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12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 R  K ,

16 *Petitioner,*
17

18 vs.

19 JEREMY CASEY, in his official capacity
20 as Warden of the Imperial Regional
21 Detention Facility; et al.

22 *Respondents.*
23
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25
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27
28

Case No.: 3:25-cv-01926-DMS-DEB

PETITIONER 
 S REPLY IN SUPPORT
OF PETITION FOR WRIT OF
HABEAS CORPUS

Judicial Officer: Hon. Dana M. Sabraw
Courtroom number: 13A
Hearing Date/Time: N/A

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1 **I. Introduction**

2 Respondents' Factual Return contains almost no facts and nothing to justify
3 the detention of a man for nearly three months without charge, trial, or clear path to
4 release. Under *Zadvydas v. Davis*, detention is lawful only if the government carries
5 its burden of showing that removal is reasonably foreseeable. Attempting to carry
6 this burden, Respondents offer this Court vague speculations and recycled headlines.
7 Yet they have given this Court nothing to rebut what is obvious: Petitioner [REDACTED]
8 [REDACTED]'s removal from the United States is no more foreseeable today than it was
9 seventeen years ago.

10 When this Court heard oral argument on Mr. [REDACTED]'s detention a month-and
11 a-half ago, (1) Respondents had taken no concrete steps toward removing Mr.
12 [REDACTED] (2) they had procured no travel documents for him, (3) they had nowhere to
13 send him, (4) they could not provide any details on when they might have
14 somewhere to send him, and (5) they offered no specifics respecting what efforts
15 they were taking to remove him. The only thing Respondents could tell the Court
16 was that, based on public news reporting, the Administration was generally seeking
17 to expand its third-country removal options.

18 Since then, as summer now turns into autumn, nothing has changed.
19 Respondents claim their efforts "remain pending." But their only support for this
20 assertion are news articles (mostly the same news articles submitted to this Court
21 back in July), which themselves confirm that the prospect of Mr. [REDACTED]'s removal
22 to anywhere at any time remains remote. The Government has not found or showed
23 progress or even efforts toward finding a third country that will take Mr. [REDACTED] nor
24 has it obtained travel documents for him. In its factual response, it provides no facts
25 (additional or otherwise) justifying continued detention—because there are none.
26 The Government, consistent with its obligations under the Convention Against
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1 Torture, is just as unable to remove Mr. [REDACTED] now as it was last month, or last
2 year, or at any time during the last two decades.

3 Meanwhile, Mr. [REDACTED]'s life and livelihood has deteriorated. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] Indeed, as Mr. [REDACTED]'s mother noted in the attached affidavit, "over
10 the years, [Mr. [REDACTED]] has become [her] daily primary caretaker," the past months
11 with him in ICE detention have "been one of the most difficult times of [her] life,"
12 and it is her hope that Mr. [REDACTED] "could be with [her] during this surgery" to
13 provide "help and comfort." *Id.* ¶¶ 2, 7, 11. What is more, Mr. [REDACTED]'s rights to
14 life, liberty, and property continue to be denied. Irreparable harm—including to
15 multiple lives—is both ongoing and growing in service of no practical purpose that
16 Respondents can identify.

17 Rather than acknowledge the lack of any factual basis or reason to continue to
18 deprive this man of his liberty, the Government takes the extraordinary position that
19 *Zadvydas* permits it to hold anyone subject to a removal order for six months, at its
20 discretion, whenever it wishes. But that is not what *Zadvydas* provides. Nor is it how
21 the Ninth Circuit interprets *Zadvydas*. And sister courts across the country have
22 rejected, over and over again, such a perverse position.

23 Respondents continue to detain Mr. [REDACTED] for detention's sake. Though this
24 Court held that Respondents enjoy a rebuttable presumption that removal is
25 foreseeable in the first months after detention, a presumption is not a guarantee.
26 Respondents have provided no factual support for this presumption, and the record
27 now overwhelmingly rebuts it. This Court has given Respondents every benefit of
28

1 the doubt. But now, the Government must be held to its burden of proof.
2 Respondents have given this Court nothing on which it could base a good faith
3 finding that Mr. [REDACTED]'s removal is likely at all—let alone in the reasonably
4 foreseeable future.

5 In recent months, courts across circuits have held detention in similar
6 circumstances unlawful and granted habeas relief. *See Escalante v. Noem*, No. 9:25-
7 CV-00182, 2025 WL 2206113 (E.D. Tex. Aug. 2, 2025); *Munoz-Saucedo v. Pittman*,
8 No. 25-2258, 2025 WL 1750346 (D.N.J. June 24, 2025); *Zavvar v. Scott*, No 25-
9 2104, 2025 WL 2592543 (D. Md. Sept. 8, 2025) (concerning an Iranian). In this case,
10 any doubt should now be dispelled: there is no likelihood—let alone the “significant”
11 likelihood that is necessary—that Mr. [REDACTED] will be removed in the reasonably
12 foreseeable future. He must therefore be released.

13 **II. The Zadvydas Presumption Does not Free Respondents from**
14 **Demonstrating that there is a Substantial Likelihood that Mr. [REDACTED]'s**
15 **Removal is Reasonably Foreseeable.**

16 In ruling on Mr. [REDACTED]'s Motion for Temporary Restraining Order and Order
17 to Show Cause Re Preliminary Injunction, this Court held that “under *Zadvydas* a
18 *rebuttable* presumption of reasonable detention applies during the first six months of
19 detention.” Order (Dkt. 27) at 7-8 (emphasis added); *see also Ali v. Dep’t of*
20 *Homeland Security*, 451 F.Supp.3d 703, 707 (S.D. Tex. 2020) (“This six-month
21 presumption is not a bright line . . . *Zadvydas* did not automatically authorize all
22 detention until it reaches constitutional limits.”).

23 Respondents nevertheless continue to press this Court to adopt a more
24 generous rule under which that presumption is un rebuttable until Mr. [REDACTED] has
25 spent six months in detention. Return (Dkt. 28) at 4–5 (“ICE’s position is that the
26 burden-shifting framework of *Zadvydas* does not commence until after the period of
27 presumptive reasonableness.”). Respondents maintain that, under this more generous
28 rule, they have no obligation to come forward with any evidence indicating that Mr.

1 s removal is reasonably foreseeable until that time. And in substance, their
2 Return offers no such evidence.

3 As an initial matter, should the Court be inclined to accept Respondents'
4 invitation to revisit how long they enjoy a presumption of any kind, this Court should
5 hold the presumption inapplicable when an individual has been re-detained after
6 *seventeen* years after a final order of removal. The animating principle of *Zadvydas*
7 is reasonableness, and the Supreme Court held detention is only authorized for "a
8 period reasonably necessary to bring about [the] alien's removal from the United
9 States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). *Zadvydas* applied a
10 presumption of reasonableness to ongoing detention in the period immediately
11 following a removal order, not re-detention after the government has determined that
12 removal is not likely in the foreseeable future. It was within that specific context, and
13 only that context, that the Supreme Court created the presumption "to grant the
14 Government appropriate leeway" in its efforts to execute removal. *Id.* at 700.

15 When Respondents have failed to remove an individual for seventeen years,
16 the underlying rationale of *Zadvydas*' presumption melts away. The potential of
17 imminent removal long ago vanished and Respondents' prioritized opportunity for
18 removal has come and gone. Hence, as other courts have recently held, "[i]mposing
19 the burden of proof on the alien each time he is re-detained would lead to an unjust
20 result and serious due process implications." *Escalante*, 2025 WL 2206113 at *3.

21 But even affording Respondents some benefit of the doubt, Respondents still
22 must come forward with *some* evidence to carry their burden of showing that Mr.
23 s removal is reasonably foreseeable. ICE's own regulations impose such a
24 burden on the Agency. *See* 8 C.F.R. § 241.13(i). Specifically, the regulation allows
25 ICE to "revoke an alien's release . . . if, on account of changed circumstances, *the*
26 *Service determines* that there is a significant likelihood [of removal in the reasonably
27 foreseeable future]." 8 C.F.R. § 241.13(i)(2) (emphasis added). By requiring the
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1 Service to make an initial determination of “changed circumstances” for re-detention,
2 the “regulations clearly indicate . . . it is the Service’s burden” to prove removal is
3 reasonably foreseeable. *Escalante*, 2025 WL 2206113, at *3; *see also Nguyen v.*
4 *Hyde*, No. 25-cv-11470, 2025 WL 1725791 at *3 n.2 (D. Mass. June 20, 2025).

5 **III. Mr. [REDACTED]’s Removal is Not Reasonably Foreseeable**

6 Mr. [REDACTED] has been detained since early July. Return (Dkt. 28) at 3. At the
7 hearing this Court held on August 6, 2025, the only progress Respondents could
8 claim toward removing Mr. [REDACTED] was the vague statement they were “actively
9 pursuing third countries for resettlement” and the affirmation to the Court they were
10 making good faith efforts in “locating a third country and obtaining travel
11 documents.” Transcript of Aug. 6, 2025 Oral Argument at 7:21–22, 8:13–17. In
12 denying the preliminary injunction in early August, this Court credited Respondents’
13 representations and afforded them time to show progress toward removing Mr.
14 [REDACTED] Order (Dkt. 27) at 8-9.

15 A month-and-a-half later, in its Return, Respondents offer this Court *nothing*
16 *more*. They do not claim to have accomplished a single step identified in early
17 August. Respondents have not identified a country to which they might foreseeably
18 send Mr. [REDACTED] nor indicated they have obtained travel documents for him. Instead,
19 they offer this Court the passive voice vagary that “local ICE Enforcement and
20 Removal Operations (ERO) confirmed with ERO HQ that efforts remain pending.”
21 Return (Dkt. 28) at 2. In other words, despite Respondents assurances to this Court,
22 *nothing* has been done and, today, *nothing* has changed.

23 Information regarding third-country removals is wholly within Respondents’
24 hands. Yet, the only evidence Respondents offered this Court then, and the only
25 evidence they offer it now, are generic news articles reporting on general, high-level
26 efforts to secure third-country cooperation to secure the removal of several dozen of
27 the thousands, if not tens of thousands, of non-citizens for which Respondents seek
28

1 third-country removal. Even taken at face value, these articles confirm Mr. [REDACTED] is
2 as unlikely to be removed from the United States in the reasonably foreseeable future
3 as he has ever been.

4 The news articles, in fact, show that Respondents are making little progress in
5 effecting third-country removals, even citing a source “[n]oting deportations to third
6 countries remain relatively limited in scale.”¹ Indeed, aside from recent asylum
7 seekers and a contingent of 200 alleged Venezuelan gang members removed to El
8 Salvador, the articles indicate only 13 removals to third countries. And they show no
9 progress in effecting third-country removals of Iranians specifically.

10 What is more, Respondents’ news articles indicate the third countries for
11 which removal *might* be possible at some indefinite future date include “war-torn
12 South Sudan, a country the State Department advises against travel to due to ‘crime,
13 kidnapping, and armed conflict,’”² and Rwanda, which is subject to a Department of
14 State travel advisory “due to the potential for armed violence.”³ This bears directly
15 on whether Mr. [REDACTED]’s removal to such countries is reasonably foreseeable
16 because even if one was willing to accept Mr. [REDACTED]—and neither evidently is—
17 Mr. [REDACTED] would still be able to seek protection from removal if his “life or
18 freedom would be threatened . . . because of [his] race, religion, nationality,
19 membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3).

20 If Respondents, for example, sought to remove Mr. [REDACTED] to a country with a
21 social or political landscape similar to the ones in Iran from which he was granted
22 CAT withholding (*e.g.*, an Islamic country which imposes severe punishments on
23

24 ¹ CBS, *U.S. broadens search for deportation agreements . . .* (Aug. 21, 2025),
<https://www.cbsnews.com/news/us-deportation-agreements-honduras-uganda/>

25 ² Associated Press, *US completes deportation of 8 men to South Sudan . . .* (July 5,
26 2025), <https://apnews.com/article/trump-south-sudan-djibouti-deport-supreme-court-50f9162cff680b5c8729873e11d514e9>

27 ³ U.S. Dep’t of State Rwanda Travel Advisory (July 16, 2025),
28 <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/rwanda-travel-advisory.html#>

1 individuals with drug convictions, or who have left the faith), Mr. [REDACTED] may not
2 be sent to those countries. *See Zavvar*, 2025 WL 2592543, at *8 (prospect of
3 administrative challenge to third-country removal weighed in favor of finding
4 removal to third country not reasonably foreseeable). Concerningly, in another case,
5 Respondent Noem admitted that Ghana “is violating the assurances it provided to the
6 United States” that removed non-citizens would not be sent to countries where they
7 would likely be tortured. *D.A. v. Noem*, 25-cv-3135, 2025 WL 2646888, *2 (D.D.C.
8 Sept. 15, 2025). Judge Chutkan expressed “alarm[] and dismay[]” at “the
9 circumstances under which these removals are being carried out, especially in light
10 of the government’s cavalier acceptance of Plaintiffs’ ultimate transfer to countries
11 where they face torture and prosecution.” *Id.* at *8. Thus, even if Respondents could
12 identify a third country which would take Mr. [REDACTED] (which they have not),
13 removal may still not be reasonably foreseeable because these third-country
14 agreements “may have been designed to evade [Respondents’] obligations” under the
15 Convention Against Torture. *Ibid.*

16 The most troubling aspect of Respondents brief Return, however, is not just
17 that it is substance-less. It is that Respondents do not even attempt to answer the
18 questions this Court has posed. For instance, this Court asked about statistics,
19 particularly after Respondents’ field agent informed Mr. [REDACTED] that the odds of his
20 removal were less than one-in-five. Tr. of Aug. 6, 2025 Oral Argument at 8:18-23 (to
21 Respondents’ counsel: “What about the argument that . . . Officer Gonzalez made a
22 statement to Mr. [REDACTED] that ‘There’s a 20 percent chance we’ll find a third
23 country’? How does that factor in . . .”), 17:19-20 (to Petitioner’s counsel: “Do you
24 have statistics or data that supports the 20 percent number[?]”). This Court’s concern
25 with statistics and historical trends was squarely relevant, as courts around the
26 country have held, to the question of whether Respondents can show a “substantial
27 likelihood of removal in the reasonably foreseeable future.” *Munoz-Saucedo*, 2025
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1 WL 1750346, at *7 (granting habeas relief because, among other reasons, “ICE has
2 had historically low success in removing similar individuals”); *Phan v. Becerra*, No.
3 2:25-CV-01757, 2025 WL 1993735, at *4 (E.D. Cal. Jul. 16, 2025) (“the court has
4 no evidence regarding the percentage of successful requests to Vietnam”).

5 As Mr. [REDACTED] submitted to this Court after argument, ICE’s own pre-2025
6 statistics⁴ indicate that it has been able to remove only approximately 15% of Iranian
7 nationals with criminal convictions. ICE Enforcement and Removal Operations
8 Statistics, <https://www.ice.gov/statistics>; *see also* Pet. Supp. Br. (Dkt. 21) at 3. This
9 Court, for its part, recognized that removing Iranians like Mr. [REDACTED] was
10 historically unlikely, but it gave Respondents the benefit of the doubt, given the
11 Administration’s then-renewed efforts at third-country removals. Order (Dkt. 27) at 8
12 (“Respondents do not dispute these statistics, but correctly argue they . . . ‘have no
13 bearing on what ICE’s success rate will be under the current resettlement
14 program.’”). Now, a month-and-a-half later, Respondents have offered this Court no
15 updated figures of any kind, let alone anything that might contradict their own
16 agent’s representations to Mr. [REDACTED] about the slim chance that he will be removed
17 in the reasonably foreseeable future.

18 The data that is publicly available further confirm that Mr. [REDACTED]’s removal
19 is not reasonably foreseeable. For example, recent statistics published by the
20 Department of Justice’s Executive Office of Immigration Review (which houses the
21 nation’s immigration courts) show that nearly a thousand removable non-citizens
22 were granted protection under the Convention Against Torture in FY2025 alone.⁵
23 This is in addition to the thousands, like Mr. [REDACTED] who have lived under orders of
24 removal for a decade or more and the thousands of others who are not readily
25

26 ⁴ This Court may take judicial notice of such statistics. *See United States v. Orozco-*
27 *Acosta*, 607 F.3d 1156, 1164 & n.5 (9th Cir. 2010).

28 ⁵ DOJ EOIR FY 2025 Decision Outcomes (July 31, 2025),
<https://www.justice.gov/eoir/media/1344811/dl?inline>

1 removable to their countries of origin, for example, because their home governments
2 do not summarily accept their repatriation. *See, e.g., Arango Marquez v. I.N.S.*, 346
3 F.3d 892, 896 (9th Cir. 2003) (“Because Cuba will not accept repatriation, he is
4 presently subject to indefinite detention by INS.”). On top of this, the news articles
5 indicate Respondents are seeking third-country options not just for long-standing
6 cases like Mr. [REDACTED]’s in which ICE has nowhere to send the non-citizen but also
7 for more recent asylum seekers who do not want to return to their home countries or
8 who the Government is trying to quickly reroute out of the U.S. CBS, *supra*. There is
9 a line of thousands, if not tens of thousands, of non-citizens for whom Respondents
10 are seeking third-country removal, and Respondents have offered this Court *nothing*
11 to indicate that Mr. [REDACTED] is anywhere near the front.

12 To the contrary, the news articles Respondents offer instead of statistics
13 indicate that the likelihood of Mr. [REDACTED] being removed to any of the countries
14 with whom the Administration is negotiating are so vanishingly small as to be zero.
15 The CBS article Respondents cite, for example, notes “documents indicate Uganda in
16 East Africa recently agreed to accept deportees . . . who hail from other countries on
17 the continent, as long as they don’t have criminal histories.” CBS, *supra*.
18 “[I]ndividuals with criminal records . . . will not be accepted.” *Id.* Honduras only
19 agreed “to receive deportees from other Spanish-speaking countries in Latin
20 America,” while Mexico likewise only accepts Latin American migrants. *Id.* Rwanda
21 has only agreed to accept “up to 250 deportees from the U.S. with ‘the ability to
22 approve each individual proposed.’”⁶

23 Whatever presumption of reasonableness Respondents might enjoy under
24 *Zadvydas*, it is rebutted when they can offer this Court no evidence they have sent a
25 single individual with a similar profile to a third country for removal. Here, that
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27 ⁶ Associated Press, *Rwanda agrees to take deportees from the US . . .* (Aug. 5, 2025),
28 <https://apnews.com/article/trump-immigrants-deportees-rwanda-us-bb5edea43bb470e76af3ecee5ddad10c>

1 presumption is rebutted because Respondents have offered this court nothing specific
2 to Mr. [REDACTED]'s case that would support the conclusion that his removal is
3 imminent, nor have they offered an example of a similarly situated Iranian, who has
4 been removed to a third country under circumstances comparable to this case.

5 **IV. Mr. [REDACTED]'s Criminal History is Irrelevant to his Habeas claim**

6 Unable to show Mr. [REDACTED]'s removal is reasonably foreseeable, Respondents
7 attempt to distract this Court by recapitulating Mr. [REDACTED]'s criminal history. Return
8 (Dkt. 28) at 1. That history is irrelevant to the questions before this Court.

9 Immigration detention is “nonpunitive in purpose and effect,” and the “basic
10 purpose” of the statute under which Mr. [REDACTED] is detained (8 U.S.C. § 1231(a)(6))
11 is “assuring [his] presence at the moment of removal.” *Zadvydas*, 533 U.S. at 690,
12 699. “[I]f removal is not reasonably foreseeable, the court should hold detention
13 unreasonable and no longer authorized by statute.” *Id.* at 699–700. That standard is
14 met here: Mr. [REDACTED]'s detention is unreasonable and no longer authorized by
15 statute. In making this holding, the Supreme Court in *Zadvydas* squarely confronted
16 the relevance of a non-citizen’s criminal history. Only “*if removal is reasonably*
17 *foreseeable*,” the Court held, should “the habeas court . . . consider the risk of the
18 alien’s committing further crimes as a factor potentially justifying confinement
19 *within that reasonable removal period*.” *Id.* at 700 (emphasis added).

20 In addition, although ICE’s Notice of Revocation of Release generically cited
21 Mr. [REDACTED]'s “immigration and criminal history” as the reasons for revocation, in its
22 briefing to this Court, Respondents stated the reason for Mr. [REDACTED]'s re-detention is
23 to execute the final removal order against him. *Compare* Pet.’s Mem. iso Mot. for
24 TRO (Dkt. 2) at 6 *with* Respondents’ Resp. in Opp. to Apps. for Interim Relief (Dkt.
25 12) at 2. Its renewed focus on Mr. [REDACTED]'s criminal history, such as his convictions
26 between 2004 and 2016—which ICE itself ignored for nearly a decade—are simply
27 meant to distract this Court.

1 And even had ICE intended to revoke Mr. [REDACTED]'s release based on his
2 criminal history, as opposed to his imminent removal, ICE would have violated its
3 own regulations. *See* 8 C.F.R. §§ 241.4(d), 241.13 (requiring Service to first evaluate
4 whether there is significant likelihood of removal in the reasonably foreseeable
5 future). Those regulations reflect *Zadvydas*' injunction that criminal history is
6 irrelevant to whether it may continue to detain a non-citizen when removal is not
7 reasonably foreseeable.

8 Finally, and crucially, Mr. [REDACTED] has answered for his crimes. He is not on
9 re-trial or re-sentencing before this Court. The *only* legally sufficient reason for
10 which Respondents may detain him is to make sure it can find him when it is able to
11 execute his removal in the reasonably foreseeable future. Respondents fall far short
12 of that, so his detention is unlawful.

13 **V. Conclusion**

14 This Court should grant Mr. [REDACTED]'s Writ of Habeas Corpus and order him
15 immediately released.

16 Respectfully submitted,

17 Dated: September 26, 2025

18 **STEPTOE LLP**

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