENT

PETITIONER'S CONTINUED DETENTION IS UNLAWFUL UNDER *ZADVYDAS* BECAUSE HIS REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT SHOULD ACCORDINGLY ORDER HIS IMMEDIATE RELEASE.

49. Mr. LaFortune's removal is not reasonably foreseeable under *Zadvydas*. His detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since he received a final grant of CAT relief. The 90-day removal period began for Mr. LaFortune on January 10, 2024, when the appeal period expired without either party filing a timely appeal. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c).6 Therefore, the *Zadvydas* framework applies to Mr. LaFortune's detention, and he has been detained for more than six months since his removal order became final.

39. Mr. LaFortune will very likely never be *legally* deported from the United States, let alone in the reasonably foreseeable future. He cannot be deported to his home country of Haiti because he has a final grant of CAT deferral of removal.¹ *See* 8 C.F.R. § 1208.17(b)(2).

40. Furthermore, it is exceedingly unlikely that ICE will identify an alternative country to which it can remove him, because, in the 11 months that he has been detained, ICE has only identified one country that might be willing to accept him, Mexico, and he has expressed a fear of being removed to Mexico. Mr. LaFortune is not a citizen of, has never lived in, has never even travelled through, and has no connection to Mexico, and ICE has not attempted to remove him to any other country.

45. Even in the highly unlikely scenario that an alternative country notifies ICE of its willingness to accept the deportation of Mr. LaFortune, ICE would still be required to obtain

¹ Even assuming arguendo that his statutory removal period re-commenced on March 14, 2025, when his release was revoked, both the 90-day and 180-day periods have run.

travel documents and afford him a Reasonable Fear Interview (RFI) at which he would have the opportunity to articulate a fear of return to the country willing to accept him. *See* 8 C.F.R. § 241.8(e). Considering the fact that ICE has not advised any intention to remove him to another alternate country, it is impossible to say with certainty how much longer he would remain in detention while reasonable fear process continues, it stands to reason that the additional detention period would be significant.

46. Therefore, Mr. LaFortune has been detained for more than six months since receiving a final removal order, and his removal is not reasonably foreseeable because 1) he cannot be deported to his home country due to his CAT relief grant; 2) any countries to which requests may still be pending have no logical reason to accept him and have provided no timeline under which they might decide; and 3) deporting Mr. LaFortune to those alternative countries would require additional, lengthy proceedings. *See Hassoun v. Sessions*, No. 18-cv-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (finding removal not reasonably foreseeable where several countries had declined to issue travel documents and several others had provided no response or timeline for response); *Kacanic v. Elwood*, No. 02-cv-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002) (finding removal not reasonably foreseeable where the country of origin had “been in possession of all the information [ICE] is capable of providing to it” but had “never stated that the Petitioner is likely to be granted travel papers” and was “unable to tell the [ICE] when a decision will be reached”).

47. Mr. LaFortune has demonstrated that his continued detention is unreasonable under *Zadvydas*. Post-removal order detention for more than six months is unreasonable. *See Cesar*, 542 F. Supp. 2d at 904 (“The burden might be on the detainee within the first six months to overcome the presumptive legality of his detention, but where a[] [non-citizen] can carry that

burden, even while giving appropriate deference to any Executive Branch expertise, his detention would be unlawful.”); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) (“*Zadvydas* established a ‘guide’ for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months.”); *Ali v. DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) (“Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.”).

48. For the reasons stated above, Mr. LaFortune has clearly met any burden of proof that this Court may place on him. Unlike *Zadvydas* and the vast majority of its progeny, which analyzed whether ICE will foreseeably remove non-citizens to their home country or country of citizenship, *see, e.g., Zadvydas*, 533 U.S. at 684-85, the question here is whether ICE will be able to deport Mr. LaFortune to random third countries to which he has no connection whatsoever. The answer to that question has been no from the moment his relief grant became final, and the likelihood of third-country removal has only decreased since then.

49. This Court should order Mr. LaFortune’s immediate release pursuant to *Zadvydas*. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms of supervision”).

To order his immediate release, this Court need only determine that Mr. Rodriguez Guerra’s removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. *See* 533 U.S. at 699-700 (“[I]f removal is not reasonably foreseeable; the court should hold continued detention unreasonable and no longer authorized by statute.”).

50. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, see *id.* at 690 (observing that the “justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best”), and that dangerousness cannot unilaterally justify indefinite civil detention barring “special circumstances,” which may include the non-citizen being a “suspected terrorist[.]” but do not include the non-citizen’s “removable status itself.” *Id.* at 691. *See also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) (“A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention].”).

With respect to Mr. Rodriguez Guerra’s detention, ICE has not invoked the regulations governing these “special circumstances” determinations. *See* 8 C.F.R. § 241.14. 51. To the extent this Court considers any factors outside of the foreseeability of Petitioner’s removal, which it need not do, Mr. LaFortune has significant equities that warrant release. Additionally, this Court or ICE is free to impose conditions on release to mitigate any potential concerns regarding flight risk or danger. *See Zadvydas*, 533 U.S. at 700 (“[T]he [noncitizen]’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.”).

CLAIMS FOR RELIEF

COUNT I

Violation of 8 U.S.C. § 1231(a)(6)

32. Mr. LaFortune has been detained beyond the statutory removal period and the six-month presumptively reasonable period.

33. ICE has failed to demonstrate a significant likelihood of removal in the reasonably foreseeable future.

34. Continued detention is therefore unauthorized by statute and unlawful.

COUNT II
Violation of the Fifth Amendment Due Process Clause

35. Detention is constitutionally permissible only when it bears a reasonable relation to a legitimate government purpose.

36. Because removal is not reasonably foreseeable, continued detention no longer serves its purported purpose and violates substantive due process.

COUNT III
Violation of Federal Regulations

37. ICE has failed to conduct a proper custody review as required by 8 C.F.R. §§ 241.4 and 241.13.

38. ICE has failed to meaningfully consider Mr. LaFortune's fear-based claims, rehabilitation, flight-risk factors, and eligibility for release under an Order of Supervision.

PRAYER FOR RELIEF

39. WHEREFORE, Mr. Lafortune respectfully requests that this Court:
- a) Assume jurisdiction over this action;
 - b) Declare that Respondents' continued detention of Mr. LaFortune violates the INA and the Due Process Clause;
 - c) Grant the writ of habeas corpus and order Mr. LaFortune's immediate release under an Order of Supervision pursuant to 8 U.S.C. § 1231(a)(3);
 - d) Award reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
 - e) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: February 6, 2026

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Newark, NJ 07102

General Admission Forthcoming

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 6, 2026

Respectfully submitted,

/s/ Susan G. Roy
Susan G. Roy, Esq.
Pro Bono Counsel for Petitioner
Seton Hall Law School, Center for Social Justice
833 McCarter Highway
Newark, NJ 07102

General Admission Forthcoming

Certificate of Service

I, Susan G. Roy, hereby certify that on this 6th day of February 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus to be served as follows:

Via CM/ECF on all counsel of record who are registered CM/ECF users, including:

Civil Process Clerk
United States Attorney's Office
Middle District of Pennsylvania

Via Certified U.S. Mail, Return Receipt Requested, upon the following:

Warden
Lewisburg Immigration Detention Facility
2400 Robert F. Miller Drive
Lewisburg, PA 17837

Field Office Director
U.S. Immigration and Customs Enforcement
Philadelphia Field Office
900 Market Street, Suite 200
Philadelphia, PA 19107

Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, SW, Mail Stop 5900
Washington, DC 20536-5900

Secretary
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528-0001

Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536-0001

/s/ Susan G. Roy
Susan G. Roy, Esq.
Pro Bono Counsel for Petitioner
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