

1 **Katie Hurrelbrink**  
2 Federal Defenders of San Diego, Inc.  
3 225 Broadway, Suite 900  
4 San Diego, California 92101-5030  
5 Telephone: (619) 234-8467  
6 Facsimile: (619) 687-2666  
7 katie\_hurrelbrink@fd.org

8 Attorneys for Mr. Fana



9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 NISAR AHMAD FANA,  
12 Petitioner,

13 v.

14 KRISTI NOEM, Secretary of the  
15 Department of Homeland Security,  
16 PAMELA JO BONDI, Attorney General,  
17 TODD M. LYONS, Acting Director,  
18 Immigration and Customs Enforcement,  
19 JESUS ROCHA, Acting Field Office  
20 Director, San Diego Field Office,  
21 JEREMY CASEY, Warden at Imperial  
22 Regional Detention Center,

23 Respondents.

CIVIL CASE NO.: '26CV0504 DMS MMP

Petition for Writ  
of  
Habeas Corpus  
[28 U.S.C. § 2241]

1 INTRODUCTION

2 On July 14, 2025, Nisar Fana was ordered removed to France and, if France  
3 would not accept him, to Afghanistan. ICE has proved unable to remove him to  
4 either country for over six months, despite his strenuous efforts to further his  
5 removal. Because “there is no significant likelihood of removal in the reasonably  
6 foreseeable future,” Mr. Fana’s detention is no longer statutorily authorized, and  
7 this Court must order his immediate release. *Zadvydas v. Davis*, 533 U.S. 678  
8 (2001).

9 STATEMENT OF FACTS

10 Mr. Fana was born in Afghanistan in 1999. Exh. A at ¶ 1. He worked for  
11 the United States during the war, and when the U.S. withdrew from Afghanistan,  
12 he was persecuted. *Id.* He therefore fled to the U.S. to seek asylum, entering via  
13 CBP One on December 18, 2024. *Id.* He was immediately detained. *Id.*

14 He passed his credible fear interview, and he was placed in removal  
15 proceedings. *Id.* at ¶ 2. He lost his asylum claim on July 14, 2025. *Id.* The  
16 immigration judge ordered him removed to France or, if he could not be removed  
17 there, to Afghanistan. *Id.*

18 Since then, he has worked strenuously to help ICE remove him. A few days  
19 after he was ordered removed, he sent a picture of his passport and identification  
20 to ICE, asking them to request travel documents for him. *Id.* at ¶ 3. He then  
21 followed up with ICE in July, August, and September, telling ICE that he was  
22 available to help in any way. *Id.* ¶ 4. No one would meet with him. *Id.*

23 Eventually, he was transferred to an Arizona detention center. There, an  
24 ICE officer finally met with him and gave him a paper to sign. *Id.* at ¶ 5. He  
25 signed it, asking the officer to expedite his removal and offering to send him any  
26 documents he needed. *Id.* But to no avail. After a while, he was transferred back  
27 to Imperial, where ICE again refused to meet with him. *Id.* at ¶¶ 5–6.

1 Finally, Mr. Fana went on a hunger strike to try to force an ICE officer to  
2 meet with him. *Id.* at ¶ 6. One finally did. *Id.* The officer said that ICE had finally  
3 sent a travel document request on November 28, 2025. *Id.*

4 Since then, ICE has only met with Mr. Fana to give him standard detention-  
5 related paperwork. He still does not have a travel document, and he still has seen  
6 no sign of progress in obtaining one. *Id.* at ¶ 7.

7  
8 **CLAIMS FOR RELIEF**

9 This Court should grant this petition and order Mr. Fana’s immediate  
10 release, because there is “no significant likelihood of removal in the reasonably  
11 foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

12 **I. Count 1: Mr. Fana’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

13 **A. Legal background**

14 Mr. Fana’s indefinite detention violates the statute authorizing detention, 8  
15 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme  
16 Court considered a problem affecting people like Mr. Fana. Federal law requires  
17 ICE to detain an immigrant during the “removal period,” which typically spans  
18 the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-  
19 (2). After that 90-day removal period expires, detention becomes discretionary—  
20 ICE may detain the migrant while continuing to try to remove them. *Id.*  
21 § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as  
22 removal happens within days or weeks. But some detainees cannot be removed  
23 quickly. Perhaps their removal “simply require[s] more time for processing,” or  
24 they are “ordered removed to countries with whom the United States does not  
25 have a repatriation agreement,” or their countries “refuse to take them,” or they  
26 are “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma*  
27 *v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other  
28 circumstances, detained immigrants can find themselves trapped in detention for

1 months, years, decades, or even the rest of their lives.

2 If federal law were understood to allow for “indefinite, perhaps permanent,  
3 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at  
4 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by  
5 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

6 As an initial matter, *Zadvydas* held that detention is “presumptively  
7 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period  
8 for effectuating removals.

9 Following the six-month grace period, courts must use a burden-shifting  
10 framework to decide whether detention remains authorized. First, the petitioner  
11 must make a prima facie case for relief: He must prove that there is “good reason  
12 to believe that there is no significant likelihood of removal in the reasonably  
13 foreseeable future.” *Id.*

14 If he does so, the burden shifts to “the Government [to] respond with  
15 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of  
16 proof rests with the government: The government must prove that there is a  
17 “significant likelihood of removal in the reasonably foreseeable future,” or the  
18 immigrant must be released. *Id.*

19  
20 **A. The six-month grace period expired.**

21 As an initial matter, the six-month grace period has ended. The *Zadvydas*  
22 grace period lasts for “*six months* after a final order of removal—that is, *three*  
23 *months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257  
24 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Fana was ordered removed on July  
25 14, 2025. Exh. A at ¶ 2. Accordingly, his 90-day removal period began then. 8  
26 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months after  
27 the removal period began, on January 14, 2026. The threshold requirement is  
28 therefore met.

1           **B. There is good reason to believe that there is no significant**  
2           **likelihood of Mr. Fana removal in the reasonably foreseeable**  
3           **future.**

4           Because the six-month grace period has passed, this Court must evaluate  
5 Mr. Fana's *Zadvydas* claim using the burden-shifting framework. At the first  
6 stage of the framework, there must be "good reason to believe that there is no  
7 significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*,  
8 533 U.S. at 701. This standard can be broken down into three parts.

9           **"Good reason to believe."** The "good reason to believe" standard is a  
10 relatively forgiving one. "A petitioner need not establish that there exists no  
11 possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL  
12 10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor does "[g]ood reason to  
13 believe' . . . place a burden upon the detainee to demonstrate no reasonably  
14 foreseeable, significant likelihood of removal or show that his detention is  
15 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,  
16 2020 WL 3972319, at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401  
17 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:  
18 Petitioners need only give a "good reason"—not prove anything to a certainty.

19           **"No significant likelihood of removal."** This component focuses on  
20 whether Mr. Fana will likely be removed: Continued detention is permissible only  
21 if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*,  
22 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped  
23 possibilities, but also [the] probability of *success* in such possibilities." *Elashi v.*  
24 *Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In  
25 other words, even if "there remains *some* possibility of removal," a petitioner can  
26 still meet its burden if there is good reason to believe that successful removal is  
27 not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL  
28 31520362, at \*4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

1           **“In the reasonably foreseeable future.”** This component of the test  
2 focuses on when Mr. Fana will likely be removed: Continued detention is  
3 permissible only if removal is likely to happen “in the reasonably foreseeable  
4 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s  
5 removal efforts. If the Court has “no idea of when it might reasonably expect  
6 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal  
7 is likely to occur—or even that it might occur—in the reasonably foreseeable  
8 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at \*3  
9 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL  
10 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d  
11 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Fana  
12 “would *eventually* receive” a travel document, he can still meet his burden by  
13 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,  
14 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

15           Mr. Fana satisfies that standard. ICE has had Mr. Fana’s identification and  
16 passport in hand since July. Exh. A at ¶ 3. He has been begging ICE for months to  
17 expedite his removal, offering his help in every possible way and even hunger  
18 striking to get answers about the delay. *Id.* at ¶¶ 4–6. ICE purportedly requested  
19 travel documents back in November, but there is no sign that ICE has gotten an  
20 answer. *Id.* at ¶ 7. Mr. Fana has therefore met his burden, and the burden shifts to  
21 the government to show that he can be removed in the reasonably foreseeable  
22 future.

23           **II. This Court must hold an evidentiary hearing on any disputed facts.**

24           Resolution of a prolonged-detention habeas petition may require an  
25 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr.  
26 Fana hereby requests such a hearing on any material, disputed facts.  
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**III. Prayer for relief**

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal; and
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: January 26, 2026

*s/ Katie Hurrelbrink*

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**KATIE HURRELBRINK**  
Federal Defenders of San Diego, Inc.  
Email: [Katie\\_Hurrelbrink@fd.org](mailto:Katie_Hurrelbrink@fd.org)

**PROOF OF SERVICE**

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I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney’s Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: 1/26/2026

/s/ Katie Hurrelbrink  
Katie Hurrelbrink