IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Heithem Mohammad Abdul Khaliq,

Petitioner

v.

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Mark Siegel, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; Scarlet Grant, Warden of Cimarron Correctional Facility.

Respondents.

Case No.: 25-CV-01154-SLP

PETITIONER'S OBJECTIONS TO REPORT AND RECOMMENDATION

EXPEDITED HANDLING REQUESTED UNDER 28 U.S.C. § 1657 WITH REFERENCE TO 28 U.S.C. CH. 153

INTRODUCTION

On October 3, 2025, Mr. Heithem Mohammad Abdul Khaliq ("Petitioner") filed a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1. After various back and forth, the Honorable Magistrate Chris Stephens issued a Report and Recommendation ("R&R") recommending that Petitioner's request for a writ of habeas corpus be denied. ECF No. 26. The R&R made two crucial holdings. First, it was held that Petitioner failed to satisfy his initial burden of demonstrating "good reason to believe" his removal is not significantly likely to occur in the reasonably foreseeable future. *Id.* at 8-14. Second, it

was held that even if Petitioner did meet his initial burden, Respondents have sufficiently met their rebuttal burden so as to justify continued detention. *See id.* at 14-16.

For the reasons that follow, Petitioner respectfully objects to the R&R and submits that the Court must reverse, ordering Petitioner's immediate release.

I. Petitioner satisfied his initial burden.

"It is undisputed that Petitioner has been re-detained since March 2025, beyond a presumptively reasonable period of six months." R&R at 8. "It is also undisputed that Petitioner's order of removal is to Saudi Arabia and that ERO is not attempting to remove him to Saudi Arabia." *Id.*

In order to meet his initial burden, Petitioner must only provide "**good reason** to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (emphasis added). Importantly, "for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701.

Petitioner was detained when his order of removal became administratively final on February 20, 2020. *See* R&R at 2. After numerous efforts to deport Petitioner were unsuccessful, Petitioner was released on an Order of Supervision ("OOS") on August 10, 2021. R&R at 3. Thus, Petitioner's initial period of post-order immigration confinement was an astounding 537 days, or 596.66% of the 90-day removal period and 357 days longer than the presumptively reasonable 6-month period under *Zadvydas*.

Petitioner was then re-arrested on March 6, 2025. R&R at 3. At the time the R&R

issued, an additional 271 days had elapsed, bringing the aggregate period of post-final-order immigration confinement to a whopping **808 days (2.21 years)**.

The magistrate erred by failing to consider the *Zadvydas* rule of relativism: as the length of post-order confinement grows, the period of the reasonably foreseeable future shrinks. Here, the R&R treats the "reasonably foreseeable future" as a constant (or at the very least, fails to consider or otherwise account for the variable effect of Petitioner's lengthy detention). Petitioner has already served the equivalent of more than two one-year felony sentences while waiting to be deported. Under these circumstances, what constitutes the "reasonably foreseeable future" is days, not weeks or months. In light of the extraordinary length of Petitioner's aggregate period of post-order detention, the only further detention that is justified is door-to-plane detention of the sort identified in *Tazu v. Att'y Gen. United States*, 975 F.3d 298 (3d Cir. 2020). *See Kong v. United States*, 62 F.4th 608, 618 (1st Cir. 2023) (*Tazu* applies only to "'brief door-to-plane detention[s]' that are 'integral to the act of execut[ing] [a] removal order'" "where a noncitizen was detained by ICE **after his travel documents were secured and ICE was certain it would deport him to Bangladesh**.") (emphasis added).

Because the magistrate failed to account for the rule of relativism and the extraordinary length of Petitioner's aggregate post-order detention, the magistrate relied on cases that are inapposite to the unique facts and circumstances of Petitioner's case. For example, *Atikurraheman v. Garland*, 2024 WL 2819242 (W.D. Wash. May 10, 2024) involved around eight months of post-order detention, and was in relation to a noncitizen that had never previously been released on an OOS after it was determined there was no

significant likelihood of removal in the reasonably foreseeable future. Similarly, *Dusabe v. Jones*, No. 24-CV-464-SLP, 2024 WL 5465749 (W.D. Okla. Aug. 27, 2024) involved just 13 months of post-final-order detention, which is less than half of the amount of aggregate post-order detention Petitioner has accumulated. Additionally, as with *Atikurraheman*, *Dusabe* also involved a claim by a noncitizen who had never previously been released on an OOS after an initial determination that there was no significant likelihood of removal in the reasonably foreseeable future. *Komlanvi v. Sessions*, 2018 WL 3348886 (S.D. Tex. July 9, 2018) also involved only 16 months of detention, and further related to an individual who was transferred to ICE straight from an 11-year prison sentence and who had never been previously released on an OOS after a finding was made of no significant likelihood of removal in the reasonably foreseeable future. Likewise, *Derrick v. Barr*, 2019 WL 3997505 (W.D. Wash. May 22, 2019) involved less than a year of post-order detention and did not involve a noncitizen who had been previously released on an OOS after finding no significant likelihood of removal in the reasonably foreseeable future.

The magistrate's error in failing to apply the rule of relativism was compounded by the magistrate's failure to meaningfully consider the evidentiary effect of the government's prior unsuccessful deportation efforts and prior finding that release on an OOS was appropriate in light of the lack of any significant likelihood of removal in the reasonably foreseeable future. As Magistrate Amanda Maxfield and Judge Bernard Jones recently recognized, it is important to consider the full case history in determining whether there is a significant likelihood of removal in the reasonably foreseeable future. *See*

Momennia v. Bondi, No. 25-CV-1067-J (W.D. Okla. Oct. 27, 2025) ("In their objection, Respondents assert that Judge Maxfield's finding improperly relies on events from 2004 and a claim that is not supported by plausible allegations of fact. Having reviewed the court file, the Court concurs with Judge Maxfield's finding. It is undisputed that Petitioner has been detained over six months. **Additionally, based upon the information obtained in both Petitioner's prior attempted removal and the current attempted removal,** Petitioner has provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. It is undisputed that Petitioner previously applied for travel documents from Iran, was denied…") (emphasis added); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025) (in the R&R, Magistrate Maxfield found relevant various facts, such as: (1) "**In 2004,** ICE was 'unable to obtain travel documents…'"; (2) "Mr. Momennia 'has **previously** applied for travel documents from Iran, but his application was denied…'") (emphasis added).

If the Court harbors any concern about whether it is proper to aggregate Petitioner's periods of confinement for purposes of determining what constitutes the reasonably foreseeable future, such concerns can be safely disregarded for two reasons.

First, numerous cases throughout the country (including cases within this district) have determined the periods of separate post-order confinements must (or at least, can) be aggregated. *See Giorges v. Kaiser*, No. 25-cv-07683, 2025 WL 2898967, at *8 n.5 (N.D. Cal. Oct. 10, 2025) ("When calculating time spent in detention, courts aggregate nonconsecutive detention periods. The clock does not restart each time that a nonconsecutive detention begins for a noncitizen."); *Nguyen v. Scott*, --- F. Supp. 3d ---,

2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) (same); *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876807, at *6 (N.D. Cal. Apr. 19, 2018) (same); *Nhean v. Brott*, No. 17-28-PAM-FLN, 2017 WL 2437268, at *2 (D. Minn. May 2, 2017) (report and recommendation) (holding that when the government detains an alien for 90 days, releases him, and then re-detains him, the second detention "was presumptively reasonable for an additional 90 days (six months in total)," not an additional six months), *adopted*, 2017 WL 2437246 (D. Minn. June 5, 2017); *Bailey v. Lynch*, No. 16-2600-JLL, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (holding that the six-month *Zadvydas* period "does not restart simply because an alien who [was previously detained and then] has previously been released is taken back into custody"); *Farah v. INS*, No. Civ. 02-CV-4725-DSD-RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases an alien and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*"); *Chen v. Holder*, No. 14-CV-2530, 2015 WL 13236635, at * (W.D. La. Nov. 20, 2015) ("Surely, under the reasoning of *Zadvydas*, a series of releases and re-detentions by the government, as was done in this case, while technically not in violation of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention, albeit executed in successive six month intervals."); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. May 2, 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3477023

(W.D. Okla. Oct. 30, 2025) (R&R), *report and recommendation adopted*, 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025) (granting a § 1231 habeas claim roughly 3 months after Pham was re-detained in violation of regulation). The U.S. Attorney's Office in this district has even agreed with this proposition recently. *Sukhyani v. Bondi*, No. 25-CV-1243-J, 2025 WL 3283274, at *1 n.2 (W.D. Okla. Nov. 25, 2025) ("Because Petitioner was detained after he was initially ordered removed, Respondents agree that he has been 'in post order detention in excess of six months' [Doc. No. 18 at 20] despite the fact that his current detention has only lasted approximately five months.").

Second, if there is any question about whether to aggregate detention periods, the choice not to aggregate only makes sense if re-detention occurred in accordance with law. Here, there is no indication in the record that Respondents lawfully revoked Petitioner's OOS under 8 C.F.R. § 241.13(g) or (i)(2)-(3) or under 8 C.F.R. § 241.4(c), (i)(7) because there is no indication that Petitioner was ever notified of the changed circumstances that allegedly justified his re-detention, nor is there any indication in the record that Petitioner ever received an interview at which he was permitted to present evidence to demonstrate no significant likelihood of removal in the reasonably foreseeable future, nor is there any indication that the Executive Associate Commissioner, acting through the HQPDU, had any involvement in the continued custody decisions made in Petitioner's case. *See, e.g.*, *Roble v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *Sarail A. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *Yee S. v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2879479 (D. Minn. Oct. 9, 2025); *Constantinovici v. Bondi*, --- F. Supp. 3d ---, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v.*

Larose, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (granting habeas and ordering release); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on unlawful redetention claim because "there is no indication that an informal interview was provided"); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387-88 (D. Mass. 2017) (holding that ICE's failures to follow regulatory revocation procedures rendered detention unlawful); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 164 (W.D.N.Y. 2025) ("because ICE did not follow its own regulations in deciding to redetain [the petitioner], his due process rights were violated, and he is entitled to release"); *Momennia v. Bondi*, No. 25-CV-1067-J, 2025 WL 3011896 (W.D. Okla. Oct. 15, 2025), *report and recommendation adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025); *Pham v. Bondi*, No. 25-CV-1157-SLP, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025) ("A majority of district courts have found such regulatory defects amount to due process violations that entitle a petitioner to habeas relief. … The Court finds the majority view persuasive and consistent with the facts and circumstances of this case."); *Hamidi v. Bondi*, No. 25-CV-1205-G, 2025 WL 3452454, at *2 (W.D. Okla. Dec. 1, 2025) ("The Magistrate Judge found that ICE failed to comply with 8 C.F.R. § 241.13(i)(3) in re-detaining Petitioner. The Court agrees with and adopts the Magistrate Judge's findings in this regard."). Because it appears that Petitioner's due process rights were violated at the moment of re-detention, Respondents have unclean hands and cannot receive the windfall benefit of non-aggregated detention periods assuming *arguendo* there are ever circumstances where detention periods cannot or should not be aggregated.

Regarding Petitioner's initial burden, the magistrate also erred in holding that "there are not 'obstacles particular to [Petitioner's] removal' that demonstrate he will not be removed to a third country—Jordan—in the reasonably foreseeable future." R&R at 9. This holding is erroneous for at least two reasons. First, it misstates the legal standard, which only requires Petitioner to "demonstrate the existence of either institutional barriers to repatriation or obstacles particular to his removal." *Id.* at 8 (quoting *Dusabe*, 2024 WL 5465749, at *3) (internal quotations omitted). Here, Petitioner has demonstrated the existence of an institutional barrier to repatriation by demonstrating he was ordered removed to Saudi Arabia, and that he is not a citizen of Saudi Arabia. In *Sukhyani*, Magistrate Stephens found that similar circumstances demonstrated "a clear institutional barrier to... repatriation." *Sukhyani*, No. 25-CV-1243-J (W.D. Okla. Nov. 18, 2025), ECF No. 20 (R&R) at 10. Other courts have held similarly. *Trejo v. Warden of ERO El Paso East Mont.*, No. EP-25- CV-401, --- F. Supp. 3d. ---, 2025 WL 2992187, at *5 (W.D. Tex. Oct. 24, 2025) (finding that petitioner "identified a particular individual barrier to his repatriation to his country of origin—his grant of DCAT, which prevents his removal to El Salvador" (citation modified)); *Misirbekov v. Venegas*, No. 25-cv-00168, 2025 WL 2450991, *1 (S.D. Tex. Aug. 15, 2025) (finding that petitioner is likely to succeed in his habeas petition because he "provided good reason to believe that there is no significant likelihood of removal in the foreseeable future," as he could not be removed to his country of birth and "does not have citizenship nor any ties to any other country"); *see also Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (recognizing that a grant of withholding of removal under the Convention Against Torture to a noncitizen "is a

powerful indication of the improbability of his foreseeable removal, by any objective measure").

Second, while it is true that *Sukhyani* involved *more* barriers to third country removals than are facially apparent in Petitioner's case (*Sukhyani* involved applications for travel documents to six different countries that were all denied or ignored), *Sukhyani* also involved far less total post-order detention time (11-12 months during the first detention period and six months during the 2025 detention period, in contrast to Petitioner's total of nearly 27 months of post-order detention). *See Sukhyani*, 25-CV-1243-J, R&R at 2-4.

The foregoing is important to determining whether Petitioner has established clear barriers to third-country removal *in the reasonably foreseeable future*. The facts of Petitioner's case demonstrate such barriers. For example, Respondents have previously attempted to obtain Jordanian travel documents in 2021; these efforts were unsuccessful. *See* R&R at 3. Similarly, Respondents have, at time of submission, spent nine months trying to get a Jordanian travel document without success. Respondents have even gone so far as to engage in behaviors that demonstrate their own uncertainty about obtaining a Jordanian travel document by diversifying their efforts and beginning the process of applying for a Palestinian travel document for Petitioner in September. *See id.* at 5. Respondents also indicated an intent to begin applying for Israeli travel documents for Petitioner. If Respondents truly believed there was a significant likelihood of removal to Jordan in the reasonably foreseeable future, why bother with the Palestinian or Israeli requests? Respondents' course of conduct demonstrates a barrier to Petitioner's removal

to Jordan.

The arguments in the preceding paragraph demonstrate that the magistrate erred in holding that "Petitioner has not provided any reason that Jordan would not or should not issue him a new passport. Nor has he alleged why the Government of Jordan would have issued him a passport in 1989 but will not do so in 2025." R&R at 9. Petitioner need not speculate about the Jordanian government's internal motivations to demonstrate "good reason to believe" that Jordan will not issue him a travel document in the reasonably foreseeable future. He can instead point to Jordan's prior refusal in 2021 and the total lack of meaningful progress from Jordan since March 2025. Similarly, it is not reasonable to expect that Jordan will issue Petitioner a passport in 2025 simply because they issued him a passport in 1989, prior to Petitioner's numerous serious criminal convictions in the United States. If anything, Petitioner's numerous criminal convictions make it far less likely that Jordan will accept Petitioner for deportation now than would be true if Petitioner had a clean record.

Lastly, Petitioner notes that none of the statements Jordan has made to Respondents indicate that Jordan *will* issue a travel document to Petitioner. Instead, Jordan has informed Respondents that "they would **not** be able to issue emergency travel documents based on [Petitioner's] temporary [and expired] passport." R&R at 9 (quoting ECF No. 18-1, ¶ 24) (internal quotations omitted; emphasis added). Jordan then "gave instructions for submitting an application for a new passport." *Id.* (quoting ECF No. 18-1, ¶ 24) (internal quotations omitted). Giving instructions on how to submit an application is a far cry from promising to grant that application or even indicating a likelihood, much less a significant

likelihood, of granting the application. In the context of Petitioner's extremely lengthy 27 months of post-order aggregate detention, the magistrate erred in holding that "the Jordanian Embassy's indication that the process 'could take some time' alone does not impact the analysis because it is only when 'the delays are so extraordinarily long as to trigger an inference that travel documents will likely never issue at all,'" R&R at 13 (citations omitted), because the question is not whether travel documents will ever issue, but is instead whether travel documents will issue in the *reasonably foreseeable future* which, in Petitioner's case, means within the next few days.

In light of the foregoing, the Court must reverse the magistrate's finding that Petitioner failed to meet his burden of establishing no significant likelihood of removal in the reasonably foreseeable future.

II. Respondents did not meet their rebuttal burden.

Petitioner incorporates the arguments above by reference to submit that Respondents have failed to rebut Petitioner's showing that there is no significant likelihood of his removal in the reasonably foreseeable future.

Petitioner adds that, in the section of the R&R addressing Respondents' rebuttals, the magistrate did briefly address *Zadvydas*' rule of relativism. *See* R&R at 16 ("The undersigned is mindful that 'as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink,' *Zadvydas*, 533 U.S. at 701, and recognizes that Petitioner has been detained post-removal for nearly nine months this year."). However, the magistrate erred in failing to consider Petitioner's aggregate length of post-order detention. *Supra* at 7-8.

CONCLUSION

The Court must reverse the magistrate and order Petitioner's immediate release. In light of the extraordinary length of Petitioner's aggregate post-order confinement, Respondents must be prevented from continuing to detain Petitioner or re-detaining Petitioner unless and until a valid travel document is obtained allowing for a brief door-to-plane detention.

DATED: December 6, 2025

Respectfully submitted,

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