

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

MOHAMED NADER ALSHEREF,

Petitioner-Plaintiff,

v.

KRISTI NOEM, et al.,

Respondents-Defendants.

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Case No. 1:25-cv-190-H

REPLY TO RESPONDENTS' ANSWER AND RESPONSE

It is undisputed that Mr. Alsheref's detention is only lawful if it is significantly likely that he will be removed in the reasonably foreseeable future. Respondents intend to remove Mr. Alsheref, a stateless Palestinian born to stateless Palestinians, to Palestine via Israel and have requested permission from Israel to do so. They claim that "Israel *may* approve the transit request in this case," based on an unknown number of such approvals for Palestinian nationals and a single approval for a Palestinian individual born abroad to parents who *were* residents of Palestine. ECF No. 19, App. 017 ¶ 4 (emphasis added).

First, Respondent's own assessment of the chances of Mr. Alsheref's removal—that Israel "may" approve transit sometime in the future—is fatal to their argument. The test the Supreme Court established in *Zadvydas v. Davis* requires they show a "significant likelihood of removal in the reasonably foreseeable future" in order to continue detaining those like Petitioner with final orders of removal. 533 U.S. 678,

701 (2001). The mere possibility that Israel “may” approve transit clearly does not satisfy the *Zadvydas* test.

Second, neither Mr. Alsheref nor his parents have ever resided in Palestine and there is *no existing path* by which Mr. Alsheref would be given the right to reside there. The result Respondents claim may happen would be *historic*. They suggest nothing less than that Israel will grant Mr. Alsheref the Right of Return to Palestine, something sought by generations of Palestinians, in a stunning reversal of decades of Israeli policy. To say this is significantly unlikely would be a profound understatement. It is a fantasy. Israel is no more likely to approve a transit request for Mr. Alsheref today than it was when it denied the same in 2008. Because Respondents cannot show that Mr. Alsheref is significantly likely to be removed in the reasonably foreseeable future, his motion for a preliminary injunction and petition for a writ of habeas corpus should be granted.

BACKGROUND

Mr. Alsheref is a stateless Palestinian man born in Libya to stateless Palestinian parents born in Libya and Egypt. ECF No. 1 ¶ 11. He entered the United States legally in 1988 on an F-1 student visa. *Id.* He was ordered removed from the United States following a criminal conviction, but the government failed to obtain travel documents from Libya, Jordan, Israel, and Egypt. *Id.* ¶¶ 15-16. Pursuant to the Supreme Court’s holding in *Zadvydas v. Davis*, the government released Mr. Alsheref from its custody in 2008. *Id.* ¶ 16. He remained free until July 26, 2025, when Immigrations and Customs Enforcement (“ICE”) re-detained him. *Id.* ¶ 18. The

reasons for his re-detention were unclear. The ICE agent who processed his re-detention told him, “I don’t know what to do with you. I see here no Egypt, no Jordan.”

Id. ¶ 19.

In response to Mr. Alsheref’s habeas petition, Respondents submitted declarations from Mr. Alsheref’s Deportation Office Aaron Nation and ICE Attaché Joshua Coster laying out the government’s plan to attempt to remove Mr. Alsheref to Palestine via Israel. According to Officer Nation, around July 30, 2025, ICE “began working on a transit request to the government of Israel to allow Alsheref to fly into Ben Gurion International Airport for transit to the Palestinian territories.” ECF No. 19, App. 015 ¶ 9. Attaché Coster stated that the transit request was presented to the Israeli Embassy on August 28, 2025, and to the Israeli Ministry of Foreign Affairs on September 2, 2025. *Id.* at App. 016 ¶ 3. According to Attaché Coster such requests are usually answered in “sixty to ninety days.” *Id.* Attaché Coster “believe[s] Israel *may* approve the transit request in this case based on Israel’s approval of travel requests for Palestinian nationals and for one Palestinian born outside of Palestine to Palestinian national parents. *Id.* at App. 017 ¶ 4.

ARGUMENT

I. Respondents have not shown any changed circumstances because removals to Palestine always require Israeli assistance.

In *Zadvydas v. Davis*, the Supreme Court “read an implicit limitation” into 8 U.S.C. § 1231’s detention authority “in light of the Constitution’s demands.” 533 U.S. 678, 689 (2001). Post-removal order detention is only lawful “until it has been determined that there is no significant likelihood of removal in the reasonably

foreseeable future.” *Id.* Those non-citizens who are released pursuant to *Zadvydas* may only be re-detained according to procedure found in 8 C.F.R. 241.13(h)(4)(i), a regulation ensuring that the government may not simply release a non-citizen only to re-detain them with no change in the likelihood of their removal. Re-detention is authorized only upon a determination that “on account of changed circumstances, . . . there is a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(h)(4)(i)(2). “These regulations clearly indicate, upon revocation of supervised release, it is the [government’s] burden to show a significant likelihood that the [non-citizen] may be removed.” *Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025).

Respondents have not claimed that there are any changed circumstances relevant to Mr. Alsheref’s removal at all, let alone any that render his removal significantly likely. In a declaration submitted by Respondents from ICE Attaché Joshua Carter, he states that, “ERO has removed multiple Palestinians to the Palestinian territories in FY 2025, and the Israeli government has approved other Palestinian transit requests which ERO is currently coordinating for removal.” ECF No. 19, App. 017 ¶ 4. Respondents call this a “change in circumstances relating to the government’s ability to remove Palestinians to Palestinian territory with the assistance of Israel,” ECF No. 18 at 11, but fail to explain what has changed. Without anything to compare it to, the fact that some unspecified number of Palestinians have been removed in 2025 does not indicate a *change* in the government’s ability to

remove Palestinians. Respondents do not claim they were unable to remove Palestinians before this year.

Nor is the involvement of Israel in Palestinian removals a changed circumstance. Travel to Palestine *always* involves Israel because Israel controls all international entry points into the West Bank and Gaza.¹ As such, removals to Palestine have always required coordination with Israel. “According to ICE, they have in the past deported Palestinians by working through the governments of Israel, Jordan, or Egypt[.]”² The cooperation and permission of Israel is required even for removals to the West Bank via Jordan³ because Israel controls “its international land crossings with Jordan (into both the West Bank and Israel) . . .”⁴ As for removals to

¹ See U.S. Dep’t of State, Israel, the West Bank, and Gaza International Travel Information, Entry, Exit and Visa Requirements, <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/IsraeltheWestBankandGaza.html> (“The Government of Israel administers immigration and security controls at its international land crossings with Jordan (into both the West Bank and Israel), Egypt (at the Taba crossing near Eilat), and at Israel’s airports and seaports. A separate network of security checkpoints and crossings operated by Israeli authorities regulates the movement of people and goods between Israel and the West Bank, and between Israel and Gaza.”).

² John Washington, *The US Wants to Deport This Palestinian—but First It’d Have to Recognize Palestine*, *The Nation* (Mar. 28, 2016), <https://www.thenation.com/article/archive/can-you-be-deported-if-you-are-stateless/#:~:text=According%20to%20ICE%2C%20they%20have,might%20spend%20the%20rest%20of.>

³ Removals to the West Bank are now only possible via transit through Israel because Jordan stopped assisting with Palestinian removals from the United States in 2018. Karen DeYoung, *Attempted deportation of Palestinian man reveals tangled legal odyssey*, *Wash. Post* (June 15, 2019), https://www.washingtonpost.com/world/national-security/attempted-deportation-of-palestinian-man-reveals-tangled-legal-odyssey/2019/06/14/700890a6-8bbb-11e9-8f69-a2795fca3343_story.html.

⁴ U.S. Dep’t of State, *supra* note 2.

Palestine through Israeli territory, Respondents have not provided any evidence that they are more available now than they have been previously.

In light of the facts that (1) Palestinians have been removed from the United States before 2025 and (2) such removals *necessarily* involve Israel's cooperation, Respondents' indication that some number of Palestinians have been removed with the assistance of Israel in 2025 does not establish any change in circumstances.

II. Any changed circumstances asserted by Respondents do not apply to Mr. Alsheref.

A. Mr. Alsheref is not similarly situated to the individuals whose removals Respondents assert demonstrate changed circumstances.

Even if there has been a change in circumstances regarding the removal of Palestinians via Israel, “[t]he changed circumstances need to be applicable to [Mr. Alsheref].” *Nguyen v. Noem*, --- F. Supp. 3d ----, 2025 WL 2737803, at *7 (N.D. Tex. Aug. 10, 2025). Attaché Coster indicates that Israel granted transit permits to an unspecified number of Palestinian nationals and to a single Palestinian individual born outside of Palestine to Palestinian parents. ECF No. 19, App. 017 ¶ 4. Neither scenario is applicable to Mr. Alsheref.

The first group of individuals to whom, according to Respondents, Israel granted transit permits were born in Palestine. Their removal says as much about Mr. Alsheref's likelihood of removal as the removal of Italian citizens to Italy does about a third-generation Italian American's. Indeed, it is even less probative because

Israel affirmatively does not allow diaspora Palestinians to live in the West Bank.⁵ Mr. Alsheref was not born in Palestine and does not have status there. Circumstances surrounding the removal of Palestinians born in Palestine are not applicable to him.

Nor is Mr. Alsheref similarly situated to the *single* Palestinian not born in Palestine to whom Respondents claim Israel granted a travel permit. As an initial matter, the fact that Respondents can only point to one example indicates that this is a rare occurrence which, by definition, is not significantly likely. In any case, the rules governing residency in the West Bank illustrate the inapplicability of Respondents' solitary example to Mr. Alsheref.

Israel controls who may visit or reside in the West Bank. It is virtually impossible for Palestinians born outside of the West Bank to obtain permission to reside there. Residency in the West Bank is only permitted for Palestinians registered in the Israeli-controlled "Population Registry."⁶ Palestinians born abroad may only apply for registration if they are under 16 years old and one parent is a registered resident.⁷ The only other path to residency in the West Bank is family reunification. "Palestinians in the West Bank can apply to Israel through a separate family reunification process via the Palestinian Authority to get Palestinian IDs issued for

⁵ Hum. Rts. Watch, *West Bank: New Entry Rules Further Isolate Palestinians* (Jan. 23, 2023), <https://www.hrw.org/news/2023/01/23/west-bank-new-entry-rules-further-isolate-palestinians>.

⁶ See Hum. Rts. Watch, *"Forget About Him, He's Not Here" Israel's Control of Palestinian Residency in the West Bank and Gaza* (Feb. 5, 2012), <https://www.hrw.org/report/2012/02/05/forget-about-him-hes-not-here/israels-control-palestinian-residency-west-bank-and>.

⁷ *Id.*

their spouses and other relatives in ‘exceptional circumstances,’ which would allow them to stay on a long-term basis.”⁸ This process has been “effectively frozen.”⁹

The individual to whom Respondents point “was born outside of the Palestinian territories to Palestinian parents.” ECF No. 19, App. 017 ¶ 4. Respondents’ description indicates that, while the individual was not born in Palestine, his or her parents were. As such, Israel’s approval suggests that he or she was registered in the Population Registry or otherwise eligible for a rare grant of family reunification. Neither scenario is inapplicable to Mr. Alsheref whose parents were born in Libya and Egypt and who has no family in Palestine at all. ECF No. 1 ¶ 15.

Nothing short of a historic exception to decades of Israeli policy is required to enable Mr. Alsheref’s removal to Palestine via Israel. Indeed, Israel already denied a request for travel documents for Mr. Alsheref in 2008. ECF No. 19, App. 014 ¶ 7. Respondents have not provided the reason for Israel’s denial, but it was likely for the same reasons it is unlikely to be granted today: Mr. Alsheref does not possess Palestinian or any citizenship and is ineligible for residency in the West Bank through any existing process.

B. Respondents’ reliance on Nyugen v. Noem is misplaced.

Respondents suggest that the Court should resolve this case the same way it did *Nyugen v. Noem*. But the Court’s reasoning there leads to the opposite result. The

⁸ Hum. Rts. Watch, *supra* note 5.

⁹ *Id.*

petitioner in *Nyugen* was a Vietnamese national who entered the United States prior to 1995. *Nyugen*, 2025 WL 2737803 at *1. He was re-detained following an agreement between the United States and Vietnam that would permit the removal of Vietnamese nationals who entered the United States before 1995, a previously impossible outcome. *Id.* at *2. The Court rejected the petitioner's assertion that a broad change in the ability to remove non-citizens like him cannot justify re-detention of a particular non-citizen without an individualized determination. *Id.* at *7. Moreover, the government had, in fact, obtained travel documents for the petitioner. *Id.* at *10.

The Court was clear, however, that while changed circumstances needn't be particular to the non-citizen, they do "need to be applicable." *Id.* at *7. For the reasons laid out above, the supposed change in "Israel's willingness to facilitate the removal of Palestinians to Palestinian territory[.]" ECF No. 18 at 11, is not similar in any sense to the agreement by Vietnam specifically permitting the removal of non-citizens in that petitioner's situation. Mr. Alsheref is not like the individuals Respondents indicate were granted travel documents. And they have not provided any evidence that Israel is significantly likely to reverse course on its longstanding, if not foundational, policy of not permitting stateless Palestinians to reside in the West Bank. *Nyugen* does not support Respondents' position, it supports Mr. Alsheref's.

The District Court for the Southern District of Texas reached the same conclusion just last week in *Abuelhawa v. Noem*, No. 25-cv-04128, 2025 WL 2937692 (S.D. Tex. Oct. 16, 2025). There, the court ordered a stateless Palestinian man

released from custody because the government's conclusory assurances that Israel would issue a travel document could not, in light of overwhelming evidence to the contrary, make it significantly likely to be so. *See Abuelhawa*, 2025 WL 2937692, at *15-*18. Respondents do not even attempt to make the same assurances here, limiting themselves to the conclusion that Israel "may" approve their request. *See* ECF No. 19, App. 017 ¶ 4. Unlikely outcomes remain, by definition, possible, but their mere possibility does not satisfy the law's demand of a significant likelihood that Mr. Alsheref be removed in the reasonably foreseeable future. That conclusion, as Respondents seem to tacitly agree, is beyond their reach.

III. Respondents' Remaining Arguments

In light of evidence that recently removed Palestinian nationals have been transferred to the custody of Israeli authorities and simply marched across the border of the West Bank, *see* ECF No. 1 ¶¶ 35-36, Mr. Alsheref sought a temporary restraining order to prevent his immediate removal to Israel given his statelessness and the dire consequences that may obtain as a result. Respondents note a "tension" between this and Mr. Alsheref's argument for release. ECF No. 19 at 6. But emergency relief was requested simply to prevent possibly irreversible error. Respondents' brief makes clear that they do not fully appreciate the unique circumstances of stateless Palestinians. Mistaken removals happen. Without knowledge of Respondents' removal plan—laid out for the first time in their brief—Mr. Alsheref sought a restraining order to ensure he was not put an impossible situation.

That said, on September 9, 2025, Respondents committed to not removing Mr. Alsheref from the United States during the pendency of this action, or to providing at least five days' notice of such a removal should circumstances change. *See* ECF No. 13. As such, and given the information revealed in Respondents' brief, the requested temporary restraining order is no longer necessary, and Petitioner therefore does not address Respondents' related arguments.

CONCLUSION

Respondents have not provided any support for their specious conclusion that Mr. Alsheref is significantly likely to be removed from the United States in the reasonably foreseeable future. As such, his petition for a writ of habeas corpus and motion for a preliminary injunction should be granted.

Dated: October 21, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2025, I electronically filed the foregoing on the Court's CM/ECF system, that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Christopher Godshall-Bennett
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