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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EMAN ZAERI,

Petitioner,

v.

KRISTI NOEM, *et. al.*,

Respondents.

Case No. 2:25-cv-02219-CDS-NJK

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Eman Zaeri respectfully submits this Reply to Respondents' Response to the Petition for Writ of Habeas Corpus (ECF No. 15). Respondents' filing fails to rebut the constitutional and statutory violations identified in the Petition. Instead, it rests on factual inaccuracies, misstatements of governing law, and speculation untethered to any lawful or reasonably foreseeable removal pathway. Most notably, Respondents repeatedly proceed as though Petitioner's release on supervision was formally revoked by written order, yet they have never served Petitioner with a revocation order, nor have they produced any such order for the record. That omission alone is fatal to Respondents' position. When combined with the absence of any significant likelihood of removal in the reasonably foreseeable future, continued detention is plainly unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

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I. RESPONDENTS' ASSERTION THAT A REVOCATION ORDER WAS SIGNED IS FACTUALLY FALSE AND FATALLY UNDERMINES THEIR DEFENSE

Respondents' Response asserts that the Baltimore Field Office Director, Nikita Baker, signed Petitioner's revocation order. That statement is false. It is not supported by the record because no revocation order has ever been served on Petitioner or produced by Respondents in this case. The assertion appears to be the product of a careless copy-and-paste error drawn from *Douglas v. Baker*, a case arising in the District of Maryland involving an entirely different petitioner, a different factual record, and a different field office. It has no connection whatsoever to Mr. Zaeri.

This factual error is not a minor misstatement. It goes to the heart of Respondents' claim that Petitioner's detention is the result of a lawful regulatory revocation under 8 C.F.R. § 241.4. Yet Respondents cannot identify, attach, or authenticate any revocation order in this case, nor can they show that such an order was ever served. Indeed, nowhere in Respondents' filings do they cite a Bates-stamped document, exhibit number, or declaration attesting to the existence or service of a revocation decision. Instead, they rely on conjecture, asserting "upon information and belief" that ICE re-detained Petitioner to enforce his removal order.

Habeas review cannot proceed on information and belief. Where the Government purports to detain a person pursuant to a regulatory revocation of supervised release, it must be able to produce the revocation decision itself. The absence of any revocation order renders Petitioner's detention legally unmoored. It deprives Petitioner of notice, forecloses meaningful administrative or judicial review, and confirms that ICE's action was arbitrary. Even where an agency enjoys discretion, it must still engage in an identifiable agency action capable of review. Detention without a served or produced revocation order is the paradigm of arbitrary custody.

Respondents' attempt to avoid this problem by arguing that 8 C.F.R. § 241.4(l)(2) does not require notice or an informal interview misses the point. Petitioner is not claiming an entitlement to advance notice prior to arrest. He is pointing out that, after re-detaining him, ICE was required at a minimum to issue and serve a revocation decision explaining the basis for custody. The Government cannot lawfully detain first and invent the paperwork later, nor can it rely on paperwork from an entirely different case. This failure alone warrants habeas relief.

II. PETITIONER HAS MET HIS BURDEN UNDER ZADVYDAS, AND THE BURDEN HAS NOW SHIFTED TO THE GOVERNMENT

Respondents misstate the burden-shifting framework under *Zadvydas*. The Supreme Court held that after the presumptively reasonable six-month period following the start of post-order detention, the detainee need only provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. Once that showing is made, the burden shifts to the Government to rebut it with evidence sufficient to demonstrate a significant likelihood of removal.

Here, December 22, 2025 marked day 180 of Petitioner's detention. At that point, the *Zadvydas* presumption expired as a matter of law. Petitioner has met—and exceeded—his burden. He is subject to a final order of removal coupled with deferral of removal under the Convention Against Torture, which legally bars removal to Iran absent termination of CAT protection through the prescribed regulatory process. ICE has not initiated any such termination proceedings. Nor has ICE identified any third country willing to accept Petitioner, initiated travel document requests for any such country, scheduled a removal, or provided any evidence of diplomatic progress. Petitioner has therefore shown that removal is not merely delayed but legally and practically unforeseeable.

At that point, the burden shifted to Respondents. They were required to come forward with evidence showing a significant likelihood of removal in the reasonably foreseeable future. They did not do so. Instead, they rely on abstract assertions that ICE is "actively processing" Petitioner for third-country removal, references to unrelated deportation flights involving other Iranian nationals, and conclusory statements in custody review forms checking a box indicating that removal is "expected." Courts have repeatedly rejected such speculation as insufficient under *Zadvydas*. *See*, e.g., *Rokhfirooz v. LaRose*, 2025 U.S. Dist. LEXIS 180605, at *10–12 (S.D. Cal. Sept. 15, 2025); *Ali Ghafouri v. Noem*, 2025 U.S. Dist. LEXIS 218347, at *11–13 (S.D. Cal. Oct. 28, 2025).

Respondents' failure to carry their burden is dispositive. Once the Government cannot demonstrate a significant likelihood of removal, continued detention is no longer authorized by statute and violates the Due Process Clause. *Zadvydas*, 533 U.S. at 699–701.

III. CAT DEFERRAL FORECLOSES RESPONDENTS' RELIANCE ON GENERALIZED REMOVAL POSSIBILITIES

Respondents' Response conspicuously avoids grappling with the legal effect of Petitioner's CAT deferral. CAT deferral is not a discretionary benefit. It is a mandatory prohibition on removal to the designated country. *See* 8 C.F.R. § 1208.17(a). Where CAT protection has been granted, ICE cannot lawfully remove the individual to that country unless and until CAT protection is terminated pursuant to regulation. Respondents do not claim that CAT deferral has been terminated or that termination proceedings have even begun.

This distinction matters because Respondents repeatedly cite cases holding that detention may continue where diplomatic difficulties delay repatriation. Those cases are inapposite. Petitioner's inability to be removed to Iran is not a matter of diplomatic friction; it is a matter of law. As courts have recognized, detention is even less justifiable where removal is

barred by law rather than merely delayed by foreign governments. *See Shadalo v. Mattos*, 2025 U.S. Dist. LEXIS 257948, at *14–18 (D. Nev. Dec. 14, 2025).

Respondents' vague references to third-country removal do not cure this problem. Before ICE may effect third-country removal of an individual with CAT protection, it must provide notice and an opportunity to seek protection with respect to the proposed third country. Respondents do not claim that any such notice has been given. Nor do they identify any third country under consideration. Absent those steps, third-country removal remains speculative and legally unavailable. Speculation cannot satisfy *Zadvydas*.

IV. DISCRETION DOES NOT AUTHORIZE INDEFINITE OR ARBITRARY DETENTION

Respondents argue at length that revocation of supervision under 8 C.F.R. § 241.4(l)(2) is discretionary and therefore insulated from due process review. That argument misunderstands the nature of Petitioner's claim. Petitioner is not asking the Court to second-guess ICE's weighing of discretionary factors. He is challenging detention that exceeds statutory and constitutional limits.

The Supreme Court has made clear that § 1231(a)(6) does not authorize indefinite detention. *Zadvydas*, 533 U.S. at 689. Regulations promulgated under that statute cannot expand detention authority beyond constitutional bounds. Even where an agency has discretion, it must exercise that discretion within the limits imposed by the Constitution and the statute it administers. Detention untethered to a significant likelihood of removal violates those limits regardless of how the agency labels its action.

Moreover, Respondents' own position underscores the arbitrariness problem. They argue simultaneously that revocation is purely discretionary and that no notice or interview is required, while also insisting that detention is justified because removal is expected. Yet they

cannot identify the document embodying that discretionary decision or the evidence supporting their expectation. The Constitution does not permit detention on such an opaque basis.

V. SECTION 1252(g) DOES NOT BAR REVIEW OF UNLAWFUL POST-ORDER DETENTION

Respondents' reliance on 8 U.S.C. § 1252(g) and *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), is misplaced. Petitioner does not challenge the decision to commence removal proceedings. He challenges prolonged post-order detention that violates *Zadvydas*. The Supreme Court has repeatedly entertained habeas challenges to post-order detention under § 1231, and *Zadvydas* itself would have been impossible if § 1252(g) barred such review.

Detention may be "incidental" to removal only so long as it serves the purpose of effectuating removal. Once removal is not significantly likely in the reasonably foreseeable future, detention loses its statutory justification. That is the claim before this Court, and it falls squarely within habeas jurisdiction.

VI. PETITIONER HAS STATED A COGNIZABLE AND SERIOUS EQUAL PROTECTION CLAIM BASED ON NATIONALITY-BASED SELECTIVE ARREST AND RE-DETENTION

Respondents contend that Petitioner's equal protection claim is barred by 8 U.S.C. § 1252(g) and *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999). That contention misunderstands both the nature of Petitioner's claim and the limits of § 1252(g). Petitioner does not challenge the Government's decision to commence removal proceedings, execute a removal order, or exercise prosecutorial discretion over whether he should be removable. He challenges a distinct executive action: his sudden, arbitrary arrest and re-detention after nearly five years of compliant supervised release, undertaken without any

revocation order, without any individualized change in circumstances, and pursuant to a nationality-based enforcement directive issued in the wake of Operation Midnight Hammer. Section 1252(g) is narrowly drawn. It strips jurisdiction only over claims "arising from" the decision to commence proceedings, adjudicate cases, or execute removal orders. *AADC*, 525 U.S. at 482. The Supreme Court expressly warned against reading the provision as a general bar on constitutional claims related to immigration enforcement. *Id.* at 487. Here, Petitioner's detention did not arise from a discretionary charging decision; it arose from a custodial enforcement sweep targeting a discrete national group already living at liberty under ICE supervision. Courts have repeatedly recognized that such claims fall outside § 1252(g)'s limited scope. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006) (holding that § 1252(g) does not bar habeas review of unlawful detention); *Arce v. United States*, 899 F.3d 796, 800–01 (9th Cir. 2018) (permitting constitutional claims challenging unlawful detention practices notwithstanding jurisdiction-stripping provisions).

Petitioner's equal protection claim is grounded in the Fifth Amendment's guarantee that the federal government may not subject individuals to arbitrary discrimination, including discrimination based on nationality, absent constitutionally sufficient justification. Nationality is a suspect classification for equal protection purposes. *See Graham v. Richardson*, 403 U.S. 365, 372 (1971); *Nyquist v. Mauclet*, 432 U.S. 1, 7–9 (1977). While Congress and the Executive possess broad authority over immigration classifications at the level of admission and removal, that deference does not extend to arbitrary, selective arrests and detentions of individuals already present and already released, particularly where detention is not tied to effectuating removal. *See Zadvydas*, 533 U.S. at 695 (emphasizing that once removal is not reasonably foreseeable, immigration detention implicates core liberty interests).

Petitioner has alleged—and will establish—that ICE officers explicitly told him they had been instructed to "round up Iranians" following Operation Midnight Hammer. His re-detention did not occur in isolation. It occurred contemporaneously with the sudden arrest and re-detention of scores of Iranian nationals across the country, many of whom, like Petitioner, had been living in the community for years under orders of supervision, fully compliant, and without any intervening change in circumstances. The temporal clustering of these arrests, the absence of individualized revocation decisions, and the officers' own statements reflect a nationality-driven enforcement action, not a neutral application of post-order detention authority.

This is not a case in which Petitioner seeks heightened scrutiny of a removal statute or challenges Congress's power to classify noncitizens by nationality for purposes of admission or exclusion. He challenges selective enforcement—the decision to arrest and detain him, while leaving similarly situated non-Iranian supervisees at liberty—based solely on national origin. Selective enforcement claims of this nature are cognizable where the plaintiff alleges that enforcement was based on an impermissible classification and was not rationally related, much less narrowly tailored, to a legitimate governmental interest. *See Wayte v. United States*, 470 U.S. 598, 608 (1985); *United States v. Armstrong*, 517 U.S. 456, 464–65 (1996).

Even under the most deferential standard, Respondents cannot justify this conduct. Detaining Petitioner does not advance the Government's interest in effectuating removal, because his removal is not legally or practically foreseeable. Nor can the Government plausibly claim individualized public-safety necessity when it tolerated Petitioner's liberty for nearly five years under supervision and then abruptly reversed course without explanation. Where detention serves no legitimate removal-related purpose and is imposed selectively based on nationality, it fails even rational-basis review. And where, as here, the classification is nationality-based and

the deprivation is physical liberty, strict scrutiny applies. Respondents have not attempted—let alone succeeded—to show that mass re-detention of Iranian nationals on supervision was narrowly tailored to serve a compelling governmental interest.

Finally, Respondents' effort to reframe this claim as a collateral attack on removal proceedings is contradicted by their own filings. They insist Petitioner remains removable and that detention is justified to effect removal. But Petitioner's equal protection claim does not depend on the validity of the removal order. It depends on the arbitrary manner in which ICE chose to exercise custody authority, untethered to any lawful removal process and applied discriminatorily based on nationality.

The Constitution does not permit the Executive to use civil immigration detention as a proxy for nationality-based preventive confinement. That is precisely what the Fifth Amendment forbids, and precisely what habeas corpus exists to remedy.

VII. CONCLUSION

Respondents have failed to rebut Petitioner's showing that there is no significant likelihood of removal in the reasonably foreseeable future. They have failed to produce or serve any revocation order. And they have relied on factual assertions that are demonstrably false. Under these circumstances, continued detention is unauthorized by statute and unconstitutional.

The Court should grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release under his prior conditions of supervision.

DATED this 29th day of December, 2025.

Respectfully Submitted,

SHAMOON ELIADES, LLP

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Certificate of Service

I hereby certify that on December 29, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

s/ Michael T. Shamoon