**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA**

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| MOHAMED NADER ALSHEREF, | ) | |
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| Petitioner, | ) | |
| | ) | |
| v. | ) | CIV-26-089-G |
| | ) | |
| KRISTI NOEM, et al., | ) | |
| | ) | |
| Respondents. | ) | |

**RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Respondents United States Department of Homeland Security ("DHS") Secretary Kristi Noem; Acting Director of the United States Immigration and Customs Enforcement ("ICE") Todd Lyons; Acting Executive Associate Director of ICE's Enforcement Removal Operations ("ERO") Marcos Charles; and Attorney General Pamela Bondi, in their official capacities (collectively, "Respondents" [1]), pursuant to the Court's Order (Doc. 6), respond to the Petition for Writ of Habeas Corpus (Doc. 1), and respectfully submit that the Court should deny the Petition and enter an order of dismissal.

**Introduction**

In this immigration detention habeas proceeding, Petitioner seeks immediate release from custody claiming his removal from the United States is not reasonably foreseeable, and thus (according to the Supreme Court's *Zadvydas v. Davis,* 533 U.S. 678 (2001),

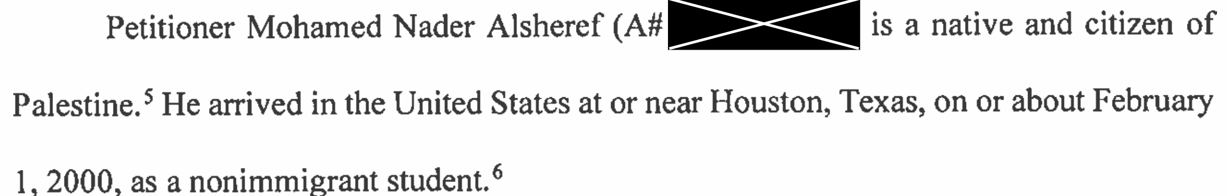
[1] Respondent Fred Figuera, Warden of the Diamondback Correctional Facility, is not a federal official and this response is therefore not filed on his behalf.

framework) release is appropriate. Because Petitioner fails to meet his initial burden in this regard, his Petition should be denied.

**Petitioner's Claims**

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 directing his release from Diamondback Correctional Facility in Watonga, Oklahoma, immediate release, and an injunction against his movement or removal without evidence that such is imminent.[2] Petitioner contends that his continued detention is unlawful under the Fifth Amendment due process clause and *Zadvydas.*[3] He further asserts a that ICE has violated substantive due process and its own regulations.[4]

**Factual Background**



Petitioner Mohamed Nader Alsheref (A# is a native and citizen of Palestine.[5] He arrived in the United States at or near Houston, Texas, on or about February 1, 2000, as a nonimmigrant student.[6]

On April 13, 2006, Petitioner was convicted in the United States District Court for the Southern District of Texas, Corpus Christi Division, of Possession of a Controlled Substance with Intent to Deliver 449 pounds of marijuana in violation of 21 U.S.C. § 841.[7] That same day, DHS placed Petitioner in removal proceedings by personally serving him

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[2] Pet. at 11, Request for Relief.
[3] *Id.* at 8-10, ¶¶ 24-31.
[4] *Id.* at 10, ¶¶ 28-31. Respondents note that Petitioner's paragraphs are not in chronological order and have done their best to correctly identify the referenced paragraphs.
[5] Decl. of Aaron Nation ("Nation Decl."), Ex. 1, at ¶ 3.
[6] *Id.* ¶ 4.
[7] *Id.* ¶ 5; *see* also Judgment in a Criminal Case, Ex. 2, *Alsheref v. United States*, No. 2:05CR00765-001, Doc. 44 (S. D. Tex. Apr. 13, 2006).

a Notice to Appear.[8] DHS charged Petitioner as removable under 8 U.S.C. § 1227(a)(2)(A)(iii) for having been convicted of an aggravated felony, as defined in 8 U.S.C. § 1101(a)(43)(B), relating to illicit trafficking in a controlled substance.[9] DHS also charged Petitioner as removable under 8 U.S.C. § 1227(a)(2)(B)(i) for having been convicted of violating a law relating to a controlled substance, other than a single offense involving possession for personal use of 30 grams or less of marijuana.[10]

On or about April 11, 2008, Petitioner was served with Form I-851, Notice of Intent to Issue a Final Administrative Removal Order pursuant to 8 U.S.C. § 1228.[11] He was subsequently served with Form I-851A, Final Administrative Removal Order.[12] On August 6, 2008, Petitioner was released from DHS custody under a conditional Order of Supervision ("OOS").[13]

On May 29, 2017, Petitioner was arrested by the Richardson, Texas, Police Department and charged with assault causing bodily injury to a family member (TPC § 22.01(a)(1)) and interfering with an emergency request for assistance (TPC § 42.062).[14] Both charges were dismissed on November 20, 2017.[15] On March 12, 2019, Petitioner was again arrested by the Richardson Police Department and charged with assault causing

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[8] Nation Decl., at ¶ 6; *see* also Notice to Appear, Ex. 3.
[9] *Id.*
[10] *Id.*
[11] *Id.* ¶ 7.
[12] *Id.*
[13] *Id.* ¶ 8.
[14] *Id.* ¶9.
[15] *Id.*

bodily injury to a family member (TPC § 22.01(a)(1)).[16] This charge was dismissed on May 15, 2020.[17] On April 4, 2019, Petitioner was arrested by the Richardson Police Department and charged with violating a bond/protective order (TPC § 25.07(g)).[18] This charge was also dismissed on May 15, 2020.[19]

On July 26, 2025, Petitioner was apprehended by Laredo Sector Border Patrol in Dallas, Texas, and transported to the Dallas ICE ERO Field Office for further processing.[20] At the time of his arrest, Petitioner was informed of the reason for his apprehension.[21] He was advised that he had a final order of removal, and that he would be held in ICE custody pending his removal from the United States.[22] Petitioner was advised of his right to speak with a consular official from his country and afforded the opportunity.[23] He was also provided with a list of free legal services.[24]

On July 30, 2025, ICE ERO Officer Aaron Nation ("Officer Nation") prepared a request for a Palestinian travel document and forwarded it to the Embassy of Israel in Washington, D.C. on August 25, 2025.[25] Based on the Government of Israel's willing to accept Palestinians and allow them to travel through Israel for purposes of repatriation, Officer Nation believes Petitioner's removal is significantly likely in the reasonably

[16] *Id.* ¶10.
[17] *Id.*
[18] *Id.* ¶ 11.
[19] *Id.*
[20] *Id.* ¶ 12.
[21] Decl. of Hassan Safy ("Safy Decl."), Ex. 4, at ¶ 4.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] Nation Decl., at ¶ 13.

foreseeable future.[26]

Finally, On September 22, 2025, Petitioner filed a writ of habeas corpus in the Northern District of Texas,[27] and on December 3, 2025, the district court denied his petition, finding in a substantial opinion that Respondents did not violate its regulations and that a change in circumstances regarding Israel's willingness to accept Palestinians for repatriation indicated that Petitioner's removal was substantially likely in the reasonably foreseeable future.[28] Petitioner was removed to Diamondback,[29] and then apparently refiled his Petition here. On February 6, 2026, Petitioner was served with his 180-day Decision to Continue Detention and was given an opportunity to request a personal interview.[30]

## Legal Standards

### I. Statutory framework for the detention of noncitizens.

The authority to detain noncitizens after the entry of a final order of removal is set forth in Section 241(a) of the Immigration and Nationality Act ("Act"), codified at 8 U.S.C. § 1231(a).[31] Pursuant to that provision, ICE is afforded a ninety-day period within which to remove the noncitizen from the United States following the entry of a final order of

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[26] *Id.* at ¶ 15.
[27] Pet. at 7 n.4.
[28] Order, Ex. 5, *Alsheref v. Noem*, Case 25-cv-190-H, Doc. 21, at 8-11 (N.D. Tex. Dec. 3, 2025).
[29] Pet. at 7 n.4.
[30] Nation Decl., at ¶ 14; *see also* Decision to Continue Detention, Ex. 6.
[31] Unless directly quoted, this Response uses the term "noncitizen" as equivalent to the statutory term "alien." *Nasrallah v. Barr*, 590 U.S. 573, 578 n. 2 (2020) (citing 8 U.S.C. § 1101(a)(3)).

removal.[32] During the removal period, ICE must detain the noncitizen.[33] If the removal period expires, ICE can either release an individual pursuant to an order of supervision as directed by Section 1231(a)(3), or continue detention under Section 1231(a)(6). Section 1231(a)(6) allows continued detention for those noncitizens who are inadmissible to the United States, removable under various INA provisions, or who are determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal.[34]

This detention prior to removal, however, is not indefinite. In *Zadvydas*, the United States Supreme Court held that Section 1231(a)(6) "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." "It does not," the Court held, "permit indefinite detention."[35] The Court explained: "[I]nterpreting the statute [section 1231(a)(6)] to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute."[36] The *Zadvydas* Court found that six months was a presumptively reasonable period of post-order detention.[37] As such, in order to establish a claim for habeas relief under the *Zadvydas* rationale, a noncitizen must first prove that he has been in post-order custody for more than

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[32] 8 U.S.C. § 1231(a)(1).
[33] *Id.* § 1231(a)(2) ("shall detain").
[34] *Id.* § 1231(a)(6).
[35] *Zadvydas,* 533 U.S. at 689.
[36] *Id.* at 699.
[37] *Id.* at 701; *see also Morales-Fernandez v. INS*, 418 F.3d 1116, 1123 (10th Cir. 2005) ("the reasonable period of post-removal detention is presumptively six months . . .").

six months at the time the habeas petition is filed.[38]

If a noncitizen can demonstrate he has been held longer than the presumptively reasonable six months, they must then provide a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. As explained by the United States Court of Appeals for the Tenth Circuit, "the onus is on the alien to 'provide[] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'"[39] And critically, someone detained cannot establish a claim for relief simply because he is more than six months into his post-order confinement.[40] "To the contrary," the Supreme Court stated in *Zadvydas*, noncitizens "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future."[41]

In other words, while six months of detention is presumptively reasonable, time in detention after that may also be reasonable so long as removal of the noncitizen is in the reasonably foreseeable future. And the noncitizen "bears the initial burden of proof in showing that no such likelihood of removal exists."[42] Where the noncitizen fails to come

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[38] *Apau v. Ashcroft*, 2003 WL 21801154, at *2 (N.D. Tex. Jun. 17, 2003) (citing *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 and n.3 (11th Cir. 2002)); *see also Abiodun v. Mukasey*, 264 F. App'x 726, 729 (10th Cir. 2008).
[39] *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (citing *Zadvydas*, 533 U.S. at 701); *Diop v. Gonzales*, No. 07-245-T, 2007 WL 2080173, at *1 (W.D. Okla. July 18, 2007); *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) ("*The burden is upon the alien to show that there is no reasonable likelihood of repatriation.*") (emphasis in original).
[40] *Zadvydas,* 533 U.S. at 701.
[41] *Id.*
[42] *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).

forward with this initial offer of proof, the petition is ripe for dismissal.[43]

**II. Standards for habeas corpus relief.**

Habeas corpus review may be sought by an immigration detainee who claims that he "is in custody in violation of the Constitution or laws or treaties of the United States."[44] The writ of habeas corpus, "while essential to our political system, is a drastic remedy."[45] To obtain relief, a § 2241 petitioner must allege and establish that his custody violates the Constitution or laws or treaties of the United States.[46] "Habeas is an exceptional writ reserved for errors which result from fundamental defects that result in a complete miscarriage of justice or an omission inconsistent with the rudimentary demands for fair procedure."[47]

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[43] *Knwanga v. Maurer*, No. 06-0262-MSK/MEH, 2006 WL 2475261, at *1 (D. Colo. Aug. 24, 2006).

[44] 28 U.S.C. § 2241(c)(3); *see also Zadvydas*, 533 U.S. at 687 (immigration detainees may bring § 2241(c)(3) petitions).

[45] *Basri v. Barr*, 469 F. Supp. 3d 1063, 1066 (D. Colo. 2020). *See also Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) ("The writ of habeas corpus is an extraordinary remedy that guards only against extreme malfunctions in the state criminal justice systems.") (internal quotation marks and citation omitted); *Gomez-Arias v. U.S. Immigr. & Customs Enf't*, No. 20-CV-00857-MV-KK, 2020 WL 6384209, at *2 (D.N.M. Oct. 30, 2020) ("As release from custody is an extreme remedy, Congress has circumscribed its use by the courts.").

[46] *Bradin v. United States Prob. & Pretrial Servs.*, No. 22-3032-JWL, 2022 WL 1154622, at *3 (D. Kan. Apr. 19, 2022).

[47] *Nguyen v. Noem*, No. 6:25-CV-057-H, 2025 WL 2737803, at *6 (N.D. Tex. Aug. 10, 2025) (citing *Hill v. United States*, 368 U.S. 424, 428 (1962), and *United States v. Reyna*, 358 F.3d 344, 349 (5th Cir. 2004)).

## Argument

### I. The Petition should be denied because it fails to establish a *prima facie* claim for relief under *Zadvydas.*

#### A. Petitioner has not met his initial burden under *Zadvydas.*

Petitioner was detained on July 26, 2025. At the time of filing his Petition, Petitioner had been detained just shy of six months. Even if his detention had been beyond the presumptively reasonable six month period articulated in *Zadvydas,* Petitioner has not "provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."[48]

As his second cause of action, Petitioner contends that Respondents have demonstrated no change in circumstances and that his continued detention violates *Zadvydas.*[49] He contends that his post-removal-order detention is "only lawful if removal is reasonably foreseeable."[50] claims, "I have been and remain[] in detention in excess of six month (sic). . . . ICE has not been able to remove me to a third country."[51]

But mere months ago, Petitioner "concede[d] that the United States 'has initiated a policy of deporting individuals of Palestinian descent to Israel."[52] And Officer Nation has already requested Petitioner's Palestinian travel document.[53]

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[48] *Zadvydas*, 533 U.S at 701.
[49] Pet. at ¶¶ 29, 31.
[50] Id. at ¶ 28.
[51] *Id.*
[52] Order, at 11.
[53] Nation Decl., at ¶ 13.

Petitioner has put forth no additional evidence, especially as between December and now, to undermine Respondents' belief that his removal is substantially likely in the reasonably foreseeable future.

Accordingly, the Petition should be denied because Petitioner has failed to meet his burden to prove that his removal is not significantly likely in the near future.

**B. Even if Petitioner had met his burden, Respondent has sufficiently rebutted the presumption that removal is not likely.**

For there to be no significant likelihood of removal in the reasonably foreseeable future, there must be some indication that the United States is unwilling to remove the alien or that the United States is incapable of doing so due to seemingly insurmountable barriers, such as an alien's stateless status or the foreign country's outright refusal to issue travel documents.[54]

Here, Respondents have already requested his travel document from Palestine where he is a native and citizen. Thus, even if Petitioner had met his burden, Respondents have sufficiently rebutted it with evidence. Indeed, Officer Nation states the Government of Israel is willing to accept Palestinians and allow them to travel through Israel for purposes

[54] *See Al-Shewaily v. Mukasey*, No. 07-0946-HE, 2007 WL 4480773, at *5 (W.D. Okla. Dec. 18, 2007) (citing *Khan v. Fasano,* 194 F. Supp. 2d 1134, 1136-37 (S.D. Cal. 2001)). (noting that an alien can satisfy his initial burden by showing "the existence of either institutional barriers to repatriation to the country in question or barriers peculiar to the individual in question such that there is no significant likelihood of removal in the reasonably foreseeable future.")

of repatriation.[55] This effort supports a rebutting of any presumption should the Court find Petitioner met it.[56]

## II. Petitioner's continued detention does not violate his due process rights under the Fifth Amendment.

Petitioner alleges for his first cause of action that detention is not a requirement for deportation and that his "arbitrary" arrest instead of a "bag and baggage letter" was inhumane.[57] As discussed above, the Petitioner failed to establish a claim under *Zadvydas*. Therefore, he cannot now prevail on a substantive due process claim. "A petitioner's failure to establish that his detention violates Zadvydas negates a substantive due process claim."[58] Accordingly, the Court should deny the Petition.

## III. Respondent has complied with the Immigration and Nationality Act's regulations.

Petitioner alleges in a subpart to his second cause of action that "ICE's decision to re-detain him, absent new evidence or changed circumstances, is arbitrary and

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[55] Nation Decl. ¶ 15.

[56] *See Tawfik v. Garland,* No. CVH-24-2823, 2024 WL 4534747, at *4 (S.D. Tex. Oct. 21, 2024) (finding respondents sufficiently rebutted petitioner's showing because "ICE has been actively working on securing [petitioner's] removal since the removal order became final"); *McAulay v. Taylor,* No. CIV-17-3290, 2017 WL 4842375, at *3 (D.N.J. Oct. 25, 2017) (finding respondents rebutted petitioner's claim that his removal was not likely in the reasonably foreseeable future because during petitioner's year-long detention the government had been in direct contact with and provided requested documents to the United Kingdom Consulate and passport office, and his "removal awaits only the issuance of a travel document").

[57] Pet. at ¶¶ 27-29.

[58] *Dusabe,* 2024 WL 5465749, at *6 (citation modified); *see also Mafukidze v. Gonzales, No. CIV-07-871-W, 2008 WL 395411, at *4 (W.D. Okla. Feb. 11, 2008)* ("Without providing good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future, [p]etitioner cannot prevail on a substantive due process claim based upon his continued detention.").

capricious, violating substantive due process and a violation of 8 CFR § 241.13."[59] Of course, Petitioner raised this very same argument before the Northern District of Texas wherein the Court held that even if it were true that Respondents failed to follow their regulations, Petitioner had had the opportunity to obtain counsel, make a full argument to a federal court (now twice), submit evidence, respond, and more.[60] And Petitioner has since received a 180-day Decision to Continue Detention based on ERO's work toward effectuating his removal. In short, any argument based on a failure to follow regulations should fail.

But even if Petitioner had further fleshed out an argument that his detention did not meet with required regulation, release is not the appropriate remedy here. "Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release."[61] While habeas offers relief from unlawful imprisonment or custody, it is not a mechanism for courts to order the fulfillment of administrative requirements or to direct release on that basis.[62] It is unclear that, even should the Court determine Respondents failed to comply with applicable regulations, the Court could order the Respondents to fulfill these administrative requirements given the purposes of habeas petitions. Even so, release in such a circumstance is certainly not a corresponding remedy. The Petition should be denied.

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[59] Pet. at ¶ 32.
[60] Order, at 9-10.
[61] *Munaf v. Geren*, 553 U.S. 674, 693 (2008); *see also Cody v. Henderson*, 936 F.2d 715, 720 (2d Cir. 1991) ("The traditional function of the writ is to secure release from illegal custody.").
[62] *Nguyen v. Noem*, No. 25-057-H, 2025 WL 2737803, at *7 (N.D. Tex. Aug. 10, 2025).

**Conclusion**

Petitioner has failed to meet his burden under *Zadvydas* that there is no significant likelihood of his removal in the reasonably foreseeable future. His detention is therefore lawful, and his Petition for Wright of Habeas Corpus should be dismissed and/or denied.

Respectfully Submitted,

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