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10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 ALI PARTOVI,

13 Petitioner,

14 v.

15 PAMELA BONDI, Attorney General of the  
United States; KRISTI NOEM, Secretary,  
16 United States Department of Homeland  
Security; MICHAEL BERNACKE, Field  
17 Director, West Valley City Office; TODD  
LYONS, Acting Director; JOHN MATTOS,  
18 Nevada Southern Detention Center,

19 Respondents.

Case No. 2:25-cv-02283-JAD-DJA

**Federal Respondents' Response to  
Petitioner's Petition for Writ of Habeas  
Corpus Under 28 U.S.C. § 2241 (ECF  
No. 1-1)**

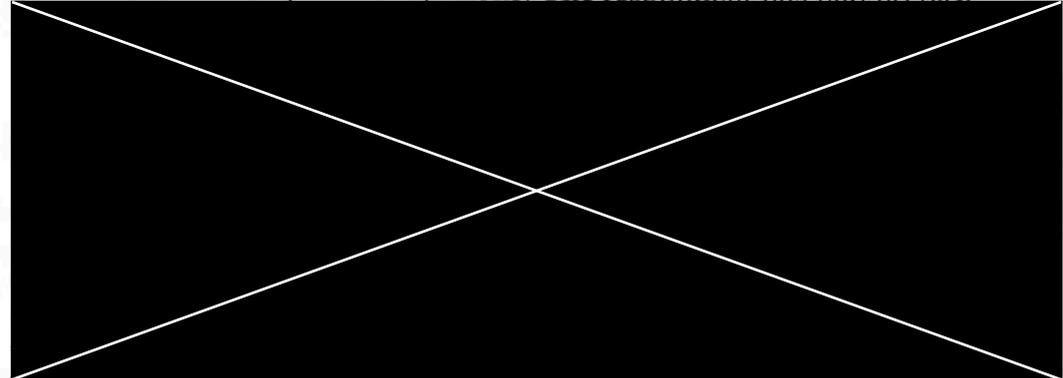
20 Federal Respondents hereby file their Response to Petitioner Ali Partovi's Petition  
21 for Writ of Habeas Corpus Under 28 U.S.C. § 2241. (ECF No. 1-1).

22 **I. Factual Background**

23 Petitioner, Ali Partovi ("Petitioner") is a citizen of Iran with an administratively  
24 final order of removal that was entered by the Immigration Judge ("IJ") on May 3, 2002.  
25 See May 3, 2002, Final Order of Removal attached hereto as Exhibit A. Petitioner was in  
26 asylum-only proceedings, not removal proceedings under 8 U.S.C. § 1229a because he  
27 entered on a visa waiver program using a fraudulent Italian passport under the name of  
28

1 Michel Franchini. See Exhibit A, page 1. Petitioner was prosecuted and plead guilty and  
2 was sentenced for the offense of false use of passport in violation of Title 18 of U.S.C §  
3 1543. See Exhibit A, page 2. The IJ denied the application for asylum, for withholding of  
4 removal pursuant to Section 241(b)(3) of INA and for relief under the United Nations  
5 Convention Against Torture (“CAT”). See Exhibit A, p 28. The IJ also ordered that  
6 Petitioner be removed from the United States to Iran. The IJ explained the basis for her  
7 ruling and stated the following:

8 The respondent has further failed to establish that relief is warranted under  
9 the United Nations Convention Against Torture. Country conditions are  
10 clear in establishing that there are people in Iran who have been tortured and  
11 persecuted for their political opinions. The respondent has had no past



12 live in Iran without any problems. The application for protection under the  
13 United Nations Convention Against Torture will be denied. See Exhibit A,  
14 page 27.

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17  
18 Petitioner filed an untimely appeal on August 29, 2008, which was dismissed by the Board  
19 of Immigration Review (“BIA”) on November 12, 2008. Petitioner was in custody until  
20 October 12, 2011. Enforcement and Removal Operations (ERO) within Immigration and  
21 Customs Enforcement (“ICE”) placed him on an order of supervision while submitting  
22 requests to the Iranian embassy for travel documents. Petitioner remained in that status  
23 until June 23, 2025, when he was detained by ICE in a target enforcement action.

24  
25 For the reasons set forth in this Response, Federal Respondents’ position is that the  
26 Petition should be denied, because Petitioner has been afforded due process throughout  
27 and during his removal proceedings and detention, was denied asylum under CAT and  
28

1 ordered removed to Iran, and ICE is actively working on obtaining travel documents from  
2 Iran to effectuate the removal to Iran.

### 3 JURISDICTION AND BURDEN OF PROOF

4 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited  
5 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon*  
6 *Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted).  
7 “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789  
8 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S.Ct. 1959, 1974 n. 20  
9 (2020). Section 2241 of Title 28 provides district courts with jurisdiction to hear federal  
10 habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in  
11 custody in violation of the Constitution or laws or treaties of the United States to warrant  
12 relief. *See* 28 U.S.C. § 2241(c).

## 13 **II. Legal Argument**

### 14 **A. Ground One: Petitioner’s Continued Detention Does Not Violate His Fifth** 15 **Amendment right to due process because his removal is reasonably foreseeable**

16 The Ninth Circuit, applying the Supreme Court's holding in *Thuraissigiam*, has  
17 explicitly stated that, “[a]ccordingly, any rights [an inadmissible alien] may have in regard  
18 to removal or admission are purely statutory in nature and are not derived from, or  
19 protected by, the Constitution's Due Process Clause.” *Mendoza-Linares v. Garland*, 51 F.4th  
20 1146, 1167 (9th Cir. 2022). Ultimately, “[t]he recognized liberty interests of U.S. citizens  
21 and aliens are not coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the  
22 proposition that Congress may make rules as to aliens that would be unacceptable if  
23 applied to citizens.’” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022)  
24 (quoting *Demore v. Kim*, 538 U.S. 510, 522, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003)).  
25 *Zelaya-Gonzalez v. Matuszewski*, 2023 U.S. Dist. LEXIS 72761, \*10. Petitioner is lawfully  
26 detained under 8 U.S.C. § 1231(a)(6) as he has been issued a final order of removal, the  
27  
28

1 ninety-day mandatory removal period set forth in 8 U.S.C. § 1231(a)(1)(A) has not passed.

2 8 U.S.C. § 1231(a)(6) states:

3 **(6) Inadmissible or criminal aliens**

4 An alien ordered removed who is inadmissible under section 1182 of this title,  
5 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who  
6 has been determined by the Attorney General to be a risk to the community or  
7 unlikely to comply with the order of removal, may be detained beyond the removal  
8 period and, if released, shall be subject to the terms of supervision in paragraph (3).

9 The Supreme Court has interpreted the text of 8 U.S.C. § 1231(a)(6) and held that a  
10 noncitizen detained under this statutory authority has no right to a bond hearing or release.

11 *See Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827 at 1832-34; (“Section 1231(a)(6) does not  
12 expressly specify how long detention past the 90-day removal period may continue for those  
13 who fall within the four designated statutory categories.”); *id.* at 1833. The Supreme Court  
14 has repeatedly “recognized detention during deportation proceedings as a constitutionally  
15 valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003); *see also*,  
16 *e.g.*, *Reno v. Flores*, 507 U.S. 292, 309 (1993) (rejecting procedural due process claim that “the  
17 INS procedures are faulty because they do not provide for automatic review by an  
18 immigration judge of the initial deportability and custody determinations”); *Abel v. United*  
19 *States*, 362 U.S. 217, 233-34 (1960) (noting the “impressive historical evidence of acceptance  
20 of the validity of statutes providing for administrative deportation arrest from almost the  
21 beginning of the Nation”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is  
22 necessarily a part of this deportation procedure.”); *Wong Wing v. United States*, 163 U.S. 228,  
23 235 (1896) (“We think it clear that detention or temporary confinement, as part of the  
24 means necessary to give effect to the provisions for the exclusion or expulsion of aliens,  
25 would be valid.”). As the Supreme Court has explained, “[i]n the exercise of its broad power  
26 over naturalization and immigration, Congress regularly makes rules that would be  
27 unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Petitioner’s  
28 substantive due process claim therefore fails. *See Demore*, 538 U.S. at 531; *see also Zadvydas*,  
533 U.S. at 701 (recognizing a “presumptively reasonable period of detention” of up to six  
months to effectuate a final removal order).

1 While a noncitizen detained under 8 U.S.C. § 1231(a)(6) does not have a statutory right  
2 to release or a bond hearing, a noncitizen may warrant relief if he or she establishes a due  
3 process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690-701. In *Zadvydas*,  
4 533 U.S. at 689, the Supreme Court held that “in light of the Constitution’s demands”,  
5 “indefinite and potentially permanent” detention under 8 U.S.C. § 1231 would raise a  
6 “serious question” under the Fifth Amendment’s Due Process Clause. The Supreme Court  
7 proceeded to conclude that detention of a noncitizen for up to six months under 8 U.S.C.  
8 § 1231 is “presumptively reasonable”, but added that “once the [noncitizen] provides good  
9 reason to believe that there is no significant likelihood of removal in the reasonably  
10 foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that  
11 showing.” *Id.* at 700-01.  
12

13  
14 In this case, although Petitioner’s detention has exceeded the six-month period outlined  
15 in *Zadvydas* since being detained on June 23, 2025, ICE is working on obtaining travel  
16 documents to the country of Iran so that Petitioner’s removal can be accomplished. As of  
17 this filing, Petitioner’s detention has exceeded the six-month period by approximately one  
18 month. However, this is not an “indefinite” period of detention as ICE is actively in the  
19 process to obtain the necessary travel documents from Iran to remove Petitioner and hence  
20 Petitioner’s Fifth Amendment right to due process has not been violated and his removal is  
21 reasonably foreseeable, and the Petition should be denied.  
22

23 **B. Ground Two: Petitioner’s continued detention Does Not Violate 8 U.S.C. §**  
24 **1231(a)(6)**

25 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court construed § 1231 “to  
26 contain an implicit ‘reasonable time’ limitation, the application of which is subject to federal-  
27 court review.” 533 U.S. at 682. When a removable alien is detained beyond this reasonable  
28 time and “removal is not reasonably foreseeable, the court should hold continued detention

1 unreasonable.” *Id.* at 699. The Court adopted a six-month period of presumptive  
2 reasonableness and confirmed that “an alien may be held in confinement until it has been  
3 determined that there is no significant likelihood of removal in the reasonably foreseeable  
4 future.” *Id.* at 710. To the extent the Court reviews this matter *after* the six month  
5 presumptively reasonable time has expired, Petitioner fares no better, as release from  
6 detention is not automatic. After six months, the burden shifts to the petitioner to show  
7 “good reason to believe that there is no significant likelihood of removal in the reasonably  
8 foreseeable future” before the burden reverts to the government to rebut that showing *Id.* at  
9 701. The Supreme Court has recognized that “detention during deportation proceedings [is]  
10 a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523  
11 (2003). When evaluating “reasonableness” of detention, the touchstone is whether an alien’s  
12 detention continues to serve “the statute’s basic purpose, namely, assuring the alien’s  
13 presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. To set forth a Constitutional  
14 violation for § 1231 detention, an individual must satisfy the *Zadvydas* test. *See Castaneda v.*  
15 *Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that “*Zadvydas*, largely, if not entirely  
16 forecloses due process challenges to § 1231 detention apart from the framework it  
17 established.”).

18 Petitioner has been detained since June 23, 2025, which is approximately one month  
19 more than the six month presumptively reasonable time outlined in *Zadvydas*. However, this  
20 is not an “indefinite” period of detention as ICE is actively working and in the process to  
21 obtain the necessary travel documents from Iran to remove Petitioner and hence Petitioner’s  
22 continued detention does not violate 8 U.S.C. § 1231 and his Petition should be denied.

23 **C. Ground Three: ICE’s Continued Detention of Petitioner Does Not Violate the**  
24 **Administrative Procedures Act, 5 U.S.C. § 706(2)(A)**

25 Petitioner also asserts an Administrative Procedures Act (APA) claim under 5 U.S.C. §  
26 706(2)(A). Civil APA claims are not cognizable in the habeas context *See, e.g., Mesina v. Wiley*,  
27 352 F. App’x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim “does  
28 not state a habeas claim”).

1 In this case, Petitioner's APA claim fails as a matter of law and therefore ICE did not  
2 violate the APA and Petitioner's Petition should be denied.

3 **D. Ground Four: ICE's Policy To Remove Noncitizens to a third country does not**  
4 **apply in this case and hence there is no violation of the Administrative Procedures**  
5 **Act, 5 U.S.C. § 706(2)(A)**

6 Section 1231(a)(6) satisfies both the substantive and procedural components of the Due  
7 Process Clause. The Supreme Court has explained that detention is "a constitutionally valid  
8 aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). Post-order  
9 detention helps ensure the removal of noncitizens who have already been "ordered removed"  
10 from the United States. 8 U.S.C. § 1231(a)(6). Furthermore, § 1231(a)(6), as implemented  
11 by the existing regulations, does not violate the Due Process Clause "[w]hen detention  
12 crosses the six-month threshold." *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1091 (9th Cir.  
13 2011).

14  
15 This case has nothing to do with third-country removal because Petitioner was denied  
16 the application for asylum, for withholding of removal pursuant to Section 241(b)(3)  
17 of INA and for relief under CAT and ordered removed to his country of citizenship which is  
18 Iran. See Exhibit A. Therefore, ICE's policy to remove noncitizens to a third country does  
19 not violate the APA because as a matter of law, Petitioner cannot assert an APA claim in a  
20 Habeas Corpus Petition and his claim does not apply in this matter since the removal  
21 proceedings involve Petitioner's country of citizenship which is Iran and his Petition should  
22 be denied.  
23

24 **E. Ground Five: Petitioner's Detention Does Not Involve Removal to any Third**  
25 **Country and hence there is no Violation of the Due Process Clause of the Fifth**  
26 **Amendment**

27 The Ninth Circuit has made clear that, in the context of third-country removals, due  
28 process protections—including notice and an opportunity to reopen to pursue withholding  
or CAT claims—are triggered when the agency identifies a third country of removal. *See*

1 *Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (“[A]n applicant is not entitled to  
2 have the agency adjudicate claims of relief that relate ‘to a country that nobody is trying to  
3 send them to.’”).

4 As discussed above, this case has nothing to do with a third-country removal. Petitioner  
5 was denied the application for asylum, for withholding of removal pursuant to Section  
6 241(b)(3) of INA and for relief under CAT and ordered removed to his country of citizenship  
7 which is Iran. See Exhibit A. Petitioner’s claim does not apply in this matter, because the  
8 removal proceedings involving removing Petitioner to his country of citizenship which is  
9 Iran and hence there was no violation of his Due Process clause of the Fifth Amendment  
10 and his Petition should be denied.  
11

### 12 **III. Conclusion**

13 For the foregoing reasons, Federal Respondents respectfully request that the Court  
14 deny Petitioner’s Petition.

15 Respectfully submitted this 6th day of January 2026.

16  
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19 SIGAL CHATTAH  
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