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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOHEIL MEHRPOUR,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-339-BJC-VET

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

Having received the government's Return and supporting evidence, this Court should grant the petition. As to Claim One, the government contends that it complied with its own regulations. First, the government argues that there are "changed circumstances" because it is now deporting people to Iran. Dkt. 5 at 6. But even assuming this is true, Respondents did not state this in its Notice of Revocation, thereby failing to provide the notice the regulations require. While the government argues in the alternative that Mr. Mehrpour had "a history of missed ICE appointments," it provides no evidence of this factual allegation. Dkt. 5 at 3. Nor does it respond to Mr. Mehrpour's argument that because any "missed appointments" occurred over a decade ago, this was a pretextual basis for revoking his supervised release. Thus, this Court may grant the petition on the basis of Respondents' regulatory violations alone.

As to Claim Two, the government provides no evidence to satisfy the success element ("a significant likelihood of removal") or timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Deportation Officer ("DO") Cole admits that ICE has not even submitted a travel document request to its internal headquarters for approval, let alone to Iran. Given the government's failure to do so when Mr. Mehrpour has already been detained for nearly a month—combined with the absence of proof that Iran will issue a travel document—Respondents cannot meet their burden to show a significant likelihood of removal in the reasonably foreseeable future. For either reason, this Court should grant the habeas petition and order Mr. Mehrpour released.[1]

[1] In response to Mr. Mehrpour's request for injunctive relief to prevent ICE from removing him to a third country, Respondents deny that they are seeking to do so. Mr. Mehrpour reserves the right to renew this argument if Respondents change this position.

ARGUMENT

I. Claim One: ICE did not adhere to the regulations governing re-detention.

In his habeas petition, Mr. Mehrpour argued that ICE's failure to follow its own regulations required his immediate release. Dkt. 1 at 7–12. Although the Notice of Revocation stated that there were "changed circumstances," Exh. A at ¶ 8, the officer never said what had changed since ICE was unable to deport Mr. Mehrpour to Iran in 2008. "Simply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Mr. Mehrpour also argued that ICE's failure to identify any changed circumstances also meant he had not been afforded a meaningful opportunity to respond to the reasons for revocation or submit evidence rebutting his re-detention.

In response, the government claims that "the notice explains that there are changed circumstances in Petitioner's case because [1] ICE determined it could execute his outstanding order of removal and expeditiously remove him to Iran—[2] something it could not do before but can do now due to ICE's recent success executing such removal orders." Dkt. 5 at 4 (citing Exh. 2; Cole Decl. at ¶ 21). But the Notice does not include the *second* part of that statement—that removal was "something it could not do before but can do now due to ICE's recent success executing such removal orders"—nor does it include the statistics of removal to Iran that Respondents cite in their return. Dkt. 5-5; Dkt. 5 at 6. Instead, the Notice only states the *first* part of Respondents' assertion—that "ICE has determined you can be expeditiously removed" because "[y]ou have a final order of removal from an Immigration Judge on March 10, 2008." Dkt. 5-5. Nothing in this statement gives notice of any "changed circumstances," since everyone knows that Mr. Mehrpour was ordered removed in 2008. Thus, ICE did not comply with the

regulations because "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Sarail A.*, 2025 WL 2533673, at *3.

The government also claims that at his informal interview, Mr. Mehrpour "offered responses that demonstrate that he knew and understood that ICE had revoked his release to remove him to Iran." Dkt. 5 at 4. But knowing and understanding that ICE "*has* revoked his release" is not the same as knowing *why* ICE revoked his release, which is what the regulations require. Indeed, everyone in Mr. Mehrpour's situation will know that ICE *has* revoked their release from the simple fact that they are now in detention. So the mere fact that Mr. Mehrpour knew that ICE had revoked his supervised release does not satisfy the regulation requiring ICE to explain the "changed circumstances" that justify his re-detention.

Alternatively, Respondents claim that Mr. Mehrpour had "a history of missed ICE appointments while … released on order of supervision," which was a violation of the conditions of his release on supervision." Dkt. 5 at 4 (citing Exh. 4 at 2). To begin, the government provides no evidence of these "missed ICE appointments." Rather, Exhibit 4 at 2, which the government cites, is merely the original order of supervision itself. *See* Exh. 4. So the only evidence of any violation of the conditions of his release is the bare-bones statement in the Notice of Revocation itself.

Mr. Mehrpour noted in his habeas petition that he may have missed a check-in appointment by several days in 2011 and possibly 2013 because he put the wrong date on the calendar. Dkt. 1 at 2. But when he then went to check in, the immigration officials did not revoke his supervision or take him into custody. *Id.* Instead, they simply reminded him of the importance of checking in. *Id.* He thus argued that any attempt to use a 13-year-old violation as a basis for revoking his supervision was pretextual. *Id.* at 9–11. *See, e.g., Seretse-Khama v. Ashcroft*,

215 F. Supp. 2d 37, 53 (D.D.C. 2002) (stating that "[t]he recent assertion of this additional explanation for petitioner's detention" is "not credible").

The government does not respond to this argument or to Mr. Mehrpour's case law showing that courts have found similar post hoc assertions of noncompliance pretextual. Dkt. 1 at 9–11. Nor does it explain why the government would wait 13 years to re-detain Mr. Mehrpour after an alleged violation of the conditions of supervised release. The government has thus waived its opportunity to show that this was a bona fide reason for revoking Mr. Mehrpour's supervision. Accordingly, this Court should order him immediately released on account of the government's regulatory violations.

II. Claim Two: The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future.

As an initial matter, DO Cole admits that Mr. Mehrpour was ordered removed on March 10, 2008. Dkt. 5-5 at ¶ 12. Thus, the six-month grace period under *Zadvydas* has passed. *Zadvydas*, 533 U.S. at 701. Because the six-month grace period has passed, the burden shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* That standard has a success element ("significant likelihood of removal") and a timing element ("in the reasonably foreseeable future"). The government meets neither.

First, DO Cole admits that in the three weeks since Mr. Mehrpour was arrested, ICE has not even submitted a request for a travel document to its own internal headquarters—let alone to a foreign country. Instead, DO Cole states only that ICE is "actively gathering the appropriate documents and information to enable it to complete a travel document request." Dkt. 5-5 at ¶ 19. So it is difficult to believe that Mr. Mehrpour's removal is "significantly likely" when Respondents have not even submitted a request for a travel document to their own internal headquarters *or* to Iran.

Second, DO Cole asserts that "[o]nce ICE obtains a travel document for Petitioner's removal to Iran, ICE can promptly schedule his removal flight." Dkt. 5-5 at ¶ 20. But this assertion completely skips over the question of *whether* ICE can obtain a travel document to Iran at all. ICE itself lists Iran as one of the 15 most "uncooperative" countries in terms of accepting their nationals for deportation. *See* Exhibit A, ICE Report on Uncooperative Countries at 8. In 2024, ICE had been unable to deport at least 2,618 Iranian nationals. *Id.* at 4. So even if ICE *had* requested a travel document, it is doubtful whether Iran would have issued one.

Moreover, good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case

was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

Additionally, even if ICE will eventually remove Mr. Mehrpour, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. DO Cole provides no timetable for how long travel document requests like his typically take—stating only that once it *is* received, he can be removed "promptly." Dkt. 5-5 at ¶ 20.

That is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Mehrpour] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might*

occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

Courts have routinely granted habeas petitions where, as here, the government does not establish *Zadvydas*'s timing element. *See, e.g.*, *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020), *report and recommendation adopted,* No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) ("[A] theoretical possibility of eventually being removed does not satisfy the government's burden[.]"); *Eugene v. Holder*, No. 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) ("While Respondents contend Petitioner *could* be removed to Haiti, it has not been shown that it is significantly likely that Petitioner *will* be removed in the *reasonably foreseeable* future."); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D. Pa. 2004) (granting petition because even if "Petitioner's removal will ultimately be effected . . . the Government has not rebutted the presumption that removal is not likely to occur in the reasonably foreseeable future"); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the government had not provided any "evidence . . . that travel documents will be issued in a matter of days or weeks or even months").

In sum, then, there could be "some possibility that [Iran] will accept Petitioner at some point. But that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *16. Mr. Mehrpour therefore succeeds under *Zadvydas*.

CONCLUSION

For all these reasons, this Court should grant the petition and order Mr. Mehrpour immediately released.

Respectfully submitted,

Dated: February 2, 2026

s/ Kara Hartzler

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