IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

FILED
MAR 23 2026
Clerk, U.S. District Court
By: _____ Deputy Clerk

YONA FETWI SAMA,
Petitioner,

v.

Case No: 5:26-cv-03017-JWL

CRYSTAL CARTER, et al.,
Respondents.

PETITIONER'S TRAVERSE IN RESPONSE TO GOVERNMENT'S OPPOSITION

I. INTRODUCTION

Petitioner has now been detained well beyond the six-month presumptively reasonable period established in Zadvydas v. Davis, 533 U.S. 678 (2001), yet the Government remains unable to effectuate his removal to Eritrea. The record shows that Eritrean authorities have been unable to locate any information confirming Petitioner's identity and have not issued—nor indicated any intention to issue—a travel document. Despite months of requests, follow-ups, and additional submissions by ICE, the process has stalled with no progress toward removal. The absence of a travel document, combined with Eritrea's failure to recognize Petitioner, demonstrates that removal is not merely delayed, but uncertain and speculative. Under Zadvydas, such circumstances establish "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."

Because Petitioner has met his burden, the obligation shifts to the Government to provide concrete evidence that removal is significantly likely in the reasonably foreseeable future. The Government has failed to do so. Instead, it relies on generalized assertions of ongoing efforts and speculative possibilities, which courts have repeatedly found insufficient. Without a verified identity, without travel documents, and without any projected timeline for removal, Petitioner's detention has become effectively indefinite. Continued confinement under these circumstances violates both 8 U.S.C. § 1231(a)(6) as interpreted by Zadvydas and the Fifth Amendment's guarantee against arbitrary and prolonged civil detention. Accordingly, Petitioner's release under appropriate supervision is not only warranted—it is constitutionally required.

II. LEGAL FRAMEWORK UNDER ZADVYDAS

Post-removal-order detention is governed by 8 U.S.C. § 1231(a). Under that statute, the Government is required to effectuate removal within a 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). During that period, detention is mandatory. 8 U.S.C. § 1231(a)(2). However, once the removal period expires,

continued detention is authorized only under § 1231(a)(6), and only to the extent it comports with constitutional limitations.

In Zadvydas v. Davis, 533 U.S. 678 (2001), the Supreme Court imposed those constitutional limits to avoid serious due process concerns associated with indefinite civil detention. The Court held that § 1231(a)(6) does not authorize indefinite detention, but instead permits detention only for a period reasonably necessary to effectuate removal. To give practical meaning to that limitation, the Court established a presumptively reasonable period of six months. Id. at 701. After that period, continued detention is no longer justified unless removal remains reasonably foreseeable.

Critically, Zadvydas sets forth a burden-shifting framework. Once a noncitizen has been detained for more than six months, he need only provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." Id. Upon such a showing, the burden shifts to the Government to rebut that evidence with specific, non-speculative proof that removal is significantly likely in the reasonably foreseeable future. Id. The Government cannot satisfy this burden through generalized assertions, ongoing efforts, or mere hope that travel documents will issue at some undefined point in time. Rather, it must present concrete evidence demonstrating that removal is practically attainable within a reasonable timeframe.

The Supreme Court emphasized that the purpose of detention under § 1231(a)(6) is solely to facilitate removal. When that purpose can no longer be served—because removal is not reasonably foreseeable —continued detention loses its statutory basis and becomes constitutionally impermissible. As the Court explained, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." Id. at 699. Prolonged detention under such circumstances raises serious Fifth Amendment concerns, as civil immigration detention may not become punitive or indefinite in nature.

Accordingly, under Zadvydas and its progeny, the central inquiry is not whether the Government is making efforts to remove the petitioner, but whether removal is realistically achievable in the reasonably foreseeable future. Where, as here, removal depends on the cooperation of a foreign government that has failed to verify identity or issue travel documents, and where no timeline for removal exists, courts routinely find that continued detention exceeds statutory authority and violates due process. In such circumstances, release under appropriate conditions of supervision is the required remedy.

III. PETITIONER HAS MET HIS BURDEN

Petitioner has satisfied his initial burden under Zadvydas by providing ample evidence that there is no significant likelihood of removal in the reasonably foreseeable future. As the Supreme Court made clear, once detention exceeds six months, a petitioner need only present "good reason to believe" that removal is not foreseeable. Zadvydas, 533 U.S. at 701. This is a modest burden, and Petitioner has exceeded it.

First, Petitioner has been detained well beyond the six-month presumptively reasonable period following the final order of removal. His order became administratively final on or about July 24, 2025, yet he remains in custody months later with no indication that removal is imminent. Prolonged

detention alone, when coupled with a lack of progress toward removal, supports a finding that removal is not reasonably foreseeable.

Second, the record demonstrates that the Government of Eritrea has not issued—and has not shown any indication that it will issue—a travel document necessary for Petitioner's removal. ICE's own submissions confirm that Eritrean authorities were unable to locate any record of Petitioner and requested additional identifying information. Despite ICE's subsequent efforts, including submission of supplemental information and repeated follow-ups, no travel document has been issued. The absence of a travel document is a critical factor, as removal cannot occur without it, and courts consistently recognize that prolonged failure to obtain such documentation strongly indicates that removal is not reasonably foreseeable.

Third, Eritrea's inability to verify Petitioner's identity further undermines any realistic prospect of removal. Where a receiving country does not recognize a noncitizen as its national or cannot confirm identity, removal efforts typically stall indefinitely. This is not a situation where travel documents are delayed due to routine administrative processing; rather, the process has reached a substantive impasse. The Government has provided no evidence that this obstacle will be resolved in the near future.

Fourth, ICE has not provided any concrete timeline, assurance, or diplomatic indication that removal will occur within any reasonably foreseeable period. Instead, the Government relies on vague assertions that efforts are ongoing and that a response from Eritrea is still pending. Such assertions are insufficient under Zadvydas. Courts have repeatedly held that indefinite waiting on a foreign government—without any indication of progress—does not satisfy the Government's burden and, in fact, supports a finding that removal is not foreseeable.

Finally, Petitioner has fully cooperated with ICE throughout the removal process, including completing required applications and participating in efforts to secure travel documentation. There is no allegation that Petitioner has obstructed or delayed his removal in any way. Accordingly, the lack of progress cannot be attributed to Petitioner, but instead reflects circumstances beyond his control—namely, the failure of the Eritrean government to facilitate his repatriation.

Taken together, these facts establish far more than the "good reason" required under Zadvydas. The prolonged detention, absence of travel documents, failure of identity verification, lack of a removal timeline, and Petitioner's full cooperation all demonstrate that there is no significant likelihood that removal will occur in the reasonably foreseeable future. As a result, the burden shifts to the Government to rebut this showing with concrete evidence—something it has failed to do.

IV. THE GOVERNMENT HAS FAILED TO REBUT PETITIONER'S SHOWING

Once Petitioner meets his burden, the burden shifts to ICE.

Respondents fail to meet that burden.

A. ICE Offers Only Speculation — Not Evidence

ICE's entire argument rests on:

- "Efforts are ongoing"

- "Travel document is pending"

- "No known barrier to removal"

This is legally insufficient.

Courts have repeatedly rejected this exact argument:

- Lema v. INS, 214 F. Supp. 2d 1116, 1121 (W.D. Wash. 2002):

> "The Government cannot rely on the mere possibility that a travel document might issue at some unknown point in the future."

- Kacanic v. Elwood, 2002 WL 31520362, at *3 (E.D. Pa. Nov. 8, 2002):

> "Speculative or conclusory assertions are insufficient to rebut a Zadvydas showing."

B. Eritrea's Failure to Recognize Petitioner Is Critical

ICE admits:

- Eritrea "was unable to find information regarding the Petitioner"

- Additional documents were requested

- No resolution has occurred months later

This is powerful evidence that removal is not foreseeable.

Courts recognize that when a country cannot verify identity, removal becomes indefinite:

- Hajbeh v. Loiselle, 490 F. Supp. 2d 689, 695 (E.D. Va. 2007):

> "Where the receiving country refuses to acknowledge the alien or issue documents, removal is not reasonably foreseeable."

C. ICE's "Two Successful Removals" Argument Is Irrelevant

ICE cites two unrelated removals to Eritrea.

This is legally meaningless.

- One individual already had documents

- The other case resolved in 4 months — unlike Petitioner's case

Courts reject generalized evidence:

- Zadvydas itself requires case-specific proof, not anecdotal examples.

V. DETENTION HAS BECOME INDEFINITE AND UNCONSTITUTIONAL

Petitioner's continued detention has now crossed the constitutional line from permissible civil detention into impermissible, indefinite confinement. The Supreme Court in Zadvydas v. Davis, 533 U.S. 678 (2001), made clear that post-removal-order detention is strictly limited in duration and purpose. The Government may detain a noncitizen only for a period reasonably necessary to effectuate removal—not to hold an individual indefinitely while awaiting uncertain or speculative developments. As the Court emphasized, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem," and therefore must be interpreted to avoid such a result. Id. at 690.

That constitutional concern is no longer hypothetical in this case—it is the present reality. Petitioner remains detained with no travel document, no verified identity from Eritrean authorities, and no projected timeline for removal. ICE's own submissions confirm that removal depends entirely on the cooperation of a foreign sovereign that has thus far failed to recognize Petitioner or issue the documentation necessary for repatriation. Where detention hinges on the discretionary actions of a third-party government that has not acted—and may never act—detention ceases to be meaningfully tethered to its statutory purpose and instead becomes effectively indefinite.

The Supreme Court expressly rejected such a scenario in Zadvydas, holding that once removal is no longer reasonably foreseeable, "continued detention is no longer authorized by statute." Id. at 699. The Court further warned against a regime in which noncitizens could be held "for a period of time that is potentially permanent," emphasizing that civil immigration detention must not resemble punitive incarceration. Id. at 690–91. Here, Petitioner's detention has already exceeded the presumptively reasonable six-month period, and the Government offers no concrete evidence that removal will occur within any definable future timeframe. Without a foreseeable endpoint, detention becomes indistinguishable from the very indefinite confinement that Zadvydas prohibits.

Moreover, prolonged detention under these circumstances violates the Fifth Amendment's Due Process Clause. Civil detention is constitutionally permissible only when it bears a reasonable relation to its underlying purpose. When that purpose—removal—cannot be effectuated in the reasonably foreseeable future, continued detention becomes arbitrary and excessive in relation to its justification. As courts have recognized, detention that is no longer reasonably related to removal transforms into an unconstitutional deprivation of liberty.

Importantly, the Government cannot salvage this detention by pointing to its ongoing efforts or administrative diligence. The constitutional inquiry is not whether ICE is attempting to remove Petitioner, but whether removal is realistically achievable. Efforts alone do not supply a lawful basis for continued detention where the fundamental prerequisite—foreseeable removal—is absent. To hold otherwise would permit precisely the kind of indefinite detention regime the Supreme Court rejected.

In sum, Petitioner's detention is no longer authorized by statute and cannot be sustained under the Constitution. With no travel document, no verified identity, no diplomatic progress, and no timeline for removal, his continued confinement has become indefinite in both duration and character. Under Zadvydas and the Fifth Amendment, such detention is unlawful, and release under appropriate conditions of supervision is required.

VI. ICE'S ASSERTED "DILIGENCE" DOES NOT JUSTIFY CONTINUED DETENTION

Respondents argue that Petitioner's continued detention is justified because ICE has acted diligently in attempting to secure travel documents and effectuate removal. This argument misstates the governing legal standard and fails under controlling Supreme Court precedent. Under Zadvydas v. Davis, the relevant inquiry is not whether the Government has made efforts to remove the noncitizen, but whether removal is significantly likely in the reasonably foreseeable future. 533 U.S. 678, 701 (2001). The Government's diligence, standing alone, does not supply a lawful basis for continued detention when that core requirement is unmet.

The Supreme Court made clear that detention under 8 U.S.C. § 1231(a)(6) is justified only insofar as it serves its limited purpose—effectuating removal. When removal is no longer reasonably foreseeable, continued detention loses its statutory and constitutional foundation, regardless of the Government's efforts. As the Court explained, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized." Id. at 699. Thus, even good-faith or persistent efforts by ICE cannot cure the fundamental defect where removal remains speculative or unattainable.

Federal courts applying Zadvydas have consistently rejected the argument that ongoing administrative efforts alone are sufficient to justify prolonged detention. The Government cannot rely on routine status updates, repeated follow-ups, or general assertions that it is "working diligently" to meet its burden. Such assertions do not demonstrate that removal is likely to occur within any identifiable timeframe. Instead, courts require concrete, case-specific evidence showing that removal is practically achievable in the near future—not merely possible at some indefinite point.

Here, Respondents' own evidence confirms that, despite months of effort, ICE has been unable to secure a travel document or obtain verification from Eritrean authorities. The process has stalled at a critical stage: Eritrea has not recognized Petitioner or issued the documentation necessary for removal. ICE's repeated inquiries and submissions have produced no substantive progress. This record demonstrates that, while efforts may be ongoing, they have not brought removal any closer to fruition. In fact, the continued lack of response underscores the absence of a realistic prospect of removal.

Permitting continued detention based solely on the Government's diligence would effectively eliminate the constitutional limitations recognized in Zadvydas. Under such a rule, ICE could detain individuals indefinitely so long as it continued to make periodic inquiries or submit follow-up requests—precisely the outcome the Supreme Court sought to prevent. The constitutional safeguard established in Zadvydas is not concerned with effort, but with outcome: whether removal is realistically foreseeable.

Accordingly, Respondents' reliance on their asserted diligence is legally insufficient and cannot justify Petitioner's continued detention. Where, as here, removal remains uncertain, undocumented, and without any defined timeline, continued detention is unlawful regardless of the Government's efforts. The absence of foreseeable removal—not the presence of administrative activity—controls the analysis and compels Petitioner's release.

VII. PROCEDURAL DUE PROCESS VIOLATION

Petitioner's continued detention also violates the procedural protections guaranteed by the Fifth Amendment's Due Process Clause. Even where detention is initially authorized by statute, due process requires that prolonged civil detention be accompanied by meaningful procedural safeguards to ensure that the deprivation of liberty remains justified. At a minimum, this includes a timely and meaningful opportunity to challenge continued detention before a neutral decision-maker, particularly once detention becomes prolonged and its justification is no longer clear.

Here, those procedural safeguards have not been meaningfully provided. ICE acknowledges that Petitioner was scheduled for a custody review interview but that the interview was delayed due to internal administrative reassignment, and subsequently rescheduled months later. This delay is not insignificant. By the time of the rescheduled review, Petitioner will have been detained well beyond the six-month period recognized in Zadvydas as presumptively reasonable. The Government's failure to provide a timely custody review during this critical period effectively deprived Petitioner of any meaningful opportunity to challenge his continued detention when it became constitutionally suspect.

Moreover, the administrative custody review process itself does not satisfy due process requirements when detention becomes prolonged. ICE's Post-Order Custody Review (POCR) is an internal, non-adversarial process conducted by the same agency responsible for detention and removal. It does not provide the basic procedural protections typically required in civil detention contexts, such as an impartial adjudicator, the opportunity to present evidence and argument in a meaningful way, or a requirement that the Government justify continued detention under a defined evidentiary standard. As courts have increasingly recognized, such internal reviews are insufficient to safeguard the substantial liberty interests at stake once detention extends beyond its initial justification.

Due process requires more than periodic administrative review when detention becomes prolonged and removal is uncertain. At that stage, the Government must provide a meaningful, individualized determination that continued detention is justified—typically through a hearing before a neutral decision-maker where the Government bears the burden of demonstrating that detention remains necessary. Without such safeguards, detention risks becoming arbitrary and unchecked, in violation of the Constitution.

In this case, Petitioner has received no such meaningful process. He has not been afforded a timely or adequate opportunity to contest the factual basis for his continued detention, including the critical question of whether removal is reasonably foreseeable. Instead, his detention has continued based on internal ICE determinations, delayed procedures, and speculative assertions about future removal. This lack of meaningful procedural protection independently renders his continued detention unconstitutional.

Accordingly, even apart from the statutory violations identified under Zadvydas, Petitioner's prolonged detention violates procedural due process. The appropriate remedy is release under reasonable conditions of supervision, or at minimum, an order requiring a prompt and meaningful hearing before a neutral decision-maker at which the Government must justify continued detention.

VIII. SUBSTANTIVE DUE PROCESS IS VIOLATED

Petitioner's continued detention also violates the substantive component of the Fifth Amendment's Due Process Clause, which protects against arbitrary government action and prohibits deprivation of liberty that is not reasonably related to a legitimate governmental purpose. Civil immigration detention is constitutionally permissible only insofar as it serves a valid regulatory objective—namely, ensuring the noncitizen's removal or preventing flight or danger to the community. When detention no longer meaningfully serves those purposes, it becomes excessive, arbitrary, and unconstitutional.

The Supreme Court has repeatedly emphasized that civil detention must bear a reasonable relation to its purpose and may not become punitive or indefinite in nature. In Zadvydas v. Davis, the Court recognized that indefinite detention of a noncitizen raises "serious constitutional concerns" and construed the statute to avoid authorizing such confinement. 533 U.S. 678, 690 (2001). The Court further explained that once removal is no longer reasonably foreseeable, continued detention is no longer justified because it is no longer connected to its underlying purpose. Id. at 699. At that point, detention ceases to be regulatory and instead becomes an impermissible deprivation of liberty.

That is precisely the situation presented here. Petitioner's detention no longer serves the purpose of effectuating removal because removal is not reasonably foreseeable. Eritrean authorities have failed to verify Petitioner's identity, no travel document has been issued, and there is no indication that such documentation will be forthcoming within any identifiable timeframe. As a result, Petitioner's detention is no longer tethered to a legitimate governmental objective but instead depends on speculative future events beyond his control. Detention based on such uncertainty is inherently arbitrary and cannot withstand constitutional scrutiny.

Moreover, substantive due process prohibits the Government from imposing excessive restraints on liberty that are disproportionate to the asserted regulatory goals. Continued detention in this case is excessive because it imposes severe and ongoing deprivation of liberty without advancing removal in any meaningful way. The Government has not demonstrated that Petitioner's continued confinement meaningfully increases the likelihood of removal, nor has it shown that less restrictive alternatives—such as supervised release—would be insufficient to address any legitimate concerns. Where detention no longer advances its intended purpose, its continued imposition is constitutionally unjustifiable.

The Supreme Court has also recognized that lawful permanent residents, such as Petitioner, are entitled to heightened constitutional protections in the immigration context. In Demore v. Kim, Justice Kennedy explained that even where detention is initially permissible, "a lawful permanent resident could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." 538 U.S. 510, 532 (2003) (Kennedy, J., concurring). Here, Petitioner's detention has become both unreasonable and unjustified, yet no meaningful individualized determination has been provided.

Respondents' argument that Petitioner's substantive due process claim rises and falls with his Zadvydas claim is misplaced. While the analyses are related, substantive due process provides an independent constitutional limitation on arbitrary and excessive detention. Even if the Court were to find ambiguity under the statutory framework, the Constitution independently prohibits detention that is indefinite, purposeless, or disproportionate. The Government cannot avoid constitutional scrutiny

simply by asserting that it continues to pursue removal where, in reality, removal remains speculative and unattainable.

In sum, Petitioner's prolonged detention—untethered from any realistic prospect of removal, unsupported by a meaningful governmental interest, and imposed without adequate justification—constitutes an arbitrary deprivation of liberty in violation of substantive due process. The Constitution does not permit the Government to detain individuals indefinitely based on uncertain future events. Accordingly, Petitioner's continued confinement is unlawful, and release under appropriate conditions of supervision is required.

IX. THE GOVERNMENT HAS NO TIMELINE — ONLY DELAY

A central and dispositive failure in Respondents' position is the complete absence of any concrete, articulable timeline for Petitioner's removal. Under Zadvydas v. Davis, the Government must do more than demonstrate ongoing efforts—it must show that removal is significantly likely in the reasonably foreseeable future. 533 U.S. 678, 701 (2001). This necessarily requires some identifiable projection or evidentiary basis indicating when removal is expected to occur. Here, Respondents offer none.

Instead, the record reflects only a pattern of delay and uncertainty. Months have passed since the submission of Petitioner's travel document request, yet Eritrean authorities have neither verified his identity nor issued any documentation necessary for removal. ICE acknowledges that the Eritrean government was unable to locate records pertaining to Petitioner and required additional information, which was subsequently provided. Despite these follow-up efforts, there has been no meaningful progress. The Government's position amounts to little more than waiting—without any indication that such waiting will result in removal within a definable timeframe.

Courts have consistently held that the absence of a removal timeline is strong evidence that detention has become indefinite. Where the Government cannot identify when—or even whether—removal will occur, continued detention is no longer reasonably related to its statutory purpose. The requirement of a "reasonably foreseeable future" necessarily implies more than speculation; it requires a concrete expectation grounded in evidence. Indefinite delay, dependent on the uncertain cooperation of a foreign sovereign, does not meet this standard.

Moreover, Respondents' reliance on the fact that travel documents are "pending" does not cure this defect. A pending request, without any indication of when it will be resolved, is not evidence of foreseeable removal—it is evidence of uncertainty. If accepted as sufficient, this reasoning would allow the Government to detain individuals indefinitely so long as a request remains technically open, even where there is no realistic prospect of completion. This is precisely the outcome Zadvydas forbids.

The facts of this case illustrate the problem clearly. There is no travel document, no verified identity, no response timeline from Eritrean authorities, and no diplomatic assurance that removal will occur. ICE has not identified any expected date of issuance, any stage of approval, or any concrete development suggesting that removal is imminent. Without such evidence, the Government cannot meet its burden.

In sum, Respondents offer delay in place of evidence. The Constitution and § 1231(a)(6), as interpreted by Zadvydas, do not permit continued detention based on indefinite waiting. Where, as here, the Government cannot articulate when removal will occur, detention becomes effectively indefinite and

therefore unlawful. This absence of a foreseeable endpoint compels Petitioner's release under appropriate conditions of supervision.

X. PETITIONER IS NOT A FLIGHT RISK OR DANGER

As stated in the Petition:

- Strong family ties in the U.S.
- Willing to comply with supervision
- No evidence that release cannot be managed

Release under supervision is the proper remedy.

XI. CONCLUSION

Petitioner's continued detention is no longer authorized by statute and cannot be sustained under the Constitution. He has been detained well beyond the six-month presumptively reasonable period established in Zadvydas v. Davis, and the record demonstrates that there is no significant likelihood that his removal to Eritrea will occur in the reasonably foreseeable future. The Government has failed to rebut this showing with concrete, non-speculative evidence. Instead, it relies on generalized assertions of ongoing efforts and indefinite waiting on a foreign government that has not verified Petitioner's identity or issued the necessary travel documents. Such uncertainty cannot justify continued confinement.

At this point, Petitioner's detention has become effectively indefinite—untethered from its statutory purpose and in violation of the Fifth Amendment's protections against arbitrary and excessive deprivation of liberty. The Supreme Court has made clear that civil immigration detention may not be prolonged beyond the point where removal is reasonably foreseeable. To permit continued detention under these circumstances would be to sanction the very indefinite confinement that Zadvydas prohibits.

Accordingly, Petitioner respectfully requests that this Court grant the Petition for Writ of Habeas Corpus and order his immediate release under appropriate conditions of supervision. In the alternative, Petitioner requests that the Court order a prompt hearing before a neutral decision-maker at which the Government must justify continued detention under a constitutionally adequate standard. Such relief is necessary to ensure compliance with federal law and to safeguard the fundamental liberty interests at stake.

XII. RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus
2. Order Petitioner's immediate release under appropriate supervision
3. Grant any other relief the Court deems just, proper, and appropriate

VERIFICATION

I YONA FETWI SAMA, 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.

Yona Sama . 3-9-26

FCI Leavenworth

[redacted]

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