IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GOLNAZ ZAMANPOUR,

MAHSA KARIMAGHAEE;

Petitioners,

v.

ORLANDO PEREZ, in his official capacity as Warden of the Laredo Processing Center,

MIGUEL VERGARA, in his official capacity as Field Office Director of the Harlingen Field Office, Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security, and

PAMELA BONDI, in her official capacity as Attorney General of the United States Department of Justice;

Respondents.

REPLY IN SUPPORT OF THE PETITION FOR A WRIT OF HABEAS CORPUS AND RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Case No.: 5:25-cv-00224

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INTRODUCTION

Petitioners Golnaz Zamanpour and Mahsa Karimaghaee reply in support of their Emergency Petition for a Writ of Habeas Corpus (the "Petition") and respond in opposition to the government's Motion to Dismiss. *See generally* ECF 21. Nothing in the government's response supports Ms. Zamanpour and Ms. Karimaghaee's continued detention. First, the government disputes the Petition's timeliness. But the government has detained Ms. Zamanpour and Ms. Karimaghaee beyond the presumptively reasonable six-month (180-day) period following their removal order in May 2025. This was the case at the time they filed their Petition after 181 days of continuous post-removal confinement, and it is certainly the case now, several weeks later.

Likewise, the government's response does not meaningfully contest Ms. Zamanpour and Ms. Karimaghaee's *Zadvydas* showing. An IJ granted them withholding of removal and CAT protection to their native Iran, and neither have ties with or citizenship in any other country. Along with the presumptive period's expiration, these individual particular barriers to repatriation satisfy their initial good reason burden. And the government provided no evidence of any meaningful progress towards removal. It relies solely on an unsworn declaration[1] from an ICE deportation officer stating, without support, that "ERO is currently working to identify and secure removal for Petitioners to a third country." *See* Dkt. No. 21-1 ¶ 7. That single sentence is the sole rebuttal proof. This speculative assertion—unsupported by even so much as a request for travel documents to a third country—cannot justify Ms. Zamanpour and Ms. Karimaghaee's continued detention.

[1] The government's assertions are also legally deficient. The government submits a faulty declaration that fails threshold requirements; the declaration is uncorroborated and untested. Unsworn declarations under the penalty of perjury made within the United States must contain the following "I declare (or certify, verify, or state) under penalty of perjury the foregoing is true and correct." 28 U.S.C. § 1746; *see Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300, 1306 (5th Cir. 1988) ("[Petitioner] never declared her statement to be true and correct; therefore, her affidavit must be disregarded as summary judgment proof."). Officer Garza's declaration does not attest that his statements are "true and correct."

Contrary to the government's assertions, Ms. Zamanpour and Ms. Karimaghaee need not engage with 8 C.F.R. § 241.13 for the Court to adjudicate their Petition. For one, nothing in the INA or the federal habeas statute considers exhaustion to be jurisdictional. That forecloses the government's Motion to Dismiss for lack of subject matter jurisdiction, and it implicates prudential exhaustion principles. But exhaustion under the circumstances would be fraught with futility because, just as courts have recently recognized in the BIA appeal context, extended administrative processes exacerbate unconstitutional detention and inflict irreparable injury. The Court, in its sound discretion, should waive any application of administrative exhaustion.

Finally, the government's Motion to Dismiss, premised on a failure to state a claim and lack of subject matter jurisdiction, presents no barrier to release.[2] Ms. Zamanpour and Ms. Karimaghaee's Petition is timely, and they have satisfied their burden under *Zadvydas*. The Petition presents a viable claim and is ripe for review. And regardless of whether prudential exhaustion applies, exhaustion is not jurisdictional in this setting. The 12(b)(1) component of the government's Motion to Dismiss necessarily fails.

The Court should address the merits, grant Ms. Zamanpour and Ms. Karimaghaee's Petition, and order their immediate release.

[2] The government captions its pleading as a response to the emergency habeas petition and as a motion to dismiss the petition. To resolve any question as to whether Ms. Zamanpour and Ms. Karimaghaee oppose the Motion to Dismiss, this document replies in support of the Petition and responds in opposition to the government's Motion to Dismiss. However, the Motion to Dismiss is procedurally improper under the Court's Order. Rule 4 of the Rules Governing § 2254 and § 2255 Cases in the United States District Courts, which applies to this § 2241 case according to the Court's discretion, *see* Rule 1(b), grants the Court latitude to tailor habeas pleading procedures. In exercising that latitude, the Court ordered the government to show cause and respond to Ms. Zamanpour and Ms. Karimaghaee's Petition and affirmed their option to reply within the prescribed timeline. *See* Dkt. No. 9. The Court's Order did not contemplate further motions. A superfluous motion outside the Court's established procedures should not afford the government additional briefing. This Court can and should order the immediate release of Ms. Zamanpour and Ms. Karimaghaee without waiting for any further briefing.

ARGUMENT

I. Ms. Zamanpour and Ms. Karimaghaee's Petition is Timely Under *Zadvydas*.

The government first argues that Ms. Zamanpour and Ms. Karimaghaee filed this Petition prematurely. Not so.

While *Zadvydas* generally established "six months" as the "presumptively reasonable" period of post-removal detention, *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), district courts across the country, including in this district, understand the operative period to be 180 days. *See Sagastizado Sanchez v. Noem*, No. 25-cv-00104, Dkt. No. 29 at 14, 16 (S.D. Tex. Nov. 14, 2025) (Saldaña, J.) (referring to the presumptively reasonable period of detention as 180 days); *Villanueva v. Tate*, No. 25-cv-3364, 2025 WL 2774610, at *2 (S.D. Tex. Sept. 26, 2025) (Hittner, J.) ("The Court also held that 180 days is a 'presumptively reasonable' period for removing a noncitizen.") (citing *Zadvydas*, 533 U.S. at 701); *Alfredo v. Warden, Glades Cnty. Det. Ctr.*, No. 25-cv-610, 2025 WL 3177203, at *1 (M.D. Fla. Oct. 17, 2025) ("If [petitioner] remains detained more than 180 days after his removal order became final, he may pursue a claim under *Zadvydas*[.]"); *Ahmed v. Brott*, No. 14-cv-5000, 2015 WL 1542131, at *3 n.3 (D. Minn. Mar. 17, 2015), *report and recommendation adopted*, No. 14-cv-5000, 2015 WL 1542155 (D. Minn. Apr. 7, 2015) ("Although six months may or may not equal 180 days depending on the specific months in question, a number of courts have narrowly construed *Zadvydas*' presumptively reasonable period as equaling that many days."). This squares with DHS's own regulations, which require a secondary review of a noncitizen's post-removal detention after 180 days. *See* 8 C.F.R. § 241.4(k)(2)(ii); *see also Misirbekov v. Venegas*, No. 25-cv-00168, 2025 WL 3033732, at *2 (S.D. Tex. Oct. 29, 2025) (Olvera, J.) (describing the process). DHS specially established this review mechanism to "implement [*Zadvydas*'s] newly established constitutional constraints[,]" *id.*,

so it follows that the 180-day mark—the moment the presumptively reasonable period of detention expires—triggers additional review of detention propriety.

Ms. Zamanpour and Ms. Karimaghaee waited the prescribed 180 days of post-removal detention before filing the present Petition. The IJ's May 21, 2025, order began the clock—a point the government concurs with. *See* Dkt. No. 21 at 7. On November 18, 2025—181 days later—Ms. Zamanpour and Ms. Karimaghaee petitioned this court for release.[3] That timeline complies with *Zadvydas*, this and other court's construal of the six-month presumptive period, and DHS's own regulations. The Petition is timely.

The government's argument is unsubstantiated and unavailing. It baldly claims timeliness issues without offering an alternative calculation or explaining precisely how the Petition is premature with reference to contrary authority. It leaves Ms. Zamanpour and Ms. Karimaghaee only with general claims of error: "[p]etitioners had been detained less than six months in post-order custody" and "[t]here is no dispute that Petitioners have not been in post-order custody for six months." *See* Dkt. No. 21 at 7–8. But the law and facts are clear—the presumptive period is 180 days, and Ms. Zamanpour and Ms. Karimaghaee filed their Petition on their 181st day of continuous post-removal detention.

Regardless, timeliness is a red herring under these circumstances. Ms. Zamanpour and Ms. Karimaghaee remain detained, and the government's continued detention further exceeds the presumptive period with each passing day. They will have been in continuous post-removal detention for 193 days as of this filing. And "Respondents do not cite any controlling precedent or legal support to indicate that six months must have elapsed at the time of filing in order for this Court to consider Petitioner[s'] *Zadvydas* claim." *Sagastizado Sanchez*, Dkt. No. 29 at 13 n.3.

[3] This calculation does not even include the day of filing—November 18, 2025—in the calculation. Including that day of detention would bring the total to 182 days, and counting, of continuous post-removal detention.

Even assuming Ms. Zamanpour and Ms. Karimaghaee petitioned the court prematurely—which, they did not—"nothing in *Zadvydas* precludes a challenge to detention before the presumptively constitutional time period has elapsed." *Id.* at 16 n.4.

Ms. Zamanpour and Ms. Karimaghaee's Petition is timely, and the Court should deny the government's Motion to Dismiss as to this issue and proceed to the merits.

II. Ms. Zamanpour and Ms. Karimaghaee Are Entitled to Release, and the Government's Minimal Arguments to the Contrary Lack Merit.

The INA and the Fifth Amendment's Due Process Clause limit Ms. Zamanpour and Ms. Karimaghaee's detention. *See* Dkt. 1 (Emergency Petition for a Writ of Habeas Corpus) at ¶¶ 34–48. The government has detained them for well over six months since the IJ issued the removal order. Dkt. No. 1 at ¶ 24. This exceeds the INA's initial 90-day removal period, 8 U.S.C. § 1231(a), permitting their continued detention only if there is a significant likelihood of removal in the reasonably foreseeable future. *Clark v. Suarez Martinez*, 543 U.S. 371, 378 (2005); *Zadvydas*, 533 at 701. Ms. Zamanpour and Ms. Karimaghaee provide "good reason to believe" their removal is not significantly likely, and certainly not in the reasonably foreseeable future. *Id.* at 699–701. The government's response and associated evidence does not rebut that showing, so they are entitled to release from indefinite detention.

A. Ms. Zamanpour and Ms. Karimaghaee Provide Good Reason to Believe Their Removal is Not Reasonably Foreseeable.

The Government first, and most substantially, argues that Ms. Zamanpour and Ms. Karimaghaee fail on their initial *Zadvydas* burden. *See* Dkt. No. 21 at 8–9. Relevant case law shows otherwise. A petitioner is not required to "show the absence of any prospect of removal—no matter how unlikely or unforeseeable," but only that circumstances provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *See*

Gomez v. Mattos, No. 25-cv-00975, 2025 WL 3101994, at *5 (D. Nev. Nov. 6, 2025) (quoting *Zadvydas*, 533 U.S. at 701–02). A petitioner meets this initial "good reason" standard by simply showing that "the presumptively reasonable six-month period has expired." *Pham v. Bondi*, No. 25-cv-01835, 2025 WL 3122884, at *1 (W.D. Wash. Nov. 7, 2025) (quoting *Nguyen v. Scott*, --- F. Supp. 3d ----, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025)); *see also Alexis v. Sessions*, No. 18-cv-1923, 2018 WL 5921017, at *7 (S.D. Tex. Nov. 13, 2018) (Rosenthal, J.) ("[P]ostremoval detention under § 1231(a)(6) for longer than six months is presumptively unreasonable.") (citing *Zadvydas*, 533 U.S. at 682). Courts, including in this district, have also looked for "particular individual barrier[s] to [petitioner's] repatriation to his country of origin" in scrutinizing the initial burden. *Abuelhawa v. Noem*, No. 25-cv-04128, 2025 WL 2937692, at *8 (S.D. Tex. Oct. 16, 2025) (Eskridge, J.) (quoting *Tawfik v. Garland*, No. 24-cv-2823, 2024 WL 4534747, at *3 (S.D. Tex. Oct. 21, 2024) (Hittner, J.)).

Ms. Zamanpour and Ms. Karimaghaee satisfy their burden twice over. Initially, *Zadvydas*'s six month presumptively reasonable period has lapsed, providing, *per se*, good reason to doubt reasonably foreseeable removal. *See Pham*, 2025 WL 3122884, at *1; *see also Hambarsonpour v. Bondi*, No. 25-cv-1802, 2025 WL 3251155, at *2 (W.D. Wash. Nov. 21, 2025) ("After a 6-month detention, there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, and the Government must respond with evidence sufficient to rebut that showing.") (citation modified). But more specifically, the IJ's withholding of removal and CAT protection bar Ms. Zamanpour and Ms. Karimaghaee's removal to their native Iran, a factor that "substantially increases the difficulty of removal" and serves as a "powerful indication of the improbability of [their] foreseeable removal, by any objective measure." *Zavvar v. Scott*, No. 25-cv-2104, 2025 WL 2592543, at *7 (D. Md. Sept. 8, 2025)

(quoting *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006)). Indeed, Ms. Zamanpour and Ms. Karimaghaee are citizens of Iran alone, and neither have meaningful connection with any country other than Iran and the United States. *See* Dkt. No. 1-2 ¶ 3; Dkt. No. 1-3 ¶ 3. Those absent third country connections, coupled with the IJ's order, present "particular individual barrier[s] to [their] repatriation to [their] country of origin[,]" thereby satisfying *Zadvydas*'s initial burden. *See Abuelhawa*, 2025 WL 2937692, at *8.

District courts have found petitioners' *Zadvydas* burden met and granted habeas relief in nearly identical circumstances. *See, e.g.*, *G.A.A., v. Chestnut*, No. 25-cv-01102, 2025 WL 3251316, at *4 (E.D. Cal. Nov. 21, 2025) (granting habeas relief and finding petitioner's burden met where petitioner was granted withholding of removal from home country and removal requests to third countries were either denied or left pending for several months); *Salazar-Martinez v. Lyons*, No. 25-cv-00961, 2025 WL 3204807, at *2 (D.N.M. Nov. 17, 2025) (granting habeas relief and holding that removal was not reasonably foreseeable where government detained petitioner for seven months post-removal, withholding of removal prevented petitioner's removal to her home country, and third countries either declined to accept petitioner or failed to respond to requests); *Gomez*, 2025 WL 3101994, at *5 (granting habeas relief and holding that petitioner met initial burden by demonstrating that an IJ granted him withholding of removal to his home country, that he was not a citizen of any other country, and that the government had not identified a country willing to accept him); *Misirbekov v. Venegas*, No. 25-cv-168, 2025 WL 2450991, at *1–2 (S.D. Tex. Aug. 15, 2025) (Olvera, J.) (finding likelihood of success on argument that removal was not reasonably foreseeable where the petitioner was granted CAT withholding from Kyrgyzstan and had no citizenship or ties to any other country); *Trejo Trejo v. Warden of ERO El Paso E. Montana*, No. 25-cv-401, 2025 WL 2992187, at *5 (W.D. Tex. Oct. 24, 2025) (granting habeas petition in

part and finding that petitioner met initial burden by showing that CAT protection prevented removal to his home country and he was not a citizen of any other country).

Just as in these cases, Ms. Zamanpour and Ms. Karimaghaee's withholding of removal and CAT protection prevent their removal to Iran—the only country other than the United States with which they have any connection. These "particular individual barrier[s]" to their repatriation, *Abuelhawa*, 2025 WL 2937692, at *8, along with the expiration of the presumptive period, satisfy their initial burden and oblige the government to rebut their showing.

B. The Government Has Not Shown a Significant Likelihood of Removal.

The government continues that, even assuming Ms. Zamanpour and Ms. Karimaghaee offer good reason to doubt removal, "ICE avers that there is significant likelihood of removal in the reasonably foreseeable future." Dkt. No. 21 at 9. That argument falls short under *Zadvydas*.

Courts demand specificity and particularity from the government in substantiating removal likelihood. "Generalizations" fall short, even where the government identifies a target third country, or countries, for potential removal. *See Gomez*, 2025 WL 3101994, at *6. Nor will "vague and conclusory" statements concerning the removal timeline justify continued detention. *See Nguyen*, 2025 WL 2419288, at *16 (finding that declaration indicating a pending request to the Vietnamese government for travel documents, along with other declarations, failed to satisfy the government's *Zadvydas* burden). Moreover, the significant likelihood standard in the third country context turns on the third country's *agreement* to accept a noncitizen, not a pending travel document request. *See Alic v. Dep't of Homeland Sec./Immigr. Customs Enf't*, No. 25-cv-01749, 2025 WL 2799679, at *3 (S.D. Cal. Sept. 30, 2025) ("[G]eneral indications that U.S. agencies have been in discussions with [target country] regarding repatriation efforts do not indicate that those discussions will result in the timely removal of Petitioner, as it is unclear whether those efforts

will be successful.") (quoting *Lopez-Cacerez v. McAleenan*, No. 19-cv-1952, 2020 WL 3058096, at *6 (S.D. Cal. June 9, 2020)).

The government's limited removal evidence contravenes each of these requirements. It submits, as its sole authority for removal likelihood, an unsworn statement from an ICE deportation officer stating that "ERO is currently working to identify and secure removal for Petitioners to a third country." Dkt. No. 21-1 ¶ 7. That conclusory statement omits every key marker indicative of significantly likely removal. The statement does not suggest that the government has identified any target country, that it has submitted any request for travel documents, that any third country has agreed to accept Ms. Zamanpour and Ms. Karimaghaee, or that a clear removal timeline is in place. Instead, the government merely states that it is "currently working" to identify that country, leaving Ms. Zamanpour and Ms. Karimaghaee, still detained, without a single concrete detail as to where the removal process sits.

The government layers this generalized evidence with more generalities. The entirety of its rebuttal argument reads as follows:

> 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.

Dkt. No. 21 at 9. Now approaching seven months in post-removal detention, *Zadvydas*, the INA, and the Due Process Clause demand more from the government. To protect the freedom from government detention that "lies at the heart of the liberty that [the Due Process] Clause protects," *Zadvydas*, 533 U.S. at 690, the government must "actually make legitimate progress towards removal[.]" *El Ahrach v. Baltazar*, No. 25-cv-03195, 2025 WL 3227529, at *4 (D. Colo. Nov. 19, 2025) (finding that removal was not reasonably foreseeable for noncitizen granted withholding of

removal where travel document requests to four countries were pending for several months). And "a remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Balouch v. Bondi*, No. 25-cv-216, 2025 WL 2871914, at *3 (E.D. Tex. Oct. 9, 2025). On this record, a remote possibility of removal to an unidentified country, devoid of meaningful progress, is all the government can muster. That warrants Petitioners' immediate release.

In a somewhat cryptic footnote, the government claims that "[t]he 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." Dkt. No. 21 at 7 n.3. This wrongly ignores that *Zadvydas* affirmatively places the rebuttal burden on the government to justify a petitioner's post-removal detention past the presumptive period. *Zadvydas*, 533 U.S. at 701. Instead, the government seeks to hide its hand, claim jurisdictional deficiency, and compel the Court to trust, without verification, that it is doing the necessary work. *Zadvydas* squarely rejected that approach. *See id.* at 699 ("The Government seems to argue that, even under our interpretation of the statute, a federal habeas court would have to accept the Government's view about whether the implicit statutory limitation is satisfied in a particular case, conducting little or no independent review of the matter. In our view, that is not so.").

Further, the government's two cited cases do not support its assertion that the Court lacks jurisdiction to review its third country removal efforts. *C.R.L. v. Dickerson* held that the court "has no jurisdiction to interfere with the execution of a final order of removal[.]" No. 25-cv-175, 2025 WL 1800209, at *3 (M.D. Ga. June 30, 2025). Conversely, Ms. Zamanpour and Ms. Karimaghaee challenge the constitutionality of their indefinite detention—a standard that depends on the government's efforts to secure reasonably foreseeable removal. Similarly, *Turcious v. Oddo*

held that the court lacked jurisdiction to issue a TRO enjoining the petitioner's third country removal after ICE issued a notice of final removal to Mexico. *See* No. 25-cv-0083, 2025 WL 1904384, at *1, *5 (W.D. Pa. July 10, 2025). That case has nothing to do with application of *Zadvydas*—indeed, it does not even cite the case. And in any event, nothing in *Turcious* supports the government's suggestion that the Court lacks jurisdiction to review third country removal efforts when used as a litmus test to gauge reasonably foreseeable removal.[4]

In sum, the government fails to rebut Ms. Zamanpour and Ms. Karimaghaee's showing, and the Court should order their immediate release.

III. The Government's Exhaustion Arguments Do Not Impede Ms. Zamanpour and Ms. Karimaghaee's Requested Relief.

Finally, the government argues that 8 C.F.R. § 241.13, which establishes an internal DHS review process for noncitizens detained past the removal period, divests the Court of jurisdiction and prevents it from adjudicating Ms. Zamanpour and Ms. Karimaghaee's Petition. This argument also fails. First, § 241.13 exhaustion is not jurisdictional, precluding a motion to dismiss in the government's favor. And second, futility prevents application of prudential exhaustion because it would unreasonably frustrate Ms. Zamanpour and Ms. Karimaghaee's constitutional claims and inflict irreparable injury in the form of prolonged, unconstitutional detention. The Court should waive any potentially applicable exhaustion requirement and resolve the Petition's merits.

[4] In another jurisdictional quibble, the government asserts that "[w]here the alien challenges the discretionary basis for detention authority, that decision is protected from judicial review. 8 U.S.C. § 1252(a)(2)(B)." Dkt. No. 21 at 7. Assuming without conceding that statement's accuracy, it does not apply here. Ms. Zamanpour and Ms. Karimaghaee currently challenge the constitutionality of their indefinite detention, not the propriety of the government's "discretionary basis for detention." *See Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (federal district courts have jurisdiction to review detention "insofar as that detention presents constitutional issues, such as those raised in a habeas petition"). Indeed, the government does not meaningfully argue that § 1252(a)(2)(B) has any real force in this case. In the subsequent sentence, it goes on to list four requirements for pleading and proving a *Zadvydas* claim, never mentioning § 1252(a)(2)(B) again. To the extent *Zadvydas* can be broken down into four requirements in the way the government posits, Ms. Zamanpour and Ms. Karimaghaee satisfy all of them. And § 1252(a)(2)(B) presents no barrier to the Court's determination.

A. 8 C.F.R. § 241.13 Does Not Jeopardize the Court's Jurisdiction.

Respondents' attempt to cast 8 C.F.R. § 241.13 exhaustion as a jurisdictional prerequisite under 28 U.S.C. § 2241 is incorrect. "There is no statutory requirement to exhaust remedies for [noncitizen] detention claims." *Covarrubias v. Vergara*, No. 25-cv-112, 2025 WL 2950096, at *6 (S.D. Tex. Oct. 3, 2025) (Kazen, J.) (denying government respondent's motion to dismiss on basis of exhaustion of remedies); *Buenrostro-Mendez v. Bondi,* No. 25-cv-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.) ("[E]xhaustion does not bar this court's review because it is not a statutory requirement in these circumstances."); *Garaev v. Noem*, No. 25-cv-00640, 2025 WL 3035052, at *1 (W.D. La. Oct. 30, 2025). And Congress knows how to require administrative exhaustion when it wishes. Under the INA, a noncitizen must exhaust appeals of final removal orders before seeking Court relief. *See Lopez-Arevelo v. Ripa*, No. 25-cv-337, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) (citing *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) (Recio, J.)); *see also* 8 U.S.C. § 1252(d)(1). But this is the INA's sole administrative exhaustion requirement, *see Lopez-Arevelo*, 2025 WL 2691828, at *6, and it does not apply here.

Courts have recognized, in an array of contexts, that § 2241 contains no statutory exhaustion mandate. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992), *superseded by statute on other grounds as recognized by Woodford v. Ngo*, 548 U.S. 81, 84–85 (2006) ("Where Congress specifically mandates, exhaustion is required. But where Congress has not clearly required exhaustion, sound judicial discretion governs.") (citation modified); *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) ("Section 2241's text does not require exhaustion."); *Doe v. Chesnut*, No. 25-cv-01372, 2025 WL 3295154, at *4 (E.D. Cal. Nov. 26, 2025) ("Section 2241 does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus.") (quoting *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004)). Even Respondents' cited authority implicitly recognizes that exhaustion in this context is not jurisdictional, and that courts may reach

the merits where circumstances warrant. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) ("Exceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action.") (citation omitted).

The government directly cites *Swain v. Pressley*, 430 U.S. 372 (1977), for the proposition that exhaustion is jurisdictional "[f]or purposes of 28 U.S.C. § 2241 relief." *See* Dkt. No. 21 at 9. But that case has nothing to do with § 2241, detention review in immigration cases, or even administrative exhaustion. *Swain* decided whether a collateral review procedure for convictions in the D.C. Superior Court operated as a suspension of the writ insofar as it divested federal court jurisdiction to consider writs challenging convictions from that court. *See Swain*, 430 U.S. at 375–81. The statute divested jurisdiction in plain terms. *See id.* at 376. Indeed, the Court clarified that it was *not* confronting a simple issue of administrative exhaustion, but an express bar to federal courts' jurisdiction to consider habeas petitions from the newly created forum. *See id.* at 377 ("There are two reasons why s 23-110(g) cannot fairly be read as merely requiring the exhaustion of local remedies before applying for a writ of habeas corpus in the District Court."). *Swain* is not applicable authority here.

Because exhaustion is not jurisdictional, the government's 12(b)(1) Motion to Dismiss on this issue fails. Rather, the Court can and should exercise its discretion to determine whether prudential considerations favor a merits decision. They do.

B. Prudential Exhaustion Favors a Merits Decision.

If exhaustion is not jurisdictional, it is prudential. Because prudential exhaustion turns on "sound judicial discretion" alone, this Court retains its jurisdiction to consider the merits. *See Sergiu Rusu v. Kristi Noem et al.*, No. 25-cv-13819, 2025 WL 3240911 at *3 (N.D. Ill. Nov. 20, 2025) (quoting *Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004)); *Cabanas v. Bondi*,

No. 25-cv-04830, 2025 WL 3171331, at *3 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.) (merits consideration "proper" despite non-exhaustion); *Covarrubias*, 2025 WL 2950096, at *6; *Hernandez-Fernandez v. Lyons*, No. 25-cv-00773, 2025 WL 2976923, at *6–7 (W.D. Tex. Oct. 21, 2025). Courts in the Fifth Circuit disregard exhaustion, where, among other reasons, the administrative review process would be futile. *See Fuller*, 11 F.3d at 62; *Garner v. US Department of Labor*, 221 F.3d 822, 825 (5th Cir. 2000). Irrespective of whether administrative exhaustion has occurred, this Court should find as a matter of judicial discretion that Ms. Zamanpour and Ms. Karimaghaee need not abide by § 241.13 to obtain habeas relief.

Requiring Ms. Zamanpour and Ms. Karimaghaee to petition DHS for review would be a futile endeavor. This Court ordered the government to show cause as to why Ms. Zamanpour and Ms. Karimaghaee's Petition should not be granted, which necessarily entailed the government's reasonably foreseeable removal proof. As previously described, the government came up empty-handed in an inadequate showing under *Zadvydas*. This begs the question: what more could an internal process addressing the same question have to offer? In response to this Court's order, the government had the occasion to provide Ms. Zamanpour and Ms. Karimaghaee the evidence substantiating its belief that their removal is reasonably foreseeable. All it could muster was an unsworn declaration from a deportation officer containing the route statement that ICE is "currently working to identify and secure removal for Petitioner to a third country" and a footnote indicating it may be withholding further evidence from the Court on inapplicable jurisdictional grounds. Dkt. No. 21-1 ¶ 7. The government came up short on this showing, and it is not entitled to a second, internal attempt to justify detention.

The government's detention basis and procedural compliance during the presumptive period underscore the futility of § 241.13 review. The government attempted to justify Ms.

Zamanpour and Ms. Karimaghaee's detention by asserting—without support or explanation—that Ms. Zamanpour poses a "significant risk of flight" due to her alleged "failure to comply with facilitating the issuance of a travel document." Dkt. No. 21-4 at 1. Its pretext is transparent. ICE already has her passport, the only travel document she could supply. *Id.* And the continued detention decision offers nothing to suggest how or why the government reached the flight risk rationale. Exacerbating futility, the government claims that Ms. Zamanpour was served with a 90-day Decision to Continue Detention, declined a personal interview, and refused to sign acknowledgment of the Decision. *See* Dkt. No. 21-4. But this starkly contrasts with Ms. Zamanpour's lived—and sworn—experience. Dkt. No. 1-2 (Decl. of Golnaz Zamanpour) ¶ 10 ("My 90 day review did not occur to my knowledge, and I did not receive any documentation relating to this review."); *but see* Dkt. No. 21-4 at 3.[5] Further processes would only enable unjustifiable detention on pretextual bases with no guarantee of any additional, legitimate removal substantiation.

Because the presumptively reasonable period has expired, HQDPU is required to review Ms. Zamanpour and Ms. Karimaghaee's detention anyways. Under 241.4(c)(1), authority over a noncitizen's custody determination transfers from the applicable district director to the Executive Associate Commissioner, acting through the HQPDU, after the removal period expires. *See* 8 C.F.R. §§ 241.4(c)(1); 241.4(k)(2)(ii). The Executive Associate Commissioner then conducts the mandatory 180-day custody review "according to procedures established by the HQPDU." § 241.4(k)(2)(i). Ms. Zamanpour and Ms. Karimaghaee have not received their 180-day review—

[5] As stated in their prior declarations—and contrary to Deportation Officer Juan M. Garza's unsworn declaration—Petitioners aver that they did not receive a custody review in September of this year, and did not speak with a detention officer regarding their custody review or Decision to Continue Detention. They deny that they ever received a copy of Dkt. No 21-4, that they were asked to sign the document, and that they refused the signature request. *See generally*, Dkt. No. 1-2; Dkt. No. 1-3.

a point the government's response does not dispute. And since the removal period has expired, jurisdiction over their custody determination now rests with the Executive Associate Commissioner, acting through the HQDPU—the same body responsible for detention review requests under § 241.13. In effect, then, the government suggests that Ms. Zamanpour and Ms. Karimaghaee must first petition for review from the very authority obliged by rule to assess their detention, but that has failed to do so according to its own timelines and procedures. "If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." *Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021).

Analogies to the BIA appeal process confirm futility. Over the last several months, a litany of district courts have held that a re-detained noncitizen subject to final removal orders need not engage with the BIA appeals process before filing a habeas challenge to their detention. *See, e.g.*, *Covarrubias*, 2025 WL 2950096, at *6 (collecting cases); *Lopez-Arevelo*, 2025 WL 2691828, at *6. Courts disregard traditional exhaustion requirements on futility grounds in these cases because, among other reasons, "the unreasonable delay would frustrate [petitioner's] claims," *Covarrubias*, 2025 WL 2950096, at *6, and because "the appeal timeline exacerbate[s] [petitioner's] alleged injury of prolonged detention," *Lopez-Arevelo*, 2025 WL 2691828, at *6 (citation modified). *See also Buenrostro-Mendez*, 2025 WL 2886346, at *3 (excusing exhaustion, finding that preventing months of unlawful detention outweighs the government's interest in detainment during administrative review); *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (excusing prudential exhaustion of BIA appeal because noncitizen would suffer irreparable harm in the form of continued detention if unable to pursue detention challenge in habeas).

Those justifications apply with at least equal, if not greater, force here. For one, § 241.13 does not commit to any clear timeline. It requires only that HQPDU acknowledge the request for review "within 10 business days" after receipt. *See* § 241.13(e)(1). But thereafter, HQPDU review is seemingly indefinite. The process involves several rounds of interviews and responses, and may, in HQPDU's discretion, even involve compelled submission to "medical or psychiatric examination" to establish conditions of release if removal is unlikely. *See* § 241.13(g)(1). These are not the markers of an expedited review process, leaving open a distinct possibility that HQPDU review could extend well past 200 days—the average BIA appeal timeline that courts have found justifies prudential exhaustion waiver. *See Covarrubias*, 2025 WL 2950096, at *6 (waiver of exhaustion warranted because average BIA appeal wait is more than six months) (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1255 (W.D. Wash. 2025) (waiving exhaustion because BIA takes 200 days, on average, to hear an appeal)).

And all the while, per § 241.13(b)(2)(i), HQPDU "shall" continue the noncitizen's detention while review pends. That flies in the face of *Zadvydas*, which recognizes the "serious constitutional threat" of indefinite immigration detention past the presumptive period. 533 U.S. at 699. Compelling Ms. Zamanpour and Ms. Karimaghaee to engage in a redundant review process with no definitive timeline would "frustrate" their ripe *Zadvydas* claim and "exacerbate [the] alleged injury of prolonged detention." *Covarrubias*, 2025 WL 2950096, at *6; *Lopez-Arevelo*, 2025 WL 2691828, at *6. Prudential exhaustion—fundamentally, a discretionary function—offers the Court leeway to avoid irreparable harm.

The government's cited cases suggesting that § 241.13 exhaustion presents a habeas prerequisite are easily distinguishable. For one, the petitioners in both cases had not been detained for six months post-removal, undercutting their *Zadvydas* claims. *See Parker v. Sessions*, No. 18-

cv-2261, 2018 WL 11491450, at *1 (S.D. Tex. July 16, 2018) (Hittner, J.); *Hung Van Le v. Sessions*, No. 18-cv-1984, 2018 WL 3361515, at *1 (S.D. Tex. July 10, 2018) (Atlas, J.). Timeliness issues, not present here, made up the courts' primary ground for denial in each case. *Parker*, 2018 WL 11491450, at *1 (Under these circumstances, "[petitioner] does not demonstrate that his detention violates the Constitution and he does not state an actionable claim for relief."); *Hung Van Le*, 2018 WL 3361515, at *1 (same). As such, the exhaustion discussions were at best dicta, and at worst inconsequential, to the courts' primary holding.

Current detention policies also alter the exhaustion calculus from these cases. For all of recent history, DHS generally released, subject to supervision, individuals granted withholding of removal or CAT protection. *See* U.S. Dep't of Just., *Detention of Release during the Removal Period of Aliens Granted Withholding of Removal or Deferral of Removal* (Apr. 2, 2000), available at www.acluva.org/app/uploads/2023/10/all_ice_policies_on_post-relief_release_2000-2021 1.pdf. Now, detention is the default. That distinguishes these cases, and all other previous § 241.13 cases, because the decision to continue a noncitizen's detention previously implicated the agency's expertise. *See id.* at 1 (explaining that if "INS is not actively pursuing the [noncitizen's] removal to an alternate country, the INS has authority to consider the release of such a[] [noncitizen] during the removal period" subject to consideration of "all appropriate factors"). Current detention decisions do not feature the same nuance. A blanket, indiscriminate policy of detention for noncitizens pending removal undercuts the administrative expertise § 241.13 facilitates. The exhaustion interest diminishes with it.

At base, this "legal question is fit for resolution and delay means hardship[.]" *Buenrostro-Mendez*, 2025 WL 2886346, at *3. Ms. Zamanpour and Ms. Karimaghaee seek the Court's resolution of a ripe constitutional claim. Indefinite delay, redundancy, and irreparable harm

inevitably follow § 241.13 review in the same way courts have recognized in the BIA appeal context. The Court should proceed to the merits.

CONCLUSION

Ms. Zamanpour and Ms. Karimaghaee respectfully request that the Court grant their release for the reasons set forth in their Petition and this Reply and Response in Opposition to the government's Motion to Dismiss.

Dated: December 3, 2025

/s/ Micah Doak

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CERTIFICATE OF SERVICE

I certify that on the 3rd day of December, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and that Respondents Miguel Vergara, Kristi Noem, and Pamela Bondi were served via PACER through the email address of their Counsel of Record at Baltazar.Salazar@usdoj.gov.

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