IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KAVEH ABEDI,

Petitioner,

v. Case No. 26-3012-JWL

CRYSTAL CARTER, Warden, FCI-Leavenworth; KRISTI NOEM, Secretary, Department of Homeland Security; CHRISTOPHER CHAMBERLAIN, Acting Assistant Field Office Director, Immigration and Customs Enforcement; and U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.

RESPONSE TO SECOND § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

Crystal Carter, the Warden of the Federal Correctional Institute in Leavenworth, Kansas ("FCI-Leavenworth"); Kristi Noem, the Secretary of the United States Department of Homeland Security ("DHS"); Christopher Chamberlain, an Acting Assistant Field Office Director at United States Immigration and Customs Enforcement ("ICE"); and DHS (collectively "Respondents") submit the following response to the Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Habeas Petition") filed by Kaveh Abedi ("Petitioner") and the Order To Show Cause issued by the Court.

NATURE OF THE MATTER BEFORE THE COURT

Filed in January 2026, this is Petitioner's second Habeas Petition. He filed his first Habeas Petition in July 2025. The Court denied the first Habeas Petition in October 2025, and Petitioner immediately appealed. The day after Respondents filed their appellate brief with the United States Court of Appeals for the Tenth Circuit – before briefing was complete and before the Tenth Circuit scheduled oral argument – Petitioner presented his second Habeas Petition to this Court. In his

second Habeas Petition, Petitioner has attempted to "update" his first Habeas Petition by including some factual developments after October 2025. But the core arguments in the Second Petition are the same as the core arguments in the first Habeas Petition: Petitioner continues to claim that his detention is indefinite and/or unjustified, with no significant likelihood of removal in the reasonably foreseeable future.

The second Habeas Petition should be denied. First, Petitioner cannot establish trial court jurisdiction because his appeal of the first Habeas Petition is pending before the Tenth Circuit. The filing of a notice of appeal divests a district court of jurisdiction over all non-collateral aspects of the case. Like Petitioner's second Habeas Petition, the pending appeal of the denial of Petitioner's first Habeas Petition involves contentions of indefinite or prolonged detention and reliance on principles of due process, 8 U.S.C. § 1231(a)(6), and *Zadvydas v. Davis*, 533 U.S. 678 (2001). The fact that Petitioner's second Habeas Petition has a new case number is immaterial. Second, even if the Court had jurisdiction, Petitioner still has not shown that there is no significant likelihood of removal in the reasonably foreseeable future. Petitioner notes that two Deportation Officers have recommended his release, but that recommendation is under review by more senior ICE officials, and a final decision has not been made. Even after ICE unsuccessfully attempted to remove Petitioner to two countries, at the time he filed his second Habeas Petition, he had been detained for only approximately seven months – just a few weeks beyond *Zadvydas*'s presumptively reasonable six month period.

STATEMENT OF FACTS

The following facts are part of the Declaration of Eric Swanson, a Deportation Officer for Enforcement and Removal Operations ("ERO") at ICE. Exhibit ("Ex.") 1, Declaration ¶¶ 1-4. Some allegations from the Habeas Petition are included as well.

Petitioner is a native and citizen of the Islamic Republic of Iran ("Iran"). Ex. 1 ¶¶ 5, 22. He was initially admitted to the United States in or around January 1991 as a nonimmigrant temporary visitor. *Id.* ¶ 6. He remained in the United States beyond the time authorized. *Id.* In December 2000, the Immigration and Naturalization Service ("INS") approved his Form I-485, Application to Register Permanent Residence or Adjust Status. *Id.* ¶ 7. In or around November 2001, Petitioner was convicted in California state court of the offense of possession for sale of a controlled substance (cocaine), in violation of § 11351 of the California Penal Code. *Id.* ¶ 8. He was sentenced to 180 days in custody. *Id.* However, the state court suspended imposition of the sentence and placed Petitioner on probation for three years. *Id.*

In April 2002, INS agents arrested Petitioner based on his controlled substance conviction. *Id.* ¶ 9. Approximately one day after his arrest, INS issued Petitioner a Form I-862, Notice to Appear ("Notice to Appear"). *Id.* ¶ 10. The Notice to Appear alleged Petitioner was removable to Iran pursuant to § 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"), *id.*, also known as 8 U.S.C. § 1227(a)(2)(A)(iii). The Notice to Appear further alleged Petitioner was removable for having been convicted of an aggravated felony as defined in § 101(a)(43)(B) of the INA, also known as 8 U.S.C. § 1101(a)(43)(B); an offense related to illicit trafficking of a controlled substance. *Id.*

After being placed in removal proceedings, Petitioner requested release from INS custody. *Id.* ¶ 11. An Immigration Judge declined to release Petitioner. *Id.* Petitioner appealed, but the Board of Immigration Appeals ("BIA") affirmed the Immigration Judge's bond decision. *Id.* In June 2002, with the assistance of counsel, Petitioner admitted the factual allegations in the Notice to Appear and conceded the charge of removability. *Id.* ¶ 12. Petitioner declined to designate a country of removal. *Id.* An Immigration Judge directed Iran as the country of removal. *Id.*

Petitioner subsequently applied for relief from removal. *Id.* ¶ 13. He alleged in his first Habeas Petition that he sought relief under the United Nations Convention Against Torture. *Abedi v. Carter*, No. 25-3141-JWL ("*Abedi I*"), ECF 1 at 2. In September 2002, an Immigration Judge granted Petitioner's application for relief. Ex. 1 ¶ 14. Petitioner alleged in his first Habeas Petition that the Immigration Judge granted deferral of removal. *Abedi I*, ECF 1 at 2-3, 11 & Ex. B. No appeal to the BIA was taken by either party, rendering the Immigration Judge's decision final. Ex. 1 ¶¶ 14-16.

Under 8 U.S.C. § 1231(a)(1)(A), an alien subject to an order of removal shall be removed from the United States within 90 days. *Id.* ¶ 17. At or around 90 days, if the alien has not been removed, a Post-Order Custody Review ("POCR") is conducted. *Id.* In October 2002, Petitioner was served with a Notice to Alien of File Custody Review ("POCR Notice"), indicating INS would be reviewing his custody status in early January 2003. *Id.* ¶ 18. The POCR Notice informed Petitioner he could submit any evidence that would support his argument for release from INS custody. *Id.* In December 2002, ICE's San Diego Field Office notified Petitioner he was to be released from custody on an order of supervision ("OSUP"). *Id.* ¶ 19; *see also* ECF 1 ¶ 23.

On June 22, 2025, Petitioner's release on an OSUP was revoked based on changed circumstances and to enforce the existing removal order by removing him to a third country. Ex. 1 ¶ 20 (citing 8 U.S.C. § 1231(b)(1)(C)). On June 23, 2025, Petitioner was taken into ICE custody. *Id.* ¶ 21; *see also* ECF 1 ¶ 22. On that date, a deportation officer served Petitioner a copy of a Notice of Revocation of Release ("Notice of Revocation"). Ex. 1 ¶ 21. Among other things, the Notice of Revocation stated "[r]emoval to a country other than Iran is now a possibility." *Abedi I*, ECF 1 at Ex. E. Petitioner declined to sign the Proof of Service on the Notice of Revocation. Ex. 1 ¶ 21.

On July 3, 2025, ERO contacted the Interests Section of Iran in the United States ("Iranian Interests Section"). *Id.* ¶ 22. The Iranian Interests Section indicated it was willing to issue a travel document for Petitioner. *Id.* On or around July 10, 2025, Petitioner's spouse communicated with ERO via email inquiring whether he could be removed to Turkey or the United Arab Emirates ("UAE"). *Id.* ¶ 23. On or around July 14, 2025, the Iranian Interests Section issued a travel document for Petitioner. *Id.* ¶ 24.

On July 21, 2025, Petitioner filed his first Habeas Petition in *Abedi I*. Among other things, the first Habeas Petition alleged that Petitioner's detention was indefinite and/or unjustified under *Zadvydas*, and there was not a significant likelihood of removal in the reasonably foreseeable future. *Abedi I*, ECF 1 ¶¶ 24, 42, 48, 50, 52, 54, 56. On October 6, 2025, after receiving and considering the parties' submissions, *see Abedi I*, ECF 1, 9, 10, the Court denied the first Habeas Petition. *Abedi v. Carter*, No. 25-3141-JWL, 2025 WL 3209009, at *1-2 (D. Kan. Oct. 6, 2025). The Court rejected "petitioner's claim that his detention has become unreasonably indefinite" under *Zadvydas*. *Id.* at *1. The Court observed not only that Petitioner had been detained for "less than four months," but also that Respondents had been "active in seeking petitioner's removal," which affected "the ultimate likelihood of petitioner's removal in the reasonably foreseeable future." *Id.* at *1-2.

On October 6, 2025 – the same day that this Court rendered judgment on the merits in *Abedi I* – Petitioner filed a notice of appeal. *Abedi I*, ECF 13. On November 19, 2025, Petitioner filed his opening Tenth Circuit brief in *Abedi I*. Ex. 2 (Appellant's Brief). On January 15, 2026, Respondents filed their Tenth Circuit response in *Abedi I*. Ex. 3 (Appellees' Brief). On January 16, 2026, Petitioner filed with this Court his second Habeas Petition in the case captioned *Abedi v. Carter*, No. 26-3012-JWL ("*Abedi II*"). *Abedi II*, ECF 1. Shortly thereafter, on February 26,

2026, Petitioner filed his Tenth Circuit reply in *Abedi I*. Ex. 4 (Appellant's Reply Brief). *Abedi I* remains pending before the Court of Appeals, and any oral argument presumably will take place during the May 2026 session. *See* https://www.ca10.uscourts.gov/calendar (last visited Jan. 27, 2026).

Meanwhile, ERO continued its efforts but ultimately was unable to remove Petitioner to Turkey or the UAE. Ex. 1 ¶ 25. On November 19, 2025, ERO was advised that Removal and International Operations ("RIO") was actively working with the Department of State and DHS on avenues to remove aliens to a third country. *Id.* ¶ 26. On or around December 24, 2025, ERO issued a Decision to Continue Detention. *Id.* ¶ 27. On January 7, 2026, (1) the Decision to Continue Detention was served on Petitioner's counsel; (2) Petitioner was served with a Notice to Alien of Interview for Review of Custody Status; (3) Petitioner was interviewed; and (4) local ERO inquired with a Detention and Deportation Officer ("DDO") at ERO's Removal Management Division ("RMD") for an update on third country removal and was informed no updates were available. *Id.* ¶¶ 27-28, 30; *see also* ECF 1 ¶ 2.

In the Decision to Continue Detention that was served on Petitioner's counsel on January 7, 2026, an ICE Deputy Field Office Director explained that "ICE is in receipt of or expects to receive the necessary travel documents to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest." ECF 1-1 at 7. Nevertheless, following Petitioner's interview, local ERO made a recommendation to ERO Headquarters to release Petitioner. Ex. 1 ¶ 29; *see also* ECF 1 ¶ 2; ECF 1-1 at 1. This decision belongs to ERO Headquarters and has not yet been made. Ex. 1 ¶¶ 29, 33. On or around February 4, 2026, ERO reached out to a DDO and was advised that removal efforts are ongoing, but no

updates were available. *Id.* ¶¶ 31, 34. On or around February 11, 2026, ERO again reached out to a DDO and has not yet received a response. *Id.* ¶ 32.

ARGUMENT

I. Petitioner cannot establish trial court jurisdiction because his appeal of the denial of his first Habeas Petition is pending before the Tenth Circuit

The filing of a notice of appeal "is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *United States v. Madrid*, 633 F.3d 1222, 1226 (10th Cir. 2011) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). Because a district court is "divested of jurisdiction" in these circumstances, "[a]ny subsequent action is null and void." *Garcia v. Burlington N. R.R. Co.*, 818 F.2d 713, 721 (10th Cir. 1987). Only with respect to "collateral matters" does a district court retain jurisdiction. *Burke v. Utah Transit Auth. & Local 382*, 462 F.3d 1253, 1264 (10th Cir. 2006); *see also Madrid*, 633 F.3d at 1226-27 (noting that a district court may act "in aid of the court of appeals' exercise of its jurisdiction" or on "collateral matters not involved in the appeal") (citation modified).

Courts in this Circuit have confirmed that trial court jurisdiction is lacking when an appeal is pending in a habeas matter. *See, e.g., Henderson v. Ray*, 164 F. App'x 760, 761-62, 763-64 (10th Cir. 2006) (affirming that an appeal divested the district court of jurisdiction in a habeas case arising under 28 U.S.C. § 2254); *United States v. Drayton*, Crim. A. No. 10-20018-01-KHV, Civ. A. No. 19-2578-KHV, 2020 WL 916876, at *1-2 (D. Kan. Feb. 26, 2020) (finding that an appeal divested the district court of jurisdiction in a habeas case arising under 28 U.S.C. § 2255); *Bradin v. Thomas*, No. 19-3041-JWL, 2020 WL 9264864, at *1 (D. Kan. Jan. 9, 2020) (same, in a habeas case arising under 28 U.S.C. § 2241). So have courts in other jurisdictions. *See, e.g., Talmadge v. Angol*, No. 3:25-cv-00010-SLG-MMS, 2025 WL 1033851, at *1-2 (D. Alaska Mar. 18, 2025)

(same, in another habeas case arising under § 2241); *Galindo v. Warden*, No. 2:23-cv-00572-TLN-JDP, 2024 WL 3675719, at *1-2 (E.D. Cal. Aug. 6, 2024) (same, in another habeas case arising under § 2241).

Petitioner's second Habeas Petition does not raise issues that are "collateral" to the pending appeal of the denial of Petitioner's first Habeas Petition. On the contrary, the claims raised in the first Habeas Petition directly overlap with the claims in the second Habeas Petition. In his first Habeas Petition, Petitioner claimed his detention was inconsistent with the Due Process Clause of the Fifth Amendment to the Constitution, 8 U.S.C. § 1231, and the Supreme Court's decision in *Zadvydas*. *Abedi I*, ECF 1 ¶¶ 24, 42, 48, 50, 52, 54, 56. Petitioner based these claims in part on allegations that his detention was indefinite and/or unjustified, and there was not a significant likelihood of removal in the reasonably foreseeable future:

> 48. Finally, Mr. Abedi's civil detention with no foreseeable end infringes upon a protected liberty interest and thus violates his Constitutional rights. *See Zadvydas v. Davis*, 533 U.S. 678, 679 (2001) ("Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual's liberty interest. The instant proceedings are civil and assumed to be nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil detention under this statute."). . . .
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> 50. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690–91. Such a justification for detention is required to be particularly strong once detention is presumptively unconstitutional. . . .
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> 52. Nor has the government met its burden of proof that Mr. Abedi's removal is reasonably foreseeable as is required by *Zadvydas*. 533 U.S. at 701. There are no known travel documents for removal, and Mr. Abedi has not been informed of any third country to which removal is imminent. In addition, even if ICE were to secure a third country to which Mr. Abedi were to be removed, he would be entitled to written notice and fear screening pursuant to the Respondent DHS' own policies. Therefore, removal is not reasonably foreseeable. . . .

> 56. Moreover, given that there is nothing to suggest that Mr. Abedi is a danger to the community or a flight risk, Respondents having determined that for some 23 years, his continued detention, despite his having a valid work authorization document, a job to which he can return, and his US citizen wife and extended family, Mr. Abedi's continued detention is punitive in violation of the Due Process Clause of the Constitution. *Zadvydas*, 533 U.S. at 690.

Abedi I, ECF 1 ¶¶ 48, 50, 52, 56 (some case or record citations modified or omitted).

Petitioner has merely repackaged and attempted to "update" these claims in his second Habeas Petition. He is suing the same Respondents in the second Habeas Petition as he did in the first Habeas Petition. *Compare* ECF 1 at 1 & ¶¶ 8-11 *with Abedi I*, ECF 1 at 1 & ¶¶ 2-5. All of Petitioner's claims in the second Habeas Petition allege that his detention is indefinite and/or unjustified, and there is not a significant likelihood of removal in the reasonably foreseeable future:

> 1. Kavah Abedi ("Petitioner" or "Mr. Abedi" or "Kaveh") has been incarcerated since June 23, 2025, for over 6 months. Petitioner's detention became presumptively unconstitutional after six months. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Accordingly, to vindicate Petitioner's statutory and constitutional rights and to put an end to his continued arbitrary detention, this Court should grant the instant petition for a writ of habeas corpus.
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> 2. On January 7, 2025, ICE conducted a review of Petitioner's custody since he has been detained for over 180 days. According to Immigration Officer Mann, it is recommended that the Petitioner be released from custody. This is because Petitioner is not a danger to the community, he is not a flight risk, and his removal is not reasonably foreseeable. The recommendation has been forwarded to ICE Headquarters, but it is uncertain when the recommendation will be reviewed, and there is no timetable available. Under these circumstances, Petitioner's release, which easily meets the threshold under the Supreme Court's ruling in *Zadvydas* is appropriate. Absent an order from this Court, Petitioner will likely remain detained indefinitely since there is no timeline known for HQ review.
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> 32. The Supreme Court held in *Zadvydas* that "the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's] removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. . . .
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> 35. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted

> justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690. The government may not detain a noncitizen based on any other justification. . . .
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> 42. Petitioner's prolonged detention is not likely to end in the reasonably foreseeable future since, despite the recommendation of release, it is unclear when a review of that recommendation will occur, but ICE, itself believes it could be months if not longer. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.
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> 43. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment. . . .
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> 45. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.").
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> 46. Since ICE itself has now determined that removal is not reasonably foreseeable, Petitioner's detention does not effectuate the purpose of the statute, and is accordingly not authorized by § 1231(a).

ECF 1 ¶¶ 1-2, 32, 35, 42-43, 45-46 (some case or record citations modified or omitted).

This overlap means any action this Court takes with respect to the second Habeas Petition runs the risk of contradicting the Tenth Circuit's mandate and reasoning with respect to the first Habeas Petition. Appellate briefing on the first Habeas Petition closed in January 2026, and oral argument is likely to occur in May 2026. Among the issues being considered by the Tenth Circuit are whether Petitioner's detention is indefinite and/or unjustified, and whether there is a significant likelihood of removal in the reasonably foreseeable future. *See* Ex. 2 (*Abedi I* Appellant's Brief) at 9-12, 17-18, 22-23, 32-34; Ex. 3 (*Abedi I* Appellees' Brief) at 2, 11, 38-46; Ex. 4 (*Abedi I* Appellant's Reply Brief) at 7-10, 19-25. Any ruling by this Court on the second Habeas Petition addressing these issues and deciding whether Petitioner should be detained or released could be

inconsistent with the Tenth Circuit's ruling on the first Habeas Petition addressing these issues and deciding whether Petitioner should be detained or released. For example, if the Court were to order Petitioner's release in *Abedi II*, that order ostensibly would moot the appeal in *Abedi I* and nullify any work the Tenth Circuit panel has done to study the briefs, draft bench memoranda or tentative opinions, and prepare for oral argument.

It bears emphasis that the problem is not that Petitioner has filed multiple habeas petitions.[1] The Court noted in *Abedi I* that Petitioner could file another petition if his detention became "unreasonably indefinite" under *Zadvydas*. *Abedi I*, 2025 WL 3209009, at *1 n.2. The Court has entertained successive habeas petitions by other petitioners as well. *See, e.g., Reyna-Salgado v. Noem*, No. 25-3138-JWL, 2025 WL 2550346, at *1-2 (D. Kan. Aug. 11, 2025) (denying the petitioner's first habeas petition because the petitioner did not show there was no significant likelihood of removal in the reasonably foreseeable future); *Reyna-Salgado v. Noem*, No. 25-3172-JWL, 2025 WL 3209007, at *1-2 (D. Kan. Oct. 3, 2025) (denying the petitioner's second habeas petition on similar grounds); *Reyna-Salgado v. Noem*, No. 25-3236-JWL, 2025 WL 3562597, at *1-3 (D. Kan. Dec. 12, 2025) (granting the petitioner's third habeas petition because at this point the petitioner demonstrated removal was unlikely and his detention had become "unreasonably indefinite"). The problem here is that Petitioner wants to have his cake and eat it too by filing a second Habeas Petition *while his appeal of the denial of his first Habeas Petition is still pending*.

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[1] The Court can dismiss a successive § 2241 petition if (1) the petition presents a claim that was raised and adjudicated in an earlier proceeding, unless hearing the claim would serve the ends of justice; or (2) the petition raises a claim that could have been presented in an earlier petition but was not, unless the omission was not the result of inexcusable neglect. *Stanko v. Davis*, 617 F.3d 1262, 1269-72 (10th Cir. 2010); *see also Tercero v. Holder*, 510 F. App'x 761, 763 (10th Cir. 2013) (criticizing a § 2241 petitioner for failing to understand that "he does not have an endless supply of habeas petitions available to him"). Although the United States currently is not relying on *Stanko* and its progeny, it reserves the right to do so with respect to any later petition, and in other cases.

If Petitioner wants to prosecute his second Habeas Petition in the short term, he largely controls his own fate. He is free to seek leave to dismiss his appeal of the denial of the first Habeas Petition. *See* Fed. R. App. P. 42(b). Once the pending appeal is dismissed or resolved and district court jurisdiction over this subject matter is restored, he can refile his second Habeas Petition with this Court. But "[h]e cannot appeal" the dismissal of his first Habeas Petition "and simply refile the same petition over and over again while his appeal remains pending," because "[a]n appeal generally divests the district court of jurisdiction over the matter until such time as the Court of Appeals has rendered its decision." *Puchner v. Severson*, No. 23-C-1523, 2024 WL 85077, at *3 (E.D. Wis. Jan. 8, 2024); *see also id.* ("The fact that Puchner has refiled his habeas petition as a separate action does not change the result.").

II. Counts I and II should be denied because Petitioner has not shown there is no significant likelihood of removal in the reasonably foreseeable future

In addition to failing to establish district court jurisdiction, the second Habeas Petition does not discharge Petitioner's burden to show there is no significant likelihood of removal. The sole basis for Petitioner's assertion in *Abedi II* that there is now little prospect of removal is that at the conclusion of the POCR on January 7, 2026, two Deportation Officers in ICE's Kansas City Sub Office (whom Petitioner identifies as Richard Mann and Marissa Saenz) recommended to Headquarters that Petitioner should be released. ECF 1 ¶¶ 2, 36, 40-42, 46; ECF 1-1 at 1. Citing *Zadvydas* and arguing that "removal is not reasonably foreseeable," Petitioner in Count I asserts a substantive due process claim under the Fifth Amendment to the Constitution. ECF 1 ¶¶ 38-43. Citing *Zadvydas* and again asserting that "removal is not reasonably foreseeable," Petitioner in Count II asserts a claim under 8 U.S.C. § 1231(a)(6). *Id.* ¶¶ 45-46.

These two *Zadvydas*-based claims are really a single claim, no matter how Petitioner captions them. *See Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *5-6 (W.D.

Okla. Aug. 27, 2024) ("Courts, including this one, have held that a petitioner's failure to establish that his detention violates *Zadvydas* negates a substantive due process claim."), *adopted*, 2025 WL 486679, at *1-4 (W.D. Okla. Feb. 13, 2025); *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, at *7 & n.3 (W.D. Tex. Mar. 23, 2020) ("[T]he record does not support Petitioner's claim that his detention threatens to be either indefinite or potentially permanent so as to implicate *Zadvydas* and substantive due process concerns."); *Jovel-Jovel v. Contreras*, No. H-18-1833, 2018 WL 11473467, at *4 (S.D. Tex. Oct. 30, 2018) ("[I]f detention is no longer than reasonably necessary to effectuate removal, it will comport with § 1231(a)(6) as well as substantive due process protections.") (citation modified); *Nasr v. Larocca*, No. CV 16-1673-VBF(E), 2016 WL 2710200, at *5 (C.D. Cal. June 1, 2016) ("[W]here Petitioner has failed to meet his burden to show there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*, Petitioner also has failed to prove that his continued detention violates due process.") (citation modified).

Under *Zadvydas*, upon the entry of a final removal order "the Government ordinarily secures the alien's removal during a subsequent 90-day statutory 'removal period,' during which time the alien normally is held in custody." 533 U.S. at 682. If the alien is not removed during this 90-day period, 8 U.S.C. § 1231(a)(6) "authorizes further detention." *Id. Zadvydas* held that a six month period of detention is presumptively reasonable. *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* The presumption does not mean that "every alien not removed must be released after six months," but instead that the alien may be held in confinement until "it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

The evidence provided by Petitioner reflects only a potential disagreement among ICE employees, not proof sufficient to justify relief under 28 U.S.C. § 2241. At the POCR on January 7, 2026, Petitioner was served with a Decision to Continue Detention that had been signed by an ICE Deputy Field Office Director. ECF 1-1 at 7-10. The Decision to Continue Detention provided several grounds for Petitioner's continued detention. *Id.* at 7. ERO Headquarters may agree with Mr. Mann's and Ms. Saenz's recommendation, in which case Petitioner will be released. But ERO Headquarters also may see the facts differently and disagree with Mr. Mann's and Ms. Saenz's recommendation, in which case Petitioner will not be released. Petitioner's second Habeas Petition assumes away this option.

The recommendation of Mr. Mann and Ms. Saenz is not a final decision by DHS or ICE. "An agency action is not final if it is only the ruling of a subordinate official, or tentative." *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992) (citation modified). Indeed, under the Administrative Procedure Act ("APA"), a "core question" is "whether the agency has completed its decisionmaking process." *Id.* Until the recommendation of Mr. Mann and Ms. Saenz is reviewed by senior officials, it is tentative[2] and does not establish the absence of a significant likelihood of removal in the reasonably foreseeable future. *Cf. Soudom v. Warden*, No. 25-3063-JWL, 2025 WL

[2] It is doubtful that any decision to continue custody can be considered "final" under the APA, as custody review decisions are part of an ongoing process and subject to reconsideration under 8 C.F.R. §§ 241.4(k)(1)(i)-(ii) & 241.4(k)(2)(ii)-(iii). *See, e.g., Garcia v. U.S. Citizenship & Immigration Servs.*, No. 3:21-CV-2233-G, 2022 WL 3349151, at *4, 6-8 (N.D. Tex. Aug. 12, 2022) (dismissing an APA challenge to a denial of an application to adjust status because the petitioner could renew the application later); *Ms. L v. U.S. Immigration & Customs Enf't*, 302 F. Supp. 3d 1149, 1167-68 (S.D. Cal. 2018) (dismissing an APA challenge to a decision to separate parents from children in immigration detention because the plaintiffs "failed to allege facts sufficient to show 'final agency action' subject to review under the APA"); *Bhatia v. Warden*, No. 1:16-CV-576, 2016 WL 4573971, at *2 (W.D. La. June 23, 2016) ("Even if Petitioner's temporary detention was based on an administrative decision, it would be tentative in nature, not a 'final agency action' as required for judicial review.").

1594822, at *2 (D. Kan. May 23, 2025) (denying relief where the petitioner did not carry his initial burden under *Zadvydas*, in part because "[t]he letter on which petitioner relies does not foreclose the possibility of his removal"). Petitioner cites no authority entitling him to use 28 U.S.C. § 2241 to leapfrog a review by ERO Headquarters based on the theoretical possibility that Petitioner may later disagree with the pace or results of that higher-level review.

"Speculation and conjecture" about the timing or outcome of the ERO Headquarters review is not sufficient to carry Petitioner's burden, nor is "a lack of visible progress" in removing him "sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future." *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, at *3 (S.D. Tex. Oct. 21, 2024). Because ICE is "still actively pursuing" Petitioner's removal and his detention furthers "Congress's goal of ensuring his presence for removal," he is not yet "entitled to release under *Zadvydas*." *Bains v. Garland*, No. 2:23-cv-00369-RJB-BAT, 2023 WL 3824104, at *4 (W.D. Wash. May 16, 2023). Similarly, a "mere delay" in obtaining Petitioner's travel documents does not "trigger the inference" that he will not be "removed in the reasonably foreseeable future because the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals." *Dusabe*, 2024 WL 5465749, at *4 (citation modified). Even when DHS "has not identified a specific date by which it expects a travel document to issue," uncertainty "as to when removal will occur does not establish that detention is indefinite." *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, at *4 (W.D. Wash. May 10, 2024).

Nor has Petitioner otherwise shouldered his burden under *Zadvydas*. Based on communications with Petitioner's spouse, ICE initially attempted to remove Petitioner to Turkey and UAE. Ex. 1 ¶ 23. ICE only recently determined that removal to those countries is not an option.

Id. ¶ 25. ICE is continuing efforts to effectuate removal and reached out to a DDO with ERO RMD in early February 2026. *Id.* ¶¶ 31-32, 34. At the time the second Habeas Petition was filed, Petitioner had been in detention for approximately seven months, barely over the presumptively reasonable period prescribed by *Zadvydas*. *Compare id.* ¶ 21 *with* ECF 1 at 12. As this Court recently held in another case:

> [T]he Court concludes that petitioner has not met his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. The mere fact that the requisite six months have now elapsed is not sufficient to meet that burden. Moreover, petitioner does not contend that officials have made no efforts to remove him to a third country; to the contrary, petitioner concedes in the petition that officials have made attempts to remove him to three alternative countries. In light of those efforts and the fact that petitioner's detention has lasted only slightly longer than six months since the beginning of the removal period, the Court cannot find that petitioner's detention has become unreasonably indefinite. The Court therefore denies the petition.

Reyna-Salgado, 2025 WL 3209007, at *2 (citation modified); *see also Rustami v. Noem*, No. 25-3160-JWL, 2025 WL 3760744, at *2 (D. Kan. Dec. 30, 2025) (finding the petitioner had not "met his burden to show that there is no significant likelihood of his removal in the reasonably foreseeable future," as he had been in detention only slightly longer than six months and the respondents had "attempted to obtain a travel document" from a third country); *Gonzalez Olmedo v. U.S. Immigration & Customs Enf't*, No. 25-3159-JWL, 2025 WL 2821860, at *2 (D. Kan. Oct. 3, 2025) (similar).

CONCLUSION

For the foregoing reasons, the Court should dismiss or deny the second Habeas Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I electronically filed the foregoing with the Clerk of the Court by uploading it to the CM/ECF system which will send a notice of electronic filing to all parties and counsel of record receiving CM/ECF notifications in this case, including:

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