

JUDGE KATHLEEN CARDONE
UNITED STATES COURT
FOR THE WESTERN DISTRICT OF TEXAS

FILED
JAN 22 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *CM* DEPUTY CLERK

Esmael Rajabi



Petitioner,

v.

Pam Bondi, ATTORNEY GENERAL,
Kristi Noem, SECRETARY OF THE
DEPARTMENT OF HOMELAND
SECURITY, Maria Deandra Ybara,
U.S. ICE FIELD OFFICE DIRECTOR,

Respondents

EP 26CV0130

Civil Action No.
PETITION FOR A WRIT OF 2nd
HABEAS CORPUS PURSUANT
TO 28 U.S.C. §2241, BY A
PERSON SUBJECT TO
INDEFINITE IMMIGRATION
DETENTION.

Petitioner, Esmael, Rajabi appearing pro se, hereby petitions this Honorable Court for the second (2) writ of habeas corpus and seeks declaratory and injunctive relief to review the lawfulness of his detention by the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) as well as relief from unlawful deprivation of liberty in violation of the Constitution, the law relating to Immigration, and binding treaties, or, in the alternative, grant a hearing to address the issues contained in the instant writ of habeas corpus.

CUSTODY

1. Petitioner is in the physical custody of respondents and detained at the ICE Processing Center in El Paso, Texas pursuant to a contractual agreement with the Department of Homeland Security since June 23rd, 2025.

JURISDICTION

2. This Court possesses habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 et seq. The instant action arises under the Fifth and Fourteenth Amendment of the United States Constitution, the Immigration and the Nationality Act of 1952, as amended, 8 U.S.C. § 1101 et seq. (the “Act”), and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. (the “APA”).

3. Habeas jurisdiction also lies pursuant to Art I, U.S.C. § 9, Cl.2 of the U.S. Constitution (“the Suspension clause”) and the common law. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 2241 et seq., 28 U.S.C. § 1331. The APA, 5 U.S.C. § 701 et seq., the Declaratory Judgement Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1361.

4. The REAL ID Act of 2005 (the Act), Pub. L. No. 109-13, 119 Stat 231 (May 11, 2005) divested the district courts of § 2241 habeas corpus petitions attacking removal orders, however, section 106(a) of the REAL ID Act preserves an alien’s right to seek relief from unlawful detention. See H.R. Rep. No. 109-72. At 300 (2005).

5. An alien petitioner's challenge to his detention is independent of his challenge to the removal order therefore this Court has habeas jurisdiction over it. H.R. REP. 109-72, at 175 (2005) (Conf. Rep.) (stating that the REAL ID Act does not "preclude habeas review over challenges to detention that are independent of challenges to removal order").

6. The petitioner challenges his detention rather than his removal order wherefore this Honorable Court possesses jurisdiction to consider the Petitioner's § 2241 habeas corpus petition. See, *Baez v. Bureau of Immigration and Customs Enforcement*, 150 Fed. Appx. 311, 312 (5th Cir, 2005); *Nguyen v INS*, 117 F.3d 206 (5th Cir. 1997).

7. This Court has personal jurisdiction over the Respondents since they may be reached by service. See, e.g., *Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 848, 495 (1973).

PARTIES

The Petitioner

8. The Petitioner is a Native Citizen of Iran. Petitioner had been in the United States, in the State of Texas, in the city of El Paso since around September 19th, 1977. As a student, the Petitioner adjusted his status to a Lawful Permanent Residence (LPR) in 1982. However, on November 20th, 2007, Petitioner was removed back to Iran.

9. On March 20th, 2012, Petitioner re-enters the United States through the U.S.A. and Mexico border in McAllen, Texas. Petitioner's final order of removal was reinstated on February 26th, 2018. Petitioner had his 90-Day custody review on May 27th, 2018.

10. Also, on June 20th, 2018, Petitioner signed all the necessary documents cooperating with DHS/ICE to get Petitioner's Travel Documents from the Iranian Consular. In June 2025, Petitioner signed an additional document for travel request, with Agent C. Fernandez and with Agent J. Perez in July of 2025.

11. Petitioner's removal is not foreseeable in the future since the U.S. and Iran have no formal diplomatic relations since they were severed in 1980 following the Islamic Revolution, with the U.S. viewing Iran as a state sponsor of terrorism. The Honorable Immigration Judge William L. Abbot, on April 18th, 2018, stated on record that, "The Iranian Government does not cooperate with us." Sadly, DHS/ICE is still detaining Petitioner knowing very well and for a fact that Petitioner's removal is not likely in the foreseeable future at this moment. Petitioner hereby prays that this Honorable Court orders the parties in charge of petitioner's detention, to release Petitioner from his detention until they have secured Petitioner's travel documents.

The Respondents

12. Mary De Anda – Ybarra, Acting Field Office Director (FOD), is directly responsible for the continued detention of the Petitioner and his removal from the United States.

13. Pam Bondi, United States Attorney General is responsible with promulgating and interpreting the laws governing immigration and naturalization in the United States of America.

14. Kristi Noem, Secretary of the U.S. Department of Homeland Security is responsible for administering the laws relating to the detention, processing, and removal of aliens from the United States.

EXHAUSTION OF REMEDIES

15. *Zadvydas v. Davis*, 533 U.S. 678 (2001) nor *Clark v. Martinez*, 543 U.S. 371 (U.S. 2005), the Supreme Court decisions controlling the Petitioner's case require that respondent exhaust all administrative remedies.

16. Petitioner is filing this second (2nd) habeas corpus with this court, and not any other court.

17. The Petitioner's remedy for release of his physical custody lies with this Honorable Court again.

VENUE

18. The Petitioner is currently detained at the El Paso Processing Center in El Paso, Texas. 8915 Montana Avenue, El Paso, Texas 79925. The Petitioner has been detained for more than six (6) months beginning February 26th, 2018. Petitioner was released on Order of Supervision (OSUP) on his first habeas corpus.

19. After full compliance with ICE, and the OSUP's requirements, Petitioner was detained again on June 23rd, 2025 and is being held at the El Paso Processing Center. Petitioner has now been detained a second time for almost seven (7) months, totaling thirteen (13) months of custody after the final removal order.

20. Venue therefore lies in the U.S. District Court, Western District of Texas, El Paso Division. *See Rumsfield v. Padilla*, 542 U.S. 426, 443 (2004) (jurisdiction lies in only one district: district of confinement).

PROCEDURAL HISTORY AND RELEVANT FACTS OF THE CASE

21. The Petitioner is a 73 year old male, native of Iran, who last entered the United States on March 20th, 2012.

22. The Petitioner has been detained beyond the presumptive six (6) months period as the time set forth in *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Clark v. Martinez*, 543 371 (2005).

23. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court found that the "indefinite detention status," 8 U.S.C. § 1231(a)(6), INA § 241(a)(6), as applied to aliens that have been admitted to the United States, was unconstitutional and therefore set a six (6) months time period as "reasonably necessary" to effectuate removal of an alien who has been ordered removed from the United States.

24. However, the Supreme Court in *Zadvydas v. Davis* failed at that time to extend such favorable consideration to those deemed inadmissible, i.e., Mariel detainees and other aliens who have not been admitted to the United States.

25. Subsequently, in *Clark v. Martinez*, 543 U.S. 371 (U.S. 2005), the Supreme Court held that presumptive six(6) month period applied also to inadmissible aliens. Id 379.

26. The Petitioner is deemed an inadmissible alien who was not inspected by USCIS before entering the United States.

27. Furthermore, Petitioner's due process rights under the Fifth Amendment have been violated because the Respondents failed to comply with the Order of Supervision (OSUP) revocation procedures set forth in 8 C.F.R. §§ 241.4(l)(1-2) and 241.13(h)(4)(i)(3) when revoking Petitioner's release from immigration custody.

28. His re-detention, after being released pursuant to an OSUP in 2018, without, "any showing of changed circumstances" and "pending as-yet uninitiated third country removal", is entirely arbitrary and violates his due process rights. *See Trejo v. Warden of the ERO El Paso E. Montana*, 2025 U.S. Dist. LEXIS 212821. In the case of Trejo the Court stated in part, "it also finds, in the alternative, that Trejo's re-detention after his release without a bond hearing violates his due process rights."

29. Based on the foregoing reasons, ICE, the agency responsible for making the determination to release the Petitioner, has found that the Petitioner should remain detained pending the removal of the Petitioner.

30. The burden of proof is upon ICE to demonstrate under the "commonly accepted substantive standards", that there exists a "special justification", that might outweigh the alien's powerful interest in avoiding physical confinement "under [individually ordered] release conditions that

may be violated”. *Demore v. Kim*, 538 U.S. 510, 513 (2003) “Due process [in the civil detention context], calls for an individual determination”, of dangerous factors when someone continues to be detained *beyond the brief period* [six months] according to *Zadvydas v. Davis*, *Clark v. Martinez*.

31. ICE has failed to provide the Petitioner with evidence supporting their claim that the Petitioner presents a danger to the community or to the National Security of the United States. The Petitioner mailed his last request for a 180-Day review with ICE on December 2nd, 2025 but has not been seen by an officer.

32. ICE did not place the Petitioner in, “Alien Terrorist Removal Procedures”, pursuant to 8 U.S.C. § 1531 et seq.

33. More than six (6) months have passed since Petitioner has been detained again after his previous release during which he was compliant with ICE OSUP requirements.

34. The Petitioner’s detention record lacks any derogatory information or negative behavior incident.

35. His re-detention violated due process because revocation of OSUP was without cause. Petitioner was compliant with all OSUP requirements and there have been no changes in his removal proceedings.

36. The Petitioner’s final order of removal was issued on February 26th, 2018 when DHS/ICE reinstated Petitioner’s prior order of removal. The Petitioner is willing to subject himself to, including, but not limited to imposition of monetary or secured bail measures, home confinement, telephonic and electronic monitoring, restrictions or whatever form of restrictive non-custodial measures deemed as lawful by ICE and this Honorable Court.

37. If released, Petitioner will reside with his daughter, a U.S. Citizen,



at



El Paso, Texas



38. No special circumstances exist to justify Petitioner's continued detention:

- Petitioner is not an alien with "highly contagious diseases posing a danger to the public". See 8 C.F.R. § 241.14(b).
- Petitioner's release would not cause, "serious adverse foreign policy consequences". See 8 C.F.R. § 241.14(c)(1)(II). There is no indication the Petitioner's release would have "serious adverse" foreign policy consequences.
- Petitioner was never and is not now detained on account of security or terrorism concerns. See 8 C.F.R. § 241.14(d)(1).
- Petitioner has not committed a violent crime as defined in 8 C.F.R. § 241.14(f)(1). His release therefore would not pose a special danger to the public. See 8 C.F.R. § 241.14(f).

COUNT ONE

39. ICE's continued detention violates the Petitioner's Fifth and Fourteenth Amendment Constitutionally protected due process rights to remain free from unlawful civil detention beyond the time required by law and the controlling Supreme Court case laws.

COUNT TWO

40. Petitioner's continued detention beyond the six (6) months denunciation in the Supreme Court's decision *Zadvydas v. Davis*, *Clark v. Martinez*, violates the "Constitutional laws, or treaties of the United States of America".

41. ICE's failure to follow the procedures and principles enunciated in the controlling Supreme Court decisions *Zadvydas v. Davis* and *Clark v. Martinez* violates the Petitioner's Procedural and Substantive Due Process Rights as guaranteed by the Constitution of the United States. See *Zadvydas v. Davis*, id. 692.

COUNT THREE

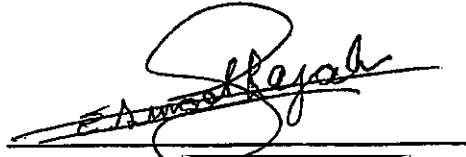
42. Petitioner's re-detention and revocation of his Order of Supervision violates his Fifth Amendment due process rights and Immigration's procedures set forth in 8 C.F.R. §§ 241.4 and 241.13.

CONCLUSION

WHEREFORE, for the following reasons and good cause shown, the Petitioner respectfully requests this Honorable Court:

- Declare that the continued detention of the Petitioner violates the Petitioner's constitutionally protected Fifth and Fourteenth Amendment and Due Process rights.
- Grant the immediate writ of habeas corpus.
- Or in the alternative, issue and ORDER to show cause as to why the Petitioner should remain detained beyond the period specified in the rulings of *Zadvydas v Davis* and *Clark v. Martinez*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Rajabi', is written over a horizontal line.

Esmael Rajabi,  Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this date, I served a true and correct copy of the foregoing Petition for Writ of Habeas Corpus upon the individuals listed below, via First Class U.S.P.S, postage prepaid on JAN 19, 2026

Mary De Anda-Ybarra
El Paso Field Office
Immigration and Customs Enforcement
11541 Montana Ave, Suite E
El Paso, TX 79936

Pam Bondi
Attorney General United States of America
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington DC 20530

Kristi Noem
Secretary of U.S. Department of Homeland Security
245 Murray Lane S.W.
Washington, DC 20528-0305

Respectfully submitted,



ESMAEL RAJABI, *Pro Se*



JAN 19, 2026
Date

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U.S. Department of Justice
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Washington DC 20530

Kristi Noem
Secretary of U.S. Department of Homeland Security
245 Murray Lane S.W.
Washington, DC 20528-0305

Respectfully submitted,


ESMAEL RAJABI, *Pro Se*



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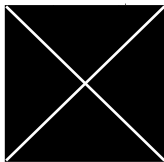
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