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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Mehmet Kucuk,

Petitioner,

v.

Pamela Bondi, *et al.*,

Respondents.

Case No. 2:25-cv-02285-APG-MDC

Petitioner's Consolidated Reply in Support of Emergency Motion for Temporary Restraining Order and Petition for Writ of Habeas Corpus[1]

[1] Respondents' answer was untimely. Mr. Kucuk filed his Petition for Writ of Habeas Corpus on November 17, 2025. ECF No. 1-01. On December 4, 2025, the Court ordered Respondents to file a response within fourteen days. ECF. No. 4. Respondents requested an extension until December 29, 2025, to respond. ECF No. 10. Nonetheless, Respondents did not file their response by December 29, 2025. Instead, they filed separate responses to Mr. Kucuk's Emergency Motion for Temporary Restraining Order, ECF No. 13, and to his Petition, ECF No. 1-01, on January 12, 2026. ECF No. 16; ECF. No. 17. In any event, Petitioner prevails on the merits regardless of whether this Court considers the untimely response.

INTRODUCTION

Respondents filed both an opposition to Petitioner Mehmet Kucuk's emergency motion and a response to the habeas petition. Although styled as separate pleadings, both rest on the same core contention: that Mr. Kucuk has failed to satisfy his burden under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and that his continued detention is therefore lawful.

Respondents rely entirely on ICE's internal custody determination and conclusory statements that removal is "reasonably foreseeable." That approach misstates the governing burden and fails to rebut Petitioner's showing under *Zadvydas*. As another court in this district recently held, where a noncitizen cannot be removed to his country of origin and no third country has been identified, the Government bears the burden of demonstrating that removal is significantly likely in the reasonably foreseeable future and generalized assertions that the process is "ongoing" do not suffice. *Barka v. Mattos*, No. 2:25-cv-01781-GMN-MDC, 2025 U.S. Dist. LEXIS 264962, at *19 (D. Nev. Dec. 23, 2025). Respondents have not met that burden here, rendering Mr. Kucuk's continued detention unlawful under 8 U.S.C. § 1231(a)(6) and the Fifth Amendment. Respondents likewise fail to meaningfully engage Mr. Kucuk's APA and due process challenges. Because the merits favor Mr. Kucuk and ongoing unlawful detention constitutes irreparable harm, emergency relief is appropriate, and he should be immediately released from custody. Moreover, this Court should grant the Petition in its entirety as he is entitled to relief on all grounds raised in the Petition.

ARGUMENT

I. Mr. Kucuk has satisfied his initial burden under *Zadvydas*, and Respondents' vague assertions without any evidentiary support do not rebut that showing.

"Both during the six-month period and after, a district court has an ongoing obligation to determine whether detention remains authorized." *Douglas v. Baker*,

No. 25-CV-2243-ABA, 2025 WL 2997585, at *2 (D. Md. Oct. 24, 2025) (internal quotation marks omitted; emphasis in original). "Within the six-month window," the noncitizen bears the burden of "prov[ing] the unreasonableness of detention." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). After six months, once there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S. at 701.

"Whether detention is 'reasonably necessary to secure removal' is determinative of whether the detention is, or is not, pursuant to statutory authority… [and] the basic federal habeas corpus statute grants the federal courts authority to answer that question." *Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*, 533 U.S. at 699). And "[a]s the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. "[A]s time passes, the burden on the government increases accordingly." *Sweid v. Cantu*, No. 1:24-cv-01987-DAD-BAM, 2025 WL 3033655, at *4 (E.D. Cal. July 25, 2025) (quoting *Cesar*, 542 F. Supp. 2d at 903).

In *Barka v. Mattos, et al.*, another court in this district held that the petitioner satisfied his initial burden under *Zadvydas* by showing that he had an order of withholding to his country of origin and that there was no designation of a third country that had accepted him. *Barka v. Mattos*, No. 2:25-cv-01781-GMN-MDC, 2025 U.S. Dist. LEXIS 264962, at *16 (D. Nev. Dec. 23, 2025). The court found that showing sufficient to shift the burden to the government. *Id.*

Mr. Kucuk has made the same showing here. He cannot be removed to Turkey, and despite claims that ICE is "working on" finding an alternative third country, none have been identified. That alone is sufficient to satisfy the initial burden, as in *Barka*.

Once that showing is made, the burden shifts to Respondents to justify continued detention; they have failed in this regard.

Courts in this district and within the circuit have regularly refused to find the Government has established reasonable foreseeability where the Government has offered little more than generalizations regarding the likelihood that removal will occur. *See Barka*, 2025 U.S. Dist. LEXIS, 264962, at *19; *G.A.A. v. Chestnut*, No. 1:25-cv-01102-EPG-HC, 2025 U.S. Dist. LEXIS 229639, at *10 (E.D. Cal. Nov. 21, 2025); *Cavieres Gomez v. Mattos*, No. 2:25-cv-00975-GMN-BNW, 2025 WL 3101994 at *6 (D. Nev. Nov. 6, 2025); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025).

In *G.A.A. v. Chestnut*, the court granted habeas relief where the petitioner established that he was unable to removed to his country of origin and respondents asserted that the removal process was "ongoing" despite providing no further details or identifying any suitable alternative third country, and thus removal was not reasonably foreseeable. *G.A.A.*, 2025 U.S. Dist. LEXIS 229639, at *10–11; *see also Barka*, 2025 U.S. Dist. LEXIS, 264962, at *19 (finding removal not reasonably foreseeable based on similar facts to *G.A.A.*).

Here, Respondents claim ICE is "working on" removal to a third country by relying exclusively on ICE's continued custody determination, generalized assertions of "pending" removal to a third country, and the claim that Turkey has issued a travel document. *See* Resps' Resp. to Pet. at 3, 7–8. However, Respondents do not identify any country that has agreed to accept Mr. Kucuk, and they do not explain how a Turkish travel document, untethered to any lawful removal pathway to a country *other* than Turkey—to which he cannot be removed—renders removal significantly likely in the reasonably foreseeable future.

These vague statements are woefully insufficient to establish that removal is reasonably foreseeable. They are mere assertions without any evidentiary support. On a basic level, there is no explanation as to what paperwork was even prepared or submitted. Moreover, there is no indication what the current status actually is, or how long this process even takes. Critically, they acknowledge that there has been no third country designation.

Indeed, in cases such as *G.A.A.*, *Singh*, and *Hoac*, the Government had at least identified specific countries for removal; here, no country has even been identified. In sum, there is no reliable or specific evidence that deportation is reasonably foreseeable. Respondents' vague claims that removal is reasonably foreseeable utterly fail. Thus, Respondents' failure to carry their burden means Mr. Kucuk's continued detention is not authorized by 8 U.S.C. § 1231(a)(6) and is unlawful under both the statute and the Fifth Amendment. *Zadvydas*, 533 U.S. at 699–701.

II. Respondents improperly seek to shift the burden onto Mr. Kucuk.

Rather than follow the clear *Zadvydas* framework, Respondents seek to invert it. They acknowledge that Mr. Kucuk's detention has exceeded six months but assert that continued detention is justified because ICE has reviewed his case, issued a "detailed" decision stating that removal is reasonably foreseeable, and noted that Mr. Kucuk was issued a travel document by the Government of Turkey. *See* Resps' Resp. to Pet. at 7–8; *see also* Resps' Resp. to TRO at 8. Respondents further emphasize that the ICE decision "does not preclude Petitioner from bringing forth evidence in the future to demonstrate a good reason why his removal is unlikely." Resps' Resp. to Pet. at 7

Respondents' framing of the burden is a misdirection. Once detention extends beyond six months and a noncitizen provides good reason to believe removal is not significantly likely in the reasonably foreseeable future, the burden does not remain on the detainee to disprove the Government's internal assessment. It shifts to the

Government to justify continued detention with evidence. Respondents' position would effectively collapse the *Zadvydas* inquiry into whether ICE has internally concluded that removal is foreseeable. But an agency's own belief that detention should continue is not the legal standard. By resting only on ICE's continued custody determination, generalized assertions of "pending" third-country removal simply because ICE is "working on" finding an alternative country, and the existence of a travel document untethered to any lawful removal pathway, Respondents attempt to transform Mr. Kucuk's initial burden into an ongoing obligation to negate the continued detention. *See* Resps' Resp. to Pet. at 3, 7–8. *Zadvydas* does not permit that shift. *See* 533 U.S. at 702 (stating petitioner is not required to "show the absence of any prospect of removal—no matter how unlikely or unforeseeable"). As shown above, Mr. Kucuk easily meets his initial burden, which shifted the evidentiary burden onto Respondents to establish that his deportation is reasonably foreseeable. Respondents have completely failed to meet their burden. Both the emergency motion and the petition should be granted on this ground.

III. Respondents' arguments regarding Grounds Three to Five are functionally non-responsive.

Respondents assert in conclusory fashion that Mr. Kucuk received a "detailed" decision to continue his detention[2] and argue that Administrative Procedure Act (APA) claims are not cognizable in habeas. Resps' Resp. to Pet. at 8. But habeas relief is available to persons "in custody in violation of the Constitution or laws or treaties of the United States," 28 U.S.C. § 2241(c), and courts have recognized that APA

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[2] To the extent Respondents appear to suggest failure to exhaust administrative remedies would have any effect on Grounds Three, they fail to clearly articulate what that effect would be. *See* Resps' Resp. to Pet. at 8. In any event, a conclusory custody determination does not insulate continued detention from judicial scrutiny. *See Phan v. Reno*, 56 F. Supp. 2d 1149, 1154–56 (W.D. Wash. 1999) (examining whether the custody review reflected a meaningful, individualized assessment).

violations may be raised in habeas where the alleged violation bears directly on the legality of custody. *See Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (en banc) (explaining that habeas relief is available where a claim, if successful, would necessarily affect the legality or duration of custody); *Crickon v. Thomas*, 579 F.3d 978, 983–85 (9th Cir. 2009) (holding that agency action affecting the fact or duration of custody is subject to habeas review and that the Bureau of Prisons' failure to articulate its reasoning violated the APA).

Regarding Grounds Four and Five, Respondents fail to directly engage either the APA or Fifth Amendment arguments. Instead, they merely repeat the same vague, conclusory statements that ICE is "working on" finding a third country and that removal is reasonably foreseeable. *See* Resps' Resp. to Pet. at 8–9. Those statements do not answer whether ICE's third-country removal practices comply with the APA or the Fifth Amendment. Repeating that removal may occur in the future does not address the absence of notice, the lack of procedural safeguards, or Mr. Kucuk's claim that third-country removal without process would violate due process. Courts in this district have granted relief on this basis. *See Barka*, 2025 U.S. Dist. LEXIS, 264962, at *20–21 (holding petitioner had Fifth Amendment due process right to meaningful notice and an opportunity to present a fear-based claim to an immigration judge before DHS may effectuate third-country removal and enjoining DHS from removing petitioner to any third country absent such notice and process); *see also Gomez,* 2025 WL 3101994, at *6.

IV. Emergency relief is warranted.

Respondents' opposition to emergency relief rises or falls with their merits arguments. Because Respondents have not demonstrated that removal is to occur in the reasonably foreseeable future, Mr. Kucuk's continued detention is unlawful. That alone establishes entitlement to interim relief.

A. Continued unlawful detention constitutes irreparable harm.

Respondents contend that "detention alone is not an irreparable injury." Resps' Resp to TRO at 5. But where detention is unlawful, each additional day of confinement is an ongoing deprivation of liberty that cannot be remedied after the fact. *See Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017). Courts have repeatedly recognized that the loss of liberty constitutes irreparable harm. *See, e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Another court in this district recently ordered immediate release upon finding that continued post-order detention violated *Zadvydas*. *See Barka*, 2025 U.S. Dist. LEXIS, 264962, at *22. The same ongoing constitutional injury exists here. Absent interim relief, Mr. Kucuk will continue to suffer irreparable harm through unlawful confinement.

B. The balance of equities and the public interest favor immediate release.

Respondents invoke the general public interest in immigration enforcement. Resps' Resp to TRO at 5. But the government has no legitimate interest in continuing to detain a person without statutory or constitutional authority. *Zadvydas*, 533 U.S. at 690.

By contrast, the equities favor Mr. Kucuk. He has been detained well beyond the presumptively reasonable period, cannot be removed to his country of origin, and no third country has been identified. Ordering release subject to appropriate conditions would preserve any legitimate governmental interests while ending ongoing unlawful detention. *See* 8 U.S.C. § 1231(a)(3).

As in *Barka*, where the court ordered release under materially similar circumstances, the balance of equities and the public interest support immediate relief here. *See Barka*, 2025 U.S. Dist. LEXIS, 264962, at *22.

V. This Court should not impose a bond requirement.

Pursuant to Federal Rule of Civil Procedure 65(c), "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." FED. R. CIV. P. 65(c). "The purpose of such a bond is to ensure that the enjoined party may readily be compensated for the costs incurred as a result of the injunction should it later be determined that it was wrongfully enjoined." *Axia NetMedia Corp. v. Mass. Tech. Park Corp.*, 889 F.3d 1, 11 (1st Cir. 2018); *accord Edgar v. MITE Corp.*, 457 U.S. 624, 649 (1982) (Stevens, J., concurring) ("The bond, in effect, is the moving party's warranty that the law will uphold the issuance of the injunction"). The Ninth Circuit has previously indicated that, "[d]espite the seemingly mandatory language, Rule 65(c) invests the district court with discretion as to the amount of security required, *if any*." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (citations and quotation marks omitted) (emphasis added). And "[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Id.* The burden of establishing the amount of bond necessary to secure against the wrongful issuance of an injunction rests with the party opposing the injunction. *See, e.g., Doctor's Assocs. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996) (suggesting burden on defendant to support claim for bond).

This Court should waive the security requirement here because there is no likelihood of harm to the Respondents.

CONCLUSION

Mr. Kucuk's continuing detention violates due process. He is entitled to relief on the grounds raised in his Petition. Both his emergency motion and the petition should be granted. He must be released immediately. Because Respondents have

indicated that they have initiated potential third country removal, this Court should also order that he must be given adequate notice and an opportunity to contest any future attempt to remove him to a third country.

Dated January 20, 2026.

Respectfully submitted,

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