

Magistrate Judge Grady J. Leupold

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

Mshafiq Msharif,

Petitioner,

v.

JULIO HERNANDEZ, *et al*

Respondents.

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

**TRAVERSE IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS**

Noted for Consideration
April 21, 2026

INTRODUCTION

Petitioner is a noncitizen whom Respondents have detained a totality of sixteen months and now over nine months post removal order. In their response to Petitioner's writ of habeas corpus, Respondents rely on an unverified declaration from an ICE officer, which alleges various unsubstantiated facts, and alleges documents and evidence which were not provided to the Court. Respondents have not submitted the actual travel documents of the country of deportation, alleged in the response. The government of Afghanistan is currently the Taliban, an organization the United States has deemed a terrorist organization. The Respondents also allege a letter to the U.S. Mission to Afghanistan in Doha, which supposedly was submitted to assist in Petitioner's removal.

1 They have not included this letter in evidence nor explained how approval of this letter would
2 facilitate Petitioner's removal to Afghanistan. Respondents do not provide a timeline of
3 Petitioner's actual removal, only relying on a vague, undefined framework of "reasonably
4 foreseeable future". This does not align with the *Zadvydas* framework of detention "for a period
5 reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*,
6 533 U.S. at 689. The Court should grant the Petitioner's Habeas Corpus petition as the
7 Respondents have not articulated an interest in the Petitioner's continued detention.
8

9 ARGUMENT

10 **I. The Government fails to Rebut Petitioner's claim that Petitioner's Detention is** 11 **Prolonged and Beyond the Reasonable time Allowed under *Zadvydas***

12 Respondents' arguments fail both legally and factually. The attempt to cabin *Zadvydas v. Davis*'
13 presumption of six months to only periods of "active detention" is contrary to the statute and
14 controlling case law. Section 1231(a) governs the entire post-final order removal period, not
15 isolated segments of custody. *See, e.g., Abubaka v. Bondi*, No. C25-1889, 2025 WL 3204369, at *3
16 (W.D. Wash. Nov. 17, 2025) ("the 'clock' on *Zadvydas*'s six month period of presumptive
17 reasonability does not re-start with each successive detention"); Respondents theory would permit
18 indefinite cycles of detention and release, effectively resetting the constitutional clock each time
19 ICE re-detains an individual which is precisely the sort of indefinite deprivation of liberty that
20 *Zadvydas* forbids.
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23 Furthermore, Respondent's arguments collapse under the actual facts of this case. Unlike the
24 hypothetical framework they construct, Petitioner has been continuously detained since his entry
25 into the United States, with no intervening periods of release. Respondents' concern about
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1 “resetting” the clock involving re-detention is irrelevant here because there has been no break in
2 custody. This is precisely the situation *Zadvydas* addresses: a noncitizen subjected to uninterrupted,
3 prolonged post-order detention. Accordingly, the relevant detention period is the full duration of
4 Petitioner’s confinement, which now far exceeds six months and squarely triggers the constitutional
5 concerns the Supreme Court sought to avoid.
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7 Petitioner, in his petition, has met and exceeded his initial burden by demonstrating that removal
8 is not significantly likely in the reasonably foreseeable future due to the length of his detention,
9 Respondents’ failure to effect Petitioner’s removal, and the practical challenges to doing so which
10 include country conditions and severed diplomatic ties with Afghanistan and Petitioner’s lack of
11 travel documents. 446 F.Supp.2d 1186, 1189-90 (W.D. Wash. 2006) (finding removal not likely in
12 reasonably foreseeable future when noncitizen detained for eight months and consulate stated only
13 that case was still under review pending a decision). See also, *Jaranow v. Bondi*, No. 2:25-CV-
14 02396-TL, 2026 WL 35864, at *4 (W.D. Wash. Jan. 6, 2026). Meanwhile, Respondents have failed
15 to establish a significant likelihood of removal in the reasonably foreseeable future. *Id.*; *Zadvydas* at
16 701.
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18 Respondents’ assertion that removal to Afghanistan is forthcoming rests entirely on speculative
19 and incomplete administrative steps. Data published this month shows that only 9% of all Afghan
20 removals since 2022 have actually been removed to Afghanistan while the remaining 91% were
21 removed to third countries. See <https://kabulnow.com/2026/04/us-deportations-to-afghanistan/>¹. It
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25 ¹ U.S. Deportations to Afghanistan Continue Despite Taliban Rule, KabulNow (Apr. 2026),
<https://kabulnow.com/2026/04/us-deportations-to-afghanistan/>.

1 is therefore not speculative that Petitioner is likely to be removed to a third country rather than
2 Afghanistan seeing as Respondents have been unable to remove him despite claiming without
3 sufficient evidence that they do have travel documents.

4 Most importantly, Respondents' reliance on an unverified declaration by an ICE officer does not
5 satisfy their burden. A request for documentation, without confirmation of issuance, acceptance by
6 receiving authorities, or any defined timeline, does not establish a significant likelihood of removal.
7 In *Nguyen v. Field Office Director*, No. 2:26-cv-00394-DGE, 2026 WL 538487, at *4 (W.D. Wash.
8 Feb. 26, 2026), the court reiterated that once the petitioner meets the initial burden, the Government
9 must do more than point to ongoing efforts—it must show removal is actually likely in the
10 reasonably foreseeable future, not merely possible. Under *Zadvydas v. Davis*, 533 U.S. 678, 690
11 (2001), The Supreme Court held that post-removal-order detention is constitutionally limited where
12 removal is not reasonably foreseeable. The Court indicated that immigration detention cannot
13 continue indefinitely once “there is no significant likelihood of removal in the reasonably
14 foreseeable future.” *Id.* At 701. Most importantly, the Court identified precisely this situation,
15 where “no country will accept the alien”, as the classic case where removal is not foreseeable and
16 continued detention (or attempts at removal) becomes unlawful. Here, critically, Respondents fail to
17 provide any credible evidence that removals to Afghanistan are presently being effectuated in any
18 regular or predictable manner. Respondents also fail to identify any recent successful removals
19 under comparable circumstances, any functioning repatriation agreement, or any timeline for
20 effectuating Petitioner's removal. Instead, they rely solely on unsubstantiated statements by an ICE
21 officer that ICE has travel documents for Petitioner and a pending request for additional
22 documentation, without explaining how that additional documentation would effectuate Petitioner's
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1 removal in the reasonably foreseeable future. (Dkt. No. 6). Under *Zadvydas*, such speculative and
2 indefinite steps are insufficient to demonstrate that removal is significantly likely in the reasonably
3 foreseeable future.

4 Under Ninth Circuit precedent, prolonged detention in precisely these circumstances raises
5 serious due process concerns. As recognized in *Diouf v. Mukasey*, 542 F.3d 1222, 1231–33 (9th Cir.
6 2008), continued detention without a realistic prospect of removal cannot be sustained. Where, as
7 here, detention has been continuous, lengthy, and unsupported by evidence of actual removability in
8 the reasonably foreseeable future, it is no longer constitutionally permissible.

9 Because Petitioner has been continuously detained, has demonstrated the absence of any
10 meaningful likelihood of removal to Afghanistan, and because the Government’s evidence is purely
11 speculative, his detention has become indefinite under *Zadvydas*. Habeas relief is warranted.
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15 **II. Respondents’ Reliance on an unsupported declaration is insufficient Evidence of**
16 **Removal in the foreseeable Future**

17 Respondents have failed to meet their burden to rebut Petitioner's showing under *Zadvydas*.
18 “Courts in this circuit have regularly refused to find Respondents’ burden met where Respondents
19 have offered little more than generalizations regarding the likelihood that removal will occur.”
20 *Nguyen*, 2025 WL 2419288, at *16; see *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D.
21 Wash. 2006). Declarations alleging the government’s general plans to deport a habeas Petitioner,
22 alone without travel documents, are not sufficient evidence. See *Revenko v. Bondi* No. 2:25-CV-
23 02149-RAJ-BAT, 2025 WL 4070027 (W.D. Wash. Dec. 29, 2025) (Finding that Respondents’
24 representations of obtaining travel documents were insufficient to rebut Petitioner’s showing). See
25 also *Laguna v. Hernandez* No. 2:26-CV-00864-GJL, 2026 WL 962127 (W.D. Wash. Apr. 9, 2026).
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(Finding that Respondents made no viable factual or evidentiary submissions). Under the current administration, ICE has become an agency widely reported of lying under oath, disobeying established law and judicial orders, and otherwise flouting the law to achieve its dubious ends of deporting and detaining as many foreign nationals as possible, as quickly as possible. See *Clarke v. Nassau County Correctional Center*, No. 2:25-cv-06773-GRB, 2025 WL 3674471, (E.D.N.Y. Dec. 18, 2025); <https://themainemonitor.org/judges-admonish-ice-falsehoods-violating-court-orders/>. Respondents have failed to provide evidence of actual travel documents and have admitted to not being able to remove Petitioner without finalization of a “travel letter”. See, e.g., *Tran v. Noem*, No. 1:25-cv-01523-TLN-CKD, 2025 WL 3268491, at *3 (E.D. Cal. Nov. 24, 2025) (assertion that government was “actively working on obtaining a travel document for Petitioner to Vietnam” was insufficient to show removal was reasonably foreseeable). While here, Respondents assert they have travel documents; they have also indicated their inability to use said travel documents without a finalized “travel letter” from the US mission in Doha, such request taking months to finalize. (See Dkt. No. 5 p. 7 ¶¶ 23, 24). Accordingly, without corroborating evidence, the officer’s declaration is not credible and should be accorded little, if any evidentiary weight.

III. Petitioner’s Relief Regarding Third Country Removal is Warranted Given DHS’s Position that it has Authority to effect Third Country Removal without the Involvement of an Immigration Judge

Respondents’ argument that Petitioner’s challenge to third-country removal is premature is unsupported by the record. While removal to Afghanistan remains uncertain and prolonged, the risk that ICE may pursue third-country removal is neither speculative nor remote. As demonstrated, 91%

1 of all removals to Afghanistan since 2022 have been to third countries. See

2 <https://kabulnow.com/2026/04/us-deportations-to-afghanistan/>.

3 The Ninth Circuit has made clear that habeas relief is appropriate where a noncitizen faces a
4 realistic threat of unlawful custody or removal, even if the precise mechanism has not yet been
5 finalized. See *Nadarajah v. Gonzales* 443 F.3d 1069 (9th Cir. 2006) (rejecting indefinite detention
6 where removal depended on uncertain future events); *Prieto-Romero v. Clark* 534 F.3d 1053 (9th
7 Cir. 2008) (focusing on practical likelihood, not theoretical possibility). Consistent with this
8 principle, courts in this District have declined to deny relief based on speculative future
9 developments where the Government cannot demonstrate a clear and imminent path to removal.
10 See, e.g., *Nguyen v. Field Office Director* No. 2:26-cv-00394-DGE, 2026 WL 538487, at *4 (W.D.
11 Wash. Feb. 26, 2026). The Government's reliance on internal DHS procedures does not cure this
12 concern, as such policies do not create enforceable rights and do not substitute for constitutional due
13 process protections. Nor must Petitioner wait until removal is imminent to seek relief—particularly
14 where the harm resulting from an unlawful transfer to a third country would be immediate and
15 irreparable.

16 Because the threat of third-country removal arises directly from the Government's inability to
17 effectuate removal to the designated country, Petitioner's claim is ripe, and judicial intervention is
18 warranted.

19 CONCLUSION

20 For the foregoing reasons, Petitioner respectfully requests that the Court grant his petition for
21 habeas and grant his release, or order an evidentiary hearing to determine, among other things,
22 whether the Respondent's do have the requisite documents to effectuate Petitioner's removal.

1 Additionally, the Court should enjoin Petitioner's removal not listed on his removal order without
2 due process protections, and award attorney's fees and cost under the Equal Access to Justice Act,
3 and on any other basis justified under law.
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5 Respectfully submitted,
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9 DATED: April 21, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

Date April 21, 2026

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