UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

BRITANIA URIOSTEGUI RIOS,

Petitioner,

v.

DONALD J. TRUMP, et al.

Respondents.

Civil Action No. 1:25-cv-1320

Judge Edwards
Magistrate Judge Perez Montes

PETITIONER'S REPLY

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INTRODUCTION

Britania, a transgender woman, has been in immigration detention for 8 months since an immigration judge ("IJ") granted her protection from removal to Mexico, her home country. Now, Britania—who was deemed incompetent by the IJ in her removal proceedings—is being held in an all-male dorm, which has resulted in the significant and urgent decompensation of her mental health, placing her at risk of suicide. Moreover, over the past 8 months since Britania won relief, the government has sought to remove her to Panama, Guatemala, El Salvador, Costa Rica, Nicaragua, Honduras, and El Salvador again.[1] The first five countries have declined to accept her; the request to Nicaragua remains pending. *See* Ex. B; Dkt. 13-1, ¶¶ 20–22. The law is clear that, where, as here, "the Government ha[s] [more than] thrice failed to secure the transfer of [a noncitizen] subject to a final order of removal, and c[an] offer no promise of future success, as all the nations to which the [noncitizen] had ties ha[s] refused h[er] admission . . . ," release is appropriate because detention no longer serves a legitimate government purpose. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (distinguishing *Zadvydas v. Davis,* 533 U.S. 678 (2001) in denying habeas relief).

The government now aspires to remove Britania to El Salvador again, but the evidence is clear that El Salvador already refused to accept her over six months ago. *See* Ex. B; Dkt. 13-1, ¶ 25. Without more than a single declaration—proclaiming that 8 months after Britania's CAT order became final, no country has agreed to accept her—the government seeks to convince this Court that Britania's removal to a third country is nevertheless "reasonably foreseeable." Dkt. 13-1. But

[1] The Government states in their response that Petitioner's list of countries was "inaccurate." Dkt. 13 at 6. To the extent this list is inaccurate, it is because Petitioner was relying on assertions from Britania's assigned ICE Enforcement and Removal Officer. *See* Ex. B, Authenticated Emails from ICE Enforcement and Removal Officers (Officer Lascano stating, on March 20, 2025: "3 countries that were requested so far are Panama Guatemala el Salvador"; Officer Morales stating, on May 14, 2025: "solicitations of acceptance have been sent to Costa Rica, Nicaragua, and Honduras.").

this loose standard is not the law. After the government's many failed attempts to remove Britania to various countries to which she has no claim to citizenship or status, the burden now falls to Respondents to show that her removal is reasonably foreseeable. *Zadvydas,* 533 U.S. at 701. Respondents have failed to do so: she has CAT protection from the only country to which she has citizenship and she has no assurances of a forthcoming travel document from anywhere else—El Salvador most definitely included, as there is no basis to believe the country will alter its prior refusal. Dkt. 13; Dkt. 13-1. And, contrary to the government's assertions, Britania cannot be held indefinitely merely because of her criminal history, just as Mr. Zadvydas could not be held indefinitely for his history of "drug crimes, attempted robbery, attempted burglary, and theft." *Zadvydas*, 533 U.S. at 684 ("Zadvydas ha[d] a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft. He [also] ha[d] a history of flight, from both criminal and deportation proceedings. [He was] [m]ost recently, . . . sentenced to 16 years' imprisonment [before he was taken into ICE custody]."). Respondents' ongoing detention of Britania violates her statutory and substantive due process rights under *Zadvydas*. Thus, Britania is entitled to immediate release.

ARGUMENT

I. Britania's Ongoing, Indefinite Detention Is Unlawful.

A. *There is no exception to the Constitutional limits on post-order detention based on criminal history.*

Due process and the "Constitution[] demand[]" that detention during the post-removal period be limited to "a period reasonably necessary to bring about the [noncitizen's] removal from the United States. It does not permit indefinite detention." *Zadvydas*, 533 U.S. at 689. The removal period is, by statute, 90 days. 8 U.S.C. § 1231(a)(1)(A). Acknowledging that the government may need more time to effectuate removals in certain instances, however, the Supreme Court

recognized that "six months is the appropriate period."[2] *Id.* at 680. After six months, if the noncitizen can show "good reason to believe" that there is no significant likelihood of removal in the reasonably foreseeable future, the government must "furnish evidence sufficient to rebut that showing." *Id.* at 680. Specifically, the Supreme Court stated: "there is reason to believe that [Congress] doubted the constitutionality of more than six months' detention." *Id.*

These Constitutional limits on detention exist even when the Government believes a Petitioner presents a danger to the community. *Zadvydas*, 533 U.S.; *Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). In *Zadvydas*, Mr. Zadvydas himself had a lengthy criminal history, including "drug crimes, attempted robbery, attempted burglary, and theft." *Id.* at 684. The Government had unsuccessfully tried to remove Mr. Zadvydas to three countries: Germany, Lithuania, and the Dominican Republic. *Id.* It was on these facts—where the Petitioner had a criminal history and removal to three countries was rejected—that the Supreme Court held that post-order detention under § 1231(a)(6) was presumptively reasonable for only 6 months. *Id.* at 701–702.

Contrary to the government's assertions, a Petitioner's criminal history does not provide an exception to these constitutional limits on post-order confinement. In *Tran*, the Government argued that the Petitioner—who had murdered his wife in the presence of his daughter—could be detained beyond the removal period because he was "specially dangerous," 515 F.3d at 482, relying on the language in *Zadvydas* that the Supreme Court has "upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong

[2] While detention is presumptively reasonable for up to six months, *Zadvydas*, 533 U.S. at 701, reasonableness is measured "primarily in terms of the statute's basic purpose, namely, assuring the [noncitizen's] presence at the moment of removal." *Id.* at 699. Accordingly, a noncitizen may challenge her detention prior to the six-month mark if she "can prove" that there is no significant likelihood of her removal in the reasonably foreseeable future. *Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *5 (D.N.J. June 24, 2025); *accord Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d. 703, 706-07 (S.D. Tex. 2020). If "removal is not reasonably foreseeable, continued detention is unreasonable and no longer authorized by statute." *Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *4 (D. Mass. July 9, 2025); *see also Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *4 (W.D. Wash. July 24, 2025).

procedural protections." *Zadvydas*, 533 U.S. at 691. But the Fifth Circuit was clear that this language in *Zadvydas* did not provide any exception to the constitutional limits on post-order detention: "The statement in *Zadvydas* that noncriminal detention by the Government is permissible only in narrow nonpunitive circumstances . . . did not state what the Government is authorized to do under § 1231(a)(6)." *Tran*, 515 F.3d at 483 (citing *Tuan Thai v. Ashcroft,* 366 F.3d 790 (9th Cir.2004)); *see also Foucha v. Louisiana*, 504 U.S. 71, 72 (1992) ("Although a State may imprison convicted criminals for the purposes of deterrence and retribution," no such interest exists where a criminal penalty is not being imposed); *Addington v. Texas*, 441 U.S. 418, 427 (1979) (requiring a heightened burden of proof to satisfy due process in cases of confinement). Resoundingly, the Fifth Circuit affirmed that "in light of the unqualified holdings of both *Zadvydas* and *Clark* that § 1231(a)(6) does not permit continued detention where removal is not reasonably foreseeable, this Court cannot establish an exception where none exists." *Id.* at 485.[3] Furthermore, the Fifth Circuit was clear that "the Government's concerns" for public safety were "properly directed to Congress." *Id.*

For its part, DHS' own regulations define "specially dangerous" conjunctively, where it can only be met if each of the following conditions are satisfied: (1) the immigrant has previously committed one or more crimes of violence as defined in 18 U.S.C. § 16; (2) the immigrant has a mental condition or personality disorder that makes future violent acts likely; and (3) "no conditions of release can reasonably be expected to ensure the safety of the public." 8 C.F.R. § 241.14(f)(1). Regarding the first condition, crimes of violence include offenses that have elements

[3] This also aligns with *Zadvydas*' reasoning that, while a Petitioner's criminal history may be considered in determining how long that Petitioner may be held in post-order confinement, the outer limit remains the "reasonable removal period." *Zadvydas*, 533 U.S. at 700. Specifically, "*if removal is reasonably foreseeable*, the habeas court should consider the risk of the [noncitizen's] committing further crimes as a factor potentially justifying confinement *within that reasonable removal period*." *Id.* (emphasis added).

of use, attempted use, or threatened use of physical force against another person or property. 18 U.S.C. § 16(a).[4] While the existence of a qualifying conviction is one factor in determining dangerousness, the designation can only be granted after receiving a report pursuant to the second condition, following a full examination conducted by Public Health Service medical experts. 8 C.F.R. § 241.14(f)(3). No such report has been rendered here.

At bottom, Britania is not "specially dangerous" under the government's own definition. And, in any event, the "specially dangerous" language in *Zadvydas* does not provide an exception to the constitutional limits on post-order confinement; namely, that Britania must be released when there is no longer a substantial likelihood of her reasonably foreseeable removal. Accordingly, if Britania can provide (which she has) "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and if the government fails (which it has) to respond with evidence sufficient to rebut the showing, she must be released regardless of her criminal history. *Id.* at 702.

B. Britania's removal is not reasonably foreseeable.

Britania's removal in the reasonably foreseeable future is unlikely because: (1) she cannot be deported to Mexico due to her valid CAT protection; (2) she does not have citizenship or any claim to status in any other country; and (3) should the government seek to remove Britania to any third country, as discussed *infra*, it must afford Britania mandatory protections. As the Supreme Court made clear in *Zadvydas*, a Respondent cannot be asked to prove that removal is *impossible*—but rather that it is not *reasonably foreseeable*. *Zadvydas*, at 702 ("[T]his standard would seem to require [a noncitizen] seeking release to show the absence of *any* prospect of removal — no matter

[4] The definition of crime of violence in 18 U.S.C. § 16 is divided into two clauses—"often referred to as the elements clause, 16(a), and the residual clause, 16(b)." *Sessions v. Dimaya*, 584 U.S. 148, 148 (2018). The latter has been found constitutionally void for vagueness. *Id.*

how unlikely or unforeseeable — which demands more than our reading of the statute can bear."). "In fact, courts have consistently granted habeas relief where: (1) petitioners acted in good faith and attempted to cooperate with DHS to secure travel documents to finalize their removal; and (2) diplomatic barriers outside of petitioners' control hampered their removal." *Fuentes-De Canjura v. McAleenan*, 2019 WL 4739411, *8 (W.D. Tex. Sept. 26, 2019).[5]

Britania has met her initial burden that removal is not reasonably foreseeable because she has CAT protection from Mexico and no other country to claim. The government asserts in response that Britania "must demonstrate that 'the circumstances of [her] status' or the existence of 'particular and individual barrier to repatriation' to [her] country of origin" to meet her initial burden. Dkt. 13 at 11 (quoting *Idowu v. Ridge*, 03-1293, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003)). But that is exactly what she has done: Britania's CAT protection is a particular and individual barrier to her repatriation to Mexico. This sets Britania apart from each of the cases relied on by Respondents, where the petitioners were ordered removed to their home countries. *See, e.g., Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002) (where Petitioner was ordered returned to his home country, had a valid passport to travel there, and was refusing to produce his valid passport); *Nagib v. Gonzales*, No. 3:06-cv-0294-G, 2006 WL 1499682 (N.D. Tex. May 31, 2006) (where Petitioner was ordered removed to his home country and there was no

[5] For the proposition that 8 months is "well within the length of time that other courts in the Fifth Circuit have found to be reasonable," the government cites only cases with fundamentally different procedural postures to the present Petition. *See Delgado-Rosero v. Warden, LaSalle Det. Ctr.*, No. 1:16-CV-01250, 2017 WL 2580509, at *3 (W.D. La. May 1, 2017), *report and recommendation adopted,* 2017 WL 2579250 (June 13, 2017) (A case regarding "detention during withholding of removal proceedings," where "Colombian officials have indicated that they are willing to issue a travel document upon completion of the appeal process"); *Barrera-Romero v. Cole*, No. 1:16-cv-00148, 2016 WL 7041710, at *5 (W.D. La. Aug. 19, 2016) (A case in which a "removal order has not yet been executed because [Petitioner's] withholding of removal and CAT proceedings are still ongoing"); *Garcia v. Lacy*, No. H-12-3333, 2013 WL 3805730, at *5 (S.D. Tex. July 19, 2013) (A case where "removal proceedings have been and continue to be steadily progressing"); *Kim v. Obama*, No. EP-12-CV-173-PRM, 2012 WL 10862140, at *3 (W.D. Tex. July 10, 2012) (A case where Petitioner was still in asylum proceedings and "statutory law forecloses [a bond] redetermination."); *M.P. v. Joyce*, No. 1:22-CV-06123, 2023 WL 5521155, at *4 (W.D. La. Aug. 10, 2023) (A case where "the appeals, requests for stay, and his pending civil litigation are the sole cause for his continued detention").

institutional barrier to his return). In rendering its decision in *Nagib*, the court differentiated between the Petitioner in that case and the other cases where the Petitioner "was literally a [person] without a country" to go to, as is the case here. *Nagib*, 2006 WL 1499682 at *3.

Meanwhile, sister courts have found that a petitioner's initial burden is met where, as here, there was "no assurance" from a receiving country "that a travel document is forthcoming." *Butt v. Holder,* No. CA 08-0672-CG-C, 2009 WL 1035354, *5 (S.D. Ala. March 19, 2009); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1207 (N.D. Ala. 2011) (granting the petition where Petitioner did nothing to obstruct removal, but had not been removed because his home country failed to issue a travel document); *Khan v. Gonzales*, 481 F. Supp. 2d 638, 642 (W.D. Tex. 2006) (same); *see also Andreasyan v. Gonzales,* 446 F. Supp. 2d 1186, 1190 (W.D. Wash. 2006) (finding petitioner satisfied initial burden where his travel document application was simply "still under review and pending a decision"). Similarly, Britania's assertions that her removal is not reasonably foreseeable are not "conclusory"—they are based on Respondents' nearly 8-month failure to effectuate her removal, despite inquiries to Panama (declined to accept), Guatemala (declined to accept), El Salvador (declined to accept), Costa Rica (declined to accept), Nicaragua (pending), Honduras (declined to accept), and El Salvador again. *See* Ex. B; Dkt. 13-1. Therefore, her ongoing detention is "not limited, but potentially permanent." *Zadvydas*, 533 U.S. at 691.[6]

Because Britania has met her initial burden, the burden now shifts to Respondents to "furnish evidence sufficient to rebut." *Zadvydas*, 533 U.S. at 701. They cannot. Courts have found that the government's burden is met where it presents evidence of ongoing consular engagement—as demonstrated by *specific consular actions*, not general intent—and the absence of diplomatic resistance. For example, the issuance of a valid travel document and scheduled removal within a

[6] *See supra*, n.5.

defined timeframe is sufficient rebuttal evidence. *See, e.g., Ademfemi v. Gonzalez*, 2006 WL 2052120, at *2 (W.D. La. Mar. 7, 2006), *subsequently aff'd*, 228 Fed. Appx. 415 (5th Cir. 2007) (Finding government met its burden where it had obtained travel documents); *Galtogbah v. Sessions*, 2019 WL 3766280, at *2 (W.D. La. June 18, 2019), *R&R adopted*, 2019 WL 3761637 (W.D. La. Aug. 8, 2019) (Finding government met its burden where a flight was arranged and interviews were conducted with Petitioner). By contrast, "[a] remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Kane v. Mukasey*, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008), *superseded by* 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008) *R & R adopted*, 2008 WL 11393148 (S.D. Tex. Oct. 7, 2008).

The evidence that the government provides here—one declaration from Director Hodges—is insufficient. Dkt. 13-1. Director Hodges concedes that multiple countries have declined to accept Britania, which is unsurprising given she has no claim to legal status anywhere except Mexico. Dkt. 13-1, ¶¶ 20–21; *see also* Ex. B. The government now claims it is seeking removal to El Salvador, Dkt. 13-1, ¶25—but El Salvador already declined to accept Petitioner in April. *See* Ex. B. Though the government asserts in its response that it "intends to remove Rios to El Salvador imminently," Dkt. 13 at 7, there is nothing in the record to suggest that removal will, in fact, be "imminent." At this point, the government has sought removal to six countries, one of them twice, and have no concrete assurances a document is forthcoming. *See Butt*, 2009 WL 1035354 at *5. The fact that the government ostensibly claims that it "continues to act diligently," Dkt. 13 at 6, is plainly insufficient to show a substantial likelihood of reasonably foreseeable removal. The Supreme Court in *Zadvydas* was clear that ongoing, "good faith efforts to effectuate . . . deportation" do *not* demonstrate the lawfulness of continued detention. 533 U.S. at 702. Surely it

is not the case that a removal is reasonably foreseeable until Respondents have asked the more than 190 countries in the world whether they will accept an individual who is not their own citizen. By this calculation, a removal remains foreseeable for 95 years[7]—in short, until someone's death.

Nor does the vague assertion that "[t]hird country removal have continued to increase as relations and cooperation grows" provide sufficient evidence for rebuttal. Dkt. 13-1, ¶ 26. These are exactly the types of conclusory statements that sister courts have rejected as insufficient to meet the government's burden. *See Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("Thus far, Respondents have only made conclusory statements that they are taking steps to remove Petitioner to Mexico or perhaps Canada. 'A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future.'" (citing *Kane*, 2008 WL 11393137, at *5)); *see also Vaskanyan v. Janecka*, 2025 U.S. Dist. LEXIS 137846, at *16 (C.D. Cal., Jul 18, 2025) (Ordering petitioner's release where countries designated for removal would not accept petitioner and "ICE d[id] not know whether and when the information requested by the [alternate third country] Consulate can be obtained or when it can expect to receive a response from the [alternate third country] consulate").

Here, all parties agree that Britania's grant of CAT protection is final. Dkt. 13 at 1. Respondents concede (by omitting any reference to the contrary) that Britania has acted in good faith and has fully cooperated with Respondents' efforts to remove her. *Khader*, 843 F. Supp. 2d at 1207. They also concede that, as of this date, no travel documents have been issued for Britania, and indeed no confirmation or assurances have been made that such travel documents are remotely forthcoming. *See generally,* Dkt. 13-1; *Butt*, 2009 WL 1035354 at *5. As such, under the standard set forth in *Zadvydas* as applied in sister courts, Britania's removal is not reasonably foreseeable

[7] Six-month removal period per country multiplied by approximately 190 countries = 1,140 months = 95 years.

and she must be released.

C. Detention is Exacerbating Britania's PTSD and MDD.

Britania's detention, in conditions of confinement that are exacerbating her Post-Traumatic Stress Disorder ("PTSD") and Major Depressive Disorder ("MDD"), violate her substantive due process protections because her confinement appears premised on little more than the intent to punish, a goal for which immigration detention cannot be used. *See Zadvydas*, 533 U.S. at 690–91. To comply with substantive due process, detention must always bear "some reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018). The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person's attendance for a legal hearings adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690–91. But where, as here, the proceedings have concluded and removal is not reasonably foreseeable, the first justification "is weak or nonexistent." *Id.* As for ensuring safety of the community, as established *supra*, Britania cannot be held indefinitely merely because of her criminal history, just as Mr. Zadvydas could not be held indefinitely for his history of "drug crimes, attempted robbery, attempted burglary, and theft." *Id.* at 684. Therefore, Britania's detention is untethered to a lawful purpose, and instead is only serving to exacerbate her disabilities.[8] Dkt. 1, ¶ 96.

[8] While the government argues that Britania's disability is her gender identity, that is not the case. Her disabilities are her PTSD and MDD. Dkt. 1-2, ¶¶ 16–17. They are so significant that, on August 20, 2024, an IJ deemed Britania incompetent on the basis that she did not understand the nature and object of the proceedings and did not have a reasonable opportunity to examine adverse evidence, present favorable evidence, and cross-examine government witnesses. Dkt. 1-2, ¶ 35; *see also Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011). Now, these disabilities are being further exacerbated by her conditions of confinement—being deprived of gender-affirming care and being forced to sleep in a room with, and be constantly surrounded by, men—a gender with which Britania does not identify. Dkt. 1, ¶ 15. Significantly, the fact that Britania's disabilities are being exacerbated by issues related to her gender identity does not mean that her disability *is* her gender identity. *Contra* Dkt. 13 at 16. Britania's disabilities have always been, and remain, her PTSD and MDD. Dkt. 1-2, ¶¶ 16–17.

Alarmingly, Britania's continued detention is causing significant ongoing mental deterioration and functional impairment, including cognitive decline, chronic mental and physical health issues, potential long-term disability, and even suicide. *Id.* At bottom, the creation of a suicide risk surely has the effect of defeating any valid purpose for Britania's ongoing detention. Dkt. 1, ¶¶ 86, 106. Because Britania's removal is not reasonably foreseeable, her detention only serves to exacerbate her disabilities, rendering it unconstitutional.

II. Britania's Challenge to her Detention Is Properly Before This Court.

A. *Britania's challenge to her indefinite detention is not disturbed by D.V.D.*

Instead of engaging with the substance of Britania's third country removal claims, Respondents argue that these claims should be dismissed or stayed because she is a class member under *D.V.D. v. DHS*, 778 F.Supp.3d 355 (D. Mass. Apr. 18, 2025) ("*D.V.D.*")—all the while simultaneously acknowledging that "the Supreme Court, however, has stayed the injunction." Dkt. 13 at 9. However, the Supreme Court's stay of the nationwide *D.V.D.* injunction *supports* Britania's claims for relief because those protections are no longer in place. Her habeas claim lacks the jurisdictional obstacles presented by claims for class-based injunctive relief. Dkt. 1, ¶¶ 70–72. Further, *D.V.D*. does not address whether a person may be detained while the government attempts a third-country removal. *See Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *3 (D. Md. Aug. 25, 2025) (Stating that *D.V.D.* class members are "not seeking . . . relief only from [their] present detention").[9] Britania's petition is a request for relief from prolonged post-order detention, which cannot and will not be addressed by the *D.V.D* litigation.

In any event, the fact the Britania will require process before removal to a third country

[9] *See also Medina v. Noem*, 2025 WL 2306274 (D. Md. Aug. 11, 2025) (same); *E.D.Q.C. v. Warden, Stewart Detention Ctr.*, 2025 WL 1575609 (M.D. Ga. June 3, 2025) (declining to dismiss or stay proceedings pending the resolution of *D.V.D.* because "*D.V.D.* is not a habeas action and release from custody is not one of the remedies requested.")

only serves to further strengthen her claim that she will not be removed in the reasonably foreseeable future. On March 30, 2025, DHS issued a memorandum requiring that, before executing third country removals, the government seek diplomatic assurances that non-citizens removed from the U.S. will not be persecuted or tortured. *See* Ex. C, March 30 Memo. If the government does not receive such assurances, then it must follow the procedures outlined in the March 30 Memo, which includes providing the non-citizen with notice and a reasonable fear interview. *Id.* In this case, Britania fears persecution and torture if she is removed to a country that does not respect the rights of transgender people, particularly those who are also incompetent. Dkt. 1, ¶ 81. Binding regulations, statutes, and due process require Respondents to provide her—*as an individual*—with process as robust as that set forth in the now stayed *D.V.D.* class injunction. *Id.*, ¶ 82; *see also D.V.D.*, 778 F. Supp. at 392–93.

As the government concedes, Britania "has raised a general claim of fear of removal to a third country that does not respect the rights of transgender people." Dkt. 13 at 7; Dkt. 1, ¶ 81.[10] Britania already won CAT protection from one country that does not respect the rights of transgender people: Mexico. Dkt. 1, ¶ 6. To win CAT protection, Britania had to prove that it was more likely than not that she would be tortured or killed if forced to return to Mexico. 8 C.F.R. §§ 1208.16(c)(3), 1208.17. This is an extremely high burden and, if met once, is likely to be met again—especially regarding another country in Central America where there is significant overlap in language, culture, and institutions.[11] Therefore, while it is true that Britania's fear alone "does not entitle [her] to remain in the United States indefinitely," Dkt. 13 at 7, if she were to win relief

[10] The government is on notice, due to these habeas proceedings, that Britania has fear of removal to El Salvador, among other places. In fact, in her initial petition, Britania cited to various sources which discuss harms to LGBTQ+ people in El Salvador specifically. *See* Dkt. 1, n.3.

[11] As noted *supra* n.10, in her initial petition, Britania expressed fear of return to any country that does not respect the rights of transgender people, particularly those who are also incompetent. Dkt. 1, ¶ 81. This includes various countries in Central America. *See* Dkt. 1, n.3.

again, it would preclude her removal from yet another country. Ultimately, then, the government cannot remove Britania until it finds a country that is both willing to accept her *and* safe for her as a transgender, incompetent woman. Together, these factors make Britania's already unforeseeable removal even less likely. Dkt. 1, ¶ 82.

B. *No jurisdictional bar precludes Britania's challenge to her indefinite detention.*

To argue a lack of jurisdiction, Respondents rely on a mischaracterization of Britania's claims. Respondents assert that Britania's challenge to unknown third countries where she may be sent is barred by § 1252(g) because it goes "to the execution of a final removal order, i.e., detention pending to El Salvador." Dkt. 13 at 13. But this position directly contradicts Supreme Court and Fifth Circuit precedent clearly preserving this Court's jurisdiction over detention claims. *See Zadvydas*, 533 U.S. at 688 (stating that habeas proceedings are available for "statutory and constitutional challenges" to post-order detention). Britania does not ask this Court to stay the government's execution of her removal order. Rather, she challenges the legality of her indefinite detention pending effectuation of her removal order.

Over two decades ago, the Supreme Court held that the jurisdiction-stripping provision § 1252(g) "applies only to three discrete actions"—a decision "to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("*AADC*"); *see also Dep't of Homeland Sec. v. Regents of Univ. of Calif.*, 591 U.S. 1, 19 (2020) (calling 1252(g) "narrow," imposing no "general jurisdictional limitation" nor covering "all claims arising from deportation proceedings").[12] The Supreme Court has further

[12] In line with *AADC*, the Fifth Circuit consistently applies § 1252(g) narrowly. *See, e.g., Texas v. United States,* No. 23-40653, 2025 U.S. App. LEXIS 1132, at *37-38 (5th Cir. Jan. 17, 2025) (holding that the issue of whether §1252(g) applies is not a "sort of 'zipper' clause that says "no judicial review in deportation cases unless [the § expressly provides for it]"); *Kale v. United States*, No. 01-10921, 2002 U.S. App. LEXIS 29129, at *7-8 (5th Cir. May 10, 2002) (holding that §1252(g) was inapplicable because the claims did not arise from "the decision[ ] to commence proceedings, to adjudicate cases, and to execute removal orders"); *Cardoso v. Reno*, 216 F.3d 512, 516-17 (5th Cir. 2000) (§ 1252(g) does not prevent plaintiffs from challenging 'other decisions or actions

clarified that, in interpreting the language of subsection (g), it "did not interpret this language to sweep in any claim that can technically be said to 'arise from' the three listed actions" but instead read the language "to refer to just those three specific actions themselves." *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (citing *AADC*, 525 U.S. at 471).

Significantly, district courts across the country have found that they have jurisdiction over third country removal claims identical to the one presented here. *Escalante*, 2025 WL 2206113 at *3 (finding jurisdiction where Petitioner "is merely asking to be placed back on supervised release pending his removal . . . ."); *Santamaria Orellana*, 2025 WL 2444087, at *3 ("[Petitioner] challenges the legality of his detention pending the effectuation of his removal order.").

Respondents alternatively argue that jurisdiction is barred by the channeling provisions of §§ 1252(a)(5) and (b)(9). Dkt. 13 at 13–14. But again, Britania does not challenge the order of removal underlying her CAT grant, but rather her ongoing detention in spite of the fact that no country is clearly prepared to receive her. *Ozturk v. Hyde*, 136 F.4th 382, 401 (2d Cir. 2025) (holding these Sections do not strip jurisdiction of habeas challenges to unlawful detention). Section "1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." *Regents*, 591 U.S. at 19 (cleaned up); *Jennings*, 583 U.S. at 293 (rejecting "expansive interpretation" of § 1252(b)(9)).

III. Alternatively, Limited Discovery May Be Appropriate In This Case.

Respondents have failed to demonstrate that third country removal is possible as a matter

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that may be part of the deportation process . . . ."'). Sister circuits have likewise recently reiterated that where, as here, a petitioner's claims do not challenge the government's discretion to decide or take action to execute a removal order, they do not "arise from" execution of that order. *See Kong v. United States,* 62 F.4th 608, 614 (1st Cir. 2023) ("Among such 'collateral' claims" not subject to the § 1252(g) bar on judicial review are "claims seeking review of the legality of a petitioner's detention")*; Ozturk v. Hyde,* 136 F.4th 382, 397 (2d Cir. 2025) (holding an unlawful detention challenge to be unrelated to the jurisdiction-stripping provisions of § 1252(g)).

of law. Because the *Zadvydas* test is an inherently fact-intensive inquiry, should this Court question the factual possibility of third country removal, Petitioner requests an evidentiary hearing or limited discovery. *See Zadvydas*, 533 U.S. at 686 (referencing district court's reliance on evidentiary hearing to determine the factual feasibility of removal).

While it is true that a habeas petitioner, "unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course," *Bracy v. Gramley*, 520 U.S. 899, 904 (1997), in *Hamdi v. Rumsfeld*, the Supreme Court explained that "[th]e simple outline of § 2241 makes clear that both Congress envisioned that habeas petitioners would have some opportunity to present and rebut facts and that courts in cases like this retain some ability to vary the ways in which they do so as mandated by due process." 542 U.S. 507, 526 (2004).[13] The essential element of Britania's *Zadvydas* claim concerns the feasibility of her removal to a third country. The only evidence produced is the Hodges Declaration, which does not contain any facts beyond cursory assertions of requests to a limited set of third countries. *See generally*, Dkt. 13-1. The declaration does not contain evidence of any arrangement with these countries to accept noncitizens and provides no indication that a travel document can be processed. *Id.* Thus, there is a factual dispute as to whether Britania's removal to a third country is possible. Limited discovery could clear up the dispute, *see* Ex. A, Proposed Requests for Discovery, as could an evidentiary hearing. *See Gaitan-Campanioni v. Thornburgh*, 777 F. Supp. 1355, 1356 (E.D. Tex. 1991).

CONCLUSION

Britania asks this Court to grant the Petition and order her immediate release.

[13] 28 U.S.C. § 2246 states in full that "[i]f affidavits are admitted any party shall have the right to propound written interrogatories to the affiants." *See also Harris v. Nelson*, 394 U.S. 286, 290 (1969) ("[W]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry."); *Gibbs v. Johnson*, 154 F.3d 253, 258 (5th Cir. 1998) (same); *Murphy v. Davis*, 901 F.3d 578, 590 (5th Cir. 2018) (same).

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