UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Arish Rustami, Petitioner, v. Kristi Noem, Todd M. Lyons, Sam Olson, and Pamela Bondi, Respondents.	)	Case No. 26-cv-03018-JWL

PETITIONER'S TRAVERSE

The question before the Court is narrow but serious: whether the Government may continue detaining Mr. Rustami when it cannot identify a country willing to accept him and cannot articulate any concrete plan for effectuating his removal.

The record is undisputed in all material respects. Mr. Rustami cannot be removed to Iran because an Immigration Judge granted him protection under the Convention Against Torture. The only third country to which Respondents have actually sought travel documents, Pakistan, has refused. Swanson Affidavit, Dkt 4-1. Since that refusal in November 2025, three months ago, Respondents have not submitted another travel document request to any country, have not identified a country willing to accept him, and have not provided the Court with any projected timeline for removal. Instead, they offer generalized assurances that the agency is "actively working" to remove "aliens" to third countries. *Id.* ¶ 26, 29. That explanation isn't even specific to Mr. Rustami individually.

The question is not whether DHS is working to remove "aliens" in the abstract. It is whether there is a significant likelihood that Mr. Rustami himself will be removed in the reasonably foreseeable future. Respondents do not make that showing. And *Zadvydas* does not permit indefinite detention on that

basis. The statute authorizes detention only so long as it is reasonably related to the Government's ability to accomplish removal. On this record, it is not.

I. Respondents Offer No Individualized Evidence That Mr. Rustami's Removal Is Likely.

Zadvydas requires an individualized showing. After six months of post-order detention, the Government must rebut a detainee's showing with evidence that removal is significantly likely in the reasonably foreseeable future. That inquiry is not abstract. It concerns the realistic prospects of removing this person.

The only concrete removal effort reflected in the record is the October 28, 2025 request for travel documents from Pakistan. Pakistan denied that request on November 10, 2025. That effort failed. There is no evidence of a second request to Pakistan, no evidence of a request to any other country, and no evidence that any government has expressed a willingness to accept Mr. Rustami.

Instead of attempting an individualized showing, the respondents' affiant states generally that they are "actively working with Department of State and DHS on avenues to remove *aliens* to a third country." Swanson Affidavit, Dkt 4-1 ¶ 26, 29 (emphasis added). The phrasing is telling. The declaration speaks in terms of "aliens" generally. It does not state that respondents are working on Mr. Rustami's removal, nor does it identify any avenue specific to him. Respondents' brief candidly acknowledges that they have "no additional detail to provide the Court at this time." It does not identify a single country currently considering his admission. It does not describe diplomatic communications concerning him. It does not state that removal is expected within any defined period. It does not even suggest which countries are under consideration.

That concession should be dispositive. *Zadvydas* requires evidence sufficient to rebut a showing that removal is not significantly likely. Generalized statements about ongoing diplomatic efforts, unconnected to this detainee and unaccompanied by any concrete development, do not satisfy that burden.

The record therefore reflects the following: Mr. Rustami cannot be removed to Iran; Pakistan has refused to issue travel documents; no other country has been identified; and no timeline for removal exists. Continued detention under those circumstances is not tethered to a realistic prospect of removal. It rests instead on the possibility that, at some undefined point in the future, some unspecified country might agree to accept him.

Zadvydas does not authorize detention on that basis.[1]

II. Under *Zadvydas*, Continued Detention Is No Longer Authorized.

Mr. Rustami has now been detained well beyond six months since his re-arrest on June 23, 2025. At that point, the presumption of reasonableness recognized in *Zadvydas* no longer controls. Once a detainee provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to rebut that showing with evidence. 533 U.S. at 701.

Mr. Rustami has satisfied that threshold. He cannot be removed to Iran due to his grant of protection under the Convention Against Torture. The only third country from which DHS sought travel documents, Pakistan, has refused. Swanson Decl., Dkt. 4-1 ¶ 25. No alternative country has been identified. No travel-document request is pending. No timeline for removal exists. Respondents do not represent that removal is expected within any defined period.

That showing is sufficient to shift the burden. The respondents therefore must come forward with evidence that removal is significantly likely in the reasonably foreseeable future. They have not

[1] Respondents note that, during a September 2025 interview, Mr. Rustami indicated that he was unwilling to be removed to Afghanistan. Swanson Decl., Dkt. 4-1 ¶ 22. That fact does not alter the Zadvydas analysis. The record contains no evidence that Afghanistan has agreed to accept him, that a travel-document request has been submitted to Afghan authorities, or that removal to Afghanistan is imminent or even under active consideration. Respondents do not claim that they have ever secured Afghanistan's consent or initiated the formal process necessary to effectuate removal there. A detainee's unwillingness to forgo potential protection rights with respect to a hypothetical country of removal does not establish a significant likelihood of removal in the reasonably foreseeable future.

done so. They have offered no evidence that any country is presently willing to accept Mr. Rustami. They have not identified ongoing negotiations specific to him. They have not described diplomatic communications concerning his admission. They have not projected a removal date. Instead, they rely on generalized statements that removal options for "aliens" are being explored. Id. ¶¶ 26, 29. *Zadvydas* requires more.

Civil detention under § 1231(a)(6) is permissible only so long as it remains reasonably related to its regulatory purpose: effectuating removal. Where removal is not significantly likely in the reasonably foreseeable future, continued confinement ceases to serve that purpose and becomes impermissibly indefinite.

On this record, detention is no longer tethered to a realistic prospect of removal. It rests on the possibility that, at some unspecified point, some unspecified country might agree to accept him. Section 1231(a)(6), as construed in Zadvydas, does not authorize detention on that basis.

CONCLUSION

The record before the Court is straightforward. Mr. Rustami cannot be removed to Iran. Pakistan has refused to accept him. No alternative country has been identified. No travel-document request is pending. No timeline for removal has been provided. Respondents do not represent that removal is significantly likely in the reasonably foreseeable future.

Under Zadvydas, detention under 8 U.S.C. § 1231(a)(6) is permissible only so long as it remains reasonably related to effectuating removal. Once removal is no longer significantly likely, continued detention is not authorized.

Because Respondents have failed to rebut Mr. Rustami's showing, his continued confinement violates § 1231(a)(6) as construed by the Supreme Court. The writ should issue, and Mr. Rustami should be released under appropriate conditions of supervision.

Respectfully submitted,

//s// Matthew Lorn Hoppock

Date: 02/27/2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 27, 2026, I served this Petitioner's Traverse via electronic filing through CM ECF, that all parties are enrolled in CM ECF and that all parties will be served in that manner.

/s/ Matthew L. Hoppock
MATTHEW L. HOPPOCK