

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

ARISH RUSTAMI,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 5:26-cv-03018-JWL
	)	
KRISTI NOEM, Secretary of Homeland	)	
Security, TODD M. LYONS, Acting	)	
Director, U.S. Immigration and Customs	)	
Enforcement, SAM OLSON, ICE Chicago	)	
Field Office Director, and	)	
PAMELA BONDI, Attorney General,	)	
	)	
Respondents.	)	
	)	

---

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

This matter is before the Court on the petition of Arish Rustami (“Petitioner”) for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained in FCI Leavenworth in Leavenworth, Kansas, pending removal from the United States. In compliance with the Court’s Order to Show Cause, Doc. 2, Kristi Noem, Secretary of the Department of Homeland Security; Samuel Olson, ICE Chicago Field Office Director; Todd M. Lyons, Acting Director, U.S. Immigration and Customs Enforcement; and Pamela Bondi, Attorney General of the United States (collectively “Respondents”) respectfully submit this response.

Petitioner alleges: (1) his detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, and (2) that Respondents have violated 8 C.F.R. § 241.4(d) because Petitioner has not yet received a custody determination decision after his January 7, 2026, interview regarding his custody status. The Court should deny the habeas petition because (1) Petitioner’s detention does not violate 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*, and (2) 8 C.F.R. § 241.4(d) does not require that a custody determination decision be issued within a certain timeframe.

### STATEMENT OF FACTS

The following facts are part of the Declaration of Eric K. Swanson, a Deportation Officer for Enforcement and Removal Operations (“ERO”) at United States Immigration and Customs Enforcement (“ICE”). Exhibit 1, Eric K. Swanson Decl., ¶¶ 1-3. Petitioner is a native and citizen of Iran. *Id.* ¶ 5. Petitioner was admitted to the United States at Chicago, Illinois on or about October 27, 2004. *Id.* ¶ 6. On or about April 28, 2010, Petitioner was convicted in the Circuit Court of Jackson County, Missouri for possession of child pornography in violation of Revised Statutes of Missouri § 573.037. *Id.* ¶ 7.

Petitioner was taken into ICE custody on or about August 2, 2010, due to his criminal conviction, which rendered him removable from the United States. *Id.* ¶ 8. On or about August 2, 2010, DHS issued a Notice to Appear charging Petitioner as removable from the United States pursuant to INA § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony as defined in INA § 101(a)(43)(A) and (I), 8 U.S.C. § 1101(a)(43)(A) and (I), offenses related to sexual abuse of a minor and child pornography. *Id.* ¶ 9. On or about September 28, 2010, Petitioner, with the assistance of counsel, admitted the factual allegations in the Notice to Appear and conceded the charge of removability. *Id.* ¶ 10. Petitioner declined to designate a country of removal and the Immigration Judge directed Iran as the country of removal. *Id.* Petitioner subsequently submitted an application for relief from removal. *Id.* ¶ 11.

On or about January 13, 2011, Petitioner hired new counsel and moved to vacate his pleading to the Notice to Appear as legally invalid. *Id.* ¶ 12. On January 31, 2011, the Immigration Judge denied Petitioner’s motion. *Id.* ¶ 13. On or about March 3, 2011, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief. *Id.* ¶ 12. On or about June 30, 2011, Petitioner was released from ICE custody on an order of supervision (“OSUP”). *Id.* ¶ 18.

On June 23, 2025, Petitioner's prior release on OSUP was revoked based on changed circumstances and to enforce the existing removal order by attempting to remove Petitioner to a third country pursuant to 8 U.S.C. § 1231(b)(1)(C), and Petitioner was taken into ICE custody. *Id.* ¶ 19. On or about June 27, 2025, Petitioner was served with a copy of the Notice of Revocation of Release. *Id.* ¶ 20.

On September 12, 2025, ERO interviewed Petitioner about his willingness to be removed to Afghanistan. *Id.* ¶ 22. Petitioner indicated that he refused to be removed to Afghanistan. *Id.* On or about October 17, 2025, Petitioner was served with a Decision to Continue Detention notice, informing him that he would not be released from custody at that time. *Id.* ¶ 23.

On or about October 28, 2025, a travel document request was sent to the Consulate of Pakistan in Chicago, Illinois. *Id.* ¶ 24. On or about November 10, 2025, ERO received notice that Pakistan had denied the request for travel document. *Id.* ¶ 25. DO Swanson sent an email to a Detention and Deportation Officer at ERO's Removal Management Division ("RMD") regarding possible removal to another third country. *Id.*

On or about November 13, 2025, ERO was advised that Removal and International Operations ("RIO") is actively working with Department of State and DHS on avenues to remove aliens to a third country. *Id.* ¶ 26. On or about December 22, 2025, ERO again reached out to a Detention and Deportation Officer at RMD for updates on removal. *Id.* ¶ 27.

On January 7, 2026, ERO interviewed Petitioner regarding his custody status. *Id.* ¶ 28. A decision on Petitioner's custody status has not yet been made. *Id.* On or about January 8, 2026, ERO was again advised that RIO is still actively working with Department of State and DHS on avenues to remove aliens to a third country. *Id.* ¶ 29. On January 9, 2026, an informal interview with Petitioner was held to allow him the opportunity to be heard on the reasons for the revocation of his prior order of supervision. *Id.* ¶ 30.

On February 6, 2026, DO Swanson reached out to a Detention and Deportation Officer at RMD for updates on removal efforts. *Id.* ¶ 31. RMD again advised that removal options are still being explored, but that no updates are available. *Id.* ICE will continue its efforts to effectuate Petitioner's removal and ICE will update the Court on any further developments in this matter. *Id.* ¶ 32.

### ARGUMENT

“The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal.” *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, \*6 (D. Kan. July 13, 2020) (citation omitted). To obtain habeas corpus relief, a petitioner must demonstrate that “[h]e is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).

Under the INA, an alien shall be removed if the alien commits certain deportable offenses, including commission of an aggravated felony. 8 U.S.C. § 1227(a)(2)(A)(iii). Upon the entry of a final removal order, “the Attorney General ‘shall detain the alien’ during the 90-day removal period established under 8 U.S.C. § 1231(a)(2).” *Zhiriakov*, 2020 WL 3960442, at \*8 (citations omitted). “Generally, the government is required to remove the alien held in its custody within the 90-day removal period.” *Garcia Uranga v. Barr*, No. 20-3162-JWL, 2020 WL 4334999, \*4 (D. Kan. July 27, 2020) (citing 8 U.S.C. § 1231(a)(1)(A)-(B)). Nevertheless, “[i]f removal cannot be carried out within the removal period, inadmissible aliens may be detained beyond the removal period under certain circumstances.” *Id.* (citing 8 U.S.C. § 1231(a)(6)).

Specifically, “the detention of an alien subject to a final order of removal for up to six months is presumptively reasonable in view of the time required to accomplish removal.” *Zhiriakov*, 2020 WL 3960442, at \*8 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). “Beyond that period, if the alien shows that there is ‘no significant likelihood of removal in the

reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Garcia Uranga*, 2020 WL 4334999, at \*4 (quoting *Zadvydas*, 533 U.S. at 701). “The six-month presumption” thus “does not mean that every alien must be released after that time, but rather an alien may be detained ‘until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.’” *Zhiriakov*, 2020 WL 3960442, at \*8 (quoting *Zadvydas*, 533 U.S. at 701).

Although aliens subject to a final order of removal may be released pursuant to an order of supervision in certain circumstances, an order authorizing release “may be revoked in the exercise of discretion when, in the opinion of the revoking official . . . it is appropriate to enforce a removal order.” 8 C.F.R. §§ 241.4(l)(2)(iii); 241.5.

Here, Petitioner was convicted of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(A) and (I), offenses related to sexual abuse of a minor and child pornography, on or about April 28, 2010. Swanson Decl., ¶¶ 7, 9. As such, Petitioner was ordered removed from the United States on or about March 3, 2011. *Id.* ¶ 14. Petitioner was then released from ICE custody on June 30, 2011, after an Immigration Judge granted Petitioner’s application for relief from removal to Iran on March 3, 2011. *Id.* ¶¶ 14, 18. On June 23, 2025, Petitioner’s prior release on OSUP was revoked based on changed circumstances and to enforce the existing removal order by attempting to remove Petitioner to a third country pursuant to 8 U.S.C. § 1231(b)(1)(C). *Id.* ¶ 19.

**I. Petitioner’s detention does not violate 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*.**

Petitioner asserts that his detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, because he alleges he is a stateless person and that there are no countries to which he can be deported. Pet., Doc. 1, ¶ 5.

But, Petitioner's withholding of removal to Iran does not prohibit his removal to a third country. As a general matter, if an alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien [last] resided[.]" 8 U.S.C. § 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005).

As such, ICE has been actively working with Department of State and DHS on avenues to remove aliens to a third country and ERO has continued to follow up on efforts to remove Petitioner since Petitioner reported that he was unwilling to be removed to Afghanistan in September 2025. *Id.* ¶¶ 22-31. Petitioner has therefore failed to meet his burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" as is required by *Zadvydas*. *See Zadvydas*, 533 U.S. at 701; *see also Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, \*3 & n.32 (M.D. Pa. Oct. 2, 2024) (citing favorably an order noting that "the fundamental basis of petitioner's argument appears to be that his removal is unlikely simply because it has not occurred to this point") (alteration omitted).

As recognized by the Supreme Court in *Zadvydas*, the "6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Zadvydas*, 533 U.S. at 701. Instead, "an alien may be detained 'until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Zhiriakov*, 2020 WL 3960442, at \*8 (quoting *Zadvydas*, 533 U.S. at 701); *see also Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at \*4 (W.D. Okla. Aug. 27, 2024), *report and recommendation adopted*,

2025 WL 486679 (W.D. Okla. Feb. 13, 2025) (“But a mere delay does not trigger the inference that an individual 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.’”) (alteration and citation omitted); *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, \*3 (S.D. Tex. Oct. 21, 2024) (“Speculation and conjecture are not sufficient to carry [Petitioner’s] burden, nor is a ‘lack of visible progress’ in his removal sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future.”) (citation omitted).

Even when the government “has not identified a specific date by which it expects a travel document to issue,” it remains true that “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, \*4 (W.D. Wash. May 10, 2024). As such, the Supreme Court in *Zadvydas* rejected the Ninth Circuit’s conclusion that the government was required to release an alien from detention where “its conclusion may have rested solely upon the ‘absence’ of an ‘extant or pending’ repatriation agreement without giving due weight to the likelihood of successful future negotiations.” *Zadvydas*, 533 U.S. at 702.

Here, although Petitioner’s travel document request was rejected by Pakistan, ICE has continued to work with Department of State and DHS on avenues to remove aliens to a third country and has continued to follow up on efforts to remove Petitioner. *Id.* ¶¶ 22-31. “Because ICE is still actively pursuing” Petitioner’s removal “and his detention furthers Congress’s goal of ensuring his presence for removal,” Petitioner is not entitled to release under *Zadvydas*. *Bains v. Garland*, No. 2:23-cv-00369-RJB-BAT, 2023 WL 3824104, \*4 (W.D. Wash. May 16, 2023).

Although Respondents understand the Court’s requests for greater detail on ICE’s removal efforts in recent habeas cases, *see, e.g., Hassan, v. Welsh*, No. 25-3239-JWL, 2026 WL 21234, at

\*3 (D. Kan. Jan. 5, 2026) (“This failure is especially disheartening in light of this Court’s repeated complaints about the lack of such detail and the use of similar boilerplate language in the Government’s submissions.”), Respondents do not have additional detail to provide the Court at this time and assert that Petitioner has not met his burden to establish indefinite detention.

**II. 8 C.F.R. § 241.4 does not provide a timeline under which a decision to continue detention must be issued.**

Next, Petitioner claims that Respondents have violated 8 C.F.R. § 241.4(d) because Petitioner has not yet been served with a decision regarding his detention containing the reasons for continued detention. Pet., Doc. 1, ¶ 53. Although section 241.4(d) provides that a custody determination decision “shall be provided to the detained alien” and “shall briefly set forth the reasons for continued decision,” it does not mandate a timeline under which a custody determination decision must be issued. 8 C.F.R. § 241.4(d). Here, a decision on Petitioner’s custody status has not yet been made. Swanson Decl., ¶ 28. As such, Respondents have not violated a provision of 8 C.F.R. § 241.4(d).

To the extent that Petitioner would assert that a decision on Petitioner’s custody has been unreasonably delayed, that claim should be brought under the Administrative Procedure Act—not in habeas. Under the APA, “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702. This includes the ability of courts to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

When evaluating whether agency action has been unreasonably delayed, courts in the Tenth Circuit must look to: “(1) the extent of the delay, (2) the reasonableness of the delay in the context of the legislation authorizing agency action, (3) the consequences of the delay, . . . (4) administrative difficulties bearing on the agency’s ability to resolve an issue[,]” and (5) “the

complexity of the task envisioned by a court's remand order." *Qwest Commc'ns Int'l, Inc. v. FCC*, 398 F.3d 1222, 1239 (10th Cir. 2005). Because Petitioner has not brought a claim under the APA nor plausibly alleged an unreasonable delay, the Court should deny Petitioner's request for an Order to Show Cause directing Respondents "to comply with 8 C.F.R. § 241.4(d)."

### CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

RYAN A. KRIEGSHAUSER  
United States Attorney  
District of Kansas

/s/ Christopher Allman  
CHRISTOPHER ALLMAN  
Assistant United States Attorney  
Ks. S.Ct. No. 14225  
500 State Avenue, Suite 360  
Kansas City, Kansas 66101  
PH: (913) 551-6730  
FX: (913) 551-6541  
Email: [chris.allman@usdoj.gov](mailto:chris.allman@usdoj.gov)

Attorneys for Respondents

**CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2026, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrants:

Matthew Lorn Hoppock, #23854  
HOPPOCK LAW FIRM  
P.O. Box 3886  
Shawnee, KS 66203  
Phone: (913) 267-5511  
E-mail: matthew@hoppocklawfirm.com  
*Attorney for Petitioner*

/s/ Christopher Allman  
CHRISTOPHER ALLMAN  
Assistant United States Attorney