

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MELIKA MOHAMMADI GAZVAR OLYA,

Petitioner,

v.

ANGEL GARITE, Assistant Field Office Director,
El Paso Field Office, El Paso Service Processing
Center; MARY DE ANDA-YBARRA, Field
Office Director, El Paso Field Office, United States
Immigration and Customs Enforcement; TODD
LYONS, Acting Director, United States
Immigration and Customs Enforcement; KRISTI
NOEM, Secretary of Homeland Security;
PAMELA BONDI, United States Attorney
General, *in their official capacities,*

Respondents.

Civil Action No.: 3:25-cv-00083

**PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 AND
REQUEST FOR ORDER TO
SHOW CAUSE**

**PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND REQUEST
FOR ORDER TO SHOW CAUSE**

INTRODUCTION

1. Petitioner Melika Mohammadi Gazvar Olya has spent over two years in detention, and she has been detained pursuant to a final order of removal for almost 19 months. She came to the United States on January 29, 2023, to seek asylum after Iranian officials physically assaulted her and threatened her with death for protesting mandatory hijab laws and failing to wear or correctly wear a hijab. Ms. Mohammadi Gazvar Olya has been in custody since arriving in the U.S. and has been detained in Immigration and Customs Enforcement (“ICE”) custody at the El Paso Service Processing Center (“EPSPC”) since February 23, 2023. She has been subject to a final order of removal since August 19, 2023.

2. Ms. Mohammadi Gazvar Olya challenges her indefinite detention as a violation of the Immigration and Nationality Act (“INA”) and her rights under the Due Process Clause of the Fifth Amendment.
3. Ms. Mohammadi Gazvar Olya is entitled to a Writ of Habeas Corpus ordering Respondents to release her from custody under reasonable conditions of supervision because her almost 19-month post-order detention has far exceeded the presumptively reasonable period of six months and her removal to Iran is not reasonably foreseeable. *See Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008) (citing *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001)).
4. Ms. Mohammadi Gazvar Olya asks the Court to “forthwith . . . issue an order directing [Respondents] to show cause why the writ should not be granted” to be returned to this Court “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” 28 U.S.C. § 2243.
5. Ms. Mohammadi Gazvar Olya is in the physical custody of Respondents. She is detained at EPSPC in El Paso, Texas. She is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

6. Jurisdiction is proper under 28 U.S.C. §§ 1331, 2241, and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.
7. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687; *Tran*, 515 F.3d at 482.
8. Venue is proper in the United States District Court for the Western District of Texas because at least one Respondent is in this District, Petitioner is detained in this District, and Petitioner’s immediate physical custodian is in this District. 28 U.S.C. § 1391(b).

PARTIES

9. Petitioner Mohammadi Gazvar Olya is currently detained by Respondents at EPSPC. She has been in ICE custody since on or about February 23, 2023. Her removal order became administratively final on August 19, 2023. She has been detained for over 749 days in total and for almost 19 months pursuant to a final order of removal.
10. Angel Garite is the Assistant Field Office Director for the El Paso Field Office. Angel Garite performs the duties typically performed by a warden for the El Paso Service Processing Center. Accordingly, Angel Garite is the legal custodian of Petitioner and is named in his official capacity.
11. Respondent Mary De Anda-Ybarra is the Field Office Director responsible for the El Paso Field Office of ICE with administrative jurisdiction over Petitioner's case. She is a legal custodian of Petitioner and is named in her official capacity.
12. Respondent Todd Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.
13. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security ("DHS"). She is a legal custodian of Petitioner and is named in her official capacity.
14. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.

FACTS

15. Ms. Mohammadi Gazvar Olya is a 22-year-old native and citizen of Iran.
16. In Iran, Ms. Mohammadi Gazvar Olya participated in several protests against Iran's mandatory hijab policy, the morality police, and the Iranian government, and in support of

Mahsa Amini, Nika Shakarami, and other women who were killed by the Iranian police for standing up for their beliefs. The morality police physically assaulted her and threatened to kill her for participating in protests. After she fled Iran, her mother told her that government agents came to their home searching for her.

17. Ms. Mohammadi Gazvar Olya and her father entered the U.S. without inspection on January 29, 2023. Immediately after crossing the Rio Grande River near El Paso, Texas, she and her father waited at a gate on the border wall between the U.S. and Mexico to surrender themselves to Border Patrol Officers.
18. After she was arrested by Border Patrol, she spent a few days in Border Patrol custody. Ms. Mohamadi Gazvar Olya gave her passport and other identification documents to Border Patrol Officers when she was arrested. Border Patrol agents took her to a federal jail in El Paso, Texas. On February 22, 2023, in the Western District of Texas Court, El Paso Division, Ms. Mohammadi Gazvar Olya was convicted of Improper Entry by an Alien, 8 U.S.C. § 1325(a)(1). She was sentenced to time served plus one business day.
19. Immediately after completing her sentence for Improper Entry, she was transferred into ICE custody at EPSPC, where she remains today.
20. On March 11, 2023, while Ms. Mohammadi Gazvar Olya was detained at EPSPC, an asylum officer determined she had a credible fear of returning to Iran, and she was placed in asylum proceedings.
21. On July 20, 2023, the Immigration Judge (“IJ”) denied her application for asylum, withholding of removal, and protection under the Convention Against Torture and ordered her removed to Iran. Ms. Mohammadi Gazvar Olya appeared before the immigration judge *pro se*.

22. She did not appeal the IJ's removal order. Thus, her removal order became administratively final on August 19, 2023. *See* 8 C.F.R. §§ 1240.15, 1241.1(c)
23. Around October 1, 2023, ICE officers took Ms. Mohammadi Gazvar Olya down to the processing department of EPSPC and ordered her to change out of her detention uniform. Ms. Mohammadi Gazvar Olya complied. The officers informed her she would be put on a flight to Iran. Ms. Mohammadi Gazvar Olya began crying and explaining to the officers that if she went back to Iran, she would be killed. The officers then informed her they were going to the airport and started to drive Ms. Mohammadi Gazvar Olya in a van while she continued to cry. The officers in the van initially told her that they could not help her, but then they called another officer on the phone and drove back to EPSPC instead of going to the airport as they had told her. Once back at EPSPC, a different officer told Ms. Mohammadi Gazvar Olya that she might be sent to federal prison for disobeying the order of the IJ.
24. On October 18, 2023, Ms. Mohammadi Gazvar Olya's counsel filed a motion to reopen proceedings with the IJ, which was denied the next day, on October 19, 2023. Counsel then appealed the denial of the motion to reopen and filed a stay of removal with the Board of Immigration Appeals ("BIA"). While she had a pending motion to reopen and request for a stay of removal with the BIA, her order of removal remained final. *See* 8 C.F.R. §§ 1003.23(b)(1)(v), 1241.1; *Tamas v. Barr*, No. 4:20CV188-MW-MAF, 2020 WL 4756678, at *3 (N.D. Fla. July 20, 2020) (holding that a "motion to reopen is the equivalent of a motion to reconsider and does not alter the legal effect of the order of removal") (citing *Stone v. I.N.S.*, 514 U.S. 386, 405–06 (1995)).
25. On November 28, 2023, Ms. Mohammadi Gazvar Olya received a Warning for Failure to Depart from her Deportation Officer. It does not contain specific factual allegations relating

to Ms. Mohammadi Gazvar Olya and states only that the statutory removal period can be extended based on failure to make an application in good faith for a travel or other document or actions to prevent removal. Records obtained in a Freedom of Information Act request also show the same form document issued by ICE on other dates during her detention.

26. On April 18, 2024, the BIA remanded the Motion to Reopen to the IJ.
27. On May 30, 2024, the IJ denied the motion to reopen a second time. Counsel again appealed the IJ's decision to deny the motion to reopen. At the same time, counsel applied for a discretionary stay of removal with the BIA.
28. On July 22, 2024, ICE officers again brought Ms. Mohammadi Gazvar Olya down to the processing department of EPSPC. They ordered her to change out of her prison uniform into her street clothes, and they told her ICE was going to take her to the airport. Ms. Mohammadi Gazvar Olya complied. Then, she met with Deportation Officer Ruiz. He gave her another Warning for Failure to Depart. Ms. Mohammadi Gazvar Olya told him she had a case pending with the BIA. ICE did not attempt to transport her anywhere that day, and officers eventually told her to put her detention uniform back on and returned her to the barracks.
29. On or about August 18, 2024, Deportation Officer Ruiz gave Ms. Mohammadi Gazvar Olya a decision indicating that ICE decided to continue her detention.
30. The BIA denied Ms. Mohammadi Gazvar Olya's request for a discretionary stay of removal on September 12, 2024.
31. Around September 16, 2024, ICE officers brought Ms. Mohammadi Gazvar Olya back to the processing department of the detention center. The officers told her that she would fly from El Paso to Turkey to Iran. Ms. Mohammadi Gazvar Olya explained to the officers that she would be killed if she was sent to Iran, and the officers responded that she would be able to

stay in Turkey if she did not want to go to Iran, even though she does not have any lawful status in Turkey. Ms. Mohammadi Gazvar Olya began crying and leaned against the wall of the room, and one of the officers grabbed her arm to get her to go into the van. Then she complied and got into the van. Once she and the officers were driving to the airport, the officers told her that she had the option to reject her flight and not get on the plane to Iran. She told the officers that she did not want to go to Iran because she would be killed there. The officers drove her back to EPSPC.

32. On December 13, 2024, the BIA denied Ms. Mohammadi Gazvar Olya’s appeal of the motion to reopen.
33. On February 3, 2025, Ms. Mohammadi Gazvar Olya’s Iranian passport expired. A couple of weeks later, she complied with ICE’s requests to have her picture taken so she could get a new passport.
34. ICE has never notified Ms. Mohammadi Gazvar Olya of its intention to remove her to a country other than Iran. Ms. Mohammadi Gazvar Olya would fear persecution and torture in countries other than Iran, including Turkey.
35. Since at least 2016, the DHS has listed Iran as an “uncooperative” country, meaning that ICE has had difficulties getting Iran to issue travel documents for its citizens and accept charter flights for the repatriation of its citizens.¹

¹ U.S. Department of Homeland Security, *ICE Faces Barriers in Timely Repatriation of Detained Aliens*, (Mar. 11, 2019), <https://www.oig.dhs.gov/reports/2019/ice-faces-barriers-timely-repatriation-detained-aliens/oig-19-28-mar19>.

36. As a result, ICE has proven unable to repatriate many Iranians like Ms. Mohammadi Gazvar Olya. The Washington Post recently reported that there are 2,618 Iranians with final orders of removal in the U.S., among the top ten countries in the world.²
37. Given the historical relationship between Iran and the United States, and Iran’s history of not accepting deportation flights from the U.S., it is highly likely that Ms. Mohammadi Gazvar Olya will not be removed to Iran in the foreseeable future.
38. If released from detention, Ms. Mohammadi Gazvar Olya would live with her father and her family friend, who is a legal permanent resident. They live together in San Jose, California, and are eager to welcome Ms. Mohammadi Gazvar Olya into their home. Ms. Mohammadi Gazvar Olya’s father came to the U.S. with her, but he was subsequently released on an order of supervision while she remained detained.
39. Ms. Mohammadi Gazvar Olya’s prolonged detention has had a severe impact on her mental health. She feels depressed after being in detention for so long, and reports crying and often thinking about harming herself. On at least one occasion, ICE sent her to a segregated housing unit after she reported wanting to hurt herself.

LEGAL FRAMEWORK

40. “Freedom from imprisonment—from government custody, detention, or other forms physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690. Indefinite detention, in particular, raises a “serious constitutional problem” and violates the Due Process Clause. *Id.* at 689–90.

² Maham Javaid and Adrian Blanco Ramos, *Countries refusing deportees could hinder Trump’s immigration plans*, Washington Post (Jan. 27, 2025), <https://www.washingtonpost.com/world/2025/01/27/trump-deportees-venezuela-china-india-cuba/>.

41. The Due Process Clause requires that the deprivation of Petitioner’s liberty must be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”).
42. Section 1231 of Title 8 of the U.S. Code governs the detention and removal of individuals who have been ordered removed.
43. Once an individual in ICE custody is subject to a legally final and executable order of removal, the government is required under Section 1231 to deport them “within a period of 90 days . . . referred to as the ‘removal period.’” 8 U.S.C. § 1231(a)(1)(A); *see also id.* § 1231(a)(1)(B) (listing the circumstances that trigger the beginning of the removal period). Detention is mandatory during the removal period. *See id.* § 1231(a)(2).
44. Individuals who are not removed within the 90-day removal period are no longer subject to mandatory detention and should generally be released under conditions of supervision, such as periodic reporting and other reasonable restrictions. *See id.* § 1231(a)(3).
45. Detention beyond the removal period is only permitted under certain, limited circumstances. *See id.* § 1231(a)(6) (providing that certain inadmissible and removable noncitizens “may be detained beyond the removal period” if they are determined “to be a risk to the community or unlikely to comply with the order of removal”); 8 C.F.R. § 241.4.
46. The government’s post-removal period discretionary detention authority is subject to constitutional limitations. In *Zadvydas*, the Supreme Court construed Section 1231(a)(6) to contain an “implicit ‘reasonable time’ limitation” in light of the “serious constitutional problem” raised by potentially indefinite civil detention. 533 U.S. at 682, 690.

47. The *Zadvydas* Court adopted a “presumptively reasonable period of detention” of six months, inclusive of the 90-day removal period. *Id.* at 701. “After this 6-month period, once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*; see also *Clark v. Martinez*, 543 U.S. 371, 386 (2005) (extending *Zadvydas*’s holding to inadmissible noncitizens); see also *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008) (same). Moreover, “as the period of prior post-removal confinement grows, what counts as the “reasonably foreseeable future” conversely would have to shrink.” *Zadvydas*, 533 U.S. at 701.
48. The government must release a noncitizen whom it has detained beyond the presumptive six-month period if it is unable to present substantial evidence that removal is likely to occur in the reasonably foreseeable future. *Clark*, 543 U.S. at 386.
49. Release is the proper remedy for unconstitutionally prolonged post-removal-order detention. See *Zadvydas*, 533 U.S. at 699–700 (explaining that supervised release is the appropriate relief when “the detention in question exceeds a period reasonably necessary to secure removal” because, at that point, detention is “no longer authorized by statute”).
50. The 90-day removal period can be extended when an individual fails to cooperate with the government’s lawful efforts to deport them. 8 U.S.C. § 1231(a)(1)(C). Section 1231(a)(1)(C) defines two main categories of failure to cooperate: “[1] fail[ing] or refus[ing] to make timely application in good faith for travel or other documents necessary to [one]’s departure or [2] conspir[ing] or act[ing] to prevent [one]’s removal subject to an order of removal.” *Id.* Detention is discretionary during the time(s) when an individual’s removal period is extended pursuant to Section 1231(a)(1)(C). *Id.* (providing that an individual “*may* remain in detention

during such extended period”) (emphasis added).

51. Neither the Supreme Court nor the Fifth Circuit have “addressed the quantum of evidence necessary to establish lack of cooperation” under Section 1231(a)(1)(C). *Khan v. Gonzales*, 481 F. Supp. 2d 638, 641 (W.D. Tex. 2006). This Court has held that, in order to justify a habeas petitioner’s continued detention under Section 1231(a)(1)(C), “the government must demonstrate a lack of cooperation by clear and convincing evidence.” *Glushchenko v. U.S. Dep’t of Homeland Sec.*, 566 F. Supp. 3d 693, 709 (W.D. Tex. 2021) (adopting “the standard of proof used in other civil confinement contexts”). Moreover, the government must “renew its efforts to seek compliance . . . on a regular basis”—specifically, “no less than every six months” in order “[t]o keep within the spirit of *Zadvydas*.” *Id.*

52. In *Glushchenko*, this Court established “a two-part test to establish a lack of cooperation:”

(1) the alleged non-compliance with removal efforts must be a product of the detainee’s *intentional or deliberate conduct*; and (2) the non-compliance must deprive the government of documents necessary to effectuate a departure from the United States or otherwise prevent the [person]’s removal from the United States subject to an order of removal.

Id. at 709 (emphasis added); *see also Balogun v. I.N.S.*, 9 F.3d 347, 351 (5th Cir. 1993) (holding, in pre-*Zadvydas* case, that continued post-removal order detention is justified if government can show that petitioner “by his conduct has *intentionally* prevented [immigration authorities] from effecting his deportation”, and petitioner must be afforded an opportunity in district court to contest the government’s claims of deliberate noncooperation) (emphasis added).

CLAIMS FOR RELIEF

COUNT ONE

Violation of The Immigration and Nationality Act – 8 U.S.C. § 1231

53. Petitioner Ms. Mohammadi Gazvar Olya repeats and realleges each allegation of this petition here.
54. Ms. Mohammadi Gazvar Olya’s detention is governed by the post-removal order detention statute, 8 U.S.C. § 1231(a), because she has been subject to a final order of removal since August 2023.
55. In *Zadvydas*, the Supreme Court construed Section 1231(a) to contain an implicit reasonable time limitation in light of serious due process concerns. 533 U.S. at 682. Respondents have detained Ms. Mohammadi Gazvar Olya for over two years and for almost 19 months since her removal order became administratively final—more than triple the presumptively reasonable period of detention under *Zadvydas*. *See id.* at 701.
56. There is “no significant likelihood” that ICE will be able to remove Ms. Mohammadi Gazvar Olya to Iran “in the reasonably foreseeable future.” *Id.*
57. The government cannot rebut this showing that Mr. Mohammadi Gazvar Olya’s removal is unlikely, *see id.*; nor can it demonstrate by clear and convincing evidence that she has engaged in intentional or deliberate conduct to prevent her removal sufficient to justify her over-two-year detention. *See Glushchenko*, 566 F. Supp. 3d at 709.
58. Thus, Ms. Mohammadi Gazvar Olya’s detention violates § 1231, and she is entitled to immediate release from custody.

COUNT TWO

**Violation of the Due Process Clause
of the Fifth Amendment to the U.S. Constitution**

59. Petitioner Ms. Mohammadi Gazvar Olya repeats and realleges each allegation of this petition here.

60. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause Protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).
61. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See id.* at 690 (citing *Jackson v. Indiana*, 506 U.S. 715, 738 (1972)). The Supreme Court recognized that the statutory purpose of § 1231 was to detain non-citizens with final orders of removal to effectuate removal. *Id.* at 697 (Section 1231’s “basic purpose” is to “effectuat[e] an alien’s removal”).
62. Prolonged civil detention also violates due process unless accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Id.* at 690–91. Ms. Mohammadi Gazvar Olya’s prolonged civil detention has extended well beyond the 90-day removal period and will continue indefinitely. Her detention is no longer reasonably related to the primary statutory purpose of effectuating removal. *Id.* at 697.
63. Nor has ICE provided Ms. Mohammadi Gazvar Olya with adequate procedural protections to guard against a wrongful deprivation of her liberty.
64. Thus, Ms. Mohammadi Gazvar Olya’s detention violates both substantive and procedural due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Issue an order to show cause to be returned within three days;

- C. Declare Petitioner's prolonged detention to be unlawful and unconstitutional;
- D. Order the immediate release of Petitioner;
- E. Enjoin Respondents from transferring Petitioner outside of this judicial district pending litigation of this matter or her removal proceedings;
- F. Enjoin Respondents from removing or transferring Petitioner to a third country without notice and an opportunity to seek relief from removal to that country before an Immigration Judge;
- G. Award Petitioner reasonable costs and attorneys' fees; and
- H. Grant any other relief that this Court deems just and proper.

Dated: March 13, 2025

/s/ Zoe Bowman
Zoe Bowman
Texas Bar No. 24126562*
Las Americas Immigrant Advocacy
Center
1500 Yandell Dr.
El Paso, TX 79902
(915) 544 5126
zoebowman@las-americas.org

Ayla Kadah*
Samah Sisay*
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6436
kadah@ccrjustice.org
ssisay@ccrjustice.org

/s/ Sara Zampierin
Sara Zampierin
State Bar No. 24132896
Elizabeth Kruse**
Colin Mayer**

Riley Smith**
Texas A&M University Civil Rights
Clinic***
307 W. 7th St, Suite LL50
Fort Worth, TX 76102
T: 817-212-4123
F: 817-212-4124
E: sara.zampierin@law.tamu.edu

*Attorneys for Petitioner Melika
Mohammadi Gazvar Olya*

**pro hac vice* application forthcoming

** Qualified Law Students under Tex.
Gov't Code § 81.102

*** Plaintiff is represented by a clinic
operated by Texas A&M University
School of Law, but this document does not
purport to present the school's
institutional views, if any.

Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submit this verification on behalf of the Petitioner. Undersigned counsel have discussed with Petitioner the events described in this Petition for Writ of Habeas Corpus and Complaint and, on the basis of those discussions, verify that the statements in the Petition and Complaint are true and correct to the best of our knowledge.

Dated: March 13, 2025

/s/ Zoe Bowman
Zoe Bowman
Attorney for Melika Mohammadi Gazvar Olya