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A# [redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARASA AKRAM,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden at Otay Mesa Detention Center;
MARKWAYNE MULLIN, Secretary of U.S. Department of Homeland Security;
DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs Enforcement;
DANIEL A. BRIGHTMAN, Director, San Diego Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations, and
TODD BLANCHE, Acting Attorney General of the U.S.

Respondents.

CIVIL CASE: 26-CV-3882-CAB

Amended[1] Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

[1] Federal Rule of Civil Procedure 15(a)(2) permits a party to "amend its pleading . . . with the court's leave." The Court's scheduling Order permitted an amended petition by setting a July 22 deadline. [ECF 2.]

INTRODUCTION

Petitioner Marasa Akram has been in immigration custody since August 29, 2025. After he withdrew his asylum request, he was granted voluntary departure on January 14 and told that if he did not leave the United States by February 13, his voluntary departure order would automatically turn into a final removal order. Because he remained in custody, he had no practical means of departing on his own, and U.S. Immigration and Customs Enforcement ("ICE") apparently was unable to obtain the necessary travel documents. Since he has been subject to a final removal order, ICE has continued to be unable to arrange for Mr. Akram's removal to any country, even though he has informed them he has lawful status in Canada under a different name.

Mr. Akram must be released because "there is no significant likelihood of removal in the reasonably foreseeable future," meaning that Mr. Akram's detention is not statutorily authorized. *Zadvydas v. Davis,* 533 U.S. 678 (2001).

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment), and United States Constitution Article I, Section 9 (Suspension Clause).

Venue is proper in the Southern District of California under 28 U.S.C. § 1391 because this is a civil action in which Respondents are agencies of the United States, Petitioner is detained in this district, and a substantial part of the events or omissions giving rise to this action occurred in this district.

PARTIES

Petitioner Marasa Akram is in immigration custody and is detained at the Otay Mesa Detention Center, located in the Southern District of California.

Respondent Christopher J. Larose is the Warden of the Otay Mesa Detention Center, where Mr. Akram is detained. He has immediate physical custody of Mr. Akram and is sued in his official capacity.

Respondent Markwayne Mullin is the U.S. Secretary of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Mr. Akram's detention. Mr. Mullin has ultimate custodial authority over Mr. Akram. He is sued in his official capacity.

Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement and has authority over ICE operations. In that capacity and through his agents, Mr. Venturella has authority over the operation and enforcement of the immigration laws. Mr. Venturella is sued in his official capacity.

Respondent Daniel A. Brightman is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations. He is therefore the custodian of all people held at the Otay Mesa Detention Center and is Mr. Akram's immediate custodian and responsible for his detention. He is sued in his official capacity.

Todd Blanche is the Acting Attorney General of the U.S. and is responsible for the Department of Justice. He is sued in his official capacity.

STATEMENT OF FACTS[2]

Three facts are central to this Petition: Mr. Akram has remained in immigration custody since August 2025; he has been subject to a final removal order since January 2026; and there is no apparent likelihood that ICE will remove him in the reasonably foreseeable future.

A. Immigration History Basics.

Prior to entering the U.S., Mr. Akram was residing in Canada under a different name – Temesgen Aregaw Arata. He entered the United States no later than August 2025 and was arrested by ICE on August 29, 2025.

Mr. Akram claimed asylum and was placed in immigration proceedings. He quickly grew exhausted by the treatment he received, which included being transported on a crowded immigration detainee bus from New York, to New Jersey, to Louisiana, to Arizona, to Colorado, and then to Otay Mesa. He spent most of the trip sick and nauseous from the stifling heat and was frequently vomiting. He could not go to the bathroom until those in charge said he could and he was on at least one occasion instructed to urinate in a water bottle in front of everyone else.

By December, Mr. Akram decided to withdraw his asylum application because he could not stand to be in immigration custody

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[2] These facts are derived from counsel's best understanding of Mr. Akram's personal and immigration history based on communications with Mr. Akram and review of limited documents. Counsel does not have access to all immigration documents at this juncture but is working to gather additional documents from Mr. Akram's prior immigration attorney. Counsel assumes the government will have additional documents at the time it files its return and can provide additional information.

any longer given the conditions in Otay Mesa and his declining health. At that time, he also informed immigration officials that he had not crossed through New Mexico as he previously stated and that he had actually been in Canada with legal refugee status before crossing into the U.S. across the northern border. He requested voluntary departure to the Democratic Republic of the Congo (DRC) but also made clear that he would also be open to returning to Canada if that allowed him to get out of immigration custody more quickly.

On January 14, the Immigration Judge (IJ) granted Mr. Akram voluntary departure to the DRC and filed an order. [*See* Ex. A.] The order stated that "the respondent be granted pre-conclusion voluntary departure under Immigration and Nationality Act (INA) § 240B(a), in lieu of removal, without expense to the Government, on or before 02/13/2026". [*Id.* at 1.] The IJ also made clear that Mr. Akram was withdrawing his asylum claim, stating, "The Court deems withdrawn without prejudice Respondent's filed I-589." [*Id.*] And the Order specified that if Mr. Akram did not voluntarily depart by the February 13 date, a final removal order would instead become immediately effective, and "the Respondent shall be removed to Congo on the charge(s) set forth in the Notice to Appear." [*Id.*]

B. Following Removal Order.

Because Mr. Akram remained in immigration custody, he could not arrange his own departure or independently obtain Congolese travel documents (and given ICE's later failure to do so it does not appear he would have been successful anyway).

It is Mr. Akram's understanding that after his voluntary departure Order was automatically converted to a final removal order,

ICE began attempting to deport him to Congo. He was informed they could not obtain travel documents from Congo. He remained in immigration custody.

As noted above, Mr. Akram informed the immigration court and ICE in December that he actually had legal immigration status in Canada under a different name. He provided documents showing his Canadian residence. He requested that ICE deport him to Canada or literally any other safe third country so that he could be released from immigration custody. It is Mr. Akram's understanding that ICE has been trying to deport him to Canada but has been unsuccessful. At one point several weeks ago he was told that ICE contacted the Canadian embassy and that he should be receiving a call from Canadian authorities to verify his identity and ability to return to Canada. But in the intervening weeks he received no such call. His belief in the statements provided by ICE officers is nil because they have told him many times that he would soon be deported (regardless of the specific country) and nothing has happened. He is desperate to be released from immigration custody (whether through removal or release within the U.S.) because the food in Otay Mesa is causing his cholesterol to skyrocket and doctors have told him he is close to developing diabetes – conditions he never had before being in custody.

Mr. Akram has now been in immigration custody for nearly twelve months and it has been over six months since the IJ issued the Order that is now a final removal order. There is no indication the U.S. will be able to remove him to any country in the foreseeable future.

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ARGUMENT

I.

THE COURT SHOULD ORDER MR. AKRAM'S IMMEDIATE RELEASE BECAUSE HIS CONTINUED DETENTION VIOLATES *ZADVYDAS* AND 8 U.S.C. § 1231.

This petition addresses the question of whether the government may continue to detain someone against whom there is a final removal order when there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Under *Zadvydas*, the answer to that question is no and the Court should order Marasa Akram's immediate release.

A. Legal Background.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Akram. Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first ninety days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that ninety-day period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove him. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances,

detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives.

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

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

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

If he does so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, the burden of proof rests with the government: The government must prove there is a "significant likelihood of removal in the reasonably foreseeable future," or the immigrant must be released. *Id.*

B. <u>The six-month grace period has already expired.</u>

The six-month grace period has already ended as of the filing of this petition. The *Zadvydas* grace period lasts for "six months after a final order of removal—that is, three months after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). As noted above, the Order granting voluntary departure was filed on January 14 and included a provision that it would be automatically converted into a final removal order if Mr.

Akram did not depart by February 13. Mr. Akram has not appealed or otherwise challenged his removal and does not plan to do so (and the deadline for appeal has already passed).

The six-month period therefore began on January 14 and over six months has run as of the filing of this petition. And the government cannot argue that the six-month clock began to run on February 13 (the date by which Mr. Akram was required to depart) instead because under the regulations, his failure to depart meant that his order of removal became final *on the day the IJ granted voluntary departure.* That is because an IJ who grants voluntary departure "shall also enter an alternate order of removal." 8 C.F.R. § 1240.26(d). And when a person fails to voluntarily depart the country by the IJ's imposed deadline, "the voluntary departure order shall vacate automatically and the alternate order of removal will take effect, as if in effect on the date of issuance of the immigration judge order." 8 C.F.R. § 1240.26(b)(3)(ii) (emphasis added). So when Mr. Akram failed to depart by February 13, his voluntary removal order automatically vacated and the IJ's alternate order of removal took effect "on the date of issuance of the immigration judge order"—i.e., January 14, 2026.

C. <u>There is good reason to believe that there is no significant likelihood of Mr. Akram's removal in the reasonably foreseeable future.</u>

Because the six-month grace period has passed, this Court must evaluate Mr. Akram's *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, there must be "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts:

1. "Good reason to believe."

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

2. "No significant likelihood of removal."

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

3. "In the reasonably foreseeable future."

This component of the test focuses on when Mr. Akram will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts.

If the Court has "no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *See Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), report and recommendation adopted, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes Mr. Akram "would eventually receive" a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 16-CV-13556-DML, Dock. 9 at *3 (E.D. Mich. Nov. 14, 2016).

Mr. Akram has good reason to doubt the likelihood of his removal in the reasonably foreseeable future. ICE appears to have made no progress in removing him for over six months, despite Mr. Akram's cooperation in requesting and providing immigration-related documents. And that failure must be viewed in the context of his overall immigration detention – nearly one year – during which ICE was no doubt looking into how it would deport Mr. Akram if his asylum was denied (or, as happened, withdrawn) and he was ordered removed. The fact that ICE has not been able to remove Mr. Akram despite having a year to prepare for and effectuate removal is potent evidence that it simply cannot do so.

Mr. Akram is not required to explain with empirical evidence why the government has not been able to remove him to either the Congo or Canada – or literally any safe third country. As noted above, he has expressed to immigration officials that he is open to being sent to any country in Africa (provided it is safe) – which the government has been attempting to do against immigrants' wishes in other cases –

and they have not been able to do so. He has therefore made it as easy as possible to effectuate his removal and yet he remains in custody.

Given the facts and timeline, there is good reason to believe there is no significant likelihood of Mr. Akram's removal in the reasonably foreseeable future.". Thus, Mr. Akram has met his initial burden. Unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. Akram must be released. *Zadvydas*, 533 U.S. at 701.

D. <u>The Court should hold an evidentiary hearing on any disputed facts.</u>

Resolution of a prolonged-detention habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. Akram hereby requests such a hearing on any material, disputed facts.

E. <u>Prayer for relief.</u>

For the foregoing reasons, Petitioner respectfully requests this Court:

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from removing Petitioner to any country other than Congo or Canada unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
    a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand

b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;

c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;

d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

4. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 22, 2026

s/ Adam F. Doyle

Adam F. Doyle
Attorney for Marasa Akram
email: adam@doyledefense.com

VERIFICATION

I, Adam F. Doyle, declare as follows:

I am an attorney admitted to practice law in the State of California.

I am the attorney of record for Petitioner in this action. I have prepared the foregoing Amended Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 based on my review of records, including immigration documents, and on information provided to me by Petitioner.

Because Petitioner is currently detained, it has not been feasible for him to review and sign this petition prior to filing. The factual allegations in the petition are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on July 22, 2026.

s/ Adam F. Doyle
ADAM F. DOYLE
Attorney for Mr. Akram
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