UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Mahshid DIVAFKAN,

Petitioner

v.

Jason STREEVAL, Warden, Stewart Detention Center
Respondent

Civil Action No. _____

Agency number: A[redacted]

HEARING REQUESTED

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

1. Petitioner Mahshid Divafkan, a citizen of Iran, was granted withholding of removal under the Immigration and Nationality Act (INA) on December 11, 2025. Neither side appealed the Immigration Judge's decision by the deadline, rendering the decision final on January 13, 2026.

2. Despite being granted withholding of removal more than six months ago, Petitioner remains detained at the Stewart Detention Center in Lumpkin, Georgia. At least one alternate country, Kuwait, already denied issuing a travel document, and there is no indication that a different country has accepted her.

3. Ms. Divafkan has now been detained for more than six months post-order, and there is no significant likelihood that she will be sent to a third country in the reasonably foreseeable future. Ms. Divafkan's detention, post-removal-order, has become unconstitutionally prolonged under the framework set out in *Zadvydas v. Davis*, 533 U.S. 678 (2001). She therefore challenges her prolonged and indefinite detention as a violation of the Immigration and Nationality Act ("INA") and the Due Process Clause.

4. Ms. Divafkan respectfully requests that this Court grant her a Writ of Habeas Corpus, ordering Respondent to release her from custody and prohibit the Department of Homeland Security from detaining her in the future without sufficient legal justification.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and art. I. sec. 9, cl. 2 of the U.S. Constitution (Suspension Clause), as Ms. Divafkan is presently in custody under or by color of the authority of the United States, and she challenges her custody as in violation of the Constitution, laws, or treaties of the United States.

6. The federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See, e.g.*, *Zadvydas*, 533 U.S. 678; *Demore v. Kim*, 538 U.S. 510 (2003). In *Jennings v. Rodriguez*, 138 S. Ct. 830, 839-41 (2018), the United States Supreme Court reiterated the federal courts' jurisdiction to review such claims.

7. Venue is proper in the Middle District of Georgia, Columbus Division, pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Ms. Divafkan is detained at the Stewart Detention Center in Lumpkin, Georgia.

PARTIES

8. Petitioner Ms. Divafkan is a native of Kuwait but a citizen of Iran (ECF No. 1, at Exh. Six). She has been in ICE custody at the Stewart Detention Center since on or about July 2, 2025. *Id.* at Exh. 5. An Immigration Judge at the Stewart Immigration Court granted Withholding of Removal in a written decision on December 11, 2025. *Id.* at Exh. 6. The Immigration Judge reserved the right to appeal. Neither side did, however, rendering the decision final on January 13,

2026. *Id.; see also, id.* at Exh. 2.

9. Respondent is sued in his official capacity as the Warden of Stewart Detention Center. Pursuant to a contract with ICE, Warden Streeval is responsible for the operation of the Stewart Detention Center, where Ms. Divafkan is detained. Thus, Warden Streeval has control over Ms. Divafkan as her immediate custodian.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. "[W]here Congress does not say there is a jurisdictional bar, there is none." *Santiago-Lugo v. Warden*, 785 F.3d 467, 473 (11th Cir. 2015). "Congress knows how to limit courts' subject matter jurisdiction to decide § 2241 petitions when it wishes to do so. The fact that it did not limit courts' subject matter jurisdiction to decide unexhausted § 2241 claims compels the conclusion that any failure of [the respondent] to exhaust administrative remedies is not a jurisdictional defect." *Id.* at 474.

11. In the absence of a statutorily mandated exhaustion requirement, whether to apply a common law exhaustion requirement is a decision subject to sound judicial discretion, considering congressional intent and any applicable statutory scheme. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *see also Richardson v. Reno*, 162 F.3d 1338, 1374 (11th Cir. 1998); *Yahweh v. U.S. Parole Comm'n*, 158 F. Supp. 2d 1332, 1341 (S.D. Fla. 2001).

12. Here, there is no reason to require exhaustion as Ms. Divafkan has no meaningful administrative remedy to request. Ms. Divafkan's prolonged detention raises constitutional issues. "[A] petitioner need not exhaust [their] administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim.'" *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001) (quoting *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (11th Cir. 1989)). Thus, "[b]ecause the BIA does not have the power to decide constitutional claims—like

the validity of a federal statute— . . . certain due process claims need not be administratively exhausted." *Warsame v. U.S. Att'y Gen.*, 796 F. App'x. 993, 1006 (11th Cir. 2020). *See also Haitian Refugee Ctr., Inc*, 872 F.2d at 1561, *aff'd sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991) (exhaustion had "no bearing" where petitioner made a constitutional challenge to procedures adopted by the INS); *Matter of G-K-*, 26 I&N Dec. 88, 96-97 (BIA 2013) ("Neither the [BIA] nor the Immigration Judges have the authority to rule on the constitutionality of the statutes we administer, so we lack jurisdiction to address [challenges to their constitutionality].").

13. Thus, this Court has jurisdiction over Ms. Divafkan's § 2241 action because exhaustion of administrative remedies is not required, and her petition raises constitutional issues that cannot be addressed administratively.

STATEMENT OF FACTS

14. Ms. Divafkan was born in Kuwait but is a citizen of Iran (ECF No. 1, at Exh. 6). She entered the United States without inspection with her brother on or about September 11, 2024. *Id.* at Exh. 4, p. 1, at ¶ 4. She was detained in the Department of Homeland Security's custody but was shortly released on parole after she passed a Credible Fear Interview. *Id.* at ¶¶ 4-5.

15. Ms. Divafkan filed an asylum application affirmatively with United States Citizenship and Immigration Services (USCIS) on or about March 11, 2025. *Id.* at Exh. 6. At the time, she was not in removal proceedings. ICE agents then detained Ms. Divafkan on or about June 22, 2025. *Id.* at Exh. 4, p. 1, ¶ 5. She was transferred to the Stewart Detention Center from Atlanta on or about July 2, 2025. *Id.* at Exh. 5. She has been in ICE custody since she was detained outside of her home in June 2025. *Id.* at Exh. 4, p. 1, ¶ 5. Ms. Divafkan recalls that the agents who detained her did not provide a reason to re-detain her or allege any violation. *Id.* ICE detained Ms.

Divafkan less than a month after she was hospitalized. *Id.* at Exh. 5.

16. The Department of Homeland Security filed a Notice to Appeal (NTA), alleging she was inadmissible under 8 U.S.C. § 1182(a)(6). *Id.* at Exh. 6. While the proceedings were pending, the agency added an additional ground of inadmissibility, specifically 8 U.S.C. § 1182(a)(7). *Id.* Neither ground alleges that Ms. Divafkan has committed a crime. *See, e.g.,* 8 U.S.C. § 1182(a)(2); *see also, Fong Yue Ting v. United States,* 149 U.S. 698 (1893).

17. Ms. Divafkan remained detained while her removal proceedings were pending at the Stewart Immigration Court, which is inside of the facility. Through her counsel, she submitted several additional documents and filings. *Id.* At the conclusion of her individual hearing over two separate days, the Immigration Judge reserved decision. *Id.* On December 11, 2025, he issued a written decision, granting her application for withholding of removal under the Immigration and Nationality Act. *Id.* Her application for asylum was denied due to Circumvention of Lawful Pathways. *Id.* The Immigration Judge did not find that any other bars applied to her application for asylum, or that there were any bars that rendered her ineligible for withholding of removal. *Id.*

18. Both Ms. Divafkan and the Department of Homeland Security had the right to appeal the decision to the Board of Immigration Appeals, and the deadline was January 12, 2026. *Id.* Neither side filed a Notice of Appeal. Therefore, the order became final on January 13, 2026, more than one-hundred and eighty (180) days ago. *Id.* at Exh. 2.

19. Since she was granted withholding of removal, ICE requested a travel document to Kuwait. *Id.* at Exh. 3. On March 17, 2026, the Kuwaiti embassy informed ICE it would not issue a travel document, as Ms. Divafkan is not a Kuwait citizen. *Id.* Ms. Divafkan has been in contact with ICE officers at Stewart several times and has been cooperative. *Id.* at Exh. 4, pp. 1-2, ¶ 8. Ms. Divafkan, through an attorney, provided ICE with a list of three alternative countries she would be

willing to go to, but she has not heard anything. *Id.* at p. 2, ¶ 9.

20. Ms. Divafkan's brother was also granted withholding of removal. *Id.* at Exh. 7. Farshid Divafkan was in the Department of Homeland Security's custody in Virginia when an Immigration Judge granted withholding of removal on April 21, 2025, and both sides waived the right to appeal the same day. *Id.* He filed a habeas corpus petition, challenging his prolonged detention, on December 3, 2025. *Id.* (citing *Divafkan v. Lyons, et al.*, 1:25-cv-02242). He was ordered released on an Order of Supervision on January 20, 2026. *Id.*

LEGAL FRAMEWORK

21. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

22. The Due Process Clause requires that the deprivation of liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests . . . unless the infringement is narrowly tailored to serve a compelling state interest"). As the Supreme Court held in *Zadvydas*, indefinite detention raises a "serious constitutional problem" and runs afoul of the Due Process Clause. 533 U.S. at 690.

23. 8 U.S.C. § 1231 governs the detention and removal of noncitizens like Ms. Divafkan. Section 1231(a)(2) authorizes a 90-day period of mandatory post-final-removal-order detention, during which ICE is supposed to effectuate removal. This 90-day period is known as the "removal period" and generally starts once a final order of removal has been entered or, as here, on the date of release from criminal custody. *See* § 1231(a)(1)(B). Here, as Ms. Divafkan was granted withholding of removal, she cannot be removed to Iran. 8 U.S.C. § 1231(b)(3).

24. Those who are not removed within the 90-day removal period should be released under conditions of supervision, such as periodic reporting and other reasonable restrictions. *See* § 1231(a)(3). The Government may continue to detain certain noncitizens beyond the 90-day removal period if they have been ordered removed on inadmissibility grounds after violating nonimmigrant status or conditions of entry, or on grounds stemming from criminal convictions, or security concerns, or if they have been determined to be a danger or flight risk. *See* § 1231(a)(6). If these groups of noncitizens are released, they are also subject to the supervision terms set forth in § 1231(a)(3). *Id.*

25. In *Zadvydas*, the Supreme Court held that § 1231(a)(6), when "read in light of the Constitution's demands, limits [a noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S. at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized." *Id.* At that point, the individual must be released because his continued detention would violate both the statute and the Due Process Clause of the Constitution. *Id.*

26. In determining a period reasonably necessary to effectuate removal, the *Zadvydas* Court adopted a "presumptively reasonable period of detention" of six months, inclusive of the 90-day removal period. *Id.* at 701. "After this six-month period, once the [noncitizen] 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.* Thus, after six months, the Government bears the burden of disproving a detained person's "good reason to believe that there is no significant likelihood of removal in the reasonably

foreseeable future." *Clark v. Martinez*, 543 U.S. 371, 386 (2005) (granting habeas relief to Cuban petitioners whose detention lasted beyond six months post-removal-order and whose removal to Cuba was not reasonably foreseeable); *see also Adu v. Bickham*, No. 7:18-cv-103-WLS-MSH, 2018 WL 6495068 (M.D. Ga. Dec. 10, 2018) (R&R recommending release under *Zadvydas*).

27. A noncitizen who has been detained beyond the presumptive six-month period should be released if the Government is unable to present documented confirmation that removal is likely to occur in the reasonably foreseeable future. *Clark*, 543 U.S. at 386; *see also McKenzie v. Gillis*, No. 5:19-cv-139, 2020 WL 5536510, at *3 (S.D. Miss. July 30, 2020) ("Six months have passed since [the ICE Deportation Officer] stated that Petitioner's removal was imminent. Yet, Petitioner remains in ICE custody, and nothing in [the Supervisory Detention and Deportation Officer's] declaration demonstrates that Petitioner will be removed anytime soon. Neither ICE's belief that Petitioner will be removed, nor the information provided by Respondent satisfy the Government's burden to rebut Petitioner's showing that he will not be removed in the foreseeable future."), *report and recommendation adopted*, 2020 WL 5535367 (S.D. Miss. Sept. 15, 2020).

28. Release is the proper remedy for unconstitutionally prolonged post-removal-order detention. *See Zadvydas*, 533 U.S. at 699–700 (explaining that supervised release is the appropriate relief when "the detention in question exceeds a period reasonably necessary to secure removal" because at that point, detention is "no longer authorized by statute").

29. Ms. Divafkan's detention fits squarely within the *Zadvydas* framework. Her grant of withholding of removal grant has been final since January 13, 2026. To Petitioner's knowledge, nothing suspended or tolled the removal period. Nothing has suspended or tolled the removal period since she has been detained.

30. Therefore, Ms. Divafkan is subject to permissive post-removal-order detention

under 8 U.S.C. § 1231(a)(6) and his claim is ripe for court review.

31. "[F]or detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. ICE has attempted to obtain a travel document for Ms. Divafkan and has not been successful.

32. ICE has recently increased its efforts to removal noncitizens granted withholding of removal and protection under the Convention Against Torture to third countries, following a directive issued on February 18, 2025.[1]

33. Several district courts that have considered similar circumstances when a noncitizen has a final order of humanitarian protection and is detained, and they have found that removal is sufficiently unforeseeable, requiring release. *See, e.g. Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *8 (D. Md. Sept. 8, 2025) (ordering release of Iranian national who had obtained withholding, and for whom two alternate countries of removal had been identified but had not accepted). In *Banoub v. Crawford*, No. 3:25CV917, 2025 WL 3723458, at *9 (E.D. Va. Dec. 23, 2025), respondents submitted a request for a travel document to three countries, and at least one country refused to issue a travel document, and at least one request pending. *Id.* The court, relying on *Zadvydas*, ordered the petitioner's release and commented that "[a] grant of withholding of removal substantially increases the difficulty of removing an individual." *Id.*

34. Removal "seems a remote possibility at best." *Zadvydas*, 533 U.S. at 690. Thus, Ms. Divafkan's continued detention violates the implicit requirement in 8 U.S.C. § 1231(a)(6) that detention may not become unreasonably prolonged. In addition, her continued detention does not

[1] Directive, issued February 18, 2025, *available at* https://immigrationlitigation.org/wp-content/uploads/2025/03/1-4-Att-C-Feb-18-2025-Directive.pdf (Document 1-4 of *D.V.D. v. U.S. Department of Homeland Security* (1:25-cv-10676)).

serve a legitimate government purpose and lacks sufficient procedural protections in violation of the Due Process Clause.

35. ICE has not asked Ms. Divafkan if she has fear of returning to a different country, other than Iran, for purposing of having a Reasonable Fear Interview with an Asylum Office with USCIS.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT,

8 U.S.C. § 1231(a)(6)

36. Ms. Divafkan realleges and incorporates by reference each and every allegation contained above.

37. Ms. Divafkan is detained pursuant to the discretionary, post-removal-order detention provision, § 1231(a)(6), because more than 90-days have elapsed since her withholding of removal grant became administratively final and she has not done anything to impede her removal or toll the removal period. See 8 U.S.C. § 1231(a); 8 C.F.R. § 1241.1.

38. Section 1231(a)(6) contains an implicit temporal limitation of six months, after which detention is no longer presumptively reasonable. *Zadvydas*, 533 U.S. at 701. After that point, if the habeas petitioner "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," and due process "requires ordering [the p]etitioner released." *Adu*, 2018 WL 6495068, at *2-3 (quoting *Zadvydas*, 533 U.S. at 701).

39. Ms. Divafkan's detention under §1231 is no longer presumptively reasonable because she has been continuously detained for more than six months since the Immigration

Judge's grant of withholding of removal became administratively final.

40. Ms. Divafkan's cooperation with ICE's removal efforts and ICE's inability to obtain a travel document, such as an email from the Kuwait embassy on March 17, 2026, is evidence that there is no significant likelihood of removal in the reasonably foreseeable future.

41. ICE has made no indication that it is making or will make progress in securing Ms. Divafkan's removal to a third country. At least one country has refused to issue a document and informed ICE in writing more than three months ago. She could remain detained for several months or even years beyond the six months recognized as reasonably necessary to effectuate removal in *Zadvydas*.

42. Nor is there any "sufficiently strong special justification" for Ms. Divafkan's prolonged detention beyond the six-month limit. *See Zadvydas*, 533 U.S. at 690-91 (requiring a showing of dangerousness accompanied by some other "special circumstance" to justify continued detention when removal is not significantly likely in the reasonably foreseeable future).

43. Thus, Ms. Divafkan's detention violates § 1231, and she is entitled to immediate release from custody.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE

OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

44. Ms. Divafkan realleges and incorporates by reference each and every allegation contained above.

45. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at

the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

46. Civil immigration detention following issuance of a final removal order violates due process if it is not reasonably related to its statutory purpose of effectuating removal. *See id.* at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *id.* at 697. When removal is not reasonably foreseeable, detention is no longer reasonably related to that purpose. *Id.* at 699.

47. Prolonged civil detention also violates procedural due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Id.* at 690-91; *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 364-69 (1997); *United States v. Salerno*, 481 U.S. 739, 750-752 (1987).

48. Ms. Divafkan has been detained continuously for more than one year, including more than six months since she has a grant of withholding of removal. She is likely to be detained indefinitely absent intervention from this Court. Her detention is no longer reasonably related to the primary statutory purpose of ensuring her imminent removal to a third country.

49. Moreover, any pro forma internal post-order custody reviews ICE conducted in Ms. Divafkan's case do not meet the minimum procedural safeguards required by due process. *See Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011).

50. Thus, Ms. Divafkan's detention violates both substantive and procedural due process.

51. As a result, Ms. Divafkan is entitled to immediate release from custody.

PRAYER FOR RELIEF

WHEREFORE Petitioner requests that the Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order Respondent to show cause why a writ of habeas corpus should not be granted "within three (3) days unless for good cause additional time, not exceeding twenty (20) days, is allowed," that Petitioner be afforded one (1) week to file a response to Respondents' return, and set a hearing on this Petition within one (1) week after Petitioner's response is due, pursuant to 28 U.S.C. § 2243;

c. Order that as part of their filing showing cause why the Petition should not be granted, Respondents provide all documents relevant to efforts made to obtain travel documents for Ms. Divafkan, which Ms. Divafkan does not have access to;

d. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under Chapter 153 (habeas corpus) of Title 28;

e. In the event that this Court determines that a genuine dispute of material fact exists regarding the likelihood of removal to a third country in the reasonably foreseeable future, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243. *Singh v. U.S. Attorney Gen.*, 945 F.3d 1310, 1315-16 (11th Cir. 2019);

f. Grant a writ of habeas corpus ordering Respondent to immediately release Ms. Divafkan from their custody;

g. Enter preliminary and permanent injunctive relief enjoining Respondent from further unlawful detention of Ms. Divafkan in the future;

h. Declare that Ms. Divafkan's detention without a bond hearing violates the Immigration and Nationality Act;

i. Declare that Ms. Divafkan's detention violates the Due Process Clause of the Fifth Amendment;

j. Enjoin Respondent from transferring Ms. Divafkan outside of this judicial district pending litigation of this matter;

k. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

l. Grant such further relief as this Court deems just and proper.

Dated: July 13, 2026

Respectfully submitted,

/s/ Matthew O. Boles
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Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Matthew O. Boles

Date: July 13, 2026