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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Mohamad Alkarori,

Petitioner,

v.

Nevada Southern Detention Center, *et al.*,

Respondents.

Case No. 2:25-cv-02567-MMD-MDC

Reply to Respondents' Response to Petitioner's Petition for Writ of Habeas Corpus

INTRODUCTION

Respondents' opposition rests on three core arguments: (1) that this Court lacks jurisdiction over this writ of habeas corpus brought under 28 U.S.C. § 2241, (2) that Mr. Alkarori's continued detention is lawful because ICE is "still working on [his] travel to Egypt" but removal "imminent," and (3) the petition is premature under *Zadvydas v. Davis*, 533 U.S. 678 (2001).[1] (ECF No. 12 at 1-3.) Each argument

[1] Respondents also spend significant time focusing on Mr. Alkarori's criminal history, which is irrelevant to this Court's analysis as to whether there is a likelihood of Mr. Alkarori's removal in the reasonably foreseeable future. See *Tanahan v. United States*, 2:25-cv-02075-RFB, *4 n.1 (D. Nev. Jan. 21, 2026), (granting habeas relief and finding the government's focus on petitioner's criminal history was irrelevant to the *Zadvydas* analysis).

fails. For the reasons below, this Court should grant the petition, order Mr. Alkarori's immediate release from ICE custody, and prohibit Respondents from removing Mr. Alkarori to any third country absent meaningful notice and a full and fair opportunity to seek fear-based protection consistent with due process.

BACKGROUND

Petitioner Mohamad Alkarori is a native and citizen of Sudan who lawfully entered the United States in 2005 as a refugee and later adjusted to lawful permanent resident status. (ECF No. 12-2 at 2.) In 2019, following full removal proceedings, an Immigration Judge issued a final order of removal but simultaneously granted Deferral of Removal under the Convention Against Torture (CAT) after extensive factual findings concerning both country conditions in Sudan and Mr. Alkarori's serious mental health conditions. (ECF No. 12-2.)

In the 2019 written decision, the Immigration Judge made detailed and specific findings that Mr. Alkarori suffers from significant mental illness, including chronic psychotic symptoms such as auditory hallucinations, paranoia, and impaired functioning, which had manifested for years and were documented by medical evidence and expert testimony. (ECF No. 12-2 at 11.) The Immigration Judge further found that Mr. Alkarori's mental illness would predictably worsen if he were detained, institutionalized, or imprisoned, and that without consistent psychiatric care and medication, Mr. Alkarori would be unable to function safely or independently. (Id. at 9-12.)

Critically, the IJ found that individuals with serious mental illness in Sudan face a substantial risk of abuse, neglect, and torture, including prolonged detention in inhumane conditions, lack of access to mental health treatment, exposure to violence, and mistreatment by state actors. (ECF No. 12-2 at 11-12.) The IJ concluded that, given Mr. Alkarori's mental illness and the documented country conditions, it was more likely than not that he would be subjected to torture if removed to Sudan. (Id. at 12.) On that basis, the IJ granted Deferral of Removal

under CAT, a form of protection that remains in effect and has never been vacated. (Id. at 13.)

Mr. Alkarori now challenges his current immigration detention—not the validity of the 2019 removal order, and not the grant of CAT deferral—but Respondents' continued custody without evidence of a realistic or reasonably foreseeable removal option and without accounting for the very mental health findings that formed the basis of CAT protection. As set forth below, Respondents' assertion that removal to a third country is "imminent" is unsupported by the evidence (or lack thereof), and continued detention under these circumstances exceeds the limits imposed by the Due Process Clause and *Zadvydas*.

ARGUMENT

I. Jurisdiction

Respondents are mistaken in their assertion that this Court lacks jurisdiction over Mr. Alkarori's habeas claims, which challenge the legality of his continued detention. This Court has jurisdiction pursuant to 28 U.S.C. § 2241, which grants federal district courts general habeas authority; Article I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 1331, which confers federal question jurisdiction; and 28 U.S.C. §§ 2201 and 2202, the Declaratory Judgment Act.

Federal district courts have long exercised jurisdiction over habeas petitions brought by noncitizens challenging the lawfulness of their immigration detention. *See, e.g., Zadvydas,* 533 U.S. at 678. Nothing in the immigration statutes divests district courts of jurisdiction to review constitutional and statutory challenges to prolonged or unlawful detention.

This Court also has federal question jurisdiction to review agency action under the Administrative Procedure Act ("APA"). The APA authorizes courts to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas proceedings. 5 U.S.C. § 703. The APA further

affords a right of judicial review to any person "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

Mr. Alkarori's continued detention violates the Due Process Clause of the Fifth Amendment, constitutes arbitrary and capricious agency action, and represents an abuse of discretion where removal is not reasonably foreseeable and Respondents have not complied with constitutionally required procedures. Accordingly, Mr. Alkarori's habeas petition is properly before this Court.

II. Third country removal

1. Third country removal must comply with due process, and no lawful third country removal is foreseeable here

a. Third country removal is constitutionally constrained by due process

Although the government may, in some circumstances, seek to remove a noncitizen to a country other than the one designated in the removal order, third country removal is not exempt from constitutional constraints. Removal to a third country must comply with due process, including notice and a meaningful opportunity to raise fear-based claims such as protection under the Convention Against Torture. As the Ninth Circuit has explained, "Immigration proceedings must provide the procedural due process protections guaranteed by the Fifth Amendment." *Vilchez v. Holder*, 682 F.3d 1195, 1199 (9th Cir. 2012) (citing *Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009)).

More generally, due process requires that individuals be informed of the matters that will determine their rights. "[I]ndividuals whose rights are being determined are entitled to notice of the issues to be adjudicated, so that they will have the opportunity to prepare and present relevant arguments and evidence." *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999).

Applying these principles in the removal context, courts have recognized that surprise country designations can violate due process. "[I]n the context of country of removal designations, last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of

persecution in that country." *Najjar v. Lynch*, 630 Fed. App'x 724, 724 (9th Cir. 2016) (non-precedential memorandum disposition).

The Supreme Court has made clear that due process protections apply to all persons within the United States, including noncitizens subject to final orders of removal. As the Court explained in *Zadvydas*, freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause, and civil detention is permissible only where it bears a reasonable relation to its purpose. *Id.* 533 U.S. at 690. When the government seeks to remove an individual to a third country, due process requires procedures sufficient to ensure that removal will not result in persecution or torture. *See Cavieres Gomez v. Mattos*, 2:25-cv-00975-GMN, *12 (D. Nev. Nov. 6, 2025) ("[t]he Court finds that Petitioner has a due process right to received meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports him to a third country.")

b. Mr. Alkarori's alleged "agreement" to removal to Egypt did not—and could not—satisfy due process

Respondents argue that Mr. Alkarori "agreed" to removal to Egypt. Even assuming such a statement was made, any purported agreement is legally insufficient and cannot satisfy due process. Mr. Alkarori has already been found to suffer from serious mental illness in prior immigration proceedings and falls squarely within the protected class identified in *Franco-Gonzalez v. Holder*, CV–10–02211 DMG, 2014 WL 5475097, (C.D. Ca. Oct. 29, 2014), consisting of detained noncitizens with serious mental disorders who are incompetent to represent themselves without assistance in immigration proceedings. The very premise of *Franco-Gonzalez* is that individuals in this class cannot knowingly waive rights or navigate complex immigration consequences on their own and therefore require heightened procedural protections.[2]

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[2] Although the injunction applies only to class members in Arizona, California, and Washington, the Executive Office for Immigration Review (EOIR) has implemented a Nationwide Qualified Representative Program (NQRP). The existence of the NQRP is instructive because it reflects the Department of Justice's

Accordingly, any alleged consent to third country removal made without appointed counsel, without a competency determination, and without a fear-based determination cannot be treated as a valid waiver of constitutional or statutory rights. The Constitution does not permit the government to rely on an uncounseled and unassessed statement by a mentally ill detainee as consent to removal to a country where he may face torture or persecution. The record contains no indication that Mr. Alkarori was provided counsel, understood his right to seek CAT protection as to Egypt, or afforded any competency-appropriate process before the government purported to rely on his alleged agreement. Moreover, the very concerns that led an Immigration Judge to grant CAT protection from Sudan are likely to be relevant to any assessment of the risk of harm from removal to Egypt, particularly where Respondents have offered no assurance that Egypt would not subsequently transfer or return Mr. Alkarori to Sudan.

c. *Because lawful third country removal has not begun, removal is not reasonably foreseeable under* Zadvydas *and prolonged detention is therefore unlawful*

Under *Zadvydas*, detention beyond the removal period is authorized only for so long as removal is reasonably foreseeable. *See Zadvydas*, 533 U.S. at 690 (where "detention's goal is no longer practically attainable, detention no longer bears a reasonable relation to the purpose for which the individual was committed.") (internal citations omitted). When removal depends on speculative future events or on legally required procedures that have not yet begun, continued detention violates due process. Here, removal to Egypt is not reasonably foreseeable because Respondents have not initiated a third country removal process that complies with constitutional requirements. Mr. Alkarori has not been afforded counsel, no fear-

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recognition that individuals with competency concerns require additional procedural protections in immigration proceedings. See e.g., https://www.justice.gov/eoir/eoir-policy-manual/miscellaneous/chapter1-6.

based adjudication regarding Egypt has occurred, and there is no evidence that Egypt has accepted him or issued travel documents.

Until these constitutional prerequisites are satisfied, Respondents are barred from removing Mr. Alkarori to Egypt. Detention that rests on the mere possibility that Respondents may someday initiate lawful procedures is precisely the type of speculative detention that *Zadvydas* forbids. *See Suarez-Ramirez v. Bondi*, 2:25-cv-02369-MMD, at *3 (D. Nev. Jan. 15, 2026) (granting habeas relief to a Cuban petitioner because the government's prior failed efforts to remove him to Mexico demonstrated that future removal was not reasonably foreseeable). Because lawful removal (either to Sudan or to a third country) is not presently available, and because Respondents have not shown that such removal will occur in the reasonably foreseeable future, continued detention violates due process. As in *Zadvydas*, Mr. Alkarori's detention has ceased to bear a reasonable relation to its purported purpose of effectuating removal. *Zadvydas*, 533 U.S. at 690.

The Constitution does not permit the government to detain a mentally ill individual indefinitely while postponing the very procedures required to make removal lawful.

III. Respondents are wrong that Mr. Alkarori's due process claim is foreclosed by the six-month presumption in *Zadvydas*

Respondents next argue that Mr. Alkarori's habeas claim is foreclosed because he has not yet been detained for six months following his most recent detention. That argument misunderstands *Zadvydas* and mischaracterizes the nature of the claim. The six-month period identified in *Zadvydas* is not a jurisdictional bar, nor does it insulate detention from constitutional scrutiny. The controlling question under *Zadvydas* is, and always has been, whether detention is reasonably necessary to secure removal. Where removal is not reasonably foreseeable, continued detention violates due process regardless of the precise length of detention.

First, the six-month presumptively reasonable period under *Zadvydas* runs from the date a removal order becomes final—not from the date ICE chooses to re-

detain an individual years later. A noncitizen's removal period begins when the removal order becomes administratively final, and the presumptively reasonable six-month detention period expires six months after that date. The government does not receive a new six-month clock each time it re-detains a noncitizen following release on an order of supervision. Allowing ICE to reset the *Zadvydas* clock through serial release and re-detention would effectively authorize indefinite detention, a result the Supreme Court expressly rejected. Indeed, recently in an order granting habeas relief in this district, the court rejected Respondents' argument that the habeas petition was premature based on re-detention. *Tanahan v. United States*, 2:25-cv-02075-RFB, *8 n.3 (D. Nev. Jan. 21, 2026). It determined that the six-month presumptively reasonable detention period runs from the date the removal order becomes final, not from the date of re-detention, and does not reset each time the government re-detains a non-citizen. *Id.* Allowing the government to restart the clock would permit indefinite detention, contrary to the INA and *Zadvydas*. *Id.*

Second, Respondents' focus on the six-month benchmark ignores that the *Zadvydas* presumption is rebuttable and does not operate as a safe harbor for unlawful detention. The Supreme Court did not hold that detention is per se reasonable during the first six months. Rather, it recognized six months as a presumptively reasonable period while expressly preserving the authority—and obligation—of district courts to assess whether detention remains authorized under the statute and the Constitution. Courts have repeatedly recognized that detention may become unreasonable within the six-month period where the record shows that removal is not realistically foreseeable. *See Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2997585, at *2 (D. Md. Oct. 24, 2025) ("regardless of whether the six-month *Zadvydas* period has expired, the question presented by a petition asserting a *Zadvydas* claim is 'whether [the petitioner's] removal is reasonably foreseeable.' Both during the six-month period and after, a district court has an ongoing 'obligation to determine whether detention remains authorized.'") (internal cites omitted); *see also Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO), 2025 WL

1750346, at *5 (D. N.J. June 24, 2025) (collecting cases recognizing that the six-month presumption may be rebutted before six months where removal is not reasonably foreseeable.)

Third, even if this Court were to accept Respondents' framing of the six-month presumption, Mr. Alkarori has rebutted any presumption of reasonableness. Respondents offer only vague and unsupported assertions that removal might occur at some point in the future, without identifying concrete steps taken to effectuate lawful removal, or providing any evidence. Here, Mr. Alkarori cannot be removed to his country of origin, Sudan, because he has been granted deferral of removal under CAT. Respondents instead speculate about possible removal to Egypt yet concede (either explicitly or by omission) that they have not initiated a third country removal process that complies with due process. There is no evidence that Egypt has accepted Mr. Alkarori and no evidence that Egypt will issue travel documents. (ECF No. 12 at 2, 8, 18.) There is also no evidence that Mr. Alkarori has been afforded the notice, counsel, and fear-based proceedings required before third-country removal to Egypt may lawfully occur.

Fourth, Respondents' argument improperly assumes that the mere passage of time can substitute for reasonable foreseeability. *Zadvydas* requires more than speculation or good-faith assertions by ICE. Indeed, courts within this circuit have declined to find the government's burden satisfied where Respondents rely on little more than generalized assertions that removal may occur at some undefined point in the future. *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4-5 (E.D. Cal. July 16, 2025). Where removal depends on legally required procedures that have not begun, and may not lawfully proceed absent compliance with due process, detention ceases to be reasonably related to its purpose. That is especially true here, where any third country removal would require appointed counsel and a meaningful opportunity to raise fear-based claims because Mr. Alkarori has already been found to suffer from serious mental illness and is a member of the protected class recognized in *Franco-Gonzalez* and by the Nationwide

Qualified Representative Program. Until those procedures occur, removal is not just unlikely, it is barred.

Where, as here, removal is not reasonably foreseeable because the government has not taken and cannot yet take the steps required to lawfully remove Mr. Alkarori, continued detention becomes indefinite in nature. *Zadvydas* does not permit the government to detain a noncitizen while it delays or avoids initiating the very procedures that would make removal lawful.

In short, Mr. Alkarori's claim is not foreclosed by *Zadvydas*. To the contrary, it is precisely the type of claim *Zadvydas* contemplated: a challenge to continued detention where removal is not reasonably foreseeable and the government cannot meet its burden of justifying further confinement. Respondents' six-month argument therefore fails, and Mr. Alkarori is entitled to relief.

CONCLUSION

Respondents failed to carry their burden on every issue they raise. This Court has jurisdiction to review the legality of Mr. Alkarori's continued detention. Respondents have not shown that removal to Egypt—or to any country—is lawful or reasonably foreseeable. Nor have they complied with the basic due process requirements that must precede any third country removal, particularly where, as here, Mr. Alkarori has been found to suffer from serious mental illness and is entitled to heightened procedural protections. Respondents' reliance on an alleged "agreement" to removal to Egypt is legally insufficient and constitutionally invalid, and their attempt to shield prolonged detention behind the six-month presumption in *Zadvydas* misunderstands both the law and the record.

Because lawful removal is not presently available and because continued detention no longer bears a reasonable relation to its purported purpose, Mr. Alkarori's confinement violates the Due Process Clause of the Fifth Amendment. The Constitution does not permit the indefinite detention of a mentally ill individual while the government delays or avoids the procedures required to make removal lawful.

For these reasons, this Court should grant the petition for a writ of habeas corpus, order Mr. Alkarori's immediate release and prohibit Respondents from removing Mr. Alkarori to any third country absent meaningful notice and a full and fair opportunity to seek fear-based protection consistent with due process. Finally, this Court should enjoin Respondents from re-detaining Mr. Alkarori absent changed circumstances regarding the likelihood of removal.

Dated January 27, 2026.

Respectfully submitted,

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/s/ Margaret Lambrose
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on January 27, 2026. I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:

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