

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-62457-JB

**FARZAD SOUDBAKHSH on behalf of
KARIM SOUDBAKHSH
Petitioner,¹**

v.

**JUAN F. GONAZALEZ, Assistant Field
Office Director at Broward Transition
Center.²**

Respondent.

**RESPONDENT'S RESPONSE TO COURT ORDER (ECF NO. 5)
AND PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241 (ECF NO. 1)**

Respondent, Juan F. Gonzalez, Assistant Field Office Director at Broward Transition Center, through the undersigned Assistant United States Attorney, respectfully submits this Response to this Court's Order, requiring Respondent to file a "memorandum of fact and law . . . to show cause why the Petition [(ECF No. 1)] should not be granted..." (ECF No. 5 at 2).


¹ Farzad Soudbakhsh ("Farzad") is listed as the "Petitioner" in the Complaint, (ECF No. 1 at 1). For reasons that are discussed below, Respondent will treat Farzad as the Petitioner until he establishes his "next friend" status.

² The Petition named U.S. Immigration and Customs Enforcement, "Field Office Director, GEO Group, and any custodian responsible for detention" as Respondents (ECF NO. 1 at 1). The proper respondent in the instant case is Juan F. Gonzalez in his official capacity, *see* 28 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 438 (2004). The remaining Respondents should be dismissed as parties to the instant action. *See Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

MEMORANDUM OF FACT

I. Karim Soubakhsh's First Overstay

Karim Soubakhsh ("Karim") is a native and citizen of Iran who entered the United States in 1972 on an F-1 visa that permitted him to remain in the United States until January 1, 1979 (Exhibit A (BIA Opinion of July 10, 2002) at 1-2; Exhibit B (Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated June 24, 2025); Exhibit C (Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated December 05, 1979)). Karim overstayed that visa and was placed in deportation proceedings by the issuance of an Order to Show Cause, charging him as deportable from the United States in violation of INA § 241(a)(2) (Exhibit D (Order to Show Cause Record of Deportable/Inadmissible Alien, (Form I-221) dated December 20, 1979)). On January 7, 1980, Petitioner admitted the allegations in the Order to Show Cause and conceded the charge of deportability (Exhibit F (Immigration Judge order dated July 29, 1980)).

Karim returned to Iran where he was  (Exhibit A (BIA Opinion of July 10, 2002) at 1-2). He resettled in the United Arab Emirates in 1987 where he had legal status (*id.*).

II. Karim Soubakhsh's Second Overstay

On March 20, 1993, Karim entered the United States on a B1/B2 visa that permitted him to remain in the United States until January 1, 1994 (Exhibit E (Order to Show Cause Record of Deportable/Inadmissible Alien, (Form I-221) dated March 21, 1996)). On or about March 21, 1996, Petitioner was placed in deportation proceedings by the issuance of an Order to Show Cause, charging him as deportable from the United States in violation of INA § 241(a)(1)(B) as an alien who, after admission as a nonimmigrant under section 101(a)(15) of

the INA, remained in the United States for a longer time than permitted. (*Id.*) On October 27, 1997, Petitioner applied for relief from deportation (Exhibit G (Oral Decision of the Immigration Judge dated October 27, 1997)). The Immigration Judge denied Karim's request for relief, finding in part, that Karim was not eligible because he had firmly resettled in the United Arab Emirates. Because Karim lacked legal status to remain in the United States (in that his visa expired and relief from deportation was denied), a final order of removal was entered on or about October 27, 1997.

In July 2002, the Board of Immigration Appeals granted Karim's withholding of deportation to Iran (Exhibit A (BIA Opinion of July 10, 2002) at 2). The final order of removal, however, remained active, meaning Karim has no legal status to remain in the United States, should have voluntarily departed immediately after the entry of the final order of removal, and could be removed to another country if Karim failed to voluntarily depart.

On or about June 25, 2025, Karim was arrested by immigration officials because he failed to comply with the final order of removal (Exhibit B (Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated June 24, 2025); Exhibit H (Detention History)). On October 28, 2025, Karim was served a Decision to Continue detention in accordance with 8 C.F.R. § 241.4, because removal is practicable and likely to occur in the foreseeable future and his continued detention is in the public interest (Exhibit I (Declaration of Deportation Officer)). To date, Petitioner remains in Immigration and Customs Enforcement custody at the Broward Transition Center (Exhibit H (Detention History)).

MEMORANDUM OF LAW

I. THIS COURT LACKS JURISDICTION OVER THE PETITION UNTIL THE “NEXT FRIEND” REQUIREMENT IS MET.

Under 28 U.S.C. § 2242, an “[a]pplication for a writ of habeas corpus shall be in writing signed and verified [(a)] *by the person for whose relief it is intended [i.e. Karim]* or [(b)] *by someone acting in his behalf.*” 28 U.S.C. § 2242 (emphasis added). *See, generally*, Fed. R. Civ. Pro. 9(a)(1)(A) (noting that a party need not plead capacity to sue except “when required to show that the court has jurisdiction”). A person “acting in his behalf” must establish that the person for whose relief is intended “is unable to seek relief himself.” *Eye v. Lamberti*, Case No. 12-CV-60326-Cohn, 2012 WL 663172, at *1 (S.D. Fla., Feb. 28, 2012) (quoting *Ford v. Haley*, 195 F.3d 603, 624 (11th Cir. 1999) and citing *Francis v. Warden, FCC-Coleman-USP*, 247 F. App’x 621, 622 (11th Cir. 2007)).

Karim never signed the Petition. Instead, Farzad Soudbakhsh (“Farzad”) is listed as the “Petitioner” in the Complaint, (ECF No. 1 at 1), signed the Petition (*id.* at 3) and requested to be notified “of any deficiencies or required corrections” (ECF No. 1-1 at 1). For these reasons, the requirements of 28 U.S.C. § 2242 have not been met in that Karim, as the “person for whose relief [the Petition] is intended” did not sign the Petition; and Farzad, a person “acting on [Karim’s] behalf,” has not established that Karim “is unable to seek relief himself,” as required by the Eleventh Circuit. *See Eye*, 2012 WL 663172, at *1.

Requiring proof of “next friend status” is not a mere technicality. Farzad’s “next friend status” is not automatic and requires proof that Karim “cannot pursue his own cause due to some disability, such as mental incompetence.” *Id.* No such evidence exists in this

record,³ and without “next friend status,” Farzad lacks Article III standing to bring the Petition (*id.*), this Court lacks jurisdiction, and it must dismiss the Petition.⁴ Moreover, if this Court were to adjudicate the Petition (ECF No. 1), any decision would have collateral consequences against Karim, for example in that he could not later bring his own petition raising different legal theories. *Cf. McFarland v. Folsom*, 854 F.Supp. 862, 882 (M.D. Ala.1994)

For these reasons, this Court lacks jurisdiction over the Petition and must dismiss the Petition with leave for Farzad to submit evidence that Karim is “unable to seek relief himself.” *See, generally, Francis*, 246 Fed. App’x at 622 (finding petitioner lacked standing where “petition did not explain why it was necessary for Dennis to submit the petition as a ‘next friend,’ as it only stated that Dennis was Francis’s husband and that he was unable to initiate the petition from prison”).

II. THE FIRST AND THIRD LEGAL CLAIMS LACK MERIT BECAUSE KARIM IS SUBJECT TO A FINAL ORDER OF REMOVAL.

The Petition asks this Court to order the immediate release of Karim because – according to the Petition – Karim is “lawfully present” in the United States and not subject

³ To the contrary, the record shows that, while Karim has “severe health challenges” (ECF No. 1-2 at 24), he was “self-sufficient” (ECF No. 1-2 at 25) and regularly attended Church (*id.* at 29). Farzad satisfied the second requirement of “next friend status” when he stated that he is Karim’s nephew (*i.e.* he has “some relationship” between the person “acting in his behalf” and the “person for whose relief it is intended,” *see Eye*, 2012 WL 663172, at *1).

⁴ Respondent is mindful of this Court’s instruction to “caption the response a ‘response’ and not a ‘motion to dismiss’” (ECF No. 5 at 2). That said, Respondent is also mindful of the Court of Appeal’s instructions to “begin by taking up the issue of justiciability.” *Wollschlaeger v. Governor of the State of Fla.*, 814 F.3d 1159, 1172 (11th Cir. 2015). *Wooden v. Board of Regents of University System of Georgia*, 247 F.3d 1262, 1271 (11th Cir. 2001) (“We first address our jurisdiction over this appeal.”).

to a “final removal order,” meaning the United States lacks “any lawful basis for detention” and Karim’s detention, in the eyes of the Petition, “violates the Fifth Amendment’s guarantees of liberty and procedural fairness” (ECF No. 1 at 2 (Legal Claims “A” and “C”)). This Court should deny the Petition because the factual assertions that Karim is “lawfully present” and not subject to a “final removal order” lack merit. To the contrary, as discussed in the Memorandum of Law, *supra*, a final order of removal against Karim remains active, meaning he has no legal status to remain in the United States, should have voluntarily departed immediately after the entry of the final order of removal, and could be removed to another country.

Simply put, the Petition’s first and third legal claims lack merit because they are based on an incorrect assumption about Karim’s legal status.⁵

III. THERE HAS BEEN NO FIFTH AMENDMENT VIOLATION.

The Petition alleges a violation of *Zadvydas v. Davis*, 533 U.S. 678 (2001), because Karim “cannot be removed to Iran due to the withholding of removal, and no third country has agreed to accept him” (ECF No. 1 at 2). That claim lacks merit. In *Zadvydas*, the Supreme Court held that a six-month detention of an alien pending removal is presumptively reasonable. *Zadvydas*, 533 U.S. at 699-701 (stating “for the sake of uniform administration in the federal courts, we recognize that [six-month] period.”).

⁵ Farzad, who is not an attorney, seems to have believed that the Board of Immigration Appeals’ “Withholding of Removal to Iran” (ECF No. 1 at 1) granted Karim lawful status to remain (*id.* at 2). That is not the case because a decision not to *affirmatively remove someone* to a country is not the same as the government’s decision to *authorize someone to remain* in the United States (which Karim does not have) and Karim did not comply with the final removal order requiring Karim to depart from the United States.

Under INA section 241 (codified at 8 U.S.C. § 1231), “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” 8 U.S.C. § 1231 (a)(1)(A). That 90-day period is called the “removal period.” During the removal period, the Attorney General is required to detain the alien. 8 U.S.C. § 1231(a)(2)(A). “An alien ordered removed who is inadmissible under section 1182 of this title ... may be detained beyond the removal period” or released subject to supervision. 8 U.S.C. § 1231(a)(6).

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that § 1231(a)(6) only authorizes detention for a period reasonably necessary to remove the alien, and “does not permit indefinite detention.” *Id.* at 682 (“[W]e construe the statute to contain an implicit ‘reasonable time’ limitation.”). To help guide lower court determinations, and to limit the occasions when courts will need to make them, the Court held that six months of post-removal order detention is presumptively reasonable. *Id.* at 700-01. Even in cases where detention is longer than the presumptively reasonable period, the Supreme Court held that “an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

Thus, to state a valid claim under *Zadvydas*, a detained alien must show (1) “post removal order detention in excess of six months” and (2) “a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Petitioner has not made such a showing.

As of this filing, Karim has been in ICE custody for less than six months—the post removal order detention period held presumptively reasonable under *Zadvydas*. Accordingly, Petitioner's challenge to his detention is premature. *See Gonzalez v. Barr*, Case NO. 20-10130-

CV-KING, 2020 WL 7294570 (S.D. Fla. Dec. 10, 2020) (“the 180 days in post-order custody must have expired before an individual can challenge custody under 8 U.S.C. § 1231”); *Salpagarova v. Immigration and Naturalization Service*, Case No. 20-61739-CV-SINGHAL, 2020 WL 13550204 (S.D. Fla. Oct. 20, 2020) (“Petitioner is not entitled to relief because she has not been detained for more than six months after being subject to a final order of removal”); *Louis v. US. Atty. General*, Case No. 2:20-cv-135-FtM-38NPM, 2020 WL 1049169 (M.D. Fla. Mar. 4, 2020) (“when he filed the Petition, Petitioner had been in custody only 92 days, much less than the 180-day presumptive reasonable period. The Court dismisses the Petition without prejudice as premature”).

Moreover, Karim cannot show that there is “a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *See Akinwale*, 287 F.3d at 1052. The Petition is correct that Karim cannot be removed to Iran. That said, Karim previously had legal status in the United Arab Emirates and there is no reason to believe that the final order of removal cannot be effectuated through removal to a third country. Under *Akinwale*, Petitioner’s petition should be dismissed as premature, as Petitioner has failed to meet his burden of establishing that there is no significant likelihood of his removal in the reasonably foreseeable future.

CONCLUSION

This Court should dismiss the Petition because, until Farzad establishes his “next friend” status, this Court lacks jurisdiction. Moreover, the first and third legal claims lack merit because Karim is subject to a final order of removal. Finally, the Petition’s *Zadvydas* claim lacks merit because Karim has not yet been in custody for six months and there is no reason to believe that a third country, like the United Arab Emirates which previously granted Karim residency, will not accept him again.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 5, 2025, I uploaded the attached document to the Court's PACER system. Moreover, I certify that a copy with exhibits was mailed to:

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By: /s/ H. Ron Davidson
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