

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Fadi El Bitar

Petitioner,

v.

JULIO HERNANDEZ, ICE Seattle Field Office
Director; FACILITY ADMINISTRATOR,
Northwest ICE Processing Center; MARKWAYNE
MULLIN, Secretary, U.S. Department of Homeland
Security; TODD BLANCH, Attorney General of the
United States,

Respondents.

Civil Action No:
2:26-cv-00919-TMC

PETITIONER'S TRAVERSE /

REPLY TO RESPONDENTS' RETURN TO THE ORDER TO SHOW CAUSE

INTRODUCTION

Respondents' Return rests on a fundamental misstatement of Ninth Circuit law and a mischaracterization of the factual reality of Petitioner's indefinite detention. Respondents urge this Court to treat the six-month Zadvydas window as an absolute shield against judicial review, conspicuously ignoring binding Ninth Circuit precedent that holds otherwise. Furthermore, Respondents attempt to weaponize Petitioner's good-faith cooperation with the removal process—his suggestion of potential third-country destinations—as an excuse for their own failure to secure a viable travel document after more than four months of trying.

Because Respondents concede they have no affirmative agreement from any third country, and because the primary destination of Lebanon is legally barred, Petitioner's removal is not significantly likely in the reasonably foreseeable future. His continued detention violates 8 U.S.C. § 1231(a)(6) and the Due Process Clause of the Fifth Amendment.

ARGUMENT

A. The Six-Month Period is Not a "Safe Harbor," and Respondents Ignore Binding Precedent.

Respondents devote the bulk of their argument to the claim that Petitioner is "prematurely" seeking relief because the six-month period from November 15, 2025, has

1 not yet expired. In making this argument, Respondents fail to cite, distinguish, or even
2 acknowledge *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006).

3 In the Ninth Circuit, the six-month period established in *Zadvydas v. Davis*, 533 U.S.
4 678 (2001), is a presumption, not a safe harbor. *Nadarajah* explicitly dictates that
5 "detention is not permitted where removal is not 'reasonably foreseeable.' This is true even
6 if the detention period has not yet exceeded six months." *Nadarajah*, 443 F.3d at 1080
7 (emphasis added). By ignoring this controlling precedent, Respondents ask this Court to
8 apply an incorrect, rigidly temporal legal standard. Where, as here, the factual and legal
9 barriers to removal are evident from the outset, Petitioner is not required to sit in a jail cell
10 until May 15, 2026, merely to satisfy an administrative clock that serves no practical
11 purpose.

12 **B. "Active Efforts" Without Results Do Not Make Removal Reasonably**
13 **Foreseeable.**

14 Respondents concede that Petitioner is protected by the Convention Against Torture
15 (CAT) from removal to Lebanon. To justify his continued detention, they rely entirely on
16 the fact that on November 30, 2025, ERO sent "third-country removal inquiries" to the
17 United Kingdom, Canada, and Australia. Respondents admit that, as of April 2026, "none
18 of those countries has responded affirmatively." (Return at 3/9).

1 Respondents attempt to blame this delay on the Petitioner, noting these inquiries
2 were made "in direct response to Petitioner's own requests." This argument is disingenuous.
3 Petitioner has a statutory duty to cooperate with removal efforts. His suggestion of potential
4 third countries demonstrates his compliance and lack of obstruction. However, Petitioner's
5 cooperation does not magically grant him citizenship or entry rights into the UK, Canada,
6 or Australia.
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9 The Ninth Circuit has clearly held that the government cannot justify prolonged
10 detention based on mere speculation that a third country might eventually agree to accept
11 an individual. See *Ma v. Ashcroft*, 257 F.3d 1095, 1102 (9th Cir. 2001) (government must
12 show a "significant likelihood" of removal, not just a hope). The fact that three distinct
13 sovereign nations have ignored ERO's inquiries for over four months strongly indicates
14 that removal is an administrative fantasy, not a foreseeable reality. Sending blind letters to
15 foreign embassies does not satisfy the government's burden under *Zadvydas*.
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19 **C. Alleged "Flight Risk" Cannot Justify Indefinite Civil Detention.**

20 Respondents argue that ERO's February 7, 2026, custody determination found
21 Petitioner to be a "flight risk," and that this provides "further support for continued
22 detention." (Return at 7/7). This puts the cart before the horse.
23

24 Under *Zadvydas*, if the government lacks the statutory authority to effectuate
25 removal under 8 U.S.C. § 1231(a)(6), the individual's perceived flight risk or
26 dangerousness cannot independently justify indefinite civil confinement. *Zadvydas*, 533
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1 U.S. at 690 (rejecting the argument that alien status itself justifies indefinite preventive
2 detention). Because Respondents have no legal or practical means to remove Petitioner
3 their authority to detain him has expired. The government's interest in preventing flight is
4 moot when there is no removal flight to catch.
5

6 **D. Respondents Mischaracterize Petitioner's Request for Alternative Relief.**
7

8 Respondents cite *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), for the
9 proposition that Petitioner is not statutorily entitled to a bond hearing under 8 U.S.C. §
10 1226. Petitioner does not dispute that his detention is currently governed by 8 U.S.C. §
11 1231(a)(6).
12

13 However, *Johnson* did not extinguish the equitable power of a federal district court
14 sitting in habeas corpus to order an individualized bond hearing as a remedy for prolonged
15 unconstitutional detention. While Petitioner's primary request is immediate release under
16 *Nadarajah* due to the impossibility of removal, a judicially mandated bond hearing and
17 which the government bears the burden of proof remains an appropriate alternative
18 equitable remedy to cure a Fifth Amendment due process violation.
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22 **E. Petitioner is Not Challenging the Designation of a Third Country.**
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24 Finally, Respondents argue that any challenge to "the prospect or manner of his
25 potential removal to a third country" is unripe. (Return at 8/17). This is a strawman
26 argument.
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1 Petitioner is not challenging ICE's authority to designate the UK, Canada, or
2 Australia. Petitioner is challenging the factual premise that any of these countries will
3 actually accept him. The government's failure to secure a single travel document in over
4 four months of post-order custody proves that removal is unforeseeable.
5

6 **CONCLUSION**

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8 Respondents have failed to rebut the reality of Petitioner's circumstances: his
9 primary destination is legally barred, and no third country will take him. Waiting for the
10 six-month mark to pass will not change these facts. Therefore, Petitioner respectfully
11 requests that the Court grant the Writ of Habeas Corpus and order his immediate release
12 under an Order of Supervision.
13

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15 DATED: April 7, 2026

Respectfully Submitted,

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