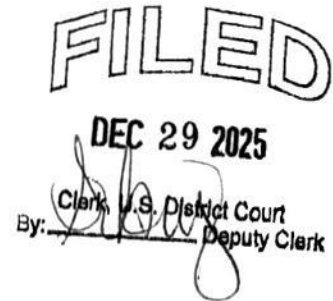


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MUHAMMAD A. BIN NUR HUSSEIN,
Petitioner, Pro Se



V.

PAMELA BONDI, KRISTI NOEM,
SAMUEL OLSON
AND CRYSTAL CARTER
Respondents,

Case No. 5:25-cv-03240-JWL

TRAVERSE TO RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner, Mohammad Ali Bin Nur Hussein, has been continuously detained since April 24, 2025, post-removal-order, for a period exceeding one hundred eighty (180) days. Crystal Carter, Warden at FCI Leavenworth and his immediate custodian is located in this district (Kansas). The Writ of Habeas Corpus is brought under 28 U.S.C. § 2241 challenging the lawfulness of continued detention post-removal order. Respondents' Return fails to rebut Petitioners showing that his continued detention violates 8 U.S.C. § 1231(a)(6) as interpreted by Zadvydas v. Davis, 533 U.S. 678 (2001), and violates substantive due process. Instead, the government relies on speculative future removal, failed third-country negotiations, and a post hoc custody review scheduled after the statutory six-month period had already expired.

Because Respondents cannot demonstrate a significant likelihood of removal in the reasonably foreseeable future, and because they failed to comply with mandatory custody review procedures, the Court should order Petitioner's immediate release under appropriate supervision.

II. LEGAL STANDARD GOVERNING POST-ORDER DETENTION

The Supreme Court held in Zadvydas that post-removal-order detention is presumptively reasonable for six months. After that period:

"Once the alien provides good reason to abide 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

Indefinite detention based on mere hope, diplomatic effort, or speculation is unlawful.

III. RESPONDANTS FAIL TO REBUT PETITIONER'S ZADVYDAS SHOWING

A. Failed Third-Country Removal Attempts Confirm, Rather Than Undermine, Petitioner's Claim

Respondents argue that Petitioner's detention is lawful because the unsuccessfully attempted removal to Canada and are now seeking removal to Malaysia. This argument confirms that removal is not reasonably foreseeable.

Courts consistently hold that unsuccessful third-country efforts do not justify continued detention:

"The government's assertion that it is 'seeking alternatives' does not establish a significant likelihood of removal in the reasonably foreseeable future." *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 334 (W.D.N.Y. 2018)

Here:

- Canada refused removal;
- No Agreement exists with Malaysia;
- No travel document has been issued;
- No acceptance by Malaysia has been secured.

ICE has not satisfied its burden of showing that the Petitioner is significantly likely to be removed in the reasonable foreseeable future. The Petitioner has already been detained for eight months. The Petitioner's period of detention exceeds the "6 months" reasonable period of detention authorized by *Zadvydas*, and there is no evidence of when, if ever, a travel document will be issued or if an alternative country will accept the Petitioner. ICE has not satisfied its burden and the Petitioner must be released. See *Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290, *5(W.D. Ill. Apr. 28, 2003) INS failed to carry burden of proof where no travel documents have been issued..." Citation modified

Respondents have been unable to secure travel documents for the Petitioner within the "REASONABLE" 6 months the Supreme Court considers enough to effectuate removal as previously mentioned. The Immigration Judge Ordered the Petitioner removed on April 24,

2025, as of the date of this response, it has been 8 months since the Final Order of Removal and ICE has not yet secured a travel document, proving that the removal is no longer within the reasonable time mentioned in Zadvydas. For the detention to remain reasonable, as the period of prior post removal confinement grows, what counts as the "Reasonably Foreseeable Future" conversely would have to shrink. Failing to obtain travel documents suggests that officials were unable to effect Petitioner's removal.

See Gomez Barco v. Witte, No. 6:20-CV-00497, [2020 WL 7393786](#) (W.D. La. Dec. 16, 2020) (ordering release of a petitioner who was detained longer than six months because ICE had not been able to secure necessary travel documents, noting that the ICE officer's clearly has no factual basis for his 'belief' that there is no foreseeable impediment to Petitioner's removal or that her removal is imminent,"

Speculation about possible third-country removal does not satisfy Zadvydas.

B. CAT Protection For Burma Makes Removal To Home Country Legally Impossible

Petitioner has relief under the Convention Against Torture (CAT) with respect to Burma (Myanmar). Removal to his home country is therefore legally barred.

Courts recognize that when removal to the country of origin is prohibited, the government bears a heightened burden to show realistic third-country removal;

"Where removal to the country of origin is barred, the likelihood of removal depend entirely on the willingness of a third country to accept the alien." Lema v. INS [341 F.3d 853, 856](#) (9th Cir. 2003)

In addition, the petitioner's removal consists of ICE having the obligation to identify an "alternative country" where the Petitioner will have the same terms and conditions as stated on his granted "WITHHOLDING OF REMOVAL" status. ICE must find a country that will guarantee that the petitioner will not be tortured, deprived of his freedom, or will face any type of danger. The designated country for removal must also guarantee that the Petitioner will not be removed and deported back to Burma while his STATUS remains and his deportation to this country is suspended indefinitely. As of today, ICE has not found a country with these conditions within the 6 months the courts considers reasonable to effectuate removal, therefore proving that travel documents have not been secured for a prolonged period.

Respondents have not identified any third country that has agreed to accept Petitioner.

C. Petitioner Has Fully Cooperated Throughout Detention

Under § 1231(a)(1)(c), detention may be extended only if the noncitizen acts to prevent

removal. When cooperation exists, continued detention is unlawful:

"Where an alien has cooperated fully and removal is not foreseeable, continued detention exceeds statutory authority." *Rajigah v. Conway*, 268 F. Supp 2d 159, 165 (E.D.N.Y. 2003)

The Petitioner believes that once the "Detainee" shows facts indicating no realistic removal (over six months and no non-cooperation being the cause etc.), the Respondents must produce competent evidence of an available destination. The Petitioner believes that he has shown enough to trigger that burden.

Furthermore the Respondents insist on competent evidence of third-country removal by citing *Zadvydas's* standard: The detainee must provide "'good reason to believe' there is no significant likelihood of removal in the reasonably foreseeable future." (Page 5, lines 15-16). The Petitioner believes that *Zadvydas* does not require the detainee to provide complete proof that no country exists. The Petitioner believes that length of detention (8 months as of writing this response), as well as his full cooperation in obtaining a travel whenever requested, demonstrate a lack of realistic removal path; not by mere speculation that removal is impossible, but showing that with his full cooperation and ICE's efforts throughout the last eight months nothing viable has materialized. The Petitioner also believes that the Respondent's failure to document any willingness or acceptance by a third country after more than six months is a meaningful evidentiary gap, making is appropriate to order release.

D. Speculative Future Removal Cannot Justify Continued Detention

Respondents' claim that removal may occur at some unknown future date is precisely the type of reasoning rejected in *Zadvydas*:

"The Constitution does not permit detention based on the remote possibility that removal may someday occur." *Zadvydas*, 533 U.S. at 699

When evaluating whether a Petitioner's detention has been unreasonably prolonged, "Two factors of particular importance are (1) The length of the detention and (2) The reason for the delay." *Vasquez-Ramos v. Barr*, No. 20-CV6206-FPG/ 2020 U.S. Dist. Lexis 266756, 2020 WL 13554810, at *4(W.D.N.Y June 26, 2020) In the Petitioner's case, the length of detention has now been 8 months after the Final Order of the Immigration Judge in April 24, 2025. The reason for delay is ICE using the excuse of "Finally, that efforts to remove Petitioner to Canada were not successful, does not mean that third countries similarly will not accept Petitioner. ICE is currently working on a travel document request to Malaysia and will continue its efforts to identify alternative countries to which Petitioner may be removed." (Respondents' Response, Page 6, lines 3-6). Here, Respondents show that they have failed at their attempts to identify any alternative country that is willing to accept the Petitioner. The respondents must show a significant likelihood of removal (*Zadvydas*) not merely that

efforts are underway. Continued efforts alone does not show a likelihood of removal in the reasonably foreseeable future. The standard is not simply that efforts exists, but that removal is credibly likely in the near term. If the Respondents has not produced correspondence from a country willing to accept the Petitioner, then the Respondents "Efforts" remain speculative.

No embassy confirmation, no travel document, and no timeline exist. This is speculation, not evidence.

IV. RESPONDENTS' RELIANCE ON A FUTURE CUSTODY REVIEW IS LEGALLY INSUFFICIENT

A. The 180-Day Custody Review Was Mandatory And Time-Sensitive

Petitioner's 180th day of post-order detention occurred on or about October 24, 2025. Respondents concede that no custody review interview occurred prior to that date.

Regulations require timely review once detention exceeds six-months. A delayed review does not cure unlawful detention:

"A belated custody review does not retroactively authorize detention that has already become unlawful." *Singh v. DHS*, 656 F.3d 1047, 1053 (9th Cir. 2011)

B. A Scheduled Review Does Not Moot Habeas Relief

Respondents argue that Petitioner is not entitled to relief because a File Custody Review is scheduled for December 9, 2025. Courts uniformly reject this argument:

"The prospect of future administrative review does not defeat jurisdiction once detention has become unlawful." *Clark v. Martinez*, 543 U.S. 371, 386 (2005)

Habeas relief addresses current unlawful detention, not hypothetical future compliance.

C. Petitioner Is Not Required To Exhaust Administrative Reviews That Are Discretionary And Untimely

Post-order custody reviews are discretionary, not adjudicatory, and exhaustion is not required:

"Section 2241 does not require exhaustion of discretionary custody reviews before seeking judicial relief." *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004)

Thurs, Respondents' exhaustion-based argument fails as a matter of law in the Tenth Circuit.

V. CONTINUED DETENTION VIOLATES SUBSTANTIVE DUE PROCESS

Civil immigration detention is permissible only so long as it bears a reasonable relationship to its purpose effectuating removal.

"When detention no longer serves its purported purpose, it becomes punishment and violates due process." Zadvydas, 533 U.S. at 690

Here:

Removal is not foreseeable;
Detention has become indefinite;
Portioner poses no flight risk or danger warranting extraordinary detention

VI. THE DISTRICT OF KANSAS HAS AUTHORITY TO ORDER IMMEDIATE RELEASE

Federal Courts in this district routinely order conditional release where Zadvydas violations exist. Supervised release under an Order of Supervision is the appropriate remedy.

VII. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Order Petitioner immediate release from ICE custody under reasonable conditions of supervision;
3. Enjoin Respondents from continued detention absent concrete evidence of imminent removal;
4. Grant any further relief the Court deems just and proper.

VIII. Verification

I Mohammad Ali Hussein Bin Nurhwa declare under penalty of perjury under the laws of the United States that I am the Petitioner in the above-entitled action; that I have read the foregoing Traverse to Respondents' Response and know the contents, therefore; and that the same is true and correct to the best of my knowledge, information, and belief.

 12-20-25

FCI Leavenworth



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