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Via Electronic Filing

Honorable Julien X. Neals, U.S.D J.
United States District Court
Martin Luther King Bldg. & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: *De Souza-Ferreira v. Mayorkas*, No. 25-18142
Answer to § 2241 Petition**

Dear Judge Neals:

This Office represents Respondents in this habeas matter filed by Petitioner Lucas De Souza-Ferreira, a noncitizen challenging the legality of his detention by U.S. Immigration and Customs Enforcement ("ICE"). We write in response to the petition, ECF No. 1.

Petitioner, a native of Brazil, is subject to a final order of removal *in absentia* from July 2017. Pet. at 5; Ans. Ex. A (Removal Order). In May 2022, ICE issued an Order of Supervision directing Petitioner to make periodic reports to ICE. Ans. Ex. B (Order of Supervision). ICE revoked the Order of Supervision on June 8, 2025 and detained Petitioner to effectuate his removal. Pet. at 5; *see* Ans. Ex. C (Revocation of Release). Two months later, on August 8, 2025, an IJ granted Petitioner Withholding of Removal to Brazil under the Convention Against Torture. Ans. Ex. D (CAT Order).

ICE denied Petitioner's request for humanitarian parole and release on October 12, 2025, because the agency concluded that removal to a third country was "reasonably foreseeable" in the future and in the "public interest." Ans. Ex. E (Denial of Release). Additionally, ICE concluded that Petitioner's "immigration history suggests" that he poses "a significant flight risk if you were released from ICE custody." *Id.* On December 10, 2025, ICE issued a Decision to Continue Detention stating:

You are a native and citizen of Brazil. You were arrested by United States Border Patrol on 03/21/2013. You were then removed from the United States to Brazil on December 21, 2018. You then again illegally re-entered the United States without receiving permission. You then

claimed fear of returning to Brazil. Your case was ruled on by an Immigration Judge (IJ) on August 20, 2025, and a Deferral of Removal under the Convention Against Torture (DCAT) was granted. You also have a criminal conviction for Disorderly Conduct.

Due to your DCAT ruling, ICE is unable to move forward with your removal from the United States at this time. Pending the acceptance of a third country, ICE has reason to believe there's a significant likelihood that your removal will occur in the reasonably foreseeable future, therefore you are to remain in ICE custody at this time, as ICE is unable to conclude that the factors set forth at 8 C.F.R. § 241.4(e) have been satisfied [due] to the likelihood that you will be removed.

Ans. Ex. F (Decision to Continue Detention). Accordingly, Petitioner remains in ICE custody. Petitioner has been detained 201 days as of this filing.

Where, as here, an alien is subject to a final order of removal, there is a 90-day "removal period," during which ICE "shall" remove the alien. *See* 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* § 1231(a)(2). There are at least three potential outcomes if ICE does not remove an alien during the 90-day mandatory removal period. First, ICE may release the alien subject to conditions of supervised release. *See* § 1231(a)(3). Second, ICE may extend the removal period if the noncitizen "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." *See* § 1231(a)(1)(C). And third, ICE may further detain certain categories of aliens, including those "inadmissible" under § 1182, as Petitioner is here. *See* § 1231(a)(6). Continued detention under this third category is often referred to as the "post-removal-period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

The Immigration and Nationality Act does not set a limit on how long detention in the "post-removal-period" can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court in *Zadvydas v. Davis* held that the government may only detain aliens in the post-removal-period for the time "reasonably necessary to bring about that alien's removal from the United States." 533 U.S. 678, 689 (2001). A six-month period of detention is "presumptively reasonable." *Id.* at 701. "After this six-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* Several courts have held that the grant of Withholding of Removal regarding a detainee's home country is sufficient to shift the burden to ICE to show that that removal to a third country is reasonably foreseeable, although Respondents are not aware of precedential authority on this burden shifting. *See, e.g., Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 396 (D.N.J. 2025); *Tadros v. Noem*, No. 25-4108 (EP),

2025 WL 1678501, at *3 (D.N.J. June 13, 2025); *see also Servellon Giron v. Noem*, No. 25-6301 (JXN), ECF No. 17 (D.N.J. Jul. 22, 2025) (Text Order).

Here, ICE detained Petitioner on June 8, 2025 to facilitate his removal to Brazil. Ans. Ex. C (Revocation of Release). However, because of an IJ's intervening grant of Withholding of Removal on August 8, 2025, removal to Brazil is not currently possible. Ans. Ex. D (CAT Order). As set forth in its Decision to Continue Detention, "ICE has reason to believe," that "[p]ending acceptance of a third country," "there is a significant likelihood that [Petitioner's] removal will occur in the reasonably foreseeable future." Ans. Ex. F (Decision to Continue Detention). Moreover, Petitioner has not alleged that he has taken any effort to facilitate removal to a third country. "Numerous courts in this District have held that a detainee's failure to cooperate in obtaining travel documents precludes a finding that his or her removal is not reasonably foreseeable." *Ugarte v. Green*, No. 17-1436 (SRC), 2017 WL 6376498, at *3 (D.N.J. Dec. 13, 2017) (collecting cases); *but see Munoz-Saucedo*, 789 F. Supp. 3d at 400 (holding that this line of cases does not apply where ICE seeks removal to a third country and fails to identify specific information that Petitioner refused to provide). That said, ICE does not have further information or documentation regarding its efforts to facilitate removal to a third country at this time. Respondents, therefore, respectfully request that the Court render its decision on the existing record.

For these reasons, Respondents respectfully ask the Court to dismiss or deny the Petition.

Respectfully submitted,

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