

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Nadeem K.,<sup>1</sup>

Case No. 25-cv-2183 (NEB/DLM)

Petitioner,

v.

**REPORT AND  
RECOMMENDATION**

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.

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This matter is before the Court on Petitioner Nadeem K.’s Petition for Writ of Habeas Corpus, which was filed on May 21, 2025. (Doc. 1.) Petitioner asserts that his detention after a final order of removal has been unconstitutionally extended, because there is not a significant likelihood of his removal in the reasonably foreseeable future. (*See generally id.*) Respondents, in their June 12, 2025 filing, asserted that Petitioner’s removal was reasonably foreseeable and that his “removal to Pakistan is scheduled to occur later this month [that is, June].” (Doc. 8 at 1.)

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<sup>1</sup> This District has adopted a policy of using only the first name and last initial of any nongovernmental parties in immigration cases.

In the time since Respondents' June 12, 2025 response, they have consistently maintained that Petitioner's removal was reasonably foreseeable, if not imminent. (*See, e.g.*, Docs. 20 at 2-3 (August 8, 2025 Declaration indicating Petitioner's removal was reasonably foreseeable); 22 at 2-3 (September 22, 2025 Declaration indicating same); 27 at 2-3 (October 7, 2025 Declaration indicating same); 31 at 2-3 (October 15, 2025 Declaration indicating same).) Despite these many assurances of imminent removal to his home country of Pakistan, Petitioner has now been detained in the United States for approximately 15 months. During that time, there have been no less than five failed attempts at removal—each of which occurred after an assurance from Respondents that there was a significant likelihood of Petitioner's removal in the reasonably foreseeable future.

The Court cannot agree with Respondents' assertion. Petitioner has been detained for far longer than the presumptively-constitutional period identified in *Zadvydas v. Davis*, 533 U.S. 678 (2001). And as further explained below, the government's continued assertion that Petitioner will soon be removed is not entitled to credence when tested against the actual circumstances of Petitioner's case. Put simply, removal cannot be endlessly "reasonably foreseeable." Even excluding the period of time for which Petitioner may have been responsible for one failed removal attempt, his continued detention at this point violates constitutional due process guarantees. As such, the Court respectfully recommends granting the Petition for a Writ of Habeas Corpus.

## BACKGROUND

Petitioner is a native of Pakistan subject to a final order of removal. (Doc. 1 ¶¶ 8, 14, 16.) He has been detained in the custody of Immigration and Customs Enforcement (“ICE”) since July 8, 2024. (Doc. 1. ¶ 1.) He suffers from significant, serious health problems that seem to have worsened while in custody. (Doc. 1 ¶¶ 17, 21; Doc. 1-7; Doc. 1-14; Doc. 1-15; Doc. 20; Doc. 22; Doc. 31.)

On September 30, 2024, ICE conducted a custody review of Petitioner consistent with 8 U.S.C. § 1231 and 8 C.F.R. § 241.4. (Doc. 1-9.) This review resulted in a decision to continue Petitioner’s detention. (*Id.*) Among other reasons supporting the decision to continue detention, ICE indicated Petitioner’s removal was “likely to occur in the reasonably foreseeable future.” (*Id.* at 1.)

Despite the assurance that Petitioner was likely to be removed in the reasonably foreseeable future, he was not. Fall turned to winter, and Petitioner was still here, and still in custody. On January 23, 2025, ICE conducted another custody review of Petitioner. (Doc. 1-10.) Again, ICE determined Petitioner should remain in custody, (again) asserting that there was a “significant likelihood that [Petitioner’s] removal will occur in the reasonably foreseeable future.” (*Id.* at 1.)

When ICE officials were certifying in September of 2024, and again in January of 2025, that Petitioner was likely to be removed in the foreseeable future, Petitioner had none of the travel documents necessary for removal. (Doc. 1 ¶ 18.) Petitioner had applied for a Pakistani passport on July 18, 2024, but by early March of 2025 it still had not arrived. (Doc. 1-7; Doc. 1-8; Doc. 9 ¶¶ 38-40.)

Finally, on March 25, 2025, ICE received Petitioner's Pakistani travel documents. (Doc. 9 ¶ 40.) ICE attempted to remove Petitioner to Pakistan on May 5, 2025. (Doc. 9 ¶ 41.) However, due to international conflicts, the flight was apparently stopped in Abu Dhabi, and Petitioner returned to custody in the United States. (Doc. 1-13 ¶ 9.)

Upon Petitioner's return to the United States, ICE again requested travel documents for him. (Doc. 9 ¶ 42.) Again, ICE received travel documents, this time good through July 15, 2025. (Doc. 9 ¶ 43.) And again, ICE officials asserted that there was a significant likelihood that Petitioner would be removed "in the reasonably foreseeable future." (Doc. 9 ¶ 44.)

On June 23, 2025, Petitioner was scheduled to be removed to Pakistan. (Doc. 13 ¶ 4.) He missed the flight. (Doc. 13 ¶ 5, Doc. 16-1 ¶ 2.) The parties dispute why this happened. Respondents blame Petitioner for intentionally delaying the process and expressing an unwillingness to travel. (Doc. 13, Doc. 13-1.) Petitioner admits he asked a few questions about his journey, but asserts there was not enough time for him to make the flight in any event because they were so late to start with. (Doc. 16-1 ¶¶ 2, 8-9.) Regardless, according to Petitioner, he was scheduled to stage for removal once again on a July 12, 2025 flight, but ultimately he was not taken on the flight. (Doc. 16-1 ¶ 12.) Again, Petitioner's travel documents expired and he remained in custody in the United States. And again, ICE officials swore that there was a significant likelihood that Petitioner would be removed "in the reasonably foreseeable future." (Doc. 13 ¶ 7.)

On July 29, 2025 ICE received new travel documents for Petitioner. (Doc. 20 ¶ 6.) Petitioner was scheduled to depart for Pakistan on a charter flight on July 30, 2025. (Doc.

20 ¶ 5.) He did not depart, however. Rather, Petitioner was hospitalized on July 31 and again on August 2, 2025. (Doc. 20 ¶ 7.) There is no evidence, however, that Petitioner's failure to leave on July 30, 2025 was related to his subsequent hospitalization. At the October 9, 2025 Show Cause Hearing, Respondent was invited to supplement the record to include any newly-discovered information about why Petitioner did not fly to Pakistan on July 30, 2025. Respondent has since filed a supplemental declaration, but it did not include any new information on this issue. (Doc. 31.)

After not being removed on July 30, 2025, Petitioner was transferred to a number of ICE offices within the United States within a few days—first from Phoenix to Harlingen (Texas), then from Harlingen back to St. Paul. Petitioner's travel documents were set to expire on September 23, 2025, and ICE indicated it was planning to remove Petitioner before that date. (Doc. 20 ¶¶ 6, 10.) Again, ICE officials swore that there was a significant likelihood that Petitioner would be removed “in the reasonably foreseeable future.” (Doc. 20 ¶ 11.)

Based on the assurance of Petitioner's imminent removal, the Court issued an Order on August 15, 2025 holding this matter in abeyance until after the September 23, 2025 expiration of Petitioner's travel documents. (Doc. 21.) The Court further directed Respondents to keep the Court apprised of Petitioner's status. (*Id.*)

On September 22, 2025, Respondent submitted a declaration indicating Petitioner would not be removed by September 23, 2025. (Doc. 22.) The parties agree that there was yet another flight set for Petitioner's removal on September 2, 2025, and that Petitioner was required to travel to Arizona to stage for this flight. (Doc. 22 ¶¶ 4-5; Doc. 23 ¶ 3.) The

parties also agree that Petitioner missed this flight, too. (*Id.*) Petitioner credibly asserts that he was taken to the flight staging facility, brought onto the plane, and subsequently removed from the plane because it was overbooked. (Doc. 23 ¶ 4.) As of September 22, 2025, ICE officials had requested (but not received) new travel documents for Petitioner. (Doc. 22 ¶ 7.) Despite a growing record of failed removals and the absence of any travel documents at the time the declaration was written, an ICE official nonetheless again swore that there was a significant likelihood of Petitioner's removal "in the reasonably foreseeable future." (Doc. 22 ¶ 10.)

At this point, the Court set a Show Cause Hearing for October 9, 2025. (Doc. 24.) In a status conference preceding that hearing, the Court informed the parties that they may, but were not required to, provide live witness testimony so long as they filed Notices of Intent to Call Witnesses. (Doc. 26.) Absent witness testimony, the Court invited updated declarations. (*Id.*)

On October 7, 2025, Respondents filed a Notice of Intent not to Call Witnesses, as well as a supplemental declaration. (Docs. 27, 28.) The supplemental declaration indicated that ICE had requested updated travel documents for Petitioner, but that as of October 6, 2025 those documents had not been received. (Doc. 27 ¶¶ 4, 6.) Despite not having travel documents, ICE indicated that it was in the midst of scheduling Petitioner's removal, which, again, it believed was likely to occur "in the reasonably foreseeable future." (Doc. 27 ¶ 8.)

The Court heard argument on this matter on October 9, 2025. (Doc. 29.) The parties submitted no new evidence, save for a proffer that Petitioner still remained in the United

States. The Court set a schedule for additional submissions (*id.*), which have now been received. Respondents assert that they have received new travel documents for Petitioner, and that his removal is expected in October of 2025. (Doc. 31 ¶¶ 8-9.) Again, ICE officials swear that, as of October 15, 2025, there is a significant likelihood Petitioner will be removed “in the reasonably foreseeable future.” (Doc. 31 ¶ 10.) The Court issued an order directing the parties to promptly provide updates about Petitioner’s status. (Doc. 32.) As of this writing, no updates have been received.

### ANALYSIS

Federal courts have jurisdiction to order the release of a person who is unconstitutionally detained. 28 U.S.C. § 2241(c)(3). The “primary federal habeas corpus statute” is the appropriate vehicle for noncitizens to challenge the legality of their immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001). Petitioner has properly presented his matter via habeas petition, and as such the Court turns to the merits of his claim of unlawful detention.

The Supreme Court’s seminal decision in *Zadvydas* established the contours and framework for a circumstance like Petitioner’s—where there is no question about the legality of removal, but a challenge to the length of detention pending that removal. Immigration proceedings are assumed “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690. For this reason, an “indefinite detention of a [noncitizen] would raise a serious constitutional problem.” *Id.* To address this concern, the Court concluded that administrative detention of a noncitizen was permissible so long as the person’s removal was “reasonably foreseeable.” *Id.* at 699-700. Recognizing the amorphous nature of that

phrase, the *Zadvydas* Court set certain parameters: detention for six months or less is presumed reasonable; after that period, if a person “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.* at 701.<sup>2</sup> “[A]s the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Id.*<sup>3</sup>

Petitioner has met his initial burden under *Zadvydas*. He has been detained for about 15 months—more than double the presumptively-reasonable term identified in *Zadvydas*. While Respondents assert that a person must show something more than the mere passage of time, Petitioner has clearly done so: time and again, the government has promised that removal was imminent. Yet, despite these assurances—often made under oath—Petitioner remains in the United States, detained. Many times, Petitioner has been scheduled to leave, and each time he has not been removed. Repeated statements that Petitioner is likely to be removed in the “reasonably foreseeable future” cannot be credited when tested against the record of this matter, which shows Petitioner has consistently *not* been removed despite several failed attempts. Respondents’ inaccurate statements of foreseeability are inconsistent with *Zadvydas* and sufficient to meet Petitioner’s burden. *Accord Bah v. Cangemi*, 489 F. Supp. 2d 905, 922-23 (D. Minn. 2007).

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<sup>2</sup> A person’s removal period starts once there is a removal order is “administratively final.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 534 (2021). Here, Respondents concede that occurred before Petitioner’s detention began. (*See* Doc. 8 at 2-3; *accord* Doc. 9 ¶¶ 7-29.)

<sup>3</sup> Regulations have been issued in the wake of *Zadvydas* consistent with its principles. *See, e.g.*, 8 C.F.R. §§ 241.4, 241.13, & 241.14. The question of the validity of Petitioner’s continued detention, however, is a constitutional one.

Respondents assert that it is Petitioner who is actually responsible for his continued detention, because it was his fault that he missed the June 23, 2025 flight. It is true that a person's removal period may be extended where a person acts to prevent their own removal. 18 U.S.C. § 1231(a)(1)(C); *Williams v. Sessions*, No. 18-cv-2633 (DSD/SER), 2019 WL 234350, at \*4 (D. Minn. Jan. 16, 2019). It is also true that there is at least some evidence (albeit not conclusive) that Petitioner delayed his trip to the airport on June 23, 2025 so long that he bears responsibility for missing this flight. But even accepting that proposition, that does greenlight prospective, indefinite detention. Rather, the Court should properly exclude from consideration the period of time between the date of Petitioner's missed flight and the next travel attempt, since that represents the *actual* period of delay attributable to Petitioner. Here, that is the time between Petitioner missed his June 23, 2025 flight and, at most, his next-scheduled departure on July 31, 2025. Excluding these five weeks, it remains the case that Petitioner has now been detained without removal for well over a year.

Respondents also correctly note that cases in this District have identified five general circumstances where courts have found there was no significant likelihood of removal: (1) where a person is stateless and will not be accepted by another country; (2) where the person's country of origin will not issue travel documents; (3) where there is no repatriation agreement; (4) where political conditions in the country of origin make it "virtually impossible" to return the person; and (5) where the delay in getting travel documents is so long that it seems they will never issue. *Ahmed v. Brott*, No. 14-cv-5000 (DSD/BRT); 2015 WL 154131 at \*4 (D. Minn. Mar. 17, 2015), *report and*

*recommendation adopted*, 2015 WL 1542155 (D. Minn. Apr. 7, 2015); *see also Deqa M.Y. v. Barr*, No. 20-cv-1091 (ECT/DTS), 2020 WL 4926618 (D. Minn. Aug. 21, 2020) (same). Because none of the above circumstances are present here, say Respondents, this Court cannot grant Petitioner relief. The Court respectfully declines Respondents' invitation to find that a survey of circumstances where courts *have* found no significant likelihood of removal is a proscription on the grounds for which courts *may* find no significant likelihood of removal. To hold otherwise would be inconsistent with *Zadvydas* itself, which set forth a protocol for courts' determinations of reasonable foreseeability but left the substance of those determinations to the lower courts. *See Zadvydas*, 533 U.S. at 699-702.

Finally, it is true that sometimes the "existence of travel documents" and a scheduled date for removal can support a finding that Petitioner "will be removed from the United States in the reasonably foreseeable future." *Berchie v. Bondi*, No. 25-cv-3197 (KMM/SGE), 2025 WL 2753393, at \*2 (D. Minn. Sept. 29, 2025). It does not here. Respondents have scheduled Petitioner for removal several times, often with travel documents in hand. But none of those scheduled trips actually resulted in Petitioner's removal. Meanwhile, Petitioner's travel documents have regularly expired, requiring resubmission and reprourement. Here, the existence of valid travel documents and scheduled travel has resulted in a chaotic series of operational fits and starts, including trips to different staging facilities and aborted overseas flights, affecting Petitioner's health. But having valid travel documents and scheduled flights have not served their primary purpose of effecting Petitioner's removal. To determine whether Petitioner's removal is reasonably foreseeable, the Court must account for the actions of the Respondents, not just their

statements. While Respondents tell the Court Petitioner's removal is reasonably foreseeable, the evidentiary record before the Court indicates otherwise.

### **RECOMMENDATION**

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS RECOMMENDED THAT** Petitioner Nadeem K.'s petition for habeas corpus relief under 28 U.S.C. § 2241 (Doc. 1) be **GRANTED** subject to appropriate conditions as set forth in 8 C.F.R. § 241.5 or otherwise applicable.

Dated: October 24, 2025

*s/Douglas L. Micko*  
DOUGLAS L. MICKO  
United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).