

1 ADAM GORDON
United States Attorney
2 DOUGLAS D. NELSON
Assistant U.S. Attorney
3 California Bar No. 177643
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8909
Facsimile: (619) 546-7751
6 Email: Douglas.Nelson@usdoj.gov

7 Attorneys for Respondents

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 MEHRAD FARDIJOUYBARI,
11
12 Petitioner,
13
14 v.
15

16 MARKWAYNE MULLIN, Secretary of the
Department of Homeland Security, TODD
17 BLANCHE, Acting Attorney General,
TODD M. LYONS, Acting Director,
18 Immigration and Customs Enforcement,
JESUS ROCHA, Acting Field Office
Director, San Diego Field Office, JEREMY
CASEY, Warden at Imperial Regional
Detention Facility,

19 Respondents.

Case No.: 26cv3840 BJC AHG

**RESPONDENTS' RESPONSE
IN OPPOSITION TO
PETITIONERS' HABEAS
PETITION**

20
21 **I. Introduction**

22 Petitioner has filed a habeas petition pursuant to 28 U.S.C. § 2241. For the
23 reasons set forth below, the Court should deny Petitioner's requests for relief and
24 dismiss the petition.

25 **II. Factual and Procedural Background**

26 Petitioner is a citizen and national of Iran. On October 18, 2024, Petitioner
27 appeared at the U.S Port of Entry in Calexico, California by appointment using the CBP
28

One app. Exhibit 1.¹ (Record of Deportable/Inadmissible Alien). He did not have the proper documents to allow entry into the United States. *Id.* He requested asylum. *Id.* On December 10, 2024, the Department of Homeland Security (DHS) served the Petitioner a Notice to Appear charging him as inadmissible to the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I) (not in possession of valid entry documents). Exh 2. On July 10, 2025, an immigration judge found the Petitioner inadmissible as charged, denied asylum and its related protections, and ordered the Petitioner removed to Iran. Exh. 3 (Order of the Immigration Judge). The Petitioner appealed the decision to the Board of Immigration Appeals (BIA). On February 26, 2026, the BIA dismissed the appeal. Exh. 4 (Decision from the BIA). No further appeal, petition for review, or stay was filed. Accordingly, the Petitioner is subject to a final order of removal. ICE is currently preparing a travel document (TD) request in order to effectuate Petitioner's removal to Iran. Declaration of Jose L. Rosiles, Deportation Officer at Exh . 5 at ¶ 8. Once airspace over Iran reopens ICE can resume his removal. *Id.* at ¶ 9.

III. Argument

A. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court

¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising
2 from the decision or action by the Attorney General to commence proceedings,
3 adjudicate cases, or *execute removal orders* against any alien under this chapter.”)
4 (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483
5 (1999) (“There was good reason for Congress to focus special attention upon, and make
6 special provision for, judicial review of the Attorney General’s discrete acts of
7 “commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—
8 which represent the initiation or prosecution of various stages in the deportation
9 process.”). In other words, § 1252(g) removes district court jurisdiction over “three
10 discrete actions that the Attorney may take: [his] ‘decision or action’ to ‘commence
11 proceedings, adjudicate cases, or execute removal orders.’” *Reno*, 525 U.S. at 482
12 (emphasis removed). Petitioner’s claims necessarily arise “from the decision or action
13 by the Attorney General to . . . execute removal orders,” over which Congress has
14 explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g). The Court should
15 deny the pending motion and dismiss this matter for lack of jurisdiction under 8 U.S.C.
16 § 1252.

17 **B. Petitioner is Lawfully Detained**

18 Alternatively, Petitioner’s petition should be denied because he has a final order
19 of removal and is properly detained under 8 U.S.C. § 1231(a). Respondents have the
20 necessary documents to request repatriation to Iran and is ready to remove the Petitioner
21 once airspace over Iran reopens. Exh. 5, ¶ 8. Thus, Petitioner has not met his burden
22 of rebutting the presumptively reasonable period of detention.

23 An alien ordered removed must be detained for 90 days pending the
24 government’s efforts to secure the alien’s removal through negotiations with foreign
25 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien
26 during the 90-day removal period); *see also Zadvydas v. Davis*, 533 U.S. 678, 683
27 (2001). The statute “limits an alien’s post-removal detention to a period reasonably
28 necessary to bring about the alien’s removal from the United States” and does not permit

1 “indefinite detention.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that a
2 six-month period of post-removal detention constitutes a “presumptively reasonable
3 period of detention.” *Id.* at 683; *see also Clark v. Martinez*, 543 U.S. 371, 377 (2005)
4 (“[T]he presumptive period during which the detention of an alien is reasonably
5 necessary to effectuate his removal is six months...”); *Lema v. INS*, 341 F.3d 853, 856
6 (9th Cir. 2003). Release is not mandated after the expiration of the six-month period
7 unless “there is no significant likelihood of removal in the reasonably foreseeable
8 future.” *Zadvydas*, 533 U.S. at 701; *see also Clark*, 543 U.S. at 377.

9 In *Zadvydas*, the Supreme Court held that “the habeas court must ask whether the
10 detention in question exceeds a period reasonably necessary to secure removal. It should
11 measure reasonableness primarily in terms of the statute’s basic purpose, namely,
12 *assuring the alien’s presence at the moment of removal.*” *Zadvydas v. Davis*, 533 U.S.
13 at 699 (emphasis added). The Court in *Zadvydas* therefore recognized that detention is
14 presumptively reasonable pending efforts to obtain travel documents, because the
15 noncitizen’s assistance is needed to obtain the travel documents, and a noncitizen who
16 is subject to an imminent, executable warrant of removal becomes a significant flight
17 risk, especially if he or she is aware that it is imminent.

18 The Court in *Zadvydas* also held that the detention could exceed six months:
19 “This 6-month presumption, of course, does not mean that every alien not removed must
20 be released after six months. To the contrary, an alien may be held in confinement until
21 it has been determined that there is no significant likelihood of removal in the
22 reasonably foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien
23 provides good reason to believe that there is no significant likelihood of removal in the
24 reasonably foreseeable future, the Government must respond with evidence sufficient
25 to rebut that showing and that the noncitizen has the initial burden of proving that
26 removal is not significantly likely.” *Id.*

27 In recent cases involving re-detention to effect removal, courts have recognized
28 that ICE has a presumptively reasonable period of six months to obtain travel

documents. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) (“The government is entitled to its six-month presumptive period before Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue”); *Guerra-Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.”); *Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 1895479, at *8 (S.D. Fla. July 8, 2025) (“Because Grigorian has been in custody for fifteen days, his detention does not violate the implicit six-month period read into the post-removal-period detention statute under *Zadvydas*.”). *Cf. Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, No. CV 17-28 (PAM/FLN), 2017 WL 2437246 (D. Minn. June 5, 2017) (“Nhean’s 90-day removal period began to run on October 12, 2010, when his removal order became final, and he was released after 91 days of custody to supervised release on January 11, 2011. Nhean was transferred back into ICE custody on August 26, 2016. Nhean’s detention was presumptively reasonable for an additional 90 days (six months in total)”), *cited in Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, “the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*”).

Apart from the fact that the period of presumptive reasonableness has not yet elapsed, Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future. He has failed to provide sufficiently compelling evidence to warrant an interruption of the removal process by releasing the Petitioner when the government has the necessary documentation to request repatriation. Exh. 5.

1 Further, Petitioner's case does not implicate the impossibility of repatriation in
2 *Zadvydas*. *Zadvydas* was stateless, and both countries to which he potentially could
3 have been deported (the country where he was born and the country of which his parents
4 were citizens) refused to accept him because he was not a citizen. *See id.*, at 684. The
5 deportation of the other petitioner in *Zadvydas*, Ma, was prevented, because there was
6 no repatriation agreement at that time between the United States and Cambodia. *Id.* at
7 685. Here, Petitioner is an Iranian citizen. ICE is already in possession of the documents
8 necessary to seek repatriation. ICE is ready to resume his removal to Iran once airspace
9 reopens, thus his continued detention is not unconstitutionally indefinite.

10 On this record, Petitioner cannot sustain his burden, and it would be premature
11 to reach that conclusion before permitting ICE an opportunity to complete its diligent
12 efforts to effect his removal. "[E]vidence of progress, albeit slow progress, in
13 negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's
14 detention grows unreasonably lengthy." *Kim v. Ashcroft*, Case No. 02cv1524-J (LAB)
15 slip op., at 7 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month
16 detention does not violate *Zadvydas* given respondent's production of evidence showing
17 governments' negotiations are in progress and there is reason to believe that removal is
18 likely in the foreseeable future) [Exs. 26-34.]; *see also Sereke v. DHS*, Case No.
19 19cv1250 WQH AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) ("the record at this
20 stage in the litigation does not support a finding that there is no significant likelihood
21 of Petitioner's removal in the reasonably foreseeable future.") [Exs. 35-39.]; *Marquez*
22 *v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080 at *3 (denying petition
23 because "Respondents have set forth evidence that demonstrates progress and the
24 reasons for the delay in Petitioner's removal").

25 /////

26 /////

27 /////

28

1 **IV. CONCLUSION**

2 For the foregoing reasons, Respondents respectfully request that the Court
3 dismiss the petition.

4 DATED: July 14, 2026

Respectfully submitted,

6 ADAM GORDON
7 United States Attorney

8 s/ Douglas D. Nelson
9 DOUGLAS D. NELSON
10 Assistant United States Attorney
11 Attorneys for Respondents
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28