

United States District Court
Western District of Texas
El Paso Division

Esmael Rajabi,
Petitioner,

v.

No. 3:26-CV-00130-KC

Pam Bondi, *et al.*,

Respondents.

Federal¹ Respondents' Response to Petitioner's Petition for Writ of Habeas Corpus

Federal Respondents timely submit this response per this Court's Order dated January 23, 2026, directing service and ordering a response to the petition for writ of habeas corpus. *See* ECF No. 2. In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Rajabi ("Petitioner") seeks release from civil immigration detention, claiming that his post-removal-order detention has been become indefinite, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Petitioner has a final order of removal from March 16, 2006, which mandated his detention under 8 U.S.C. § 1231(a) during the 90 days following the entry of his final order. *See* Exh. A (ERO Declaration) ¶ 4. Detention can be extended past the removal period in the exercise of discretion where removal is reasonably foreseeable. 8 U.S.C. § 1231(a)(6). ICE decided in its discretion to continue Petitioner's detention past the 90-day removal period, which is a decision protected from judicial review. 8 U.S.C. § 1252(a)(2)(B).

Petitioner has not shown here that there is no likelihood of removal in the reasonably

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. The Federal Respondents, however, have detention authority over aliens detained under 8 U.S.C. § 1231(a).

foreseeable future. Even if Petitioner were able to make such a showing, the burden would shift to Respondents who can show that removal to Iran is, in fact, significant likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Iran. ECF No. 1 at ¶ 8. Petitioner alleges he entered in 1977 and adjusted his status to a Lawful Permanent Resident (LPR) in 1982, and that in 2007 he was removed back to Iran. *Id.* at ¶ 8; Exh. B, Order of Removal (redacted). He further alleges that he reentered the United States in March 2012, and that his final order of removal was reinstated on February 26, 2018. *Id.* at ¶ 9. On April 18, 2018, the immigration judge entered an order indicating Petitioner's request for withholding of removal was withdrawn. *See* Exh. C, Order (redacted). Petitioner also alleges that he had a 90-day custody review on May 27, 2018, and on June 20, 2018, signed travel documents from the Iranian Consular. *Id.* at ¶¶ 9, 10. Petitioner was subsequently released pending further removal proceedings. *See* Exh. D, Release Notification (redacted).

Petitioner was re-detained and placed in ICE custody on June 23, 2025. Exh. A, at ¶ 5. On July 31, 2025, travel documents were requested through the Detention and Deportation Officer (DDO) at HQ RIO in Washington, D.C. *Id.* at ¶ 6. On October 22, 2025, Petitioner was interviewed via WebEx at the El Paso Service Processing Center (SPC) by the Director for the Interest Section of the Islamic Republic of Iran to confirm Iranian citizenship. *Id.* at ¶ 7. On November 11, 2025, the El Paso ERO field office requested an update on the Petitioner's case for removal, and was advised on January 6, 2026, by the DDO at headquarters that the travel document request was still pending. *Id.* at ¶ 8. On January 22, 2026, the DDO for Iran informed ERO El Paso that Petitioner's case was still under review by the authorities in Tehran. *Id.* at ¶ 9. The HQ RIO is due to update

ERO El Paso on the status of Petitioner's travel document request from authorities in Tehran the first week of February 2026. *Id.* at ¶ 10. Generally, Iranian nationals are being removed via coordinated ICE Air Operations charter flights. *Id.* at ¶ 11.

II. Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Under § 1231, the removal period can be extended in at least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

III. There Is No Good Reason to Believe That Removal to Iran Is Not Significantly Likely in the Reasonably Foreseeable Future.

Petitioner cannot show "good reason" to believe that removal to Iran is unlikely. In *Zadvydas*, the U.S. Supreme Court held that § 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" but "does not permit indefinite detention." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer

authorized by the statute.” *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption “does not mean that every alien not removed must be released after six months.” *Id.* at 701.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a “good reason” to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills*, No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite “good reason,” the burden will not shift to the government to prove otherwise. *Id.*

The “reasonably foreseeable future” is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21–CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioner’s burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03–CV–1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien’s burden of proof. *Nagib v. Gonzales*, No. 3:06–CV–0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03–CV–178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that “the circumstances of his status” or the existence of “particular individual barriers to his repatriation” to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

There is no dispute that Petitioner's removal order has been final since 2006 and that ICE has been making repeated efforts to secure a travel documents from Iran. Petitioner, nonetheless, argues that his continued detention pending removal is contrary to statute and in violation of his due process rights. *Id.* ¶¶ 27, 35. Petitioner, however, relies on only conclusory allegations and speculation to argue that his detention is not foreseeable in the future *Id.* at ¶ 11.

In addition to travel document issues, Petitioner cites a lack of cooperation by the Iranian Government as the basis for his conclusion that his chance of removal is not likely in the foreseeable future. *Id.* ¶ 11. However, as shown in the Declaration in Exhibit A, efforts are ongoing to secure the travel documents, and an update on the status of the documents is due in the first week of February 2026. *See* Exh. A at ¶ 10. Because the efforts have not been fruitful yet, Petitioner argues his detention has become indefinite.

Petitioner's conclusory and speculative claims are wholly insufficient to meet his burden of proof under *Zadvydas*. *See Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014). As such, Petitioner cannot meet his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. *See Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government travel documents). The burden of proof, therefore, does not shift to Federal Respondents to prove that removal is likely.

Even if the burden did shift to ICE, Petitioner concedes that ICE is making continuous efforts to obtain his travel document from Iran. *See* Exh. A (ERO Declaration). An update on the

status is anticipated the first week of February 2026. *Id.* ¶ 10. There is no basis for a due process argument here when ICE is complying with *Zadvydas* standards and making concerted efforts to effectuate Petitioner's removal in the reasonably foreseeable future.

IV. Conclusion

There is no good reason to believe that removal to Iran in the reasonably foreseeable future is unlikely. Continued detention under 1231(a)(6), therefore, is lawful. Accordingly, the Court should deny this petition.

Dated: January 30, 2026

Respectfully submitted,

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