

United States District Court
Western District of Texas
San Antonio Division

Mahari Segid,
Petitioner,

v.

Kristi Noem, in her official capacity as
Secretary, U.S. Department of Homeland
Security *et al*,
Respondents.

No. 5:25-CV-00478-XR

**Federal¹ Respondents' Response to
Petitioner's Writ of Habeas Corpus**

Federal Respondents timely submit this response per this Court's Order dated May 7, 2025, directing service and ordering a response within 60 days of service. *See* ECF Nos. 3, 5 (confirming CMRRR delivery on June 12, 2025).

I. Facts and Procedural History

Petitioner is a native and citizen of Eritrea. ECF No. 1 at 7–8. Petitioner entered the United States without inspection in 2023, which resulted in the issuance of an expedited removal order. Ex. A (Peet Declaration) ¶ 4. Petitioner claimed fear, but an asylum officer ultimately decided Petitioner did not qualify for asylum. *Id.* ¶¶ 7-8. Petitioner requested review of this decision by an Immigration Judge (“IJ”), which he received. *Id.* ¶ 9. The IJ affirmed the asylum officer’s negative credible fear finding on August 31, 2023, and returned the case to DHS to execute the removal order. *Id.*; *see also* Ex. B (IJ Order).

On May 21 and July 1, 2024, Petitioner was advised, via form I-229(a) to comply with his

¹ The warden is not a federal employee, and as such, the U.S. Department of Justice does not represent him in this action. The remaining Federal Respondents, however, have detention authority over all aliens detained under Title 8 of the United States Code.

obligation to depart the United States under his removal order. Ex. C (ICE Documents). Petitioner, however, failed to comply or make good faith efforts to obtain the required travel documents necessary for removal. *Id.*; *see also* Ex. A (Peets Declaration) ¶¶ 14-23.

II. Petitioner Is Detained Under Section § 1225(b) With A Final Expedited Removal Order.

Under 8 U.S.C. § 1225(b)(1)(A)(ii), when an alien entering the United States indicates an intent to apply for asylum or a fear of persecution, the alien is referred for a credible fear screening interview with an asylum officer. If the officer determines that an alien does not have a credible fear of a persecution, the officer shall order him removed from the United States without further hearing or review. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). The alien is subject to mandatory detention pending a final determination of credible fear and, if found not to have such a fear, until removed. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Congress constructed the expedited removal scheme in the 1996 immigration reform provisions to weed out meritless asylum claims and expeditiously remove aliens making such claims from the country. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140-41 (2020). The “system is comprehensive, complex, and national in scope. It provides multiple procedural channels to determine whether a noncitizen should be removed and establishes a detailed process for reviewing those determinations.” *United States v. Texas*, 97 F.4th 268, 285 (5th Cir. 2024).

III. Argument

A. No Court Has Jurisdiction to Review an Expedited Removal Order or a Related Negative Credible Fear Finding.

Congress specifically prohibits judicial review of expedited removal orders, including any determination regarding the alien’s fear of returning to his country of origin. 8 U.S.C. § 1252(a)(2)(A). Similarly, Congress prohibits judicial review of the Attorney General or the DHS

Secretary's discretionary decisions. 8 U.S.C. § 1252(a)(2)(B)(ii). The action of an executive officer to admit or exclude an alien is final and conclusive. *United States v. Munoz*, 602 U.S. 899, 908 (2024). Indeed, even if the alien qualifies for relief under the asylum statutes, a grant of asylum is discretionary. *See Thuraissigiam*, 591 U.S. at 110 n.4; *Vazquez-Guerra v. Garland*, 744 F.3d 265, 268–69 (5th Cir. 2021); *Chen v. Gonzales*, 470 F.3d 1131, 1135 (5th Cir. 2006); *Derick v. Jaddou*, No. 23–CV–00857, 2024 WL 3035626 at *3 (W.D. Tex. June 17, 2024) (citing 8 U.S.C. § 1158(b)(1)(A); 8 CFR § 208.14).

Additionally, § 1252(e)(1) provides that the Court may not grant injunctive relief “in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1).” The only exception relevant here is found in § 1252(e)(2), which provides limited judicial review of expedited removal orders in habeas corpus proceedings. Such review is restricted to the following: whether the petitioner (1) is an alien, (2) was ordered removed under § 1225(b), and (3) can prove by a preponderance of the evidence that he is an alien lawfully admitted for permanent residence or as a refugee or asylee. *Id.* § 1252(e)(2)(A)–(C).

Here, Petitioner lodges a continued detention challenge, but his habeas petition is actually challenging his inability to seek further judicial review of his expedited removal order. In other words, Petitioner disguises his challenge to the asylum officer's adverse decision and the immigration judge's decision affirming it (*i.e.*, none of the enumerated bases listed above) as a prolonged detention claim. This strategy fails to overcome the jurisdictional hurdles Petitioner faces. The Court has no jurisdiction to review ICE's decision to pursue expedited removal proceedings against Petitioner or the decisions related to the credibility of his fear claim. *See, e.g., Zuniga v. Bondi*, No. 24-60368, 2025 WL 958259 at *1 (5th Cir. Mar. 31, 2025) (citing *Thuraissigiam*). The statutes do not entitle him to review beyond what he has already been given.

As such, these claims are not cognizable under habeas, and the Court lacks jurisdiction to grant Petitioner the relief he seeks. *See Thuraissigiam*, 591 U.S. 140-41.

B. Petitioner Is Not Entitled to Process Beyond What § 1225(b) Provides.

Zadvydas does not afford any additional protection to Petitioner beyond the protections Congress built into the expedited removal process. In *Zadvydas*, the U.S. Supreme Court reviewed the government's detention authority under 8 U.S.C. § 1231(a)(6). *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Section 1231(a)(6) governs post-removal-period detention, and the Supreme Court designated six months as a presumptively reasonable period of post-order detention. *Id.* at 701. Petitioner here is not detained under § 1231, so *Zadvydas* does not apply.

Where the alien is detained pursuant to an order of expedited removal under § 1225(b), the Court treats the alien as an individual “on the threshold of entry” into the United States, because the alien’s apprehension and detention occurs contemporaneously with the unlawful entry. *Petgrave v. Aleman*, 529 F.Supp.3d 665, 678 (S.D. Tex. 2021). In other words, even though Petitioner is detained within the interior of the United States, he “is not considered to have entered the country” for the purposes of constitutional due process. *Id.* (citing *Thuraissigiam*). Even *Zadvydas* instructs that aliens apprehended during an illegal entry lack certain constitutional protections because they remain, as a legal matter, “outside of our geographic borders.” *Zadvydas*, 533 U.S. at 693. As such, it is not within the authority of the judicial branch to provide aliens similarly situated to Petitioner procedural recourse beyond that identified in the applicable statutes. *Petgrave*, 529 F.Supp.3d at 679. Petitioner does not allege that ICE acted contrary to the expedited removal statute.

C. Petitioner Is Delaying His Own Removal, And His Detention Is Mandatory.

Even if the Court were to consider *Zadvydas*, Petitioner has obstructed the removal process

on various occasions by refusing to cooperate with future removal efforts. *See* Ex. A (Peets Declaration) at ¶¶ 14-23. Petitioner’s repeated failures to comply with removal efforts would have tolled the removal period even under § 1231(a) because he refused to participate in consular interviews or provide the required information to verify identity. *See* 8 U.S.C. § 1231(a)(1)(C) (authorizing continued detention under a related final order statute where an alien “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure”); *see also* 8 C.F.R. § 241.4(g)(1)(ii).

As this Court has acknowledged, an alien will have difficulty showing the required “good cause” that removal is unlikely if the alien’s actions have obstructed the removal process. *See Glushchenko v. USDHS*, 566 F.Supp.3d 693, 707, 709–10 (W.D. Tex. 2021); *Liu v. Chertoff*, EP-06-CA-0203-DB, 2006 WL 4511941, at *3 (W.D. Tex. Oct. 23, 2006); *Dumpeh v. Moore*, SA-07-CA-294-OG, 2007 WL 3235099, at *2 (W.D. Tex. Oct. 26, 2007) (“[A]n alien cannot assert a viable constitutional claim when his indefinite detention is due to his failure to cooperate with the INS’s efforts to remove him.”); and *Khan v. Gonzales*, 481 F.Supp. 2d 638, 641 (W.D. Tex. 2006) (holding “[w]e cannot know whether an alien’s removal is a ‘remote possibility,’ ... until the alien makes a full and honest effort to secure travel documents.”); *Shabanov v. Tate*, No. H–23–3136, 2024 WL 1772873 at *3 (S.D. Tex. Apr. 24, 2024).

Even under the broader protections of *Zadvydas*, Petitioner would not be entitled to relief. Just like the petitioner in *Glushchenko* and similar cases cited above, Petitioner here contributed to his own continued detention by refusing to participate in consular interviews or provide the necessary information to secure a TD. Despite these repeated failures to comply, ICE was not complacent in its removal efforts. In any event, § 1225 mandates his detention until his removal is executed.

IV. Conclusion

As an arriving alien with an expedited removal order, Petitioner's detention is mandated by statute under 8 U.S.C. § 1225(b) until his removal order is executed. He is not entitled to any additional protections beyond what that statute affords, and his detention comports with due process. The Court should deny this petition.

Respectfully submitted,

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Certificate of Service

I certify that on July 11, 2025, I cause a copy of this filing to be mailed to Petitioner (*pro se*) at the following address:

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/s/ Lacy L. McAndrew
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