IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

YOUSHITA ALIZADEH, PETITIONER, v. KRISTI NOEM, et al, RESPONDENTS.	Civil Case No. 3:25-CV-02316-S-BN

REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR A PRELIMINARY INJUNCTION

Petitioner, Youshita Alizadeh, by and through undersigned counsel, files this reply to Respondents' opposition to his Petition for a Writ of Habeas Corpus and Motion for a Preliminary Injunction. In his habeas application filed on August 27, 2025, Petitioner argued that (1) ICE's indefinite re-detention of him was a violation of its own regulations, specifically 8 C.F.R. § 241.13, and (2) his continued detention violates his right to substantive due process. Dkt. 1. Concurrent with filing the habeas application, Petitioner also submitted a Motion for a Preliminary Injunction asking this Court to order his release immediately. Dkt. 2.

Respondents filed a response on October 6, 2025, claiming that Petitioner's re-detention is not unlawful under *Zadvydas v.* Davis, 533 U.S. 678 (2001), and circumstances have changed because Petitioner now may be removed to Iran. Dkt. 8. Petitioner now files this reply.

1. Respondents assert no constitutional or statutory authority that permitted detaining Mr. Alizadeh in July 2025 or that allows for Mr. Alizadeh's continued re-detention.

In its response, Respondents make no attempt to provide legal justification for the re-detention of Mr. Alizadeh, instead focusing on discussing the possibility of now obtaining travel documents for Mr. Alizadeh and when these documents will be issued. Respondents therefore wholly fail to address the core issue raised in this habeas petition: What was the legal basis for detaining Mr. Alizadeh in July 2025? And what is the reason for his current civil detention? There is no legal authority mentioned because there is none.

First, there is no statutory authority for re-detaining Mr. Alizadeh long after his removal period has ended. The Immigration and Nationality Act provides that a noncitizen who is "ordered removed" "shall" be removed "from the United States within a period of 90-days."[1] The 90-day period is "referred to as the 'removal period'" in § 1231.[2] The 90-day "removal period begins on the latest of the following: (i) The date the order of removal becomes administratively final; (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order; (iii) If the alien is detained or confined (except under an immigration process); the date the alien is released from detention or confinement."[3] The statute also has a subsection entitled "Suspension of period" which states:

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[1] 8 U.S.C. § 1231(a)(1)(A).

[2] *Id.*

[3] *Id.* at (a)(1)(B).

> The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.[4]

If the alien is not removed within the removal period, the alien, pending removal, shall be subject to supervision, *i.e.*, an order of supervision ("OSUP").[5]

Mr. Alizadeh went through this 90-day removal period in 2007 after he was taken into ICE custody and ordered removable by an IJ. He was detained more than 90 days after his removal order due to the fact that Iran refused to issue travel documents for him. Because Mr. Alizadeh's removal was not, has not, and is not, a practical possibility, ICE released him after spending over a year detained. He has been following all the rules of his OSUP ever since that date.

The INA provides no legal authority to detain Mr. Alizadeh after his almost two decades of compliance with the OUSP. Congress specifically laid out the reasons for the time being extended beyond 90 days in subsection (C)'s provision. None of these reasons apply to Mr. Alizadeh. The provision indicates that Congress was well aware that there may be reasons to toll the timing of the removal period but still chose not to include situations like the one that Mr. Alizadeh is currently facing. There is no statutory authority that permits Mr. Alizadeh's current detention.

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[4] *Id.* at (a)(1)(C).

[5] *Id.* at (a)(3).

Second, Mr. Alizadeh is currently being detained in a civil setting, and the Supreme Court has made very clear that indefinite civil detention is not constitutionally permissible. Indeed, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem."[6] "There is no sufficiently strong special justification here for indefinite civil detention."[7] Indeed, the Court has explained that under the INA, the Government has an interest in "ensuring the appearance of aliens at future immigration proceedings" and "preventing danger to the community" and therefore can justify limited detention.[8] But "preventative detention based on dangerousness" is "limited to specially dangerous individuals." And an alien's removable statute in itself "bears no relation to a detainee's dangerousness."[9] The Supreme Court has made explicitly clear, then, that the only way extended re-detention can be constitutional is if Respondents can demonstrate that it is necessary to prevent a flight risk or because the individual is a danger to the community. Here, however, Respondents have made no such effort to do that.

Indeed, Mr. Alizadeh's documented history of reporting to ICE over the past 18 years proves that he is not a flight risk. He has demonstrated his willingness to assist in ICE's attempts to remove him by requesting travel documents years ago. As his attached declaration states, Mr. Alizadeh would do the same now.[10] Mr. Alizadeh has strong ties to

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[6] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] Pet. Ex. 1.

the Northern District of Texas and no reason to flee. His United States citizen wife and children live here, and he is gainfully employed as a contractor to support his family.[11] His wife has serious medical conditions that have left her disabled, and she depends heavily on her husband for help with her care.[12] She is required to take a complex combination of medications that Mr. Alizadeh assists with in making sure she takes the medications in the prescribed amounts. Since his detention, Mr. Alizadeh's wife's health has deteriorated exponentially, and she has had trips to the emergency room.[13] His family needs him home, and Mr. Alizadeh wants to help. None of this behavior or personal history indicates that Mr. Alizadeh is a flight risk. Moreover, Mr. Alizadeh does not possess a history that indicates he is a "specially dangerous individual." Even though Respondents have made no attempt to justify limited civil detention here, there are no facts that would warrant it.

What's even more alarming, however, is that the "civil confinement here at issue is not limited, but potentially permanent."[14] *Zadvydas* and its progeny make certain that indefinite detention in the immigration context is not constitutionally permissible.[15] Rather, *Zadvydas* explained that once 180 days have passed since the removal period began, a noncitizen may bring a habeas petition seeking release from further ICE custody. Mr.

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[11] Pet. Ex. 1.

[12] Pet. Ex. 1 & 2.

[13] Pet. Ex. 2.

[14] *Zadvydas*, 533 U.S. at 690 (citing *United States v. Salerno*, 481 U.S. 739 (1987); *Carlson v. Landon*, 342 U.S. 524, 545-46 (1962)).

[15] *Id.*

Alizadeh has already spent over 180 days in ICE custody almost two decades ago. And now, over 90 days have passed since Mr. Alizadeh was unlawfully taken back into custody. Respondents have made zero attempt to justify the re-detention in that period of time and have failed to provide how long they expect Mr. Alizadeh to remain in custody.

Mr. Alizadeh has dutifully complied with the conditions of his supervised release for the past 18 years. He was taken into ICE custody on July 2, 2025, after he was picked up by ICE officials as he was leaving his house. Since that date, there has been zero explanation for his detention, and he has received no explanation as to why his detention continues to be necessary. This is likely due to the reality that there is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Mr. Alizadeh. Respondents' ultra vires actions are completely unlawful and in violation of Mr. Alizadeh's constitutional and statutory rights. This Court should grant habeas relief immediately on this basis.

2. Respondents' threatened third country removal is unlawful.

Respondents also foreshadow the likelihood of removing Mr. Alizadeh to a third country if Iran denies travel documents again. Dkt. 8 at 6; Dkt. 9 at 6. Mr. Alizadeh vehemently rejects this idea on the basis that it is unlawful to remove him to a third country when his removal order only dictates that he may be removed to Iran.

The immigration laws delineate the proper procedures by which a country may be designated for removal.[16] These procedures move in incremental steps. First, an individual

[16] *See* 8 U.S.C. § 1231(b).

with a removal order may designate the country to which they want to be removed, and the government *shall* remove the alien to that country.[17] The government may disregard that designation if (1) the individual fails to designate a country promptly; (2) the government of that country does not inform the U.S. government finally, within 30 days after the date the U.S. government first inquires, whether the government will accept the individual into that country; (3) the government of the country is not willing to accept the alien into the country; or (4) the government decides that removing the individual to that country is prejudicial to the United States.[18] Second, if the individual is not removed to the country they designated under § 1231(b)(2)(A), the government shall remove the individual to the country of which the individual is a "subject, national, or citizen" unless the government of that country does not inform the U.S. government or the individual within 30 days after first inquiry or within another reasonable period of time whether the government will accept the individual into the country or the country is not willing to accept the individual into the country.[19] Third, if the individual is not removed to either the country of their designation or the country of which they are a subject, national, or citizen then the government shall remove them to any of the following options: (1) the country from which the individual was admitted to the United States; (2) the country in which is located the foreign port from which the individual left for the United States or for a foreign territory contiguous to the United States; (3) the

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[17] *Id.* at § 1231(b)(2)(A).

[18] *Id.* at § 1231(b)(2)(C).

[19] *Id.* at § 1231(b)(2)(D).

country in which the individual resided before the individual entered the United States and from which the individual entered the United States; (4) the country in which the individual was born; or (5) the country in which the individual's birthplace is located when the individual was ordered removed.[20] *Only* "[i]f impracticable, inadvisable, or impossible" to remove the individual to any of these countries may the government remove the individual to "another country whose government will accept [them] into that country."[21]

Notwithstanding any of these procedures, the statute prohibits removal to a third country where a person may be persecuted or tortured, a form of protection known as withholding of removal.[22] The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion."[23] Withholding of removal is a mandatory prosecution.Similarly, Congress codified protections enshrined in the CAT prohibiting the government from removing a person to a country where they would be tortured.[24] CAT protection is also mandatory.

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[20] *Id.* at § 1231(b)(2)(E).

[21] *Id.* at § 1231(b)(2)(E)(vii).

[22] *Id.* at § 1231(b)(3)(A).

[23] *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.

[24] *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id* §§ 208.16-208.18, 1208.16-1208.18.

To comport with the requirements of due process, the government must provide notice of the third country removal and an opportunity to respond. Due process requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)."[25] The government must be able to show evidence that the third country will accept the individual into that country.[26] Due process also demands that the government "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]."[27] If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an IJ in reopened removal proceedings.[28] Finally, notice of the country to which the

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[25] *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2013); *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) ("All removals to third countries, *i.e.*, removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand." (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country where they will be removed).

[26] *See Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004) (when "at the time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country *will* accept the [individual]").

[27] *Aden*, 409 F. Supp. 3d at 1019; *cf. D.V.D.*, 2025 WL 1453640, at *1 ("Following notice, the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal." (emphasis omitted)).

[28] *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration

noncitizen will be removed must not be "last minute" because that would deprive an individual of a meaningful opportunity to apply for fear- based protection from removal.[29] They must have time to prepare and present relevant arguments and evidence and to seek reopening of their removal case.

Moreover, it is bedrock law that the U.S. government may not impose or inflict an infamous punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court ruled that while deportation itself was not a punishment, the government could not attach punitive conditions to deportation—in that case, imprisonment at hard labor—absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth, and Eighth Amendments.[30] Importantly, the Court drew a distinction between deportation, which the Court reasoned is "not a 'banishment,' in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment," and government actions aimed at punishment, such as imprisonment at hard labor in addition to deportation.[31] The Court explained that deportation "is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper

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proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

[29] *Andriasian*, 180 F.3d at 1041.

[30] *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

[31] *Id.* at 236.

departments, has determined that his continuing to reside here shall depend."[32] But the Court admonished that the government may not "declare unlawful residence within the country to be an infamous crime, punishable by deprivation of liberty and property . . . unless provision were made that the fact of guilt should first be established by a judicial trial."[33] Deportation of individuals to third countries to be imprisoned or harmed is unquestionably punishment.

In this case, none of the requisite thresholds have been met before removing to a third country becomes an option. Removal to a country other than Iran would be unlawful and in violation of ICE's own regulations and would only be intended as a form of punishment. Mr. Alizadeh explains that he is "extremely fearful" of being removed to a third country.[34] He has no connection to any country besides Iran and the United States. Mr. Alizadeh must be notified and given an opportunity to respond and contest that removal if he has a fear of prosecution or torture in that country. No process like this has been conducted at this time. Removal to a third county is not a feasible option and otherwise would be a violation of Mr. Alizadeh's due process rights.

3. Habeas relief is warranted here.

Respondents have failed to rebut any of the claims in Mr. Alizadeh's habeas petition indicating there is no lawful basis for his sudden and indefinite detention. The

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[32] *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730 (1893)).

[33] *Id.* at 237.

[34] Pet. Ex. 1.

government's case is built not on facts or law, but on speculation. For almost two decades, Mr. Alizadeh has lived under the shadow of a removal order that could never be executed. The reward for his compliance should not be indefinite detention.

Petitioner Alizadeh therefore has shown that he is entitled to relief habeas relief because his continued, indefinite detention in ICE custody is unlawful and violates his constitutional and statutory rights. Petitioner respectfully asks this Court to grant the writ of habeas corpus and direct Respondents to immediately release Petitioner from custody under reasonable conditions of supervision. Additionally, Petitioner asks this Court to order Respondents not to remove him to any country other than Iran without proper notice and an opportunity to respond. Finally, Petitioner asks this Court to set this matter for an evidentiary hearing.

RESPECTFULLY SUBMITTED,
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CERTIFICATE OF SERVICE

I hereby certify that I electronically submitted this document via this Court's ECF system and served all parties electronically, including AUSA Ann Cruce-Haag on the date of filing.

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