

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' OBJECTIONS TO MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Respondents submit these objections to the Magistrate Judge's September 17, 2025, Report and Recommendation ("R&R"). ECF No. 10.

I. BACKGROUND

Salim Omar Balouch, an Iranian national, was allowed to enter the United States more than 10 years ago to face a federal criminal charge of heroin trafficking. ECF No. 5-1, ¶¶ 6-7. Following his conviction and term of imprisonment, he was transferred to the custody of U.S. Immigration and Customs Enforcement (ICE), and a final order of removal was entered. *Id.* ¶ 10-11. The written decision denying all relief became an administrative final order of removal in October 2023. *Id.* ¶ 14.

Since that time, ICE has been working to remove Balouch from the United States. *See* ECF No. 5-1, ¶¶ 15-23. In October 2024, he was released from custody on an order of supervision not long after Iranian officials denied a request for travel documents. *Id.* ¶¶ 16-17. ICE later determined that Balouch could be expeditiously removed to Iran. *Id.* ¶ 22. On that basis, his release was revoked, and he was re-detained on June 23, 2025. *Id.* ¶¶ 18, 22. One month later, he filed a habeas petition. ECF No. 1.

In considering the requested relief, the Magistrate Judge issued a show cause order requiring a response to the petition. ECF No. 4. Respondents timely filed a response and attached a sworn declaration from Deportation Officer Amy Lebo. ECF No. 5 and 5-1. The Magistrate Judge set an evidentiary hearing for September 17, 2025. ECF No. 6. Prior to the hearing, Respondents filed a supplement in further support of their response which attached an amended sworn declaration from Lebo. ECF No. 8. The hearing took place as scheduled. ECF No. 9. The R&R was entered later the same day.

In the R&R, the Magistrate Judge determined that (1) Balouch's assertion of a post-removal order detention in excess of six months was sufficient to shift the burden of proof and (2) the record did not establish a significant likelihood of removal in the foreseeable future. Respectfully, both are incorrect. This burden shifting does not comport with the United States Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Further, there is sufficient proof to demonstrate a significant likelihood of Balouch's removal in the foreseeable future. Accordingly, the Respondents object to the R&R and ask that Balouch's petition be denied.

II. ARGUMENT

A. **The Magistrate Judge erred in finding that Balouch satisfied his initial burden of establishing that there is no likelihood of removal in the reasonably foreseeable future.**

In the R&R, the Magistrate Judge noted that Balouch claimed to have been detained more than six months since the time of his removal order. ECF No. 10, at 4. Based on this argument, the Magistrate Judge concluded that "the burden shifts to the Respondents to establish a 'significant likelihood that the petitioner will be removed within the reasonably foreseeable future'." *Id.* This was incorrect.

Balouch is subject to a final order of removal. Under 8 U.S.C. § 1231, such individuals “shall” be detained for an initial period of 90 days (i.e., “the removal period”) to permit removal. 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).

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. “[F]or the sake of uniform administration in federal courts,” the Supreme Court recognized a six-month period of detention as presumptively reasonable. *Id.* at 701. “After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*; see *Andrade v. Gonzales*, 459 F.3d 538, 543-44 (5th Cir. 2006) (“The alien bears the initial burden of proof in showing that no such likelihood of removal exists.”); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (“Therefore, in order to state a claim under *Zadvydas*, the alien must not only show the post-removal order detention in excess of six months but must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.”); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002) (“petitioner, in effect, seeks to place the burden on the Government to show when it will remove petitioner, whereas the Supreme Court held that it is petitioner’s burden first to show good reason to believe that there is no significant likelihood of removal”).

Contrary to the R&R's suggestion, the Fifth Circuit's holding in *Zadvydas* on remand did not alter this analytical framework. There, the alien, who was refused acceptance by Germany and Lithuania because he was not a citizen of either, did exactly what the Supreme Court required by "provid[ing] good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 285 F.3d 398, 404 (5th Cir. 2002).

The R&R also cites to 8 C.F.R. § 241.4(b)(4) in support of the notion that the initial burden in the habeas context rests with the Respondents instead of Balouch. ECF No. 10, at 6. Section 241.4(b)(4) states:

The custody review procedures in this section do not apply after the Service has made a determination, pursuant to the procedures provided in 8 CFR 241.13, that there is no significant likelihood that an alien under a final order of removal can be removed in the reasonably foreseeable future. However, if the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future to the country to which the alien was ordered removed or to a third country, the alien shall again be subject to the custody review procedures under this section.

The subsequent determination described relates to re-detention of an alien, not the duration of any further period of custody. There is nothing to suggest that this determination somehow establishes a burden of proof different from the one set forth in *Zadvydas*. Further, Balouch's Notice of Revocation of Release shows that ICE made this subsequent determination. *See* Respondents' Exh. No. 1 (informing Balouch that his "order of supervision has been revoked...based on a review of [his] official alien file and a determination that there are changed circumstances in [his] case" and that he "can be expeditiously removed from the United States").

The R&R does not identify any evidence submitted by Balouch to satisfy his burden. In the Petition, he alleged that his removal was not reasonably foreseeable because ICE had not yet obtained a travel document from Iran or secured a third country for his removal. ECF No. 1, ¶¶

53, 58. Mere conclusory statements and assumptions are inadequate to satisfy *Zadvydas*. *Andrade v. Gonzales*, 459 F.3d 538, 543-44 (5th Cir. 2006); *see, e.g., Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002) (*Zadvydas* does not require release of deportable alien simply because native country is “moving slow”).

Further, at the evidentiary hearing, Balouch described ICE’s unsuccessful efforts to remove him on a charter flight. Such testimony does not demonstrate that his removal is unlikely or not reasonably foreseeable. *See, e.g., Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001) (denial of travel documents and subsequent pending request showed that “progress is being made” toward alien’s deportation).

Shifting the burden of proof to the Respondents based solely on expiration of the six-month period is inconsistent with *Zadvydas* and its progeny. Accordingly, Balouch failed to carry his threshold burden.

B. The record demonstrates a significant likelihood that Balouch will be removed in the reasonably foreseeable future.

The Magistrate Judge found that Respondents have not shown there is a significant likelihood of removal to Iran in the reasonably foreseeable future. ECF No. 10, at 8. The habeas court must determine “whether the detention in question exceeds a period reasonably necessary to secure removal” as measured “primarily in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699.

The record shows that Respondents have been and continue to take reasonable steps to remove Balouch from the United States.¹ These include:

- In November 2023, Enforcement and Removal Operations (ERO) submitted to the Embassy of Iran a request for a travel document for Balouch. ECF No. 5-1, ¶

¹ Such efforts were established through two sworn declarations of an Enforcement and Removal Operations (ERO) Deportation Officer.

15. On September 19, 2024, the Iranian Interest Section notified ERO that the travel document was denied. *Id.* ¶ 16.

- In August 2025, Balouch was added to a flight manifest for an ICE Iran removal charter flight departing the United States on August 25, 2025. ECF No. 8-1, ¶ 22.
- According to Balouch, on August 25, 2025, ICE transported him to an airport in Alexandria, Louisiana, to board a charter plane along with other detainees. However, the Iran portion of the charter was canceled. ECF No. 8-1, ¶ 24.
- On August 27, 2025, a travel document request package was submitted to ERO Headquarters for delivery to the Interest Section of the Islamic Republic of Iran Embassy. ECF No. 8-1, ¶ 25.
- On September 5, 2025, ERO Houston learned that Balouch was added to a flight manifest for an ICE Iran removal charter flight departing the United States on October 1, 2025. ECF No. 8-1, ¶ 26.

Balouch has offered no credible proof to contradict these facts. Accordingly, they are undisputed.

Since the time of the evidentiary hearing on September 17, 2025, Hossein Noushabadi of Iran's Ministry of Foreign Affairs has publicly stated that deportation flights removing a total of approximately 400 Iranians from the United States are expected in the coming months. Farnaz Fassihi and Hamed Aleaziz, *U.S. Deports Planeload of Iranians After Deal With Tehran, Officials Say*, N.Y. Times, Sept. 30, 2025 (available at <https://www.nytimes.com/2025/09/30/world/middleeast/us-iran-deportation-flight.html>).

According to Iranian officials, on September 29, 2025, a U.S.-chartered flight containing Iranians took off from a military airport in Alexandria, Louisiana. Approximately 54 Iranian citizens were removed to Iran. Declaration of Quincy R. Hodges (Hodges Decl.) (attached as Exhibit A), ¶ 7.²

² The Court may consider new evidence raised for the first time in an objection to a magistrate judge's report and recommendation. *See Performance Autoplex II, Ltd. V. Mid-Continent Cas. Co.*, 322 F.3d 847, 862 (5th Cir. 2003); *Freeman v. Cnty. of Bexar*, 142 F.3d 848, 853 (5th Cir. 1998). The Hodges Declaration meets this standard because it proffers facts and information that have come into existence after issuance of the R&R.

The R&R highlights previous failed attempts to remove Balouch and the prior denial of travel documents to conclude that there was only “[a] remote possibility of an eventual removal.” ECF No. 10, at 7 (citation omitted). Not so. *See Fahim*, 227 F. Supp. 2d at 1365 (“bare fact that the Egyptian consulate has not yet issued any travel documents” deemed insufficient to establish there is no significant likelihood of removal in reasonably foreseeable future).

In *Khan*, 194 F. Supp. 2d at 1135, the district court for the Southern District of California considered the habeas petition of a native of Pakistan and former lawful permanent resident who was ordered removed to Belgium or, in the alternative, to Pakistan. He sought release, arguing that Belgium’s denial of a request for travel documents and the “lack of visible progress” concerning a similar pending request to Pakistan was sufficient to satisfy *Zadvydas*. *Id.* at 1136-37. The district court disagreed, recognizing that such facts failed to establish there is no significant likelihood of removal and simply showed “that the bureaucratic gears of the [federal immigration agency] are slowly grinding away.” *Id.* at 1137.

Iran is accepting flights from the United States. Recently, there was the flight on September 29, 2025, and Balouch was manifested on a flight for October 1, 2025. There is potential for another removal flight to Iran within the next two weeks. Hodges Decl., ¶ 7. Iran is accepting the return of Iranian citizens. In Fiscal Year 2025, there have been 104 removals to Iran. *Id.* A request for travel documents for Balouch remains pending. The package included a copy of his expired Iranian passport, thus evidencing his citizenship. *Id.* ¶ 6.

Similar to the situation in *Khan*, progress is being made. There are no institutional or individual barriers to Balouch’s removal that would implicate the concerns underlying the Supreme Court’s decision in *Zadvydas*. Accordingly, the Magistrate Judge erred in recommending release.

III. CONCLUSION

For the foregoing reasons, the Court should sustain Respondents' objection to the R&R and dismiss the case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ L. Frank Coan, Jr.
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