IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SAMAN KHAMISI Petitioner	§	
v.	§	
PAM BONDI, in her capacity as Attorney General of the United States; KRISTI NOEM, in her capacity as Secretary, U.S. Department of Homeland Security TODD LYONS, Acting Director, United States Immigration and Customs Enforcement; BRET BRADFORD, in his capacity as Field Office Director Houston Field Office U.S. Immigration and Customs Enforcement; RAYMOND THOMPSON, in his capacity as Warden of the Joe Corley Processing Center, Respondents.	§	Case No. 4:25-cv-01937

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

Petitioner, Saman Khamisi, by and through undersigned counsel, respectfully submits this response in opposition to the Respondents' Motion for Summary Judgment ("Motion"). ECF No. 11. Respondents' Motion must be denied because there is a genuine fact issue on whether there is a significant likelihood of removal in the reasonably foreseeable future.

I. INTRODUCTION

The Respondents' Motion should be denied because it fails to rebut the core factual and legal basis for habeas relief: there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future, as required by *Zadvydas v. Davis*, 533 U.S. 678 (2001). In his petition, Petitioner pleaded that he does not possess an original passport or birth certificate. The Iranian government has made clear that it cannot verify Petitioner's citizenship or issue a travel document until it receives one of these original identity documents. These facts remain undisputed and establish "good reason to believe" that removal is not significantly likely in the reasonably foreseeable future, thereby shifting the burden to Respondents. Despite the Respondents' assertion that they are working with the Iranian government to secure travel documents, Iran has clearly stated it cannot verify his Iranian citizenship to issue a travel document without Petitioner's *original* passport or *original* birth certificate. Yet Respondents offer no evidence that the Iranian government is willing or able to issue travel documents without the required identification. Moreover, the Iranian government's willingness to conduct an interview with Petitioner does not demonstrate that removal is likely, nor does it indicate that Iran has changed its documentary requirements for verifying citizenship for issuance of travel documents. Absent a realistic prospect of obtaining the necessary documents, and with no indication of whether removal is even possible or

when it might occur, Petitioner's continued detention has become indefinite and unconstitutional.

II. LEGAL STANDARDS

A. Summary Judgment Standard

Summary judgment is proper 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P.56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When a motion for summary judgment is directed solely at the plaintiff's petition, the reviewing court takes "all allegations, facts, and inferences in the pleadings as true, viewing them in a light most favorable to the pleader", and will affirm summary judgment "only if the pleadings are legally insufficient". *Natividad v. Alexsis, Inc.* 875 S.W.2d 695, 699 (Tex. 1994). The party moving for summary judgment "bears the burden of identifying those portions of the record it believes demonstrate the absence of genuine issue of material fact." *Triple Tee Golf, Inc. v. Nike, Inc.*, 485 F.3d 253, 261 (5th Cir. 2007) (citing *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-25 (1986)). The burden then shifts to the non-movant to show the existence of a genuine fact issue for trial. *Id.*

B. Burden-Shifting Under *Zadvydas.*

In the context of post-removal detention under 8 U.S.C. § 1231(a)(6), the controlling legal standard is set forth in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Under *Zadvydas*, an individual subject to a final order of removal may not be detained indefinitely. The Supreme Court held that post-removal detention is presumptively reasonable for up to six months. After that point, continued detention is permitted only where removal is significantly likely in the reasonably foreseeable future. *Id.* at 701.

The burden of proof under *Zadvydas* follows a two-step, burden-shifting framework: the initial burden of proof is on the noncitizen to provide "good reason to believe" that there is no likelihood in the foreseeable future. *See Zadvydas,* 533 U.S. at 701. If the noncitizen provides "good reasons" to believe there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the Government to rebut the noncitizen's allegations. *Id.* While there is no definition of the standard necessary to establish "good reason to believe," it is comparable to the "probable cause" standard in the criminal context. *See Jimenez v. Aristeguieta*, 311 F.2d 547, 562 (5th Cir. 1962) (probable cause is the determination of whether there is "good reason to believe that the crime alleged had been committed by the person charged with having committed it."). In that context, probable cause requires only a probability or substantial chance, not a prima facie showing. *Illinois v. Gates,* 462 U.S. 213, 243 n.13 (1983); *Spinelli v. United States*, 393 U.S. 410, 419 (1969); *Beck v. Ohio,* 379 U.S. 89, 96 (1964). This burden is not onerous and may be satisfied with factual evidence or circumstances showing

removal is unlikely or stalled. As such, Petitioner is not required to definitively show that there is no significant likelihood of removal in the reasonably foreseeable future, but rather, that there is a probability.

If the noncitizen meets this threshold, the burden shifts to the government to respond with evidence sufficient to rebut the petitioner's showing and demonstrate that removal remains reasonably foreseeable. *Id.; see also Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).

III. ARGUMENT

A. Petitioner has met his initial burden under *Zadvydas*

Respondents' motion for summary judgment improperly attempts to shift the burden of proof onto Petitioner, despite clear precedent establishing a burden-shifting framework under *Zadvydas v. Davis*, 533 U.S. 678 (2001). In this case, more than six months have passed since the expiration of the removal period, and Petitioner has presented evidence that there is a probability that his removal is not foreseeable. Specifically, the complaint shows that Petitioner does not possess his original Iranian passport or original birth certificate (Pet., ¶ 21, ECF No. 1), which are documents that the Iranian government has explicitly stated are required to issue a travel document (Pet., ¶ 22, ECF No. 1). Without these documents, and with no realistic means of obtaining them, removal is not merely delayed, it is effectively stalled. Contrary to the Respondents' assertions, Petitioner is not assuming that Iran

will not issue travel documents but for submission of these documents, but rather, that is explicitly what the Iranian government requires.

Respondents' assertion that Petitioner relies solely on conclusory statements or assumptions is factually incorrect. The Petition explicitly outlines concrete facts demonstrating that removal is not significantly likely in the reasonably foreseeable future. Specifically, the Petition shows that Petitioner does not possess his original Iranian passport or original birth certificate, which are both documents that the Iranian government has expressly stated are required to verify his citizenship and necessary to issue a travel document. These facts go well beyond "conclusory statements."

The Petitioner's evidentiary showing is not only specific and individualized but also closely mirrors the facts deemed sufficient to shift the burden in *Sharifi v. Gillis*, No. 5:20-cv-5-DCB-MTP, 2020 U.S. Dist. LEXIS 236144 (S.D. Miss. Oct. 9, 2020). In *Sharifi*, the district court held that the petitioner had made the requisite initial showing under *Zadvydas v. Davis*, 533 U.S. 678 (2001), where he presented evidence that his country of removal, Iran, had strict documentary requirements and where he lacked the necessary documentation to meet those requirements. Specifically, the court noted that the petitioner had no viable means of obtaining the required documents and that this created a substantial impediment to removal.

Like the petitioner in *Sharifi*, the Petitioner here does not possess an original Iranian passport or original birth certificate, documents that, according to the Iranian government's express policy, are required for issuance of a travel document. Petitioner has no realistic means of obtaining these documents because they do not exist and he cannot reasonably obtain them while in custody. As in *Sharifi*, this constitutes a sufficient showing of a significant impediment to removal, thereby satisfying the initial burden under *Zadvydas* and shifting the burden to the government to demonstrate that removal is, in fact, reasonably foreseeable.

Rather than presenting evidence that removal is reasonably foreseeable, Respondents attempt to argue that Petitioner has not definitively established that there is no significant likelihood for removal. This misstates the applicable legal standard. Petitioner is not required to conclusively prove that removal cannot or will not occur; rather, he must show a *probability* that it is not foreseeable, which he has done. At this stage, the burden rests with Respondents to offer affirmative, evidence-based reasons showing that removal is likely to occur in the near future.

B. The Government fails to rebut the showing that removal is not foreseeable.

a. The Government's declaration contains material inaccuracies.

Respondents rely heavily on a declaration submitted by Deportation Officer Tierra D. Dixon (hereinafter "Declaration"), which contains several materially

inaccurate and misleading statements, undermining its credibility and evidentiary value.

The Declaration wrongly states that Petitioner is a "native of Afghanistan". Resp.'s Ex. 1 at ¶ 2; *see* also Resp.'s Exh. 2. This is false. Petitioner is an Iranian citizen, born in Iran, and has never held Afghan citizenship, never lived in Afghanistan, and has no familial, legal, or political ties to Afghanistan. Ex. 1. (Iranian Passport). There is no factual basis for Respondents to assert otherwise, and the government has submitted no supporting documents to justify this claim. This type of fundamental factual error is especially relevant in the context of a *Zadvydas* habeas petition, where the government's alleged ties to another country directly impact its assessment of whether removal is reasonably foreseeable.

The Declaration further claims that the officer "informed an attorney for Ms. Khamisi that his passport and birth certificate were needed to facilitate the request for a travel document." Resp.'s Ex. 1 at ¶ 25. However, the only correspondence Petitioner's counsel received from ERO was an email requesting written correspondence "that The Consulate of Iran Washington, DC will not provide any documents" and informing counsel that they are seeking a travel document. Ex. 2 (Email Correspondence).

In full compliance with that request, on April 28, 2025, Petitioner provided ERO with the official communication from the Embassy of Pakistan Interests Section of

the Islamic Republic of Iran, dated April 16, 2025. The document confirms that Iran is unable to even begin the process of verifying Petitioner's Iranian citizenship absent the original Iranian birth certificate or original Iranian passport. Ex. 3 (Letter from the Embassy of Pakistan Interests Section of the Islamic Republic of Iran).

Despite this, the government attempts to mischaracterize Petitioner's conduct by suggesting he has failed to produce his original documents. This is not only factually inaccurate, but it is also legally deficient. Petitioner has not been found to be uncooperative under applicable regulations, which require formal notice and an opportunity to rebut such a determination. *See* 8 C.F.R. § 241.4(g)(5)(iii).

Moreover, even if Immigration and Customs Enforcement ("ICE") had issued a formal finding, Petitioner's inability to provide documents that are realistically unobtainable cannot constitute failure to cooperate. Section 1231(a)(1)(C) does not apply "where the inability to remove is not because of consistent refusals to cooperate by the [noncitizen], but by external matters over which the [noncitizen] has no control..." *Jabir v. Ashcroft,* 2004 U.S. Dist. LEXIS 346, 2004 WL 60318, 8 (E.D. La. 2004).

b. Generalized government efforts and consular communication do not demonstrate that removal is reasonably foreseeable, particularly where Petitioner faces specific and persistent individual barriers to repatriation.

While the government points to ICE's recent communications with the Iranian government and its willingness to conduct a second interview, these actions, on their

own, do not establish that removal is reasonably foreseeable. *See, e.g., Nikbakhsh-Tali v. Mukasey*, No. CV 07-1526-PHX-NVW (BPV), 2008 U.S. Dist. LEXIS 123564 (D. Ariz. May 13, 2008). "A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Kane v. Mukasey*, No. B-08-037, 2008 U.S. Dist. LEXIS 141911, at *12 (S.D. Tex. Aug. 21, 2008). ICE's recent efforts, absent any indication that Iran is willing to issue a travel document without the Petitioner's original passport or birth certificate, do not overcome the specific, documented barriers identified in the Petition.

Although the Iranian government has expressed a general willingness to speak with the Petitioner, this alone does not constitute meaningful progress toward removal. Diplomatic engagement is not synonymous with repatriation, especially where the Iranian government has made clear that issuance of a travel document is contingent on the submission of original identity documents, documents the Petitioner does not possess and cannot realistically obtain while in ICE custody. The mere scheduling of another interview, without any change in Iran's stated requirements or the Petitioner's ability to meet them, does not render removal significantly likely.

In fact, no material circumstances have changed since the previous consular interview, which similarly failed to result in the issuance of a travel document.

Respondents have not identified any shift in Iranian policy or any new evidence suggesting that Iran is now willing to waive its longstanding documentation requirements.

If Respondents have "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." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019); *See also Gonzalez-Rondon v. Gillis*, No. 5:19-cv-109-DCB-MTP, 2020 WL 3428983 (S.D. Miss. June 23, 2020) (holding that petitioner met his initial burden where he was held in ICE custody for more than one year after the issuance of his removal order with no indication from the Venezuelan officials that travel documents would be issued). Therefore, ICE's minimal diplomatic efforts and the mere possibility of another interview fall far short of establishing that the Petitioner's removal is significantly likely in the reasonably foreseeable future, particularly given the documented obstacles that remain entirely unresolved.

This case is also clearly distinguishable from *Duong v. Tate,* 2025 WL 933947, at *4 (S.D. Tex. 2025), where the court found removal likely based on the lack of country-specific procedural obstacles. Here, Petitioner faces individualized barriers to removal: he does not possess the original documents that the Iranian government

has explicitly stated are prerequisites for issuing a travel document. Therefore, the government's reliance on general efforts and hypothetical progress is insufficient.

In light of these persistent and specific impediments, continued detention violates due process, as removal is not significantly likely in the reasonably foreseeable future.

IV. CONCLUSION

For the reasons set forth above, Respondents' Motion (ECF No. 11) should be denied.

Dated: August 4, 2025

Respectfully submitted,

By: */s/ Rebecca Chavez*

Rebecca Chavez
GALVESTON-HOUSTON IMMIGRANT REPRESENTATION PROJECT
Texas Bar No. 24109716
Federal Bar No. 3479390
P.O. Box 36329
Houston, TX 77236
Telephone: (713) 909-7015
Fax: (713) 588-4700
Email: rebeccac@ghirp.org

Attorney-in-Charge for Petitioner

CERTIFICATE OF SERVICE

I certify that on August 4, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Rebecca Chavez
Rebecca Chavez