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9
10 UNITED STATES DISTRICT COURT
11
12 SOUTHERN DISTRICT OF CALIFORNIA
13

14 Asim Pasholli, 

Civil Action No. 3:26-cv-01296-CAB-MSB

15 Petitioner,

16 v.

17 Warden of the Imperial Regional Detention
18 Facility; **PATRICK DIVVER**, Field Office
19 Director, Enforcement and Removal
20 Operations, San Diego Field Office, U.S.
21 Immigration and Customs Enforcement;
22 **KRISTI NOEM**, Secretary, U.S. Department
23 of Homeland Security; **TODD M. LYONS**,
24 Acting Director, U.S. Immigration and
25 Customs Enforcement; and U.S.
26 **DEPARTMENT OF HOMELAND
27 SECURITY,**
28

Respondents,

PETITIONER'S TRAVERSE TO
RESPONDENTS' RETURN IN
OPPOSITION

I. INTRODUCTION

Respondents oppose habeas relief on the theory that Petitioner's removal is "imminent" because ICE claims it obtained an Albanian travel document in December 2025 and scheduled flights in January, February, and March 2026. But the record submitted by Respondents does not defeat habeas relief for three independent reasons.

First, habeas review concerns the legality of current custody. Respondents' own submission confirms that ICE cancelled the March 8 flight after Petitioner filed this habeas

1 petition. That sequence undercuts any claim that removal is presently “imminent” and shows that
2 ICE’s timeline is contingent and discretionary rather than supported by a concrete, near-term
3 removal schedule.

4 Second, Respondents’ factual assertions are materially disputed and are not supported by
5 the types of contemporaneous operational records ICE typically maintains when it has an
6 operative travel document and is actively executing a removal. Petitioner requests that the Court
7 require Respondents to lodge the relevant documents with the Court, including the travel
8 document itself and the records supporting the alleged removal attempts and cancellations.

9 Third, Respondents’ jurisdictional reliance on 8 U.S.C. § 1252(g) mischaracterizes the
10 petition. Petitioner challenges unlawful detention under § 1231(a)(6) and the Fifth Amendment,
11 not a discretionary decision about whether or when to execute a removal order. Zadvydas
12 contemplates release as the remedy when continued detention is no longer authorized.

13 II. FACTUAL RESPONSE

14 Respondents submit a declaration from Deportation Officer Edgar Olvera asserting: (1)
15 ICE requested an Albanian travel document on December 10, 2025 and received it on December
16 24, 2025; (2) flights were scheduled on January 27, February 15, and March 8, 2026; (3) the
17 February 15 flight failed because Petitioner “refused to leave the detention facility”; and (4) ICE
18 cancelled the March 8 flight after this habeas petition was filed.

19 Petitioner disputes that Respondents have provided a reliable, reviewable factual record
20 supporting those claims. Respondents did not attach the alleged Albanian travel document, any
21 consular confirmation, flight booking confirmations, cancellation documentation, I-229(a)
22 paperwork or other written removal notices, transportation and escort paperwork, or any incident
23 report or contemporaneous log entry supporting the claim that Petitioner refused to depart on
24 February 15. The Court should not deny habeas relief based on conclusory assertions when
25 Respondents can readily submit the underlying records to confirm or refute these key facts.

26 Moreover, Respondents acknowledge that ICE cancelled the March 8 flight after this
27 habeas petition was filed. Respondents also represent that ICE will identify and book a removal
28 flight only once the petition is resolved. Those statements demonstrate that removal is not

1 currently scheduled and that ICE's asserted imminence depends on discretionary future action.

2 III. ARGUMENT

3 A. Respondents have not rebutted Petitioner's Zadvydas showing

4 Zadvydas provides that detention under § 1231(a)(6) is permissible only for a period
5 reasonably necessary to effect removal, and after six months the Government must rebut a
6 showing that removal is not significantly likely in the reasonably foreseeable future.

7 Respondents' showing fails for two reasons.

8 First, Respondents' asserted imminence depends on discretionary future actions and is
9 contradicted by their own account. They cancelled the March 8 flight after the petition was filed
10 and state ICE will book another flight only once this petition is resolved. That is not evidence
11 that removal is significantly likely in the reasonably foreseeable future. It is an admission that
12 removal is not presently scheduled and will be deferred at ICE's discretion.

13 Second, even accepting Respondents' declaration at face value, Respondents still must
14 support their assertions with reliable documentation sufficient to meet their burden. Respondents
15 have not provided the alleged travel document or the operational records that would corroborate
16 the claimed flight scheduling, cancellations, and the allegation that Petitioner refused to depart
17 on February 15. Without that documentation, Respondents have not met their burden to rebut
18 Petitioner's showing.

19 Accordingly, at minimum, the Court should require Respondents to lodge the relevant
20 documentation with the Court so that the Court can evaluate whether the Government has met its
21 burden under Zadvydas.

22 B. Section 1252(g) does not bar this Court from ordering release from unlawful detention

23 Respondents argue that the Court cannot order release because it would "impinge" on the
24 executive's discretion about executing removal orders and is barred by § 1252(g). That reframing
25 is incorrect.

26 This petition challenges custody, not the discretionary decision of whether or when to
27 execute a removal order. Zadvydas authorizes release as the remedy where continued detention
28 exceeds statutory authority and violates due process. A release order does not "review" a

1 discretionary removal decision. It enforces the statutory and constitutional limits on detention
2 while removal efforts continue.

3 C. Respondents' "mootness" argument fails

4 Respondents suggest the claims are moot because a travel document allegedly exists and
5 removal is "imminent." But Respondents admit ICE cancelled the most recent flight after this
6 petition was filed and will not rebook until the petition is resolved. That is not imminence. The
7 Court can grant effective relief by ordering release under supervision or by issuing a conditional
8 writ requiring release unless Respondents demonstrate, with actual documentary proof, that
9 removal is scheduled on a definite near-term date and that continued detention remains
10 authorized.

11 D. At minimum, the Court should require Respondents to lodge documentary proof with
12 the Court

13 Petitioner requests that the Court order Respondents to lodge, under seal if necessary, the
14 documents supporting the key assertions in the Olvera declaration, including:

- 15 1. The Albanian travel document allegedly issued for Petitioner (and any cover letter or
16 consular confirmation);
- 17 2. Flight booking confirmations and cancellation records for January 27, February 15, and
18 March 8, 2026;
- 19 3. Any I-229(a) or other written notice(s) provided to Petitioner regarding scheduled
20 removal;
- 21 4. Any incident report(s), log entries, escort paperwork, or other contemporaneous
22 documentation supporting the assertion that Petitioner refused to depart on February 15,
23 2026; and
- 24 5. Any post-order custody review record(s) under 8 C.F.R. §§ 241.4 and 241.13.

25 These materials are within Respondents' control and can be provided promptly.

26 Requiring production is a narrow, practical step that allows the Court to evaluate the
27 Government's claims without protracted proceedings.

28 IV. CONCLUSION

1 For the foregoing reasons, Petitioner respectfully requests that the Court grant the
2 Petition and order immediate release under reasonable conditions of supervision. At minimum,
3 Petitioner requests that the Court issue a conditional writ requiring release unless Respondents
4 promptly lodge competent documentary proof establishing a scheduled near-term removal and
5 showing that continued detention remains authorized, and that the Court order Respondents to
6 lodge the specific documents identified above so the Court can evaluate Respondents' assertions.

7
8 March 16, 2026

9
10 Respectfully submitted,

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