

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

SALIM OMAR BALOUCH	§	
Petitioner	§	
	§	
v.	§	Case No. 9:25-cv-00216
	§	
PAMELA BONDI, et al.,	§	
Respondents.	§	
	§	

**PETITIONER’S RESPONSE TO RESPONDENTS’ OBJECTIONS TO
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

On September 17, 2025, United States Magistrate Judge Christine L. Stetson entered a Report and Recommendation (“R&R”) on the Petition for Writ of Habeas Corpus. On October 1, 2025, Respondents filed objections to that report. Petitioner hereby replies to those objections.

ARGUMENT

I. The Court should decline to consider Respondents’ new evidence.

Respondents’ objections introduce new evidence, namely a sworn declaration of Quincy R. Hodges (“Hodges Declaration”). Quincy R. Hodges is a Detention and Deportation Officer for the Removal Management Division, U.S. Immigration and Customs Enforcement (“ICE”). Typically, evidence raised for the first time in objections to a report and recommendation of a magistrate judge are not properly

before the district judge. *See Finley v. Johnson*, 243 F.3d 215, 219 n.3 (5th Cir. 2001). When deciding whether to accept additional evidence after a magistrate judge's recommendation has been issued, the Court should consider several factors "including: (1) the moving party's reason for not originally submitting the evidence; (2) the importance of the omitted evidence to the moving party's case; [and] (3) whether the evidence was previously available to the non-moving party if the evidence is accepted." *Performance Autoplex II Ltd. v. Mid-Continent Cas. Co.*, 322 F.3d 847, 862 (5th Cir. 2003).

Respondents note in a footnote their objections that Hodges Declaration "meets this standard" to be properly before the district court but fails to address any of the above-mentioned factors. Dkt. 12 at 6 n.2. Presumably, the Hodges declaration could have been obtained prior to filing their response to the Petition. Most of the information was before the Court or could have been provided before the evidentiary hearing. For example, the removals to Iran in Fiscal Year 2025 was information that was already available to Respondents. The only new information provided is that on September 29, 2025, a U.S. chartered flight removed approximately 54 Iranians citizens to Iran. However, this evidence is not new information because the Respondents' position has been that flights were departing to Iran, and more specifically, that Respondent was scheduled to depart on a charter flight on October 1, 2025. This is not new information, but rather, recent events to support their

previous position. Moreover, the Hodges declaration contains several conclusory statements that provide no basis for Hodges' purported knowledge, nor any indicia of reliability. Therefore, the factors weigh against allowing Respondents to supplement the record.

II. The Magistrate Judge properly evaluated the burden shifting in this case.

Respondents allege that the Magistrate Judge erred by shifting the burden to them to establish a significant likelihood that Petitioner will be removed within the reasonably foreseeable future. Respondents misinterpret 8 U.S.C. § 1231, to require detention for the initial 90-day re-detention period. However, this interpretation is against the plain reading of 8 U.S.C. § 1231 and *Zadvydas v. Davis*, 533 U.S. 678 (2001). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "*may* be detained beyond the removal period" if they meet certain criteria. 8 U.S.C. § 1231(a)(6) (emphasis added). The "removal period" does not re-start after a noncitizen is re-detained. Rather, it is fixed as is the 90-day period immediately following the removal order becoming administratively final. This is supported by custody review procedures cited by the Magistrate Judge at 8 C.F.R. 241.4(b)(4).

III. The Respondents have failed to demonstrate a significant likelihood that Petitioner will be removed in the reasonably foreseeable future.

Respondents claim that their efforts to remove Petitioner are sufficient to demonstrate a significant likelihood that he will be removed to Iran in the reasonably foreseeable future. To support their position, Respondents rely on *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001). The Respondents' reliance on *Khan* is misplaced. In *Khan*, the court noted that removal was still reasonably foreseeable to Pakistan because Khan could not point to any unique or individual barrier to his repatriation to Pakistan.

Unlike *Khan*, Petitioner's case involves specific, repeated, and continuing failures that present concrete barriers to removal. Petitioner has already been denied travel documents by the Iranian government because his expired passport was insufficient for issuance of a travel document by Iranian authorities. There is no indication that resubmitting the same expired passport will yield a different result. These are not merely bureaucratic delays.

Respondents claim that "Iran is accepting the return of its citizens" and points to a handful of removals in FY 2025 is unavailing. That some removals occur to Iran says nothing about the likelihood of Petitioner's removal, especially where there have been flights that he was not permitted to board. The determinative factor is not whether flights are possible in the abstract, but whether this Petitioner is likely to be

on one in the future. Without valid travel documents, he cannot be removed, and there is no indication Iran will issue those documents.

Accepting the Respondents' position that "reasonable steps" toward removal is sufficient to continue to detain a noncitizen past the removal period would eviscerate the protections of *Zadvydas*. If mere repetition of failed requests, absent any new evidence or changed circumstances, were enough to forestall a finding that removal is not reasonably foreseeable, then no detention would ever become indefinite. So long as the Government could say a new request is "pending," even if futile, it could indefinitely detain a noncitizen.

CONCLUSION

For the foregoing reasons, the Court should decline to consider the Respondents' new evidence and adopt the Magistrate Judge's report and recommendation.

Dated: October 6, 2025

Respectfully submitted,

By: /s/ Rebecca Chavez

Rebecca Chavez
GALVESTON-HOUSTON IMMIGRANT
REPRESENTATION PROJECT
Texas Bar No. 24109716
P.O. Box 36329
Houston, TX 77236
Telephone: (713) 909-7015
Fax: (713) 766-6641
Email: rebeccac@ghirp.org
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that October 6, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Rebecca Chavez
Rebecca Chavez