

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

NURBOLOT MISIRBEKOV,

Petitioner,

v.

FRANK VENEGAS, *et al.*,

Respondents.

Case No. 25-cv-168

REPLY IN SUPPORT OF VERIFIED
PETITION FOR WRIT OF
HABEAS CORPUS

INTRODUCTION

“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The justification offered by Respondents for continuing to deprive Mr. Misirbekov of his liberty more than six months after he won his immigration case is woefully feeble. They effectively concede his arguments under *Zadvydas*, acknowledging that on May 19, 2025, they emailed a copy of his passport to a deportation officer, and have done absolutely nothing else since. Dkt. 10 (“Resp.”) at 3. And with regard to his claims under the APA that DHS has failed to abide by its own custody-review regulations, they have no response at all.

- I. Mr. Misirbekov has met his burden of showing his removal is not significantly likely in the reasonably foreseeable future, and Respondents have failed to rebut the presumption that his detention has become unconstitutional.**

Resolution of this case is governed by two words from *Zadvydas*: “significant” and “reasonably.” Once a noncitizen shows that “there is no *significant* likelihood of removal in the *reasonably* foreseeable future,” the Government must produce evidence to rebut that showing. *Zadvydas*, 533 U.S. at 701 (emphasis added). “A remote possibility of an eventual removal is not

analogous to a significant likelihood that removal will occur in the reasonably foreseeable future.”

Kane v. Mukasey, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008) (superseded on mootness grounds by *Kane v. Mukasey*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008)).

First, Respondents claim that Mr. Misirbekov has not met his initial burden under *Zadvydas*. Resp. at 4 (arguing that his “assertions are too speculative and conclusory to satisfy [his] burden.”) In his Verified Petition, he states that: (1) the IJ’s order bars removal to his home country, Kyrgyzstan; (2) he has no ties to, or citizenship in, any other country; (3) he would raise a credible fear before an immigration judge if Respondents attempt his removal to any country that has an extradition treaty with Kyrgyzstan; and (4) Respondents’ efforts to remove him to a third country during the six-month removal period have failed. Dkt. 1 at ¶¶ 52-54. These are not “speculative” or “conclusory”: they are uncontradicted facts. Indeed, Respondents concede that they made multiple requests to Russia, all of them ignored, as well as requests to Costa Rica and Mexico, also ignored or denied. Dkt. 10-1 (Gonzalez Decl.) at 2, ¶¶ 10-11.

If Respondents mean to suggest that Mr. Misirbekov must produce evidence demonstrating an unlikelihood of removal to each individual country in the world where he might possibly be deported, they cite no authority for such a requirement, and Petitioner is aware of none. Indeed, in numerous cases, district courts have found it sufficient if a petitioner proved he could not be removed to his home country, as Mr. Misirbekov has done here. *See, e.g., Palma v. Gillis*, 2020 WL 4880158, at *2 (S.D. Miss. July 7, 2020) (“to shift the burden to the Government, an alien must demonstrate ... barriers to his repatriation to his country of origin”); *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 707-08 (S.D. Tex. 2020) (Pakistani man met burden by showing he could not be removed to Pakistan); *Joseph v. Mukasey*, 2009 WL 331558, at *4 (N.D. Fla. Feb. 10, 2009) (dual citizen of Bahamas and Haiti met burden by showing Bahamas would not issue

travel documents for him). None of these courts required the petitioner to demonstrate there was nowhere in the world where he could ever possibly be removed. If courts were to impose such a requirement, it is unclear how any petitioner could ever meet his burden, since detained noncitizens are not privy to the behind-the-scenes details of DHS's efforts at third-country removal.¹ In short, Mr. Misirbekov has gone beyond what was deemed sufficient in the above-cited cases, not only demonstrating an unlikelihood of removal to his home country, but also showing an unlikelihood of deportation elsewhere, an unlikelihood borne out by Respondents' own declaration.²

Respondents next inexplicably assert that Mr. Misirbekov's six-month period of presumptively permissible detention "should be tolled" because he has somehow failed "to cooperate in removal," arguing that he "could likely effectuate his [] removal by providing the necessary information to the appropriate officials." Resp. at 5-6 (citing *Bailey v. Lynch*, 2016 WL 5791407 (D.N.J. Oct. 3, 2016)).³ But one searches Respondents' brief in vain for the slightest clue of what Mr. Misirbekov has done to "hamper[] or delay[] removal" or what information he could provide to officials. *Id.* (citing *Balogun v. I.N.S.*, 9 F.3d 347, 350-51 (5th Cir. 1993)). Indeed, as Mr. Misirbekov has shown, he was in frequent contact with deportation officers, and there is no indication he was ever asked to do anything in particular to aid in his removal. Since he is detained, it is unclear what else Respondents expect him to do to assist in the removal process: he can hardly be expected, for example, to contact foreign countries and arrange his own deportation.

¹ See Dkt. 1-5 (Petitioner's fruitless attempts to obtain information about his case from ICE).

² Respondents' reliance on *Castellanos v. Holder*, 337 F. App'x 263 (3d Cir. 2009) is misplaced, as that case holds that granting "a writ of habeas corpus is premature" where an immigration case is ongoing and "there is no final order of removal." *Id.* at 264, 267-68. Here Mr. Misirbekov has won his immigration case and his removal order has been final for over six months.

³ Respondents quote *Bailey* to suggest Mr. Misirbekov "has the keys to his [] freedom in his[] pocket." Resp. at 6. True, he could be released from detention if he dropped his persecution claim and voluntarily left for Kyrgyzstan. But the Due Process Clause is not so narrow as to offer only a binary choice between indefinite detention in the U.S. or torture abroad.

Finally, Respondents assert that “the evidence establishes that there is a significant likelihood of Petitioner’s removal in the reasonably foreseeable future,” though they actually cite *no* evidence except that DHS sent Mr. Misirbekov’s ID and passport to a deportation officer in May. Resp. at 7. Given that DHS failed to remove Mr. Misirbekov to the only countries it contacted (Russia, Costa Rica, and Mexico), and considering there is no evidence that DHS has done *anything* in Mr. Misirbekov’s case since May 19, Respondents’ contentions are unconvincing. See *Palma*, 2020 WL 4880158, at *3 (“Respondent cannot rest on bald assertions that removal is foreseeable with no supporting evidence”). To rebut Mr. Misirbekov’s showing, Respondents must show “evidence of progress ... in negotiating [his] repatriation.” *Gebrelibanos v. Wolf*, 2020 WL 5909487 (S.D. Cal. Oct. 6, 2020), at *3. In any case, “the reasonableness of Petitioner’s detention does not turn on the degree of the government’s good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner’s detention turns on whether and to what extent the government’s efforts are likely to bear fruit. Diligent efforts alone will not support continued detention.” *Hassoun v. Sessions*, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (internal citation omitted). “[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.” *Palma*, 2020 WL 4880158, at *3 (citing *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).

II. Respondents apparently concede Mr. Misirbekov’s claims under the APA.

Even if the Court agrees with Respondents that Mr. Misirbekov has not established a *Zadvydas* claim, the Court should still grant relief under the APA. Notably, Respondents do not respond in any way to his allegations regarding ICE’s failure to follow its own custody regulations. Pet. at ¶¶ 59-63. Indeed, if anything, Officer Gonzalez’s declaration proves that Mr. Misirbekov’s

90-day custody review was not performed until June 26, 2026, nearly five months after the IJ's decision was final. Decl. at 2, ¶ 13. The 180-day review was not performed until after Mr. Misirbekov filed this case. *Id.* at ¶ 17-18. Respondents also do not refute Mr. Misirbekov's allegations that his review was not based on the factors in 8 C.F.R. § 241.4(e) or that the reasons given for denying his release were merely boilerplate or pretextual. Pet. at ¶ 59-60.

The remedy under *Zadvydas* is immediate release, while the remedy for this sort of APA violation is for Respondents to conduct another custody review. *See Bonitto v. I.C.E.*, 547 F. Supp. 2d 747, 758 (S.D. Tex. 2008). Given Respondents' failure to follow the regulations thus far and their boilerplate reasons for denying Mr. Misirbekov's release, Petitioner has little faith that a new custody review would result in his freedom. However, should the Court order a new custody review, Petitioner respectfully requests that the Court require it to be conducted in good faith in accordance with all applicable regulations, giving due weight to the factors in 8 C.F.R. § 241.4(e)-(f), and mandate that release cannot be denied based on boilerplate or pretextual reasons.

CONCLUSION

Because Respondents' justification for indefinitely depriving Mr. Misirbekov of his liberty falls far short of what the Constitution requires, this Court should grant his immediate release.

Dated: August 18, 2025

Respectfully submitted,

/s/ James D. Jenkins

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Certificate of Service

The undersigned certifies that the foregoing document was filed with the Court's CM/ECF system on this 18th day of August, 2025, which sent electronic notice of filing to all parties receiving such notice.

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