

PROCEDURAL BACKGROUND

Petitioner is a native of Iran; however, he has resided in the United States since 1988, being only four years of age at the time of entry. During his time here, he married a United States citizen and has two children that are citizens here as well. On July 20, 2011, after removal proceedings, Petitioner was granted withholding of removal to Iran by an Immigration Judge under the U.N. Convention Against Torture (“CAT”). As an alternative, he was ordered to be removed to Germany or another alternative third country. Petitioner was never removed to any country and has remained in the United States on supervised release. On June 23, 2025, U.S. Immigration and Customs Enforcement (“ICE”) agents apprehended Petitioner and detained him asserting that they intend to now deport him to an unknown third country. On June 27, 2025, Petitioner filed this action.

On July 3, 2025, the court entered a temporary restraining order preventing the Petitioner’s removal without notice and an opportunity to contest such removal under the CAT. (Doc. #14.) Prior to expiration of this order, on July 10, 2025, the parties came to an agreement to stay the case, and the court extended its restraining order prohibiting Petitioner’s sudden removal without notice pending Respondent’s efforts to secure travel documents to remove him to Germany, which he is unopposed to. (Docs. #20, #21, #22.)

On July 31, 2025, the parties moved to extend the stay and temporary order asserting that Germany denied a request to issue travel documents for the Petitioner’s removal because he is identified as an Iranian citizen with no records of German citizenship or lawful permanent residency, having left Germany 37 years ago. (Doc. #23.) Respondents asserted that there is, however, a more complex alternative process that exists for non-citizens, involving extra screening like fingerprinting, and they have initiated this alternative process with the German consulate. (*Id.*) The court again extended the stay and temporary order. (Doc. #24.)

On September 15, 2025, the parties filed another motion to extend and updated the court stating that Germany was unable to process a request for travel documents and it was not clear whether there are additional options to remove Petitioner to Germany. (Doc. #25.) The Respondents also did not identify a third country to which they seek to remove Petitioner. (*Id.*) The court granted the parties' motion to extend. (Doc. #26.)

A status conference was held on October 14, 2025. Respondents' counsel reported to the court that Germany was never explored as an option for removal in 2011 after his final order of removal; however, they have now exhausted that option trying two different methods, and neither was successful. They further stated that they still have not identified a third country to which they seek to remove Petitioner.

EVIDENCE PRESENTED

An evidentiary hearing was held on October 21, 2025. Petitioner was present and testified as the only witness. He stated that he left Iran with his family at two years old and lived with them in Germany for two years. After leaving Germany, he arrived in the United States in 1988 at four years old on a B-2 visa. He is now married to a United States citizen and has two teenage daughters that are United States citizens. He has a home with his family in Katy, Texas, and has resided in that area for the last 38 years. He has a work permit and owns a furniture business with his sister and a real estate company. His parents both became United States citizens. His mother passed away, and his father still resides in Katy, Texas. Since his arrival to the United States in 1988, Petitioner has remained here and has never left the United States.

In 2009, the Petitioner applied for a green card, but he was denied due to two convictions for minor drug offenses for which he received deferred adjudication back in 2003 and 2005. He is now in the process of re-applying for citizenship. Once his green card was denied, his case was

referred to immigration court. ICE picked up Petitioner in 2009 then released him the same day on immigration supervised release pending removal proceedings. Petitioner then hired an attorney and applied for protection under the Convention Against Torture, as he is a Christian and does not speak the language of his country of origin. He later received that protection and an order withholding his removal to Iran in 2011. His final order of removal signed on July 20, 2011, lists Germany as an alternative third country for removal. He has remained on supervised release with immigration since 2011 (the last 14 years) with no violations and has checked in for every scheduled appearance as required. He has had no criminal arrests or convictions while on supervised release. In fact, one of his past drug convictions from 2004 was overturned and dismissed. Therefore, he has only one conviction for possession of less than one gram of marijuana from 2003, many years prior to his final order of removal and supervision period.

When Petitioner was arrested by ICE and detained on June 23, 2025, he did not resist arrest. As of the date of the hearing, Petitioner has been in custody for 120 days. He has had no disciplinary infractions while in custody. On his 87th day in custody, he was interviewed by his deportation officer and that officer argued for his release; however, an acting field officer executed a letter on September 18, 2025, stating that ICE had determined that he will not be released from custody because he is a flight risk.

In addition to the above testimony, Petitioner's most recent filing with the court contains supporting documents regarding his family and community ties, charity within the community, his work authorization, his marriage, family members' and friends' letters of support, criminal history records, and order of removal. (Doc. #33.) This filing also solely seeks immediate release from detention per the law set forth in *Zadvydas* and the immigration supervision regulations. (*Id.*)

Respondents did not bring forth any testimony or documents regarding the removal of Petitioner. Their Response to the Petition contains two attachments: 1) the Department of Homeland and Security's March guidance policy regarding third country removals; and 2) Executive Order 14165 dated January 20, 2025, and titled "Securing our Borders." (Docs. #34-1, #34-2.) Counsel asserted that Germany is not an option for removal, and no third country has yet been identified for removal.

DVD CLASS ACTION

In *DVD*, the court granted a nationwide class action regarding the notice procedures that should be given to non-citizens who have a final order of removal issued under the INA and whom DHS has deported or will deport on or after February 18, 2025, to a country not previously designated as the country or alternative country of removal or not identified in writing in the prior proceedings as a country to which the individual would be removed. *DVD v. DHS*, No. 25-10676, 2025 WL 1142968, *11 (D. Mass. April 18, 2025).

Respondents assert that the instant case should be dismissed because Petitioner is a member of the non-opt out class action in *DVD* or, in the alternative, the court should at least stay this case pending resolution of the *DVD* case. Respondents also state that Petitioner is seeking the same relief as the class members. (*Id.*) However, *DVD* was not filed as a section 2241 habeas case requesting release by the non-citizens. *DVD*, 2025 WL 1142968, *1. Instead, that class action only seeks declaratory and injunction relief to establish notice procedures for the class members. *Id.* The request for a structured notice plan is based upon the President's January 20, 2025 Executive Order, DHS's February 18, 2025 Directive, and DHS's March 30, 2025 Guidance, which dictate third country removal without notice or an individualized inquiry if the United States has

received assurances from that country that aliens removed there will not be persecuted or tortured. *Id.* at *3-4.

Here, however, Petitioner made clear in their most recent filing with the court (doc. #33) and at the evidentiary hearing that Petitioner now seeks immediate release from detainment, a relief not addressed in the *DVD* class action. See *E.D.Q.C. v. Warden, Stewart Det. Ctr.*, No. 4:25-CV-50-CDL-AGH, 2025 WL 1575609, at *5 (M.D. Ga. June 3, 2025) (While there is some overlap of the legal issues involved, *D.V.D.* is not a habeas action and release from custody is not one of the remedies requested . . . In contrast, Petitioner’s habeas petition is—at its core—a request for relief from prolonged post-final order of removal detention pursuant to *Zadvydas*). Consequently, the undersigned recommends denying Respondent’s request for dismissal and/or stay of the case pending resolution of *DVD* and will now address the merits of this case as it applies only to the Petitioner’s request for release from detainment.

JURISDICTION

As an initial matter, the Respondents argue that this court lacks subject matter jurisdiction to handle this case according to statutes under the Immigration and Nationality Act. (Doc. #34.) Specifically, they cite 8 U.S.C. § 1252(g), which bars court review of decisions by ICE to execute removal orders. Section 1252(g) of the Illegal Immigration Reform and Immigration Responsibility Act states:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). The United States Supreme Court has specifically rejected the idea that section 1252(g) strips federal courts of jurisdiction over habeas challenges to present immigration

confinement. *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court held that 28 U.S.C. § 2241 confers jurisdiction to challenge detention that is without statutory authority, as well as constitutional challenges to post-removal-period detention.. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *see also Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, at *1 (W.D. Tex. Mar. 23, 2020) (“Federal courts have jurisdiction, however, to adjudicate claims challenging the constitutionality of an alien’s continued detention.”) (citing *Gul v. Rozos*, 163 F. App’x 317, 2006 WL 140540, at *1 (5th Cir. 2006)). For the same reasons, Sections 1252(a)(4),(5), (b)(9), and the Foreign Affairs Reform and Restructuring Act of 1998 also do not bar jurisdiction of Petitioner’s claim seeking immediate release per *Zadvydas*.

It is not disputed that this court does not have jurisdiction over the Petitioner’s actual removal proceedings. Petitioner is currently seeking to re-open his case through the proper channels with the immigration court. This court will not intervene to prevent Petitioner’s lawful removal to a third country but instead is considering his request to release him from detention and put him back on supervised release pending resolution by the immigration court as to what third country he can be removed to without persecution or torture. Petitioner also alleges that the procedures for revoking his release were not properly followed and he cites to cases, wherein the court found that the Respondents failed to follow the regulations in making the proper showing of “changed circumstances” to revoke a petitioner’s immigration supervised release and therefore ordered release. Consequently, recognizing the court has jurisdiction, the court will turn to evaluation of the Petitioner’s due process claim and his alleged resulting unlawful detention.

DETENTION

Respondents state in their response that Petitioner is being detained pursuant to 8 U.S.C. § 1231(a)(6), and in accordance with the United States Supreme Court opinion in *Zadvydas v. Davis*,

533 U.S. 678 (2001), which holds that post-removal-period detention of six months is presumptively reasonable to allow the United States to effectuate removal. (Doc. #34.) Thus, they allege, the Petitioner's detainment since June 23, 2025, is well within that time frame and his claim is premature.

Petitioner argues in response that the presumptive six-month period in *Zadvydas* has expired thereby shifting the burden to the Government to establish a "significant likelihood that the petitioner will be removed within the reasonably foreseeable future." Petitioner asserts that the presumptive six-month period begins on the date of the final order of removal—July 20, 2011. Therefore, that presumptive period has expired. In addition, Petitioner argues that the regulations for detention due to revocation were not complied with, including failure to show a change in circumstances.

Typically, an unauthorized alien who has a final order of removal is statutorily detained for 90 days while attempts are made to remove him. 8 U.S.C. § 1231(a). If the Government fails to remove the alien within 90 days¹, he can be further detained under certain conditions or released on terms of supervision. 8 U.S.C. § 1231(a)(6).

In *Zadvydas*, the court considered this statute and the accompanying regulations under 8 C.F.R. § 241.4 which detail the factors for the immigration court to consider when determining whether to release the alien or continue his detention. *Zadvydas v. Davis*, 533 U.S. 678, 682-684 (2001). *Zadvydas* was born in Germany at a displaced person camp, and after ordering his removal to Germany, Germany informed INS that he was not a German citizen and it would not accept him. *Id.* at 684. Lithuania (his parents' country of origin) likewise refused to accept him because he was neither a citizen nor a permanent resident of Lithuania. *Id.* He moved to the United States

¹ In 1996, Congress shortened this period to 90 days from six months and added the "post-removal-period" provision under section 1231(a)(6). *Zadvydas*, 533 U.S. at 698.

with his parents at the age of 8 and lived in the United States ever since. *Id.* Zadvydas committed various crimes and evaded INS² custody for some time. *Zadvydas v. Davis*, 285 F.3d 398, 404 (5th Cir. 2002). He was finally placed in custody, ordered removed in 1994, and remained detained until 1997 when released by the lower district court. *Id.* The Court stated that “the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699-700. Consequently, the Court held that section 1231(a)(6) authorizes detention only for a period reasonably necessary to bring about the noncitizen’s removal from the US, and six months of post-removal detention is considered “presumptively reasonable.” *Id.* at 701. The Court outlined a process whereby, after the six-month period, the noncitizen bears the burden to show there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, at which point the burden shifts to the Government to justify continued detention. *Id.* The Supreme Court remanded Zadvydas’ case back to Fifth Circuit to apply this new standard. *Id.*

On remand, the Fifth Circuit noted the Supreme Court’s ruling declined to hold that such a presumptively reasonable period ended with the end of the 90-day removal period, and “instead chose a six-month period (*apparently beginning with the beginning of the removal period*).” *Zadvydas v. Davis*, 285 F.3d 398, 403 (5th Cir. 2002) (emphasis added). The Fifth Circuit then found that Zadvydas had been in such custody for over three years and he had provided good

² In 2003, the functions of the INS were split into three separate agencies within the DHS, each with a more focused mission, and U.S. Immigration and Customs Enforcement (ICE) assumed the enforcement, investigations, and intelligence-gathering functions of the former INS.

reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future and that Respondents had not rebutted that showing, so the district court's judgment ordering that Zadvydas be released was affirmed. *Id.* at 404. The court noted that the order of release "shall not of itself preclude the *INS* from seeking to return Zadvydas to *INS* custody (if that be otherwise shown to be appropriate) upon a showing that, on the basis of matters transpiring after the decision of the court, there has then become a substantial likelihood of removal in the reasonably foreseeable future" or *INS* seeks a modification of the conditions of his release based upon some material change. *Id.* (emphasis added).

After *Zadvydas*, the immigration regulations were revised to implement administrative review procedures for those aliens detained beyond the removal period, including those who are detained upon revocation of their supervised release. *See Meighan v. Chertoff*, No. CIV.A. H-08-1222, 2008 WL 1995374, at *2 (S.D. Tex. May 6, 2008) (citing *Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56977 (Nov. 14, 2001) (codified at 8 C.F.R. § 241.13)). Section 241.13 (b)(2)(ii) codifies the six-month presumption stating that there is no obligation by the Government to release an alien until they have had an opportunity "during the six-month period, *dating from the beginning of the removal period*" to make *its determination* as to whether there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13 (emphasis added).

In our present case, Petitioner was not detained during his 90-day removal period. After his failed attempt at obtaining a green card, he was referred to ICE for removal proceedings on September 11, 2009, then he was processed and released on immigration supervision on the same day. His final order of removal with a withholding of removal to Iran was signed on July 20, 2011. (Doc. #33-2, p. 295.) That date marks the "beginning of the removal period." *See* 8 U.S.C. § 1231

(a)(1)(B). Therefore, according to the Fifth Circuit and the immigration regulations, the six-month presumptive period begins with the beginning of the removal period—here, July 20, 2011. That leaves the 90-day removal period ending in October 2011 and the six-month period ending in January 2012. Petitioner was detained in this case on June 23, 2025—thirteen and a half years after the presumptive period ended. Respondents now claim that Petitioner is a flight risk due to his criminal history even though he has had no criminal infractions since 2004 and has been on immigration supervised release for the last 14 years without incident or violation and has never left the country.

It is the undersigned's recommendation that the six-month presumptive period expired back in 2012. In creating this presumption, the Supreme Court in *Zadvydas* did not contemplate implementing it after a fourteen-year delay in effectuating an alien's removal. Such a long period of time is more than enough to determine the likelihood of an alien's removal and essentially indicates itself that removal is not likely.

In a case similar to Petitioners, *Tadros*, the petitioner's final order of removal was issued on April 7, 2009, and he had CAT protection preventing his removal to his country of origin—Egypt. *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501, at *1 (D. N.J. June 13, 2025). He was released from ICE custody under an order of supervision after only two days of detention during his removal period. *Id.* Despite his compliance on supervision, he was taken into custody and detained on May 7, 2025—16 years later. *Id.* at 2. The court noted that Tadros's release suggests he was determined not to present a flight risk, and that the government was unlikely to find a third country to accept him in the reasonably foreseeable future. *Id.* at *3. Furthermore, the court found that six-month presumption period lapsed long ago, and the burden has shifted to the government to show that removal is now likely in the reasonably foreseeable future. *Id.* The court

found that Tadros had met his initial burden “because fifteen years have gone by without the government securing a third country for his removal.” *Id.* The court also found that respondents’ statement that “ICE has been making efforts to facilitate Petitioner’s removal to a country other than Egypt” is insufficient to rebut the presumption established by Tadros. *Id.*

In *Munoz-Saucedo v. Pittman*, the court took a different view and found that *Zadvydas*’ six-month presumption is just that—a rebuttable presumption—and it does not preclude an alien detainee from challenging his detention prior to the six-month mark. No. CV 25-2258, 2025 WL 1750346, at *5-6 (D.N.J. June 24, 2025). The detainee in the *Munoz-Saucedo* case was ordered removed with CAT protection in 2023 and was in custody for 90 days then released on supervision for two years without incident when he was re-detained. *Id.* at 1. The government attempted removal to three different alternative countries that were unsuccessful during his three months of re-detainment and did not provide any other information as to additional countries that were amenable to accepting him. *Id.* at *8. Therefore, the court found that the petitioner had met his initial burden that his removal had exceeded the period reasonably necessary to secure his removal and overcame the presumption that his 164-day detention remained reasonable. *Id.* While the undersigned agrees with the reasoning that the six-month presumption is not a bar to challenging the reasonableness of an alien’s detainment, the court notes that the issue of when the six-month period begins was not before the court or discussed.

The court also notes another line of cases in which the *Zadvydas* six-month presumption is found inapplicable where the alien detainee is on supervised release then years later is apprehended for removal. These cases focus on the regulatory language when revoking an alien’s supervised release.

In *Nguyen v. Hyde*, the court considered a Petitioner's section 2241 request for release under similar circumstances. 788 F. Supp. 3d 144 (D. Mass. June 20, 2025). Nguyen was ordered removed to Vietnam in 1992 and was placed on supervision due to the lack of a repatriation agreement at the time between the United States and Vietnam. *Id.* at 146-147. He did not spend any time in detention after his final order of removal, only initially during his deportation proceedings. *Id.* In 2020, the U.S. and Vietnam signed a Memorandum of Understanding to facilitate the return of Vietnam citizens. *Id.* at 148. Five years later, in March 2025, Nguyen was detained by ICE, and the respondents asserted a change in circumstances per the immigration supervision regulation and argued for his removal to Vietnam. *Id.* at 148-149. The court found *Zadvydas* inapplicable as that only applies to ICE's authority to detain upon an issuance of a final order of removal. *Id.* at 149-150. Instead, the court applied the standard in 8 C.F.R. § 241.13(i) which requires Respondents to show a change in circumstances such that there is now a significant likelihood of removal in the reasonably foreseeable future. *Id.* Ultimately, the court held that respondents failed to meet their burden because of the five-year gap between the repatriation agreement and his detention; the lack of information presented that Nguyen is eligible under that memorandum; and the lack of concrete steps taken by ICE to process his travel documents failed to show a significant likelihood of removal. *Id.* at 150-153. Thus, the court found his detention was unlawful, and release was appropriate. *Id.* at 152-153.

Likewise, in *Liu v. Carter*, a district court in Kansas found that a noncitizen's detention was unlawful because officials failed to grant the petitioner the required interview under section 241.13 and there was no evidence of "changed circumstances" that could have led officials to determine that there was a significant likelihood that petitioner would be removed to China in the reasonably foreseeable future, as required by law to justify a revocation of release and his

detention. *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025). The court noted that a bare assertion that an increase in removals to China as the necessary “changed circumstances,” did not make petitioner’s removal any more likely without addressing the obstacles to the many past failed attempts to remove him, namely the lack of proper documentation for petitioner. *Id.* at *2-3.

As stated above, the undersigned finds that the six-month presumptive period of detention has lapsed in this case. It expired in 2012. Further, it appears that there are no changed circumstances per the regulations. Whether these findings shift the burden in this case to the Respondents or leaves the initial burden with the Petitioner is of no consequence here. The Petitioner has shown “good reason” to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Fourteen years have gone by without the Government securing a third country for Petitioner’s removal. Germany has been an option for these fourteen years, and the recent attempts made to remove Petitioner to Germany were unsuccessful. Petitioner has cooperated with the Government as required to obtain travel documents and has complied with all his conditions of supervision over the last fourteen years. No other third country has been identified. To the extent Petitioner can show a negative (no likelihood of removal) with no information and no evidence from the Government other than two failed attempts at removing him to Germany, he has done so.

Further, the court finds Respondents have failed to meet their burden. Respondents have not provided any evidence that they are in a better position now than they were fourteen years ago to remove Petitioner. Germany was identified as an alternative third country for removal in Petitioner’s Final Order of Removal issued in 2011. It is unclear whether attempts were made to obtain travel documents from Germany for Petitioner back then. Petitioner claims there were, and

Respondents' counsel argued that while they thought attempts were made then they now assert that none were made. We do know that in 2025, two different methods were used to effectuate Petitioner's removal to Germany, and neither were successful. Petitioner still has protection preventing his removal to Iran. Respondents have not identified any alternative countries to which to remove Petitioner, and they have not provided any evidence of any efforts to remove Petitioner to any other country. No evidence was submitted of any plan for his removal moving forward. No documents have been provided to the court regarding any communications with any other country regarding the Petitioner's removal.

Consequently, the undersigned finds that there is not a significant likelihood of removal in the reasonably foreseeable future. "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. CV B-08-037, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008), *superseded by*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008) (a new report and recommendation was entered denying the petition as moot because petitioner was deported prior to the order adopting), *R & R adopted*, 2008 WL 11393148 (S.D. Tex. Oct. 7, 2008). In *Kane*, the court noted that "no clear guidance exists to aid courts in making the determination as to whether significant likelihood of removal in the reasonably foreseeable future exists. Ultimately, determining what the 'reasonably foreseeable future' really is, is a factual determination to be undertaken by the habeas court looking into the circumstance and detention length of each individual petitioner." *Id.*

RECOMMENDATION

For the reasons discussed herein, this court recommends that the Petitioner's Motion for Immediate Release pursuant to section 2241 be GRANTED and Respondents should be ORDERED to release Petitioner upon the district court's order adopting this report and

recommendation subject to an order of supervision in accordance with 8 C.F.R. § 241.5. The court further recommends that Respondent's request to dismiss or stay this case pending resolution of the *DVD* class action case be DENIED.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(c), each party to this action has the right to file objections to this report and recommendation. Objections to this report must: (1) be in writing, (2) specifically identify those findings or recommendations to which the party objects, and (3) be served and filed within fourteen (14) days after being served with a copy of this report. *See* 28 U.S.C. § 636(b)(1)(c) (2009); FED. R. CIV. P. 72(b)(2). A party who objects to this report is entitled to a *de novo* determination by the United States district judge of those proposed findings and recommendations to which a specific objection is timely made. *See* 28 U.S.C. § 636(b)(1) (2009); FED R. CIV. P. 72(b)(3).

A party's failure to file specific, written objections to the proposed findings of fact and conclusions of law contained in this report, within fourteen (14) days of being served with a copy of this report, bars that party from: (1) entitlement to *de novo* review by the United States district judge of the findings of fact and conclusions of law, *see Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of any such findings of fact and conclusions of law accepted by the United States district judge, *see Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, at 1428–29 (5th Cir. 1996) (en banc).

SIGNED this the 23rd day of October, 2025.



Christine L Stetson
UNITED STATES MAGISTRATE JUDGE