UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MEHRAB RAHIM BHAI, Petitioner, v. PAMELA BONDI, in her capacity as Attorney General of the United States; KRISTI NOEM, in her capacity as Secretary, U.S. Department of Homeland Security; TODD LYONS, in his capacity as Acting Director, U.S. Immigration and Customs Enforcement; PAUL MCBRIDE, in his capacity as Field Office Director, Houston Field Office U.S. Immigration and Customs Enforcement; RANDALL TATE, in his capacity as Warden of the Montgomery Processing Center, Respondents.	Civil Action No. 4:25-cv-5382

PETITIONER'S RESPONSE[1] TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 56

Respondents Pamela Bondi, Attorney General of the United States; Kristi Noem, Secretary of U.S. Department of Homeland Security; Todd Lyons, Director, U.S.

[1] Respondents filed a Motion for Summary Judgment in response to Mr. Bhai's Petition for Writ of Habeas Corpus. Therefore, Mr. Bhai styles this document as a response to Respondents' Motion for Summary Judgment rather than a reply to his Petition for Writ of Habeas Corpus. Pursuant to the Court's Order to Answer, Mr. Bhai may file a response within twenty days of the date reflected on the certificate of service of Respondents' answer or dispositive motion. Dkt. 3 ¶ 5. This response serves as Petitioner's opposition to Respondents' Motion for Summary Judgment.

Immigrations and Customs Enforcement ("ICE"), and Paul McBride, Field Office Director, ICE Houston Field Officer ("Respondents") filed a Motion for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56 ("Motion") in response to Mehrab Rahim Bhai's ("Mr. Bhai") Petition for Writ of Habeas Corpus ("Petition"). In the Motion, Respondents request the Court dismiss Mr. Bhai's Petition. Notably missing from Respondents' Motion, however, is the factual bases and legal authority to do so.

The Court should deny Respondents' Motion and grant Mr. Bhai's Petition for several reasons: (1) Mr. Bhai has been detained for much longer than the six-month presumptively reasonable removal period; (2) Respondents have not produced any evidence that there are any changed circumstances necessitating detention; and (3) Respondents have failed to show that there is a significant likelihood of removal in the reasonably foreseeable future.

I. ANALYSIS

A. Mr. Bhai's Detention Has Far Exceeded The Six-Month Presumptively Reasonable Removal Period.

As set forth in his Petition, Mr. Bhai's "removal period" began on January 30, 2002—the date he received his final removal order. 8 U.S.C. § 1231(a)(l)(B)(i). After being detained for more than 5 years, ICE finally released him on May 21, 2007, pursuant to an Order of Supervision. Dkt 1-3 (Exhibit C). Despite complying with every condition of his release for the past eighteen years, ICE arrested and detained Mr. Bhai for a second time on August 27, 2025. Now, approximately four months later, Mr. Bhai is still being held as a prisoner at the Montgomery Processing Center.

Respondents spend nearly three pages outlining the circumstances of Mr. Bhai's entrance into the United States and his prior use of the name Kamran Safdar Ali. Those facts are relevant, of course. And Mr. Bhai admits those facts in his Petition. But as Mr. Bhai also shows, the use of a pseudonym does not change the necessary result of this case: his immediate release.

As set forth in *Zadvydas v. Davis*, six months of post-removal order detention is considered "presumptively reasonable." 533 U.S. 678, 701 (2001). As Mr. Bhai previously conceded, the removal period may be extended due to his use of a pseudonym. 8 U.S.C. § 1231(a)(1)(C). But even if Respondents start the clock after Mr. Bhai revealed his true identity and dismissed his first habeas petition on June 15, 2006, Mr. Bhai's time in detention is *still* presumptively unreasonable. ICE did not release him until May 21, 2007—approximately a year later. That time, coupled with the time Mr. Bhai has now spent in detention the second time—nearly four months and counting—clearly surpasses the 6-month period of presumptively reasonable detention. In fact, Mr. Bhai's time in detention nearly *triples* the presumptively reasonable detention period.[2]

Respondents do not take issue with the total amount of time Mr. Bhai has spent in detention. Instead, they argue that it is only the time in the current detention that should count. That argument is incorrect. "The government's contention that it may avoid the

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[2] Again, the calculation outlined above is a conservative approach to counting Mr. Bhai's time in detention. In actuality, Mr. Bhai was detained approximately 5 years in his first detention. However, because the time Mr. Bhai has spent in detention far exceeds the presumptively reasonable removal period under any calculation, even when excluding the time he was detained under a pseudonym, he does not spend time briefing this issue and instead offers only the time he spent in detention after revealing his true identity to be included in the formulation.

holding of *Zadvydas* and re-start the six-month presumptively constitutional detention clock by simply releasing and then re-detaining a noncitizen has no basis in either the statutes, the regulations, or *Zadvydas* itself." *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025).

It is true that "at least one court has allowed the government to engage in this type of gamesmanship." *Id.* (citing *Guerra-Castro v. Parra*, No. 1:25-cv-22487, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025)). But such a result is neither authorized in Texas nor the Fifth Circuit. Respondents do not cite any binding case law to the contrary. Courts in this district are clear: "[d]espite this split of authority, the Court does not read *Zadvydas* to permit the government to indefinitely detain a noncitizen by the simple expedient of releasing and then re-detaining him in a series of 'presumptively constitutional' six-month increments." *Id.* Further, "[m]ost courts to consider the issue [of whether the presumptively reasonable six-month period of detention restarts] have concluded that the *Zadvydas* period is cumulative, motivated by a concern that the federal government could otherwise detain aliens indefinitely by continuously releasing and re-detaining them." *Abuelhawa v. Noem*, No. 4:25-CV-04128, 2025 WL 2937692, at *4 (S.D. Tex. Oct. 16, 2025). "[A] uniform rule that counts and sums prior time in detention is appropriate. It is, after all, liberty at issue." *Id.* at *5.

Respondents also argue that Mr. Bhai's "habeas petition is . . . premature as it has not been brought within the presumptively lawful six-month period." Motion at 6. Again, Mr. Bhai disagrees with Respondents' calculation of his time spent in detention. But even if Mr. Bhai had not met the 6-month presumptively reasonable detention period,

Respondents' argument is still incorrect. "[N]othing in *Zadvydas* precludes a challenge to detention before the presumptively constitutional time period has elapsed. *Zadvydas* specifically holds that continued detention is proper only when the noncitizen's removal is reasonably foreseeable." *Villanueva*, 2025 WL 2774610, at *9. "Even within the presumptively constitutional detention period, whether a noncitizen's detention is constitutional hinges on whether his removal from the United States is reasonably likely in the foreseeable future, not on how long the noncitizen has been detained." *Id.* at *10. "[I]f removal is not reasonably foreseeable, the court should hold continued detention is unreasonable and no longer authorized by statute." *Id.* at *9 (quoting *Zadvydas*, 533 U.S. at 699–700) (alteration in original).

This Court should follow the vast majority of courts—including this Court—in holding that the presumptively reasonable six-month period of detention is cumulative.

B. Respondents Have Not Produced Any Evidence Of Changed Circumstances Necessitating Detention.

Once a noncitizen is released under an Order of Supervision, ICE may revoke an Order of Supervision and return a noncitizen into custody if the noncitizen has violated their conditions of release, the discovery of previously unknown information indicates the individual poses a danger or flight risk, or a change in circumstances warrants detention. 8 C.F.R. § 241.4(l)(1)–(2); 8 C.F.R. § 241.13(i)(2); 8 U.S.C. § 1231(a)(6). Respondents do not allege any of those conditions are present here, much less prove them.

Mr. Bhai has not violated any of his conditions of release, nor is he a risk to the community or unlikely to comply with an order of removal. 8 U.S.C. § 1231(a)(6). In fact,

Mr. Bhai willingly showed up to the ICE Office on August 27, 2025, *after* receiving a notice of removal. If anything, this shows Mr. Bhai *would* comply with any order of removal.

Respondents also take issue with Mr. Bhai's argument that he is entitled to notice upon revocation. Motion at 7. Specifically, Respondents argue that 8 C.F.R. § 241.4(l)(1) "is inapplicable to [Mr. Bhai] as it only addresses [noncitizens] re-detained based on a violation of the conditions of their release." *Id.* If that were true, noncitizens who violate their conditions of release would be afforded more rights—the right to know why they were re-detained—than noncitizens who follow the conditions of their release. Such a result is non-sensical. But even if Respondents take issue with this particular statute, the requirement can also be found in 8 C.F.R. § 241.13(i)(3). There, the statute similarly provides:

> Upon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview . . . to afford the [noncitizen] 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. . . .

Id. That procedure did not happen in this case. "Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Villanueva*, 2025 WL 2774610, at *7.

Importantly, Respondents have failed to show *any* evidence of changed circumstances that would allow the revocation of Mr. Bhai's release. Without such

evidence, Mr. Bhai's continued detention is not only presumptively unreasonable, but unlawful.

C. Respondents Have Failed To Show That There Is A Significant Likelihood of Removal In The Reasonably Foreseeable Future.

After the termination of the 90-day removal period—in Mr. Bhai's case, April 30, 2002—post-removal detention is limited to a period in which removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 689. As described above, six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701. Mr. Bhai's time in detention has far exceeded that time. If a person has been detained more than six months following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable. *Id.* at 699. In such a circumstance, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to justify continued detention. *Id.* at 701.

Mr. Bhai has provided "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* On October 15, 2025, counsel for Mr. Bhai asked his Deportation Officer, Crystal Salinas, whether there had been a change in the likelihood of Mr. Bhai's removal to Pakistan. Dkt. 1-5 (Exhibit E). The following day, Ms. Salinas responded with a conclusory statement: "There is currently a significant likelihood of removal in the foreseeable future." *Id.* Parroting back a statement of law is not evidence. And simply alleging a conclusory statement does not make it so.

Further, as Ms. Salinas outlines in her sworn declaration, the Consulate of Pakistan has denied Mr. Bhai's request for a travel document several times—at least five of which were sent after Mr. Bhai revealed his true name. Most recently, ICE submitted a travel document request to the Consulate of Pakistan on September 25, 2025. Dkt. 8-1 Declaration ¶ 41. While submitting such a request may be a necessary step in effectuating removal, it is not evidence of removal in the foreseeable future. ICE has submitted travel document requests to the Consulate of Pakistan before, all of which were denied. There is nothing to suggest that this time will be any different. Respondents do not allege nor do they show evidence of any cooperation or response from Pakistan to the most recent request ICE submitted three months ago.

In fact, the only thing Respondents state as "evidence" is that "[a]s of today, December 2, 2025, ICE HQ is actively working with the Embassy of Pakistan and the Department of State in issuing a travel document." *Id.* ¶ 43. Respondents make similar statements in their Motion that "the Government took [Mr. Bhai] back into custody upon determining that there is a significant likelihood of removal. . . . And ICE has stated that it is actively pursuing removal by requesting a [travel document] to Pakistan." Motion at 6 (internal quotation marks omitted). There is no evidence of any fact or circumstance that Respondents considered or relied on in making a determination that removal was reasonably foreseeable. Conclusory statements that ICE is "actively working" on removal or "actively pursuing" removal is akin to no evidence at all. *See Bonitto v. Bureau of Immigration & Customs Enf't*, 547 F. Supp. 2d 747, 758 (S.D. Tex. 2008) ("Conclusory statements that removal is 'expected in the reasonable foreseeable future' . . . , with no

factual basis or explanation, teeters dangerously close to a perfunctory and superficial pretense instead of a meaningful review sufficient to comport with due process standards.").

Respondents have not demonstrated *any* likelihood of removal, much less a significant one in the reasonably foreseeable future. "Noncitizens, even those subject to a final Order of Removal, have constitutional rights just like everyone else in the United States. . . . And while the new administration may have changed how it prioritizes the removals of noncitizens, it may not do so at the expense of fairness and due process." *Villanueva*, 2025 WL 2774610, at *5. *Zadvydas* is clear: "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699. Respondents have failed to show any evidence that removal is reasonably foreseeable here; Mr. Bhai should be released.

II. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court (1) deny Respondents' Motion for Summary Judgment; (2) grant Petitioner's Petition for Writ of Habeas Corpus; (3) order Petitioner's immediate release; and (4) restore Petitioner's Order of Supervision previously imposed before his detention.

Dated: December 11, 2025 Respectfully submitted,

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ATTORNEYS FOR MEHRAB RAHIM BHAI

VERIFICATION OF SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's attorney. I, Alamdar S. Hamdani, and others working under my supervision have discussed with Petitioner the events described in the Petition. I hereby certify that the statements made in this attached Response are true and correct to the best of my knowledge.

/s/ Alamdar S. Hamdani
Alamdar S. Hamdani
Date: December 11, 2025

CERTIFICATE OF SERVICE

The undersigned certifies that on December 11, 2025, the foregoing document was electronically submitted with the clerk of the court for the United States District Court, Southern District of Texas, using the electronic case file system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Alamdar S. Hamdani
Alamdar S. Hamdani