

Magistrate Judge Theresa L. Fricke

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Mohammad HUSSAINI et al.,

Petitioner,

v.

Julio HERNANDEZ,

Respondents.

Case No. 2:26-cv-00485-TLF

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO
ORDER TO SHOW CAUSE**

INTRODUCTION

After two rounds of successive orders to produce additional evidence and information regarding Petitioner's alleged "Known or Suspected Terrorist" (KST) status, this case remains in the exact same position as it was weeks ago: Respondents assert that "the reasons [that Petitioner is] designated . . . as a KST are neither relevant to nor subject to judicial review in these proceedings." Dkt. 16 at 2. Caselaw resoundingly rejects the notion that the Court may rely on such government "officials' mere say-so" to indefinitely hold a person without any legal process. *Holt v. Hobbs*, 574 U.S. 352, 369 (2015). Notably, Respondents have never refuted two key points: that Mr. Hussaini was granted asylum and passed background checks notwithstanding the KST status, and that Respondents never invoked terrorism-related grounds to either detain Mr. Hussaini or to deny him asylum, which the Immigration and Nationality Act (INA) requires them to do. Mr. Hussaini's medical condition—which requires surgery (a fact Dr. Wang omits)—only underscores the need for immediate release.

ARGUMENT

I. Respondents have produced no evidence or explanation of the KST status.

Respondents have had three separate opportunities to provide evidence of and an explanation for the KST status. *See* Dkt. 3 (ordering return to habeas petition); Dkt. 11 (Order to Expand the Record); Dkt. 16 (Order to Show Cause). Their position throughout has not changed: they assert that because Mr. Hussaini has been designated a KST, the Department of Homeland Security (DHS) may revoke his liberty and continue to detain him without further process. And in so arguing, they have refused to provide the Court with any information underlying the KST designation, asserting the Court must simply accept the designation without scrutiny. *See* Dkt. 4 at 6–8 (arguing that the Court must give deference to the KST determination); Dkt. 12 (failing to expand the record as ordered); Dkt. 16 (asserting that the reasons for KST designation are irrelevant, not subject to judicial review, and that this designation compels continued detention). Critically, they have wholly failed to respond to the Court’s order to “[e]xplain the legal meaning, context, source of law, [and] definition” of the KST designation, Dkt. 15 at 3, though even if they had, it would not make Mr. Hussaini into a national security risk. In short, Respondents *still* “have not addressed petitioner’s claim, relevant to risk of flight and risk of dangerousness.” Dkt. 15 at 2.

Throughout, Respondents have never contested certain key facts. First, Mr. Hussaini has been granted asylum and passed background checks. As previously explained, *see* Dkt. 7 at 3–5, this demonstrates that in reality, Respondents do not view Mr. Hussaini as a grave security risk. All persons granted asylum must pass background checks, which are completed in part by collecting their biometric information. *See generally* 8 C.F.R. § 1003.47. As part of the process that follows, DHS queries a broad range of government databases, including those specifically used to identify national security threats. *See* Dkt. 7 at 4–5 (citing sources). Most notably, the queries include FBI databases, as well as the National Counterterrorism Center (NCTC), where KST designations are maintained. *See* DHS, Privacy Impact for the USCIS Asylum Division 8–10 (July 21, 2017), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis->

1 asylum-july2017_0.pdf (PDF on file with counsel) (showing that USCIS queries NCTC); Gov't
 2 Accountability Off., GAO-25-108349, Terrorist Watchlist: Nomination and Redress Processes
 3 for U.S. Persons 4 (Aug. 14, 2025), <https://www.gao.gov/assets/gao-25-108349.pdf> (PDF on file
 4 with counsel) ("GAO Report") (explaining that NCTC maintains database "about individuals
 5 with a nexus to international terrorism"); Privacy & C.L. Oversight Bd., Report on the Terrorist
 6 Watchlist 10–11, 22 (Jan. 23, 2025), <https://documents.pclob.gov/prod/Documents/Oversight>
 7 Report/b2f9ecff-99fc-48f9-a559-b486391b0e0a/PCLOB%20Terrorist%20Watchlist%20Report
 8 %20Unclassified.pdf (PDF on file with counsel) ("PCLOB Report") (similar). Petitioner passed
 9 this process—an uncontested fact in this litigation. And yet despite passing it, he remains
 10 arbitrarily detained.

11 Second, and closely related, it is also uncontested that DHS has never sought to bar
 12 asylum based on the KST designation or use the specific terrorism-related detention authority it
 13 possesses to require Petitioner's detention. This fact is critical. The INA *mandates* that asylum
 14 may not be granted where "there are reasonable grounds for regarding the [noncitizen] as a
 15 danger to the security of the United States." 8 U.S.C. § 1158(b)(2)(A)(iv). Similarly, it *mandates*
 16 that asylum may not be granted where someone is deportable or inadmissible on terrorism-
 17 related grounds. *See id.* § 1158(b)(2)(A)(v); *id.* § 1182(a)(3)(B)(i); *id.* § 1227(a)(4)(B). DHS
 18 never invoked those grounds of removability in removal proceedings or asserted that they
 19 provided a ground to deny the asylum application. Nor has DHS invoked the specific mandatory
 20 detention authority it possesses to detain terrorists under 8 U.S.C. § 1226a (providing for
 21 "[m]andatory detention of suspected terrorists").

22 Instead, in successive rounds of briefing, Respondents have merely asserted that the
 23 Court should accept the KST designation at face value. The Court has given Respondents ample
 24 opportunity to produce specific evidence and use the special procedures available for such
 25 evidence. Yet Respondents have refused to provide any admissible or credible evidence.¹ Having

26 _____
 27 ¹ Petitioner has explained that the KST designation itself is inadmissible hearsay, which
 Respondents have not refuted. Dkt. 7 at 5–6.

1 chosen that route, the Court should heed the Supreme Court’s admonition that “national-security
 2 concerns must not become a talisman used to ward off inconvenient claims—a label used to
 3 cover a multitude of sins.” *Ziglar v. Abbasi*, 582 U.S. 120, 143 (2017) (citation modified). While
 4 Respondents claim the KST designation is not “subject to judicial review in these proceedings,”
 5 Dkt. 16 at 2, “it is beyond question that the federal judiciary retains the authority to adjudicate
 6 constitutional challenges to executive action,” even in cases where the executive claims national
 7 security interests. *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017). Indeed, “federal
 8 courts routinely review the constitutionality of—and even invalidate—actions taken by the
 9 executive to promote national security.” *Id.* at 1163. Even where alleged “national security
 10 interests are at stake, . . . the government must take reasonable measures to ensure basic fairness
 11 to the private party and follow procedures reasonably designed to protect against erroneous
 12 deprivation of the private party’s interests.” *Kashem v. Barr*, 941 F.3d 358, 364–65 (9th Cir.
 13 2019) (citation modified). This remains true in habeas cases involving national security. In such
 14 cases, “the government [still] ha[s] to produce . . . ‘some evidence to support the order.’” *Al-*
 15 *Adahi v. Obama*, 613 F.3d 1102, 1104 (D.C. Cir. 2010) (quoting *INS v. St. Cyr*, 533 U.S. 289, 306
 16 (2001)); *see also generally id.* at 1104–11 (applying this principle in the context of Guantanamo
 17 Bay detainee). It has not produced any such evidence here.

18 All of this is particularly true when considering the checkered history of KST
 19 designations. As the reports cited above note, many individuals end up designated as a KST even
 20 where it is not warranted, either because of misidentification or because derogatory information
 21 is inaccurate or outdated. *See, e.g.*, GAO Report at 5; U.S. Senate Comm. on Homeland Sec. &
 22 Gov’t Affairs, *Mislabeled as a Threat: How Terrorist Watchlist and Government Screening*
 23 *Procedures Impact Americans* 29–30 (Dec. 2023), [https://www.hsgac.senate.gov/wp-](https://www.hsgac.senate.gov/wp-content/uploads/Mislabeled-as-a-Threat_Public_Report-2.pdf)
 24 [content/uploads/Mislabeled-as-a-Threat_Public_Report-2.pdf](https://www.hsgac.senate.gov/wp-content/uploads/Mislabeled-as-a-Threat_Public_Report-2.pdf) (PDF on file with counsel)
 25 (“Senate Report”). As a recent Senate Report explained, “[t]he risk of misidentification continues
 26 to be a problem, especially as the number of identities in the terrorist watchlist increases. This is
 27 further exacerbated by the fact the terrorist watchlist contains names from languages other than

1 English for which there may not be a standardized transliteration.” Senate Report at 29. This is
2 “particular concern for [members of] the Muslim American community,” like Mr. Hussaini,
3 “because alleged leaked versions of the terrorist watchlist show the overwhelming majority of
4 names on the terrorist watchlist are Muslim.” *Id.* “As a result of misidentifications, an expanded
5 set of people with no relationship to terrorists or suspected terrorist activity are affected by the
6 terrorist watchlist.” *Id.*

7 This reality underscores the need for immediate relief here. Mr. Hussaini has passed
8 background checks. DHS has not sought to bar asylum or detain Mr. Hussiani based on its
9 mandatory duty to do so if he were really a suspected terrorist. And it has not provided any
10 underlying evidence from government databases—databases known to have significant, verified
11 problems—to substantiate the KST designation. None of this is contested in this litigation, and it
12 reflects that immediate release is warranted.

13 **II. The Court should not afford Respondents another opportunity to produce evidence.**

14 In suggesting that the FBI might provide a declaration and specifying no timeline, Dkt.
15 16 at 2, Respondents do not even attempt to demonstrate “good cause for an extension of time,”
16 a standard this Court ordered them to address. Dkt. 15 at 4. Over successive rounds of briefing
17 and court orders, the Court has provided Respondents with weeks to produce something more
18 than an unsubstantiated, unexplained KST designation. Notably, the Morris declaration does not
19 state when Respondents’ counsel first reached out to the FBI, *see* Dkt. 17 ¶¶ 2–3, even though
20 the FBI would have had weeks to produce such a declaration by now. In addition, Respondents’
21 filings reflect that any declaration by the unnamed FBI agent would be limited to a statement that
22 “Petitioner’s status is classified,” not the reasons for the KST designation. *Id.* ¶ 3; Dkt. 16 at 2.
23 Respondents also do not allege that the unnamed agent possesses any other legal expertise or
24 information responsive to the Court’s Order to Show Cause. *See* Dkt. 15 at 3.

25 Accordingly, the Court should not provide Respondents with yet a fourth opportunity to
26 justify Petitioner’s detention: they have had sufficient opportunity to produce evidence—
27

1 including by utilizing the specialized procedures designed to handle highly sensitive information,
2 as this Court has identified—and have declined that offer.

3 **III. Petitioner's health status merely underscores the need for relief now.**

4 Finally, Respondents submit a declaration from the clinic director at NWIPC. That
5 declaration omits that Mr. Hussaini has seen an outside provider who has recommended surgery
6 upon his release. *See* Ex. A (Jan. 24, 2026 NWIPC Medical Clinic record). In any event,
7 Respondents acknowledge that an MRI has been recommended for Mr. Hussaini since December
8 and that they have failed to provide the MRI, despite the fact that he remains confined to a
9 wheelchair. These facts merely underscore the need for immediate relief here.

10 **CONCLUSION**

11 The Court has provided Respondents with ample opportunity to justify their reliance on
12 the KST designation to deprive Mr. Hussaini of liberty. On each occasion, they have declined to
13 do, relying simply on the designation itself. Critical facts in this case—which Respondents have
14 not contested or addressed—reflect that the KST designation should be given no weight. For all
15 the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of habeas
16 corpus and order his immediate release.

17 Respectfully submitted this 18th of March, 2026.

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21 **I certify that the foregoing contains 1,782 words,*
22 *in compliance with the Local Civil Rules.*

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