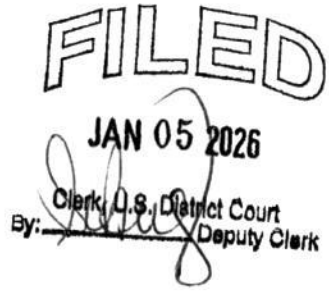
Case No. 25-3250-JWL

IN THE UNITED STATES DISTRCIT COURT
FOR THE DISTRICT OF KANSAS



MOHAMMAD SHEKIB ESAHAQZADA,
Petitioner, Pro Se

V.

CRYSTAL CARTER, SYDNEY MILUM,
TODD LYONS, KRISTI NOEM,
and PAM BONDI,
Respondents.

TRAVERSE TO RESPONDETS' RETURN TO WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner, Mohammad Shekib Esahaqzada, has been continuously detained since November 5, 2024, post-removal-order, for a period exceeding well beyond the one hundred and 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 Petitioner's showing that his detention violates § 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, repeated travel document requests, and mischaracterization of statute.

Petitioner, through this traverse, respectfully counters Respondent's argument and demonstrates this his continued detention now one year post final removal order violates 8 U.S.C § 1231, Zadvydas v. Davis, and the Due Process Clause.

II. LEGAL STANDARD GOVERNING POST-ORDER DETENTION

1. Statutory basis for detention after removal order: 8 U.S.C § 1231 and specifically § 1231(a)(6) allows detention of removable aliens beyond the 90-day removal period. 2. Supreme court precedent: Zadvydas v. Davis, 533 U.S. 678 (2001) held that post-removal-order detention under § 1231(a)(6) is implicitly limited to a "period reasonably necessary" to effect removal and does not permit indefinite detention. 3. Further authority: Clark v Martinez, 543 U.S. 371 (2005) extended Zadvydas reasoning to inadmissible aliens.

Case No. 25-3250-JWL

III. RESPONDENTS FAIL TO REBUT PETITIONER'S ZADVYDAS SHOWING

4. Respondent's reliance on 8 U.S.C § 1225(b)(1) is misplaced. Petitioner is no longer detained "pending a credible fear determination." Instead, he has been held well beyond the removal period, and the Government has failed to establish any significant likelihood of removal in the reasonably foreseeable future. Accordingly, Petitioner is entitled to release.

ARGUMENT A. DHS May Not Evade Constitutional Limits by Re-Characterizing Prolonged Detention A § 1225 Custody.

5. Respondents' argument that Petitioner remains detainable "until removed" under 8 U.S.C. § 1225(b)(1) and therefore outside the scope of Zadvydas v. Davis, 533 U.S. 678 (2001) misstates both statutory and constitutional law. 6. The Supreme Court has made clear that no immigration detention statute authorized indefinite detention, regardless of the label DHS applies. 7. In Zadvydas, the Court held: "A statute permitting indefinite detention of an alien would rise a serious constitutional problem." 533 U.S. at 690. 8. That holding rests not on § 1231 alone, but on the Due Process Clause, which applies to all persons within the United States, including non-admitted and arriving aliens. See Zadvydas, 533 U.S. at 693; Mathews v. Diaz, 426 U.S. 67, 77 (1976).

9. Even where Congress uses mandatory language such as "shall be detained," courts have consistently interpreted such provisions to include an implicit reasonableness limitation to avoid constitutional infirmity. See Clark v. Martinez, 543 U.S. 371, 380 81 (2005). 10. Thus DHS cannot rely on § 1225(b)(1)'s "until removed" language to justify year-long, potentially indefinite detention where removal has not occurred and is not reasonably foreseeable.

ARGUMENT B. Prolonged Detention Triggers Constitutional Review Regardless of the Underlying Statute

11. Respondent's argument improperly assumes that Zadvydas applies only to § 1231(a)(6) detainees. That is incorrect. Courts repeatedly hold that the constitution not the statute triggers the Zadvydas framework once detention becomes prolonged and removal is not reasonably foreseeable. In Guerrero-Sanchez v. Warden, 905 F.3d 208. 223 (3d Cir. 2018), the court explained: "The constitutional avoidance doctrine requires that detention statutes be read to contain an implicit temporal limitation." 12. Likewise in Hernandez v. Decker, 2018 WL 3579108, at *7 (S.D.N.Y. July 25, 2018): "Regardless of the statuary authority invoked, prolonged detention without a realistic prospect of removal raises serious due process concerns." Here Petitioner has been detained for more than one year post-removal order, and DHS has not effected removal. At that point, the constitutional inquiry controls, not DHS's statutory preference.

ARGUMENT C. Respondents Mischaracterize the Statute: Petitioner Is No Longer Detained

Under § 1225(b)(1) but Under § 1231 After Issuance of His Final Order of Removal

13. Respondents argue that because Petitioner was initially processed under § 1225(b)(1), he remains subject to mandatory, indefinite detention. This is contrary to statute and binding Supreme Court precedent. Once an Order of Removal becomes Final, § 1231 governs detention, not § 1225. The Supreme Court explains: "After the removal period, § 1231(a)6) provides the authority for detention." Zadvydas v. Davis, 533 U.S. 678, 683 (2001). Respondents' position ignores this statutory transition. 14. Even aliens originally subject to expedited removal, once ordered removed fall under § 1231(a). "Regardless of how an alien entered or what procedure applied initially, detention following a final order of removal order is governed by § 1231 (a)." Guerrero-Sanchez v. Warden, 905 F.3d 208, 215 (3d Cir. 2018). The Government cannot indefinitely extend § 1225(b)(1) beyond its statutory purpose. Once Petitioner's negative credible fear determination was affirmed and the order of removal becomes final, the governing statute is § 1231, and therefore Zadvydas applies.

ARGUMENT D. Unlike Jennings, Zadvydas Squarely Controls Post Final Order Detention Under § 1231 (a)(6)

15. Respondents rely on Jennings v. Rodriguez, 583 U.S. 281 (2018), to argue there is no six-month limitation on detention. But Jennings explicitly refused to address § 1231 detention, which is the provision applicable here: "Section 1231(a)(6) is not before us." Jennings, 583 U.S. at 303. Jennings concerns pre-removal detainees under §§ 1225 and 1226, not individuals such as Petitioner, who have a final order of removal and detained under § 1231. 16. Thus, the controlling case is Zadvydas, which held: "After 6 months, once the alien provides good reason to believe there is no significant likelihood of removal in reasonably foreseeable future, the burden shifts to the Government." Zadvydas, 533 U.S. at 701. 17. Petitioner has been detained well beyond the 6-month presumption, and the Government has provided no evidence that removal is likely. That is exactly the situation Zadvydas governs.

ARGUMENT E. "Entry Fiction" Does Not Permit Indefinite Detention; Even Arriving Aliens Have Constitutional Limits on Detention

18. Respondents invoke the "entry fiction" to argue Petitioner lacks due process protections. This fundamentally mischaracterizes the doctrine. The Supreme Court has repeatedly held that even for arriving aliens the Due Process Clause limits indefinite detention: "The distinction between an alien who has effected entry and one who not cannot justify indefinite detention."
Clark v. Martinez, 543 U.S. 371, 384 (2005). 19. Clark involved inadmissible arriving aliens, yet the Court applied Zadvydas' 6-month limit to them as well. This: Even if Petitioner is considered "unadmitted," the government still may not detain him indefinitely under § 1231(a)(6). 20. This directly contradicts Respondent's theory that arriving aliens have no

detention rights.

ARGUMENT F. Thuraissigiam Does Not Apply to Post-Order Detention, Only to the Scope of Credible Fear Review

21. Respondents misinterpret Dept Homeland Sec. v. Thuraissigiam, 591 U.S. 103 (2020). Thuraissigiam Concerned: The scope of habeas relief available to review a negative credible fear determination, not the legality of prolonged post-order detention. 22. Nothing in Thuraissigiam addresses § 1231 detention or alters Zadvydas. Courts continue applying Zadvydas post-Thuraissigiam: "Thuraissigiam does not speak to detention under § 1231 (a)(6). Zadvydas remains controlling." Redriguuez-Castillo v. Barr, 2020 WL 749582, at 3* (W.D. Wash. Dec. 21, 2020). 23. Thus, Respondents' due-process argument is legally irrelevant.

IV. AFGHANISTAN REMOVAL CLAIM (RESPONDENTS: RENEWED TRAVEL DOCUMENT REQUEST ASSERTED SLRRFF)

ARGUMENT A. Length of Detention Alone Rebuts DHS's Speculative Claim of Foreseeability

24. Once detention extends well beyond six months, time itself becomes evidence that removal is not reasonably foreseeable. The Supreme Court held in Zadvydas v. Davis, 533 U.S. 678, 701 (2001): "After six months, once the alien provides good reason to believe that there is no reasonably foreseeable likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." 25. Here, Petitioner has been detained for more than one year post-removal-order, and DHS has already failed once to remove him to Afghanistan. Courts routinely hold that repeated failed attempts extended detention satisfy the Petitioner's initial burden. In Abdel-Muhti v. Ashcroft, 314 F. Supp. 2d 418, 425 (M.D. Pa. 2004), the court explained: "The passage of time alone, particularly where prior attempts at removal have failed, strongly suggests that there is no significant likelihood of removal in the foreseeable future."

26. Similarly in Seretse-Khama v Ashcroft, 215 F. Supp. 2n 37, 49 (D.D.C. 2002): "The government's optimism, unsupported by concrete evidence, does not satisfy its burden under Zadvydaz." DHS's assertion that it was "informed" in October 2025 that removal is now likely without explanation, documentation, or change in country conditions specific to Petitioner is precisely the type of speculation courts reject.

ARGUMENT B. A Second Travel Document Request, Without Changed Circumstances, is Legally Insufficient

27. DHS's position fails because it does not identify any materially changed circumstance that distinguishes the second attempt from the first failed attempt. Courts are clear: a new

request is not evidence of likelihood. In Hajbeh v. Loiselle, 490 F. Supp. 2d 689, 699 (E.D. Va. 2007): "The mere fact that ICE has renewed its request for travel documents does not establish that removal is significantly likely in the reasonably foreseeable future." 28. Likewise, Bah v. Cargemi, 489 F. Supp. 2d 905, 916 (D. Minn. 2007): "Absent evidence that circumstances have changed, the government's continued efforts amount to little more than hope." 29. Here, DHS concedes: (1) Afghanistan denied acceptance in April 2025 (2) the same government is being asked again (3) no explanation is offered as to what has changed. Without evidence of: (1) New diplomatic agreements, (2) New identity verification, (3) or altered Afghan policy toward Petitioner, the renewed request is legally meaningless under Zadvydas.

ARGUMENT C. DHS Cannot Rely on Vague Assurances of Future Cooperation

30. Courts consistently reject statements like "we were informed removal is likely" when unaccompanied by proof. In Kacanic v. Elwood, 2002 WL 31520362, at 6* (E.D. Pa. Nov. 8, 2002): "Assurances from immigration officials that removal is likely are insufficient without objective evidence supporting that belief." 31. Because DHS provides no diplomatic correspondence, or timelines, its assertion fails as a matter of law.

V. THIRD-COUNTRY REMOVAL CLAIMS (RESPONDENTSS: MULTIPLE COUNTRIES ALLEGEDLY CONTACTED)

ARGUMENT A. Respondents' inconsistent statements undermine credibility and support discovery

32. Respondents now claim they contacted Saudi Arabia, Turkmenistan, and Pakistan in April 2025. Yet, in their August 2025 response to Petitioner's first habeas, DHS stated only Afghanistan had been attempted. Courts treat such inconsistencies seriously, especially in prolonged detention cases. In Lema v. INS, 341 F.3d 853, 857 (9th Cir.. 2003), the court emphasized: "The government must present credible, consistent evidence that removal is likely." 33. Contradictory factual representations: (1) undermine DHS's claim of diligence, (2) justify skepticism of its assertions, (3) and warrant limited discovery. 33. Courts regularly permit discovery when the government's account shifts over time. See Oyedeji v. Ashcroft, 332 F. Supp. 2d 747, 753 (M.D. Pa. 2004).

ARGUMENT B. Non-responses and Denials After Many Months Confirm Non-foreseeability

34. DHS admits: (1) Canada declined in July 2025 (2) Saudi Arabia, Turkmenistan, Pakistan, Australia, and the UK have not responded. Courts treat prolonged silence as evidence against foreseeability. 35. In Kumar v. Gonzales, 439 F. Supp. 2d 565, 570 (W.D. Tex. 2006): "Where multiple countries have failed to response or declined acceptance, the likelihood of removal becomes speculative at best." 36. And in Rajigah v. Conway, 268 F. Supp. 2d 159,

165 (E.D.N.Y. 2003): "Silence from foreign governments after months of inquiry weighs heavily against the government's position." 37. After numerous countries, multiple months, and multiple failures, DHS cannot argue removal remains reasonably foreseeable.

ARGUMENT C. Petitioner Was Denied Procedural Protection and Meaningful Participation

38. Petitioner was: (1) not informed earlier of alleged third-country attempts, (2) asked to sign forms for different countries (sometime in June 2025) than DHS now claims (other countries being Turkey, Tajikistan and Pakistan. With Pakistan being the exception), (3) denied any opportunity to seek asylum or protection in those countries. This violates basic due process principles recognized in prolonged detention jurisprudence. 39. In Diouf v. Napolotano, 634 F.3d 1081, 1091 (9th Cir. 2011): "Prolonged detention without adequate procedural protections raises constitutional concerns." 39. Additionally, DHS's failure to disclose relevant facts earlier prejudiced Petitioner's prior habeas litigation, foreclosing arguments he otherwise would have raised.

VII. DHS'S ASSERTIONS OF DILIGENCE DO NOT DEFEAT HABEAS RELIEF

40. Respondent's claim that they have been "diligent" in seeking removal does not resolve the constitutional question. Zadvydas does not ask whether DHS is trying, it asks whether removal is significantly likely in the reasonably foreseeable future. "Good-faith efforts do not justify continued detention when there is no realistic prospect of removal." Zadvydas, 533 U.S. at 699. 41. Where, as here, detention has exceeded one year and removal has not occurred, DHS bears the burden of producing concrete, non-speculative evidence that removal will occur soon. General assurances are insufficient.

VIII. RESPONDENT'S CONTINUED DETENTION WITHOUT CUSTODY REVIEW OR INTERVIEW VIOLATES DUE PROCESS AND STATUTORY SAFEGUARDS FOR POST-REMOVAL-ORDER DETENTION

42. The Supreme Court in Johnson v. Artega Martinez (2002) held that indianite detention under § 241(a)(6) must be limited and that "once removal is no longer reasonably foreseeable, continued detention becomes arbitrary and thus unlawful. While certain statutory custody review (e.g., 90-day or 180 day reviews) may not be explicitly required under all circumstances, detention without any review, interview or meaningful process over an extended period us vulnerable to challenge. 43. Additionally, the regulatory framework (for example, ICE policies, INA implementing regulation) provides for periodic custody determinations and release or detention re-evaluation (although the details may vary). Failure to perform those reviews can evidence arbitrariness and a lack of meaningful process. 44. Here the Petitioner has been in the custody of U.S. Immigration and Customs Enforcement for more than one year post-removal-order. During the entire period of detention, no custody review papers were served, no interview was conducted)neither

90-day nor 180-day, nor any other review), and Petitioner has not been given a chance to seek release or reconsideration of his detention status. 45. The prolonged detention without any procedural review is remarkable and lacks justification in the record.

46. Due process requires not only formal procedure but meaningful opportunity to be heard and fair decision-making process. See e.g. "what does due process mean requires the government to provide an opportunity to make their case." The absence of any custody review or interview over such a long period fails to provide any mechanism for the detainee to challenge the continued need for detention, thus lacking the "minimal procedural safeguards" required when liberty is at stake. 47. The jurisprudence recognizes that prolonged detention without bond hearings raises serious due-process concerns. In the absence of any interview or review, there is no record indicating that ICE or DHS has undertaken the required reassessment of the detainee's status, risk of flight, danger to the community, or changed circumstances that might warrant release. 48. Therefore, the detention is being maintained in a procedural vacuum no decision-making, no review, only continued deprivation of liberty.

IX. THE PETITIONER NONETHELESS IS ENTITLED TO HABEAS RELIEF DESPITE ALLEGED INADMISSIBILITY/EXPEDITED REMOVAL

49. Even if the respondent claims the Petitioner is inadmissible or entered the U.S. without inspection and is subject to expedited removal, that status does not automatically extinguish all custody-review rights or Habeas Corpus rights. The government must still show that continued detention is lawful under applicable statute and constitution, and not unreasonably prolonged. 50. The Supreme Court in Zadvydas v. Davis held that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." 533 U.S. 678, 699 (2001) 51. Also, while the Supreme Court in Department of Homeland Security v. Thuraissigiam held that noncitizen apprehended immediately after entry in expedited removal has very limited habeas reviews, 591 U.S. 103 (2020). But that does not mean banket denial of all custody review or statuary rights in all immigration detention contexts. The statutory scheme and facts matter.

52. Petitioner acknowledges that Respondents asserts an expedited removal or inadmissibility ground. However by detaining Petitioner for over one year without the statutory scheme underlying post-order detention under 8 U.S.C § 1231 and its regulatory framework (see 8 C.F.R. § 241.4, § 1241.14). In Zadvydas v. Davis, the Supreme Court held that statute does not authorize indefinite when removal is not reasonably foreseeable: "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." 533 U.S. at 699. Accordingly, Petitioner's entitlement to a habeas review of his continued detention remains intact and Respondent's reliance on expedited removal/inadmissibility to entirely foreclose review is legally deficient. 53. Moreover, while DHS v. Thuraissigiam limits review of expedited

removal immediately after entry, it does not support the proposition that once a removal order is final and months pass without removal or a review, Respondent may ignore review objections altogether. 591 U.S. 103. The key question remains whether Petitioner's detention is now indianite, and whether meaningful review (interview/custody review) has been afforded here it has not. 54. Given that more than 12 months have passed since the removal order issued and Petitioner remains in custody, the statutory justification for continued detention without review is absent, and the habeas petition must be granted.

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

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

XI. PRAYER FOR RELIEF

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

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

XII. Verification

I Mohammad Shekib Esahaqzad 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 contends, therefore; and that the same is true and correct to the best of my knowledge, information, and belief.

12/30/25

FCI Leavenworth

[redacted]

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