

1 **Kara Hartzler**

2 Federal Defenders of San Diego, Inc.

3 225 Broadway, Suite 900

4 San Diego, California 92101-5030

5 Telephone: (619) 234-8467

6 Facsimile: (619) 687-2666

7 Kara_hartzler@fd.org

8 Attorneys for Petitioner

9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **ABDOURAHMANE BALDE,**

13 **Petitioner,**

14 **v.**

15 **MARKWAYNE MULLIN, Secretary of**
16 **the Department of Homeland Security,**
17 **TODD BLANCHE, Acting Attorney**
18 **General, TODD M. LYONS, Acting**
19 **Director, Immigration and Customs**
20 **Enforcement, JESUS ROCHA, Acting**
21 **Field Office Director, San Diego Field**
22 **Office, JEREMY CASEY, Warden at**
23 **Imperial Regional Detention Center,**

24 **Respondents.**

CIVIL CASE NO.:

'26CV2457 TWR DEB

Petition for Writ
of
Habeas Corpus

[Civil Immigration Habeas Petition
Under 28 U.S.C. § 2241]

INTRODUCTION

Abdourahmane Balde was born in the Republic of Congo and was given an expedited removal order in December 2024. In the 16 months since, ICE has been unable to remove him. This Court should order immediately order him released because “there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678 (2001).

STATEMENT OF FACTS

Mr. Balde was born in the Republic of Congo. Exhibit A, Declaration of Abdourahmane Balde, at ¶ 1. He fled because he believed he would be killed there. *Id.* at ¶ 1.

Mr. Balde entered the United States on November 27, 2024, and was immediately arrested by Border Patrol agents. *Id.* at ¶ 2. He was given a credible fear interview but received a negative finding. *Id.* at ¶ 3. On December 27, 2024, an immigration judge issued a decision affirming this finding. *Id.* at ¶ 3.

In the 16 months since Mr. Balde was ordered removed, ICE has not been able to remove him. *Id.* at ¶ 4. They asked him to sign papers and sent them to the embassy, but they said the embassy hasn’t responded. *Id.* at ¶ 4.

CLAIMS FOR RELIEF

This Court should grant this petition and order Mr. Balde’s immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants for whom there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

I. Count One: Petitioner’s detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

Mr. Balde’s continued incarceration violates the statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting similarly situated people. Federal

1 law requires ICE to detain an immigrant during the “removal period,” which
2 typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C.
3 § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes
4 discretionary—ICE may detain the migrant while continuing to try to remove
5 them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive
6 detention, as removal happens within days or weeks. But some detainees cannot
7 be removed quickly. Perhaps their removal “simply require[s] more time for
8 processing,” or they are “ordered removed to countries with whom the United
9 States does not have a repatriation agreement,” or their countries “refuse to take
10 them,” or they are “effectively ‘stateless’ because of their race and/or place of
11 birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and
12 other circumstances, detained immigrants can find themselves trapped in
13 detention for months, years, decades, or even the rest of their lives.

14 If federal law were understood to allow for “indefinite, perhaps permanent,
15 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
16 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
17 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

18 As an initial matter, *Zadvydas* held that detention is “presumptively
19 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period
20 for effectuating removals.

21 Following the six-month grace period, courts must use a burden-shifting
22 framework to decide whether detention remains authorized. First, the petitioner
23 must make a prima facie case for relief: She must prove that there is “good reason
24 to believe that there is no significant likelihood of removal in the reasonably
25 foreseeable future.” *Id.*

26 If she does so, the burden shifts to “the Government [to] respond with
27 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
28 proof rests with the government: The government must prove that there is a

1 “significant likelihood of removal in the reasonably foreseeable future,” or the
2 immigrant must be released. *Id.*

3 **B. The six-month grace period has long since expired.**

4 As an initial matter, the six-month grace period has long since expired for
5 Mr. Balde. The *Zadvydas* grace period lasts for “*six months* after a final order of
6 removal—that is, *three months* after the statutory removal period has ended.” *Kim*
7 *Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Balde’s
8 order of removal became final on December 27, 2024—16 months ago.
9 Accordingly, his 90-day removal period began on that respective date. 8 U.S.C.
10 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired nearly ten months ago—
11 on June 27, 2025. The threshold requirement is therefore easily met.

12 **C. There is good reason to believe that there is no significant**
13 **likelihood of removal in the reasonably foreseeable future.**

14 Because the six-month grace period has long since expired, this Court must
15 evaluate Petitioner’s *Zadvydas* claim using the burden-shifting framework. At the
16 first stage of the framework, there must be “good reason to believe that there is no
17 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
18 533 U.S. at 701. This standard can be broken down into three parts.

19 **“Good reason to believe.”** The “good reason to believe” standard is a
20 relatively forgiving one. “A petitioner need not establish that there exists no
21 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
22 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
23 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
24 foreseeable, significant likelihood of removal or show that his detention is
25 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
26 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
27 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
28 Petitioner need only give a “good reason”—not prove anything to a certainty.

1 **“No significant likelihood of removal.”** This component focuses on
2 *whether* Petitioner will likely be removed: Continued detention is permissible
3 only if it is “significant[ly] like[ly]” that ICE will be able to remove him.
4 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of
5 untapped possibilities, but also [the] probability of *success* in such possibilities.”
6 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
7 added). In other words, even if “there remains *some* possibility of removal,” a
8 petitioner can still meet its burden if there is good reason to believe that
9 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
10 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

11 **“In the reasonably foreseeable future.”** This component of the test
12 focuses on when Petitioner will likely be removed: Continued detention is
13 permissible only if removal is likely to happen “in the reasonably foreseeable
14 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
15 removal efforts. If the Court has “no idea of when it might reasonably expect
16 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
17 is likely to occur—or even that it might occur—in the reasonably foreseeable
18 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
19 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
20 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
21 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that the Petitioner
22 “would *eventually* receive” a travel document, he can still meet his burden by
23 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
24 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

25 Mr. Balde has good reason to think that ICE cannot remove him, since nine
26 months of effort have borne no fruit. Thus, he has met his initial burden. And
27 because the government’s failure to remove him for 16 months shows that his
28 removal is not significantly likely in the reasonably foreseeable future, this Court

1 should immediately grant his habeas petition.

2 **II. This Court must hold an evidentiary hearing on any disputed facts.**

3 Resolution of a prolonged-detention habeas petition may require an
4 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

5 Petitioner hereby requests such a hearing on any material, disputed facts.

6 **III. Prayer for relief**

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

- 8 1. Order Respondents to immediately release Petitioner from custody;
- 9 2. Enjoin Respondents from re-detaining Petitioner unless and until ICE
10 obtains a travel document for his removal; and
- 11 3. Order all other relief that the Court deems just and proper.

12
13 Respectfully submitted,

14 Dated: April 17, 2026

/s/ Kara Hartzler

Kara Hartzler

Federal Defenders of San Diego, Inc.

Email: Kara.Hartzler@fd.org

PROOF OF SERVICE

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: March 18, 2026

/s/ Kara Hartzler
Kara Hartzler

Exhibit A

1 **Kara Hartzler**
2 Cal. Bar No. 293751
3 **Federal Defenders of San Diego, Inc.**
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
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23 **Respondents.**

Civil Case No.:

Declaration of
Abdourahmane Balde
in Support of Petition
for a Writ of Habeas Corpus

1 I, Abdourahmane Balde, declare:

- 2
- 3 1. I was born in the Republic of Congo. I fled because I believed I would be
- 4 killed.
- 5 2. I entered the United States on November 27, 2024, and was immediately
- 6 arrested by Border Patrol agents.
- 7 3. I was given a credible fear interview but received a negative finding. On
- 8 December 27, 2024, an immigration judge issued a decision affirming this
- 9 finding.
- 10 4. In the 16 months since I was ordered removed, ICE has not been able to
- 11 remove me. They had me sign papers and sent them to the embassy, but
- 12 they said the embassy hasn't responded.
- 13 5. I have no legal education or training and do not have money to hire a
- 14 lawyer.
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