

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-01139-NYW

ANDRANIK AMIRYAN, aka ANDRANIK GHAZARYAN,

Petitioner,

v.

PAM BONDI, Attorney General,
KRISTI NOEM, Secretary of Homeland Security,
KELEI WALKER, U.S. Ice Field Director for the Denver Contract Detention Facility, and
WARDEN OF DENVER CONTRACT DETENTION FACILITY,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the Court's April 14, 2025, Order, ECF No. 3, Respondents hereby respond to Andranik Amiryan's Amended Application for a Writ of Habeas Corpus, ECF No. 1 (filed April 10, 2025). Pursuant to 28 U.S.C. § 2241, Amiryan, proceeding *pro se*, asserts that his detention by Immigration and Customs Enforcement ("ICE") violates due process because there is no significant likelihood of his removal to Armenia in the reasonably foreseeable future. ECF No. 1 at 2. As explained below, Amiryan has not met his burden to show that his detention pursuant to 8 U.S.C. § 1231, as he awaits removal, violates his due process rights. ICE has secured Amiryan's renewed travel documents and is working to establish his travel itinerary to remove him before the expiration of those travel documents. Accordingly, the Application should be denied.

FACTUAL BACKGROUND

I. Amiryan's criminal history and prior removals.

Amiryan is a native and citizen of Armenia. Ex. A ¶ 4, Decl. of Mark Kinsey (May 14, 2025). On August 30, 1997, he was admitted to the United States as a lawful permanent resident. *Id.* ¶ 4. Since that arrival to the United States, Amiryan has been removed from the United States two different times as a result of his criminal convictions. *Id.* ¶¶ 9 & 12. Despite the two prior removals, he has reentered the United States without admission on two separate occasions. *Id.* ¶¶ 10 & 13.

Amiryan was convicted and removed from the United States. Ten years after arriving in the United States, Amiryan was convicted in the State of California for Grand Theft, in violation of Cal. Penal Code § 487(a); Identity Theft, in violation of Cal. Penal Code § 530.5; and Burglary, in violation of Cal. Penal Code § 459. *Id.* ¶ 6. He was sentenced to three years in state prison for the Grand Theft conviction and two years for the Identity Theft and Burglary convictions. *Id.* On November 26, 2007, immigration court proceedings were initiated against Amiryan by the Executive Office for Immigration Review ("EOIR") under 8 U.S.C. § 1229a. *Id.* ¶ 7. EOIR determined that he was deportable from the United States pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien who is convicted of an aggravated felony at any time after admission. *Id.* On February 25, 2008, the immigration judge ("IJ") ordered Amiryan removed from the United States. He was removed from the United States on April 16, 2008. *Id.* ¶ 9.

Amiryan reentered the United States without admission and was removed from the United States again. On November 26, 2009, ICE encountered Amiryan after he had reentered the United States at unknown place and time. *Id.* ¶ 10. The same day, ICE issued a Notice of Intent/Decision to Reinstate Prior Removal Order against Petitioner pursuant to 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8. *Id.* On September 13, 2010, Amiryan was convicted of Illegal Re-entry in violation of 8 U.S.C. § 1326(a) & (b)(2) in the U.S. District Court for the Northern District of New York. *Id.* ¶ 11. He was sentenced to fourteen months in federal prison. *Id.* ¶ 11. On January 20, 2011, Amiryan was released from prison and removed from the United States. *Id.* ¶ 12.

Amiryan again reentered the United States without admission after his second removal. On February 28, 2017, ICE encountered Amiryan after he had reentered the United States at an unknown place and time.¹ *Id.* ¶ 13. Amiryan claimed a fear of returning to Armenia, so ICE referred his case to U.S. Citizenship and Immigration Services ("USCIS") for a reasonable fear interview under 8 C.F.R. § 208.31. *Id.* ¶ 14. USCIS determined that he had not established a reasonable fear of persecution or torture upon return to Armenia and referred his case to the IJ for review. *Id.* ¶ 15. On June 15, 2017, the IJ affirmed USCIS's finding and Amiryan's case was returned to the Department of Homeland Security ("DHS") for removal. *Id.* ¶ 16. Around

¹ According to ICE records, Amiryan procured an Armenian passport under the name Andranik Ghazaryan, which he had in his possession when he illegally reentered the United States after his removal in 2011. See *U.S.A. v. Amiryan*, 2:20-cr-00520-DMG (C.D. Cal.), ECF No. 1 at 21 (Complaint).

this time, Amiryan filed several petitions for review before the U.S. Court of Appeals for the Ninth Circuit, which issued a stay of Amiryan's removal. *Id.* ¶ 17.

Amiryan was released from ICE custody and convicted of another crime.

On September 13, 2017, the IJ held a bond hearing. *Id.* ¶ 18. The next day, September 14, 2017, Amiryan was released from ICE custody under a bond order. *Id.* ¶ 19. Several years later, on September 28, 2021, Amiryan was convicted in the U.S. District Court for the Central District of California of Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. § 1349.² *Id.* ¶ 20; see also *U.S.A. v. Amiryan*, 2:20-cr-00520-DMG (C.D. Cal.), ECF No. 1 (Complaint). He was sentenced to forty-one months in federal prison. *Id.* ¶ 20.

II. Amiryan's current removal proceedings.

On September 30, 2023, ICE terminated Amiryan's bond. *Id.* ¶ 21. On October 6, 2023, he was returned to ICE custody upon release from his federal prison sentence. *Id.* ¶ 22. ICE reinstated Amiryan's order of removal. *Id.* Shortly after, Amiryan claimed fear of return to Armenia, so ICE referred him to USCIS for a reasonable fear interview under 8 C.F.R. § 208.31. *Id.* ¶ 23. On November 2, 2023, USCIS found that he had established a reasonable fear of returning to Armenia and referred the matter to the IJ. *Id.* ¶ 24. Amiryan's initial master hearing was set for November 13, 2023, but Amiryan

² Amiryan fraudulently obtained a \$650,600 Paycheck Protection Program loan under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act prior to his arrest in September 2020. See *U.S.A. v. Amiryan*, 2:20-cr-00520-DMG (C.D. Cal.), ECF No. 1 at 2 (Complaint).

requested additional time to prepare, so the IJ reset the matter. *Id.* ¶ 24.

While Amiryan sought protection from removal, ICE repeatedly reviewed his detention. On December 20, 2023, ICE conducted a Post Order Custody Review (“POCR”) pursuant to 8 C.F.R. § 241.4 and determined that Amiryan was a public safety concern because of his criminal convictions and that there was a significant likelihood of his removal in the reasonably foreseeable future. *Id.* ¶ 28. Accordingly, ICE continued to detain Amiryan.

On January 11, 2024, Amiryan filed an application for protection from removal. *Id.* ¶ 29. On March 4, 2024, the IJ conducted a merits hearing on Amiryan’s application for protection. *Id.* ¶ 31.

On April 8, 2024, ICE conducted a second POCR under 8 C.F.R. § 241.4 and again determined that Amiryan was a public safety concern because of his criminal convictions and that there was a significant likelihood of his removal in the reasonably foreseeable future. *Id.* ¶ 33.

On May 14, 2024, the IJ denied Amiryan’s application for protection. *Id.* ¶ 34. Amiryan appealed the IJ’s decision to the Board of Immigration Appeals (“BIA”) on May 20, 2024. *Id.* ¶ 35.

On July 12, 2024, ICE conducted a third POCR under 8 C.F.R. § 241.4 and again determined that Amiryan was a public safety concern because of his criminal convictions and that there was a significant likelihood of removal in the reasonably foreseeable future. *Id.* ¶ 36.

On September 25, 2024, the BIA dismissed Amiryan's appeal. *Id.* ¶ 39. On October 9, 2024, Amiryan filed a petition for review in the U.S. Court of Appeals for the Tenth Circuit. *Id.* ¶ 40.

ICE has taken steps to arrange for Amiryan's removal. While Amiryan's petition for review was pending, ICE took steps to prepare for Amiryan's removal. On October 29, 2024, Amiryan's travel document application was sent to the Armenian Embassy. *Id.* ¶ 41. ICE received Amiryan's travel documents on January 31, 2025. *Id.* ¶ 42.

On February 17, 2025, Amiryan moved for a stay of his removal before the U.S. Court of Appeals for the Tenth Circuit. *Id.* ¶ 44. The next day, the Tenth Circuit denied his motion, and Amiryan moved for a stay of his removal before the BIA. *Id.* ¶ 45. Several days later, the BIA denied his motion. *Id.* ¶ 46.

Amiryan was scheduled to be removed from the United States on February 21, 2025. *Id.* ¶ 47. However, because ICE could not locate his travel documents, he was not removed on that date. *Id.*

On April 14, 2025, Amiryan filed a second petition for review before the U.S. Court of Appeals for the Tenth Circuit. *Id.* ¶ 49.

On April 15, 2025, ICE requested Amiryan's travel documents from the Armenian Embassy. *Id.* ¶ 50. On May 7, 2025, ICE received Amiryan's travel documents. *Id.* ¶ 51. ICE is currently working on his travel itinerary to remove him from the United States to Armenia. *Id.*

III. Amiryan's habeas application

Amiryan filed this action in the District of Colorado on April 10, 2025. See *generally* ECF No. 1. In the Application, Amiryan claims that his continued detention by ICE violates due process because his removal "is not likely to occur in the near future" and his "continued detention is unnecessary and unduly burdensome." *Id.* at 2–3. On April 14, 2025, the Court ordered Respondents to show cause "why the application for a writ of habeas corpus should not be granted." See ECF No. 3 at 1.

ARGUMENT

The Application should be denied. Amiryan has failed to establish that there is no significant likelihood of his removal in the reasonably foreseeable future. His detention while he awaits removal thus does not violate his due process rights.

I. Amiryan's detention is authorized by 8 U.S.C. § 1231(a).

Amiryan's detention is authorized by 8 U.S.C. § 1231, which covers the "detention, release, and removal of [noncitizens] *ordered removed*." 8 U.S.C. § 1231(a) (emphasis added). Under § 1231(a), the Department of Homeland Security "shall detain" a noncitizen "[d]uring the removal period." *Id.* § 1231(a)(2). The removal period is the 90-day period that begins on the latest of the following:

- (i) The date the order of removal becomes administratively final [;]
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order[; or]
- (iii) If the [noncitizen] is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement.

See 8 U.S.C. § 1231(a)(1)(B). Following the expiration of the removal period, continued

detention of a noncitizen is entrusted to the Department of Homeland Security's discretion. See 8 U.S.C. § 1231(a)(6). If detained, the noncitizen receives periodic custody reviews, see 8 C.F.R. § 241.4.

Amiryan's detention status is governed under 8 U.S.C. § 1231. Here, the first clause of § 1231(a)(1)(B) applies such that the removal period for Amiryan commenced on September 25, 2024, when the order of removal became administratively final after the BIA dismissed his appeal.³ See Ex. A ¶ 39. Accordingly, Amiryan's removal period began on September 25, 2024.

"During the removal period, the Attorney General shall detain the [noncitizen]." *Id.* § 1231(a)(2). When the removal period begins, the government is instructed to "remove the [noncitizen] from the United States within a period of 90 days." See 8 U.S.C. § 1231(a)(1)(A). In certain circumstances, the ninety-day removal period may be extended. See 8 U.S.C. § 1231(a)(1)(C) ("The removal period shall be extended beyond

³ The second clause does not apply here because it applies only if both (a) a petition for review of the removal order is filed *and* (b) the reviewing court orders a stay of the removal. See 8 U.S.C. § 1231(a)(1)(B)(ii). Here, Amiryan has *not* obtained a stay of removal. As noted above, he has filed two petitions for review before the U.S. Court of Appeals for the Tenth Circuit. See Ex. A ¶¶ 40 & 49; see also *Amiryan v. Garland*, No. 24-9564 (10th Cir. Oct. 10, 2024); *Amiryan v. Bondi*, No. 25-9540 (10th Cir. Apr. 14, 2025). Amiryan filed a motion to stay his removal related to the petition for review he filed on October 10, 2024. See Ex. A ¶ 44; see also *Amiryan*, No. 24-9564 at ECF No. 23. His motion was denied on February 18, 2025. See Ex. A ¶ 45; see also *Amiryan*, No. 24-9564 at ECF No. 24. Amiryan has not moved for a stay of his removal in the petition for review that he filed on April 14, 2025. See Ex. A ¶ 52; see also *Amiryan*, No. 25-9540. Thus, all requirements of the second clause have not been met. *Cf. Singh v. Sessions*, 2017 WL 3397337, No. 17-cv-1324-WJM-KMT, *2 n.4 (D. Colo. Aug. 8, 2017) (finding that the second clause of 8 U.S.C. § 1231(a)(1)(B) did not apply where petitioner's motion for stay of removal was denied).

a period of 90 days and the [noncitizen] may remain in detention during such extended period if the noncitizen fails or refuses to make timely application in good faith for travel or other documents necessary to the [noncitizen]'s departure."'). Upon expiration of the 90-day mandatory removal period, the government may detain a noncitizen, such as Amiryan, in limited circumstances. See 8 U.S.C. § 1231(a)(6).

The Supreme Court has recognized that Section 1231(a) authorizes continued detention after the initial 90 days:

In addition to setting out a 90-day removal period, § 1231 expressly authorizes DHS to release under supervision or continue the detention of aliens if removal cannot be effectuated within the 90 days. See §§ 1231(a)(3), (6). ... DHS routinely holds aliens under these provisions when geopolitical or practical problems prevent it from removing an alien within the 90-day period. ... [Section 1231] provides for post-removal detention and supervised release in the event an alien cannot be removed within the 90-day removal period....

Johnson v. Guzman Chavez, 594 U.S. 523, 546–47 (2021). The Court in *Guzman Chavez* made clear that this authorization in § 1231 extends to individuals like Amiryan who had a prior removal order reinstated. *Id.* at 544 (explaining that § 1231(a) permits continued detention of aliens who have had an order of removal reinstated, as “aliens who reentered the country illegally after removal have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order”).

II. Amiryan's detention is constitutional because he has not shown that his removal is not reasonably foreseeable.

A noncitizen detained under this provision does not have a statutory right to release or a bond hearing. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–83 (2022). But despite the lack of a statutory right to release or a bond hearing, the Supreme Court has held that a noncitizen detained under 8 U.S.C. § 1231(a)(6) may still claim that the detention is so extended that it violates due process. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

In *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is “presumptively reasonable.” *Id.* at 700–01. The Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, the Court held that after six months, “once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing.” *Id.* at 701; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (“the onus is on the [noncitizen] to ‘provide[] good reason to believe that there is no [such] likelihood’ before ‘the Government must respond with evidence sufficient to rebut that showing’)” (quoting *Zadvydas*, 533 U.S. at 701).

Consistent with the Supreme Court's ruling, the government has promulgated regulations providing for custody reviews of noncitizens who have been in detention for more than six months after issuance of a final removal order. *See* 8 C.F.R.

§ 241.4(k)(1)(i) (a post-order custody review before the 90-day removal period expires if the noncitizen's removal cannot be accomplished during the removal period). If the noncitizen is not released or removed, he will receive an additional post-order custody review, ordinarily ninety days after the prior review occurred. 8 C.F.R. § 241.4(k)(2)(ii). In conducting its post-order custody reviews, ICE considers all the facts of the case, including the noncitizen's efforts to comply with the order of removal, the history of the Government's efforts to remove the noncitizen, the reasonably foreseeable results of those efforts, and the prospects of removal to the country in question. 8 C.F.R.

§ 241.13(f). If the agency determines that there is a significant likelihood of removal in the reasonably foreseeable future, it will inform the noncitizen of its decision to continue detention under the established standards in 8 C.F.R. § 241.4. See 8 C.F.R.

§ 241.13(g)(2).

In this case, Amiryan's detention has exceeded six months. His ninety-day mandatory removal period concluded on December 24, 2024 (90 days after September 25, 2024). To date, Amiryan has been detained beyond the end of the removal period for 141 days, or approximately four and a half months. In total, his post-removal detention has not exceeded eight months.⁴

⁴ Amiryan alleges in the Application that he did not receive his 90-day PO CR, nor his 180-day PO CR. See ECF No. 1 at 3. Under 8 C.F.R. § 241.4(k), ICE should have conducted Amiryan's 90-day PO CR by December 24, 2024, and his 180-day PO CR by March 24, 2024. But Amiryan does not appear to allege a due process violation based on this claim. Moreover, he has received three PO CRs since he returned to ICE custody on October 6, 2023. He received PO CRs on December 20, 2023, April 8, 2023, and July 12, 2024. See Ex. A ¶¶ 28, 33 & 36. After each PO CR, ICE determined that

But Petitioner fails to establish a due process violation under *Zadvydas* as he has not met *his initial burden* to “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]” See *Zadvydas*, 533 U.S. at 701 (emphasis added). In the Application, Amiryan claims that his “removal is not likely to occur in the near future, [and] [his] continued detention is unnecessary and unduly burdensome.” ECF No. 1 at 3. He further claims that the Armenian Government has not issued travel documents for him and no indication has been provided that “Armenia would accept [him] in the reasonably foreseeable future.” ECF No. 1 at 9.

The record contradicts his claim that there is no indication Armenia would accept him in the reasonably foreseeable future. The Armenian Embassy has issued Amiryan's travel documents twice since his order of removal became final on September 25, 2024. See Ex. A ¶¶ 43 & 51. Amiryan was scheduled to be removed nearly three months ago on February 25, 2025. But due to an issue locating his travel documents, ICE was not able to remove him from the United States. See Ex. A ¶ 47. Nevertheless, ICE has been diligently working to secure Amiryan's renewed travel documents, which were received on May 7, 2025, and to establish his travel itinerary to remove him from the United States before the expiration of his travel documents on August 27, 2025. *Id.* ¶ 51. These

Amiryan was a public safety concern given his criminal convictions and that there was a significant likelihood of removal in the reasonably foreseeable future. *Id.* Amiryan has been referred to Headquarters Custody and Detention Unit (“HQPDU”) for further custody review. See 8 C.F.R. § 241.4(k)(1)(ii) (“[w]hen release is denied pending the alien's removal . . . the district director or Director of the Detention and Removal Field Office may refer the alien to the HQPDU for further custody review.”).

facts show that, at this time, Amiryan's removal is reasonably foreseeable before August 27, 2025, the date on which his renewed travel documents expire. *Id.* ¶ 51.

Amiryan's assertions thus do not meet his burden under *Zadvydas*. *Cf. Knwanga v. Maurer*, 2006 WL 2475261, No. 06 CV 00262 MSK MEH, *1 (D. Colo. Aug. 24, 2006) (finding that petitioner failed to demonstrate that he was entitled to relief under *Zadvydas* where he failed to provide evidence indicating that his continued detention in the foreseeable future is likely).

Moreover, even if Amiryan had met his burden, the Court should find that Respondents' evidence is sufficient to rebut that showing. Specifically, the attached Declaration of ICE Deportation Officer Mark Kinsey shows that Amiryan's removal is imminent, since the Armenian Government issued his travel documents and ICE is working dilligently to set his travel itinerary so that Amiryan can be removed before August 27, 2025. Ex. A ¶ 51. Thus, his removal is reasonably foreseeable and therefore constitutional.

CONCLUSION

For the foregoing reasons, the Application should be denied.

Respectfully submitted on May 14, 2025.

J. BISHOP GREWELL
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s/ Erika A. Kelley

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

I further certify that on May 14, 2025, I directed personnel of the United States Attorney's Office to mail the foregoing via U.S. Mail, to the following non-CM/ECF participants:

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#A 
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Petitioner, *pro se*

s/ Erika. A. Kelley
U.S. Attorney's Office