

could not be executed by ICE. The Petitioner continued to reside in the United States on the OSUP until January 27, 2025, when ICE again decided to take him into custody. As of the filing of this motion, the Petitioner has been in ICE custody for 184 days and ICE has failed to execute the removal order. Absent this Court's intervention, he will continue to be subject to unreasonably prolonged detention.

I. JURISDICTION AND VENUE

This action arises under the Constitution of the United States, 28 U.S.C. § 2241 and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, and the Administrative Procedures Act ("APA"), 5 U.S.C. § et seq.

This Court has jurisdiction under 28 U.S.C. § 2241; art I § 9, cl 2 of the United States Constitution ("Suspension Clause"); and 28 U.S.C. § 1331, as Petitioner is presently in the custody and color of authority of the United States and he is contesting the lawfulness of his continued immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) ("we conclude that § 2241 habeas corpus proceedings remain available a a forum for statusy and constitutional challenges post removal period detention."); *INS v. St. Cyr*, 533 U.S. 289,301 (2001) ("at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.")

Venue is proper under 28 U.S.C. § 1391 because Petitioner is in the physical custody of the Respondents and ICE at the El Valle Detention Center located at 1800 Industrial Drive, Raymondville, Texas, 78580, located within this judicial district.

II. PARTIES

Petitioner is a native and citizen of Afghanistan who was admitted to the United States

as a refugee in 2002, along with his siblings and mother. He subsequently adjusted his status to that of a lawful permanent resident. However, on November 24, 2008, he was ordered removed by an Immigration Judge after being placed in removal proceedings. Since ICE could not execute the removal order, he was released on an OSUP and continued to reside in the United States until the present time.

Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the administration of ICE and the implementation and enforcement of the INA. Respondent Kristi Noem is a custodial official acting within the boundaries of this judicial district.

Respondent Todd M. Lyons is the Acting Director for Immigration and Customs Enforcement. He is responsible for the administration of Enforcement and Removal Operations (“ERO”) including policies related to detention. Respondent Todd M. Lyons is a custodial official acting within the boundaries of this judicial district.

Respondent Robert Cerna is the Acting Field Office Director for ERO in the Harlingen Field Office located in Harlingen, Texas. Respondent Robert Cerna is responsible for implementing statutory authority and ICE policies relating to custody in the Harlingen Field Office. Respondent Robert Cerna is a custodial official acting within the boundaries of this judicial district.

Respondent Carlos Cisneros is the Assistant Field Office Director for ERO in Harlingen Field Office and is responsible for overseeing custody determinations in the Harlingen Field Office. Respondent Carlos Cisneros is the Petitioner’s immediate custodian at the El Valle Detention Center located within this judicial district.

Respondent Francisco Venegas is the Warden for the El Valle Detention Facility located in Raymondville, Texas, and is responsible for overseeing the actual and physical custody of individuals detained by ICE. Respondent Francisco Venegas is the Petitioner's direct and immediate custodian at the El Valle Detention Center located within this judicial district.

III. FACTUAL BACKGROUND

The Petitioner is a native and citizen of Afghanistan, who was admitted to the United States as a refugee in 2002, while still a minor. He subsequently adjusted his status to that of a lawful permanent resident. However, after being convicted in the State of Idaho for Burglary and Petty Theft, the Petitioner was detained by ICE and placed in removal proceedings. *See* Exhibit A, Order of the Immigration Judge granting asylum. At that time, he was found removable from the United States under Section 237(a)(2)(A)(i) for having been convicted of a crime involving moral turpitude within five years of his admission as a permanent resident. *See Id.* While in removal proceedings, the Immigration Judge designated Afghanistan as the country of removal. *See Id.* The Petitioner submitted an application for asylum, withholding of removal under § 241 (b)(3) of the Immigration and Nationality Act (INA) and protection under the Convention Against Torture. *See Id.* The Immigration Judge held a hearing on that application on May 8, 2008, and granted the Petitioner's application for Asylum. *See Id.* The Department of Homeland Security ("DHS") appealed the decision with the Board of Immigration Appeals, the appeal was sustained on October 29, 2008, and the case was remanded back to the Immigration Judge. On November 24, 2008, on remand, the Petitioner's application for Asylum was denied by the Immigration Judge and he was ordered removed to Afghanistan. *See* Exhibit B, Order of Removal. The Petitioner was later released from ICE custody on an OSUP because his removal to Afghanistan could not be effectuated by ICE. *See* Exhibit C, Order of Supervision.

In January of 2025, the Petitioner was arrested in Everett, Massachusetts after a verbal argument with his brother, with whom he resides. ICE took custody of him from the State of Massachusetts on January 27, 2025. On April 1, 2025, all charges in that case were ordered to be dismissed upon completion of Pre-Trial probation conditions. *See* Exhibit D, Massachusetts' Docket Report. For months, the Petitioner remained in ICE custody in the New England region. However, he was later transferred to South Texas, first to the CBP Processing Center at McAllen, Texas, and then to the Port Isabel Processing Center in Los Fresnos, Texas, and finally to the El Valle Detention Facility in Raymondville, Texas, where he is currently detained. Throughout this time, the Petitioner has fully cooperated with efforts by ICE to remove him. Still, ICE has informed the Petitioner that they have been unable to secure a valid passport, but nevertheless have claimed he has a travel document and "are working through removal." *See* Exhibit E, Email to Senator Ed Markey.

Regarding his removal order, the Petitioner is currently seeking reopening with the Immigration Court so he may apply for relief under sections 208 or 241(b)(3) of the Act, "based on changed country conditions arising in the country to which removal has been ordered." INA § 240(c)(7); 8 CFR § 1003.23(a)(b)(4). Specifically, the Petitioner is alleging that since 2021, about thirteen years after his removal order was issued, the Taliban has exercised total control over the nation of Afghanistan, uncontested by the international community, and with internal resistance groups having been all but neutralized. That motion remains pending. *See* Exhibit F, Respondent's Emergency Motion to Reopen.

IV. LEGAL FRAMEWORK

In the instant case, the Petitioner does not contest that he is subject to deportation pursuant to a final removal order. *See* 8 C.F.R. § 1241.1. Generally, however, once an alien is

ordered removed, he must be removed from the United States within a 90-day “removal period.” 8 U.S.C. § 1231(a)(1)(A); *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). The removal period begins on the latest of three dates: (1) the date the order of removal becomes “administratively final”; (2) the date of the final order of any court that entered a stay of removal; or (3) the date on which the alien is released from non-immigration detention or confinement. *Id.* at § 1231(a)(1)(B). Moreover, during the removal period, detention is mandatory. *Id.* at § 1231(a)(2). However, if an alien is not promptly removed within that removal period, he may be eligible for supervised release until removal can be accomplished. *See Id.* at § 1231(a) (3).

In *Zadvydas v. Davis*, the Supreme Court held that 8 U.S.C § 1231, “when read in light of the Constitution’s demands, limits an alien’s post-removal period detention to a period reasonably necessary to bring about that alien’s removal.” *Zadvydas v. Davis*, at 689. It is presumptively constitutional for an immigration detainee to be detained up to six months. *See Zadvydas v. Davis*, at 701. However, a detainee may seek his release from custody after the expiration of the six-month period by demonstrating a “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*; *Agyei-Kodie v. Holder*, 418 F. App’x 317, 318 (5th Cir. 2011). Demonstrating there is “good reason to believe” removal is unlikely to occur in the reasonably foreseeable future can be done by identifying current or potential diplomatic barriers to removal that would decrease its likelihood. *See Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (aliens must present sufficient evidence establishing that there is no significant likelihood of removal in the reasonably foreseeable future, and may not merely offer conclusory statements); *Fuentes-De Canjura v. McAleenan*, 19-CV-00149, 2019 WL 4739411, at *7 (W.D. Tex. Sept. 26, 2019) (citations omitted) (“[T]he

likelihood of an alien's removal in the reasonably foreseeable future increases when no diplomatic barriers exist that would prevent the alien's removal from the United States....”). Finally, once a detainee makes a showing that there is no significant likelihood of his removal in the reasonably foreseeable future, “the Government must respond with evidence sufficient to rebut that showing.” *See Zadvydas v. Davis*, at 701.

In the instant matter, the Petitioner has been in ICE custody for over 180 days, so his continued detention is no longer presumptively constitutional. Additionally, diplomatic relations between Afghanistan and the United States are currently non-existent. In August of 2021, the Taliban seized control of Afghanistan after the rapid collapse of the U.S.-backed Islamic Republic of Afghanistan and the withdrawal of U.S. and allied forces. As a result, the U.S. Embassy in Kabul suspended operations on August 31, 2021. So, as of 2025, the U.S. has no official diplomatic relations with the Taliban regime, now referred to as the “Islamic Emirate of Afghanistan.” Exhibit G, 2023 Department of State Human Rights Report for Afghanistan. Moreover, public records indicate that ICE has been unable to effectuate removals to Afghanistan and no repatriation agreement exists under current U.S. policy. Additionally, the United Nations and other international bodies have recommended a suspension of removals to Afghanistan due to human rights concerns, targeted violence, and the persecution of returnees. *See Id.* In sum, given the political situation, there is no significant likelihood of removal in the reasonably foreseeable future to Afghanistan for the Petitioner.

V. CLAIM FOR RELIEF

Petitioner's continued detention is a violation of his substantive due process rights as protected by the Fifth and Fourteenth Amendments of the United States Constitution.

“Substantive due process analysis must begin with a careful description of the asserted right.”

Reno v. Flores, 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993) (internal quotation marks omitted). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, at 693 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992)). The Supreme Court has also made clear that “the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (quotation marks omitted).

Moreover, at least one circuit—the Sixth Circuit—has held that aliens, whether inadmissible or deportable, are entitled to substantive due process. *See Rosales-Garcia v. Holland*, 322 F.3d 386, 412 (6th Cir.2003) (en banc) (“If excludable aliens were not protected by even the substantive component of constitutional due process...we do not see why the United States government could not torture or summarily execute them. Because we do not believe that our Constitution could permit persons living in the United States...to be subjected to *any* government action without limit, we conclude that government treatment of excludable aliens *must* implicate the Due Process Clause of the Fifth Amendment.”); *see also Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir.1987) (“[W]hatever due process rights excludable aliens may be denied by virtue of their status, they are entitled under the due process clauses of the fifth and fourteenth amendments to be free of gross physical abuse at the hands of state or federal officials.”).

Accordingly, the Petitioner’s ongoing and indeterminate detention by ICE is unlawful and unconstitutional. The Petitioner has been detained for over 180 days, beyond the presumptive six-month period, and there is no significant likelihood of removal to Afghanistan in the reasonably foreseeable future. ICE previously tried and failed to remove the Petitioner pursuant

to his final order, and given the current political climate and country conditions in Afghanistan, the probability of removing him to that country now is non-existent. Furthermore, the Petitioner has moved to reopen and rescind the removal order currently in place with the Immigration Court and should be afforded the opportunity to see that process through.

VI. APPLICABLE EXHIBITS

Exhibit A: Order of the Immigration Judge granting asylum

Exhibit B: Order of the Immigration Judge ordering removal

Exhibit C: Order of Supervision

Exhibit D: Docket Report for 2550CR000102 Commonwealth vs. Rahim, Idris Abdul

Exhibit E: Email from ICE to Senator Ed Markey's office after a Congressional Inquiry

Exhibit F: Copy of Emergency Motion to Reopen

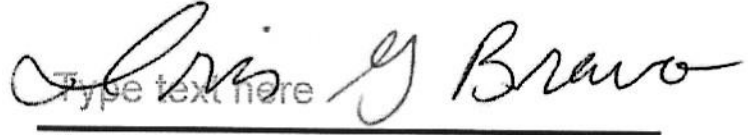
Exhibit G: Department of State Country Report on Human Rights Practices for 2023 – Afghanistan

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

- (1) Assume jurisdiction over this matter;
- (2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from ICE custody.
- (3) Enjoin Respondents from re-detaining Petitioner unless and until there is a significant likelihood of removal in the reasonably foreseeable future; AND
- (4) Grant any other relief deemed just and proper.

Respectfully Submitted,


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CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and exact copy of this Petition for Writ of Habeas Corpus Pursuant to 28 USC 2241 was electronically filed with the District Clerk of the Southern District of Texas, Brownsville Division on July 31, 2025 and shall or has been served upon the following via the Court's CM/ECF filing system and U.S. Mail:

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ICO: Civil Division
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A handwritten signature in black ink that reads "Iris G. Bravo". The signature is written in a cursive, flowing style. The first name "Iris" is written with a large, decorative capital "I". The last name "Bravo" is written with a capital "B" and a trailing flourish.

Iris G. Bravo
Attorney at Law

Exhibit A