

**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 SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT
OF HABEAS AND REQUEST FOR RELEASE**

Petitioner Melika Mohammadi Gazvar Olya (“Ms. Olya”) hereby files this supplemental brief in support of her petition for a writ of habeas corpus and renewed request for release. Despite Respondents’ suggestions to the Court that Ms. Olya would be deported to Iran on a charter flight by the end of August, *see* ECF No. 19 ¶¶ 9–11, Ms. Olya remains in detention in the United States. Respondents have, time and again, failed to show a significant likelihood that Ms. Olya will be removed in the reasonably foreseeable future. Ms. Olya’s detention has exceeded the presumptively constitutional six months by at least double. Consistent with the Supreme Court’s holding in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court should grant Ms. Olya’s immediate release.

I. Factual Background and Procedural History

Ms. Olya filed the instant Petition for a Writ of Habeas Corpus on March 13, 2025. ECF No. 1. Respondents filed their Response to the Court’s Order to Show Cause (styled as a motion to dismiss or, in the alternative, for summary judgement) on April 2, 2025. ECF No. 9. Ms. Olya

filed her Reply on April 14, 2025. ECF No. 11.¹ In response to this Court’s Order, ECF No. 14, Respondents filed a supplemental brief on July 21, 2025, ECF No. 15, and Ms. Olya filed a response on July 28, 2025, ECF No. 16. On August 21, 2025, the Court held a status conference in this matter, attended by Ms. Olya, undersigned counsel, and counsel for Respondents. This matter is now fully briefed and ripe for summary disposition.

The parties agree that Ms. Olya has been subject to a final order of removal to Iran for over two years. *See* ECF No. 1 ¶ 22; ECF No. 9 at 6 (“There is no dispute that Petitioner’s removal order has been final since August 2023.”) (citing ECF No. 1 ¶¶ 1, 9, 22).² Respondents claim that ICE’s inability to remove Ms. Olya to Iran *in the past* was attributable, at least in part, to two alleged incidents of noncooperation in October 2023 and September 2024, when Ms. Olya allegedly refused to board removal flights. *See* ECF No. 9 at 2–3; ECF No. 19, Ex. A (Decl. of Deportation and Detention Officer Quincy R. Hodges III) (hereinafter “DO Hodges Decl.”) ¶¶ 4, 7. Ms. Olya disputes this characterization of her past conduct. *See* ECF No. 11 at 3–4 (citing ECF No. 11-1 (Olya Decl.) ¶¶ 4–8). Respondents have not alleged any more recent incidents of noncooperation since September 2024, nor that they have attempted to remove Ms. Olya since that time. *See generally* ECF Nos. 9, 15, 19.

¹ Concurrent with her Reply, Ms. Olya also moved to strike portions of the declaration Respondents submitted in support of their Response. ECF No. 10. Respondents filed their response to the motion on April 21, 2025. ECF No. 12. That motion remains pending. If the Court is inclined to credit the allegations in that declaration, Ms. Olya respectfully requests resolution of her motion to strike.

² It appears Ms. Olya’s removal was briefly stayed by the Board of Immigration Appeals (BIA) on December 8, 2023. *See* ECF No. 9 at 3 (citing ECF No. 9-1 ¶ 16). Respondents acknowledge that Ms. Olya “was well within her rights” to challenge the legality of her removal order. *Id.* at 8. The BIA may have also briefly stayed Ms. Olya’s removal in June or July 2024. *See* ECF No. 9-1 ¶ 22. It is not clear from the record when these stays expired or whether the second stay ever went into effect at all. In any event, it is undisputed that there has been no legal impediment to Ms. Olya’s removal to Iran for over a year.

At the August 21 status conference, Respondents' counsel informed the Court that a charter removal flight to Iran was scheduled in August 2025, and filed a declaration to that effect. *See* ECF No. 19, Ex. A (DO Hodges Decl.). It is now September, and Ms. Olya remains detained in Respondents' custody in the ICE El Paso Service Processing Center. *See* U.S. Immigr. & Customs Enf., Online Detainee Locator System, <https://locator.ice.gov/odls/#/search>. Respondents have not provided the Court or Ms. Olya with any updates regarding new arrangements for her removal to Iran or any other country.

Ms. Olya has complied in good faith with ICE's recent efforts to remove her, including sitting for a new passport photo for her Iranian passport. ECF No. 11-1 ¶ 8; ECF No. 15-1 (AFOD Sarellano Supp. Decl.) ¶ 2. Meanwhile, U.S.-Iran relations remain tense. *See Iran says US missile demands block path to nuclear talks*, Reuters (Sept. 2, 2025), <https://www.reuters.com/business/aerospace-defense/iran-says-us-missile-demands-block-path-nuclear-talks-2025-09-02/>.

II. Argument

A. Even if this Court discounts the time periods of her alleged noncooperation, Ms. Olya's post-order detention has far surpassed *Zadvydas*'s six-month mark

There is no dispute in this matter that ICE has failed to remove Ms. Olya to Iran for almost a year despite her full cooperation. Ms. Olya is therefore entitled to immediate release under *Zadvydas* unless Respondents can come forward with sufficient evidence to rebut the presumption that her detention is no longer reasonable. *Tran v. Mukasey*, 515 F.3d 478, 482 & 484 n.4 (5th Cir. 2008) (citing *Zadvydas*, 533 U.S. at 701). Respondents cannot continue to rely on their allegations of Ms. Olya's past instances of noncooperation to justify her ongoing detention. To hold otherwise would greenlight indefinite civil detention.

Respondents attempt to justify Ms. Olya's multiyear post-order detention by pointing to two past incidents of alleged noncooperation. *See* ECF No. 9 at 2–3; ECF No. 9-1 (AFOD Sarellano Decl.) ¶¶ 11, 24; *see also* ECF No. 19, Ex. A (DO Hodges Decl.) ¶¶ 4, 7. While Ms. Olya disputes Respondents' characterization of these events, *see* ECF No. 11 at 3–4, 7–9, resolution of this dispute is not necessary because Ms. Olya is entitled to relief under *Zadvydas* even if the Court were to accept as true the government's version of these events—the more recent of which occurred almost a year ago.

Even proven instances of deliberate noncooperation under 8 U.S.C. § 1231 do not halt *Zadvydas*'s six-month clock in perpetuity—they merely pause it or, at most, restart it. For Ms. Olya, this means that, even if this Court were to credit Respondents' allegations of noncooperation, the last 11.5 months of her post-order detention, as well as her prior periods of compliance, count towards the *Zadvydas* clock. In *Gul v. Rozos*, for example, the Fifth Circuit vacated the denial of a habeas petition filed by a petitioner who had previously “hampered his own removal,” reasoning that “over one year” had elapsed since then, during which “[t]he Government [did] not claim that Gul ha[d] continued to hinder removal efforts and offer[ed] no explanation for the continued delay.” 163 F. App'x 317, 319 (5th Cir. 2006). The *Gul* Court remanded the petition to the district court “to determine whether ‘there is no significant likelihood of removal in the reasonably foreseeable future’ given the current state of the case.” *Id.* (quoting *Zadvydas*, 533 U.S. at 701). Similarly, the Fifth Circuit held in *Balogun v. I.N.S.* that the government must show that a petitioner engaged in intentional conduct to prevent his removal in order to justify post-order detention beyond six months. 9 F.3d 347, 350–52 (5th Cir. 1993) (applying equitable tolling principles in case decided before *Zadvydas* and the enactment of the current version of § 1231); *see also id.* at 351 (noting that other circuits had held that the government “has six ‘unhampered’

months from the date of the final deportation order during which it may detain” a noncitizen). Though the Fifth Circuit has not yet ruled on how frequently or by what standard the government must prove a petitioner’s failure to cooperate, this District has—holding that that government must prove by clear and convincing evidence that a petitioner engaged in “intentional or deliberate conduct” that actually prevented her removal, and must “renew its efforts to seek compliance . . . no less than every six months.” *Glushchenko v. United States Dep’t of Homeland Sec.*, 566 F. Supp. 3d 693, 709, 711 (W.D. Tex. 2021). Even if this Court were to hold the government to a lower standard here and credit Respondents’ allegations of noncooperation, Ms. Olya’s “unhampered” time in post-removal detention still far exceeds six months, any way you measure it.

Respondents cannot continue to point to increasingly stale allegations of noncooperation to justify Ms. Olya’s continued detention. As this Court has explained, “according to Respondents’ rationale, Petitioner would never be eligible to be released from detention because [s]he will always have performed the acts of bad faith that the government describes. This is contrary to the Supreme Court’s holding in *Zadvydas*.” *Khan v. Gonzales*, 481 F. Supp. 2d 638, 642 (W.D. Tex. 2006). Even if Respondents could prove that Ms. Olya’s “crying” and “begging” and alleged verbal refusal to leave the transport van at the airport in September 2024, ECF No. 15 ¶¶ 6–7, rose to the level of intentional, bad-faith conduct that prevented her removal—a doubtful proposition—that incident occurred almost a year ago. Since then, ICE has failed to carry out Ms. Olya’s removal despite her full cooperation. *See* ECF No. 11-1 (Olya Decl.) ¶ 8 (“Since [September 16, 2024], I have done everything I can to cooperate with ICE facilitating my removal to Iran.”); *see also* ECF No. 19, Ex. A (DO Hodges Decl.) ¶ 7 (last alleged incident of Ms. Olya’s noncooperation was September 16, 2024). Because “[t]he Government does not claim that [Ms. Olya] has continued to

hinder removal efforts” in the year since then, and “offers no explanation for the continued delay,” *Gul*, 163 F. App’x at 319, other than factors—like US-Iran relations—wholly outside of Ms. Olya’s control, Respondents cannot escape the conclusion that *Zadvydas*’s six-month clock has long since run out.

B. Ms. Olya is entitled to immediate release because there is no significant likelihood of her removal to Iran in the reasonably foreseeable future

Respondents suggested that Ms. Olya’s removal to Iran was likely to occur via charter flight in August, ECF No. 19, Ex. A ¶¶ 9-11, and claimed that her removal to Iran was significantly likely in the reasonably foreseeable future, *id.* ¶ 11. But August has come and gone and Ms. Olya remains in ICE detention. *See* U.S. Immigr. & Customs Enf., Online Detainee Locator System, <https://locator.ice.gov/odls/#/search>. At this stage, Respondents have not and cannot meet their burden to show Ms. Olya’s removal is significantly likely in the reasonably foreseeable future.

Notably, as Ms. Olya’s last alleged incident of noncooperation recedes further into the past and her period of post-order detention continues to grow, “the amount of time considered the ‘reasonably foreseeable future’ shrinks.” *Abdulle v. Gonzales*, 422 F. Supp. 2d 774, 778 (W.D. Tex. 2006) (citing *Zadvydas*, 533 U.S. at 701); *Alvarez v. U.S. Immigr. & Customs Enf’t*, 818 F.3d 1194, 1215 (11th Cir. 2016); *see, e.g., Adu v. Bickham*, No. 7:18-CV-103-WLS-MSH, 2018 WL 6495068, at *2 (M.D. Ga. Dec. 10, 2018) (concluding, in case of multiyear post-order detention, “the Court considers the ‘reasonably foreseeable future’ to be roughly one month”). It has now been a full year since Respondents last attempted to remove Ms. Olya, and they failed to remove

her in August as they suggested was their intention. With no concrete, or even plausible, prospect of removal in sight, the Court should order Ms. Olya's immediate release.³

If this Court is inclined to give Respondents another opportunity to come forward with evidence purportedly demonstrating the likelihood of Ms. Olya's removal, it should hold them to a strict burden—requiring concrete evidence demonstrating that the necessary elements (a valid travel document, a scheduled removal flight) are in place to execute her removal *within the next month* and, in the absence of such, ordering Ms. Olya's release from detention.

III. Conclusion

The time has come and gone for Respondents to fish or cut bait. Under *Zadvydas*, this Court should order Ms. Olya's immediate release. If the Court is inclined to give Respondents one more opportunity to show that Ms. Olya's removal is significantly likely in the reasonably foreseeable future, the Court should require Respondents to provide concrete evidence showing that Ms. Olya will be removed to Iran, or a specified third country, within thirty days.

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³ Vaguely gesturing at the possibility of third country removal, as Respondents did at the Status Conference, also does not satisfy Respondents' heavy burden to show significant likelihood of removal in the reasonably foreseeable future.

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