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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Seyidxan Salih,

Petitioner,

vs.

David Rivas, Warden, et al.,

Respondents.

No. 2:25-cv-2096-PHX-SMB (MTM)

**Reply in Support of Motion for Leave to
Conduct Limited Discovery**

Petitioner Seyidxan Salih now replies to the government's response to his motion for leave to conduct limited discovery. Mr. Salih is aware that the government has also responded to his petition for a writ of habeas corpus and his motion for a preliminary injunction. (Dkt. #16) Because what Mr. Salih might say in reply to the government's response to those two filings depends on whether this Court will allow him to conduct discovery, Mr. Salih is filing simultaneously with this document a contingent motion for an extension of time to reply in support of those two filings. Furthermore, based on the assertions in the declaration of Marcus Vera, a deportation officer at the Otay Mesa Detention Center in San Diego, California, Mr. Salih is filing with this document an amended discovery motion.

Mr. Salih was born in Syria in 1984. He is an ethnic Kurd who came to the United States as refugees with his family in 2003, and settled in the San Diego area. He contends that his detention in immigration custody following a decision in 2024 to revoke a release order may potentially last indefinitely, because he cannot be removed to Syria. *See Zadvydas v. Davis*, 533

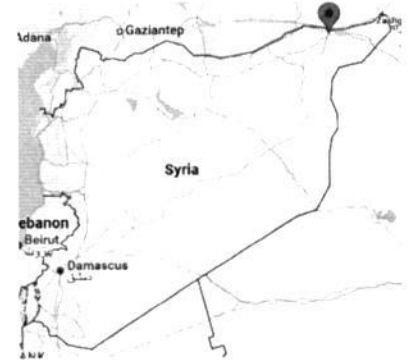
U.S. 678 (2001) (holding that the Due Process Clause forbids indefinite detention in immigration custody). The government's response to this contention and related discovery request is straightforward. Because it has succeeded in removing 41 other individuals to Syria in calendar year 2025, it will succeed in its effort to obtain travel documents that will facilitate Mr. Salih's return to Syria as well. As a result, there is no need to order discovery. (Dkt. #16 at 10)

The government's rejoinder to Mr. Salih's petition and related discovery request suffers from two factual flaws. In support of its response to Mr. Salih's petition and related filings, the government submitted the declaration of Marcus Vera, a deportation officer assigned to the Otay Mesa Detention Center in San Diego, California. (Dkt. #16-1) Based on the modern history of the Syrian government's treatment of the Kurdish population in that country, Mr. Salih posits that he may in fact be stateless, and that the Syrian government as a result may not accept him if the U.S. government should attempt to return him to Syria. But Mr. Vera does not address this supposition in any meaningful manner, and thus neither does the government's response to the petition and discovery motion.

Based on a 1996 Human Rights Watch report and a 2002 State Department report, Mr. Salih posited in his petition that his parents were stripped of their Syrian citizenship in the 1962 census, and that as a result he lacks Syrian citizenship as well. He and his family may have been issued distinctive identity documents that relegate them to second-class status in Syrian society, rather than a Syrian passport that would confirm their citizenship. (Dkt. #1 at 3-4 ¶¶ 10a-10c) He and his family were granted asylum in the United States on account of the persecution they faced in Syria because of their Kurdish ethnicity. (Dkt. #1 at 4-5 ¶¶ 11-12) The government dismisses this history out of hand, complaining that "these reports provide no particularized or concrete information to indicate that the Syrian government does not recognize [Mr. Salih] as a citizen or that he could not be successfully removed there." (Dkt. #16 at 7) This complaint is not well taken.

The government confirmed that Mr. Salih was born in Qamishli, Syria, in 1984. (Dkt. #16 at 2; Dkt. #16-1 at 3 ¶ 6)

This map shows the location of Qamishli (the pin) within the country of Syria. (It was copied from Google Maps, and is thus a proper subject of judicial notice. *See United States v. Brown*, 636 F. Supp. 2d 1116, 1124 n.1 (D. Nev. 2009).) Qamishli is in the



northeastern region of Syria that is predominately occupied by the Kurdish people. (See Dkt. #1 at 3 n.3) The history on which Mr. Salih relied in his petition to support the supposition that he and his family may be stateless, or otherwise occupy some second-class status in Syrian society, gives rise to “reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is entitled to relief.” *Bracy v. Gramley*, 520 U.S. 899, 908–09 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)) (cleaned up). And owing to his detainee status, Mr. Salih does not have in his possession the documents necessary to confirm that his particular situation is consistent with the history documented by both Human Rights Watch, a well-respected nongovernmental organization, and the U.S. State Department itself. But the government does. The government’s raw information can confirm or refute a key supposition on which Mr. Salih’s petition rests—that he and his family are stateless Kurds whom the Syrian government does not recognize as citizens.

Another key fact on which Mr. Salih’s petition rests is that the Syrian government does not have a diplomatic presence in the United States, such that (Mr. Salih alleges) it is impossible to request travel documents from an embassy or consulate of that government. (Dkt. #1 at 5–7 ¶¶ 16–17) Mr. Vera explained that on August 27, 2024, Mr. Salih was released from immigration detention in Florence, Arizona, on an order of supervision. (Dkt. #16-1 at 4 ¶¶ 20–24) This release presumably rested on the fact that there was then, in the government’s estimation, no significant likelihood of removal in the reasonably foreseeable future. Mr. Vera says nothing to undermine this presumption. Rather, he says that on January 27, 2025, four months to the day after Mr. Salih was released from custody, ICE changed course and determined that there *was* a

significant likelihood of removal in the reasonably foreseeable future. Mr. Vera says that this is because “the government of Syria is issuing travel documents for Syrian nationals.” (Dkt. #16-1 at 4 ¶ 25) Mr. Vera does *not* say that Syria re-established a diplomatic presence in the United States. Nor does he say anything to explain what changed in those four months about ICE’s ability to obtain travel documents for Mr. Salih. But there is a natural explanation for the decision to take Mr. Salih into custody on January 27. One week earlier, President Trump directed the Secretary of Homeland Security to take steps to “ensur[e] the successful enforcement of final orders of removal.” Executive Order No. 14159, § 4, 90 Fed. Reg. 8443, 8444 (Jan. 29, 2025). Mr. Vera’s assertions could merely reflect this change in enforcement priority, which in turn might have involved a reassessment of the government’s detention practices in a manner that ignores the dictates of *Zadvydas*.

Indeed, Mr. Vera says nothing to indicate that ICE has attempted to obtain travel documents in a manner that, against the backdrop of the allegations in Mr. Salih’s petition, are reasonably calculated to succeed. Notably, Mr. Vera describes communications with “the Syrian government” in support of this endeavor. (Dkt. #16-1 at 5 ¶¶ 28, 31) But here again, Mr. Vera overlooks Mr. Salih’s assertion that the Syrian government has no diplomatic presence in the United States. Which Syrian officials, exactly, have ICE and the State Department been communicating with?

Furthermore, rather than explain specifically what actions have been taken to obtain valid travel documents for Mr. Salih, Mr. Vera glosses over obvious gaps in his account of ICE’s efforts here. Mr. Vera says that “ERO [ICE’s unit for Enforcement and Removal Operations] was advised by the Department of State that Salih’s identity was verified by the Syrian government.” (Dkt. #16-1 at 5 ¶ 28) Mr. Vera does not say that Mr. Salih’s Syrian *citizenship* was confirmed by the Syrian government. And if, as Mr. Salih has pointed out, he is a member of an ethnic minority to whom the Syrian government does not issue passports, but rather distinctive identity documents that denote his second-class status (Dkt. #1 at 3 ¶ 10a), confirming Mr. Salih’s *identity* is all the Syrian government could possibly do.

Mr. Vera also says that in his “experience” there is a “significant likelihood we will obtain Salih’s travel documents to Syria.” (Dkt. #16-1 at 5 ¶ 33) But nothing in his declaration explains how his “experience” taught him that this is so. He has been a “law enforcement officer” with ICE for less than a year and a half (Dkt. #16-1 at 2 ¶ 2), during most of which time ICE had determined that there was no significant likelihood of removing Mr. Salih to Syria in the reasonably foreseeable future. Mr. Vera conspicuously does not say that he has personally been involved in the removal of 41 “individuals” to Syria in 2025; he says only that “the United States” has done this. (Dkt. #16-1 at 5 ¶ 34) Moreover, he does not say whether any of these 41 individuals are Syrian citizens. The current administration’s desire to remove people to third countries—notably including El Salvador, Libya, and South Sudan—is well documented. *See, e.g., DHS v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting) (describing an “internal guidance document” issued by DHS on February 18, 2025, that directed “immigration officers to review for removal all cases on the non-detained docket and determine the viability of removal to a third country”).

The government complains that Mr. Salih’s discovery request arises from “mere speculation” and “pure hypothesis.” (Dkt. #16 at 10 (quoting *Arthur v. Allen*, 459 F.3d 1310, 1311 (11th Cir. 2006))) But Mr. Salih and his counsel have by necessity had to draw on inferences from Mr. Salih’s own memory about the events of his own life in order to prepare his petition and supporting documents. As Mr. Salih pointed out, by virtue of his status as a detainee, he does not have any documentation necessary to support the assertions in his petition. (Dkt. #4 at 2) The government, for its part, has this documentation in its sole and exclusive possession. Mr. Salih’s discovery request accordingly is “narrowly tailored to the *Zadvydas* inquiry.” Order at 3, *Ishmuratov v. Rivas*, No. 2:25-cv-1366-PHX-JAT (ESW) (D. Ariz. Jun. 5, 2025) (Dkt. #31) (citing *Batyuchenko v. Reno*, 56 F. Supp. 2d 1163, 1164 (W.D. Wash. 1999)). Mr. Vera says that there is a “significant likelihood” that the government will obtain travel documents for Mr. Salih. (Dkt. #16-1 at 5 ¶ 33) If the government has information in its sole and exclusive possession that bears on the validity of this expectation, Mr. Salih should be allowed to see it. If the government has

other information in its possession that was relevant to Mr. Vera as he put together his declaration, Mr. Salih should be allowed to review it. And if there is additional information in the government's possession that bears on Mr. Salih's claim or the accuracy of Mr. Vera's declaration, this Court should order the government to produce it.

One final note about the amended discovery motion. In his declaration, Mr. Vera explains that the "United States has removed 41 individuals to Syria in 2025." (Dkt. #16-1 at 5 ¶ 34) Mr. Vera does not explain how that fact alone has any bearing on whether there is a significant likelihood that *Mr. Salih* will be removed to Syria in the reasonably foreseeable future. Because the government has nevertheless made these 41 cases relevant to the success or failure of Mr. Salih's *Zadvydas* case, this Court should order the government to produce the same information about each of these 41 individuals that it orders the government to produce about Mr. Salih.

Respectfully submitted:

July 9, 2025.

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