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

Nadeem KHALID,

Petitioner,

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.

SUPPLEMENTAL RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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 Supplemental Response to Petitioner Nadeem Khalid's Petition for a Writ of Habeas Corpus. In his Reply (ECF No. 10), 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. Yet, Khalid does not disclose or acknowledge that the reason he was not removed on June 23, 2025, was Khalid's refusal to board his scheduled flight. Because Khalid's removal is reasonably

foreseeable, and for the reasons set forth in Defendant's initial response (ECF No. 8), Khalid's Petition should be denied.

RELEVANT FACTUAL BACKGROUND

The relevant factual background was set forth in the Respondents' initial response to the Petition (ECF No. 8 at 2-4). As such, the Respondents in this supplemental response focus on recent developments.

On June 23, 2025, Khalid was scheduled to be removed via a commercial flight. (Declaration of John D. Ligon ("Second Ligon Decl.") ¶ 4.) On that same date, prior to departing the ERO St. Paul office, Khalid stated he would not cooperate with the scheduled removal and refused to comply with removal efforts. (*Id.* ¶ 5, Ex. 1.) Escorting officers and a supervisor spoke with Khalid and advised him of potential consequences of his failure to comply with removal efforts. (*Id.*) On June 25, 2025, a Failure to Comply letter and an I-229(a) were sent to the Sherburne County jail via certified mail. (*Id.* ¶ 6, Ex. 2.)

ICE is now working on charter options, which been occurring regularly, and expects that to happen in the near term, but does not have a date yet. (Second Ligon Decl. ¶ 7.) 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.*)

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, which he persists in challenging despite his own resistance to

boarding his scheduled commercial removal flight on June 23, 2025. 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.

Ignoring the role his refusal to board his scheduled flight on June 23, 2025, played in his continued detention, Khalid argues that his detention pending his removal to Pakistan is unconstitutional. (ECF No. 8.) Khalid is detained 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 despite Khalid's actions to thwart those efforts. (Second Ligon Decl. ¶¶ 5-7, Exs. 1, 2.)

1. Legal Standard

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 regulation 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).

1. Petitioner Cannot Met His Burden Given His Refusal to Board His Scheduled Removal Flight.

Khalid cannot satisfy his burden under *Zadvydas* because he has delayed his removal by physically refusing to board a plane to Pakistan. (Second Ligon Decl. ¶¶ 5-7, Exs. 1, 2.) Pursuant to 8 U.S.C. § 1231, "[t]he removal period shall be extended . . . and the alien may remain in detention during such extended period if the alien 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." 8 U.S.C. § 1231(a)(1)(C) (emphasis added). ICE regulations provide that "Release will be denied and the alien may remain in detention if the alien . . . conspires or acts to prevent the alien's removal." 8 C.F.R. § 241.4(g)(5)(i).

Pursuant to those same regulations, ICE issued Khalid Notice of Failure to Comply (Ligon Decl. ¶ 6, Ex. 2.) *See* 8 C.F.R. § 241.4(g)(5)(iii). ICE also reissued Form G166C on the same day Khalid refused to board his scheduled flight. (*Id.* ¶ 5, Ex. 1) That notice expressly advises Khalid that his failure to cooperate provides for the extension of the removal period. *Id.* (citing INA Section 241(a)(1)(C), codified at 8 U.S.C.§ 1231(a)(1)(C)); see also 8 C.F.R.§ 241.4(g)(5)(iii).[1]

Courts reject *Zadvydas* challenges in circumstances where Petitioners are frustrating their own removal. *See, e.g., Kanteh v. Ridge,* No. CIV. 05-313 (DWF/AJB), 2005 WL 1719217, at *3 (D. Minn. June 30, 2005) report and recommendation adopted, No. CIV. 05-313 (DWF/AJB), 2005 WL 1705526 (D. Minn. July 19, 2005) ("Under these circumstances petitioner's continued detention is essentially a consequence of his own conduct."). Failure to cooperate fully with officials in obtaining travel documents is one type of non-compliance that has been addressed in these cases. *See, e.g., id.; see also*

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[1] The DHS regulations set forth in 8 C.F.R. § 241.3 and 241.13 are reasonable interpretations of the INA, do not conflict with the INA, and implement appropriate procedural requirements regarding the post-order custody review process. As such, they should be afforded deference. *See Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Serv.*, 545 U.S. 967, 980 (2005) ("If a statute is ambiguous, and if the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation."); *Hernandez-Carrera v. Carlson*, 547 F.3d 1237, 1256 (10th Cir. 2008), *cert. denied*, 558 U.S. 1092 (Dec. 14, 2009) (affording *Chevron* deference to 8 C.F.R. § 241.14). *But see Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008); *Tuan Thai v. Ashcroft*, 366 F.3d 790 (9th Cir. 2004).

Pelich v. INS, 329 F.3d 1057, 1060-61 (9th Cir. 2003); *Lema v. I.N.S.*, 341 F.3d 853, 856-57 (9th Cir. 2003).

In *Kanteh*, Judge Boylan held that an alien who fails to comply with his affirmative obligation to obtain travel documents from the pertinent foreign embassy cannot carry his burden of demonstrating no likelihood of removal in the reasonably foreseeable future. 2005 WL 1719217, at *3-*4. In *Pelich*, the court held that a "detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock." 329 F.3d at 1060.

Similarly, Judge Magnuson, adopting a Report and Recommendation from Magistrate Judge Keyes, denied a habeas petition after a nearly two-year detention period based upon the petitioner's failure to cooperate in his removal. *Moses v. Lynch*, No. 15-CV-4168 (PAM/JJK), 2016 WL 2636352, at *1 (D. Minn. Apr. 12, 2016), *report and recommendation* adopted, No. 15CV4168 (PAM/JJK), 2016 WL 2596020 (D. Minn. May 5, 2016). The Petitioner in *Moses* had a travel document issued but became belligerent at the airport when ICE attempted to remove him. The Court reasoned that the petitioner could not meet his burden to show custody in violation of *Zadvydas* because the delay in his removal was due to his own obstruction. As one court stated, "It is well established that *Zadvydas* does not apply where a detainee who holds the keys to his freedom thwarts his removal by lying or refusing to cooperate with ICE." *Akinsehinwa v. Donate*, No. 1:CV-08-00395, 2008 WL 2951072, at *4 (M.D. Pa. July 30, 2008); *see also Akande v. Horgan*, No. CIV.A. 11-11913-NMG, 2012 WL 1207217, at *2 (D. Mass. Apr. 9, 2012), *aff'd* (Jan. 22, 2013).

Khalid cannot refuse to comply with his removal and at the same time complain that his detention is prolonged. He provides no reason for this Court to conclude that he will not be removed in the reasonably foreseeable future that do not result directly from his refusal to comply with his removal. (*See* ECF. No. 8.) Khalid brings forward no additional facts to suggest that he is not entitled to a new Pakistani travel document, that the government of Pakistan is no longer functioning, such that a travel document could not issue. (ECF No. 8.) ICE has established that Khalid's obstruction is the reason for the delay. (Second Ligon Decl. ¶¶ 5-7, Exs. 1-2.)

2. There is a Significant Likelihood that Petitioner will be Removed in the Reasonably Foreseeable Future.

Even if Khalid had met his burden, which he has not, ICE has solidly rebutted any such showing. The two Ligon Declarations lay out in detail ICE's current basis for detaining Khalid (his non-compliance) and the ongoing nature of the process towards his removal. (*See* ECF No. 9, Second Ligon Decl. ¶ 7.) The record reflects that after Khalid refused to board the plane while awaiting the outcome of his post-conviction litigation. ICE has made progress towards removing him. Accordingly, due to ICE's ongoing efforts, Petitioner's removal is substantially likely to occur in the reasonably foreseeable future. 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. (*See* Ligon Decl., ECF No. 9, ¶¶ 32-44, Exs. 2-5; Second Ligon Decl. ¶ 7.)

Given the above, Khalid's continued detention satisfies constitutional due process as explained in *Zadvydas*. Khalid is not being detained indefinitely; ICE has shown that he will be removed shortly. Accordingly, the Petition for Writ of Habeas Corpus should be denied.

CONCLUSION

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

Dated: July 11, 2025

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