FILED
MAR 06 2026
Clerk, U.S. District Court
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DANIEL KHUNGBIK,
Pro Se, Petitioner

V.

CRYSTAL ACRTER, AARON J. WENDLER
TODD LYONS, PAM BONDI
and KRISTI NOEM,
Respondents.

Case No. 5:26-cv-03016-JWL

TRVERSE TO RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS

Petitioner, proceeding Pro Se, submits this Traverse in reply to Respondents' Return/Answer. Petitioner remains detained by ICE since June 23, 2025, now approximately eight (8) months. This is Petitioner's second ICE detention following a prior failed attempt to remove him to Burma/Myanmar in 2021, during which the Government also could not secure travel documents and did not remove him. Despite Petitioner's full cooperation, Respondents still admit that no travel document has been received and no removal date has been scheduled. Continued detention is therefore unlawful under Zadvydas v. Davis and controlling District of Kansas authority.

I. RELEVANT BACKGROUND (SUMMARY OF THE RECORD)

1. Second Detention; Prior Failed Removal Attempt

Petitioner was previously detained in ~~2001~~ 2021 while ICE attempted removal to Burma/Myanmar, but that attempt failed and Petitioner was released. The Government is again pursuing removal to the same country (Burma/Myanmar) with no showing of materially changed circumstances since the prior failure.

2. Current Detention Length

ICE detained Petitioner again on June 23, 2025. As of Respondents' filing dated Feb 17, 2025, detention already exceeded six months by a wide margin; by the time of this Traverse, detention is about eight months.

3. Travel Document Interview and "30-day" Claim

Respondents rely primarily on a January 13, 2026 virtual interview with Myanmar embassy personal and a statement that the "travel document request will be sent to headquarters for fulfillment," which Respondents assert "generally means" issuance is forthcoming and "typically" takes about 30 days.

Petitioner submits that:

- Respondents' position is speculation , not proof;
- the claimed "typical" timeline has already expired with no travel document; and
- Respondents still concede that, as of their filling, no travel document had been received and no removal date scheduled.

4. Citizenship/Identity Barriers

Petitioner believes he is not recognized as a Burmese citizen because he left Myanmar at a young age (migrated to Malaysia) and does not posses Burmese documents; nor do family members have documentation establishing Burmese citizenship. The prior failed removal attempt and the ongoing failure to secure travel documents corroborate that Myanmar does not readily confirm Petitioner's nationality.

II. GOVERNING LEGAL STANDARD: ZADVYDAS AND DISTRICT OF KANSAS PRECEDENT

Under 8 U.S.C. § 1231(a)(6), post-order detention is limited to a period reasonably necessary to accomplish removal. The Supreme Court held that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute."

The Supreme Court established a six-month presumptively reasonably period. After six months, once the noncitizen provides good reason to believe there is no significantly likelihood of removal in the reasonably foreseeably future the Government must respond with evidence sufficient to rebut that showing.

Critically, the Court emphasized: "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink."

District of Kansas' Recent Finding:

District of Kansas has repeatedly applied Zadvydas and required specific facts and concrete progress, not generalities. In a recent D. Kan. order granting release (Paulos v. Noem, Case No. 25-3266-JWL; 2026 WL 205564, Jan 27, 2026), the Court held that the Government failed to rebut the Petitioner's Zadvydas showing where officials had not obtained travel documents, had not shown recent concrete progress, and could not "point to any specific fact that creates a significant likelihood of removal in the reasonably foreseeable future.

III. ARGUMENT

A. Petitioner Has Provided "good reason" To Believe Removal Is Not Significantly Likely In The Reasonably Foreseeable Future.

Petitioner's detention is far beyond the six-month presumptive period. The facts supporting "good reason" include:

1. Eight months detained with no travel document and no removal date. Respondents concede that no travel document has been received and no removal date has been scheduled. When the Government itself cannot provide a removal date or travel document after months of detention, that is strong evidence that removal is not significantly likely in the reasonably foreseeable future.

2. Second attempt to remove Petitioner to the same country, after a prior failure. This is not a first time effort with no diplomatic momentum; it is a repeated attempt to the same country after the Government previously failed to obtain travel documents and effect removal. A prior failed effort is highly probative because it shows that the underlying barrier lack of recognized nationality and/or travel document issuance is not speculative.

3. Myanmar "headquarter fulfillment" is not a travel document. Respondents' best fact is that a request was "sent to the headquarters for fulfilment," which they claim "generally means" success. But "generally means" is not evidence that this Petitioner will receive a travel document, and it certainly is not evidence of a significant likelihood of removal soon especially after the claimed 30-day window elapsed without issuance.

4. Citizenship/identity dispute is exactly the type of barrier that prolongs detention indefinitely. Petitioner believes that Myanmar does not recognize him as a citizen and that he lacks foundational documentation. That

factual barrier is consisted with Government's repeated inability to obtain travel documents, both in 2021 and now.

Taken together, Petitioner has met the Zadvydas burden: there is good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.

B. Respondents Have Not Rebutted Petitioner's Showing With Evidence Only Speculation And "Typical" Timelines.

Zadvydas requires the Government to rebut with evidence sufficient to show a significant likelihood of removal in the reasonably foreseeable future.

Respondents rely on (i) a January 13, 2026 interview and (ii) an embassy statement that the request would be sent to headquarters and "typically" takes ~ 30 days. That is not enough.

1. A "typical" timeline that has already passed is evidence against foreseeability, not for it. Respondents' own claimed estimate (30 days) has expired. They do not provide an update status, confirmation of approval, issuance, delivery. or any concrete diplomatic commitment.

2. No travel document + no scheduled removal = no concrete progress. In the District of Kansas' recent ruling (Paulos v. Noem, Case No. 25-3266-JWL; 2026 WL 205564, Jan 27, 2026), the Court found the Government's showing insufficient where officials had not obtained a travel document and could not identify specific fact indicating removal would occur in the reasonably foreseeable future.

That reasoning fits here even more strongly because Respondents admit they still lack the key prerequisites: travel documents and scheduled removal.

3. "Generally means" is not a specific fact about this case. Respondents must show something case-specific e.g., a confirmed issuance, approval notice, passport/travel letter number, delivery confirmation, booking instructions, or a scheduled removal window. They provide none. Their position is that removal is foreseeable because it might happen soon. Zadvydas requires more.

4. No explanation for the long delay, despite a second detention. Zadvydas reasonableness shrinks over time. With eight months already elapsed, the Government should be required to show concrete, near-term removability not open-ended hope.

Accordingly, Respondents have not rebutted Petitioner's showing under Zadvydas.

C. Continued Detention Is Unreasonable And Unauthorized By Statute; Release On Supervision Is The Proper Remedy.

Zadvydas directs that if removal is not reasonably foreseeable, the Court should hold continued detention unreasonable and no longer authorized, and the person's release may and should be conditioned on appropriate supervision conditions.

The District of Kansas recently ordered release under supervision where the Government could not show specific fact indicating a significant likelihood of removal in the reasonably foreseeable future. The same remedy is warranted here.

D. The Re-Detention/Supervision Revocation Context Underscores Why the Government Must Show More Than Speculation.

This case also involves re-detention after supervision (second detention). ICE's own regulation contemplate notice, reasons, and review when supervision is revoked and someone is re-detained under post-order authority.

Where the Government re-detains a person after supervision, but still cannot show removability and relies only on vague diplomatic statements, continued detention risks becoming exactly what Zadvydas forbids: potentially indefinite detention.

Here, the Government has not explained why it was reasonable to revoke Supervision when it still lacked concrete evidence that removal was likely and the absence of meaningful progress since re-detention confirms that the decision produces prolonged, unjustified incarceration.

IV. CONCLUSION

Respondents' Return does not satisfy Zadvydas. After eight months of detention and a prior failed removal attempt to the same country, Respondents still lack a travel document and a scheduled removal date. Their reliance on "generally means" and "typically takes 30 days" is speculation especially where the "typical" period has already passed. Under Zadvydas and District of Kansas' precedent, the Petition should be granted and Petitioner released under Supervision.

V. REQUEST FOR RELIEF

For the foregoing reasons, Petitioner respectfully request thát the Court:

1. Grant the Petition and order Petitioner's immediate release from ICE custody subject to an appropriate Order of Supervision; or, in alternative,

2. Order Respondents, within a short and definite period (e.g., 7 14 days), to produce concrete evidence showing a significant likelihood of removal in the reasonably foreseeable future (e.g., confirmation of travel document issuance or delivery and a scheduled removal date), failing which release should be ordered.

VI. VERIFICATION

I Daniel Khungbik, declare under penalty of perjury under the laws of the United States that I am the Petitioner in the above-entitled action, that I have read the foregoing Traverse to Respondents' Response to the Writ of Habeas Corpus and know the contends, therefore; and that the same is true and correct to the best of my knowledge, information and belief.

02/26/26

FCI Leavenworth

[redacted]

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