Kara Hartzler
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Kara_hartzler@fd.org

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WAAD SALAM ALKHAFAJI,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, JEREMY CASEY, Warden at Imperial Regional Detention Facility,

Respondents.

Civil Case No.: 26-cv-2262-RBM-BJW

Third Amended Petition for Writ of Habeas Corpus

[Civil Immigration Habeas Petition Under 28 U.S.C. § 2241]

INTRODUCTION

Waad Salam Alkhafaji was born in Iraq and came to the U.S. with his family as a refugee when he was two years old. After convictions for several crimes, an immigration judge ordered him removed but granted him withholding of removal on February 24, 2026. Given this grant of withholding and the inability of Respondents to effectuate nearly *any* removal in the Middle East, Mr. Alkhafaji has shown that "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678 (2001). Thus, this Court should order his release.

STATEMENT OF FACTS

Mr. Alkhafaji was born in Iraq in 1991. *See* Exhibit A, Declaration of Waad Salam Alkhafaji at ¶ 1. His family fled violence in that country and entered the United States as refugees in 1993 when he was two years old. *Id.* at ¶ 1. He became a lawful permanent resident the following year. *Id.* at ¶ 1.

In the last several years, Mr. Alkhafaji was convicted of several crimes in Arizona. *Id.* at ¶ 2. In November 2025, immigration officials took him into custody and then brought him to the Imperial Regional Detention Facility, where he was put into removal proceedings. *Id.* at ¶ 2.

An immigration judge entered an order of removal against Mr. Alkhafaji on February 24, 2026. *Id.* at ¶ 3. However, the judge granted him withholding of removal to Iraq on the basis of his conversion to Christianity and his sexual orientation. *Id.* at ¶ 3. Both his lawyer and the ICE attorney waived appeal. *Id.* at ¶ 3.

The ICE officers Mr. Alkhafaji have talked to have told him that they are not trying to deport him to a third country. *Id.* at ¶ 4. They told him to "just wait 90 days and then file a habeas." *Id.* at ¶ 4.

CLAIM FOR RELIEF

This Court should grant this petition and order Mr. Alkhafaji's immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). Because Mr. Alkhafaji was granted withholding of removal to Iraq and deportations to the Middle East have virtually ceased, he can make this showing.

I. Count One: Petitioner's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

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

If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at

699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

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

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

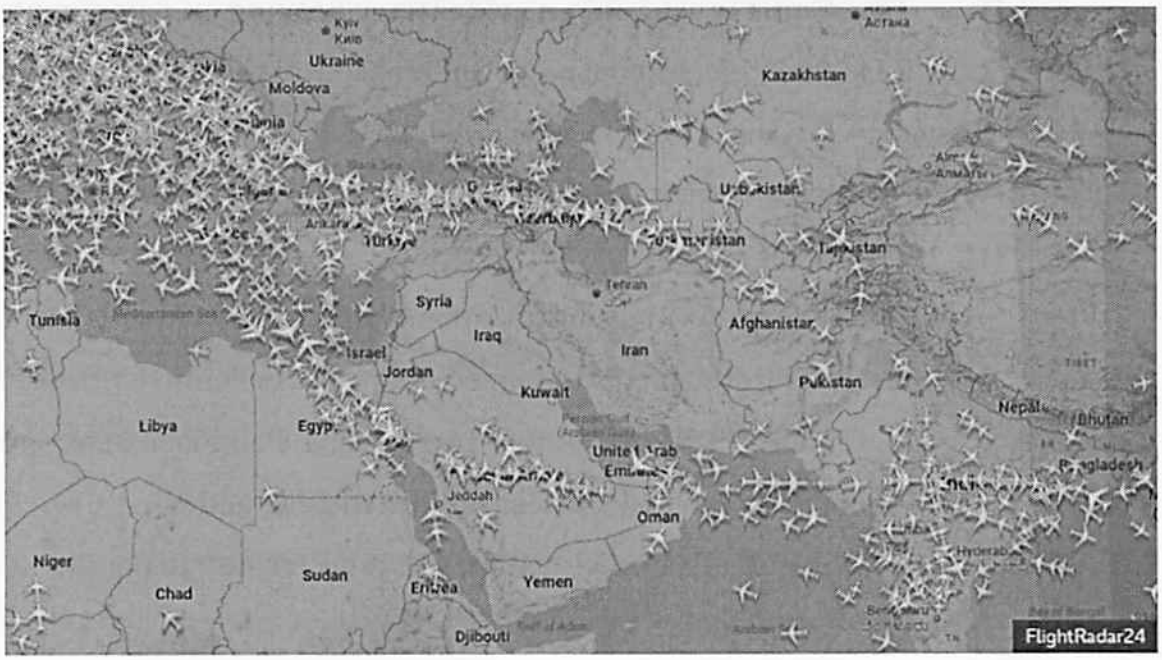
B. There is good reason to believe there is no significant likelihood of removal to Iraq or other countries in the Middle East in the reasonably foreseeable future.

As an initial matter, both Mr. Alkhafaji and the ICE attorney waived appeal, so his order of removal became final on February 24, 2026. *See* 8 C.F.R. § 1241.1(b) (noting that an order of removal becomes final "[u]pon waiver of appeal by the respondent"). Thus, the 90-day mandatory detention removal period for Mr. Alkhafaji expired on May 25, 2026. Accordingly, this Court must release Mr. Alkhafaji if he can show there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. He can.

First, Mr. Alkhafaji was granted withholding of removal and thus cannot be deported to Iraq. Exh. A at ¶ 3. Even if he could, the U.S. has been at war in the Middle East since February 28, 2026. *See* Center for Preventative Action, *Global*

Conflict Tracker: Iraq's War With Israel and the United States, Council on Foreign Relations (Mar. 13, 2026).[1] "The timeline for the duration of the war 'could change every day,'" according to White House aides and other sources. Gordon Lubold, *Escalate or exit? Military's menu of options for Trump's next move in Iraq war*, NBC News (March 16, 2026).[2]

While the war is ongoing, non-military flights are not entering or exiting Iraq and nearby countries, as depicted by a recent flight tracker:



See George Sandeman, *How passenger planes keep flying during a war*, BBC (Mar. 15, 2026).[3]

As a result, the government has been unable to deport people to Iraq, Iran, and Afghanistan. *See, e.g.*, *Zazai v. Noem*, No. 26-cv-841-BJC, ECF No. 9 (Mar. 10, 2026) (granting *Zadvydas* petition to Afghani national ordered removed on

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[1] Available at https://www.cfr.org/global-conflict-tracker/conflict/confrontation-between-united-states-and-Iraq

[2] Available at https://www.nbcnews.com/politics/national-security/trump-presented-daily-options-end-war-Iraq-hasnt-taken-far-rcna263399.

[3] Available at https://www.bbc.com/news/articles/cn4gne35kvno

October 9, 2025, because of Respondent concession that "under the 'current geopolitical situation facing the region, ICE is unable to currently remove Petitioner to Afghanistan'"); *Jasim*, 2026 WL 712825 at*4 (granting *Zadvydas* petition as to Iraqi national).

Because Mr. Alkhafaji has shown there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701, this Court should order Mr. Alkhafaji released.

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

Resolution of a prolonged-detention habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Petitioner hereby requests such a hearing on any material, disputed facts.

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 unless and until ICE obtains a travel document for his removal; and
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: June 18, 2026

/s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Email: Kara Hartzler@fd.org