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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF OREGON

EUGENE DIVISION

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| S.F.,<br><br>Petitioner,<br><br>vs.<br><br>DREW BOSTOCK, Seattle Field Office Director, U.S. Immigration and Customs Enforcement and Removal Operation, et al.,<br><br>Respondents. | ) | File No.<br>03:25-cv-01084-MTK<br><br>Agency No.<br><br>AXXX-XXX-755<br><br>**PETITIONER'S BRIEF IN SUPPORT OF HABEAS CORPUS** |

Petitioner submits the following as his brief in support of habeas corpus.

## I. JURISDICTION.

Article I, section 9, clause 2 of the United States Constitution states: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."1 The primary federal habeas

corpus statute, 28 USC § 2241 confers jurisdiction on the federal courts for any person to claim that he or she is being held "in custody in violation of the Constitution or laws … of the United States." Zadvydas v. Davis, 533 U.S. 678, 687 (2001).

In the REAL ID Act of 2005, Congress amended the Immigration and Nationality Act to "expressly eliminate[ ] habeas review over all final orders of removal ...." *A. Singh v. Gonzales*, 499 F.3d 969, 977 (9th Cir. 2007). It provided that "a petition for review filed with an appropriate court of appeals ... shall be the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5) ; *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 928-29 (9th Cir. 2005) (under REAL ID Act, a petition for review in the court of appeals "is now the exclusive means for challenging final removal orders by the [Board of Immigration Appeals ("BIA") ], except those issued pursuant to 8 U.S.C. § 1225(b)(1)").

The REAL ID Act effectively limits a noncitizen "to one bite of the apple with regard to challenging an order of removal." *A. Singh*, 499 F.3d at 977 (internal quotation marks and citation omitted). Thus, even habeas "claims that indirectly challenge a removal order" are prohibited. *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012). "When a claim by [a noncitizen], however it is framed, challenges the procedure and substance of an agency determination that is inextricably linked to the order of removal, [a district court's review of the claim] is prohibited by section 1252(a)(5)." Id. at 623 (internal citation and quotation marks omitted).

But the REAL ID Act was "not intended to 'preclude habeas review over challenges to detention that are independent of challenges to removal orders.' " *V. Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (quoting H.R. Rep. No. 109-72 at 175).

The determination of whether a case raises independent claims or indirectly challenges a final removal order requires "a case-by-case inquiry turning on a practical analysis." Id. The "distinction between an independent claim and indirect challenge will turn on the substance of the relief that a plaintiff is seeking." *Martinez*, 704 F.3d at 622 (internal quotation marks and citation omitted).

In this case, petitioner's claims are independent of his removal order. Petitioner does not challenge the immigration judge's determination that he is removable or claim any deficiency in the removal order itself. See *A. Singh*, 499 F.3d at 972 (habeas claim that does not require review of a removal order is not barred by § 1252(a)(5) ).

## II. BACKGROUND.

Petitioner is an Iranian national. He was ordered removed from the United States on August 14, 2002.[1] Since then he has been under an order of supervision by which requires him to check in regularly at the office of Immigration and Customs Enforcement ("ICE).

The petitioner was scheduled to check in at ICE on July 7, 2025. Instead he was taken into custody by respondents on June 24, 2025, at about 7:00 a.m., shortly after he

1 Petitioner's appeal was denied by the Board of Immigration Appeals on January 2, 2004.

left his residence and was driving in his car on the way to his gym. The petitioner's arrest came approximately 48 hours after the United States carried out a bombing attack on Iranian nuclear weapons production facilities on June 22, 2025.[2]

Respondents stated at the evidentiary hearing on August 12, 2025, that the purpose of the petitioner's detention is to execute the order of removal to Iran. Respondents have contacted the government of Iran to accept the return of the petitioner, and that they have apparently identified petitioner by name to the government of Iran.

The petitioner's witnesses gave uncontroverted testimony as to the petitioner's conversion from the Islamic to the Christian religion.

## III. COUNTRY CONDITIONS IN IRAN.

In Iran conversion to another religion from Islam is a crime is punishable by death, or other serious criminal sanctions:[3]

> The penal code specifies the death sentence for moharebeh ("enmity against God," which, according to the *Oxford Dictionary of Islam*, means in Quranic usage "corrupt conditions caused by unbelievers or unjust people that threaten social and political wellbeing"), *fisad fil-arz* ("corruption on earth," which includes apostasy or heresy), and sabb al-nabi ("insulting the Prophet"). According to the penal code, the application of the death penalty varies depending on the religion of both the perpetrator and the victim. Those accused of blasphemy are often charged with "spreading corruption on earth" and other crimes.[4]

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2 See docket 11-1, exhibit: NYT "What to Know About the U.S. Strike on Iran and the Israel-Iran Cease-Fire (updated June 24, 2025).

3 Docket 11-3, Dept. of State, Iran 2023 Human Rights Report; Docket 11-4, Dept of State, Iran 2023 International Religious Freedom Report.

4 Iran 2023 International Religious Freedom Report, Docket 11-4, at 9-10 (italics in the original).

## IV. DESIGNATION OF COUNTRIES OF REMOVAL.

Congress, in 8 U.S.C. § 1231(b), has set out detailed instructions as the countries to which an alien may be removed.[5] The general rule in immigration proceedings is that the alien has the right to designate the country of removal. 8 USC § 1231(b)(2)(A).

If removal of the alien cannot be effected to the country designated under subparagraph 1231(b)(2)(A)(i), then the statute provides seven alternatives for selection of a country of removal. 8 U.S.C. § 1231(b)(2)(E)(i) – (vii). These are:

> (i) The country from which the alien was admitted to the United States.
>
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
>
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
>
> (iv) The country in which the alien was born.
>
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
>
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.
>
> (vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

## V. LIMITATION ON REMOVAL AUTHORITY.

### A. Statutory provisions.

The statute limits removal authority in 8 U.S.C. § 1231(b)(3)(A) which states:

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5 Sections 1231(b)(1)(A) and (B) designates countries of removal when the alien is arriving on an airplane or a vessel, and where removal proceedings under 8 USC § 1229a were initiated at the time of the alien's arrival. These don't apply here because the removal proceedings do not seem to have been initiated at the time of the petitioners arrival.

> Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

There are four exceptions to this limitation. These are contained in 8 U.S.C. § 1231(b)(3)(B)(i) – (iv), which provides:

> If the Attorney General decides that—
>
> (i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion;
>
> (ii) the alien, having been convicted by a final judgment of a particularly serious crime is a danger to the community of the United States;
>
> (iii) there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or
>
> (iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

**B. Exceptions to limitation on removal do not apply here.**

**1. No persecutor bar.**

Section 1231(b)(3)(B)(i) is called the "persecutor bar." There is no evidence that the petitioner has engaged in any conduct that would raise the persecutor bar.

**2. No particularly serious crime bar.**

Section 1231(b)(3)(B)(ii) describes two circumstances under which the particularly serious crime bar may arise.

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> For purposes of [the particularly serious crime bar], an alien who has been convicted of an aggravated felony[6] (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime.
>
> The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime.

As to the first circumstance, respondents have presented no evidence that petitioner has ever been convicted of an aggravated felony, or that he was ever sentenced to five years or more incarceration in a final judgment of conviction.

As to the second circumstance, the Board of Immigration Appeals has historically relied on the factors set out in *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982), as modified by *Matter of N-A-M-*, 24 I&N Dec. 336, 342-43 (BIA 2007). This requires a highly individualized assessment of the crime by the immigration court or the BIA.[7]

No such evaluation has ever been done by either the immigration court or BIA. Without such an evaluation, the respondents cannot show that there is a particularly serious crime bar to withholding of removal.

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6 "Aggravated felony" is defined in 8 USC § 1101(a)(43).

7 *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982), as modified by *Matter of N-A-M-*, 24 I&N Dec. 336, 342-43 (BIA 2007), stated the factors to be considered included (1) the nature of the conviction; (2) the circumstances and underlying facts of the conviction; (3) the type of sentence; and (4) whether the type and circumstances of the crime indicate that the respondent is a danger to the community, although the last factor underwent some modification in *Matter of N-A-M-*, 24 I&N Dec., at 342-43. In *Blandino-Medina v. Holder*,712 F.3d 1338, 1346-47 (9th Cir. 2013), the Ninth Circuit held that BIA may not designate certain crimes as "particularly serious crimes per se" by relying solely on the elements of the offense. Instead, BIA must engage in *Frentescu*'s "case-by-case analysis."

**3. No serious non-political crime outside the United States.**

As to the third exception, in section 1231(b)(3)(B)(iii), there's no evidence that the petitioner has committed any serious non-political crime outside of the United States.

**4. No terrorism bar.**

The fourth exception, set out in section 1231(b)(3)(B)(iv) would permit removal "there are reasonable grounds to believe that the alien is a danger to the security of the United States." This is the "terrorism bar." Section 1231(b)(3)(B) further provides:

> For purposes of [the terrorism bar], an alien who is described in section 1227(a)(4)(B) of this title shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

Turning to section 1227(a)(4)(B), it states simply: "Any alien who is described in subparagraph (B) or (F) of section 1182(a)(3) of this title is deportable."

This next requires reference to 8 U.S.C. §§ 1182(a)(3)(B) and (F). Summarizing greatly, these make inadmissible to the United States any alien who has engaged in or supported terrorist activity (a defined term) or who has associated with a group engaged in terrorist activity.

There is no evidence the petitioner has engaged in conduct that would be grounds for inadmissibility under 8 U.S.C. §§ 1182(a)(3)(B) or (F). Hence there is no evidence which would support the fourth exception from the limitation on removal set out in 8 U.S.C. § 1231(b)(3)(A).

## VI. REMOVAL TO A THIRD COUNTRY REQUIRES DUE PROCESS.

It is possible that respondents will seek to remove the petitioner to a country other than Iran.[8] No country other than Iran was ever designated as the country of removal in the petitioner's removal proceedings. A similar situation was presented to the district court in *Aden v. Nielsen*, 409 F.Supp. 998 (W.D. Wash. 2019).

In *Aden* the habeas corpus petitioner had been born in a refugee camp in Kenya to Somali parents and was orphaned as an infant. He later was admitted to the United States as a refugee. Removal proceedings were initiated against him after he received robbery convictions.

Aden had been ordered removed to Kenya, but ICE then attempted to remove him to Somalia without giving him a hearing on fear of persecution and torture in that country. During the removal proceedings, the immigration judge designated Kenya as the country of removal. Somalia had not been discussed as a country of removal. *Aden*, 409 F.3d at 1002.

Later, when ICE sought travel documents from Kenya to execute the order of removal, the Kenyan government refused to issue travel documents to Aden on the ground that despite his birth in that country, he was not a citizen of Kenya.

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8 See NYT "Inside the Global Deal-Making Behind Trump's Mass Deportations – The administration is pushing nations around the world, including ones at war, to take people expelled by the U.S. government who are not citizens of those countries." (June 25, 2025; updated June 26, 2025); NYT, "African Nation Says It Will Repatriate Migrants Deported by U.S. – The Trump administration sent five deportees to Eswatini, an African kingdom, saying that their own countries would not take them. But Eswatini says it will send them home" (July 16, 2025).

Aden was released from custody on an order of supervision on the grounds that removal was not significantly likely in the reasonably foreseeable future.

Meanwhile ICE sought travel documents from Somalia, and which eventually they were able to get. Aden was then taken into custody when he appeared for a check-in with ICE.

Aden obtained counsel, who filed a petition for a writ of habeas corpus. The district court granted the petition in part, making the following findings:

> To ensure compliance with § 1231(b)(3) and due process, the Court finds that DHS must do the following prior to removing a noncitizen to a country not designated by the IJ.
>
> First, DHS must provide the noncitizen with written notice of the country being designated outside of removal proceedings and the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2). This requirement is similar to the regulations governing reinstatement of a removal order, which require that an immigration officer give the noncitizen written notice of the determination that the noncitizen is subject to removal. See 8 C.F.R. § 241.8(b).
>
> Second, DHS must ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids the situation presented in this case where the parties dispute whether petitioner told Officer Alvarez that he feared persecution in Somalia.
>
> Third, if the noncitizen expresses a fear of persecution or harm, DHS must inform the noncitizen that he or she may seek asylum, withholding, and relief under the CAT by filing a motion to reopen with the immigration courts and withholding to the country where they will be removed.
>
> Fourth, DHS must provide the noncitizen with adequate time to prepare and file a motion to reopen in order to challenge DHS's country designation and/or apply for asylum, withholding, and relief under the CAT. The Government appears to

> have no objection to this requirement given that ICE stayed petitioner's removal to give him time to file a motion to reopen.
>
> These requirements add important procedural safeguards that appropriately balance the noncitizen's private interests affected by removal to a country designated outside of removal proceedings and the government's interest in lawfully removing noncitizens who are subject to final orders of removal. *Aden*, 409 F. Supp at 1019-1020 (citations omitted).

Respondents have not announced an intention to deport petitioner to a country other than Iran. But the reality is that they may well decide to do so. In such a circumstance, these requirements from *Aden* would be appropriate to this case.

## VII. PETITIONER IS ENTITLED TO IMMEDIATE RELEASE.

Subject to certain exceptions which do not seem to be applicable here, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This is called the "removal period." The removable period starts when the order of removal becomes administratively final. 8 U.S.C. § 1231(a)(1)(B).

Under 8 U.S.C. § 1231(a)(6), certain aliens, including among others, those whom the Attorney General determines to be a risk to the community, may be detained beyond the removal period. The statute as written contains no cutoff point for detention beyond the removal period.

In the important case of *Zadvydas v. Davis*, 533 U.S. 678 (2001) the Supreme Court ruled that to avoid constitutional problems with interpreting 8 U.S.C. 1231(a)(6) to authorize indefinite detention, it would read an implicit limitation into the statute to

limit an alien's post-removal detention to a period "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699.

*Zadvydas* recognized the authority of the district courts to make the determination as to whether removal was reasonably foreseeable. "[The district court] should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Id.*

*Zadvydas* then stated that "we think it practically necessary to recognize some presumptively reasonable period of detention." *Zadvydas*, 533 U.S. at 701. *Zadvydas* chose six months as the presumptively reasonable period. Id. "After the six month period, once the alien 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.

In this case, the petitioner's order of removal became administratively final on January 4, 2004, when the Board of Immigration Appeals denied his appeal.

Petitioner was taken into custody on December 7, 2005 and held at the Northwest Detention Center until April 16, 2006. Dkt 10, Declaration of Mihaela Hammer, at 2, ¶¶ 8 and 9. Petitioner was released when ICE was not able to get a travel document to allow his removal to Iran. *Id.* The total time the petitioner was then in custody was 132

days. Petitioner was taken into custody again on June 24, 2025 and remains in custody as of the date of submission of this brief, that is, August 26, 2025. That is a total of 63 days.

Nothing much has changed since 2005. Today the respondents are still seeking travel documents from Iran, just as they were in 2005. Presumably those efforts have been going on for the past twenty years.

In these circumstances, it's very reasonable to add the times in custody (132 days and 63 days) together, to come up with a total time of 195 days in custody, more than the six month presumptive period set in *Zadvydas*.

Given the lack of any results in the past 20 years, following *Zadvydas*, the respondents cannot show that removal is reasonably likely in the foreseeable future, and he must be immediately released from custody.

**VIII. CONCLUSION.**

For all the foregoing reasons, the writ of habeas corpus should be granted and the petitioner immediately released from custody.

Dated this 26th day of August 2025

/s/ Michael T. Purcell

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