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 Mr. Wang

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WAAD SALAM ALKHAFAJI,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, 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

Traverse in Support of Petition for Writ of Habeas Corpus

Mr. Alkhafaji agrees with Respondents that he is a citizen of Iraq who was granted deferral of removal to Iraq under the Convention Against Torture Act on February 24, 2026. ECF No. 20 at 2. Mr. Alkhafaji also agrees with Respondents that because Petitioner waived appeal, his 90-day removal period expired on May 24, 2026. ECF No. 20 at 2. Thus, nearly four months have passed since his order of removal.

But Respondents claim that Mr. Alkhafaji's removal is still significantly likely in the reasonably foreseeable future because ICE is "actively work[ing] to identify a third country to which Petitioner can be removed." ECF 20 at 2. There are three problems with this argument.

First, Respondents provide no evidence in support of this statement. Respondents have not submitted a declaration from a deportation officer or provided any paperwork or documentation of their efforts. Rather, Respondents' return simply asserts with no evidence that ICE is "actively working" to identify a third country. ECF 20 at 2, 4. These unsupported assertions carry little to no weight.

Second, Respondents admit that "ICE has not yet identified a third country for Petitioner's removal." ECF 20 at 4. If ICE has not identified a third country in the four months since Mr. Alkhafaji was ordered removed, there is little likelihood that it will do so in the next two months. And even if it did, it is unlikely that ICE would be able to 1) submit an internal request for a travel document to ICE headquarters, 2) have that request approved, 3) submit the request to the third country, 4) receive approval from the third country, and then 5) execute Mr. Alkhafaji's removal—all in two months. In other words, ICE's concession that it has not yet "identified a third country for Petitioner's removal" virtually guarantees that he will not be removed in the next two months.

Third, even if Respondents *had* already requested a travel document, this alone would be insufficient because good faith efforts to secure a travel document

do not themselves show a significant likelihood of removal in the reasonably foreseeable future under *Zadvydas v. Davis,* 533 U.S. 678, 682 (2001). In fact, the petitioner in *Zadvydas* appealed a Fifth Circuit holding that the petitioner's continued detention was lawful "as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." *Id.* at 702 (quotations and citations omitted). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Here, then, Respondents' mere statement that they are "actively working" to identify a third country is "insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011)

("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

In other words, Respondents are months—if not years—away from being able to physically remove Mr. Alkhafaji from the United States. They provide no evidence to show they are "actively working" to identify a third country, they admit they have not yet identified a third country, and even if they had, these "good faith" efforts are not enough. *Gilali,* 2019 WL 5191251, at *5. Accordingly, there is no significant likelihood of removal in the reasonably foreseeable future, and this Court should order Mr. Alkhafaji's immediate release.

Respectfully submitted,

Dated: June 22, 2026

s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Alkhafaji
Email: kara_hartzler@fd.org