

"In The United States District Court"
For The District of Kansas

Mohammad Shekib Esahagzada.
Petitioner.

V.

Pamela Bondi, Attorney General;
Kristi Noem, DHS Secy.;
Samuel Olson, ICE Field Office Dir.;
and
Crystal Carter, Warden, FCI
Leavenworth.

Respondents,

FILED

SEP 04 2025

Clerk, U.S. District Court
By: [Signature] Deputy Clerk

Case No. 25-3145-JWL

In response to ICE Opposition
"Reply"

ICE has not satisfied its burden of showing that Petitioner is significantly likely to be removed in the reasonably foreseeable future. Already, Petitioner has been detained for over

9 months. This period of detention exceeds the six-month presumptively reasonable period of detention authorized by *Zadvydas*, *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Although ICE states that it has made a request for travel documents from the United Kingdom and Australia, the fact is that no travel documents have been issued to date. Because this country has not issued travel documents, and there is no evidence when, if ever, travel documents will be issued, ICE has not satisfied its burden and petitioner must be released. See *Shefget v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290, *5 (N.D. Ill. Apr. 28, 2003) (INS failed to carry burden of proof where no travel documents had been issued, Yugoslavian alien had been detained for 17 months, and INS had been able to remove other aliens to Yugoslavia during that period); *Okwilagwe v. INS*, No. 3-01-CV-1416-BD, 2002 WL 356758, *2-3 (N.D. Tex. Mar. 1, 2002) (INS failed to sustain its burden of showing alien's removal to Nigeria would occur in reasonably foreseeable future where alien detained for 11 months, travel documents not issued and no certainty as to when they might be issued); See also *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 53 (D.D.C. 2002) (finding that Respondents failed to meet their burden of proof under *Zadvydas* where they have not demonstrated to this Court that any travel documents are in hand, nor have they provided any evidence, or even assurances from the Liberian government, that travel documents will be issued in a matter of days or weeks or even months).

In 2001, The Supreme Court stated in the *Zadvydas* case that non-citizens that have a final order of removal can't be detained for an "Indefinite" time frame. The Petitioner should not remain in an indefinite detention if no other country is willing to accept him. Until today, the Petitioner still has been unable to get removed from the United States. The Petitioner has been in a continue detention for over 9 months after his final order of removal.

ICE has failed to demonstrate clear and convincing evidence that the Petitioner will be removed in the reasonable foreseeable future. ICE has also failed to demonstrate that "special Circumstances" exist that justify the petitioner's indefinite detention.

The fact that the Petitioner has a "Expedited Order of Removal" does not justify the Petitioner's indefinite detention. ICE has recognized that the Petitioner's removal has been "Unsuccessful" based on the statement by deportation officer Sydney Milum. The Petitioner custody breaks the laws of the Constitution. The Petitioner should not be deprived from his right to freedom each time ICE is unable to complete his removal. Also, 9 months have passed since his final order of removal, so the "reasonable 180 days" needed to remove the Petitioner have been exceeded.

The removal of the Petitioner to a "third country" is not impossible, the Petitioner did not claim it was impossible, but it has been demonstrated in a clear and convincing way that this "possible" deportation will not happen in the "Reasonable Foreseeable future".

The Petitioner does not oppose to being removed to a "Third Country". The Petitioner has cooperated on multiple occasions with ICE to be removed, but ICE has failed to remove him. The Petitioner has the right to be released from ICE custody, the "Expedited Order of removal" should not exclude the Petitioner's right to freedom. The Petitioner's indefinite detention is unconstitutional under the Fifth Amendment of the Constitution of the United States.

Under INA *235(b)(1)(B)(iv) the Petitioner has remained in mandatory detention each time the Petitioner was unable to demonstrate a credible fear of persecution, but the "Indefinite Detention" of the Petitioner violates the detention's statute because even though the detention is mandatory, this does not mean that the detention should be "Indefinite". ICE has had enough time to remove the Petitioner but has failed to do so. ICE has also failed to demonstrate or present clear and convincing evidence to support the claim that the Petitioner's removal is imminent or in the "near future".

In conclusion, the Petitioner respectfully request this Court to Grant this "Habeas Corpus 28 U.S.C. *2241" petition and order the Respondent's to immediately release the Petitioner from ICE Custody.

09/01/2025, FCI Leavenworth.

Signature: 

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