UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MELIKA MOHAMMADI GAZVAR OLYA, *Petitioner*, v. ANGEL GARITE, *et al.*, *Respondents.*	No. 3:25-CV-00083–DCG

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND RESPONSE IN OPPOSITION TO MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

I. Introduction

Petitioner Melika Mohammadi Gazvar Olya is a beloved daughter, sister, and women's rights activist who has been languishing in Immigration and Customs Enforcement ("ICE") detention for over two years, and for nearly 20 months since her order of removal became administratively final. Under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), Ms. Olya's detention runs afoul of both the post-removal order detention statute and due process. Neither Respondents' allegations of her failure to cooperate with her own removal, nor their assertions of the possibility of removal to Iran, are sufficient to justify Ms. Olya's continued detention.

First, Ms. Olya has met her burden of providing "good reason" to believe that there is no significant likelihood of [her] removal [to Iran] in the reasonably foreseeable future. *See id.* Iran has been designated a "recalcitrant" country since at least mid-2020. Given this fact, along with Ms. Olya's now-expired Iranian passport, and the increasingly deteriorating diplomatic relations between the United States and Iran, Ms. Olya is unlikely to be removed to Iran in the reasonably foreseeable future. Respondents do nothing to rebut this showing besides vaguely concluding that "improved international relations between the United States and other countries" will result in more charter flights to Iran. Dkt. 9 at 3. This uncorroborated assertion is insufficient to justify Ms. Olya's continued detention.

Second, even if this Court were to credit Respondents' claims that Ms. Olya obstructed her own removal in the past, more than six months have elapsed since Ms. Olya's last instance of alleged non-cooperation, clearly surpassing the *Zadvydas* threshold.

Accordingly, Ms. Olya is entitled to release under 8 U.S.C. § 1231, as interpreted by the Supreme Court in *Zadvydas*. Because her lengthy and indefinite detention without adequate review also violates the substantive and procedural guarantees of the Due Process Clause, she is also

entitled to release on constitutional grounds. The Court should therefore grant Ms. Olya's Petition for a Writ of Habeas Corpus and issue the writ.

II. Factual Background

Ms. Olya is a native and citizen of Iran. Declaration of Melika Mohammadi Gazvar Olya Exh. 1 ("Olya Decl.") ¶ 1. In Iran, she protested the mandatory hijab laws and fled to the U.S. with her father after facing violence and death threats from Iranian officials. *Id.* ¶ 2. Ms. Olya and her father entered the U.S. on or around January 28, 2023. *Id.* ¶ 3. Shortly after entering the U.S., she was transferred to ICE custody at the El Paso Service Processing Center ("EPSPC"), where she remains today. *Id.* At EPSPC, the Immigration Judge ("IJ") ordered her removed on July 20, 2023, and the order of removal became administratively final on August 19, 2023. *Id.*; Dkt. 1 ¶ 22. She has been detained in ICE custody for over two years.

ICE made its first alleged attempted to remove Ms. Olya on October 1, 2023. Olya Decl. ¶ 4. ICE officers brought Ms. Olya to the processing department of EPSPC and asked her to change into her street clothes, and she complied by changing clothes. *Id.* When the officers told her she was about to be removed to Iran, she began to cry because she was afraid of being returned to Iran. *Id.* One of the officers told Ms. Olya, without explaining any of the legal consequences, that if she was afraid of going back to Iran, she could reject the flight. *Id.* Then Ms. Olya went with the officers into the van that was there to take her to the El Paso International Airport. *Id.* She continued to cry while in the van out of fear of what would happen to her in Iran. *Id.* Once she and the officers arrived at the airport, Ms. Olya told the officers that she wanted to reject the flight, and they drove back to EPSPC. *Id.*

A few days after this incident, an ICE officer told her that she may go to prison for disobeying the IJ's order. In response, Ms. Olya reiterated her fear of returning to Iran. *Id.* ¶ 5.

The second time ICE allegedly attempted to remove Ms. Olya was on September 16, 2024. *Id.* ¶ 7. She was again taken to the EPSPC processing department and told she would be taken to the airport and removed to Iran. *Id.* The officers specified that the flight would be from El Paso to Dallas, Texas to Turkey and then to Iran. *Id.* The ICE officer told Ms. Olya that if she did not want to go to Iran, she could opt to stay in Turkey. *Id.* An officer again told her that she would have the option to reject the flight, without explaining how that would impact her case. *Id.* Officers brought Ms. Olya to a van to go to the airport, and she cried in fear. *Id.* Outside of the airport, she told the officers she wanted to reject her flight, and she returned to EPSPC. *Id.*

Since September 16, 2024, Ms. Olya has been fully cooperative with her removal. For example, when her Iranian passport expired, she had her picture taken so that ICE could submit a passport renewal. *Id.* ¶ 8. Meanwhile, her mental health and physical well-being have deteriorated in detention and she suffers from crying fits, nightmares, and depression. *Id.* ¶ 10.

III. Argument

A. Ms. Olya is Entitled to Release Under *Zadvydas* Because Her Removal Is Not Significantly Likely in the Reasonably Foreseeable Future and the Government Has Failed to Rebut This Showing

1. *Zadvydas*'s Burden-Shifting Framework for Post-Removal Period Detention

The *Zadvydas* Court adopted a "presumptively reasonable period of detention" of 180 days. 533 U.S. at 701. After 180 days, 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." *Id.*; *Clark v. Martinez*, 543 U.S. 371, 386 (2005); *Hernandez-Esquivel v. Castro*, No. 5-17-CV-0564-RBF, 2018 WL 3097029, at *5 (W.D. Tex. June 22, 2018).

The government's mere *belief* or unsubstantiated assertion that someone will be removed in the reasonably foreseeable future is simply not enough to meet its burden. *See McKenzie v.*

Gillis, No. 5:19-cv-139, 2020 WL 5536510, at *3 (S.D. Miss. July 30, 2020) ("Neither ICE's *belief* that Petitioner will be removed nor the information provided by Respondent satisfy the government's burden . . . ."); *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019) ("[I]f [ICE] has no idea of when it might reasonably expect [petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future."); *Andreasyan v. Gonzalez*, 446 F. Supp. 2d 1186, 1189–90 (W.D. Wash. 2006) (finding that respondent had not rebutted petitioner's showing when respondent repeatedly asked for "a few more weeks" to obtain travel documents).

2. Ms. Olya Has Provided Good Reason to Believe Her Removal to Iran is Unlikely in the Reasonably Foreseeable Future, and Respondents Fail to Rebut This Showing

Here, there is "no significant likelihood" that ICE will be able to remove Ms. Olya to Iran "in the reasonably foreseeable future." *See Zadvydas*, 533 U.S. at 701. Notably, "as the period of prior post-removal-period confinement grows, the amount of time considered the 'reasonably foreseeable future' shrinks." *Abdulle v. Gonzales*, 422 F. Supp. 2d 774, 778 (W.D. Tex. 2006) (quoting *Zadvydas*, 533 U.S. at 701) (concluding that where petitioner's "post-removal detention ha[d] exceeded one year" the "reasonably foreseeable" timeframe "shrunk dramatically").

As of mid-2020, the United States has considered Iran a "recalcitrant" country, meaning it is routinely uncooperative in accepting return of its citizens and issuing travel documents so that its citizens can be repatriated from the United States.[1] Respondents do nothing to dispute this designation, besides their baseless conclusory allegation that the report is "outdated." *See* Dkt. 9 at 6. But as recently as November 2024, ICE itself considered Iran to be "uncooperative" with

[1] Jill H. Wilson, *Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals* (Washington, DC: Congressional Research Service, 2020), https://www.congress.gov/crs-product/IF11025.

regard to accepting deportations of Iranian nationals,[2] and in December 2024, news outlets reported that DHS had not publicly changed Iran's designation.[3]

Respondents' further attempts to nitpick Ms. Olya's evidence are meritless. Specifically, they assert the irrelevance of a 2025 Washington Post article reporting that there are 2,618 Iranians with final orders of removal in the U.S., among the top ten countries in the world. *See* Dkt. 9 at 6. Although not dispositive, the presence in the U.S. of thousands of Iranians with final orders of removal strongly suggests that the United States has been largely unsuccessful in removing individuals to Iran. Moreover, Respondents cite ICE statistics indicating that 27 Iranian nationals were removed in fiscal year 2024, but then misleadingly jump to the conclusion that all these individuals were removed to *Iran* (rather than a third country). *See id.* at 7.

Finally, U.S.-Iran relations, which were already strained, have increasingly deteriorated with the change in federal administrations. During his first term, President Trump withdrew the U.S. from a nuclear deal that curbed Iran's nuclear program in return for some sanctions relief.[4] Since his reelection, President Trump has threatened to bomb Iran if it does not reach a deal with the U.S.[5] And in a further sign of the difficult path between the two geopolitical foes, President Trump issued a stark warning on April 9 that if talks were unsuccessful, "Iran is going to be in great danger."[6] The U.S. Treasury Department has since issued new sanctions targeting Iran.[7]

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[2] Exh. 3.

[3] *See* Nicole Narea, *How Trump could try to deport immigrants to countries other than their own*, Vox (Dec. 10, 2024), https://www.vox.com/politics/390533/trump-third-country-deportation-bahamas-panama-grenada-turks-caicos; Maham Javaid & Adrian Blanco Ramos, *Countries refusing deportees could hinder Trump's immigration plans*, Washington Post (Jan. 27, 2025), https://www.washingtonpost.com/world/2025/01/27/trump-deportees-venezuela-china-india-cuba/ (listing Iran as a "recalcitrant" country) (attached hereto as Exhibit 4).

[4] Explainer, *Are Iran and the US having 'direct' talks on the nuclear file?*, Al Jazeera (Apr. 8, 2025), https://www.aljazeera.com/news/2025/4/8/are-the-us-and-iran-having-direct-talks-on-tehrans-nuclear-programme.

[5] *Id.*

[6] *US issues new sanctions on Iran as Trump seeks talks*, Reuters (Apr. 9, 2025), https://www.reuters.com/world/us-issues-new-sanctions-iran-trump-seeks-talks-2025-04-09.

[7] *Treasury Department hits Iran with new sanctions targeting its nuclear program ahead of Oman talks*, AP News (Apr. 9, 2025), https://apnews.com/article/trump-iran-sanctions-nuclear-talks-oman-1e34df66ed6278827ad2f6fdc0282191.

Accordingly, Ms. Olya made an initial showing that her removal is not significantly likely in the reasonably foreseeable future, highlighting the absence of removal flights to Iran and the unlikeliness, given relations between the United States and Iran, that removals will resume in the reasonably foreseeable future. Dkt. 1 ¶¶ 35–37. Respondents thus bear the burden to provide evidence that Ms. Olya's removal is significantly likely in the reasonably foreseeable future, and they have not met their burden.

Critically, Respondents have not provided a shred of evidence indicating that removals to Iran have resumed. Instead, Respondents' declarant claims that "changes to the priorities of the United States government have resulted in improved relations between the United States and *other countries*, resulting in more charter flight approvals in recent months." Dkt. 9-1 ("Sarellano Decl.") ¶ 33 (emphasis added). Notably, AFOD Sarellano provides no basis for his personal knowledge regarding ongoing U.S. foreign relations.[8] Moreover, this vague assertion, with its lack of any detail regarding the likelihood of removal to *Iran*, is a far cry from the showing required under *Zadvydas*. As previously described, recent reports suggest a growing strain in U.S.-Iran relations due to increased tensions over Iran's nuclear program, U.S. sanctions, and divergent policies.

Accordingly, Respondents have failed to rebut Ms. Olya's showing that her removal to Iran is unlikely to occur within the reasonably foreseeable future—a timeframe that has "shrunk dramatically," *Abdulle*, 422 F. Supp. 2d at 779, given her 20-month post-order confinement.

B. Ms. Olya's Alleged Failure to Cooperate Does Not Justify Her Continued Confinement Under *Zadvydas*

1. Ms. Olya Cooperated with the Government's Efforts to Remove Her

Respondents allege that Ms. Olya failed to cooperate by rejecting removal flights in October 2023 and September 2024, refusing to sign custody review documents, and by filing

[8] For this and other reasons, Ms. Olya has moved to strike portions of AFOD Sarellano's declaration.

motions to reopen and stays of removal with the Board of Immigration Appeals ("BIA"). Sarellano Decl. ¶¶ 11, 24. However, these incidents do not amount to noncompliance, which is found where a noncitizen "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." 8 U.S.C. 1231(a)(1)(C). Respondents must demonstrate noncompliance by "clear and convincing evidence" of "intentional or deliberate conduct," and they have not done so here. *Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F. Supp. 3d 693, 709 (W.D. Tex. 2021).

First, Ms. Olya's telling officers that she wanted to reject the flights in October 2023 and September 2024 does not amount to noncompliance under 8 U.S.C. 1231(a)(1)(C). Regarding the scheduled removal flight on October 1, 2023, an officer told her that if she did not want to return to Iran, she could reject the flight. Olya Decl. ¶ 4. Fearing for her life in Iran, and not understanding the legal consequences, Ms. Olya acted on the officials' advice and told the officials she wanted to reject the flight. *Id.* The decision to turn the van around was made by officials, not by Ms. Olya. Similarly, on September 16, 2024, when ICE tried to remove her the second time, Ms. Olya cried out of fear. *Id.* ¶ 7. Seeing her fear, one of the officials again told her that she could stop her deportation by rejecting the flight, and she did so. *Id.* On both occasions, the officials chose to offer Ms. Olya the option not to be deported, and Ms. Olya, quite naturally given her fear of returning to Iran, accepted that offer. This behavior is markedly different than in other cases where courts have found noncompliance, such as when a petitioner made "conflicting claims of citizenship." *See Blankson v. Mukasey*, 261 F. App'x 758, 759 (5th Cir. 2008).

Second, Respondents misleadingly imply that by filing motions to reopen and stays of removal with the BIA, Ms. Olya was prolonging her detention. *See* Dkt. 9 at 8. However, unlike a BIA appeal of an underlying removal order, filing a motion to reopen with the immigration court

or the BIA does not automatically stay the execution of a removal order. *Garcia-Carias v. Holder*, 697 F.3d 257, 271 (5th Cir. 2012) (quoting *Dada v. Mukasey*, 554 U.S. 1, 21 (2008)). Ms. Olya only had a stay of removal from December 8, 2023 until May 30, 2024, while her first motion to reopen was pending with the BIA and then remanded to the IJ. Sarellano Decl. ¶ 16. For almost a year, she has not had a stay that would prevent ICE from removing her.

Finally, Respondents insinuate that Ms. Olya's refusal to sign legal documents, such as notices and warnings, can be treated as another sign of her non-cooperation. *Id.* ¶¶ 10–11, 13–15, 17, 22–25. However, since her removal order became final and apart from when her removal was stayed, ICE has had the authority to remove her whether or not she signed those documents. *See generally* 8 U.S.C. § 1231. Further, Ms. Olya refused to sign the documents because as a non-native English speaker, she did not understand what they meant. Olya Decl. ¶ 9. On the single occasion where ICE notified her attorney and had the attorney review the document with Ms. Olya, she signed the document. *Id.*

In comparison, courts have found non-cooperation in the past where petitioners have not been forthcoming about their citizenship, refused to meet with the consulate, and renounced citizenship of their home country. *See Blankson*, 261 F. App'x at 759; *Reid v. Gillis,* No. 5:19-cv-137-KS-MTP, 2020 WL 4574520, at *2 (S.D. Miss. Apr. 3, 2020); *Lightson v.* Mukasey, No. H-07-2236, 2008 WL 8053472, at *2 (S.D. Tex. Mar. 6, 2008). Ms. Olya has done no such things. Instead, Ms. Olya has complied with Respondents' removal efforts, including, most recently, by allowing ICE to take photos of her for her passport renewal. Olya Decl. ¶ 8.

2. Even If Ms. Olya Failed to Cooperate, Her Continued Detention Is Unjustified Because Over Six Months Have Elapsed Since Her Alleged Noncooperation

This Court recently held that "the government is required to renew its efforts to seek compliance from Petitioner in the removal process on a regular basis . . . no less than every six

months" in "keep[ing] with[] the spirit of *Zadvydas*." *Glushchenko*, 566 F. Supp. 3d at 711. And "as the length of Petitioner's confinement grows, so must the amount of evidence the Government presents to support a finding of non-cooperation." *Davis*, 482 F. Supp. 2d at 802.

Even if the Court concludes Ms. Olya obstructed her own removal in September 2024, it has now been approximately seven months since ICE last attempted to place her on a removal flight to Iran. Olya Decl. ¶ 7; *see generally* Exh. 2. During this time, Ms. Olya has complied with each of ICE's directives, including allowing her picture to be taken for her passport renewal. Olya Decl. ¶ 8. Moreover, apart from the most recent seven months during which ICE has not been able to remove Ms. Olya, nearly a year passed between ICE's first and second attempts to remove Ms. Olya. *See* Exh. 2. Thus, even accepting Respondents' assertions that Ms. Olya failed to cooperate with efforts to remove her on two occasions, Ms. Olya has been detained for over 750 days total during which she did nothing to obstruct her own removal and Respondents failed to remove her. *Id.* Her continued indefinite detention is therefore unjustified.

C. Ms. Olya's Continued Detention Violates Due Process

Ms. Olya's continued detention violates substantive due process. Civil immigration detention runs afoul of the due process clause when it no longer bears a reasonable relation to the detention statute's purpose. The purposes of post-order detention under 8 U.S.C. § 1231 are to ensure an individual's presence for her imminent removal and, secondarily, to prevent danger to the community. *See Zadvydas*, 533 U.S. at 690, 697. Moreover, as Ms. Olya's detention has drawn on, she has suffered physically and mentally, suffering depression, nightmares, and inadequate nutrition. Olya Decl. ¶ 10. Because of the length of time Ms. Olya has already been detained pursuant to final order, the harmful conditions in which is detained, and the fact that ICE is unlikely to execute her removal in the near future, her detention is no longer reasonably related to the

purpose of ensuring her presence for imminent removal. Thus, Ms. Olya's detention violates the substantive guarantees of the Fifth Amendment's Due Process Clause.

D. This Case Is Ripe for Decision Without Further Proceedings; In the Alternative, Petitioner Requests an Evidentiary Hearing

An evidentiary hearing is not necessary to resolve this petition and grant Ms. Olya the relief to which she is entitled under *Zadvydas* and the Due Process Clause: immediate release from government custody. However, if this Court determines that there is a material factual dispute, Ms. Olya is entitled to an evidentiary hearing. *See United States v. Tubwell*, 37 F.3d 175, 179 (5th Cir. 1994); *Tijerina v. Thornburgh*, 884 F.2d 861, 866 (5th Cir. 1989); *see also Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1315 (11th Cir. 2019) ("It is well established that a court may not decide a habeas corpus petition based on affidavits alone when there are factually contested issues."). If this Court determines a hearing is necessary, it should hold one swiftly as required by the federal statutes governing habeas petitions. *See* 28 U.S.C. §§ 2241 et seq.; *see also Preiser v. Rodriguez*, 411 U.S. 475, 498 (1973). (explaining that "seeking immediate release or a speedier release from confinement" is "the heart of habeas corpus").

IV. Conclusion

The government is detaining Ms. Olya in violation of 8 U.S.C. § 1231 and the Due Process Clause. Ms. Olya has met her initial burden of pleading and showing that her removal is not significantly likely in the reasonably foreseeable future, and Respondents have not met their burden to rebut that showing. This Court should grant her a writ of habeas corpus ordering her immediate release.

Dated: April 14, 2025

Respectfully submitted,

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*** Plaintiff is represented by a clinic operated by Texas A&M University School of Law, but this document does not purport to present the school's institutional views, if any.

CERTIFICATE OF SERVICE

I hereby certify that, this 14th day of April, 2025, I filed a copy of the foregoing document electronically through the CM/ECF system, which gave service to all counsel of record.

s/ Sara Zampierin
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