

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 RESPONSE TO RESPONDENTS' SUPPLEMENTAL BRIEF

I. Introduction

Petitioner Melika Mohammadi Gazvar Olya ("Ms. Olya") has been detained for over twenty-nine months, over twenty-three of which have been since her removal order became final. Respondents' last attempt to remove her was ten months ago. In response to the Court's request for further briefing in advance of the August 6, 2025 status conference, Dkt. 14, Respondents have offered vague assertions that they are in the process of procuring a travel document from Iran but no timeline for when that travel document might issue or when Respondents might actually be able to put Ms. Olya on a plane to Iran. At this point, over two years in, Respondents must do more to meet their burden of showing a significant likelihood that Ms. Olya will be removed in the reasonably foreseeable future. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Clark v. Martinez*, 543 U.S. 371, 386 (2005); *Hernandez-Esquivel v. Castro*, No. 5-17-CV-0564-RBF, 2018 WL 3097029, at *4–5 (W.D. Tex. June 22, 2018). Ms. Olya's petition is due to be granted, and if any question of fact remains, the Court should schedule an evidentiary hearing.

II. Factual Background

Ms. Olya has been in ICE detention since February 23, 2023. Ms. Olya fled Iran because Iranian officials threatened to kill her for her activism against Iran's mandatory hijab laws. Dkt. 11-1 ¶ 2. An immigration judge ordered her removed to Iran, and that removal order became final nearly two years ago, on August 19, 2023. Dkt. 1 ¶¶ 21–22.

According to Respondents, the last time ICE tried to deport Ms. Olya was over ten months ago, on September 16, 2024. Dkt. 9-1 ¶ 24; Dkt. 15-2. Ms. Olya has cooperated with ICE's efforts to remove her since then, including by allowing her photograph to be taken for a new passport prior to the July 8, 2025 incident described in Martin A. Sarellano's declaration. *Compare* Dkt. 11-1 ¶ 8 (executed April 14, 2025), *with* Dkt. 15-1 ¶ 4.

Ms. Olya recently agreed to speak with FBI agents on June 30, 2025. Second Declaration of Melika Mohammadi Gazvar Olya ("2d Olya Decl."), Ex. A, ¶¶ 2–6. One of those FBI agents told Ms. Olya that Iran is not currently accepting removal flights from the United States because of deteriorating relations between the United States and Iran. *Id.* ¶ 7.

The United States has long classified Iran as an "uncooperative" country, unwilling to repatriate Iranians deported from the United States.¹ A presidential proclamation in June 2025 imposed restrictions on Iran, noting that it has "historically failed to accept back its removable nationals."² In June 2025 and during the twelve months prior, no chartered removal flights to Iran

¹ U.S. Department of Homeland Security, *ICE Faces Barriers in Timely Repatriation of Detained Aliens*, (Mar. 11, 2019), <https://www.oig.dhs.gov/reports/2019/ice-faces-barriers-timely-repatriation-detained-aliens/oig-19-28-mar19>.

² The White House, U.S. Department of Homeland Security, Restricting the Entry of Foreign Nationals to protect the United States From Foreign Terrorists and Other National Security and Public Safety Threats, (June 4, 2025), <https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/>.

were reported.³ On June 22, 2025, the United States bombed Iran.⁴ Since then, President Trump has stated he would bomb Iran again,⁵ most recently stating that Iran was “sending very bad signals, very nasty signals,” and that the United States would “openly and gladly . . . wipe out [Iran’s nuclear facilities] faster than you can wave your finger at it.”⁶

III. Argument

A. Despite Court Instructions, Respondents Fail to Address The Fact That Over Six Months Have Elapsed Since Ms. Olya’s Alleged Failure to Cooperate

Respondents conveniently ignore the Court’s question regarding whether it has been over six months since Ms. Olya’s last alleged refusal to cooperate with the removal process, perhaps because the answer leads only to one conclusion: that Ms. Olya must be released. *See* Dkt. 14 at 2.

Under *Zadvydas*, the “presumptively reasonable period of detention” is 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.*; *Hernandez-Esquivel*, 2018 WL 3097029, at *5 (W.D. Tex. June 22, 2018). The government’s mere belief that removal is likely in the reasonably foreseeable future, without more, is insufficient to meet this burden. *See McKenzie v. Gillis*, No. 5:19-cv-139, 2020 WL 5536510,

³ Thomas Cartwright, *ICE Air June 2025 Report*, Witness at the Border (July 5, 2025), <https://static1.squarespace.com/static/5e221cacff87ba2d2833cf54/t/686984fe7e5fc02c7c0d7939/1751745794097/ICE+Air+JunTHCPDF.pdf>.

⁴ Thomas Mackintosh & Nadine Yousif, *What we know about US strikes on three Iranian nuclear sites*, BBC (June 23, 2025), <https://www.bbc.com/news/articles/cvg9r4q99g4o>.

⁵ Brendan Cole & Shane Croucher, *Donald Trump Issues New Warning to Iran, Threatens To Attack Again*, Newsweek (July 22, 2025), <https://www.newsweek.com/donald-trump-iran-warning-nuclear-strikes-2102102>.

⁶ Al Jazeera Staff, *‘Wipe it out faster’: Trump again threatens Iran over nuclear enrichment*, Al Jazeera (July 28, 2025), <https://www.aljazeera.com/news/2025/7/28/wipe-it-out-faster-trump-again-threatens-iran-over-nuclear-enrichment>.

at *3 (S.D. Miss. July 30, 2020), *report and recommendation adopted as modified*, No. 5:19-CV-139-KS-MTP, 2020 WL 5535367 (S.D. Miss. Sept. 15, 2020). Importantly, “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”).

Here, even if this Court credits Respondents’ claim that Ms. Olya obstructed her own removal in September 2024, it has now been approximately ten months since this alleged incident. *See* Dkt. 11-1 (Olya Decl.) ¶ 7. In the five months that followed, ICE made no attempt to place Ms. Olya on a removal flight to Iran before allowing her passport to expire in February 2025. Respondents claim to have met with Iranian officials on April 8, 2025, but took no further action until they attempted to take Ms. Olya’s photograph on July 8, 2025, two weeks after Ms. Olya requested that this Court hold a status conference.⁷

Conversely, in the past ten months since the alleged incident of noncooperation, Ms. Olya has made every effort to cooperate with ICE’s directives, including by allowing her picture to be taken for her passport renewal prior to April 14, 2025, *see* Dkt. 11-1 (Olya Decl.) ¶ 8, and willingly speaking with FBI agents on June 30, 2025, *see* Ex. A (2d Olya Decl.).

Respondents’ ongoing promises that Iran will issue Ms. Olya’s travel document soon, along with their unsupported belief that Iran will accept deportation flights from the United States, cannot justify Ms. Olya’s prolonged and indefinite detention. *See Andreyan v. Gonzalez*, 446 F. Supp. 2d 1186, 1189–90 (W.D. Wash. 2006) (finding that respondent had not rebutted petitioner’s

⁷ Respondents make much ado about Ms. Olya’s refusal to wear a headscarf for the July 2025 photo, but that refusal turned out to be a non-issue since, according to Respondents, Iran agreed to issue a travel document anyway. Dkt. 15-1 ¶ 4.

showing when respondent repeatedly asked for “a few more weeks” to obtain travel documents). More than ten months have elapsed since Ms. Olya’s last instance of alleged noncooperation, clearly surpassing the *Zadvydas* threshold. *Glushchenko v. U.S. Dep’t of Homeland Sec.*, 566 F. Supp. 3d 693, 711 (W.D. Tex. 2021) (holding 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*”).

B. Respondents Fail to Meet Their Burden of Showing That Deportation Flights to Iran Are Likely to Resume in the Reasonably Foreseeable Future

Nothing in Respondents’ filing supports the assertion that “the likelihood of [Ms. Olya’s] removal in the reasonably foreseeable future has only strengthened,” an assertion that Respondents have the burden to prove. Dkt. 15 ¶ 1; *see Zadvydas*, 533 U.S. at 701; *Clark*, 543 U.S. at 386; *Hernandez-Esquivel*, 2018 WL 3097029, at *5. Instead, Respondents point only to Iran’s promise to issue Ms. Olya’s travel document, provide no evidence of upcoming removal flights to Iran, and fail to meaningfully address how the United States’ recent bombing of Iran and ongoing threats to bomb Iran again impact the likelihood of Ms. Olya’s removal.

First, Respondents provide no specific information, much less evidence, regarding upcoming deportation flights or recent successful deportations to Iran. Nor could they, as recent data suggests that despite the sharp increase in ICE removal flights in June 2025, there were *no* documented chartered removal flights to Iran that month or during the twelve months prior.⁸ ICE’s own data, which is only current through January 2025, indicates that only 10 Iranians were removed between October 1, 2024 and January 2025, and it is not clear whether those Iranians

⁸ Thomas Cartwright, *ICE Air June 2025 Report*, Witness at the Border (July 5, 2025), <https://static1.squarespace.com/static/5e221cacff87ba2d2833cf54/t/686984fe7e5fc02c7c0d7939/1751745794097/ICE+Air+JunTHCPDF.pdf>.

were removed to Iran or third countries.⁹ This is consistent with information provided to Ms. Olya during her June 30, 2025, interview with the FBI, where Agent Jay Santiago told her there were no more deportation flights to Iran because U.S.-Iran relations have worsened. Ex. A (2d Olya Decl.) ¶ 7. And glaringly, Respondents make no reference to the United States’ recent bombing of Iran, how that has affected U.S.-Iran relations, and the prospects for successful removals to Iran. *See generally* Dkt. 15. Indeed, just this past week, President Trump warned Iran of renewed U.S. strikes against Iran’s nuclear facilities.¹⁰ Respondents’ vague assertion that “recent escalations between the United States and Iran” have somehow “only strengthened” the likelihood of Ms. Olya’s removal is thus baseless. Dkt. 15 ¶ 1.

Respondents would have the Court believe that high-level officials are negotiating for Ms. Olya’s deportation, but in reality, all that has happened is that in April 2025, an ICE ERO employee spoke with someone in the Iran Interest Section, the de facto consular and diplomatic office of Iran in the United States, about Ms. Olya’s travel document. *Compare* Dkt. 15 ¶ 1 (“Following a meeting between U.S. and Iranian officials on April 10, 2025, the two countries have continued negotiations to repatriate this Petitioner.”), *with* Dkt. 15-1 ¶ 2.

Additionally, Respondents’ “confidence that a travel document to Iran would be issued” for Ms. Olya is speculative at best. Dkt. 15 ¶ 8. Indeed, although Respondents claim Iran has “agreed” to issue Ms. Olya’s travel document, it remains unclear whether the document has been issued and, if not, when it will be issued. Notably, Respondents failed to remove Ms. Olya between August 2023 and February 2025, when she had an unexpired travel document, so the existence of

⁹ ICE Statistics, Removals (last accessed July 28, 2025), <https://www.ice.gov/statistics>.

¹⁰ Brendan Cole & Shane Croucher, *Donald Trump Issues New Warning to Iran, Threatens To Attack Again*, Newsweek (July 22, 2025), <https://www.newsweek.com/donald-trump-iran-warning-nuclear-strikes-2102102>.

a valid travel document does not alone show her removal is significantly likely in the reasonably foreseeable future.

Even if Respondents successfully obtain a new travel document for Ms. Olya, they fail to demonstrate how her removal is significantly likely in the reasonably foreseeable future especially given their failure to remove her last time she had a valid travel document, the lack of removal flights to Iran, and the increasingly deteriorating U.S.-Iran relations. 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*, 2020 WL 5536510, at *3 (“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*, 446 F. Supp. 2d at 1189–90. Accordingly, Ms. Olya is entitled to release under 8 U.S.C. § 1231, as interpreted by the Supreme Court in *Zadvydas*.

IV. Conclusion

Ms. Olya has languished in detention for well over two years, during which her physical and mental health have continued to deteriorate. She poses no threat to the community and has met her initial burden of showing that her removal is not significantly likely in the reasonably foreseeable future. Respondents have provided no evidence to rebut Ms. Olya’s showing and justify her ongoing detention. This Court should grant her a writ of habeas corpus and order her immediate release. Alternatively, if the Court determines there are material factual disputes regarding the likelihood of Ms. Olya’s removal to Iran, the Court should schedule 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.”).

Dated: July 28, 2025

/s/ Ayla Kadah

Ayla Kadah*
Center for Constitutional Rights
666 Broadway St. 7th Floor
New York, NY 10012
(212) 614-6436
akadah@ccrjustice.org

Caitlin J. Sandley*
Center for Constitutional Rights
P.O. Box 486
Birmingham, AL 35201
(212) 14-6443
csandley@ccrjustice.org

Zoe Bowman
Las Americas Immigrant Adv. Center
1500 Yandell Dr.
El Paso, TX 79902
(915) 433-9702
zoebowman@las-americas.org

/s/ Sara Zampierin
Sara Zampierin
State Bar No. 24132896
Texas A&M University Civil Rights
Clinic**
307 W. 7th St, Suite LL50
Fort Worth, TX 76102
T: 817-212-4123
F: 817-212-4124
E: sara.zampierin@law.tamu.edu

Counsel for Petitioner

* Appearing pro hac vice

**** 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 28th day of July, 2025, I filed a copy of the foregoing document electronically through the CM/ECF system, which gave service to all counsel of record.

s/ Ayla Kadah
Ayla Kadah
Counsel for Petitioner