

Chief District Judge David G. Estudillo
Magistrate Judge Grady J. Leupold

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TAREQ ZIAD FOUAD ZAKARNEH,

Petitioner,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT, *et al.*,

Respondents.

Case No. 2:25-cv-00707-DGE-GJL

FEDERAL RESPONDENT'S
RETURN MEMORANDUM AND
MOTION TO DISMISS

Noted for Consideration:
June 26, 2025

I. INTRODUCTION

This Court should deny Petitioner Tareq Ziad Fouad Zakarneh's habeas petition (Dkt. No. 1) because his detention is not only lawful, but also mandatory. U.S. Immigration and Customs Enforcement ("ICE") properly detains Zakarneh under Section 241 of the Immigration and Naturalization Act ("INA") because he is subject to a final order of removal. *See* 8 U.S.C. § 1231. Zakarneh is not entitled to habeas relief because he is currently detained pursuant to the statutorily required 90-day detention removal period and during the "presumptively reasonable" six-month detention period announced by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001), rendering his challenge premature. Accordingly, ICE respectfully requests that this Court deny the petition and grant Federal Respondent's Motion to Dismiss.

1 This motion is supported by the pleadings and documents on file in this case, the
2 Declaration of Deportation Officer Enrique Rodriguez (“Rodriguez Decl.”), and the Declaration
3 of Michelle R. Lambert (“Lambert Decl.”) with exhibits attached thereto.

4 II. FACTUAL AND PROCEDURAL BACKGROUND

5 A. Detention Authorities and Removal Procedures

6 The INA contains a complex scheme of authorities governing the detention and release of
7 aliens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
8 U.S. 523, 526-29 (2021). The general detention periods are generally referred to as “pre-order”
9 (meaning before the entry of a final order of removal) and “post-order” (meaning after the entry
10 of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* 8
11 U.S.C. § 1231(a) (authorizing post-order detention). This case involves post-order immigration
12 detention.

13 Once a final order of removal has been entered, an alien enters what Congress has called
14 the “removal period.” 8 U.S.C. § 1231(a)(1). During this period of 90 days, Congress has
15 directed that the Secretary of Homeland Security “shall remove the alien from the United
16 States.” *Id.* To ensure an alien’s presence for removal and to protect the community from
17 dangerous aliens while removal is being achieved, Congress directed:

18 During the removal period, the [Secretary of Homeland Security]¹ shall detain the
19 alien. *Under no circumstance during the removal period* shall the [Secretary]
20 release an alien who has been found inadmissible under section 1182(a)(2) or
1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B)
of this title.

21 8 U.S.C. § 1231(a)(2) (emphasis added).

22
23 ¹ Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining aliens, the
24 Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this
authority to the Secretary of the Department of Homeland Security. *See also* 6 U.S.C. § 251.

The removal period 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 alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

During the removal period, ICE² is charged with executing the removal of an alien from the United States. 8 U.S.C. § 1231(a)(1). However, an alien may continue to be detained after the removal period. 8 U.S.C. § 1231(a)(6). Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

An alien ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” *Zadvydas* 533 U.S. at 689. The Supreme Court has further identified six months as a presumptively reasonable time necessary to bring about an alien’s removal. *Id.*, at 701.

In this case, Zakarneh’s removal period began on April 28, 2025. 8 U.S.C. § 1231(a)(1)(B)(ii). This is the date that the mandate issued and the Ninth Circuit’s judgment

² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

denying Zakarneh's Petition for Review took effect and the stay of removal was lifted. *Zakarneh v. Bondi*, No. 22-1604, Mandate, Dkt. No. 89.1 (9th Cir. Apr. 28, 2025) & Order, Dkt. No. 74.1 (9th Cir. Dec. 5, 2024).

B. Petitioner Tareq Ziad Fouad Zakarneh

Zakarneh is a native and citizen of the West Bank, Palestine, who entered the United States in 2011 on a student visa. Lambert Decl., Ex. A (Form I-213, Record of Deportable/Inadmissible Alien), at L1900. In 2013, Zakarneh married a U.S. citizen, who then filed a Form I-130, Petition for Alien Relative, on his behalf. Ex. A, at L1899. He filed a Form I-485, Application to Register Permanent Residence or Adjust Status. *See id.* Both applications were approved, and Zakarneh was granted adjustment of status as the spouse of a U.S. citizen in June of 2014. *Id.* Because his marriage was less than two years when he adjusted status, USCIS classified him as a "Conditional Permanent Resident." Lambert Decl., Ex. B, Termination of Conditional Permanent Resident Status and Denial of Petition to Remove the Conditions on Residence.

In 2016, Zakarneh and his wife jointly filed a Form I-751, Petition to Remove Conditions on Residence, seeking to remove the conditions attached to Zakarneh's permanent resident status. *Id.* However, his wife did not appear for a mandatory interview. *Id.* This resulted in the denial of the joint Form I-751 and the termination of Zakarneh's Conditional Permanent Resident status. *Id.* USCIS also issued a Notice to Appear ("NTA") to Zakarneh, which placed Zakarneh into removal proceedings. Lambert Decl., Ex. C, NTA. The couple divorced in 2017. Lambert Decl., Ex. D, Decision of the IJ, at L2009.

In May 2017, Zakarneh first appeared before an Immigration Judge ("IJ") in his removal proceedings. *Id.* Shortly thereafter, he filed a request for a waiver of the joint filing requirement to remove his conditions on residence based upon his claim that he married his wife in good

1 faith, but the marriage was terminated through divorce or annulment. Lambert Decl., Ex. E,
2 Denial of Petition to Remove Conditions on Residence and Notification of Termination Status.
3 In 2018, USCIS denied his waiver request, finding that he “failed to provide sufficient credible
4 evidence to stablish a bona fide spousal relationship” with his ex-wife. *Id.*, at L726.

5 Zakarneh requested that the IJ conduct a de novo review of his application for a good
6 faith marriage waiver under 8 U.S.C. § 1186(c)(4)(B). Lambert Decl., Ex. D, at 2012. On July
7 15, 2019, the IJ affirmed USCIS’s denial and concluded that Zakarneh had “not met his burden
8 of demonstrating that his marriage to his United States citizen wife was entered into in good
9 faith.” Lambert Decl., Ex. D, at 2011. The IJ granted Zakarneh voluntary departure, or in the
10 alternative, ordered him removed to the Palestinian Occupied Territories pursuant to the charges
11 in the NTA. *Id.*, at 1990-89.

12 Zakarneh appealed the IJ’s order to the Board of Immigration Appeals (“BIA”).
13 Rodriquez Decl., ¶ 6. On August 29, 2022, the BIA dismissed his appeal. Lambert Decl., Ex. F,
14 BIA Decision; Rodriquez Decl., ¶ 7. In response, Zakarneh petitioned the Ninth Circuit for
15 review of the BIA’s decision. *Zakarneh v. Bondi*, No. 22-1604 (9th Cir.); Rodriquez Decl., ¶ 8.

16 Relevant here, the Ninth Circuit issued a temporary stay of removal in November 2022.
17 *Id.*, Dkt. No. 11. The following June, the Government moved to lift the stay. *Id.*, Dkt. No. 26.
18 On July 26, 2023, the Court granted the motion and lifted the temporary stay of removal. *Id.*,
19 Dkt. No. 35. In September, ICE contacted Zakarneh and ordered him to report to ICE for his
20 assistance in seeking travel documents for his removal. Rodriquez Decl., ¶ 11. Zakarneh did not
21 comply with the order. *Id.*

22 Zakarneh was not in ICE custody throughout most of his removal proceedings. On May
23 22, 2024, ICE arrested Zakarneh due to his failure to report to ICE and assist in obtaining travel
24 documents. Rodriquez Decl., ¶ 17; Lambert Decl., Ex. A, at L1901-00; Lambert Decl., Ex. H,

1 Warrant for Arrest. While in custody, Zakarneh continued to not comply with ICE's efforts to
2 obtain travel documents for his removal. See Rodriguez Decl., ¶¶ 18-21, 23, 34, 35; Lambert
3 Decl., Ex. J, Notice of Failure to Comply.

4 Zakarneh filed the opening brief in the Ninth Circuit in May 2024. *Id.*, Dkt. No. 55.
5 After the briefing was complete, Zakarneh filed an opposed renewed motion to stay his removal.
6 *Id.*, Dkt. No. 67. On December 5, 2024, the Ninth Circuit granted Zakarneh's renewed motion
7 and stayed his removal pending issuance of the Court's mandate. Lambert Decl., Ex. G, Order.
8 On February 26, 2025, the Court denied Zakarneh's petition. Dkt. No. 81. The mandate issued
9 on April 28, 2025, and the stay of removal was lifted. Lambert Decl., Ex. I, Mandate.
10 Accordingly, the 90-day removal period lasts through July 27, 2025, during which time Zakarneh
11 may not be released from detention. 8 U.S.C. § 1231(a)(2). The six-month presumptively
12 reasonable period will last through October 28, 2025.

13 Despite his non-compliance, ICE is actively working on arranging Zakarneh's removal.
14 ICE is seeking permission from Israel to permit Zakarneh's entry into the West Bank using his
15 expired Palestinian passport. See Rodriguez Decl., ¶¶ 18, 25, 27, 30, 33. ICE respectfully
16 requests that this Court dismiss the petition to allow ICE the time provided by statute and the
17 Supreme Court to execute Zakarneh's removal order. See Rodriguez Decl., ¶ 36.

18 III. ARGUMENT AND AUTHORITY

19 A. Zakarneh's challenge to his post-order detention must be dismissed as premature.

20 Zakarneh's detention is mandated by 8 U.S.C. § 1231(a)(2) and comports with
21 constitutional standards. Therefore, Zakarneh cannot make out a claim for habeas relief, and this
22 Court should dismiss the petition as premature.

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24 //

1 ***1. Section 1231(a)(2) prohibits the relief Zakarneh seeks.***

2 Zakarneh fails to state a basis for habeas relief because the plain language of 8 U.S.C.
3 § 1231(a)(2) requires his detention during the pending 90-day removal period. *See* 8 U.S.C.
4 § 1231(a)(2). The Ninth Circuit's stay of removal was not lifted until the mandate issued on
5 April 28, 2025, beginning the removal period. 8 U.S.C. § 1231(a)(1)(B)(ii). As a result, the 90-
6 day removal period designated in 8 U.S.C. § 1231(a)(2) will not end until July 27, 2025. Thus,
7 Zakarneh seeks habeas relief during the 90-day removal period and the petition should be
8 dismissed. *Khotessouvan v. Morones*, 386 F.3d 1299, 1301 (9th Cir. 2004) (affirming dismissal
9 of habeas petition brought during 90-day removal period).

10 Considering the limited time and legitimate purpose of the 90-day removal period, the
11 Ninth Circuit has repeatedly found that detention during the removal period "passes
12 constitutional scrutiny," even in cases when an alien's removal "is not reasonably foreseeable."
13 *See Khotessouvan*, 386 F.3d at 1299; *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1116 (9th Cir.
14 2010) (recalling that "Section 1231(a)(2) poses no due process issues, regardless of whether
15 removal of the detained alien is foreseeable, because the statute authorizes detention for only the
16 ninety-day removal period and therefore does not create any danger of unconstitutionally
17 indefinite detention.").

18 Accordingly, the petition should be dismissed.

19 ***2. Post-order detention authorized by statute and limited to a definite period does not***
20 ***raise a constitutional claim.***

21 Zakarneh is also unable to state a constitutional claim for habeas relief because post-order
22 detention of an alien for up to six months is presumptively reasonable. The Supreme Court has
23 adopted six months as a "presumptively reasonable period of detention" *after* which an alien
24 could bring a constitutional challenge to his detention. *Zadvydas*, 533 at 701. Zakarneh's six-

1 month “presumptively reasonable period of detention” runs through October 28, 2025. Since
2 Zakarneh has not been detained for six months after his administrative removal order became
3 final, his petition raises no constitutional claim for habeas relief based on the length of his
4 detention.

5 ***3. An alien’s interest in liberty does not raise a serious constitutional question until***
6 ***his detention has become indefinite or permanent.***

7 The Supreme Court in *Zadvydas* recognized that as detention becomes prolonged, an
8 alien’s liberty interest grows and may eventually outweigh Congress’s interest in detaining an
9 alien to facilitate his removal. The six-month period established in *Zadvydas* reflects the earliest
10 moment at which these conflicting interests might raise serious constitutional issues. *See*
11 *Zadvydas*, 533 U.S. at 701 (directing that “[a]fter this six-month period, once the alien provides
12 good reason to believe that there is no significant likelihood of removal in the reasonably
13 foreseeable future, [that] the Government must respond with evidence sufficient to rebut that
14 showing”). As the length of detention grows, a sliding scale of burdens is applied to assess the
15 continuing lawfulness of an alien’s post-order detention. *Id.* (stating that “for detention to
16 remain reasonable, as the period of post-removal confinement grows, what counts as the
17 ‘reasonably foreseeable future’ conversely would have to shrink”).

18 Since *Zadvydas*, the Supreme Court has reaffirmed the presumptively reasonable six-
19 month detention period. For example, in *Jama v. ICE*, 543 U.S. 335 (2005), the Supreme Court
20 considered the complicated removal of an alien to Somalia, a country with no strong central
21 government and continuing instability. The Court discussed approvingly the three steps of “the
22 country-selection process” to be followed by ICE in trying to remove Jama, and it also
23 acknowledged that these steps may ultimately fail and force ICE to try its last resort – third
24 country removal. *Id.* In that case, though, where the Supreme Court discussed the potential for

1 aliens being in a “removable-but-unremovable limbo,” it never suggested that aliens should be
2 released before ICE had fully explored its “last resort” option. *Jama*, 543 U.S. at 338-348.
3 Instead, the Supreme Court noted approvingly that Jama’s potential release “into American
4 society after six months” would be the appropriate protection of his liberty interest. *Id.*, at 347-
5 348 (citing *Zadvydas*, 533 U.S. 678; *Clark v. Martinez*, 543 U.S. 371 (2005)).

6
7 **B. This Court should deny the petition because Zakarneh cannot overcome the
presumption that his detention is reasonable.**

8 In the event this Court finds jurisdiction to consider Zakarneh’s claims, it should deny the
9 relief requested because Zakarneh cannot meet his burden. The burden is on the petitioner *after*
10 *the six-month presumptively reasonable detention period* to provide “good reason to believe that
11 there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
12 533 U.S. at 701. The ultimate likelihood of any alien’s removal is not ascertainable at the
13 moment a removal order becomes final. ICE must take steps, along with the alien’s efforts, to
14 effectuate removal. This is the implicit basis for the presumptively reasonable detention period.
15 Here, Zakarneh’s post-removal detention started approximately a month ago.

16 Because ICE is pursuing Zakarneh’s removal and his detention furthers Congress’s goal
17 of ensuring his presence for removal, Zakarneh has failed to meet his burden, and his petition
18 should be denied.

19 IV. CONCLUSION

20 For the foregoing reasons, Federal Respondent respectfully requests that the Court deny
21 Zakarneh’s petition for writ of habeas corpus and dismiss this matter in its entirety without an
22 evidentiary hearing.

23 //

24 //

1 DATED this 29th day of May, 2025.

2 Respectfully submitted,

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16 *I certify that this memorandum contains 2,580*
17 *words, in compliance with the Local Civil Rules.*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on today's date, I electronically filed the foregoing, Declaration of Enrique Rodriquez and Declaration of Michelle R. Lambert with the supporting Exhibits A through J with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on today's date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

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DATED this 29th day of May, 2025.

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