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11
12 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

13 Zareh Tanahan,

14 Petitioner,

15 v.

16 United States of America, *et al.*,

17 Respondents.
18

Case No. 2:25-cv-02075-RFB-BNW

**Reply in Support of § 2241
Petition¹**

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22 ¹ Respondents answer was untimely. This Court ordered Respondents to file
23 the Answer on Saturday, November 15, 2025. ECF No. 12. The Answer was not filed
24 on that date and, by its terms, FRCP 6(a) would not extend that time to the
25 following Monday. Nonetheless, Respondents did not file their Answer by November
26 15. Instead, at 11:59 p.m. on November 17, 2025, they filed a request for an
27 extension of time without conferring with opposing counsel or indicating that it was
an out-of-time request. ECF No. 13. Petitioner opposed the motion on November 18,
2025. ECF No. 14. In response, Respondents filed their Answer in an untimely
fashion late at night on November 18. ECF No. 15. In any event, Petitioner prevails
on the merits regardless of whether this Court considers the untimely Answer.

1 INTRODUCTION

2 Petitioner Zareh Tanahan, an Iranian citizen, was ordered removed on April
3 2, 2020, but he was granted withholding from removal.² His order of removal
4 became final on May 2, 2020. He was originally detained after the removal order
5 pursuant to the mandatory 90-day detention provision under the INA but was then
6 released on supervision.

7 Tanahan had remained on an order of supervision (OSUP) up until the time
8 he was re-detained on June 24, 2025, when ICE officers “conducted a targeted
9 operation . . . seeking Zareh Tanahan.”³ Although it was a targeted operation, there
10 is no legitimate reason provided as to why Tanahan was taken into custody on that
11 date.⁴ He has remained in ICE custody since June.

12 Tanahan’s continuing indefinite detention is unreasonable and violates due
13 process under *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001), because his removal is
14 not reasonably foreseeable. In their Response, Respondents provide nothing but
15 vague information that a process may be underway to try to remove Tanahan to
16 some still undetermined third country. However, these unsupported factual claims
17 are woefully insufficient to establish that his removal is reasonably foreseeable.
18 Further, Respondents’ argument that this petition is premature is wrong for the
19 same reason—the constitutional violation has been established because it is now
20 five years since the removal order became final and removal is not reasonably
21 foreseeable.

22 Accordingly, the petition should be granted, and this Court should order
23 Tanahan’s immediate release.

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25 _____
26 ² ECF No. 15-2 at 2.

27 ³ ECF No. 15-4 at 3.

⁴ ECF No. 15-4 at 2-6.

ARGUMENT**I. Tanahah's continuing detention violates due process.**

The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Petitioner has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable. Respondents have violated the Due Process Clause of the Fifth Amendment because Petitioner's removal is not reasonably foreseeable. *Zadvydas* requires that Petitioner be immediately released. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision").

A. Tanahah must be released immediately because his removal is not reasonably foreseeable.

Tanahan's continued detention is unreasonable and his removal is not reasonably foreseeable. Tanahah has now been in immigration detention for the original 90 days after the removal order and, at the time of this pleading, an additional five months. Tanahah cannot be removed to Iran. He received withholding of removal to that country. He is not a citizen of *any* country besides his home country, let alone the countries to which ICE has purportedly attempted to remove individuals in the recent past. Upon information and belief, throughout his prolonged detention, he has not been given any indication that preparations have been made to deport Tanahah. Crucially, the Government acknowledges that no third country designation has yet been made. ECF No. 15 at 10 ("ERO has submitted the requisite paperwork to carry out the process of identifying a country for Tanahah's removal."). Thus, Tanahah has shown that his current custody is unreasonable as there is no reasonable foreseeability of deportation.

1 In their Response, Respondents provides woefully insufficient information to
2 establish that deportation is reasonably foreseeable. Upon closer inspection, none of
3 the supposed evidence offered to justify Tanahan’s detention succeeds. First,
4 Respondents seek to contest the assertion that Iran does not have a repatriation
5 agreement.⁵ But that is irrelevant here as Tanahan can’t be repatriated to Iran
6 because he has withholding of removal to Iran and cannot be removed there
7 regardless of the country’s diplomatic ties (or lack thereof) to the United States.
8 Further, Respondents make no assertion that they have taken any steps to obtain
9 the relevant documentation to repatriate Tanahan to Iran. This is not surprising
10 though because, of course, they cannot remove him to Iran because of his
11 withholding grant.

12 Second, Respondents argue that Tanahan is being targeted for removal
13 because he has been convicted of two or more crimes involving moral turpitude.⁶
14 They attached an I-213 from ICE indicating the same.⁷ What this actually seems to
15 show is that Tanahan was re-detained for a irrelevant ground of removability
16 (because Tanahan was already ordered removed in 2020), instead of for any reason
17 relating to violating his OSUP terms or changed circumstances making his removal
18 reasonably foreseeable. This suggests that Tanahan’s re-detention, which occurred
19 the same week as Iranians on OSUPs around the country, was not motivated by an
20 individualized analysis of appropriate factors under the regulations governing the
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23 ⁵ ECF No. 15 at 10. What is odd about this argument is that Respondents cite
24 to a New York Times article and a decision from Kansas to support this assertion.
25 But this is information that should be in *Respondents’ possession*. The fact that they
26 cited secondary sources undermines the reliability of the assertion.

26 ⁶ ECF No. 15 at 4 stating under “Current Administrative Charges”
27 “conviction of two crimes involving moral turpitude.”

⁷ ECF No. 15-4 at 3.

1 revocation of an OSUP (8 C.F.R. 241.13(i)), but by political factors.⁸ Notably, the
2 immigration documents submitted by Respondents do not include a revocation of
3 Tanahan’s OSUP at all. To the contrary, Respondents state that the ICE agents
4 “determined that Tanahan was in violation of immigration law, determined he was
5 an individual wanted by ICE, and took him into custody.”⁹ Respondents do not
6 explain why or how Tanahan was in violation of immigration law or why he was
7 wanted by ICE, given that he had already been ordered removed and released on an
8 OSUP that does not seem to have been properly revoked.

9 Next, Respondents claim that the process to possibly remove Tanahan to a
10 third country has been initiated. They state, in full, “upon information and believe
11 [sic], Tanahan is currently being processed by ERO for a third country removal, and
12 ERO has submitted the requisite paperwork to carry out the process of identifying a
13 country for Tanahan’s removal.” ECF No. 15 at 10; *see also id.* at 5 (stating the
14 same information). These vague statements are woefully insufficient to establish
15 that removal is reasonably foreseeable. They are mere assertions without any
16 evidentiary support. On a basic level, there is no explanation as to what it means
17 for someone to be processed by ERO or what paperwork was even prepared or
18 submitted. Moreover, there is no indication when that happened, what the current
19 status actually is, or how long this process even takes. Critically, they acknowledge
20 that there has been no third country designation. Courts in this district and within
21 the circuit have regularly refused to find the Government has established
22 reasonable foreseeability where the Government has offered little more than
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25 ⁸ See Kouros Ziabari and Meghnad Bose, *Arrested for being Iranian: How a*
26 *war in the Middle East gave ICE new targets at home*, Prism (Oct. 8, 2025),
27 available at <https://prismreports.org/2025/10/08/iranian-immigrants-deportation-iran/>

⁹ ECF No. 15-4 at 3.

1 generalizations regarding the likelihood that removal will occur. See, e.g., *Cavieres*
2 *Gomez v. Mattos*, No. 2:25-cv-00975-GMN-BNW, 2025 WL 3101994 at *6 (D. Nev.
3 Nov. 6, 2025); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006);
4 *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal.
5 July 16, 2025). Indeed, in cases such as *Singh* and *Hoac*, the Government had at
6 least identified a specific country for removal; here, no country has even been
7 identified. In sum, there is no reliable or specific evidence that deportation is
8 reasonably foreseeable. The Government’s vague claims utterly fail.

9 Finally, Respondents go into great detail in their Response about Tanahah’s
10 prior criminal history, attaching 66 pages of prior criminal history documents to the
11 pleading.¹⁰ However, none of this is relevant to the due process issue present in this
12 case. There is no exception to the due process right to be free from indefinite
13 immigration detention based upon having a criminal history. Indeed, each of the
14 petitioners in *Zadvydas* also had a long (and more serious) criminal history. See
15 *Zadvydas*, 533 U.S. at 684–686. But that history was simply not relevant to
16 whether there was a due process violation. The *only* relevant question is whether
17 removal is reasonably foreseeable. See *id.* at 700. In fact, the only time the Supreme
18 Court implied a criminal history could be relevant is when *there is no due process*
19 *violation*, namely when the Government has established that the deportation is
20 reasonably foreseeable. See *id.* (“And if removal is reasonably foreseeable, the
21 habeas court should consider the risk of the alien's committing further crimes as a
22 factor potentially justifying confinement within that reasonable removal period.”);
23 see also *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 400 (D.N.J. 2025)
24 (“nothing supports the argument that danger to the community is a relevant factor
25 to consider in conducting a *Zadvydas* analysis”). Once again, Respondents have not
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27 ¹⁰ ECF No. 15 at 2-4 & Ex. C.

1 shown reasonable foreseeability here, so prior criminal history is simply not
2 relevant.

3 At bottom, the question for this Court is whether Tanahan’s removal is
4 reasonably foreseeable. The history of his case, and the dearth of relevant evidence
5 provided by Respondents compels the conclusion that it is not.

6 **B. Tanahan’s petition is not premature.**

7 Respondents also contend that Tanahan’s petition should be dismissed
8 because his present detention of five months is supposedly “well below” the
9 presumptively reasonable time limit of six months established by the Supreme
10 Court in *Zadvydas*.¹¹ First, they are wrong. Second, Respondents narrow focus on
11 the six-month period misses the forest for the trees. The real question under
12 *Zadvydas* is, and always has been, whether Tanahan’s detention is reasonably
13 necessary to secure removal.

14 **1. The *Zadvydas* six-month period of presumptive
15 reasonableness has long since passed.**

16 The first issue this Court must consider is when the six-month period of
17 presumptive reasonableness runs. The answer is that it starts during the 90-day
18 removal period after the order of removal becomes final, 8 U.S.C. §1231(a)(1)(B) and
19 comprises that period and the following three months. *See Kim Ho Ma v. Ashcroft*,
20 257 F.3d 1095, 1102 n.5 (9th Cir. 2001) (the period of presumptive reasonableness is
21 “six months after a final order of removal—that is, three months after the statutory
22 removal period has ended.”) Here, Tanahan’s order of removal was entered in
23 October of 2020. Accordingly, his 90-day removal period began then. 8 U.S.C. §
24 1231(a)(1)(B). The presumptively reasonable period thus expired six months after
25 the entry of his removal order and three months after the end of his 90-day removal
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¹¹ ECF No. 15 at 5.

1 period, both of which occurred in April of 2021. Thus, Respondents' argument fails
2 because the window of presumptive reasonableness has long since passed.

3 The government asks this Court to take a different approach and has
4 proposed calculating the removal period differently where, as here, an immigrant is
5 released and then rearrested.¹² In such cases, Respondents suggest they get a new
6 six months of presumptive reasonableness every time a noncitizen is re-detained.¹³
7 But this proposed alternative calculation contradicts the statute and *Zadvydas*.
8 "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL
9 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), report and recommendation adopted,
10 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-
11 06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases). This
12 proposal would create an obvious end run around *Zadvydas*, because ICE could
13 detain an immigrant indefinitely by releasing and quickly rearresting them every
14 six months.

15 Even if the Respondents are only suggesting that the 90-day removal period
16 restarts with each new detention by ICE, they are still wrong. As a court explained
17 in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the
18 removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL
19 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the statute, the removal period,
20 and in turn the [six-month] presumptively reasonable period, begins from the latest
21 of 'the date the order of removal becomes administratively final,' the date of a
22 reviewing court's final order where the removal order is judicially removed and that
23 court orders a stay of removal, or the alien's release from detention or confinement
24 where he was detained for reasons other than immigration purposes at the time of
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26 ¹² ECF No. 15 at 8.

27 ¹³ ECF No. 15 at 8.

1 his final order of removal.” *Id.* None of these statutory starting points have
2 anything to do with whether or when an immigrant is detained. *See id.* Because the
3 statutorily-defined removal period has nothing to do with release and rearrest,
4 releasing and rearresting the immigrant cannot reset the removal period.

5 While it is true that some courts that have considered the issue have adopted
6 Respondents’ proposed manner of calculating the six-month window,¹⁴ for the
7 reasons explained above, this Court should do as many others have done and reject
8 that approach.

9 Here, the presumptively reasonable six-months for detaining Tanahan
10 expired years ago. His removal is not reasonably foreseeable, and he must be
11 released.

12 **2. Even if this Court accepts Respondents’ argument that**
13 **the six-month period has not yet expired, Tanahan must**
14 **still be released because he can rebut the presumption of**
15 **reasonableness.**

16 Finally, even if the six-months have not yet expired, Tanahan should still
17 prevail on his petition because he has shown that his removal is not reasonably
18 foreseeable. Importantly, the *Zadvydas* court did not say the six-month
19 presumption is irrebuttable, and a variety of courts across the country that have
20 considered the issue have found the presumption of reasonableness during the first
21 six months of post-removal order detention can be rebutted. *See Munoz-Saucedo v.*
22 *Pittman*, No. CV 25-2258 (CPO), 2025 WL 1750346, at *5 (D.N.J. June 24, 2025)
23 (analyzing the issue and collecting case). “Both during the six-month period and
24 after, a district court has an ongoing **obligation to determine whether**
25 **detention remains authorized.”** *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025
26 WL 2997585, at *2 (D. Md. Oct. 24, 2025) (internal quotations omitted; emphasis in

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¹⁴ *See* ECF No. 15-6 at 4.

1 original). “Within the six-month window,” the noncitizen bears the burden of
2 “prov[ing] the unreasonableness of detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897,
3 903 (E.D. Wis. 2008). After six months, there is “good reason to believe that there is
4 no significant likelihood of removal in the reasonably foreseeable future,” and the
5 burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S.
6 at 701. “Whether detention is ‘reasonably necessary to secure removal is
7 determinative of whether the detention is, or is not, pursuant to statutory
8 authority...The basic federal habeas corpus statute grants the federal courts
9 authority to answer that question.” *Medina v. Noem, et al., Respondents*, No. 25-
10 CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*,
11 533 U.S. at 699).

12 Here, as argued above, Respondents provide essentially no evidence to
13 support the idea that Tanahah’s removal is reasonably foreseeable. Respondents do
14 not provide an affidavit from an ICE official concerning what steps have been taken
15 in furtherance of third country removal and do not even provide a cogent
16 explanation for why Tanahah was re-detained in the first place. This, in
17 combination with the fact that Tanahah cannot be removed to Iran, easily sustains
18 Tanahah’s burden of showing that removal is not reasonably foreseeable. Other
19 courts have granted habeas relief in similar cases where ICE cannot provide
20 documentation of their efforts to facilitate removal. *See Douglas*, 2025 WL 2997585,
21 at *4.

22 The cases relied on by Respondents are unpersuasive. For example,
23 Respondents attach a Virginia case that supposedly establishes that a petition filed
24 before six-months of detention has passed is premature. However, that case merely
25 says that the petition was premature because the evidence in the case suggested
26 that removal was reasonably foreseeable, and that the petitioner was likely to be
27

1 removed promptly.¹⁵ In addition, the Court noted that detention was still
2 presumptively reasonable because the petitioner was within the six-month
3 window.¹⁶

4 **CONCLUSION**

5 Tanahan's continuing detention violates due process. He is entitled to relief
6 on the grounds raised in his petition. He must be released immediately. Because
7 Respondents have indicated that they have initiated potential third country
8 removal, this Court should also order that he must be given adequate notice and an
9 opportunity to contest any future attempt to remove him to a third country.

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11 Dated November 25, 2025.

12 Respectfully submitted,

13
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15 Federal Public Defender

16 /s/ Laura Barrera
17 Laura Barrera
18 Assistant Federal Public Defender

19 /s/ Jonathan M. Kirshbaum
20 Jonathan M. Kirshbaum
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25 ¹⁵ ECF No. 15-15 at 7.

26 ¹⁶ ECF No. 15-15 at 7. However, the court in this case also adopts the
27 Respondents proposed flawed manner of calculating the six-month period of
presumptive reasonableness. For the reasons explained above, this Court should
reject that analysis, as many other courts have.