

Magistrate Judge Grady J. Leupold

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MSHAFIQ MSHARIF,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,¹

Respondents.

Case No. 2:26-cv-01121-GJL

FEDERAL RESPONDENTS'
RETURN

Noted for Consideration:
April 21, 2026

I. INTRODUCTION

This Court should deny Petitioner Mshafiq Msharif's Petition for Writ of Habeas Corpus. Dkt. No. 1 ("Pet."). Petitioner challenges his post-order detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional and unlawful while he awaits removal from the United States. Petitioner is subject to a final order of removal and is detained pursuant to 8 U.S.C. § 1231(a)(6).

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Drew Bostock.

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting United States Attorney General Todd Blanche for Pamela Bondi.

Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 Petitioner's habeas petition should be denied because his detention is lawful under
2 *Zadvydas v. Davis*, 533 U.S. 678 (2001). The government is working to effectuate Petitioner's
3 removal to Afghanistan. It has obtained travel documents for Petitioner and sent a travel letter
4 request to the U.S. Mission Afghanistan. While the travel letter remains pending, ICE believes
5 there is a significant likelihood that Petitioner will be removed to Afghanistan in the reasonably
6 foreseeable future once the travel letter is finalized. *Id.* Further, Petitioner's requested relief
7 regarding third country removal is premature and should be denied because the government is not
8 currently seeking to remove him to a third country.

9 Accordingly, Federal Respondents respectfully request the Court deny the Petition without
10 an evidentiary hearing. This return is supported by the pleadings and documents on file in this
11 case, the Declaration of Deportation Officer Karl Douglas ("Douglas Decl."), and the Declaration
12 of Jennifer Wong ("Wong Decl."), with accompanying exhibits.

13 II. BACKGROUND

14 A. Legal Background

15 The Immigration and Nationality Act ("INA") governs the detention and release of
16 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
17 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order"
18 (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning
19 after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order
20 detention) *with* § 1231(a) (authorizing post-order detention).

21 When a final order of removal has been entered, a noncitizen enters a 90-day "removal
22 period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
23 "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for
24 removal and to protect the community from noncitizens who may present a danger, Congress has

1 mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2). Section 1231(a)(6)
2 authorizes U.S. Immigration and Customs Enforcement (“ICE”) to continue detention of
3 noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section
4 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of
5 detention under that provision. 8 U.S.C. § 1231(a)(6).

6 During the removal period, ICE is charged with attempting to effect removal of a
7 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit
8 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be
9 detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from
10 the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six
11 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701.

12 **B. Petitioner Mshafiq Msharif**

13 Petitioner is a native and citizen of Afghanistan, who entered the United States at an
14 unknown time without being admitted or paroled. Douglas Decl. ¶ 3; Wong Decl. at Ex. 1 (Form
15 I-213). On December 24, 2024, Petitioner was encountered by United States Border Patrol near
16 San Ysidro, California. Douglas Decl. ¶ 3. He was placed in expedited removal proceedings on
17 December 25, 2024. Douglas Decl. ¶ 3; Wong Decl. at Ex. 2 (Notice and Order of Expedited
18 Removal).

19 On January 24, 2025, Petitioner was served a Notice to Appear (“NTA”), charging him
20 with removability under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1227(a)(6)(A)(i), and placed in
21 immigration proceedings. Douglas Decl. ¶ 4; Wong Decl. at Ex. 3 (Notice to Appear).

22 On July 2, 2025, Petitioner was ordered removed to Afghanistan. Douglas Decl. ¶ 8; Wong
23 Decl. at Ex. 4 (Order of Removal). Both the U.S. Department of Homeland Security (“DHS”) and
24

1 Petitioner waived appeal, making the order of removal administratively final on July 2, 2025. 8
2 C.F.R. § 1241.1.

3 On October 4, 2025, Petitioner was transferred from the Florence Service Processing
4 Center (SPC) in Florence, Arizona to the NWIPC. Douglas Decl. ¶ 9.

5 ICE's Enforcement and Removal Operations ("ERO") has taken steps to effectuate
6 Petitioner's removal to Afghanistan. On October 24, 2025, ERO obtained travel documents for
7 Petitioner, which have an expiration date of June 3, 2033. Douglas Decl. ¶ 10. ERO also sent a
8 travel letter request to the U.S. Mission Afghanistan in Doha on December 15, 2025. *Id.* ¶ 11. At
9 this time, the travel letter is pending. *Id.* ICE believes there is a significant likelihood that Petitioner
10 will be removed to Afghanistan in the reasonably foreseeable future once the travel letter is
11 finalized. *Id.*

12 III. ARGUMENT

13 A. Petitioner's detention is lawful and not indefinite.

14 Petitioner's detention is constitutionally and statutorily lawful as he is detained pursuant to
15 8 U.S.C. § 1231(a)(6). A noncitizen may be detained only "for a period reasonably necessary to
16 bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. In
17 *Zadvydas*, the Supreme Court determined that it is "presumptively reasonable" for DHS to detain
18 a noncitizen for six months following entry of a final removal order while it works to remove the
19 noncitizen from the United States. *Id.* at 701. The *Zadvydas* Court recognized that as the length of
20 detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a
21 noncitizen's post-order detention. *Id.* (stating that "for detention to remain reasonable, as the
22 period of post-removal confinement grows, what counts as the 'reasonably foreseeable future'
23 conversely would have to shrink").

1 Here, Petitioner's order of removal became administratively final on July 2, 2025, and he
2 has been detained for approximately nine months. Federal Respondents disagree with Petitioner's
3 argument that he has been detained for approximately fifteen months in total, from December 24,
4 2024, when he was placed in expedited removal proceedings, to the filing of the habeas petition
5 on April 2, 2026. *See* Pet. at 2, 4, 10.

6 Federal Respondents acknowledge that Courts in this district disagree as to whether the
7 presumptively reasonable period expires six months after a final order, regardless of detention.
8 *See, e.g., Tran v. Bondi*, No. 2:25-cv-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025);
9 *but see Thach Wana v. Bondi, et al.*, No. 2:25-cv-02321-RSL, 2025 WL 3628634, at *3, n.2 (W.D.
10 Wash. Dec. 15, 2025). However, the Supreme Court in *Zadvydas* was concerned with the indefinite
11 detention of noncitizens, and its interpretation of the INA was driven by the need to avoid
12 deprivations of liberty without due process. *See Zadvydas*, 533 U.S. at 690 ("A statute permitting
13 indefinite detention of an alien would raise a serious constitutional problem."). For the *Zadvydas*
14 clock to run the moment that an order of removal becomes final would not remedy the concern
15 that the Supreme Court wanted to address. Even after a final order of removal is in place,
16 noncitizens may be conditionally released and are subject to re-detention due to a change of
17 circumstances or because of their violations of their conditions of release. The duration of time
18 after a final order of removal is entered and before a noncitizen's re-detention is unpredictable.
19 During this unknown period of time – which would most likely exceed six months – noncitizens
20 are not detained. If a noncitizen is not detained, there is no deprivation of liberty that must be
21 curtailed or rendered definite under *Zadvydas*. Having the *Zadvydas* clock run unabated from the
22 moment a removal order becomes final, regardless of whether the noncitizen is in or out of custody,
23 is contrary to the Supreme Court's interpretation of the INA to address actual deprivation of liberty
24 – when a noncitizen is taken into custody.

1 Although the six-month presumptively reasonable period has ended, Petitioner's detention
2 continues to be constitutional because ICE believes that there is a significant likelihood of removal
3 in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

4 Petitioner has the initial burden to demonstrate that there is "good reason to believe that
5 there is no significant likelihood of removal in the reasonably foreseeable future." *See, e.g.,*
6 *Nguyen v. Field Office Director et al.*, No. 2:26-cv-00394-DGE, 2026 WL 538487, at *4 (W.D.
7 Wash. Feb. 26, 2026) ("*Zadvydas* 'places the burden on the [noncitizen] to show, after a detention
8 period of six months, that there is 'good reason to believe that there is no significant likelihood of
9 removal in the reasonably foreseeable future.'"); *Nguyen v. Hermosillo, et al.*, No. 2:26-cv-00335-
10 GJL, 2026 WL 538497, at *3 (W.D. Wash. Feb. 26, 2026) ("[T]he noncitizen carries the initial
11 burden of providing 'good reason to believe that there is no significant likelihood of removal in
12 the reasonably foreseeable future.'"). Only after the noncitizen meets this burden to provide good
13 reason that there is no significant likelihood of removal in the reasonably foreseeable future does
14 the burden shift to the government to show that removal remains likely within a reasonable
15 timeframe. *Id.* If the government fails to submit sufficient rebuttal evidence showing that removal
16 is likely to occur within the reasonably foreseeable future, then the noncitizen is entitled to habeas
17 corpus relief. *Id.*

18 Petitioner has failed to meet his initial burden here. Petitioner alleges that there is no
19 significant likelihood in the reasonably foreseeable future of his removal to Afghanistan because
20 Afghanistan is under the control of the Taliban and does not have diplomatic relations with the
21 United States, so it would not be possible to obtain travel documents to Afghanistan. Pet. at 10.
22 This is not true. ERO has taken steps to effectuate Petitioner's removal to Afghanistan, having
23 obtained travel documents for Petitioner, with an expiration date of June 3, 2033, and requested a
24 travel letter from the U.S. Mission Afghanistan in Doha on December 15, 2025. Douglas Decl.

¶¶ 10-11. While the request for Petitioner’s travel letter remains pending, ICE believes that there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future once the travel letter to Afghanistan is finalized. *Id.* ¶ 11.

Additionally, the fact that Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention becomes indefinite in situations where the country of removal refuses to accept the noncitizen or if removal is legally barred. *Id.* There is no reason to believe that is the situation here.

Therefore, Petitioner’s detention remains lawful and not indefinite because Petitioner fails to provide sufficient evidence or argument to overcome the presumption that his continued detention is reasonable, *Sun v. Hermosillo*, No. 2:26-cv-00215-LK, 2026 WL 510666, at *3 (W.D. Wash. Feb. 24, 2026), and ICE believes that there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future once the travel letter to Afghanistan is finalized.

B. Petitioner’s requested relief regarding third country removal is premature and should be denied.

Petitioner seeks to “enjoin removal to a country not listed on his removal order as punitive.” Pet. at 11. But ICE has not made any indication that it intends to remove Petitioner to a third country.

Even if the government did seek to remove Petitioner to a third country, DHS policy provides a framework to address the concern that removal to a third country may lead to a punitive result. Under DHS policy, Petitioner will be provided notice and an opportunity to respond to third country removal.² Notice will be provided for a petitioner to claim fear of removal to a third

² See U.S. Department of Homeland Security, “Guidance Regarding Third Country Removals,” Kristi Noem, March 30, 2025, available at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf (last visited Feb. 6, 2026) (“DHS Memo”).

country, and if petitioner claims a fear of removal to that third country, ICE will refer him to United States Citizenship and Immigration Services (“USCIS”), and USCIS will schedule petitioner for an interview to determine whether it is more likely than not that he will be persecuted or tortured in that third country. *See* DHS Memo.

Thus, the Court should deny Petitioner’s requested relief regarding third country removal because it is premature.

IV. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition.

DATED this 16th day of April, 2026.

Respectfully submitted,

s/ Jennifer Wong
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I certify that this memorandum contains 2,041 words, in compliance with the Local Civil Rules.