UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

GOLNAZ ZAMANPOUR, *et al.*, *Petitioners,*	§	
v.	§	CIVIL ACTION NO. 5:25-cv-00224
KRISTI NOEM, Secretary of Homeland Security, *et al.*, *Respondents*.	§	

RESPONDENTS' RESPONSE TO EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

Respondents, Kristi Noem, Secretary of Homeland Security, *et al.,*[1] file this response to the Emergency Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 (hereafter "the Petition") (Dkt. No. 1) and pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1) and 12(b)(6) move to dismiss the Petition for lack of subject matter jurisdiction or failure to state a claim. As explained below, Petitioners' claims for habeas relief should be denied because they are (1) lawfully detained by ICE pending removal to a third world country, (2) this action is premature as Petitioners filed this action prior to the six-month presumptive detention period post-removal order issuance and (3) in the alternative, dismissal for lack of subject matter jurisdiction is proper because Petitioners have failed to exhaust administrative remedies prior to seeking habeas relief under 28 U.S.C. § 2241.

[1] Respondents note that the proper respondent in a habeas petition is the person with custody over the petitioners. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Since the filing of the Petition, Petitioners have remained in the U.S. Immigration and Customs Enforcement ("ICE") federal facility in Laredo, Webb County, Texas. Dkt. No. 1, ¶¶ 10, 14; **Gov't Ex. 1**, ¶¶ 1-3 (Unsworn Declaration of ICE Supervisory Deportation Officer Juan M. Garza). That said, it is the originally named federal respondents, not Orlando Perez, the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

SUMMARY OF THE ARGUMENT

Petitioners are currently detained at the Laredo Processing Center in Laredo, Webb County, Texas, awaiting removal from the United States after having been detained by ICE and granted withholding of removal to Iran. On November 18, 2025, Petitioners brought this emergency habeas corpus Petition against Respondents claiming their continued detention bears no relation to any legitimate government purpose and is, therefore, unconstitutional under the Fifth Amendment Due Process Clause (substantive and procedural violations) and contrary to the Immigration and Nationality Act ("INA"). Dkt. No. 1, ¶¶ 1-2, 55-67.

The Petition should be dismissed as Petitioners have failed to state a claim that their continued detention pending removal to a third world country is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001). In addition, Petitioners' claims under the Fifth Amendment fail on the merits and are premature as Petitioners filed this action prior to the six-month presumptive period post-removal order issuance. Lastly, and in the alternative, the Petition should be dismissed for lack of jurisdiction as to any claims challenging Petitioners' removal orders for failure to exhaust administrative remedies prior to seeking habeas relief under 28 U.S.C. § 2241.

RELEVANT BACKGROUND[2]

Petitioners, Golnaz Zamanpour, and daughter, Mahsa Karimaghaee, are natives and citizens of Iran. Dkt. No. 1, ¶ 14; **Gov't Ex. 1, ¶ 5.** On or about December 28, 2024, Petitioners illegally entered the United States at or near San Ysidro, California, without inspection by an Immigration Officer at the time of entry and were found without valid documentation by immigration officials on that same date. Dkt. No. 1, ¶ 14; **Gov't Ex. 1, ¶ 4**. Petitioners allege they

[2] Respondents' Relevant Background is taken from Petitioners' Emergency Petition (Dkt. No. 1), the Petition's Exhibits 1-3 (Dkt. Nos. 1-1, 1-2, & 1-3) and attached **Gov't Exs. 1-4.**

are Christian converts that fled Iran from fear of persecution and torture after [redacted]. Petitioners were processed for expedited removal pursuant to 8 U.S.C. § 1225(b)(1) and requested a credible fear interview. Dkt. No. 1, ¶ 14; Dkt. No. 1-2, ¶ 6; Dkt. No. 1-3, ¶ 6. On December 28, 2024, a notice and order of expedited removal was issued by immigration officers after determining Petitioners inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and served on Petitioners. **Gov't Ex. 2** at 1-8 (Notice to Appear and Order of Removal as to Petitioner Zamanpour); **Gov't Ex. 3** at 1-4 (Notice to Appear and Order of Removal as to Petitioner Karimaghaee).

On or about January 3, 2025, Petitioners were transferred and placed into ICE custody at the Laredo Processing Center in Laredo, Webb County, Texas, where Petitioners have been detained since that date. **Gov't Ex. 1**, ¶ 3; Dkt. No. 1, ¶ 14. On May 21, 2025, an Immigration Judge ("IJ") denied Petitioners' asylum but granted Petitioners' withholding of removal to Iran under Section 241(b)(3) of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1231(b)(3)). Dkt. No. 1-1 at 2-5. As provided in the Petition, the Government and Petitioners waived their rights to appeal the Order of the Immigration Judge, (Dkt. No. 1, ¶ 23) therefore the IJ's order became final on that date. Dkt. No. 1-1 at 2-5.

On September 29, 2025, prior to the filing of the Petition, ICE issued a decision to continue detention of Petitioner Zamanpour (**Gov't Ex. 4**) based on her "failure to comply with facilitating the issuance of a travel document," and grounds that the Petitioner has "not demonstrated that if released, [the Petitioner] will not:

- Pose a significant risk of flight pending [the Petitioner's] removal from the United States.

Gov't Ex. 4 at 1. ICE further noted it was "unable to find evidence that the factors set forth at 8 C.F.R. § 241.4(e) have been satisfied." *Id.* The decision further provides that if the petitioner has "not been released or removed from the United States after three months" from the September 29, 2025 review, jurisdiction of the case will transfer to ICE Headquarters, ERO Removal Division where the case will be reviewed and decided on the issue of whether the petitioner "will remain in custody pending removal or may be released." *Id.*

As of the date of this response, ICE is "working to identify and secure removal for Petitioners to a third country." **Gov't Ex. 1**, ¶ 7.

STANDARD OF REVIEW

A. Fed. R. Civ. P. 12(b)(1).

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court must dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also id.* 12(h)(3)("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action."). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 494 (5th Cir. 2005) (quotations omitted); Fed. R. Civ. P. 12(h)(3). The burden of establishing subject matter jurisdiction in federal court is on the party seeking to invoke it. *Hartford Ins. Group v. Lou–Con Inc.*, 293 F.3d 908, 910 (5th Cir. 2002). Accordingly, the party with the burden of proof must establish that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp*., 613 F.2d 507, 511 (5th Cir. 1980). In ruling on a motion to dismiss for lack of subject matter jurisdiction, a court may rely on any of the following to decide the matter: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by

undisputed facts plus the court's resolution of disputed facts." *St. Tammany Parish, ex. rel. Davis v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 315 (5th Cir. 2009) (quotations omitted). A court must accept all factual allegations in the plaintiff's complaint as true. *Saraw Partnership v. United States*, 67 F.3d 357, 569 (5th Cir. 1995). "In considering a challenge to subject matter jurisdiction, the district court is 'free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has the power to hear the case.'" *Krim*, 402 F.3d at 494.

B. Fed. R. Civ. P. 12(b)(6).

A court may dismiss a claim for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007) (brackets omitted)). "Threadbare recitals of the elements of a case of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Nor must a court accept as true "legal conclusions" or "a legal conclusion couched as a factual allegation." *Id*. at 678-79.

ARGUMENT

A. Section 1231(a) Mandates Petitioners' Post-Order Detention for 90 Days.

Petitioners are detained in ICE custody under 8 U.S.C. § 1231(a), because Petitioners have

final orders of removal. *See* Dkt. No. 1, ¶¶ 21-24. Although Petitioners were granted withholding of removal to Iran on May 21, 2025, such relief extends only to the country where Petitioners were found to have a reasonable fear of being tortured under the Convention Against Torture ("CAT"). *See* 8 C.F.R. §§ 208.16–208.17, 1208.16; 1208.17; 208.31(a); 1208.31(a); 8 U.S.C. § 1231(b)(3)(A). In other words, ICE cannot remove Petitioners to Iran at this time, but nothing prevents ICE from removing Petitioners to a third country. *See e.g.*, *Johnson v. Guzman Chavez*, 594 U.S. 523, 531–32, 535–36 (2021); 8 U.S.C. § 1231(b)(1)(c)(iv); 8 C.F.R. §§ 208.16(f); 1208.16(f); 208.17(b)(2); 1208.17(b)(2). There are numerous removal options for ICE to consider under this statute, including any country willing to accept aliens. *Guzman Chavez*, 594 at 536–37; 8 U.S.C. § 1231(b)(2).

ICE's detention authority under § 1231 is well-settled under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). That statute affords ICE a 90-day mandatory detention period within which to remove the alien(s) from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B). DHS has no obligation to release during the 90-day period until the Department of Homeland Security (DHS) Headquarters Post-Order Detention Unit has had the opportunity during a six-month period to determine whether there is a significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.13(b)(2)(ii); 241.13(f).

B. <u>Petitioners' Due Process Claims are premature as Petitioners had not been detained in Post-Order Detention for six months prior to filing the Petition.</u>

Respondents are actively seeking to execute Petitioners' removal orders, and Petitioners'

post-order detention are presumptively reasonable for at least six months.[3] *See Zadvydas*, 533 U.S. at 701. Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *Id*. Under § 1231, the removal period can be extended in a least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien fails to comply with removal efforts or presents a flight risk or other risk to the community. *Id*.; *see also Guzman-Chavez*, 594 U.S. at 528–29, 544; 8 U.S.C. § 1231(a)(1)(C), (a)(6); 8 C.F.R. § 241.4. Continued detention under this provision is the "post-removal-period." *Guzman-Chavez*, 594 U.S. at 529.

Where the alien challenges the discretionary basis for detention authority, that decision is protected from judicial review. 8 U.S.C. § 1252(a)(2)(B). To state a claim for relief under *Zadvydas*, Petitioners must show that: (1) they are in DHS custody; (2) they have a final order of removal; (3) they have been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700. Petitioners do not and cannot make this showing, as at the time of filing their Emergency Petition on November 18, 2025, Petitioners had been detained less than six months in post-order custody (*i.e.*, since issuance of the May 21, 2025 Order of the Immigration Judge, Dkt. No. 1-1 at 2-5). Any due process claim under *Zadvydas* is, therefore, premature. *See Chance*, 2011 WL 6260210 at *1; *Agyei-Kodie v. Holder*, 418 F. App'x 317, 2011 WL 891071 at *1 (5th Cir. Mar. 15, 2011); *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929, n.33 (W.D. Tex. 2018);

[3] The Court lacks jurisdiction to review which country ICE is considering for removal, because those negotiations are inextricably intertwined with ICE's unreviewable authority to execute final orders of removal. *See, e.g., C.R.L. v. Dickerson, et al*, 4:25-CV-175-DL-AGH, 2025 WL 1800209 at *2-3 (M.D. Ga. June 30, 2025) (denying habeas petition for lack of jurisdiction where alien sought review of ICE's decision to execute his final removal order to a third country, noting that ICE agreed to provide him with notice and opportunity to contest the removal); *Diaz Turcios v. Oddo*, No. 3:25-CVC-0083, 2025 WL 1904384 at *5 (W.D. Pa. July 10, 2025) (removal to a third country is closely "bound up with" the removal order such that the court lacks jurisdiction over the TRO motion seeking to enjoin the removal).

Kasangaki v. Barr, 2019 WL 13221026 at *3 (W.D. Tex. July 31, 2019).

Even when an alien establishes that they have been in post-order custody for more than six months at the time the habeas petition is filed, the alien must also provide a "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade*, 459 F.3d at 543–44; *Gonzalez v. Gills,* No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien makes this showing, the burden will not shift to the government to prove otherwise. *Id*. There is no dispute that Petitioners have not been in post-order custody for six months. *See* Dkt. No. 1, ¶¶ 21-23; Dkt. No. 1-1 at 2-5.

Here, Petitioners have final orders of removal that authorize their detention under 8 U.S.C. § 1231(a). ICE denies that there is no likelihood of removal in the reasonably foreseeable future as ICE Enforcement and Removal Operations ("ERO") "is currently working to identify and secure removal for Petitioners to a third country." **Gov't Ex. 1**, ¶ 7; *see id*. § 1231(a)(6). The "reasonably foreseeable future" is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21– CV–00050-M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioners' burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must

> demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

Even if Petitioners were to successfully meet their burden once their claims are ripe, ICE avers that there is significant likelihood of removal in the reasonably foreseeable future. Petitioners are lawfully detained with final orders of removal. Their due process claims fail here as a matter of law.

C. Petitioners Failed to Exhaust their Administrative Remedies under 8 C.F.R. § 241.13.

In the alternative, the Court should dismiss the Petition for failure to exhaust administrative remedies. It is well settled that before a prisoner can bring a habeas petition under 28 U.S.C. § 2241, administrative remedies must be exhausted. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (A federal prisoner must "exhaust his administrative remedies before seeking habeas relief in federal court under 28 U.S.C. § 2241."); *see generally* Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56977 (Nov. 14, 2001) (codified as 8 C.F.R. § 241.13). If the petitioner does not exhaust available remedies, the petition should be dismissed. *Id.*

For purposes of 28 U.S.C. § 2241 relief, exhaustion of administrative remedies is jurisdictional. *See Swain v. Pressley*, 430 U.S. 372, 383 (1977). As thoroughly explained in *McCarthy v. Madigan*: "Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency…[t]he exhaustion doctrine also acknowledges the commonsense notion of dispute resolution that an agency ought to have an opportunity to correct its own mistakes with respect to the programs it administers before it is hauled into federal court." 503 U.S. 140, 144-45 (1992).

Here, Petitioners did not allege or show there has been any administrative determination by DHS's Headquarters Post-order Detention Unit (HQPDU) determining whether there is a significant likelihood that Petitioners will be removed in the reasonably foreseeable future to establish exhaustion of administrative remedies. *See* 8 C.F.R. § 241.13(d)-(g). Notably, in the Decision to Continue Detention of September 29, 2025, ICE reasoned "significant risk of flight" as basis for continued detention pending removal and noted it was "unable to find evidence that the factors set forth at 8 C.F.R. § 241.4(e) have been satisfied." **Gov't Ex. 4** at 1. The decision further provides that if the petitioner has "not been released or removed from the United States after three months" from the September 29, 2025 review, jurisdiction of the case will transfer to ICE Headquarters, ERO Removal Division where the case will be reviewed and decided on the issue of whether the petitioner "will remain in custody pending removal or may be released." *Id.*

Consequently, a Petitioners' failure to exhaust available administrative remedies under 8 C.F.R. § 241.13, implemented after *Zadvydas*, precludes habeas corpus relief by a reviewing court. *See, e.g.*, *Parker v. Sessions*, No. H-18-2261, 2018 WL 11491450, at *2 (S.D. Tex. July 16, 2018) (dismissal of habeas petition as premature was warranted because petitioner did not allege or show there had been an "administrative determination on the status of [ICE's] removal efforts or the propriety of his continuing confinement" in conformity with 8 C.F.R. § 241.13); *Hung Van Le v. Sessions*, No. H-18-1984, 2018 WL 3361515, at *1-2 (S.D. Tex. July 10, 2018) (petitioner's filing of habeas petition prior to expiration of six-month post-removal order period and failure to show he had exhausted available administrative remedies under 8 C.F.R. § 241.13 warranted dismissal of habeas petition).

Here, because Petitioners have failed to exhaust administrative remedies available to them prior to filing suit, habeas relief under 28 U.S.C. § 2241 is unavailable to Petitioners. Therefore,

the Court should dismiss this action for lack of subject matter jurisdiction.

CONCLUSION

Petitioners are lawfully detained by statute and their detention comports with the limited due process they are owed as aliens with final orders of removal. Alternatively, the Court lacks subject matter jurisdiction over this habeas action as Petitioners have failed to exhaust administrative remedies available to them in their post-removal order detention status. Therefore, the Court should dismiss this action for lack of subject matter jurisdiction or alternatively, deny the Petition (Dkt. No. 1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Baltazar Salazar, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on November 26, 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: */s/ Baltazar Salazar*
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