IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT KANSAS CITY

KAVEH ABEDI, *Petitioner*, v. CRYSTAL CARTER, as Warden U.S Penitentiary in Leavenworth; KRISTI NOEM, Secretary, U.S. Department of Homeland Security CHRISTOPHER CHAMBERLIN Acting Assistant Field Office Director for the Kansas City Field Office and US DEPARTMENT OF HOMELAND SECURITY *Respondents.*	)	Case No. 26-cv-03012

PETITIONER'S TRAVERSE TO RESPONDENTS' RESPONSE TO §2241 PETITION AND ORDER TO SHOW CAUSE

Comes Now, Petitioner, Kaveh Abedi, and respectfully submits his Traverse to the Federal Government Respondents' Response to §2241 Petition and Order to Show Cause.

INTRODUCTION

This case presents a straightforward constitutional question: may the government detain a noncitizen—who poses no danger to the community, presents no flight risk, and whose own deportation officers have formally recommended release—indefinitely, without any concrete plan or timetable for removal? The answer under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Fifth Amendment's Due Process Clause, and 8 U.S.C. § 1231(a)(6) is plainly no.

Respondents' opposition raises two arguments. First, they claim this Court lacks jurisdiction because Petitioner's appeal of his first habeas petition remains pending before the Tenth Circuit. Second, they argue that Petitioner has not met his burden under *Zadvydas* to show no significant likelihood of removal in the reasonably foreseeable future.

Both arguments fail. The second petition rests on materially changed facts that did not exist during the first petition—facts that include ICE's own formal recommendation for release—rendering the jurisdictional argument inapplicable. And on the merits, the uncontroverted record *now* establishes that ICE's own officers, after conducting the required post-order custody review ("POCR"), found that Petitioner is neither a flight risk nor a danger and that removal is not reasonably foreseeable. The officers who are actually responsible to work the case and complete the formalities to effectuate removal, themselves indicate that despite their efforts, those efforts have failed. A result that is unlikely to change in the future[1]. This is persuasive and conclusive evidence. Taken under any legal standard-the civil "by a preponderance of the evidence", the criminal, "beyond reasonable doubt" or importantly, the *Zadvydas* "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future", Petitioner has met his burden of proof. The burden firmly shifts to the government to furnish tangible, credible evidence sufficient to rebut that showing. *Zadvydas* at pp 699-701.

No amount of bureaucratic hedging about the "tentative" nature of that recommendation can obscure what the record shows, namely that under the facts as they *now* exist, Mr. Abedi's continued detention can no longer survive *Zadvydas* scrutiny-even if the appeals Court determines that this court properly denied the first habeas petition.

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[1] While Respondents offer an affidavit from Officer Swanson about ongoing efforts by the Agency, to try and counter Officers Mann and Suarez's controlling and clear statement that removal is not imminent or possible. ECF Doc. 4-1. According to Officer Swanson, however, he could answer no more questions about the case as the case had been reassigned and he was not the officer in charge of the matter. **(See attached Traverse Exhibit A)**. This aligns with Officer Mann and Officer Saenz's actions. They were the ones who conducted the interview, conducted the panel review, made the findings that removal was no longer foreseeable and completed the procedural and agency protocols for POCR cases. **(See ECF Doc 1, Ex. A).**

UNCONTROVERTED FACTS

The following material facts are established by the record and are not disputed by Respondents:

1. Kaveh Abedi has lived in the United States for over three decades. ECF Doc 4 at page 3

2. In November 2001, Mr. Abedi was convicted of possession for sale of a controlled substance (cocaine) in a California state court. The court suspended the 180-day sentence and placed him on probation. The conviction has been recommended for a gubernatorial pardon. This is his sole criminal conviction. ECF Doc. 1 ¶ 40, ECF Doc. 4 at page 3.

3. Following removal proceedings, an Immigration Judge granted Mr. Abedi's application for deferral of removal under the Convention Against Torture in September 2002. That relief was granted because Mr. Abedi—as a native and citizen of Iran—faces a risk of torture if returned. ECF Doc 4 at page 4.

4. ICE released Mr. Abedi on an Order of Supervision ("OSUP") in December 2002. He remained fully compliant with all OSUP conditions for more than 24 years. ECF Doc 4 at page 4, ECF Doc 1 ¶¶ 23-24.

5. On June 23, 2025, ICE revoked Mr. Abedi's OSUP and took him into custody. Respondents have not disputed that Mr. Abedi had never violated a single condition of his supervision in the preceding two decades. *Id.*

6. ICE obtained a travel document from the Iranian Interests Section in July 2025, but removal to Iran is impossible given the Immigration Judge's deferral of removal under the Convention Against Torture. ECF Doc 4 at pages 4-5.

7. ICE attempted removal to Turkey and the United Arab Emirates at the suggestion of Mr. Abedi's spouse. Both efforts failed. As of the filing of this Reply, no viable third-country destination has been identified. ECF Doc 4 at page 6.

8. On January 7, 2026, ICE conducted the required POCR. ERO officers Richard Mann and Marissa Saenz, who conducted the interview, formally recommended Mr. Abedi's release. Their recommendation was based on a review of the regulatory factors set forth in 8 C.F.R. § 241.4(f), including criminal history, disciplinary record, mental health, rehabilitation, flight risk, and family ties. ECF Doc 1 at ¶ 36, ECF Doc 4 at page 6

9. The formal POCR recommendation, which came after the denial of his first habeas petition, states that Mr. Abedi is not a danger to the community, is not a flight risk, and that removal is not reasonably foreseeable. These findings are the regulatory prerequisites for release under DHS's own regulations. Respondents have not introduced any evidence contradicting these factual findings. ECF Doc 1, Ex A.

10. As of the filing of this Reply, ERO Headquarters has not responded to repeated inquiries (February 4 and February 11, 2026) regarding the status of removal efforts. No travel documents for a third country have been obtained. There is no identified country to which Mr. Abedi can lawfully be removed, and no timetable for removal exists. ECF Doc. 4-1 ¶¶30-32.

11. Mr. Abedi has been in continuous detention since June 23, 2025—nearly eight months as of this filing. He has a U.S. citizen wife, extended family, employment to which he can return, and community ties spanning more than thirty years in the United States. ECF Doc. 1 ¶36, Ex. A. Ex. B.

12. The determination and recommendation of release from custody occurred on January 7, 2026, months after the denial of his first habeas petition by this court on October 6, 2025. ECF Doc. 4 at page 6, ECF Doc. 4-1 ¶29.

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER THE SECOND HABEAS PETITION

A. The Second Petition Is Not Barred by the Pending Tenth Circuit Appeal Because It Rests on Materially Changed Circumstances That Did Not Exist at the Time of the First Petition

Respondents argue that the filing of Mr. Abedi's notice of appeal in *Abedi I* divested this Court of jurisdiction. This argument misunderstands the divesting-jurisdiction rule and ignores controlling principles regarding successive habeas petitions.

The divestiture rule applies to the "same case"—meaning it prevents a district court from taking action that would affect the very *issues* under consideration by the appellate court. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)("a district court lacked jurisdiction to entertain a motion to vacate, alter, or amend a judgment after a notice of appeal was filed.") It does not operate as a permanent bar on all litigation involving the same parties. The critical distinction is whether the second petition raises *new claims* arising from changed circumstances, or merely relitigates the claims already before the appellate court. *Stewart v. Donges*, 915 F.2d 572, 573 (10th Cir. 1990)("[The notice of appeal] 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.")

The cases Respondents cite are inapposite. Those cases involve direct issues commingled intrinsically intertwined with the pending appeal. For example, *Burke v. Utah Transit Auth.*, 462 F.3d 1253, 1264 (10th Cir. 2006) involved a "motion to amend" after a

notice of appeal had been filed that divested the trial court of jurisdiction to entertain the motion. Similarly, in *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), the court examined successive motions that raised substantially similar issues with no change in facts or circumstances. Likewise, in *Bradin v. Thomas*, No. 19-3041-JWL, 2020 U.S. Dist. LEXIS 253302, at *1 (D. Kan. Jan. 9, 2020), the court was faced with a Motion for Recusal and a Motion for Appointment of Pro Bono Counsel on Appeal. Since those matters were intrinsically tied to the pending appeal, the court found it lacked jurisdiction.

Here, the second petition is premised on facts that came into existence *after* the first petition was denied on October 6, 2025. Most critically, ICE's own formal POCR recommendation for release was issued on January 7, 2026, and postdated even Petitioner's opening brief, which was filed on November 19, 2025. Of note is the fact that even the Respondents did not find the January 7, 2026, POCR release determination to have any impact on the matters pending before the Court of Appeals, as they make no mention of it in their briefing filed on January 15, 2026, after the Respondents themselves made the determination to recommend release. ECF Doc. 4-3, pages 2-6. Put another way, even the Respondents recognized that the matters before the Court of Appeals are independent of any subsequent matters like the favorable release determination, which did not exist at the time of the first habeas petition or a decision denying it. This position is of course, logical in that courts have long recognized that "the district court is better suited to make factual findings and provide narrowly tailored relief than an appellate court." *New York v. United States Dept of Homeland Sec.*, 974 F.3d 210, 213 (2d Cir. 2020). ICE's January 7, 2026, recommendation for release is a new factual factor that is best reviewed by a trial court. It has long been

recognized that a court may not consider new facts or new legal arguments for the first time on appeal. *Monroe v. Owens*, 38 F. Appx 510, 517 (10th Cir. 2002). The Tenth Circuit, therefore, is not—and could not consider the significance of ICE's own superseding recommendation for release. That issue is not involved in the appeal and can only be properly raised before the trial court in the first instance.

In addition, this Court expressly contemplated a scenario where facts could change, and a subsequent habeas petition would be merited. In *Abedi I*, the Court stated: "[I]f petitioner's continued detention without removal continues beyond the six-month period and becomes unreasonably indefinite, and he can satisfy the applicable standard under *Zadvydas*, petitioner is free to file a new habeas petition seeking his release." *Abedi v. Carter*, No. 25-3141-JWL, 2025 WL 3209009, at *1 n.2 (D. Kan. Oct. 6, 2025). In its current posture, both factual changes have come to pass: Mr. Abedi has passed the presumptive reasonable time contemplated in *Zadvydas*, and by the Respondent's own conclusions, the record establishes that removal is no longer reasonably foreseeable. These changed circumstances—the passage of the six-month period, failed third-country removal attempts, and above all ICE's own formal release recommendation—represent a fundamentally different legal and factual posture.

Moreover, this Court has jurisdiction because the second petition raises a claim that "could not have been presented" in the first petition. The abuse-of-the-writ doctrine, which governs successive § 2241 petitions under *Stanko v. Davis*, 617 F.3d 1262, 1269-72 (10th Cir. 2010), bars only claims that could have been raised earlier. At the time of the first petition, (1) the six-month presumptively reasonable period under *Zadvydas* had not elapsed, (2) no POCR had been conducted, and (3) ICE's own officers had not recommended release. These

events were not discoverable at the time of the first petition because they had not yet occurred. Such developments are not mere "updates" to old claims; they are the factual predicate for an entirely new constitutional claim. In essence, the Tenth Circuit's ruling in *Abedi I*, whatever it may be, will address whether detention was unlawful as of October 2025. This Court's ruling on the second petition will address whether continued detention is unlawful as of January 7, 2026 —a legally and factually distinct question.

B. Dismissing the Second Petition Without Addressing Its Merits Would Result in Unconstitutional Delay

Even accepting, arguendo, that some jurisdictional tension exists, the appropriate remedy is not dismissal. *Zadvydas* itself recognized that the liberty interest at stake—freedom from physical detention—is among the most fundamental protected by the Due Process Clause. 533 U.S. at 690. The Tenth Circuit's timeline to rule on *Abedi I* is unclear. In all likelihood, by the time of that decision, Mr. Abedi will have been detained for nearly a year with no prospect of removal. Requiring him to await an appellate ruling on a record that is eight months stale before seeking relief based on current facts would impose an irreparable, unconstitutional injury on a person whom ICE itself has determined should be free. This is fundamentally a different narration than the facts of *Puchner v. Severson*, No. 23-C-1523, 2024 U.S. Dist. LEXIS 3416, at *5 (E.D. Wis. Jan. 8, 2024), a case relied upon by Respondents. Because there, the Court specifically determined that "the case remains largely unchanged".

Respondents indicate concern that any ruling by this court "risks contradicting the Tenth Circuit's mandate and reasoning with respect to the first Habeas Petition." The uncontroverted record shows that the facts and circumstances have changed since the first

petition, which have created an independent ground for challenging detention as of January 7, 2026. If the Court has concerns about interfering with the pending appeal, the appropriate remedy is to consider this petition on the merits and, if relief is granted, to note that relief is independently warranted on new and changed grounds not at issue in the appellate proceedings. This preserves the Tenth Circuit's jurisdiction over the first petition while vindicating Mr. Abedi's constitutional rights based on the current record.

Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas,* 533 U.S. at 690. And the Supreme Court has repeatedly recognized "that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). As time passes, the burden on the government increases accordingly. *See Sweid v. Cantu*, 2025 U.S. Dist. LEXIS 213969, at *10 (D. Ariz. Oct. 30, 2025). With no realistic prospect of removal, Constitutional protections now dictate that, at a minimum, Mr. Abedi's detention, as of January 7, 2026, is no longer constitutionally sound.

II. PETITIONER HAS MET HIS BURDEN UNDER *ZADVYDAS*, AND THE RESPONDENTS HAVE FAILED TO REBUT IT

A. ICE's Own POCR Recommendation Establishes That As of January 7, 2026, Removal Is Not Reasonably Foreseeable

Under *Zadvydas*, once an individual provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to "respond with evidence sufficient to rebut that showing." 533 U.S. at 701. The government's rebuttal evidence must be more than bureaucratic process or speculative possibility—it must demonstrate a *genuine* prospect of removal. *Id.* at 702 ("[G]ood faith

efforts to effectuate . . . deportation" without a significant likelihood of reasonably foreseeable removal are similarly insufficient). *Id.* "The [government] must provide 'evidence' in rebuttal...Unsubstantiated assertions do not meet this burden.") *Phong Le Nguyen v. Noem*, No. 2:25-cv-01198-KWR-JMR, 2026 LX 40575, at *8 (D.N.M. Feb. 13, 2026). Similarly, "unilateral effort without establishing actual progress toward removal" is also insufficient." *Id.* citing *Lorenzo v. Bondi*, No. 2:25-CV-00923 KWR-GJF, 2026 U.S. Dist. LEXIS 5231, 2026 WL 84521, at *5 (D.N.M. Jan. 12, 2026).

Mr. Abedi has more than met his initial burden. The formal POCR recommendation, issued by the ERO officers who conducted the custody review after evaluating the regulatory factors under 8 C.F.R. § 241.4(f), constitutes a formal agency finding that: (1) Mr. Abedi is not a danger to the community; (2) he is not a flight risk; and (3) removal is not reasonably foreseeable. When ICE's own officers—armed with the full administrative record—conclude that removal is not reasonably foreseeable, that determination provides far more than "good reason to believe" that *Zadvydas*'s threshold has been crossed.

Respondents attempt to neutralize this evidence by characterizing the POCR recommendation as merely "tentative" and not "final." But this argument proves too much. ICE's own regulatory framework requires ERO officers to conduct a POCR, to evaluate specified factors, and to make a recommendation regarding custody. 8 C.F.R. § 241.4(k). That process was followed here. The resulting recommendation is not an off-the-cuff observation; it is the product of the very administrative process Congress and DHS designed to evaluate whether continued detention is warranted. To say that this formal recommendation is "tentative" and therefore legally inconsequential would render the POCR process a nullity as a check on detention. *Zadvydas* does not require a petitioner to wait for bureaucratic

processes to run their full course before he may seek judicial relief—particularly where those processes have no defined timeline.

The government cites *Soudom v. Warden*, No. 25-3063-JWL, 2025 WL 1594822, at *2 (D. Kan. May 23, 2025), for the proposition that a letter that "does not foreclose the possibility of removal" is sufficient to carry their heavy burden to show removal is now reasonably foreseeable. But that case is distinguishable. There, the petitioner relied on a general communication; here, Mr. Abedi relies on a formal custody review recommendation issued under 8 C.F.R. § 241.4—the precise administrative mechanism DHS created to assess removability. The POCR recommendation is categorically different from the type of informal statement at issue in *Soudom*.

It is uncontroverted that there is no timeline at all known to Respondents as it relates to any action of a favorable recommendation by a "panel" of ICE officers to release Mr. Abedi. It is also uncontroverted that, according to Officer Mann, it was confirmed that there were no travel documents and that removal was not imminent or in the foreseeable future, since no third country has been identified. ECF Doc. 1 Ex, 1. This alone establishes Petitioner's burden under *Zadvydas.*

Nonetheless, Respondents argue that "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." ECF Doc 4 at page 15. Such a claim is wholly contrary to the Supreme Court's clear guidance in *Zadvydas.* There, the Supreme Court found,

> "The Fifth Circuit held Zadvydas' continued detention lawful as long as 'good faith efforts to effectuate . . . deportation continue' and Zadvydas failed to show that

> deportation will prove 'impossible.' But this standard would seem to require an alien seeking release to show the absence of *any* prospect of removal -- no matter how unlikely or unforeseeable -- which demands more than our reading of the statute can bear.

Zadvydas v. Davis, 533 U.S. 678, 702, 121 S. Ct. 2491, 2505 (2001)(internal cites omitted).

Officer Mann and Officer Saenz confirmed that there was no evidence that removal was possible, let alone likely. Perhaps it is for that reason that the Agency itself, in conformity with regulatory authority, recommended release. Still, once this threshold is shown of "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifted to the government. *Ahrach v. Baltazar*, Civil Action No. 25-cv-03195-PAB, 2025 LX 568175, at *8 (D. Colo. Nov. 19, 2025). A burden they can not meet.

B. No Evidence of Any Viable Removal Country Exists, and the Government Cannot Prevail on Speculation Alone

Respondents assert that ICE "is still actively pursuing" removal and that there is a "mere delay" in obtaining travel documents. But the record tells a different story. ICE failed to remove Mr. Abedi to Iran (because of his CAT deferral). ICE then attempted Turkey and the UAE, at the suggestion of Mr. Abedi's own family—and both failed. By the Agency's own Officer's, ICE has identified no third country, obtained no travel documents, and has not even received a response to its own February 4 and February 11, 2026 internal inquiries. Respondents have produced no evidence of any country that has agreed, or is likely to agree, to receive Mr. Abedi.

This case is unlike those where courts have found detention reasonable despite a short period beyond six months. In *Reyna-Salgado v. Noem*, No. 25-3172-JWL, 2025 WL 3209007, at *2 (D. Kan. Oct. 3, 2025), cited by Respondents, the government was *actively*

pursuing removal to specific third countries. Here, the government has exhausted the only third-country options it explored (Turkey and UAE), received no response to its latest internal inquiries, and cannot point to a single country willing to accept Mr. Abedi. That is not "bureaucratic delay"—it is the functional equivalent of no viable removal option, which is precisely what *Zadvydas* addresses.

The government's reliance on *Rustami v. Noem*, No. 25-3160-JWL (D. Kan. Dec. 30, 2025), and *Gonzalez Olmedo v. ICE*, No. 25-3159-JWL (D. Kan. Oct. 3, 2025), is similarly unavailing. In those cases, active removal efforts were ongoing, and there was a concrete basis to believe removal remained achievable. By contrast, the record here reflects that ERO Headquarters has failed to respond to the field office's own inquiries, has no travel documents, and has no timeline. Speculation about what might happen in future months is not "evidence sufficient to rebut" Mr. Abedi's showing under *Zadvydas*. 533 U.S. at 701.

C. The Decision to Continue Detention Does Not Constitute Evidence of Likely Removal

Respondents point to the Decision to Continue Detention signed by an ICE Deputy Field Office Director on December 24, 2025, which states that "removal is practicable, likely to occur in the reasonably foreseeable future." But this boilerplate conclusion—made *before* the January 7, 2026, POCR and before the ERO officers' formal recommendation—is contradicted by subsequent events and by the agency's own post-review findings. Perhaps the bigger telltale admission is that of Officer Mann when he indicated that "These forms are formalities"-suggesting that these boilerplate documents lack any real evidentiary value at all. ECF Doc. 1, Ex. A.

More fundamentally, a formulaic agency statement that removal is "likely" is not, standing alone, sufficient to rebut a *Zadvydas* showing. The Supreme Court in *Zadvydas* specifically rejected the idea that the government can sustain detention merely by asserting good faith efforts continue or that deportation remains theoretically possible. 533 U.S. at 702. The government must provide evidence of *actual* progress toward removal. Here, there is none.

III. MR. ABEDI'S INDIVIDUAL CIRCUMSTANCES COMPEL RELIEF

Beyond the legal framework, the equities here are overwhelming. Mr. Abedi has spent more than thirty years in the United States. He was released on supervision for over two decades—a period longer than most people serve on criminal probation—without a single violation. ICE's own officers, after a formal review, found no evidence that he poses any risk to the community or any flight risk. He has a U.S. citizen wife. He has employment. He has community ties. He has *nothing* in his record, over three decades, that suggests he would violate the conditions of supervision if released today. Even the crime for which he was convicted decades ago has been recommended for a Gubernatorial pardon, something that requires a showing of rehabilitation and good moral character.

The only basis for Mr. Abedi's continued detention is the government's hope that some country—not yet identified, not yet contacted successfully—might someday accept him. *Zadvydas* was written precisely to prevent this kind of detention from continuing indefinitely. The Supreme Court held that "the Constitution's demands . . . limit[] an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal." 533 U.S. at 689. Where, as here, removal has no reasonably foreseeable endpoint, "continued detention is no longer authorized by statute." *Id.* at 699.

This Court granted relief in the third successive petition in *Reyna-Salgado* after multiple failed removal attempts and a detention period that had become "unreasonably indefinite." The record here is at least as compelling: two failed third-country attempts, a formal ICE recommendation for release, no identified viable destination country, and a petitioner who—by any objective measure—presents no risk. The time for release has come.

CONCLUSION

For the foregoing reasons, Petitioner Kaveh Abedi respectfully requests that this Court: (1) exercise jurisdiction over this Petition; (2) declare that his continued detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a)(6); and (3) issue a Writ of Habeas Corpus ordering his immediate release on appropriate conditions of supervision.

Respectfully submitted this 19th day of February,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 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 counsel of record, including:

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