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By ECF

Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Singh v. Maldonado, et al.*, No. 26-02438-EK

Dear Honorable Judge Komitee:

This Office represents Petitioner in this matter and writes in response to Respondents' Letter Brief, ECF No. 6 ("Opposition").

The Petitioner is a native of India who entered the United States in October 1991, and who was thereafter ordered removed on or about April 11, 1996, but who has remained in the United States since then. ECF No. 6-1, ¶¶ 3-4. Respondents incarcerated Petitioner on October 14, 2025, and he is under the direct control of Respondents and their agents. ECF No. 6-1, ¶ 8. The Petitioner has now been detained by Respondents for seven months (and counting).

This Court should order Petitioner's immediate release because his removal is not reasonably foreseeable and his continued detention violates Section 1231(a)(6) of Title 8 of the U.S. Code, and the Due Process Clause. In *Zadvydas v. Davis*, the Supreme Court determined that, to avoid serious constitutional questions, it must interpret Section 1231(a)(6) to authorize an individual's detention on a final order of removal only insofar as their deportation is significantly likely in the reasonably foreseeable future. *See* 533 U.S. 678, 699–700 (2001). To guide courts applying this decision, the Supreme Court set six months as a presumptively reasonable period of final-order detention, and established a burden-shifting test for courts to evaluate when statutory detention authority has ceased in a particular case. *See id.* at 701. After the six-month period lapses, a petitioner need not show that deportation will prove "impossible," nor do they need to establish "the absence of *any* prospect of removal—no matter how unlikely or unforeseeable." *Id.* at 702 (citation omitted) (emphasis in original). Instead, the detainee bears the initial burden to show a "good reason to believe" their removal is unlikely in the reasonably foreseeable future. *Id.* This is a relatively low threshold; in other contexts, the Second Circuit has held a "good reason to believe" standard involves "some reasonable likelihood," which is "more than a conceivable possibility" but not "certainty, or even the imminence of, an enumerated harm." *John Doe, Inc. v. Mukasey*, 549 F.3d 861, 875 (2d Cir. 2008).

Once demonstrated, the burden shifts to the government to rebut the petitioner's showing. *Zadvydas*, 533 U.S. at 701. If the government fails to do so, the court must order the individual's immediate release under conditions of supervision. *See id.* at 699–700; *see also Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (“Under *Zadvydas*, then, detention of an alien ‘once removal is no longer reasonably foreseeable’ not only violates [Section 1231], it also violates the Due Process Clause.”).

This structure certainly does not mean that only extremely prolonged periods of final-order detention violate Section 1231(a)(6); nor does it mean that a petitioner's detention must be “indefinite” to raise due process concerns. *See Zadvydas*, 533 U.S. at 701 (noting that “Congress had previously doubted the constitutionality of detention for more than six months”). As the Supreme Court emphasized in *Clark v. Martinez*, “*Zadvydas* did not hold that the statute authorizes detention until it approaches constitutional limits.” 543 U.S. 371, 384 (2005).

The Petitioner has satisfied his initial burden herein because Respondents are not actively seeking to remove him as evidenced by his continued detention. Indeed, Respondents are no closer to repatriating the Petitioner than when he was first taken into custody over seven months ago. This is demonstrated as follows:

1. ICE has interviewed Petitioner at least four times, and as recent as April 14, 2026, in an attempt to gather information to assist with the removal process. Petitioner provided all information that was requested of him, but from these interviews it has become abundantly clear that Respondents have not, and may never be able to, obtain travel documents which would allow Petitioner's travel to India. *See Verified Petition for Habeas Corpus*, ECF No. 1, ¶ 26.
2. Since his detention on October 14, 2025, Petitioner has been transferred to the following locations by Respondents: 26 Federal Plaza, New York, NY; Delaney Hall, Newark, NJ; Port Isabel, Texas; Winn Correctional Center, Louisiana; back to Delaney Hall, Newark, New Jersey; and finally, his present location at MDC Brooklyn. This convoluted travel history further supports the fact that Respondents have no real plan to effectuate his deportation from the United States. *See Verified Petition for Habeas Corpus*, ECF No. 1, ¶ 27.
3. The assertion by Respondents in ECF No. 6-1 that “ICE anticipates getting the travel documents for Petitioner on or about May 15, 2026” has proven inaccurate. *See Exhibit A*.

Based on the above, Petitioner has satisfied his burden to show a “good reason to believe” his removal is unlikely in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 702.

Respondents have set forth no reliable evidence to rebut Petitioner's showing of a good reason to believe his removal is not significantly likely in the reasonably foreseeable future. Once the petitioner satisfies his initial burden, *Zadvydas* imposes a significant rebuttal burden on the

government.¹ The Supreme Court held that a showing of continued “good faith efforts to effectuate deportation” alone does not meet this burden. *Zadvydas*, 533 U.S. at 702 (citation omitted). See also *Hassoun v. Sessions*, No. 18-CV-586, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (“[U]nder *Zadvydas*, the reasonableness of Petitioner’s detention does not turn on the degree of the government’s good faith efforts. . . . Rather, the reasonableness of Petitioner’s detention turns on whether and to what extent the government’s efforts are likely to bear fruit. Diligent efforts alone will not support continued detention.”).

One District Court has suggested the government could meet its burden if its evidence is “specific to [the petitioner’s] case” and supports a fixed timeline for removal. See *Senor v. Barr*, 401 F. Supp. 3d 420, 432 (W.D.N.Y. 2019). “Such evidence might include correspondence from [consular] officials indicating that they are moving swiftly to provide [the petitioner] with travel documents or explaining reasons for the delay that appear to be resolved or resolvable,” or a projected “date by which DHS reasonably expects” to repatriate the petitioner, but only if the government also “includ[es] the reasons behind and evidence supporting that expectation.” *Id.* (internal quotation marks and citation omitted). Other courts have found the government failed to rebut the petitioner’s burden when it had received no definitive answer to a request for travel documents from the target country after several months. See *Younes v. Lynch*, No. 16-CV-13556, 2016 WL 6679830, at *3 (E.D. Mich. Nov. 14, 2016) (finding government did not meet burden when, after eight months’ detention, “[d]espite diligent efforts by the ICE deportation officer, the government has not been able to furnish any evidence that the government of Lebanon will issue travel documents in the discernable future”); *Azad v. Interim Dist. Dir., N. Y. Immigration & Customs Enf’t*, No. 09-CV-2451, 2009 WL 2569132, at *2–3 (S.D.N.Y. Aug. 19, 2009) (finding government did not meet burden when, after twelve months’ detention, it could only report the consulate “was awaiting confirmation of the information provided in the travel document request,” even after the consulate had interviewed the petitioner); *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash 2006) (finding government did not meet burden when, after eight months’ detention, it could only report the petitioner’s travel document request was “still under review and pending a decision” at the consulate); *Kacanik v. Elwood*, No. CIV.A. 02–8019, 2002 WL 31520362, at *3–4 (E.D. Pa. Nov. 8, 2002) (finding government did not meet burden when, after twelve months’ detention, a country “ha[d] been unable to tell the INS when a decision will be reached” and “ha[d] never offered any reason why obtaining travel papers in this case has taken longer than normal”). Indeed, even where the government has indicated a proposed timeline, courts have found the assertion insufficient when unsupported. See *Hashi v. Chertoff*, 535 F. Supp. 2d 1125, 1128 (S.D. Cal. 2008) (finding government did not meet its burden when the petitioner

¹ In establishing the *Zadvydas* test, the Supreme Court discussed at length cases implicating civil confinement where detainees enjoy “strong procedural protections” and the government bears a high burden of justifying detention. See 533 U.S. at 690–92 (citing *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (upholding a statutory scheme that imposed civil detention only upon “a small segment of particularly dangerous individuals” and that provided “strict procedural safeguards”); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (striking down a civil confinement law that placed the burden on the detainee rather than the state); *United States v. Salerno*, 481 U.S. 739, 747, 750–52 (1987) (upholding criminal pretrial detention but stressing both “stringent time limitations,” and the requirement that the state carry the burden of establishing dangerousness by clear and convincing evidence)).

had been detained eleven months and the government provided a declaration that “ICE is presently arranging the details of [the petitioner’s] removal for the purpose of effecting his removal within thirty days” but did not “submit evidence to demonstrate that they have been actively and diligently pursuing possible repatriation of Petitioner” (internal quotation marks omitted)).

Callender v. Shanahan, 281 F. Supp. 3d 428 (S.D.N.Y. 2017), relied upon by Respondents in its papers, *see* ECF 6, is entirely distinguishable:

1. There, the post-removal order delays were of the detainee’s own making, as a result of his continued litigation of his immigration court case. *See Callender*, 281 F. Supp. 3d at 436 (“[T]here is substantial evidence that petitioner can and will be removed as soon as his pending immigration proceedings—all of them filed by petitioner himself—are resolved.”); *Id.* at 437 (“In this case, as in *Agoro*, the issuance of the travel documents required for removal has been delayed only by the pendency of petitioner’s many challenges to the order of removal against him.”). No such litigation delay initiated by the Petitioner is causing similar delays here.
2. Furthermore, the Consulate in *Callender* “acknowledged that [the petitioner] is a citizen of that country, has shown no unwillingness to repatriate him, and has cooperated with ICE regarding the removal. . . . Moreover, the Consulate has repeatedly assured ICE that it will issue a travel document once Callender’s immigration proceedings are resolved . . . and recently confirmed its willingness to do so in writing.” *Callender*, 281 F. Supp. 3d at 436-37. Once again, no similar evidence is part of this case’s record.

The Petitioner has satisfied his initial burden under *Zadvydas* and Respondents have offered no evidence at all demonstrating that the Petitioner’s removal is reasonably foreseeable. Therefore, this Court should order immediate release as the appropriate remedy, with any safeguards that the Court finds appropriate.

Respectfully submitted,

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