

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-CV-2183 (NEB/DLM)

Nadeem KHALID)	
)	
Petitioner,)	
)	RESPONSE TO PETITION
)	FOR WRIT OF HABEAS CORPUS
v.)	
)	
Pam Bondi, Attorney General of the)	
United States; Kristi Noem, Secretary of)	
the Department of Homeland Security;)	
Todd Lyons, Director of Immigration and)	
Customs Enforcement; Kenneth Genalo,)	
Acting Executive Associate Director,)	
Enforcement and Removal Operations;)	
and Joel Brott, Sheriff of Sherburne)	
County)	
Respondents.)	

Respondents (1) Pam Bondi, Attorney General of the United States; (2) Kristi Noem, Secretary, Department of Homeland Security; (3) Todd Lyons, Acting Director, Immigration and Customs Enforcement; and (4) Kenneth Genalo, Acting Executive Associate Director of Enforcement and Removal Operations, (collectively, the “Federal Respondents”) respectfully file this Response to Petitioner Nadeem Khalid’s Petition for a Writ of Habeas Corpus. In his Petition, Khalid argues that his detention after a final order of removal is unconstitutional because there is not a significant likelihood of his removal in the reasonably foreseeable future. Khalid’s Petition should be denied. Not only is his removal reasonably foreseeable, but his removal to Pakistan is scheduled to occur later this month.

FACTUAL BACKGROUND

Khalid is a native and citizen of Pakistan who claims to have entered the United States on or about September 20, 1989, at New York, New York, as a B-2 visitor. (Declaration of John D. Ligon (“Ligon Decl.”) ¶ 4.) In August 1992, Khalid filed an I-589 application for asylum under the name Khalid Nadeem Bhatti, claiming he entered the United States without inspection or parole near Buffalo, New York, on or about December 10, 1991. (*Id.* ¶ 5.) In June 1993, Khalid’s asylum application was denied, and immigration authorities served Khalid and Order to Show Cause under A070 697 008. (*Id.* ¶¶ 6-7.) On September 18, 1995, an Immigration Judge ordered Khalid deported in absentia. (*Id.* ¶ 8.)

In December 1998, Khalid filed an I-130 Petition for Alien Relative and an I-485 Application to Register Permanent Residence or Adjust Status with USCIS. USCIS issued Khalid  as a result. (Ligon Decl. ¶ 9.) On March 8, 1999, USCIS approved Khalid’s application for conditional residence, which was removed in April 2001. (*Id.* ¶¶ 10, 11.) On January 14, 2002, Khalid filed an I-400 application for Naturalization, which he withdrew in March 2003. (*Id.* ¶¶ 11, 12.)

On November 17, 2008, the Minnesota District Court in Dakota County, Minnesota, convicted Khalid of controlled substance crime-fifth degree possession, to wit: cocaine. (*Id.* ¶¶ 13.)

On May 24, 2011, ERO St. Paul arrested Khalid and issued him an I-862 Notice to Appear. (Ligon Decl. ¶ 14.) On October 3, 2011, an Immigration Judge granted Khalid a \$3000 bond. On the same date, Khalid posted bond and was released from ICE custody. (*Id.* ¶ 15.) In August 2013, an Immigration Judge terminated proceedings based on the

existence of a removal order under , and Khalid filed an appeal with the Board of Immigration Appeals (BIA) in September 2013, which was dismissed by the BIA in October 2014. (*Id.* ¶¶ 16, 17, 18.) On December 29, 2014, ERO St. Paul issued Khalid an I-862, Notice to Appear. (*Id.* ¶ 19.)

On February 12, 2015, the Anoka County, Minnesota District Court convicted Khalid of theft and sentenced him to 179 days incarceration. (Ligon Decl. ¶ 20.) On March 11, 2015, ERO St. Paul arrested Khalid and issued him a \$15,000 bond, which he posted two days later and was released from ICE custody. (*Id.* ¶¶ 21, 22.) On May 24, 2022, an Immigration Judge ordered Khalid removed to Pakistan. (*Id.* ¶¶ 23, Ex 1.)

On November 18, 2022, the Hennepin County, Minnesota District Court convicted Khalid of fifth degree assault and sentenced him to 90 days incarceration. (Ligon Decl. ¶ 24.) Three days later, Khalid filed a Motion to Reopen with EOIR Fort Snelling, which an Immigration Judge ultimately denied on January 27, 2023. (*Id.* ¶¶ 25-29.)

On March 30, 2023, Khalid was convicted in Hennepin County District Court of disorderly conduct and sentenced him to 90 days incarceration. (*Id.* ¶ 30.) Nearly six months later, on October 13, 2023, Khalid was convicted in Sherburne District Court of stalking and domestic abuse and sentenced him to 18 months incarceration. (*Id.* ¶ 31.)

On July 8, 2024, ERO St. Paul arrested Khalid and completed a travel document request for him on July 22, 2024. (*Id.* ¶¶ 32, 33.) On July 26, 2024, ERO St. Paul served him an I-229(a) and Notice to Alien of File Custody Review. (*Id.* ¶ 34, Ex. 2.)

On September 30, 2024, ERO St. Paul completed a Post Order Custody Review of Khalid's case. (*Id.* ¶ 35.) On the same date, the Field Office Director of ERO St. Paul

approved continued detention of Khalid. (*Id.* ¶ 35, Ex. 3.) On December 17, 2024, ERO St. Paul conducted a 180-day Post Order Custody Review for his case. (*Id.* ¶ 36.)

On January 23, 2025, ERO Headquarters approved continued detention of Khalid. (Ligon Decl. ¶ 37.) On January 24, 2025, Khalid and his attorney were notified of the decision. (*Id.* ¶ 37, Ex. 4.) Nearly a month later, on February 25, 2025, the Consulate of Pakistan notified ERO St. Paul a travel document was ready to be issued. (*Id.* ¶ 38.) The UPS package was lost prior to delivery to ERO St. Paul. (*Id.*)

On March 6, 2025, ERO St. Paul requested a new travel document. (*Id.* ¶ 39.) On March 25, 2025, ERO St. Paul received a travel document for Khalid, and attempted to remove him on May 5, 2025, however the flight was cancelled. (*Id.* ¶¶ 40, 41.)

On May 13, 2025, ERO St. Paul requested another travel document from the Consulate of Pakistan, which was received from the Consulate of Pakistan on May 21, 2025 and is valid through July 15, 2025. (Ligon Decl. ¶¶ 42-43, Ex. 5.) Khalid's removal to Pakistan is scheduled for a specific date in June 2025. (*Id.* ¶ 44.) Due to issues of operational security, third country considerations, and officer safety, ICE does not disclose specific dates and times of forthcoming removal itineraries. (*Id.*) There is a significant likelihood that Khalid will be removed in the reasonably foreseeable future. (*Id.*)

On May 21, 2025, 10 months after he was arrested and detained pending removal, Khalid filed a Petition for Writ of Habeas Corpus, alleging that his immigration detention had become unconstitutional. (ECF No. 1.) This Court ordered the Federal Respondents to respond by June 12, 2025. (ECF No. 5.)

ARGUMENT

A. Scope of Review

Judicial review of immigration matters, including immigration detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) (“[T]he power over aliens is of a political character and therefore subject only to narrow judicial review.”). The Supreme Court has thus “underscore[d] the limited scope of inquiry into immigration legislation,” and “has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.” *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) (“Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.”).

Here, Khalid’s sole challenge is to his continued civil immigration detention pending his removal. Khalid does not challenge his final order of removal, nor could he.

Jurisdiction over a challenge to a final order of removal lies exclusively with the appropriate circuit court of appeals. *See* 8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (exclusive jurisdiction to review final orders of removal is with the circuit, not district, court).

B. Khalid’s post-final removal order detention is constitutional.

Khalid argues that his detention pending his removal to Pakistan is unconstitutional. Khalid is detained, however, because immigration officials, who have reviewed his ongoing custody, have specifically determined that there is a significant likelihood of Khalid’s removal to Pakistan in the reasonably foreseeable future. (Ligon Decl. ¶ 44.) ICE has received necessary approvals for his removal itinerary. (*Id.* ¶¶ 42-44, Ex. 5.) ICE has scheduled his removal, via flight, for later this month. (*Id.* ¶ 44.)

1. Legal Standard

Khalid has been in post-removal-order detention since July 8, 2024, when ICE took custody after he was sentenced to 18 months of incarceration for his most recent criminal conviction for stalking and domestic abuse in Sherburne County. (Ligon Decl. ¶¶ 31, 32); *see* 8 U.S.C. § 1231(a)(2) (detention in cases of post final order of removal). Under the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained *indefinitely* pending removal. 533 U.S. at 699-700. *Zadvydas* established a temporal marker: post-final order of removal detentions of six months or less are presumptively constitutional. 533 U.S. at 701. Detentions longer than six months comport with due

process if a “significant likelihood of removal in the reasonably foreseeable future” exists.

Id. As the Supreme Court explained:

After this 6-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. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the “reasonably foreseeable future” conversely would have to shrink. *This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.*

Id. (emphasis added).

Thus, under *Zadvydas*, a habeas petitioner has the initial burden of demonstrating that that there is no significant likelihood of his or her removal in the reasonably foreseeable future. *Id.* If the petitioner does so, the government must rebut that showing.

Id.

After the Court’s decision in *Zadvydas*, the U.S. Department of Homeland Security promulgated comprehensive regulations to implement the *Zadvydas* mandate. *See* 8 C.F.R. §§ 241.4, 241.13, 241.14, 66 Fed. Reg. 56967-01, 56969 (Nov. 14, 2001). *Accord Alexander v. U.S. Attorney General*, 495 F. App’x 274, 277 (3d Cir. 2012) (“*Zadvydas* is not the only word on post-removal detention; regulations promulgated around the time of, and after, the *Zadvydas* decision established a series of processes for determining whether an alien should be released from custody after the expiration of the ninety-day removal period.”). These regulations govern immigration detention of aliens subject to a final order of removal and establish a systemized process for detention reviews.

Section 241.4 of the regulations requires that a detainee be given a post-order custody review before the 90-day statutory removal period expires, if removal cannot be accomplished during the 90-day period. 8 C.F.R. § 241.4(k)(1)(i). Numerous considerations factor into this initial custody review, including the detainee's criminal history. 8 C.F.R. § 241.4(f). To release a detainee at this point, DHS must conclude, among other things, that he or she is "not likely to pose a threat to the community following release." 8 C.F.R. § 241.4(e).

Section 241.13 addresses the substantial likelihood of removal in the reasonably foreseeable future standard established in *Zadvydas*. It provides numerous factors relevant to the standard, including the "ongoing nature of the Service's efforts to remove this alien," and states that "[w]here the Service is continuing its efforts to remove the alien, there is no presumptive period of time within which the alien's removal must be accomplished, but the prospects for the timeliness of removal must be reasonable under the circumstances." 8 C.F.R. § 241.13(f).

2. Khalid has not met his burden under *Zadvydas*.

Khalid has not met his *Zadvydas* burden. Rather than showing that there is no significant likelihood of his removal in the near future, Khalid simply argues that his cumulative detention has lasted more than six months under a final removal order, and that the Indian Air Force carried out airstrikes against Pakistan on or around May 7, 2025. (ECF No. 1, at 7.)¹ *Zadvydas*, however, establishes no such bright line rule regarding length of

¹ Khalid attempts to challenge his conditions of confinement as they relate to access for treatment for his heart condition. (ECF No. 1 at 7, ¶ 21, 13, ¶ 38.) This type of claim may not be raised in habeas. See *Spencer v. Haynes*, 774 F.3d 467, 470 (8th Cir. 2014);

detention. Rather, the Court in *Zadvydas* explicitly recognized that detention longer than six months is constitutional if removal will be accomplished reasonably soon. 533 U.S. at 701. *See also* 8 C.F.R. § 241.13(f); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (detainee must “present any facts indicating that the INS is incapable of executing his removal . . . and that his detention will, therefore, be of an indefinite nature”); *Gahamanyi v. Banieceke*, No. 07-cv-4007 (RHK/RLE), 2008 WL 5071098, at *11 (D. Minn. Nov. 24, 2008) (same). Khalid cannot discharge his burden by doing nothing more than citing the total length of his detention post-removal order and speculating that recent conflict between India and Pakistan will preclude his removal to Pakistan. *See Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1365-68 (N.D. Ga. 2002) (mere passage of time insufficient to meet alien’s burden of proof); *Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wa. 2002) (same). As a result, Khalid has not met his burden under *Zadvydas*; this Court should dismiss his Petition for this reason alone.

Kruger v. Erickson, 77 F.3d 1071, 1073 (8th Cir. 1996). Under 28 U.S.C. § 2241(c)(3), a writ of habeas corpus “shall not extend to a prisoner” unless he is “in custody in violation of the Constitution or laws or treaties of the United States.” The only issue before the Court is the legality of his current detention, and the only relief he could obtain would be release. *See Foy v. Bilderbergers*, 16-cv-0454 (JNE/LIB), 2016 WL 11486912, at *3 (D. Minn. Mar. 17, 2016) (“a litigant cannot combine civil-rights claims (such as conditions-of-confinement claims) and habeas claims in the same action.”), *report and recommendation adopted*, 2016 WL 2621952 (D. Minn. May 6, 2016); *Mendez v. Kallis*, No. 20-cv-924 (ECT/ECW), 2020 WL 2572524, at *1 (D. Minn. May 21, 2020) (“Mendez’s claims relate to the conditions of his confinement, and consequently, a habeas petition is not the proper claim to remedy his alleged injury.”).

3. There is a significant likelihood that Khalid will be removed in the reasonably foreseeable future.

But even if Khalid had met his burden under *Zadvydas*, immigration officials have solidly rebutted any such showing. The Declaration of Deportation Officer John Ligon lays out the basis for detaining Khalid and the ongoing process of removing him to Pakistan. Khalid has been detained under a final removal order since July 2024, and Ligon details what immigration officials have done since then, culminating in the imminent removal itinerary approved by both Pakistani and ICE officials, and the scheduling of a removal flight for June 2025. (*See* Ligon Decl. ¶¶ 32-44, Exs. 2-5.) Due to the ongoing efforts by immigration officials, Khalid's removal is substantially likely to occur in the reasonably foreseeable future. (*Id.* ¶ 44.)

This satisfies *Zadvydas*. *See, e.g., Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) (new repatriation procedure in place was sufficient to show removal substantially likely in reasonably foreseeable future); *Jaiteh v. Gonzales*, No. 07-cv-1727 (PJS/JJG), 2008 WL 2097592, at *3 (D. Minn. Apr. 28, 2008), *report and recommendation adopted*, 2008 WL 2074163 (May 14, 2008) (“[W]here a foreign country ordinarily accepts repatriation, and that country is acting on an application for travel documents, most courts conclude the alien fails to show no significant likelihood of removal.”). *Cf. Zadvydas*, 533 U.S. 684-85 (detainee was stateless); *Jama v. ICE*, 01-cv-1172 (JRT/AJB), 2005 WL 1205160, at *4 (D. Minn. May 20, 2005) (habeas relief granted where failed deportation attempt occurred and court concluded that it “may well be impossible” under the conditions in Somalia at that time). Here, Khalid is not stateless, and, far from “impossible,” his

removal to Pakistan is likely, given the progress ICE has made in effectuating his removal. (Ligon Decl. ¶¶ 32-44, Exs. 2-5.)

As Magistrate Judge Thorson noted in a similar case, there are generally five circumstances where courts have found no significant likelihood of removal: “(1) where the detainee is stateless, and no country will accept [him]; (2) where the detainee’s country of origin refuses to issue a travel document; (3) where there is no repatriation agreement between the detainee’s native country and the United States; (4) where political conditions in the country of origin render removal virtually impossible; and (5) where a foreign country’s delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue.” *Ahmed v. Brott*, No. 14-cv-5000 (DSD/BRT), 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015), *report and recommendation adopted*, 2015 WL 1542155 (Apr. 7, 2015).

Khalid does not fall into any of these categories. His continued detention satisfies constitutional due process, as explained in *Zadvydas*. He is not being detained indefinitely, has an approved removal itinerary, and immigration officials have shown that he is likely to be removed in the near future, with a removal flight scheduled this month. (Ligon Decl. ¶¶ 32-44, Exs. 2-5); *see, e.g., Joseph K. v. Berg*, No. 18-cv-3125 (DWF/HB), 2019 WL 13254377, at *3-4 (D. Minn. Mar. 15, 2019), *report and recommendation adopted*, 2019 WL 13254378 (May 3, 2019); (recommending denial of habeas petition while removal to Liberia had taken ten months); *Nadin K. v. Barr*, No. 18-cv-3223 (PJS/BRT), 2019 WL 13254351, at *3 (D. Minn. Mar. 11, 2019), *report and recommendation rejected as moot*, 2019 WL 23387804 (May 17, 2019) (same). Thus, even if Khalid could meet his burden

under *Zadvydas*, Respondents have adduced evidence showing a significant likelihood of removal in the reasonably foreseeable future. Accordingly, his Petition should be denied.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition without an evidentiary hearing.

Dated: June 12, 2025

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