UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

SAHAND YOUSEFI NASRABADI,	§	
Petitioner,	§	
	§	
v.	§	
	§	Civil Action No. 1:25-cv-00129-H
	§	
MARCELLO VILLEGAS, et al.,	§	
	§	
Respondents.	§	

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE
TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner Sahand Y. Nasrabadi (Mr. Nasrabadi or Petitioner) and files this his reply to Respondents' response to his petition for writ of habeas corpus. In support of his reply, Petitioner would state as follows:

1. Petitioner's due process claim based on the lack of meaningful notice and opportunity to present a fear-based claim prior to removal to a third country is ripe and subject to review by this Court. Petitioner's claim is a challenge to Respondent's March 30, 2025 Memorandum from Secretary of Homeland Security Kristi Noem. Pursuant to that Memorandum, Petitioner will not receive any notice of his removal to a third country if the United States receives assurances from that third country that it will not persecute or torture noncitizens removed to the third country and the Department of State finds those assurances to be credible. Exh. A (DHS March 30, 2025 Memorandum). If that happens in Petitioner's case, he will be without any legal recourse to challenge the designation of a third country.

2. Further, the procedures for presenting fear-based claims against a third country are woefully deficient. The Memorandum does not describe how the notice will be given, in what language and whether such notice will be provided to the noncitizens' legal representatives. Referrals for screening will be made to the U.S. Citizenship and Immigration Services. However, such screening will take place within 24 hours of the referral. That notice is too short for Petitioner and others to consult with their attorneys to prepare for the interview.

3. Petitioner's due process claims are separate and apart from the challenges presented by the plaintiff class in *D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.). Plaintiff is seeking relief that is not available through the *D.V.D.* litigation. First, Petitioner cannot obtain injunctive relief through *D.V.D.* because the Supreme Court has stayed the preliminary injunction; thus, Petitioner would be deported *before* a decision in *D.V.D.*

4. Second, Petitioner Nasrabadi seeks to enjoin DHS from failing to provide meaningful opportunity to seek withholding of removal prior to third country removal. But the complaint in D.V.D. does not seek preliminary or permanent classwide injunctive relief on that basis. Exh. B (*D.V.D. v. DHS* Complaint).

5. Third, Petitioner is challenging the March 30 Memorandum as unlawful. This claim is not raised in the *D.V.D.* litigation because the DHS released the memorandum after the district court issued the temporary restraining order on March 28, 2025.

6. Fourth. Petitioner Nasrabadi is also challenging the specific circumstances of his re-detention in violation of 8 C.F.R. § 241.13. This claim is not raised in *D.V.D.*

7. Lastly, Respondents read too much into the Supreme Court's June 23, 2025 opinion vacating the district court's preliminary injunction. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). The Court made no comment that the Government was likely to succeed or that a preliminary injunction was not legally warranted.

8. In its response to the Court's order, Respondents argue that § 1231(a)(1)(A) authorizes re-detention without any process. But Respondents offer no support for their argument that they can re-detain Petitioner and re-start the removal period in 8 U.S.C. § 1231(a)(1)(A). Petitioner was ordered removed on October 11, 2013. Almost 90 days later, the DHS determined that it could not execute the removal order and released Petitioner with an Order of Supervision (OSUP). Exh. C (Release Notification) and Exh. D (Order of Supervision). For the last 11 years, Petitioner has dutifully complied with this OSUP. He reports whenever DHS requires it. He has held work authorization and maintained gainful employment. He has no further arrests, has complied with the laws of the United States, and has not violated his OSUP in any way whatsoever. Indeed, in 2014, the DHS terminated Petitioner Nasrabadi's participation in the Alternatives to Detention program which monitors noncitizens with final orders of removal or who have a criminal record and were released on bond. Exh. E (Notice of Termination of ATD Participation).

9. Section 1231 does not permit Respondents to re-detain Petitioner Nasrabadi to restart the removal period without process of law. Yet, that is exactly what they have done. On or around June 23, 2025, the Immigration and Customs Enforcement re-detained Petitioner Nasrabadi based on the near 12-year-old order of removal. Although there has been no change in the diplomatic relationship between the U.S. and Iran, and they have previously failed to remove Petitioner Nasrabadi to Iran, Respondents arrested Petitioner Nasrabadi for removal to Iran. But his removal to Iran is still not reasonably foreseeable and the government has not shown otherwise.

10. Petitioner Nasrabadi has a protected liberty interest in his continued release and its termination must comply with due process. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Fifth Amendment's Due Process Clause] protects."); *Morrisey v. Brewer*, 408 U.S. 471, 482 (1972); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("Just as people on pre-parole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of custody on bond."). As explained below, the process—or lack thereof—used by the Defendants to re-detain Petitioner Nasrabadi fails to satisfy even minimal due process under the Fifth Amendment.

11. When an individual is ordered removed, 8 U.S.C. § 1231(a) authorizes the government to detain the individual during the "removal period," defined as the

90-day period during which "the Attorney General shall remove the [noncitizen] from the United States." 8 U.S.C. §1231(a)(1)(A). The removal period begins on the latest of the following:

(1) the date the order of removal becomes administratively final;

(2) if the removal order is judicially reviewed and the court orders a stay, the date of the court's final order; and

(3) if the noncitizen is released from non-immigration detention or confinement, the date of that release.

8 U.S.C. § 1231(a)(1)(B)(i-iii). In this case, only 8 U.S.C. §1231(a)(1)(A)(1) is applicable.

12. Once the removal period has expired, the government "may" detain a noncitizen only if they fall into one of the four categories under § 1231(a)(6): (1) individuals who are inadmissible; (2) individuals who are removable on specified grounds; (3) individuals determined to be a danger to the community; or (4) individuals determined to be unlikely to comply with the order of removal. However, under § 1231(a)(6) "[o]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute," and the noncitizen must be released. *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court held that six months is a presumptively reasonable for post-order detention. *Id.*

13. Upon release, a noncitizen subject to a final order of removal is typically placed under an order of supervision with conditions. 8 U.S.C. § 1231(a)(3), (6). Revocation of such release is governed by 8 C.F.R. § 241.13(i). The regulation purports to allow ICE to revoke supervised released only if "on account of

changed circumstances," there is a "significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Upon such a determination:

> [T]he [noncitizen] will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. § 241.13(i)(3).

14. In its response to the Order to Show Cause, the Defendant's fail to provide any "changed circumstances" suggesting that Petitioner Nasrabadi's removal to Iran is reasonably foreseeable. The government alleges that it is attempting to secure travel documents for Petitioner Nasrabadi to remove him to Iran but provides little reason to believe that the Iranian government is accepting its citizens.

15. Respondents have tendered the declaration of Deportation Officer Ryan J. Lankford. He states that a deportation officer met with the Interest Section to discuss Petitioner Nasrabadi's case. But the details of such meeting(s) or discussion(s) are sparse and so the declaration is not credible. We do not know when this meeting or discussion took place, the name of the person from the Interest Section in Iran, his or her rank, or whether the Deportation Officer who allegedly contacted the Interest

Section of Iran has authority to engage in diplomatic discussions with a country that the United States does not negotiate.

16. Indeed, it is difficult to believe that relations between the countries have softened since the U.S. bombed Iran in June 2025.[1] Absent any intervening developments, there are no changed circumstances justifying Petitioner Nasrabadi's re-detention. His continued detention is neither authorized by statute nor consistent with due process.

17. When he filed his habeas petition, Petitioner Nasrabadi believed that Respondents revoked his order of supervision under 8 C.F.R. § 241.4. Based on Officer Lankford's declaration, we now know that it was revoked under 8 C.F.R. § 241.13(i)(2) because Respondents believe that there is a significant likelihood that he will be removed in the reasonably foreseeable future. But Respondents have failed to demonstrate that they followed the regulatory procedures under § 241.13(i)(3).

18. Respondents did not provide Petitioner with any notice about the reason for the revocation of his release, did not conduct any interview, and did not provide him an opportunity to rebut their claim that removal is now foreseeable or that he has violated the order of supervision, as required by regulations. *See* 8 C.F.R. 241.13(i)(2), (3). Courts have recognized that when ICE revokes supervised release, it must follow the process prescribed by regulation, including providing notice, conducting an interview, and allowing the noncitizen to respond. *See, e.g., Ceesay*, 2025 U.S. Dist. LEXIS 84258 at *48–52 (finding petitioner was not afforded even

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[1] Julian E. Barnes, et al., *New Assessment Finds Site at Focus of U.S. Strikes in Iran Badly Damaged*, N.Y. TIMES (July 17, 2025), https://www.nytimes.com/2025/07/17/us/politics/iran-nuclear-sites.html.

minimal due process protections when ICE failed to provide petitioner an informal interview upon his re-detainment); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 U.S. Dist. LEXIS 136002, at *9 (E. D. Cal. July 16, 2025) ("Government agencies are required to follow their own regulations. Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful.") (internal citations omitted); *Liu v. Carter*, No. 25-cv-03036-JWL, 2025 U.S. Dist. LEXIS 115275, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) ("The Court finds that officials did not properly revoke petitioner's release pursuant to Section 241.13, for multiple reasons."); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000, at *8–9 (E.D. Cal. July 16, 2025) ("Petitioner has shown he is likely to succeed on his claim that Respondents did not properly revoke Petitioner's release pursuant to § 241.13."); *Tang v. Noem*, No. 2:25-cv-04638-MRA-PD, 2025 U.S. Dist. LEXIS 102445, at *13 (C.D. Cal. May 29, 2025) (finding due process violation where petitioner was "not notified of the reasons for the revocation, nor was he promptly interviewed or otherwise afforded an opportunity to respond to the government's purposes reasons for redetention."); *Torres-Jurado v. Biden*, No. 19 Civ. 3595 (AT), 2023 U.S. Dist. LEXIS 193725, at *14 (S.D.N.Y Oct. 29, 2023) ("Defendants cannot decide to revoke the ICE stay without affording Plaintiff an opportunity to be heard in a meaningful time and in a meaningful manner.") (internal citation and quotations omitted). Respondents' failure to provide any notice for Petitioner Nasrabadi's re-

detention and opportunity to submit evidence to challenge his re-detention, renders such action unlawful under both constitutional and regulatory standards.

19. Even if the Defendants were to demonstrate a changed circumstance, Nasrabadi asserts that 8 C.F.R. § 241.13(i)(2) is invalid and *ultra vires* to 8 U.S.C. § 1231(a)(6), which contains no allowance for re-detention upon a finding of changed circumstances. The Court should refuse to apply a regulation mandating re-detention without bail without a clear statement in the statute reflecting a Congressional intent for such an extreme interpretation.

20. Respondents misapprehend Petitioner Nasrabadi's challenge to his detention. He is not presenting a *Zadvydas* claim of prolonged detention. The 90-day removal period expired long ago. Nothing in § 1231 allows ICE to re-detain Petitioner Nasrabadi without due process. The government errs because Petitioner Nasrabadi is not challenging an initial post-order detention as in *Zadvydas*; he is challenging ICE's authority to re-detain him without notice and opportunity to be heard, in violation of the Fifth Amendment. *See Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 U.S. Dist. LEXIS 117495, *11 (D. Mass. June 20, 2025) (finding *Zadvydas* inapplicable to Petitioner's re-detention).

For the foregoing reasons, the Court should grant the Plaintiff the relief sought in the habeas petition.

Dated: September 2, 2025

Respectfully Submitted,

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ATTORNEYS FOR SAHAND YOUSEFI NASRABADI

CERTIFICATE OF SERVICE

On September 2, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Javier N. Maldonado
Javier N. Maldonado

ATTORNEYS FOR SAHAND YOUSEFI NASRABADI