UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

Idris Abdul Rahim A# [redacted] *Petitioner*, v. Kristi Noem, et al., *Respondents*	§ § § § § § § § § § § §	Civil Action No.:1:25-CV-167

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

Petitioner, IDRIS ABDUL RAHID, through undersigned counsel respectfully submits this Response in Opposition to Respondents' Motion for Summary Judgment. Petitioner, a native and citizen of Afghanistan, is currently detained by U.S. Immigration and Customs Enforcement ("ICE") under a final order of removal. He has now been detained for well beyond the six-month presumptively reasonable period established by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Because ICE has all but conceded that there is no significant likelihood of removal to Afghanistan in the reasonably foreseeable future, and because continued detention violates the Immigration and Nationality Act ("Act"), the Due Process Clause, and binding precedent, Respondents are not entitled to judgment as a matter of law.

I. CONTINUED JURISDITION

This Court retains jurisdiction over the instant habeas petition notwithstanding any transfer of Petitioner to a different detention facility outside this District. Jurisdiction attaches at the time a habeas petition is filed and cannot be defeated by the government's subsequent transfer of custody. *Ex parte Endo*, 323 U.S. 283, 306 (1944); *Lee v. Wetzel*, 244 F.3d 370 (5th Cir. 2001) (recognizing that "jurisdiction attached on the initial filing for habeas corpus relief, and it was not destroyed by the transfer of the petitioner and the accompanying custodial change."); *Ndudzi v. ICE* (W.D. Tex. June 18, 2020) ("By filing her immigration habeas petition while being detained within the territorial confines of the United States District Courts for the Western District of Texas and naming the warden at her detention facility, Petitioner 'properly complied with habeas procedure.' … Moreover, '[j]urisdiction attached on that initial filing for habeas corpus relief, and it was not destroyed by the transfer of petitioner and accompanying custodial change.'") Allowing ICE to divest jurisdiction through transfers would undermine meaningful habeas review and permit forum shopping by the government. Accordingly, this Court maintains jurisdiction over Petitioner's habeas petition and authority to grant relief, including a temporary restraining order or injunction.

II. 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* Original Petition for Writ of Habeas Corpus Petition 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* Original Petition for Writ of Habeas Corpus Petition 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* Original Petition for Writ of Habeas Corpus Petition 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* Original Petition for Writ of Habeas Corpus Petition, 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, then to the Port Isabel Processing Center in Los Fresnos, Texas, then to the El Valle Detention Facility in Raymondville, Texas,

which gave rise to this action. After filing this action, ICE transferred him to the Plymouth County Correctional Facility in Plymouth, Massachusetts, where he remains incarcerated. On or about September 19, 2025, ICE served the Petitioner with a decision on a Post Order Custody Review ("POCR"), in which they continue to allege that, "A travel document from the government of Afghanistan is expected and ICE has reasons to believe there is a significant likelihood that your removal will occur in a reasonable foreseeable future." *See* Exhibit H, Post Order Custody Review Decision from ICE.

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* Original Petition for Writ of Habeas Corpus Petition Exhibit F, Respondent's Emergency Motion to Reopen.

The Petitioner filed the current pending petition on July 31, 2025. The government submitted a written response including a declaration in which ICE admitted the following:

> 41. *On August 26, 2025, ABDUL-RAHIM was returned to Boston AOR with no travel documents.*
> 42. *As of September 3, 2025, ERO-HQ has informed ERO Boston ABDUL-RAHIM is still pending issuance of an Afghanistan travel letter.*
> 43. *As of September 5, 2025, a 180-day post order custody review is being conducted and, per acting Deputy Assistant Director Carter, a MOFA travel document will be hard to come by.*

See Respondent's Exhibit 1, Declaration of AFOD Kieth M. Chan. Despite this admission, the government now is requesting that the Court grant their Motion for Summary Judgement of the Petition for Writ of Habeas Corpus. The Petitioner opposes this request and instead moves the Court grant the instant Petition.

III. LEGAL FRAMEWORK

Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Ellison v. Software Spectrum, Inc.*, 85 F.3d 187, 189 (5th Cir. 1996). On summary judgment, "[t]he moving party has the burden of proving there is no genuine [dispute] of material fact and that it is entitled to judgment as a matter of law." *Rivera v. Houston Indep. Sch. Dist.*, 349 F.3d 244, 246 (5th Cir. 2003); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is "material" if its resolution in favor of one party might affect the outcome of the suit under governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is "genuine" if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party. *Id.* The moving party is "entitled to judgment as a matter of law" when the nonmoving party has failed to make a sufficient showing on an essential element of the case on which he or she had the burden of proof. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

In habeas proceedings under 28 U.S.C. § 2241, courts must resolve factual disputes as to the foreseeability of removal and the reasonableness of detention in favor of the petitioner where evidence is lacking or disputed. Accordingly, summary judgment is not appropriate unless, viewing the evidence in the light most favorable to the non-moving party, no reasonable jury

could return a verdict for that party. *Rubenstein v. Adm'rs of the Tulane Educ. Fund*, 218 F.3d 392, 399 (5th Cir. 2000).

IV. ARGUMENT

I. Statutory and Constitutional Limits on Post-Removal-Order Detention

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). 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. A detainee may seek his release from custody after the expiration of a 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). States...."). 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.

Detailed regulations requiring ICE to conduct regular post-order custody reviews were promulgated to implement this statutory limitation. *See* 8 C.F.R. §§ 241.4, 241.13, 241.14. These

regulations codify the constitutional requirements recognized in *Zadvydas* and ensure that prolonged detention is not left to unreviewed executive discretion. According to 8 C.F.R. § 241.4(f), ICE must consider the following relevant factors when conducting a POCR:

- *The noncitizen's cooperation in obtaining travel documents;*
- *The likelihood that removal will actually occur in the reasonably foreseeable future;*
- *The reason for the removal order and the noncitizen's criminal history;*
- *The nature and seriousness of any past criminal convictions;*
- *Any history of violence, recidivism, or threat to the community;*
- *The noncitizen's ties to the United States (family, community, employment history);*
- *Evidence of rehabilitation or good conduct while in custody.*

See 8 C.F.R. § 241.4(f). The evidence indicates that the government continues to hold Petitioner in custody despite their inability to secure travel documents due to their belief that he poses a danger to the public. However, as evidenced in Exhibit D, Massachusetts' Docket Report, in the original petition, his most recent criminal case is pending dismissal. Moreover, the victim in the case, the Petitioner's brother, wrote a letter to ICE in April of 2025 discussing the facts of the case admitting that no physical altercation occurred, let alone involve a deadly weapon. *See* Exhibit I, Letter from Abdul Rahim Idris to ICE. In fact, the Petitioner was the victim of an assault himself in 2024 the resulted in the arrest and prosecution of the aggressor. His continued detention by ICE caused him to miss a trial date which likely resulted in the dismissal of those charges. *See* Exhibit J, Letter from the District of Attorney of Suffolk County. ICE's decision to continue detention also affected his ability to seek justice in a case in which he himself was a victim.

II. No Significant Likelihood of Removal to Afghanistan Exists

The Government cannot demonstrate that removal to Afghanistan is significantly likely in the reasonably foreseeable future. As stated earlier, by their own admissions, "there is no travel

document" and "a travel document will be hard to come by." *See* Respondent's Exhibit 1, Declaration of AFOD Kieth M. Chan Since the Taliban takeover in August 2021, the United States has closed its embassy in Kabul and does not recognize the Taliban government. No diplomatic relations exist through which ICE could lawfully or practically repatriate Afghan nationals. This is evidenced by ICE's failure to obtain a valid travel document in 242 days and ICE's failure to provide evidence of any successful removals to Afghanistan since 2021. Without evidence of travel documents, diplomatic acceptance, or a scheduled removal, Respondents cannot meet their burden under *Zadvydas*.

III. Continued Detention Violates the Due Process Clause

Indefinite or prolonged detention without a realistic prospect of removal violates the Due Process Clause of the Fifth Amendment. *Zadvydas*, 533 U.S. at 690. Petitioner has already been detained for 242 days, exceeding the presumptively reasonable period. The Government has offered no concrete evidence of removal arrangements, making continued detention a constitutional violation. The Fifth Circuit has recognized that prolonged detention must yield where removal is not reasonably foreseeable. *See Andrade*, 459 F.3d at 543. As detention lengthens, what counts as the "reasonably foreseeable future" *shrinks*, so ICE must come forward with more than generalized hopes. *See Abdulle v. Gonzales*, 422 F. Supp. 2d 774, 778–79 (W.D. Tex. 2006) (district court; persuasive). In the present case, ICE cannot show even the possibility of future removal.

IV. Genuine Disputes of Material Fact Preclude Summary Judgment

Whether ICE can obtain valid travel documents from Afghanistan, whether the Taliban government has accepted any returnees, and whether any deportations have occurred since 2021 are disputed material facts. Respondents offer no evidence to show otherwise. The government's

own evidence supports that he has been in ICE custody for 242 days as of the date of this response, a legally presumptive unreasonable amount of time; that ICE has failed to obtain or produce a valid travel document; that ICE has failed to provide an anticipated date the travel document will be produced; or, scheduled a date for a removal to Afghanistan. These are the facts that are material to the claim brought by the Petitioner. As such, summary judgement is not appropriate because the court must decide whether these facts legally preclude the government from continuing to detain the Petitioner for an undetermined amount of time and necessitate his release. Accordingly, these factual disputes preclude summary judgment under Fed. R. Civ. P. 56(a).

V. CONCLUSION

For the foregoing reasons, this Court should DENY Respondents' Motion for Summary Judgment, GRANT the Petition for Writ of Habeas Corpus, and ORDER Petitioner's immediate release under reasonable conditions of supervision.

VI. APPLICABLE EXHIBITS

Exhibit H: Post Order Custody Review Decision from ICE

Exhibit I: Letter from Abdul Rahim Idris to ICE

Exhibit J: Letter from the District of Attorney of Suffolk County

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and exact copy of this PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT was electronically filed with the District Clerk of the Southern District of Texas, Brownsville Division on September 25, 2025 and shall or has been served upon the following via the Court's CM/ECF filing system:

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