

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

Hayatullah ZAHID,

Petitioner,

v.

Angel Garite, Warden, El Paso
Service Processing Center; U.S. Department of
Homeland Security; Pamela BONDI, U.S.
Attorney General; Kristi NOEM, Secretary, U.S.
U.S. Department of Homeland Security; Joel
Garcia, Director of El Paso Field
Office, U.S. Immigration and Customs
Enforcement, in their official capacities,

Respondents.

Case No. 25-563

PETITION FOR WRIT OF HABEAS CORPUS

CUSTODY

1. Petitioner Hayatullah Zahid ("Mr. Zahid") is currently detained by the United States Immigration and Customs Enforcement (ICE) at the El Paso Processing Center in Texas, located within the Western District of Texas. He has been detained there since entering the United States on February 28, 2024.
2. Mr. Zahid files this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his continued immigration detention, which violates the United States Constitution, federal statutes, and applicable case law.

JURISDICTION

3. Mr. Zahid has been detained in civil immigration custody at the El Paso Processing Center in Texas, located within the Western District of Texas, since February 28, 2024.
4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*
5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
6. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), (f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged immigration detention).

VENUE

7. Venue is proper in this District under 28 U.S.C. § 2241 because Mr. Zahid is detained in El Paso, Texas, which is within the jurisdiction of this District.
8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e), because Respondents are officers, employees, or agencies of the United States.

PARTIES

9. Petitioner Zahid, a native and citizen of Afghanistan, was ordered removed following proceedings under INA § 240 (8 U.S.C. § 1229). He has been detained and incarcerated since February 28, 2024, over 20 months ago. On November 18, 2024, an immigration judge (IJ) issued an order of removal against Mr. Zahid. Mr. Zahid appealed, and, on April 29, 2025, the

Board of Immigration Appeals (BIA) affirmed the IJ's removal order and entered an administratively final order of removal as of that date. Mr. Zahid is currently detained at the El Paso Processing Center in Texas, located within the Western District of Texas. He is under the custody and direct control of Respondents and their agents.

10. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Mr. Zahid's detention. Respondent Noem is empowered to carry out any administrative order against Mr. Zahid and is a legal custodian of Mr. Zahid.
11. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA. DHS oversees ICE and the detention of noncitizens. DHS is a legal custodian of Mr. Zahid.
12. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and oversees the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.
13. Respondent Joel Garcia is sued in his official capacity as the Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, 11541 Montana Avenue, Suite O, El Paso, Texas. Respondent Joel Garcia is a legal custodian of Mr. Zahid and has authority to release him.
14. Respondent Angel Garite is the Warden of El Paso Detention Center, and he has immediate physical custody of Mr. Zahid pursuant to a contract with ICE to detain noncitizens and is a legal custodian of Mr. Zahid.

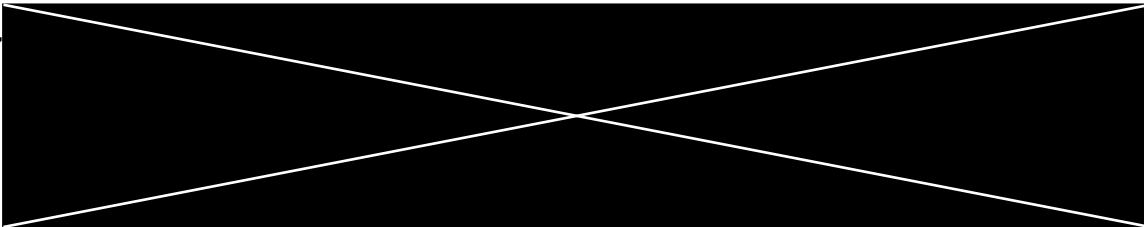
EXHAUSTION OF ADMINISTRATIVE REMEDIES

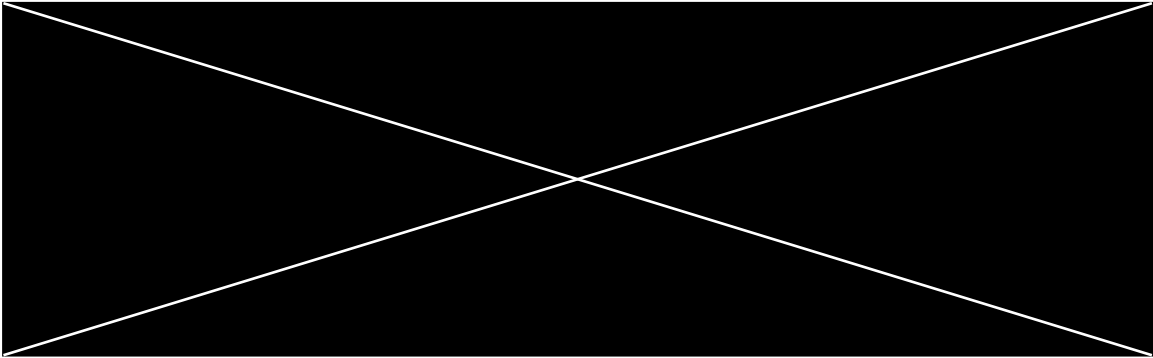
15. Mr. Zahid has exhausted his administrative remedies to the extent required by law.
16. Mr. Zahid was not eligible for a bond hearing during the course of his removal proceedings under INA § 240 (8 U.S.C. §1229) due to his designation by the government at entry as an “arriving alien” and he is presently not eligible for custody redetermination by the Executive Office for Immigration Review post order of removal. Petitioner had already sought and was denied parole under the authority of the Department of Homeland Security.
17. He has fully cooperated with Respondents and has not delayed or obstructed his detention.
18. Mr. Zahid’s only remedy is by way of this judicial action.

STATEMENT OF FACTS

19. Mr. Zahid is a 35-year-old citizen of Afghanistan. He has a wife and three young daughters. He arrived in the United States on February 28, 2024, and filed for asylum under INA § 208, 8 U.S.C. § 1158; withholding of removal pursuant to INA § 241(b)(3); 8 U.S.C § 1231(b)(3) and withholding under the Convention Against Torture (“CAT”). He has been held in custody since February 2024 - over twenty months.
20. The basis of Mr. Zahid’s claims arose out of his work on behalf of the Islamic Republic of Afghanistan, the free and democratically elected Republic that was in power before the Taliban forcibly deposed it. Mr. Zahid worked in the Ministry of Education where he was charged with providing girls with equal access to education and at all times acted as a proponent of equal education for girls.

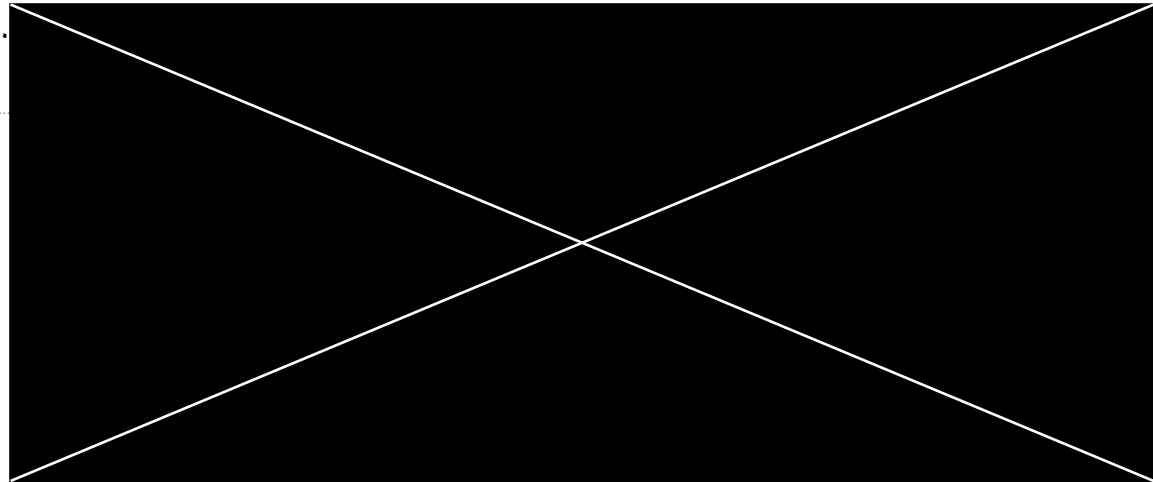
21.





Mr. Zahid did not collect any information for the Taliban or take any action for Taliban officials outside of the normal course of his civil service function. Mr. Zahid did not know what the Taliban would do with the information he provided in this capacity.

22.



23. As a result of his actions, Mr. Zahid was arrested and taken into custody, where he was repeatedly interrogated, threatened and beaten. 



24. Ultimately, Mr. Zahid was released due to the intervention of a group of local leaders, who warned him to flee the country because his life was in danger.

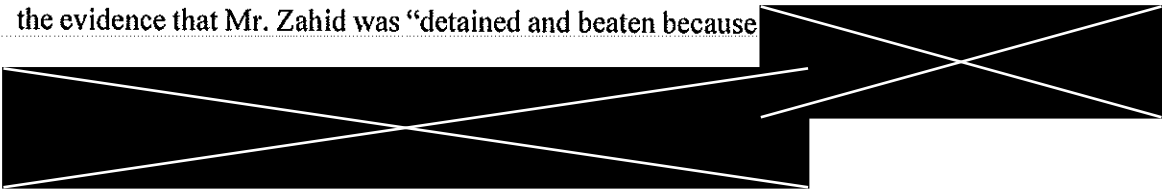
25. Mr. Zahid had to seek months of medical treatment for the injuries he sustained 



26. As a result of threats and the risk of additional persecution, on October 10, 2023, he fled Afghanistan, and on February 29, 2024, he arrived in the United States where he has been detained in El Paso ever since.

27. On October 22, 2024, the Immigration Judge (IJ) held an individual hearing on the merits of Mr. Zahid's case and issued an opinion on November 18, 2024. The IJ found Mr. Zahid to be a credible witness and met the corroboration requirements of the Real ID Act for applications of asylum and withholding of removal. Mr. Zahid also passed all security clearances.

28. In the Court's decision, the IJ held that Mr. Zahid suffered past persecution and that this persecution was the result of his "political opinion involving women's rights." The IJ relied on the evidence that Mr. Zahid was "detained and beaten because



29. The IJ concluded that Mr. Zahid "would have been eligible for asylum based upon this past persecution on account of his political opinion (women's rights in Afghanistan) but is otherwise disqualified because of his material support to the Taliban." The disqualification arises under a rule – known as the terrorist-related inadmissibility grounds rule ("TRIG") – that provides that an asylum seeker who provides "material support" to a terrorist organization may be banned from obtaining asylum unless he or she obtains a waiver of TRIG that only the U.S. Citizenship and Immigration Services (USCIS) has authority to provide.

30. Courts that have addressed what constitutes "material support" giving rise to a potential TRIG ban have provided an expansive reading of what constitutes "material support." Thus, victims of persecution who are forced to provide any type of support to certain persecutors may be subject to this bar, regardless of the duress or abuse they faced, including all manners of even

unintentional “support.” *See, e.g., Matter of A-C-M-*, 27 I&N Dec. 303 (BIA 2018) (finding that asylum applicant who was forced to clean for guerrilla terrorist organization under threat of death after watching them murder her husband had provided “material support” under the restrictive interpretation of the law).

31. In that instance, waivers of the TRIG ban must be adjudicated exclusively by USCIS. The United States itself has issued policy guidance recognizing the importance of granting these exemptions to former Afghan civil servants who worked to promote a free society and worked with American allies, similar to Mr. Zahid. *See*, USCIS Policy Memorandum, 602-0189, Implementation of the Discretionary Exemption Authority Under Immigration and Nationality Act (INA) § 212(d)(3)(B)(i) for Afghan Civil Servants, August 20, 2022, *available at* <https://www.uscis.gov/sites/default/files/document/policy-manual/Afghan-Civil-Servants-PM-602-0189.pdf>.
32. In this case, the IJ determined that it could not grant asylum because of the role that Mr. Zahid, as an Afghan civil servant, was forced to play when he turned over existing documents to the Taliban – the governing entity. The IJ ruled, as set forth above, that USCIS had exclusive authority to determine whether Mr. Zahid was entitled to an exemption to TRIG as a former Afghan civil servant. The IJ also rejected Mr. Zahid’s CAT claim despite the Taliban’s clear record of torturing its opponents. The TRIG bar does not apply to CAT.
33. It is undisputed that Mr. Zahid did not engage in planning terrorist activities, participate in efforts to cause injury or death, gather information on particular targets for a terrorist activity, provide weapons or financial assistance, or participate in the many other horrific crimes and terrorist activities. Nor did the IJ or Justice Department dispute any of the work that Mr. Zahid

did on behalf of the prior Democratic Republic or on behalf of promoting girls' education and other western values.

PROCEDURAL HISTORY

34. Mr. Zahid thereafter sought a number of avenues of legal relief from the IJ's order. First, on December 10, 2024, Mr. Zahid submitted a motion to reconsider challenging the IJ's decision on both the asylum and CAT claims. The IJ issued a summary Order on December 12, 2024, denying the motion. Then, on December 17, 2024, Mr. Zahid appealed to the BIA. In his brief on appeal, filed February 26, 2025, he disputed the IJ's finding on CAT, raising the fact of his past persecution along with the other overwhelming evidence that showed a likelihood of torture.

35. On February 22, 2025, Mr. Zahid also filed a motion to remand for CAT deferral based on the newly discovered evidence that the Taliban was continuing to threaten Mr. Zahid for his role in the prior government [REDACTED]. On February 26, 2025, along with his brief on appeal, Mr. Zahid provided a supplemental submission of the additional evidence in support of his Motion to Remand [REDACTED]

36. On April 29, 2025, the BIA rejected Mr. Zahid's claims and affirmed the IJ's decision. (Exhibit F). On May 29, 2025, Mr. Zahid filed a petition to review the BIA's decision in this Court. He also filed a Motion to Reconsider with the BIA its denial of the motion to reconsider based on newly discovered evidence. Mr. Zahid also submitted a motion to stay removal while the appeal process moved forward in the Fifth Circuit. By order dated July 28, 2025, this Court granted the Stay of Removal.

37. On August 28, 2025, the BIA denied Mr. Zahid's motion to reconsider based on newly discovered evidence. On September 25, 2025, Mr. Zahid filed a petition to review this denial of motion to reconsider. On October 21, 2025, the Fifth Circuit consolidated the BIA's denial of Mr. Zahid's motion to reconsider and the pending Petition for Review.
38. While Appellees were initially required to file their opposition brief to the petition for review in September 29, 2025, they requested an extension to submit their opposition brief until October 27, 2025. Since then, the proceedings have been stayed due to the government shutdown, and Appellees have still not filed their opposition brief.
39. As for the adjudication of the asylum claim and TRIG, both the IJ and BIA affirmed that USCIS retained exclusive jurisdiction to address whether Mr. Zahid's asylum claim should prevail over the TRIG rule. Mr. Zahid thereafter requested, through the government, an exemption to this TRIG ban on his claim. Importantly, the August 10, 2022 Policy Guidance recognized that many, like Mr. Zahid, acted under duress and at great risk to himself, providing essential services to continue the functioning of the government, and sought to use their positions to mitigate the impact of the Taliban's repressive actions. Under different policy demands of this Administration, USCIS no longer appears to be abiding by the interests underlying the Policy Memorandum relating to Afghan civil servants. As such, despite USCIS' policy prior and facts supporting waiver, Mr. Zahid was denied the TRIG exemption in a USCIS decision dated September 1, 2025.
40. There is no basis to appeal or challenge USCIS's determination, although it is clear that Mr. Zahid never performed any action to further Taliban interests and his work transitioning the Department of Education was pursued in the public interest of protecting girls' access to records and promoting education for all. The USCIS's determination highlights the renewed

importance of Mr. Zahid's CAT appeal. As noted by the IJ's holding of past persecution, there is no dispute that he has already suffered all sorts of abuse and persecution, and is likely to be tortured if returned - a claim elaborated more below.

ONGOING HARDSHIP

41. Mr. Zahid has endured significant hardships during the period he has been detained and the conditions of his detention are poor. In May 2025, Amnesty International published a report about conditions at the El Paso Service Processing Center entitled, "Dehumanized by Design: Human Rights Violations in El Paso" (**Exhibit A**). In August 2025, Mr. Zahid became ill and was hospitalized with pneumonia for approximately one week (**Exhibits B and C**).
42. Mr. Zahid has and will continue to face delays in the adjudication of his Fifth Circuit appeal. As set forth above, Respondents sought, and the Fifth Circuit granted an extension of time to submit its opposition brief, resulting in a delay in the entire briefing schedule. The resolution of the appeal is likely to take many more months if not years.
43. Mr. Zahid is facing new difficulties communicating with counsel, as well as getting information about the status of his detention, apparently because of, or coinciding with, the government shutdown.
44. Mr. Zahid has community ties in the United States. His cousin Amin Jan Abrahimi, a United States Citizen, is prepared to cover Mr. Zahid's living expenses in the event Mr. Zahid is released from custody (**Exhibit D**). His friend Ajmal Weyar is prepared to receive Mr. Zahid at his home in the event he is released from custody (**Exhibit E**).
45. Over the last 20 months, while Mr. Zahid litigated his asylum and convention against torture claims and raised these various challenges, he has been held in detention.

46. Mr. Zahid has at all times cooperated with Respondents. He is not a flight risk or a danger to the community. He has never committed any kind of crime. There is no dispute that Mr. Zahid does not constitute a threat to security. At the hearing, the Department's counsel indicated that Mr. Zahid's clearances are complete, and he has undergone all relevant background and security checks.
47. His prolonged detention is not justified and violates the Constitution and Immigration and Nationality Act (INA).

LEGAL FRAMEWORK

I. PETITIONER'S CONTINUED DETENTION IS UNLAWFULLY PROLONGED

48. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents to establish that Mr. Zahid is not entitled to relief. "The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. §2243.
49. The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 692-93 (2001) has held that unjustified, indefinite detention of noncitizens violates the Fifth Amendment's guarantee that no person shall be deprived of liberty without due process of the law. 533 U.S. 678, 692-93 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Supreme Court recognized that this protection extends to noncitizens who have been ordered removed from the United States and who face continuing detention. *Zadvydas*, 533 U.S. at 690.

50. The Court's ruling in *Zadvydas* is rooted in the due process requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (*quoting Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In support of these protections, a noncitizen awaiting removal has a fundamental interest in his "physical liberty that warrants 'strong procedural protections.'" *Id.*
51. Because this question is fundamentally about what constitutes unreasonable indefinite detentions, the Supreme Court recognized that a six-month period of detention is presumed to be reasonable after which time "aliens subject to final removal orders should either be removed, or given bail consideration." *Zadvydas v. Davis*, 533 U.S. at 701.
52. While the Supreme Court's decision in *Zadvydas* did not address the question where proceedings were not yet final, numerous courts have extended the due process protections of noncitizens subject to indefinite detentions to both final removable noncitizens and those still in removal proceedings.
53. In applying Supreme Court precedent, the Southern District of Texas in *N.Z.M. v. Wolf* recognized that detention of noncitizens beyond one year who are in pre-removal detention and not yet subject to final removal orders may constitute a violation of the Due Process Clause's prohibition on unreasonable detentions, requiring release or an individualized bond hearing. *N.Z.M. v. Wolf*, No. 2020 U.S. Dist. LEXIS 93387 at *6.
54. 8 U.S.C. §1231(a)(1)(B) sets forth the standards for when a removal period begins. Under that provision, the removal period begins on the later of the following: (i) the date the removal order becomes administratively final; or (ii) if the removal order is judicially reviewed and a

court stays the removal order, the date of the court's final order. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).

55. In the context of Mr. Zahid's case, the Court must consider whether the phrase "the court's final order" refers to the final order of the BIA issued here on April 29, 2025, or a final order to be issued by the Fifth Circuit on Mr. Zahid's petition for review. The Fifth Circuit has not issued clarification on the applicable language and standard where, as in Mr. Zahid's case, Petitioner has been detained for at least 90 days following an IJ's final order without removal, and that petitioner proceeds on a petition for review of a CAT claim once those 90 days have been accrued *C.f. Cabrera-Arucha v. Mukasey*, 1, 2 (W.D. Tex. 2008) LEXIS 60891 (considering criminal bar); *Brudy v. Gillis*, 1, 3 (2021 U.S. Dist. LEXIS 256395) (finding no final order where petition for review was actually granted). Notably, even when an IJ grants CAT protection, the IJ issues a removal order, as Mr. Zahid has already been issued and the BIA has already affirmed. *See* 8 C.F.R. § 1241.1.
56. Here, the Court should first consider Mr. Zahid's detention pursuant to 8 U.S.C. § 1231(a)(6) because he was detained for at least 90 days following the BIA's decision making his order final. *See Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). The 90-day removal period began for Mr. Zahid on April 29, 2025, when the BIA affirmed the IJ's removal order denying asylum and CAT protections. **(Exhibit F)**. Therefore, the *Zadvydas* framework applies to Mr. Zahid's detention, and he has been detained for more than six months since his removal order was final.
57. For purposes of tolling the six months on a final administrative order, although the Fifth Circuit issued a stay of the BIA's Order subject to Mr. Zahid's petition for review, Mr. Zahid's petition has been limited to CAT protections only. While Mr. Zahid's removal from the United States

was properly stayed on July 28, 2025, given the grave danger to his life and irreparable harm posed by wrongful removal, such stay does not foreclose the finality of Mr. Zahid's underlying removal order because his underlying petition is limited to CAT eligibility—a form of relief which requires entering a final order of removal. Thus, this Court should consider Mr. Zahid's petition pursuant to the 8 U.S.C. § 1231(a)(6) framework under *Zadvydas*. As such, Mr. Zahid has been detained more than the six months presumed unconstitutional for final administrative orders under *Zadvydas*.

58. Furthermore, given the Government's own request for an extension to oppose Mr. Zahid's original petition for review, many more months are likely to pass while Mr. Zahid sits in detention, making it so that his removal is not reasonably foreseeable under *Zadvydas*. There is certainly a risk of indefinite detention in his case.

59. Therefore, Mr. Zahid is entitled to release pursuant to *Zadvydas* because (1) he was not removed during the 90-day-window after the BIA denied his asylum and CAT claims; (2) he has been detained for more than six months since receiving a final removal order, and (3) his removal is not reasonably foreseeable because he cannot be deported due to his pending petition for review, stay of removal, and potential for relief under CAT.

60. Even if this Court finds that because of his stay of removal, Mr. Zahid's removal period has not sufficiently accrued and he is detained pursuant to 8 USC § 1225(b), Mr. Zahid has still demonstrated that his continued detention constitutes a violation of the due process clause under the United States Constitution, Circuit Court precedent, and *Zadvydas* principles which recognize that due process protections apply to noncitizens who are still in removal proceedings, not yet subject to a final removal order.

61. When addressing the constitutionality of detention pending removal proceedings, courts consider the following: (1) the length of time Petitioner has already been detained; (2) whether Petitioner is responsible for the delay; and (3) whether Petitioner has asserted defenses to removal." *L.N.*, 5:18-MC-932, No. 32, at *21 (quoting *Perez v. Decker*, 2018 U.S. Dist. LEXIS 141768, 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018)).
62. In *N.Z.M. v. Wolf*, the Southern District of Texas rebuked Respondents' contention that arriving aliens may be detained indefinitely, rather finding "the same concerns that animate the decision in *Zadvydas* apply to detained asylum seekers like Petitioner. . . Petitioner has a fundamental interest in [his] physical liberty that warrants strong procedural protections." *N.Z.M. v. Wolf*, 1, 5, 2020 (S.D. Tex. 2020) (quoting *L.N.*, 5:18-MC-932, No. 32, at *21). There, the Court agreed with "the weight of authority that arriving aliens subjected to unreasonably prolonged and unnecessary detention have a due process right to be released from custody." See e.g. *Tuser E. v. Rodriguez*, 370 F. Supp.3d 435, 442 (D.N.J. 2019) (20-month detention violated due process); *Wang v. Brophy*, 2019 U.S. Dist. LEXIS 1826, 2019 WL 112346, at *3 (W.D.N.Y. Jan. 4, 2019) (two-year detention was "unreasonable in violation of the Due Process Clause"); *Jamal A. v. Whitaker*, 358 F. Supp.3d 853, 859 (D. Minn. 2019) (19-month detention without bond hearing violated due process); *Lett v. Decker*, 346 F. Supp.3d 379, 387-88 (S.D.N.Y. Oct. 10, 2018) (10-month detention where delay was attributable to IJ violated due process); *Ahad v. Lowe*, 235 F. Supp.3d 676, 686-88 (M.D. Pa. 2017) (20-month detention "whose on-going duration is unknown" violated due process); *Maldonado v. Macias*, 150 F. Supp.3d 788, 811 (W.D. Tex. 2015) (26-month detention without bond hearing violated due process).

63. In the context of non-final removal orders, none of the above cases requires a petitioner to show that their claim will ultimately prevail. *See, e.g., Chavez-Alvarez v. Warden York County Prison*, 783 F.3d at 476 (noting that petitioner’s good faith challenges in proceedings and appeal, regardless of merit, were legitimately raised and could not serve as basis to “effectively punish” an alien for choosing to exercise legal challenges); *Sajous v. Decker*, 2018 U.S. Dist. LEXIS 86921 at *11 (S.D.N.Y. May 23, 2018)(“The Court need not inquire into the strength of the defenses—it is sufficient to note their existence and the resulting possibility that the Petitioner will ultimately not be removed, which diminishes the ultimate purpose of detaining the Petitioner pending a final determination as to whether he is removable.”).
64. Applying these standards, Mr. Zahid’s detention of over 20 months is presumed unreasonable and violates the Constitution’s protections against depriving any person of liberty without due process of the law. Mr. Zahid’s categorization at entry as an “arriving alien” does not preclude him from due process protections. *N.Z.M. v. Wolf*, 1, 5, 2020 (S.D. Tex. 2020).
65. There is no significant likelihood that Mr. Zahid will be removed in the reasonably foreseeable future. The Order to Stay removal applies while the appeal of Mr. Zahid’s CAT claim is adjudicated in the Fifth Circuit Court of Appeals. While Mr. Zahid submitted his brief on appeal on July 27, 2025, Respondent requested an extension to respond, causing more months of delay and detention. This Court has since entered a briefing schedule, consolidating the appeal with Mr. Zahid’s petition to review the denial of reconsideration of newly discovered evidence. The briefing schedule contemplated that Respondents would file their opposition on October 27, 2025, and Mr. Zahid would reply. However, due to the government shutdown, the proceedings were stayed. It could take many more months after that time for the Fifth Circuit

to issue a decision on both appeals, and the timeline has been exacerbated by the government shutdown.

66. Mr. Zahid is not responsible for the delay, and his good faith challenges to various IJ and BIA determinations do not serve as the basis for denying this habeas corpus request. In particular, a petitioner is not required to show that his or her claim will ultimately prevail. A petitioner need only raise a good faith challenge in proceedings or appeals, regardless of merit, and cannot be punished for choosing to exercise legal challenges. *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d at 476 (noting that petitioner's good faith challenges in proceedings and appeal, regardless of merit, were legitimately raised and could not serve as basis to "effectively punish" an alien for choosing to exercise legal challenges); *Sajous v. Decker*, 2018 U.S. Dist. LEXIS 86921 at *11 (S.D.N.Y. May 23, 2018) ("The Court need not inquire into the strength of the defenses—it is sufficient to note their existence and the resulting possibility that the Petitioner will ultimately not be removed, which diminishes the ultimate purpose of detaining the Petitioner pending a final determination as to whether he is removable.").
67. In this case, the outstanding good faith challenge relates to the denial of Mr. Zahid's CAT claim. Among other things, the IJ and BIA failed to apply the appropriate legal standard for CAT. In brief, 8 C.F.R. § 1208.16(c)(3) mandates that "*all evidence relevant to the possibility of future torture shall be considered*," including, but not limited to: (i) evidence of past torture; (ii) evidence that the applicant cannot relocate to any part of the country; (iii) evidence of gross, flagrant or mass violations of human rights within the country; and (iv) any other relevant information regarding country conditions. This also includes consideration of the "the aggregate risk" faced by an applicant. *Matter of J-R-G-P-*, 27 I. & N. Dec. 482, 484 (BIA 2018); *Guerra v. Barr*, 974 F.3d 909, 951 F.3d 1128 (9th Cir. 2020). The IJ and BIA do not

have discretion or authority to simply disregard the factors to be considered in 8 C.F.R. §1208.16(c).

68. On appeal, Mr. Zahid challenges the failure to consider or address any of the following evidence as required under these standards: (1) past torture, specifically recognized in the IJ's finding of past persecution, as required under 8 C.F.R. § 1208.16(c)(3)(i); (2) any of the numerous human rights reports documenting undeniable patterns and practices of torture for those, like Mr. Zahid, who had a role in the prior government, [REDACTED] [REDACTED] or have engaged in human and civil rights activities under 8 C.F.R. § 1208.16(c)(3)(iii); and (3) the substantial NEW and relevant evidence providing further support [REDACTED] under 8 C.F.R. § 1208.16(c)(3)(iv). In granting the stay of removal, this Court recognized the potential merit in these claims. Thus, Mr. Zahid amply satisfies the requirement that he has raised good faith challenges to the underlying decisions.

69. The government, in responding to habeas corpus claims, must show by contrast a legitimate interest in detaining petitioner for an extended period without affording petitioner with the opportunity to address whether he “poses a flight risk or a danger to the community” at a bond hearing. *N.Z.M. v. Wolf*, No. 5:20-CV-24, 2020 U.S. Dist. LEXIS 93387 at *5. In determining whether continued detention is warranted under indefinite detention situations, the ultimate goal is to further the purpose of removal proceedings, to ensure that a noncitizen will show up at detention proceedings and to protect the public from any danger posed by a noncitizen. *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 475 (3d Cir. 2015)(recognizing that even in the context of aliens convicted of crimes, “[t]he primary point of reference for justifying the alien’s confinement must be whether detention is necessary to achieve the

statute's goals: ensuring participating in the removal process, and protecting the community from the danger he or she poses."").

70. The Government bears the burden of proving by "clear and convincing evidence" that the noncitizen poses a risk of flight or danger to the community. *Anariba v. Shanahan*, 2017 U.S. Dist. LEXIS 117032 at *11 (S.D.N.Y. July 26, 2017) ("It is particularly important that the Government be held to the 'clear and convincing' burden of proof in the immigration detention context because civil removal proceedings, unlike criminal proceedings, 'are nonpunitive in purpose and effect.'").
71. The government cannot show any legitimate reason why Mr. Zahid will pose a flight risk or threat to security warranting further indefinite detention in violation of his constitutional rights. Mr. Zahid always acted as an ally to the United States in his role as a civil servant advocating for the rights of young women in Afghanistan. His work, alongside the United States and other Western organizations and NGOs, establishes that he is in fact and has always been an ally to the United States, not a security threat.
72. The IJ recognized that Mr. Zahid's testimony was credible and that he met the corroboration standards of the Real ID Act. Mr. Zahid passed all required security clearances as part of this process, and there is no dispute that Mr. Zahid does not constitute a threat to security. At the hearing, the Department's counsel indicated that Mr. Zahid's clearances are complete, and he has undergone all relevant background and security checks.
73. He has never committed a crime, and has no reason to seek to delay or flee. Mr. Zahid has friends in the United States who have vouched for his financial support, and he has no reason to pose a flight risk as his appeal on this CAT claim proceeds through the Fifth Circuit Court of Appeals.

74. Mr. Zahid has been detained now for over 20 months without justification and is likely to face many more months as the appeal process plays out. His physical and mental health have deteriorated while in detention.

75. For the foregoing reasons, Mr. Zahid meets the requirements warranting release from detention. The District Court for the Western District of Texas has the authority to determine the appropriate habeas remedy, including its own authority to grant a release from custody and set appropriate bail.

CLAIMS FOR RELIEF

COUNT 1

Violation of 8 U.S.C. § 1231(a)

76. Mr. Zahid re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

77. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention “beyond the removal period” only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 (“[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”). Because Mr. Zahid’s removal is not reasonably foreseeable, his detention does not effectuate the purpose of the statute and is accordingly not authorized by § 1231(a).

78. Mr. Zahid’s detention also exceeds the permissible limits of 8 U.S.C. §§ 1231(a)(6) or 1226(c) as interpreted by the courts and is therefore unlawful.

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution

79. Mr. Zahid re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.
80. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. at 690- 691; *Guerrero-Sanchez*, 905 F.3d at 225; *Diop v. ICE*, 656 F.3d 221, 233–234 (3d Cir. 2011); *N.Z.M. v. Wolf*, No. 5:20-CV-24, 2020 U.S. Dist. LEXIS 93387 at *5.
81. Mr. Zahid is neither a danger nor a flight risk. The detention of Mr. Zahid for over six months after his order of removal, and for over 20 months in aggregate, is arbitrary and violates procedural and substantive due process. This analysis applies notwithstanding Mr. Zahid’s categorization as an arriving alien, and whether the Court may consider his detention under 8 U.S.C. § 1225(b).
82. Because Mr. Zahid’s detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, his continued detention, at minimum without a review of his custody determination, is unlawful.
83. Furthermore, because Mr. Zahid’s health has declined in the more than 20 months he has been detained, his continued detention also violates substantive due process. **(Exhibits B and C)**. Substantive due process precludes a state actor from affirmatively acting to create or enhance a danger that will ultimately harm an individual. *See Butera v. D.C.*, 235 F.3d 637, 649–51 (D.C. Cir. 2001) (citing cases). The State “owes a duty of protection when its agents create or increase the danger to an individual.” *Id.*; *see also Paine v. Cason*, 678 F.3d 500, 510 (7th Cir. 2012) (due process was violated where police officers left detainee in a more dangerous

neighborhood, away from public transportation and without a cell phone); *Wang v. Reno*, 81 F.3d 808, 817 (9th Cir. 1996) (noncitizen could not be removed to China after the U.S. government convinced him to testify about a topic that would lead the Chinese government to torture and possibly execute him).

84. The Court is urged to consider the Supreme Court's binding precedent from *Boumediene v. Bush*, holding that adjudicators must consider granting release to noncitizens pending a common law trial or other legitimate government action. 553 U.S. at 734. In this seminal holding, the Supreme Court found that even where noncitizens are labeled "enemy combatants" arrested for war crimes, the great writ of habeas corpus shall not be suspended. *Id.* at 746. Here, Mr. Zahid is being penalized twice for his Civil Service in Afghanistan, facing torture in his home country, and thus far, unrelenting detention in the United States; however, he is far from an enemy combatant. He has been detained for more than 20 months, thus far without recourse for redetermination of his custody. For the foregoing reasons, his case warrants urgent remedy.

PRAYER FOR RELIEF

Wherefore, Mr. Zahid respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Declare that Mr. Zahid's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a), or alternatively 8 U.S.C. § 1225(b);
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Mr. Zahid immediately on his own recognizance or under parole, a low bond, or reasonable conditions of supervision;

- (4) Award Mr. Zahid attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;
- (5) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Date: November 18, 2025



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