

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

SALIM OMAR BALOUCH
Petitioner,

v.

PAMELA BONDI, et al.,
Respondents.

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CIVIL ACTION NO. 9:25-CV-216

**RESPONDENTS' RESPONSE IN OPPOSITION
TO PETITION FOR WRIT OF HABEAS CORPUS**

Respondents file this response in opposition to Petitioner Salim Omar Balouch's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241.¹ Because Petitioner's detention is lawful and his removal is reasonably foreseeable, this Court should deny the requested relief.

I. INTRODUCTION

In 2015, Salim Omar Balouch, an Iranian national, was allowed to enter the United States solely for the purpose of facing a federal criminal charge. He was convicted for trafficking heroin. After serving his sentence, a final order of removal was entered. All relief from that order has previously been denied.

Now, Balouch, who has no legal status in the United States, claims that he has been unlawfully detained. Not so. He has a final order of removal to Iran; no procedural barriers to removal exist, and he is scheduled for removal from the United States within the next 9 days. His petition should be denied.

¹ The Respondents here do not include Alexander Sanchez in his capacity as warden of the IAH Polk Secure Adult Detention Facility. The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

II. FACTUAL BACKGROUND

A. Parole into the United States to Face Federal Criminal Charges

Salim Omar Balouch is a native and citizen of Iran. Declaration of Amy L. Lebo (Lebo Decl.) (attached as Exhibit A), ¶ 2. On April 16, 2014, he was indicted in Case No. 4:12-cr-429 in the United States District Court for the Southern District of Texas for the offense of conspiracy to possess with intent to distribute one kilogram or more of a mixture of substance containing heroin, in violation of 21 U.S.C. § 846. *Id.* ¶ 6. On January 16, 2015, he was paroled into the United States for prosecution in the federal criminal proceedings related to his drug trafficking charge. *Id.* ¶ 7. On March 31, 2017, Balouch pleaded guilty to the federal drug trafficking offense. *Id.* ¶ 9. On August 7, 2019, he was sentenced to a 135-month term of imprisonment. ¶ 10.

B. Immigration Proceedings

On April 18, 2023, the Federal Bureau of Prisons released Balouch into the custody of the United States Immigration and Customs Enforcement Agency (ICE). Lebo Decl. ¶ 11. He was served a Form I-851A, Final Administrative Removal Order, charging him as being removable under Section 237(a)(2)(A)(ii) of the Immigration and Nationality Act (INA), based upon a final conviction for an “aggravated felony” as defined in Section 101(a)(43)(B), specifically illicit trafficking in controlled substance. *Id.*

Balouch subsequently applied for relief from removal. *Id.* ¶ 12. On September 22, 2023, an Immigration Judge issued a written decision denying all relief and ordered Balouch removed to Iran. *Id.* ¶ 13. Neither party filed an appeal, and the written decision denying all relief became an administrative final order of removal on October 24, 2023. *Id.* ¶ 14.

In November 2023, Enforcement and Removal Operations (ERO) submitted to the Embassy of Iran a request for a travel document for Balouch. *Id.* ¶ 15. On September 19, 2024, the Iranian Interest Section notified ERO that the travel document was denied. *Id.* ¶ 16. On October 8, 2024, ERO released Balouch on an Order of Supervision (OSUP). *Id.* ¶ 17.

On June 23, 2025, ERO Houston encountered Balouch at his residence in Houston, Texas. Lebo Decl. ¶ 18. ERO brought him into custody at the Montgomery Processing Center in Conroe, Texas. *Id.* He was then transferred to the IAH Secure Adult Detention Facility in Livingston, Texas, on June 25, 2025, and where he is currently detained by ICE. *Id.* ¶¶ 5, 18.

While Balouch has been at the facility in Livingston, the following actions have occurred:

- On July 18, 2025, he was served a Warning for Failure to Depart on Form I-229(a) and the Instruction Sheet to Detainee Regarding Requirement to Assist in Removal. *Id.* ¶ 19.²
- On August 18, 2025, he was served with a Notice to Alien of File Custody Review, advising that on or about September 19, 2025, his custody status would be reviewed and that he could submit documentation that he wished to be reviewed. *Id.* ¶ 20.
- On August 18, 2025, ERO Houston submitted an I-269, Certificate of Identity, to ERO Headquarters for placement onto an Iran removal charter flight, which would not require the issuance of a travel document by Iran. *Id.* ¶ 21.
- On August 20, 2025, ERO Houston served Balouch a Notice of Revocation of Release because ICE determined Balouch can be expeditiously removed from the United States. *Id.* ¶ 22.
- On August 20, 2025, ERO Houston learned that Balouch was added to a flight manifest for an ICE Iran removal charter flight departing the United States within the next nine (9) days. *Id.* ¶ 23.

² These documents advised Balouch of his duty to cooperate with efforts to remove him. Lebo Decl. ¶ 19. They specifically request that he submit any passports (current and expired), birth certificates, national identification cards, and any other document issued by a foreign government indicating citizenship, nationality, place of birth, and place of residence prior to entering the United States. *Id.*

III. ARGUMENT

To be entitled to a federal writ of habeas corpus, a petitioner must show that he is “in custody in violation of the Constitution or laws or treaties of the United States[.]” 28 U.S.C. § 2241(c)(3). Here, Balouch alleges statutory (INA), Constitutional (Due Process), and administrative (Department of Homeland Security regulations) violations as possible grounds for his release. These claims, collectively or alone, do not support habeas relief.

A. **Balouch’s Detention is Lawful Under the INA as well as the Fifth Amendment’s Due Process Clause Because There is a Significant Likelihood of His Removal in the Reasonably Foreseeable Future.**

Under 8 U.S.C. § 1231, the Attorney General has an initial period of 90 days (i.e., “the removal period”) to remove an alien who is subject to a removal order, during which time the alien “shall” be detained. 8 U.S.C. § 1231(a)(1)(A) and (a)(2). After the 90-day removal period expires, ICE has discretion to continue an alien’s detention. 8 U.S.C. § 1231(a)(6). Specifically, Section 1231(a)(6) provides that an alien may be detained beyond the removal period or released under supervision if he is (1) inadmissible, (2) removable because of violations of crimes involving moral turpitude, or (3) a risk to the community or unlikely to comply with the removal order. 8 U.S.C. § 1231(a)(6).

In *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001), the Supreme Court held that Section 1231(a)(6) “read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.” According to the *Zadvydas* Court, “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

To establish a *prima facie* claim for habeas relief under *Zadvydas*, a two-part showing is required. First, the alien must show that he has been in post-removal order custody in excess of

six months (the period deemed presumptively reasonable in *Zadvydas*) at the time the habeas petition is filed. *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011). Second, the alien must provide a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Mere conclusory statements and assumptions are not enough to satisfy *Zadvydas*. *Andrade*, 459 F.3d at 543-544.

Balouch asserts that his detention “is unreasonable because his removal is not reasonably foreseeable.” ECF No. 1, ¶ 62. He points to the government’s “inability to obtain a travel document from Iran,” ECF No. 1, ¶ 53, and the fact that “two years have gone by without the Government securing a third country for his removal,” *Id.* ¶ 58. Although factually correct, neither supports his release.

Balouch is being detained because he is subject to a final removal order. Lebo Decl. ¶ 5. An immigration judge ordered his removal to Iran. *Id.* ¶ 5, 12. He has been added to a flight manifest for an ICE Iran removal charter flight that is departing the United States within the next nine (9) days. *Id.* ¶ 23. Issuance of a travel document is not required for his removal. *Id.*

There is a significant likelihood of Balouch’s removal in the reasonably foreseeable future. He has not carried his burden under *Zadvydas*. Counts One and Two fail.

B. Balouch’s Claim of Arbitrary and Capricious Agency Action is Insufficient to Justify Release.

In Count Three, Balouch alleges a violation of the Administrative Procedures Act because he has not been given the reasons for his detention nor afforded an interview to challenge those reasons. Neither claim is legally sufficient to support his release.

Balouch cites to 8 C.F.R. § 241.13(l)(2) as the regulation supposedly violated here.

However, there is no such provision.³

Section 241.4 concerns the continued detention of inadmissible, criminal, and other aliens beyond the removal period. Pursuant to 241.4(l), an OSUP can be revoked for several reasons. For example, if an OSUP is revoked under § 241.4(l)(1) for an alien's violations of "conditions of release," the alien is entitled to notice "of the reasons for revocation" and an informal interview where the alien may "respond to the reasons for revocation." An OSUP may also be revoked when, "in the exercise of discretion" of the Executive Associate Commissioner or the district director, "[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien[.]" *Id.* § 241.4(l)(2)(iii).

Here, Balouch was not revoked for violation of his release conditions. Instead, ICE has determined that he can be expeditiously removed from the United States. Lebo Decl. ¶ 22. Notably, the requirements of notice and an informal interview referenced in § 241.4(l)(1)—the OSUP revocation provision based on an alien's violation of his conditions of release—are not included in § 241.4(l)(2)—the OSUP revocation provision based on the discretion of a qualified official to enforce a removal order or to commence removal proceedings.

Regardless of which provision of Section 241.4(l) applies, Balouch has been made aware of the reason(s) for his detention. He was served with a copy of a Notice of Revocation of Release on August 20, 2025. Lebo Decl. ¶ 22.

³ To the extent that Balouch intended to cite to Section 214.13(i)(2), his reliance would be misplaced. Section 241.13's scope is limited to aliens subject to a final order of removal who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed." 8 U.S.C. § 241.13(a). He has not made that showing.

As to an informal post-revocation interview, Section 241.4(l) does not prescribe a specific timeframe within which this must take place. Nor was one set forth in the Notice of Revocation provided to Balouch.

In *Tanha v. Warden, Balt. Det. Facility*, No. 1:25-CV-02121, 2025 WL 2062181, at *6 (D. Md. July 22, 2025), the District of Maryland considered a similar claim – an Iranian national seeking habeas relief due to the absence of a post-revocation interview. There, the petitioner, whose OSUP had been revoked because ICE had determined he could be expeditiously removed pursuant to his removal order, invoked Section 241.4(l) and sought release because he had not been afforded an informal interview during his three weeks in custody. Finding that this was “an insufficient basis on which to grant the requested relief,” the district court explained that “release from detention is an overreach and not the appropriate cure” when the informal interview had not taken place. *Id.*

Balouch’s OSUP was revoked because he is subject to a final order of removal and can be expeditiously removed to Iran. In fact, he is currently scheduled to be removed on a charter flight departing the United States within the next 9 days. ERO has followed the relevant regulatory requirements. There are no APA concerns here.

IV. CONCLUSION

For the reasons stated above, Respondents urge the Court to deny Balouch’s petition for writ of habeas corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to all counsel of record via the court's electronic filing system.

/s/ L. Frank Coan, Jr.
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