

THE HONORABLE JAMES L. ROBART
THE HONORABLE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANWAR MOHAMED JEYLANI,

Petitioner,

v.

PAMELA BONDI, et. al.,

Respondents.

No. 25-cv-00343-JLR-BAT

RESPONSE TO MOTION TO DISMISS

Anwar Jeylani, through counsel, respectfully replies to ICE's motion to dismiss and requests discovery. For the following reasons, the Court should deny ICE's motion.

I. ARGUMENT

A. ICE does not meet its burden under Fed. R. Crim. P. 12(b)(6).

Though ICE does not identify the legal basis for its motion to dismiss, Fed. R. Civ. P. 12 permits the Court to entertain motions to dismiss only for specified reasons. *See* Fed. R. Civ. P. 12 ("Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion...." Of those, Fed. R. Civ. P. 12(b)(6) is the only arguably relevant provision.

The Court may grant a motion under Fed. R. Civ. P. 12(b)(6) if it fails to state a claim on which relief can be granted. When assessing a motion to dismiss under this section, the Court must accept as true all of the factual allegations contained in the complaint." *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n. 1 (2002).

1 ICE does not argue that Mr. Jeylani's complaint is inadequately pleaded. Rather,
2 it argues that he does not meet his burden in light of the contrary (and contested)
3 assertions contained in the government's return. *Compare* Dkt 1 at 3 ("Somalia will not
4 accept my return") with Dkt 8 ("Somalia is accepting individuals for removal"); Dkt 1
5 at 1 at 3 ("[T]here is not good reason to believe my removal will be effectuated in the
6 reasonably foreseeable future") with Dkt 8 ("There is a significant likelihood of
7 removal in the reasonably foreseeable future."). But granting the government's motion
8 on that ground would turn the Rule 12(b)(6) analysis on its head by assuming the truth
9 of the factual assertions in the answer rather than those in the complaint. It would also
10 violate the Supreme Court's admonition that "courts [should not] "abdicat[e] their legal
11 responsibility to review the lawfulness of an alien's continued detention." *Zadvydas v.*
12 *Davis*, 533 U.S. 678, 700 (2001). *See also id.* ("The Government seems to argue
13 that... a federal habeas court would have to accept the Government's view about
14 whether the implicit statutory limitation is satisfied in a particular case, conducting little
15 or no independent review of the matter. In our view, that is not so.").

16 Consistent with *Zadvydas* and the Federal Rules, the Court should deny the
17 government's request to dismiss Mr. Jeylani's petition and order such discovery as
18 necessary to "conduct [an] independent review of the matter." *Id.*¹

19 **B. The Court should order discovery.**

20 The Court may order discovery for "good cause." *See* Rule 6(a), Rules
21 Governing Section 2254 Cases and Section 2255 Petitions. "A party requesting
22 discovery must provide reasons for the request. The request must also include any
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24 ¹ Current events have emphasized the importance of discovery when "review[ing] the
25 lawfulness of an alien's continued detention." *Zadvydas*, 533 U.S. at 700. *See e.g.*
26 *Abrego Garcia v. Noem*, et al., 25-cv 951 (D. Maryland, 2025) (ordering expedited
discovery).

1 proposed interrogatories and requests for admission and must specify any requested
2 documents” Rule (6)(b).

3 Limited discovery is appropriate here to enable to the Court “independently
4 review” the basis for the Government’s unsupported assertion that that Somalia will
5 accept Mr. Jeylani in the reasonably foreseeable future. Dkt 8 at ¶ 16. Appropriate
6 interrogatories may include:

- 7 • ICE states that “Somalia is accepting individuals for removal from the United
8 States.” Dkt 7 at 6. Please identify the number of people deported from the
9 United States to Somalia in 2025.
- 10 • ICE asserts that it interviewed Mr. Jeylani in October 2024, submitted a
11 travel document request two months later, and now “is actively working to
12 obtain a travel document for Jeylani’s removal.” Dkt 7 at ¶ 6. What
13 communications has ICE had with Somalia since December 2024 that lead
14 ICE to believe that they will issue a travel document for him?
- 15 • What is the average and mean time between requesting a travel document
16 from Somalia and receiving that travel document?

17 II. CONCLUSION

18 Two hundred and forty days after an immigration judge ordered his removal,
19 Mr. Jeylani remains imprisoned. ICE claims to have requested a travel document in
20 December 2024, but there is no evidence that any progress has been made towards his
21 removal. Because ICE itself cannot say whether or when it will receive permission to
22 remove Mr. Jeylani to Somalia, there is no basis for the Court to find a “substantial
23 likelihood” that he will be removed in the reasonably foreseeable future. *See Singh v.*
24 *Whitaker*, 362 F. Supp. 3d 93, 101–02 (W.D.N.Y. 2019) (“And if DHS has no idea of
25 when it might reasonably expect Singh to be repatriated, this Court certainly cannot
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1 conclude that his removal is likely to occur—or even that it might occur—in the
2 reasonably foreseeable future.”) (internal citations omitted and emphasis added).

3 The Court should deny ICE’s motion to dismiss and order Mr. Jeylani’s release
4 on conditions.

5 DATED this 18th day of April, 2025.

6 Respectfully submitted,

7 *s/ Gregory Murphy*
8 Assistant Federal Public Defender
9 Office of the Federal Public Defender
10 Attorney for Anwar Jeylani

11 I certify that the foregoing contains 822 words, in compliance with Local Civil Rules.
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