

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BABI KITELONGA

Petitioner,

v.

YOLANDA PITTMAN, *in her official capacity as Warden of Elizabeth Contract Detention Facility*; JOHN TSOUKARIS, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Newark New Jersey*; CALEB VITELLO, *Acting Director, U.S. Immigration and Customs Enforcement*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*; PAMELA BONDI, *in her official capacity as Attorney General of the United States,*

Respondents.

**PETITION FOR A WRIT OF
HABEAS CORPUS**

Case No.

INTRODUCTION

Petitioner, Babi Kitelonga (“Mr. Kitelonga” or “Petitioner”), remains in immigration custody despite his being granted a final order of Deferral of Removal under the Convention Against Torture (“CAT”), prohibiting his removal to the Democratic Republic of the Congo (“DRC”), on January 29, 2025. Yet, Immigration and Customs Enforcement (“ICE”) refuses to release Mr. Kitelonga, claiming that it is looking for alternative countries of removal despite knowing that he lacks citizenship in or a connection to any other country. Mr. Kitelonga’s continued detention is arbitrary and unlawful, and he requests that this Court order his immediate release from ICE custody.

Mr. Kitelonga is detained pursuant to 8 U.S.C. § 1231, which governs the detention of non-citizens with a final order of removal. Mr. Kitelonga applied for protection under the Convention Against Torture (“CAT”) before the Annandale Immigration Court. On January 29, 2025, Mr. Kitelonga’s case was heard by Immigration Judge Raphael Choi, and upon consideration of his claim, Mr. Kitelonga was granted CAT relief. The Government has waived the appeal of that Order, and more than ninety days have elapsed; thus, the Order is now final.

Mr. Kitelonga’s continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his home country, the DRC, because he has been granted protection under the CAT with respect to that country. 8 C.F.R. § 1208.17. ICE’s half-hearted attempts to remove Mr. Kitelonga to a random collection of unspecified alternative countries—to which he has no ties, and which have no policy or history of accepting non-citizen deportees—are speculative and futile.

JURISDICTION & VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

2. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g., Zadvydas*, 533 U.S. at 687.

3. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on

habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner’s liberty and freedom.

4. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at the Elizabeth Contract Detention Center in Elizabeth, New Jersey.

PARTIES

5. Mr. Kitelonga is a native and citizen of DRC who has been granted a CAT deferral of removal. He is currently detained at the Elizabeth Contract Detention Center in Elizabeth, New Jersey.

6. Yolanda Pittman is named in her official capacity as the Warden of Elizabeth Contract Detention Facility, also referred to as Elizabeth Detention Center. As Warden, she is responsible for the operations of Elizabeth Detention Center, including overseeing the people in the facility’s custody, and as such she is a custodian of the Petitioner. Respondent Pittman’s office address is Elizabeth Detention Center, 625 Evans St, Elizabeth, New Jersey, 07201.

7. Respondent John Tsoukaris is named in his official capacity as the Field Office Director of the Newark Field Office for Immigration and Customs Enforcement (“ICE”) within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations

and is a custodian of Petitioner. Respondent Tsoukaris' office address is: 970 Broad Street, 11th Floor, Newark, New Jersey, 07102

8. Respondent Caleb Vitello is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the District of New Jersey; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner. Petitioner Vitello's office address is: ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900

9. Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

10. Pamela Bondi is the Attorney General of the United States. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review (EOIR) and includes all IJs and the Board of Immigration Appeals (BIA). She is sued in her official capacity. Respondent Bondi's office address is: U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530- 0001

LEGAL FRAMEWORK

I. WITHHOLDING OF REMOVAL AND RELIEF UNDER THE CONVENTION AGAINST TORTURE.

11. 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.

12. 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.*

13. 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). 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.

14. When a non-citizen has a final 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). While ICE is authorized to remove non-citizens who were granted withholding or CAT relief to alternative countries, 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. *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f) and 8 U.S.C. § 1231(b)(2)(D)-(E).

15. 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*, 543 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.

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

a. Statutory Framework

16. 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).² 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

¹ ICE itself acknowledges this obligation. In 2020, officials within ICE’s Office of the Principal Legal Advisor (OPLA) created and circulated forms—acquired through a Freedom of Information Act (FOIA) request—that were designed to advise non-citizens of ICE’s intent to pursue third country removal and afford them the opportunity to seek withholding-only relief for that country. Ex. A, ICE Notice of Third Country Removal Form. To counsel’s knowledge, no such form has been provided to Petitioner.

² There are two other events that trigger the start of the removal period, which are not applicable here. *See* 8 U.S.C. § 1231(a)(1)(B)(ii)-(iii).

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).

17. 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.

18. 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

19. 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 non-citizen 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).

20. 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 [non-citizen] 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).

21. 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).

c. ICE Policy

22. Consistent with the statutory and regulatory scheme, long-standing ICE policy favors the prompt release of non-citizens who have been granted CAT relief. In 2000, the then-Immigration and Naturalization Service (INS) General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes but does not require the detention of non-citizens granted withholding of removal or CAT relief during the 90-day removal period.³ A 2004 ICE memorandum turned this acknowledgment of authority into a presumption, stating that “it is ICE policy to favor the release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.” *Id.* at 2.

23. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2000 and 2004 ICE memorandums are “still in effect and should be followed” and that “[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period.” *Id.* at 3. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the “longstanding policy” that “absent exceptional circumstances, . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released. . .” *Id.* at 4 (emphasis added). Director Johnson clarified that “in considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community.” *Id.*

24. ICE Policy 11022.1, “Detainee Transfers,” prohibits the transfer of individuals from one Field Office’s area of responsibility to another if, inter alia, they have immediate family,

³ INS, housed within the Department of Justice, became ICE after the formation DHS in 2002.

an attorney of record, pending or ongoing removal proceedings within the area, or if they have been granted bond or scheduled for a bond hearing, unless a Field Office Director or their designee deems the transfer necessary for one of the seven specific reasons identified in the policy.

25. The policy states that “[t]he Immigration Officer will conduct a review to determine whether any of these factors exist. Before a transfer is made in a case where one or more of these factors exist, the transfer must be approved at the Assistant Field Office Director level or higher, and the reasons for the transfer must be documented in the detainee’s A-File.”

26. The policy also states that ICE is required to notify the attorney of record that the individual “is being transferred and include the reason for the transfer and the name, location, and telephone number of the new facility as soon as practicable on the day of the transfer, but in no circumstances later than twenty-four (24) hours after the transfer occurs.”

STATEMENT OF FACTS

27. Babi Kitelonga was born in the Democratic Republic of the Congo in 1987. He is not a citizen or national of any other country and has no derivative citizenship rights to any other country through his parents.

28. Mr. Kitelonga fled the DRC after civil and military unrest, as well as subsequent wars, erupted. Mr. Kitelonga and his family were subjected to severe beatings, rape and other depredations by the armed rebels which resulted in separation and displacement of the entire family. He arrived in the United States as a refugee, where he began a new life in Richmond, Virginia. Prior to his detention, he was living in Richmond, Virginia, with his surviving family members.

29. Adjusting to life in the United States was very hard for Mr. Kitelonga. He was just 17 years old, and all of the violence and trauma he had experienced in the DNC affected him

deeply. He began attending school in the Richmond area, but did not speak the language and had not previously received much of a formal education, so school was very difficult for him, and he eventually dropped out.

30. Mr. Kitelonga attempted to assist his mother with the family's expenses. However, he continued to struggle with adjusting and lacked any proper coping skills. As a result, he was led down a bad path, befriending the wrong people. His life continued to take a bad turn when, in 2007, he was arrested and charged in Henrico, Virginia, with several felony offenses. In 2008, he was found guilty and sentenced to serve over 20 years in prison.

31. It wasn't until Mr. Kitelonga was incarcerated in Virginia that he was finally diagnosed with Post Traumatic Stress Disorder ("PTSD"). He was experiencing increased flashbacks, reliving the unimaginable violence that he had witnessed in the DNC, including people being brutally murdered, mutilated and raped. He suffered from severe nightmares at night, and during the daytime, he experienced hallucinations, voices, and visions.

32. During and since his incarceration, Mr. Kitelonga was treated with medication and psychotherapy which helped, however he was twice hospitalized for these severe symptoms yet he continued to progress in his therapy. Upon information and belief, his current detention has severely retraumatized him and interrupted his therapy and medication regimes which have become inconsistent if he has received any at all.

33. On July 1, 2024, ICE issued Mr. Kitelonga a Notice to Appear (NTA) charging him as removable under various sections under 8 U.S.C. § 1227. ICE took Mr. Kitelonga into custody following his release from Virginia state custody and he has remained in custody ever since.

34. On January 29, 2025, an IJ granted Mr. Kitelonga relief under CAT, finding that he would more likely than not be tortured by the DRC police, military or other government

officials if returned to DRC and ICE waived appeal. Ex. B, IJ Decision Granting CAT Relief. Mr. Kitelonga was ordered removed to, and his removal deferred from, DRC . *Id.* More than 90 days have elapsed since the Order was entered; therefore, Mr. Kitelonga's CAT relief grant and accompanying removal order became final as of January 29, 2025 when DHS waived appeal. *See* 8 U.S.C § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c).

35. On April 30, 2025, undersigned counsel received "Decision to Continue Detention" letter wherein it is noted that Mr. Kitelonga's custody decision would be transferred to ICE Headquarters and that he would be "afforded a personal interview." Ex. C, Decision to Continue Detention Letter. On May 6, 2025, Mr. Kitelonga, by and through counsel, requested that a personal interview be scheduled and despite numerous attempts to follow-up on the status, no personal interview has been scheduled. In response Supervisory Detention and Deportation Officer asserted that Mr. Kitelonga "remains a final order of removal and ICE will seek a third country removal." *Id.*

36. Mr. Kitelonga continues to suffer significant hardship due to his continued confinement due to his pre-existing mental health conditions.

37. If released, Mr. Kitelonga will live with his mother in Richmond, Virginia.

38. On or about June 19, 2025, Mr. Kitelonga was transferred from Farmville Detention Center to Elizabeth Detention Center without warning. He has been told by ICE officials that he will be transferred to Louisiana immediately and then from there to Guantanamo Bay, Cuba.

39. At no point did ICE notify Mr. Kitelonga or his counsel that he would be transferred, nor has it provided any explanation for the transfer.

ARGUMENT

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

A. Mr. Kitelonga's removal is not reasonably foreseeable under *Zadvydas*.

40. Mr. Kitelonga's 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 order of CAT relief on January 29, 2025 where ICE waived appeal. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c). Therefore, the *Zadvydas* framework applies to Mr. Kitelonga's detention, and he has been detained for nearly six months since his grant of relief under CAT became final.

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

42. Furthermore, it is exceedingly unlikely that ICE will identify an alternative country to which it can remove Mr. Kitelonga.

43. More specifically, ICE has recently and repeatedly attempted to remove similarly situated individuals to alternative countries. These attempts are currently the subject of federal litigation and have been stayed by the Federal Courts. Individuals who have been recently deported have been ordered returned to the United States; these cases are ongoing. ICE nonetheless continued to detain individuals in violation of court orders.

44. Given this history, it strains credulity to think that ICE will be able to remove Mr. Kitelonga to a random collection of alternative countries that have recently and repeatedly declined to accept the deportation of similarly situated individuals.⁴ Mr. Kitelonga is not a citizen of, has

⁴ ICE has contacted Madagascar, Chad, and Cameroon, who have all either declined to accept him or have not responded.

no connection to *any* country besides his home country, let alone the countries to which ICE has purportedly attempted to remove individuals in the past.

45. Even in the highly unlikely scenario that an alternative country notifies ICE of its willingness to accept the deportation of Mr. Kitelonga, ICE would still be required to obtain 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). If an Asylum Officer (AO) were to find that Mr. Kitelonga demonstrated a reasonable possibility of persecution or torture at the RFI, or an IJ subsequently vacated a negative finding by the AO, he would enter withholding-only proceedings before an IJ in which he would again seek to demonstrate his eligibility for withholding or CAT relief with respect to that country, thereby restarting the process that took several months to complete the first time.

46. Therefore, Mr. Kitelonga has been detained for nearly six months since receiving a final 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) ICE has historically managed to remove only a tiny fraction of non-citizens granted withholding or CAT to alternative countries; 3) WAS ICE failed to remove every similarly situated individual in the last year, leading to their eventual release; 4) any countries to which requests may still be pending have no logical reason to accept Mr. Kitelonga's deportation and have provided no timeline under which they might decide; and 5) deporting Mr. Kitelonga 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. For the reasons stated above, Mr. Kitelonga 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. Kitelonga to random third countries to which he has no connection whatsoever. The answer to that question has been no from the moment Mr. Kitelonga’s relief grant became final, and the likelihood of third-country removal has only decreased since then.

B. This Court should order Mr. Kitelonga’s immediate release.

48. Because Mr. Kitelonga’s removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *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. Kitelonga’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.”).

49. *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. Kitelonga’s detention, ICE has not invoked the regulations governing these “special circumstances” determinations, nor could ICE reasonably do so because he clearly does not present a national security or public health concern.

50. 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 [non-citizen]’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 IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6)

51. Petitioner realleges and incorporates by reference the paragraphs above.

52. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689, 701.

53. Petitioner’s continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT II

ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

54. Petitioner realleges and incorporates by reference the paragraphs above.

55. Courts must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

56. ICE has deviated from its own policy in continuing in transfer Petitioner after he was granted immigration relief, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

57. As a remedy, this Court should prohibit ICE from transferring the Petitioner from New Jersey or order his return to Virginia.

COUNT III

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

58. Petitioner realleges and incorporates by reference the paragraphs above.

59. ICE has violated Petitioner’s due process rights by denying him an individualized custody review to which he is entitled under ICE policy.

60. As a remedy, this Court should conduct its own review of Petitioner’s custody or, at least, order ICE to review Petitioner’s custody under the standard articulated in ICE policy.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

- a. Assume jurisdiction over this matter.
- b. Declare that Petitioner’s continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.
- c. Order Petitioner’s immediate release.
- d. Alternatively, prohibit Petitioner’s transfer from New Jersey.

- e. Order that Petitioner is not to be removed from the United States.
- f. Grant any other further relief this Court deems just and proper.

Dated: June 20, 2025

Respectfully submitted

_____/s/_____
Joseph Moravec
NJ Bar No. 268712018
Senior Attorney
Blessinger Legal PLLC
7389 Lee Highway, Suite 320
Falls Church, VA 22042
Tel: (703) 738-4248
Fax: (703) 955-3356

Tanishka V. Cruz, Esq.*
VSB# 87213 // EOIR# HL668170
Cruz Law PLLC
4100 Olympia Circle, Suite 101
Charlottesville, VA 22911
Tel: (434) 260-0665
Fax: (434) 227-5067
tcruz@tcruzlaw.com

**pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

Yolanda Pittman, Warden
Elizabeth Contract Detention Center
625 Evans Street
Elizabeth, NJ 07201

John Tsoukaris, Field Office Director
U.S. Immigration and Customs Enforcement,
c/o DHS Office of the General Counsel
970 Broad St. 11th Floor
Newark, NJ 07102

Caleb Vitello, Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW, Mail Stop 5900
Washington, DC 20536-5900

Kristi Noem, Secretary
U.S. Department of Homeland Security
c/o DHS Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Washington, DC 20528-0485

Pamela Bondi, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Alina Habba, U.S. Attorney
c/o Civil Process Clerk
District of New Jersey
970 Broad Street, 7th Floor
Newark, NJ 07102

Dated: June 20, 2025

Respectfully submitted,

/s/

Joseph Moravec
NJ Bar No. 268712018
Senior Attorney
Blessinger Legal PLLC
7389 Lee Highway, Suite 320
Falls Church, VA 22042
Tel: (703) 738-4248
Fax: (703) 955-3356