

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Ali Khan Rahimi,

Petitioner,

v.

Immigration and Customs Enforcement, *et al.*,

Respondents.

Case No. 5:26-CV-00036-JKP

Reply in Support of Petition for Habeas Corpus

Petitioner, Ali Khan Rahimi, who has now been in Immigration and Customs Enforcement (“ICE”) custody for over ten months following a final order of removal, respectfully submits that his detention has become unconstitutionally prolonged and asks this Court to order his release pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001).

I. Background

Petitioner, a citizen and national of Afghanistan, entered the United States on September 11, 2024. *See* Exh. A (“Heinrich Decl.”) ¶¶ 4-5. Mr. Rahimi was subsequently charged with illegal entry and imprisoned for approximately four months. *See id.* ¶ 7. He was then transferred to ICE custody on or around January 14, 2025. *See id.* ¶ 8; *see also* ECF No. 1 (“Petition”) at 7. Following a credible fear determination, Petitioner was served with a Notice to Appear on January 28, 2025. *See* Heinrich Decl. ¶¶ 10-11; *see also* ECF No. 6-2. On April 25, 2025, Petitioner’s asylum application was denied by an Immigration Judge, and he was ordered removed. *See* Heinrich Decl. ¶ 12. His order of removal became final in May 2025. *See id.* ¶ 13.

Petitioner has now been in ICE custody for over ten months following a final order of removal. Respondents have been unable to obtain the travel documents that would permit Petitioner's removal to Afghanistan. *See* Heinrich Decl. ¶¶ 15-16; *see also* ECF No. 6-1 ("Vasquez Decl.") ¶¶ 21-23, 27, 29. Petitioner has complied with ICE's efforts to obtain travel documents on his behalf. *See, e.g., id.* ¶ 15. Petitioner has not been informed of any upcoming deportation missions to Afghanistan or any plans to deport him to Afghanistan in the foreseeable future. *Id.* ¶ 17. In fact, on March 7, 2026, Petitioner's deportation officer instructed him to obtain his own travel letter and travel documents to Afghanistan. *Id.* ¶ 16. Moreover, Petitioner has not been informed of any plans to remove him to a third country, nor has he been asked to sign any travel documents to facilitate his removal to a third country. *Id.* ¶¶ 18-19.

On January 5, 2026, Petitioner filed a *pro se* Petition for Writ of Habeas Corpus. ECF No. 1 ("Petition"). On February 3, 2026, Respondents filed a response, in which they argued that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) and that his detention is lawful under 8 U.S.C. § 1231(a)(6). *See* ECF No. 6 ("Response"). Respondents argued that "Petitioner cannot show 'good reason' to believe that removal to Afghanistan is unlikely in the reasonably foreseeable future." *Id.* at 4. They further argued that, even if Petitioner could provide good reason to believe that his removal is not significantly likely in the reasonably foreseeable future, "ICE could show that removal is likely in the foreseeable future." *Id.* at 6.

But they have not done so. Respondents acknowledge that, following an unsuccessful attempt to remove Petitioner in 2025, they are still "attempting to obtain Petitioner's travel document and [a] travel letter." *Id.* at 7; *see generally* Vasquez Decl. Without the present ability to remove Petitioner, Respondents rely on the fact that Afghanistan nationals were successfully

removed in the past— but they do not even assert that these individuals were removed *to Afghanistan*. *Id.* at 6-7.

Sergio Vasquez, a Deportation Officer at the South Texas ICE Processing Center, averred that Petitioner was scheduled for a removal mission planned for August 25, 2025, but the mission was cancelled “due to an error[.]” Vasquez Decl. ¶¶ 18-19. Furthermore, he averred that, as of August 20, 2025, San Antonio Enforcement and Removal Operations (“ERO”) was informed that Petitioner and others were “no longer allowed to travel on expired passports[.]” *Id.* ¶ 20. Consequently, on September 12, 2025, San Antonio ERO submitted a “Request for Afghan Transportation Letter,” which Mr. Vasquez stated “is required for removal,” to the U.S. Embassy in Qatar, and ERO is “awaiting a response” on that request. *Id.* ¶¶ 21, 29. Under these circumstances, Respondents have failed to rebut Petitioner’s claim that his removal is not significantly likely in the reasonably foreseeable future; to the contrary, they have actually confirmed that it is not foreseeable. *See Zadvydas*, 533 U.S. at 701.

On April 3, 2026, counsel entered a notice of appearance for Petitioner.¹ Following the entry of appearance by counsel, this Court found that the Petition “advances a habeas claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001)” and allowed counsel to amend the Petition or file a reply no later than April 13, 2026. ECF No. 13. Because Respondents have failed to rebut Petitioner’s *Zadvydas* claim and lack any statutory basis to detain him, Petitioner respectfully requests that the Court order his immediate release.

¹ Mr. Gividen entered a Notice of Appearance on April 3, 2026, and, the same day, he filed a motion on behalf of Mr. Heinrich to appear *pro hac vice*. *See* ECF Nos. 10-11. The Court approved Mr. Heinrich’s *pro hac vice* appearance on April 6, 2026. *See* ECF No. 12.

II. Argument

A. Petitioner's Detention Violates Due Process Under *Zadvydas*

Petitioner has been detained for over ten months post-final-removal order, and Respondents have failed to deport him to date. Respondents' only support for their assertion that Petitioner's removal is reasonably foreseeable is that Afghanistan nationals have been removed in previous years, and that Respondents have submitted a *pending* travel document request on Petitioner's behalf. *See* Response at 6-7. A pending document request and the fact of previous deportations are insufficient to justify Petitioner's ongoing detention, well in excess of the "presumptively reasonable period of detention." *Zadvydas*, 533 U.S. at 701. The government's Response affirmatively demonstrates that they lack any concrete plan to remove Petitioner in the foreseeable future.

Petitioner has established both elements required to state a claim under *Zadvydas*: "(1) [a] post-removal order detention in excess of six months and (2) a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Huete-Alvarez v. Bondi*, No. 26-CV-20991, 2026 WL 530196, at *4 (S.D. Fla. Feb. 26, 2026) (internal quotation marks and citation omitted). Respondents have not put forth evidence sufficient to rebut either of these elements. *See Zadvydas*, 533 U.S. at 701.

As to the first element, Respondents do not contest that Petitioner has been detained following a final order of removal in excess of six months. *See generally* Response. Petitioner's order of removal became final in May 2025, and he has been detained since January 2025. *See* Petition at 6. Thus, he has been in detention over ten months following a final order of removal. Under these circumstances, "there is no dispute that the presumptively reasonable six-month

period recognized in *Zadvydas* has passed.” *Alnajjar v. GEO Group, Inc.*, No. 5:25-CV-0822-JKP, 2025 WL 3853217, at *4 (W.D. Tex. Dec. 23, 2025).

Petitioner has also provided “a good reason” to believe that his removal is not reasonably likely in the foreseeable future, and Respondents’ rebuttal is unpersuasive. Respondents do not offer *any* concrete plan to remove Petitioner in the foreseeable future. They do not state that there are any upcoming deportation flights to Afghanistan; instead, they simply state that Afghanistan nationals “were successfully removed” in previous years (they do not specify whether these individuals were removed *to Afghanistan*, nor do they state that any such removals have occurred or are set to occur *this year*). Response at 6-7. Even if there were planned deportations to Afghanistan in the foreseeable future, though, Respondents would be unable to include Petitioner in those missions, as they have conceded that they do not have the travel documents that are “required for removal[.]” Vasquez Decl. ¶¶ 21, 29; *see also* Response at 7.

In fact, the Response only highlights the challenges that Respondents have encountered in obtaining travel documents for Petitioner and effectuating his removal. Mr. Vasquez avers that Respondents first commenced the process of deporting Petitioner on June 20, 2025— nearly ten months ago. Vasquez Decl. ¶ 12. Respondents took various steps (*e.g.*, corresponding with Afghan airline Kam Air and completing an escort threat assessment) to effectuate Petitioner’s removal on August 25, 2025. *Id.* ¶¶ 13-14, 18. After those efforts, though, ERO cancelled the removal mission. *Id.* 19.

Then, in August 2025, Petitioner’s travel was further restricted, such that he was no longer permitted to fly with an expired passport. *Id.* ¶ 20. Consequently, in September 2025, Respondents submitted a travel document request on Petitioner’s behalf to the U.S. Embassy in Doha, Qatar. *Id.* ¶ 21. In a case involving a similarly situated habeas petitioner, this court noted

that such requests must be made to the U.S. Embassy in Qatar, which then forwards the requests to the Afghan Embassy, because “the United States currently has impediments to cooperating with Afghanistan to obtain those documents.” *Yunsai v. Bondi, et al.*, No. SA-26-CA-00129-XR, 2026 WL 895627, at *2 (W.D. Tex. Mar. 30, 2026). As of February 3, 2026—nearly five months after commencing the travel document request process—Respondents were still awaiting a response and therefore lacked the documents necessary to remove Petitioner. *Id.* ¶¶ 21-23, 27, 29. Moreover, it appears that they were still awaiting a response in early March— or, perhaps, Afghanistan had refused to provide the necessary documentation— as Petitioner’s deportation officer informed him on March 7, 2026 that he should obtain his own transportation letter and travel document to Afghanistan. *See* Heinrich Decl. ¶ 16.

Recent cases in this District confirm that Petitioner’s removal is not reasonably foreseeable. For example, *Yunsai*, 2026 WL 895627, at *1, involved an Afghan habeas petitioner who was detained for approximately eight months following a final removal order. In *Yunsai*, the government claimed that it was making “regular efforts” to obtain necessary travel documents and asserted that “the Afghanistan embassy has not declined to issue a travel document in this case[.]” *Id.* at *3. Here too, Respondents suggest that they can continue to detain Petitioner “until Afghanistan refuses to issue a travel document to Petitioner,” which, at least as of February 3, 2026, they said, “has just not happened yet.” Response at 7. In *Yunsai*, the court commented on the restrictions on Afghan nationals traveling with expired passports, as well as the “diplomatic impediments” involved in deporting Afghan nationals: “The combination of these heightened administrative requirements and a diplomatic impediment to meeting them ‘provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.’” *Id.* at *2 (quoting *Zadvydas*, 533 U.S. at 701). The court found

that the government's evidence was "insufficient to meet the Government's burden of demonstrating likelihood of removal in the reasonably foreseeable future[.]" and ordered the petitioner's release. *Id.* at *3.

Likewise, in *Ibrahimi v. Bondi, et al.*, No. SA-25-CA-00768-XR, 2026 WL 915703, at *3-4 (W.D. Tex. Mar. 27, 2026), the court held that the removal of an Afghan citizen was not reasonably foreseeable and ordered his release. The petitioner was detained for approximately twenty two months post-final-removal-order. *Id.* at *1. Arguing that the petitioner's removal was reasonably foreseeable, the government made similar assertions that they make here: that some Afghans were removed in 2025, and that they have made travel document requests on the petitioner's behalf. *Id.* at *3. The court found that "ICE's few affirmative steps toward securing travel documents do not show that removal is reasonably foreseeable[.]" and ordered the petitioner's release. *Id.* (internal quotation marks omitted). The same result is warranted here. In fact, in *Ibrahimi, id.*, the government actually asserted that it had taken some steps to facilitate Petitioner's removal to a third country. They make no such assertions here.

Other district courts in this Circuit, evaluating habeas claims from petitioners similarly situated to Mr. Rahimi, have likewise held that their removal was not reasonably foreseeable and ordered their release. *See, e.g., Samadi v. Warden*, No. CV 25-1889, 2026 WL 660574, at *4 (W.D. La. Mar. 9, 2026), *report and recommendation adopted*, No. 3:25-CV-01889 SEC P, 2026 WL 663239 (W.D. La. Mar. 9, 2026) (removal of Afghan habeas petitioner was not significantly likely in the reasonably foreseeable future); *Samir v. Wolf, et al.*, No. 1:25-CV-01397, 2026 WL 817240, at *2 (W.D. La. Mar. 2, 2026), *report and recommendation adopted sub nom. Samir v. Wolf*, No. 25-CV-1397, 2026 WL 816038 (W.D. La. Mar. 24, 2026) (same). As the court stated in *Samadi*, 2026 WL 660574, at *4, *report and recommendation adopted*, 2026 WL 663239, "an

unsubstantiated possibility [of removal] does not satisfy Respondents' burden." The fact of a pending document request creates only a *possibility* of removal; it does not make the petitioner's removal reasonably foreseeable. *See id.* at *2-3. And that possibility is slight here, considering that the Respondents' previous removal mission failed; the travel letter request has been pending since September 2025; Respondents cite no upcoming removal missions to Afghanistan; and Respondents do not assert any intent to remove Petitioner to a third country. *See Vasquez Decl.* ¶¶ 21-23, 27, 29.

Under these circumstances, Petitioner's detention has become unconstitutionally and unreasonably prolonged, and his release is warranted.

B. Petitioner's Detention is Not Authorized Under 8 U.S.C. § 1231(a)(6)

As this Court stated in *Alnajjar*, 2025 WL 3853217, at *3, "§ 1231, and thus *Zadvydas*, applies" where a non-citizen is subject to a final order of removal. Accordingly, and as Respondents state, Petitioner may be detained under 8 U.S.C. § 1231(a) "until there is no significant likelihood of removal in a reasonably foreseeable future." Response at 4 (internal quotation marks and citation omitted). But, for the reasons set forth in Section II.A *supra*, Petitioner's removal is not reasonably foreseeable, and his detention is no longer authorized under 8 U.S.C. § 1231. *See Ibrahimi*, 2026 WL 915703, at *2-3 (rejecting respondents' argument that detention of a similarly situated Afghan habeas petitioner was lawful under § 1231(a)).

C. Petitioner is Not Subject to Mandatory Detention Under 8 U.S.C. § 1225(b)

Respondents' argument that 8 U.S.C. § 1225(b) mandates Petitioner's detention is likewise unavailing. Where, as here, the petitioner "is no longer being considered for asylum," and "his removal proceedings ended with his final removal order," his detention is no longer

authorized by 8 U.S.C. §§ 1225(b)(1) or 1225(b)(2). *Ibrahimi*, 2026 WL 915703, at *2 (rejecting respondents' argument that detention of similarly situated Afghan habeas petitioner was authorized under § 1225(b)); 8 U.S.C. §§ 1225(b)(1),(2).

III. Conclusion

For the foregoing reasons, Petitioner respectfully submits that this Court should grant the Petition and order his immediate release.

Dated: April 13, 2026

/s/ Andrew Heinrich

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