

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

RIAZ SUKHYANI,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-25-1243-J
)	
PAMELA J. BONDI, et al.,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION

Petitioner Riaz Sukhyani, a noncitizen¹ and Pakistani national, filed a Verified Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 challenging his detention by the U.S. Immigration and Customs Enforcement (“ICE”). Docs. 1, 14.² United States District Judge Bernard M. Jones referred this matter to the undersigned Magistrate Judge in accordance with 28 U.S.C. § 636(b)(1)(B)-(C). Respondents filed a Response, and Petitioner filed a Reply. Docs. 18, 19. For the reasons set forth below, the undersigned recommends that the Court grant the Petition to the extent it requests habeas relief under 28 U.S.C. § 2241 for release from ICE custody.

¹ Unless directly quoted, this Report and Recommendation “uses the term ‘noncitizen’ as equivalent to the statutory term ‘alien.’” *Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020) (citing 8 U.S.C. § 1101(a)(3)).

² On October 24, 2025, Petitioner filed an Amended Verified Petition for Writ of Habeas Corpus (“Petition”). Doc. 14. This is the operative pleading. *See* Doc. 15.

I. Background

On March 13, 1993, Petitioner was paroled into the United States as an asylum applicant. Resp. at 9; Doc. 18-1 at ¶ 4. On December 7, 2001, Petitioner was convicted in Texas state court of two counts of Indecency with a Child by Contact and was sentenced to five years in prison. Resp. at 9; Doc. 18-1 at ¶ 4. On February 24, 2005, after serving his prison sentence, Petitioner was placed into removal proceedings and issued a Notice to Appear. Resp. at 10; Doc. 18-1 at ¶ 5; Doc. 18-2 at 1. On May 24, 2006, an immigration judge issued an order of removal to Pakistan, and Petitioner was granted a deferral of removal to Pakistan under the Convention Against Torture (“DCAT”). Pet. at 1, 4; Resp. at 10; Doc. 18-1 at ¶ 5. Petitioner’s removal order became final between May 24, 2006, and June 24, 2006. Pet. at 1-2.³

On October 17, 2007, ICE Enforcement and Removal Operations (“ERO”) determined it was unable to remove Petitioner to Pakistan and began the long process of trying to remove him to a third country. Doc. 18-1 at ¶ 6; *see also* Pet. at 3 (alleging that Petitioner previously applied for “numerous travel documents from numerous different countries” but all his applications were denied). On that same day, ERO informed

³ The Petition is unclear about whether an appeal of Petitioner’s removal order was expressly waived, meaning that the order would have become final on May 24, 2006, or whether the order became final on June 24, 2006, because Petitioner did not expressly waive appeal but nonetheless did not appeal. *See* Pet. at 1-2. It is also unclear how the government’s ultimately-withdrawn appeal impacts when Petitioner’s removal order became final. *See* Pet. at 2. However, because Petitioner’s first detention until 2008 was more than six months, the date that his removal order became final does not impact the undersigned’s analysis.

Petitioner that he “was required to show his efforts to obtain admission to a third country,” which Petitioner acknowledged. Doc. 18-1 at ¶ 6. On March 26, 2008, ERO issued Petitioner a 90-custody review letter informing him that ERO would continue to detain him because he was a threat to the community. *Id.* ¶ 7. On or about April 17, 2008, Petitioner submitted evidence that he applied to the Swiss Embassy for travel documents. *Id.* ¶ 8.⁴ On or about May 13, 2008, Petitioner’s request for travel documents was sent to the Irish Consulate. *Id.* On June 30, 2008, Petitioner submitted a certified receipt for a request for travel documents sent to the British Consulate. *Id.* ¶ 9. On or about September 26, 2013, Petitioner submitted letters to the Embassies of Bulgaria and Austria with certified receipts. *Id.* ¶ 11. On April 23, 2014, Petitioner submitted a certified letter from the Hungarian Consulate declining to accept him. *Id.* Since 2008, each of these countries either declined to accept Petitioner or did not respond to inquiries made by Petitioner or ERO. *Id.*

During this prolonged process, on May 23, 2008, Petitioner was released from custody on an Order of Supervision (“OOS”) after he filed a petition for writ of habeas corpus. Pet. at 2; Resp. at 10; Doc. 18-1 at ¶ 8; *see also Riaz v. Mukasy*, No. 08-cv-01192 (S.D. Tex.) (habeas petition dismissed as moot after Petitioner was released on OOS).⁵

⁴ In 2012, Petitioner also submitted a request for asylum to Switzerland that was declined. Doc. 18-1 at ¶ 10.

⁵ The undersigned takes judicial notice of the docket with Petitioner’s prior habeas petition in the Southern District of Texas. *See United States v. Ahidley*, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007) (noting a court “may exercise [its] discretion to take judicial notice of publicly-filed records in [this] court and certain other courts concerning matters that bear directly upon the disposition of the case at hand”).

Petitioner alleges that the OOS was issued pursuant to 8 C.F.R. § 241.4(e) and 8 C.F.R. § 241.13 because “it was determined there was no significant likelihood of removal in the reasonably foreseeable future.” Pet. at 2. Further, it was determined that Petitioner did not present an ongoing danger or flight risk. *Id.* Under the OOS, Petitioner was required to complete regular check-ins with ICE. *Id.* Petitioner complied with all check-in requirements and updated his address with ICE each time he moved. *Id.*

Fast forward to June 11, 2025. ERO arrested Petitioner and determined “to seek a third country removal because he is a registered sex offender with two convictions for sex offenses against a child.” Resp. at 10. Petitioner alleges that ICE told him they had a warrant to arrest him but that he did not see any proof of a warrant. Pet. at 2-3. Petitioner also alleges he was not served with a Notice of Revocation of Release purporting to revoke his OOS, nor did he recall having an informal interview to challenge the Notice of Revocation of Release. *Id.* at 13.

After Petitioner’s re-detention, ERO sent requests to three countries requesting Petitioner’s removal—to Morocco, South Africa, and Sri Lanka. Resp. at 10; Doc 18-1 at ¶ 13. On July 3, 2025, Morocco denied the request. Resp. at 10; Doc. 18-1 at ¶ 13. Neither party has provided any information to indicate South Africa or Sri Lanka has responded to ERO’s request. Resp. at 10; Doc. 18-1 at ¶ 13. Respondents contend that the State Department “is currently working to facilitate Petitioner’s removal to a third country” and that “he is a priority for removal” based on his sex offense convictions. Resp. at 10; *see*

also Doc. 18-1 at ¶ 14. Petitioner claims he has not been asked to apply for travel documents to any country since his re-detention in June 2025.⁶ Pet. at 14.

Petitioner is currently detained at Cimarron Correctional Facility in Cushing, Oklahoma. See ICE Online Detainee Locator System, <https://locator.ice.gov/odls/#/results> (last visited Nov. 18, 2025).

II. Petitioner's Claims

The Petition raises four grounds for relief.

- **Ground One:** Petitioner requests declaratory judgments that (1) he is detained pursuant to 8 U.S.C. § 1231(a)(1); (2) he has previously demonstrated to ICE's satisfaction that there is no significant likelihood of his removal in the reasonably foreseeable future; (3) ICE did not rebut Petitioner's prior showing; and (4) he cannot be re-detained until ICE rebuts that showing. Pet. at 21.
- **Ground Two:** Petitioner alleges that his re-detention is in violation of the Immigration and Nationality Act ("INA"), 8 C.F.R. § 241.13(i)(2)-(3), because Respondents failed to comply with these regulations before re-detaining him. Pet. at 21-22.
- **Ground Three:** Petitioner alleges that his re-detention is in violation of the Fifth Amendment Due Process Clause because there is no significant likelihood of his removal in the reasonably foreseeable future. Further, Petitioner asserts that his right to due process was violated because he previously established there was no significant likelihood of his removal in the reasonably foreseeable future, and Respondents have not rebutted this prior showing with credible evidence. Finally, Petitioner alleges his right to due process was violated because his re-detention was intended to punish him and send a message to similarly situated individuals. *Id.* at 22-23.

⁶ Petitioner does allege that ICE offered to bus him to the Mexican border, drop him off on the United States side, and allow him to walk across the border into Mexico without any travel documents. Pet. at 3. Petitioner declined to do. *Id.*

- **Ground Four:** Petitioner alleges that his re-detention violates the Administrative Procedures Act because Respondents have failed to articulate any reasoned explanation for re-detaining him or for failing to comply with 8 C.F.R. § 241.13(i)(2)-(3). Further, Respondents' decision to re-detain Petitioner is arbitrary, capricious, and not in accordance with law because that decision represents changes in policy, results from consideration of factors that Congress did not intend to be considered, and fails to consider important aspects of Petitioner's case. Pet. at 23-24.

Petitioner seeks immediate release from ICE detention. *Id.* at 25.

In addition, Petitioner seeks injunctive and declaratory relief, including:

- Emergency preliminary orders restraining Respondents from attempting to move Petitioner from the State of Oklahoma during the pendency of this proceeding and providing 72-hour notice of any intended movement. *Id.* at 25.
- An emergency preliminary order requiring Respondents to give Petitioner due process before removing him to a third country and for the Court to permanently enjoin Respondents from deporting Petitioner to a third country without due process in the form of a full merits hearing. *Id.*
- Declarations that Respondents' actions are arbitrary and capricious and failed to adhere to binding regulations and precedent, and that Petitioner's detention violates the Due Process Clause. *Id.*
- An order permanently enjoining Respondents from re-detaining Petitioner until Respondents have obtained a travel document allowing his removal, and, if Petitioner is re-detained, that he not be detained more than three days after receiving a travel document. *Id.*
- Reasonable attorney fees and costs pursuant to the Equal Access to Justice Act ("EAJA").⁷ *Id.* at 26.

⁷ To the extent Petitioner may be entitled to EAJA fees and costs, Petitioner must seek those separately. 28 U.S.C. § 2412(d)(1)(B); *see also Daley v. Ceja*, --- F.4th---, 2025 WL 3058588, at *10 (10th Cir. Nov. 3, 2025) (interpreting "EAJA's broad language to unambiguously authorize fees in habeas actions challenging immigration detention"). Accordingly, the undersigned does not address this request at this juncture.

III. Standard of Review

To obtain habeas corpus relief, Petitioner must show that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). “Challenges to immigration detention are properly brought directly through habeas.” *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

Petitioner asserts that his continued detention violates 8 U.S.C. § 1231(a). Pet. at 16. Under this statute, “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A). The 90-day period is known as the “removal period.” *Id.* After the removal period, ICE has discretion to detain inadmissible or criminal aliens. *Id.* § 1231(a)(6). However, detention of an alien subject to a final order of removal may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *See Zadvydas*, 533 U.S. at 701; *see also Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005) (reiterating that “the reasonable period of post-removal detention is presumptively six months”). After that, a detainee may bring a habeas action to challenge his detention. *Zadvydas*, 533 U.S. at 688. “This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

Therefore, to obtain habeas relief, a petitioner has the initial burden to show the post-removal-order detention has surpassed six months and to “provide[] good reason to

believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*; *see also Soberanes*, 388 F.3d at 1311 (“If removal is not reasonably foreseeable, the court should hold continued detention unreasonable.” (citation modified)). “After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701. Further, “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.*

IV. Analysis⁸

A. **Petitioner’s continued detention under § 1231(a)(6) violates his Fifth Amendment Due Process rights pursuant to *Zadvydas*.**

As a preliminary matter, Respondents question whether Petitioner sufficiently alleges a *Zadvydas* claim. *See Resp.* at 16-17. The undersigned concludes that Petitioner’s related claims that

- he is being improperly detained under 8 U.S.C. § 1231(a)(1), and
- his re-detention violates the Fifth Amendment Due Process Clause because there is no significant likelihood of his removal in the reasonably foreseeable future

⁸ Petitioner claims he was not required to exhaust statutory or administrative remedies before filing the Petition. Pet. 10-12. Respondents do not allege that Petitioner failed to exhaust his remedies before filing the Petition. The undersigned agrees that Petitioner was not required to exhaust before filing the Petition, and therefore does not address exhaustion at length. *See Soberanes*, 388 F.3d at 1310 (holding that exhaustion requirements do not apply to challenges to immigration detention brought in habeas proceedings).

sufficiently allege a *Zadvydas* claim. *See* Pet. at 21-23; *see also Zadvydas*, 533 U.S. at 690 (finding that “a statute permitting indefinite detention of an alien would raise a serious constitutional problem” because “the Fifth Amendment’s Due Process Clause forbids the Government to deprive any person of liberty without due process of law” (citation modified)). This Court has previously applied *Zadvydas* when evaluating a petitioner’s re-detention after prior release on an OOS. *See Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3006045, at *2 (W.D. Okla. Oct. 27, 2025) (applying *Zadvydas* to a petitioner released from detention on an OOS “for over twenty years” and then re-detained at an ICE check-in in early 2025). The undersigned addresses Petitioner’s *Zadvydas* claim first.

1. Petitioner has met his initial burden.

Petitioner has met his initial burden under *Zadvydas* to (1) establish his post-removal-order detention has surpassed six months and (2) show “there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Notably, Petitioner is not required under *Zadvydas* to “show the absence of *any* prospect of removal—no matter how unlikely or unforeseeable,” *id.* at 702, only that that he has “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” *id.* at 701.

As to detention after his removal order, the parties agree that Petitioner has been “in post order detention in excess of six months.” Resp. at 20; *see also* Pet. at 8. Petitioner’s re-detention has lasted approximately five months, since June 11, 2025. Pet. at 13. And it is undisputed that his prior detention in 2007 and 2008 lasted more than six months. *Id.* at

2. As such, Petitioner has been detained for more than six months, removing ICE's rebuttable presumption of reasonableness.⁹

Further, Petitioner has "provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. "To meet the burden of establishing this, Petitioner must demonstrate the existence of either institutional barriers to repatriation or obstacles particular to his removal." *Dusabe v. Jones*, No. 24-464-SLP, 2024 WL 5465749, at *3 (W.D. Okla. Aug. 27, 2024) (R&R), *adopted*, 2025 WL 486679 (W.D. Okla. Feb. 13, 2025). Here, Petitioner has identified several barriers and obstacles.

First, the parties agree that Petitioner's DCAT prevents him from being removed to Pakistan, his native country. Pet. at 4; *see also* Doc. 18-1 at ¶ 6 ("On October 17, 2007, ERO determined it was unable to remove Sukhyani to Pakistan."). ICE concedes that Petitioner will not be removed to Pakistan and instead is only "working to facilitate removal to a third country." Doc. 18-1 at ¶ 14. Petitioner therefore has a clear institutional barrier to his repatriation. *See Trejo v. Warden of ERO El Paso East Mont.*, No. EP-25-

⁹ Courts appear split on whether to aggregate a petitioner's prior detention and re-detention. *Compare 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.") *with Barrios v. Ripa*, No. 25-cv-22644, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025) (refusing to aggregate because "if the Court counted detentions in the aggregate, any subsequent period of detention, even one day, would raise constitutional concerns"). Based on Respondents' agreement that Petitioner has more than six months of post-removal-order detention, the undersigned need not address whether Petitioner's periods of detention must be aggregated for him to be entitled to relief.

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, Petitioner has demonstrated obstacles to his removal to a third country. He has applied for travel documents numerous times from numerous countries, all of which have been denied or unanswered. Pet. at 3. In particular, ERO Officer Thompson details the six countries to which Petitioner applied for travel documents between 2008 and 2014. Doc. 18-1 at ¶¶ 8-11. Respondents dispute Petitioner’s reliance on his prior detention and release by ICE in 2008¹⁰ to show “he has already made the requisite showing regarding the likelihood of removal in the reasonably foreseeable future for his *current* detention.” Resp.

¹⁰ In their Response, Respondents reference Petitioner’s release in 2019. Resp. at 15. This appears to be a scrivener’s error as the record does not reflect any detention of Petitioner by ICE in 2019. Rather, the record shows Petitioner’s only prior ICE detention occurred between 2006 and 2008. *Supra*, Section II.

at 15-16 (citing Pet. at 19, 22). The undersigned agrees that a prior release several years ago *alone* does not meet Petitioner's burden today under *Zadvydas*. However, Petitioner's previous attempts to obtain travel documents to six different third countries (and asylum to one of those third countries), all of which were declined or ignored, provide important context to whether ERO's current attempts to obtain travel documents to a third country will be successful. In addition, Petitioner alleges that he has not been asked to apply for any new travel documents to any country during his re-detention. Pet. at 3.

In sum, ERO's prior inability to remove Petitioner, his release in 2008, and attempts by both parties since 2008 to effectuate his removal to a third country are directly relevant to the likelihood now that Petitioner will be removed to a third country in the reasonably foreseeable future. The Court recently encountered analogous circumstances in *Momennia v. Bondi* and concluded the petitioner there "provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" "based upon the information obtained in both [*p*]etitioner's prior attempted removal and current attempted removal." 2025 WL 3006045, at *1 (emphasis added); *see also Gomez v. Mattos*, No. 25-CV-00975, 2025 WL 3101994, at *5 (D. Nev. Nov. 6, 2025) (finding petitioner met his initial burden because he "has identified a barrier preventing him from being repatriated to [his home country], has demonstrated that he is not a citizen of any other country, and that ICE has not identified a third country that will accept him"); *Trejo*, 2025 WL 2992187, at *5 (finding that petitioner met his burden by demonstrating "that he is not a citizen of any other country, and that ICE has not identified a third country that will accept him"); *Zavvar v. Scott*, No. 25-2104, 2025 WL 2592543, at *7-8 (D. Md. Sep. 8, 2025) (finding that

petitioner had shown his removal was not reasonably foreseeable because he had been granted a withholding of removal and for 17 years ICE was unsuccessful in removing him to a third country); *Yang v. Kaiser*, No. 25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (holding that petitioner had “provided good reason to believe that, despite his efforts, his removal is not reasonably foreseeable” because petitioner “has applied for travel documents to China, the country he has been ordered removed to, several times since 2018 but has been unable to procure such travel authorization”); *Tadros v. Noem*, No. 25cv4108, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding petitioner “demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing a third country for his removal”).

2. Respondents have not met their burden.

Once Petitioner has established six months of post-removal-order detention and “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701. Respondents have not met their burden.¹¹

¹¹ Rather than addressing their burden, Respondents devote their *Zadvydas* section to arguing that Petitioner fails to allege sufficiently that his removal is not significantly likely in the reasonably foreseeable future. *See* Resp. at 17-20. However, based on the declaration from ERO Officer Thompson, Doc. 18-1, the undersigned addresses relevant facts in the record that support Respondents’ position that Petitioner is not entitled to relief under *Zadvydas*.

Respondents are correct that “a mere delay in receiving travel documents does not trigger the inference that an alien will not be removed in the reasonably foreseeable future because the reasonableness of detentions pending deportation cannot be divorced from the reality of bureaucratic delays that almost always attend such removals.” Resp. at 19 (quoting *Head v. Keisler*, No. 07-402-F, 2007 WL 4208709, at *4 (W.D. Okla. Nov. 26, 2007) (citation modified)). However, this is not a simple case where “a foreign government has not issued travel documents despite efforts to secure them.” Resp. at 19. Petitioner’s case is materially different from both cases cited by Respondents to support this position, as those cases involve delays in repatriating the petitioner to his country of citizenship—not a third country. See *Salim v. Sessions*, No. H-18-2287, 2019 WL 13218806, at *6-7 (S.D. Tex. Sept. 4, 2019); *Nagib v. Gonzales*, No. 06-CV-0294, 2006 WL 1499682, at *2 (N.D. Tex. May 31, 2006).

ERO contends that “the State Department is currently working to facilitate removal to a third country in this case” and that “the State Department has successfully facilitated third country removals for ERO in the past.” Doc. 18-1 at ¶ 14 (citation modified). The fact that the State Department “has successfully facilitated third country removal for ERO in the past” does not alone mean that Respondents have met their burden. See *Rajigah v. Conway*, 268 F. Supp. 2d 159, 167 (E.D.N.Y. 2003) (finding that “evidence of what the [foreign] government has done in the past with respect to petitioner and with respect to other nationals sheds little light on how the [foreign] government will respond to the current situation,” and finding that respondent did “not provide any conclusive evidence that petitioner will be removed in the near future” (citation modified)). The undersigned

agrees with Petitioner that Respondents have not established *his* removal to a third country is significantly likely in the reasonably foreseeable future. Of note, ERO has not provided any evidence about whether such third country removals (1) were for persons convicted of sex offenses against children, like Petitioner, or (2) were to countries that have previously denied Petitioner's travel requests.

Furthermore, "mere intent to find a third country is too speculative to permit indefinite detention or to overcome [Petitioner's] showing." *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *10 (W.D. Okla. Oct. 15, 2025) (R&R), *adopted*, 2025 WL 3006045 (W.D. Okla. Oct. 27, 2025). Respondents have identified no country where any sufficient level of removal progress is being reported. According to ERO Officer Thompson, Petitioner has not received travel documents, and no country has agreed to accept him. Doc. 18-1 at ¶ 8-11, 13. In fact, every request that Petitioner or ERO has submitted since 2008 has been declined or ignored.¹² *Id.* Respondents now rely on ERO's new requests to more third countries (Morocco, South Africa, and Sri Lanka) to demonstrate Petitioner's removal is significantly likely in the reasonably foreseeable future. *Id.* ¶ 13; *see also* Resp. at 10 (indicating ERO sent third country removal requests after Petitioner's re-detention on June 11, 2025). However, one of those requests has already been denied, and neither South Africa nor Sri Lanka has responded to ERO's

¹² Indeed, ERO Officer Thompson's declaration states that "agents arrested [Petitioner] *to seek* a third country removal because he is a registered sex offender." Doc. 18-1 at ¶ 12 (citation modified and emphasis added). This phrasing indicates that ERO detained him without any plan in place to effectuate his removal to a third country or that any third country had actually agreed to receive him.

requests from several months ago.¹³ Doc. 18-1 at ¶ 13. Further, Respondents provide no evidence that Petitioner, a citizen of Pakistan, has any connections to South Africa, Sri Lanka, or any other third country.

Thus, given the track record of prior, unsuccessful attempts at Petitioner's removal to third countries and the status of ERO's pending requests to two countries without any apparent nexus to Petitioner, Respondents have not met their burden to show that his removal is significantly likely in the reasonably foreseeable future. This conclusion is consistent with other courts recently finding the government did not show removal is likely in the reasonably foreseeable future based only on a pending request for travel documents to one or more third countries. *See, e.g., Trejo*, 2025 WL 2992187, at *5 (finding that Respondents cannot carry their burden when "ICE has contacted multiple countries seeking acceptance of Petitioner and while some requests have been refused, the requests to Mexico, Guatemala, and Ecuador remain pending" but the requests had been pending for five to six months "with no indication that they will be approved" (citation modified)); *Zavvar*, 2025 WL 2592543, at *7 (finding that removal was not reasonably foreseeable because petitioner "had absolutely no ties to th[e] countr[ies]" ICE had requested to remove him to and ICE had received no response to requests "sent more than two months ago"); *Tadros*, 2025 WL 1678501, at *3 (finding that petitioner had the better argument when

¹³ While ERO Officer Thompson's declaration does not state when the requests were sent to Morocco, South Africa, or Sri Lanka, he says that Morocco denied the request on July 3, 2025. Doc. 18-1 at ¶ 13. Accordingly, the undersigned assumes that the requests were sent to South Africa and Sri Lanka some time before July 3, 2025.

“Respondents have not identified any country that has been willing to accept” the petitioner and “there are no travel or other documents to prepare for his departure”).

The undersigned’s conclusion is also consistent with other courts’ holdings that Respondents’ burden to furnish evidence demonstrating removal is likely in the reasonably foreseeable future is not met by a pending request for travel documents alone—even to petitioner’s native country. *See, e.g., Johnson v. Young*, No. 12-cv-2339, 2013 WL 1571938, at *2 (W.D. La. Feb. 11, 2013) (finding the government failed to meet its burden by stating petitioner’s native country had not yet refused to issue travel documents and the request was “pending”) (R&R), *adopted*, 2013 WL 1571272 (W.D. La. Apr. 12, 2013); *Fermine v. Dir. of Immigr. & Customs Enf’t*, No. 06-cv-1578, 2007 WL 2284606, at *4 (W.D. La. May 23, 2007) (finding no significant likelihood of removal in the reasonably foreseeable future where ICE was continuing efforts to obtain a travel document and petitioner’s native country had not yet refused the request); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006) (holding that assertions from ICE that “it has followed up on its request for travel documents from India and done all it can” is “not sufficient evidence to rebut petitioner’s showing that he is unlikely to be removed in the reasonably foreseeable future”); *cf. Yaro v. Mukasey*, No. 08-cv-593, 2008 WL 4816657, at *3 (W.D. Tex. Oct. 30, 2008) (finding petitioner’s removal likely in the reasonably foreseeable future where his native country had not refused to issue travel documents or failed to respond to ICE, but acknowledged receipt of key documents and provided a general timeline for a decision).

Respondents have failed to rebut Petitioner's claims that there is no significant likelihood of his removal in the reasonably foreseeable future and that he is being detained indefinitely in violation of his Fifth Amendment Due Process rights. Accordingly, the undersigned concludes that Petitioner is entitled under *Zadvydas* to habeas relief and immediate release from custody. *See* 28 U.S.C. § 2241(c)(3).

B. The Court should decline to address Petitioner's additional claims for relief.

Petitioner also alleges that his re-detention was in violation of ICE's own regulations. Pet. at 21-22. Because the undersigned recommends that the Court grant the Petition after finding Petitioner's indefinite detention violates his Fifth Amendment Due Process rights, the Court should decline to address Petitioner's regulatory claim. *See Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3006045, at *1 n.1 (W.D. Okla. Oct. 27, 2025) (declining to decide whether ICE violated its own regulations by continuing to detain the petitioner because the Court adopted the conclusion that his indefinite detention violates his Fifth Amendment Due Process rights). Further, considering the recommended relief, the undersigned declines to address Petitioner's other requests for injunctive and declaratory relief. *See* Pet. at 25-26.

V. Recommendation and Notice of Right to Object

For the foregoing reasons, the undersigned recommends that the Court **GRANT** the Petition to the extent it requests habeas relief under 28 U.S.C. § 2241 for release from ICE custody. The undersigned recommends that the Court order Respondents to release Petitioner from custody immediately, subject to an appropriate Order of Supervision. *See*

Zadvydas, 533 U.S. at 696 (“The choice, however, is not between imprisonment and the alien ‘living at large.’ It is between imprisonment and supervision under release conditions that may not be violated.” (citation modified)). The undersigned further recommends that the Court order Respondents to certify compliance by filing a status report within five business days of the Court’s order.

Parties are advised of their right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objection must be filed not later than November 25, 2025. *See id.* § 636(b)(1); Fed. R. Civ. P. 72(b)(2). If a party wishes to respond to the other party’s objections, such response must be filed not later than December 2, 2025. *See* Fed. R. Civ. P. 72(b)(2). Failure to object timely waives the right to appellate review of the factual and legal issues addressed in this Report and Recommendation. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in this matter.

ENTERED this 18th day of November, 2025.


CHRIS M. STEPHENS
UNITED STATES MAGISTRATE JUDGE