

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

AMR AES DERHEM NAJI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No.: 5:25-cv-26
	)	
WARDEN, Folkston ICE Processing	)	
Center, et al.,	)	
	)	
Respondents.	)	

MOTION TO DISMISS

COME NOW, Respondents,¹ by and through the United States Attorney for the Southern District of Georgia and the undersigned Assistant United States Attorney, and move to dismiss the Petition, Doc. 1, pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Petitioner Amr Aes Derhem Naji (“Petitioner”) filed this habeas corpus petition pursuant to 28 U.S.C. § 2241 to challenge his detention by Immigrations and Customs Enforcement (“ICE”). He claims he has been unlawfully detained in violation of due process. The Court should dismiss the Petition for failure to state a claim because Petitioner is mandatorily detained pursuant to the Immigration and Naturalization Act (“INA”), § 235(b), 8 U.S.C. § 1225(b), and because he is not entitled to habeas corpus relief.

¹ In addition to naming the Warden of Folkston and Petitioner’s immediate custodian, see Doc. 1, ¶ 15, Petitioner also names as putative respondents Kristi Noem, Secretary of the Department of Homeland Security and Pamela Bondi, Attorney General of the United States, *id.*, ¶¶ 16-17. Even if Petitioner has properly served these three individuals, they are not proper respondents to a habeas corpus petition. See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (“the proper respondent [in a habeas corpus petition] is the warden of the facility where the prisoner is being held”).

FACTUAL BACKGROUND

Petitioner is a citizen of Yemen. Doc. 1, ¶ 14. He is currently detained at the Folkston ICE Processing Center (“Folkston”) in Folkston, Georgia. *Id.*, ¶ 14. His detention is pursuant to INA, § 235(b), which is codified at 8 U.S.C. § 1225(b). *Id.*, ¶¶ 35, 43.

On March 12, 2025, Petitioner filed an application for Temporary Protected Status (“TPS”) with the United States Citizenship and Immigration Services (“USCIS”). Doc. 1, ¶ 30. Two weeks later, on March 27, 2025, Petitioner filed this habeas corpus petition. *See generally* Doc. 1.

ARGUMENT

Petitioner’s allegations are not entirely clear. He seeks a writ of habeas corpus from this Court ordering his immediate release, but he also seeks a declaratory judgment from the Court to essentially the same effect. Doc. 1 at 11. But Petitioner’s allegations do not state a claim that his Due Process rights have been violated. He has also not identified what mandamus relief he seeks from this Court. Because he has not stated a claim for relief, Respondents ask this Court to dismiss this habeas petition.

I. Petitioner has failed to state a Due Process claim.

Petitioner alleges that his due process rights have been violated. Doc. 1 at 9. He appears to base this on two separate grounds: (a) the fact of his detention at Folkston, and (b) the length of his detention being longer than six months. In support

of the latter claim, he cites the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Doc. 1, ¶¶ 42, 54-57.

A. Petitioner's mandatory detention does not violate Due Process.

The Supreme Court “has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). Under 8 U.S.C. § 1225(b)(1)(B)(ii), detention is mandatory for individuals who are detained pursuant to this clause. *See D. A. F. v. Warden, Stewart Det. Ctr.*, No. 4:20-cv-79, 2020 WL 9460467, at *8 (M.D. Ga. May 8, 2020) (“Detention of an arriving alien pending completion of removal proceedings is statutorily mandated, even if an asylum officer determines the alien has a credible fear of persecution.”), *report and recommendation adopted in part*, No. 4:20-cv-79, 2020 WL 9460341 (M.D. Ga. July 24, 2020). The terms of this statute do not require detention to be limited to six months or less. *Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018).

Here, Petitioner is detained pursuant to § 1225(b). Doc. 1, ¶¶ 35, 43. He concedes that his detention is mandatory. *Id.* He does not present any specific allegations outlining how his detention pursuant to § 1225(b) violates his Due Process rights. Since mandatory detention does not on its own violate the Constitution, *see Demore*, 538 U.S. at 523, Petitioner's vague references to Due Process are insufficient to establish a claim for relief.

Therefore, the fact of Petitioner's detention alone does not violate Due Process.

B. Petitioner's pending TPS application does not affect his detention.

The eligibility requirements of TPS status are outlined in 8 U.S.C. § 1254a. Individuals who receive TPS status “shall not be detained by the Attorney General.” 8 U.S.C. § 1254a(d)(4). Put another way: “An alien who has been granted TPS is eligible to remain legally in the United States during the designated period and cannot be removed from the United States nor placed into immigration detention during the period in which his TPS remains current.” *Mejia Rodriguez v. U.S. Dep’t of Homeland Sec.*, 562 F.3d 1137, 1140 (11th Cir. 2009). Further, an individual who establishes prima facie eligibility for TPS should receive those same benefits. 8 U.S.C. § 1254a(b)(4)(B).

Here, Petitioner has not been granted TPS, *see* Doc. 1, ¶ 30 (alleging only that he has applied for TPS), and his Petition does not allege that he has established prima facie eligibility for TPS. He applied only 15 days before filing this petition. *See* Doc. 1, ¶¶ 30, 32. He also states he has been scheduled for a “biometrics collection.” *Id.*, ¶ 30. These allegations do not reveal any Due Process violations with Petitioner’s TPS application. A period of only 15 days suggests nothing more than ordinary processing time by USCIS. Indeed, Petitioner has already advanced far enough in the application process far enough to be scheduled for a “biometrics collection.” *Id.*, ¶ 30. The Petition provides no authority in support of the idea that a processing time of mere weeks for a TPS application violates Due Process such that habeas relief—and a release from mandatory detention—is warranted.

Therefore, Petitioner’s allegations related to his TPS application do not state a

C. Petitioner has failed to state a Zadvydas claim.

Petitioner alleges that his detention violates *Zadvydas*, 533 U.S. 678. It does not.

Although the Supreme Court discussed Due Process, the *Zadvydas* opinion specifically concerned the applicability of 8 U.S.C. § 1231(a)(6). That provision concerns “[i]nadmissible or criminal aliens” who have already been ordered removed. 8 U.S.C. § 1231(a)(6). The Supreme Court found that the statute’s use of the term “may” was ambiguous and thus concluded that six-months’ detention after an order of removal was presumptively reasonable. *Zadvydas*, 533 U.S. at 701; *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (discussing *Zadvydas*). Thus, to state a *Zadvydas* claim, an alien “not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

Here, Petitioner does not meet either *Zadvydas* element. First, he has not been detained for longer than six months post-removal.² He thus cannot meet the first part of a *Zadvydas* claim. Petitioner is also not detained under § 1231(a)(6), the statute at issue in *Zadvydas*. Instead, he is detained pursuant to § 1225(b). Doc. 1, ¶ 8. Thus, *Zadvydas* is inapplicable. As one court noted, “*Zadvydas*, however, only applies to aliens subject to a removal under 8 U.S.C. § 1231, not aliens detained under 8 U.S.C.

² In fact, Petitioner fails even to allege that his detention has exceeded six months. The Petition provides no factual allegations asserting any particular time period during which he has been in ICE custody. However, Respondents do not contest that Petitioner has been detained longer than six months as of the filing of the Petition.

§ 1225(b)(1).” *H.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-148, 2023 WL 2745176, at *5 (M.D. Ga. Mar. 31, 2023), *report and recommendation adopted sub nom. H.C. v. Washburn*, No. 4:22-cv-148, 2023 WL 3365166 (M.D. Ga. May 10, 2023). The reasoning of the Supreme Court in *Zadvydas* was based on the ambiguity in § 1231(a)(6). *Zadvydas*, 533 U.S. at 697. But § 1225(b)(1) contains no such ambiguity—detention is mandatory. *Jennings*, 538 U.S. at 300.

Petitioner also cannot meet the second *Zadvydas* prong. He argues that his removal to Yemen is not reasonably foreseeable. Doc. 1, ¶¶ 23, 56. In the first place, Petitioner’s own allegations undermine this argument; his Petition concedes that removals have occurred, albeit at a low rate. *Id.*, ¶ 33. Removal is thus entirely foreseeable even within the four corners of the Petition. Second, the Petition concedes that removals have sometimes involved “third countries.” *Id.* A likelihood-of-removal analysis is not limited to a single country. Instead, numerous options may be available for removal: “a country designated by the alien; the alien’s country of citizenship; the alien’s previous country of residence; the alien’s country of birth; the country from which the alien departed for the United States; and finally, any country willing to accept the alien.” *Guzman Chavez*, 594 U.S. at 536 (2021) (discussing withholding-only removal). There is a “distinction between whether an alien is to be removed and where an alien is to be sent.” *Id.* at 538. Even if Petitioner were ordered removed but granted an order withholding removal to Yemen—neither of which has yet occurred—he could still be removed: “If an immigration judge grants an

application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States.” *See id.* at 536.

Therefore, Petitioner’s due process claim should be dismissed.

II. Petitioner’s assertion of a mandamus claim should be dismissed.

The Petition contains a cause of action entitled “MANDAMUS ACT” and cites 28 U.S.C. § 1361. Doc. 1 at 9. Beneath this heading, Petitioner asserts that he has complied with all requirements “for obtaining TPS relief.” *Id.*, ¶ 48. Although he never asks this Court to take any action related to his TPS application, his Petition could be construed as asking this Court to order USCIS to grant his application. Such a request should be denied.

A plaintiff seeking the “extraordinary” relief of mandamus can be awarded it “only in the clearest and most compelling of cases.” *Serrano v. U.S. Atty. Gen.*, 655 F.3d 1260, 1263 (11th Cir. 2011). It is appropriate “only if (1) the plaintiff has a clear right to the relief requested; (2) the defendant has a clear duty to act; and (3) no other adequate remedy is available.” *Id.* In other words, mandamus provides a remedy only to a plaintiff who has exhausted all other avenues and to whom the defendant owes a clear, nondiscretionary duty. *United States v. Burak*, No. 4:24-cr-1, 2024 WL 4603864, at *6 (S.D. Ga. Oct. 29, 2024) (Ray, J.). Thus, when the defendant’s purported duty is discretionary, the plaintiff cannot receive a mandamus remedy.

A petitioner who seeks habeas corpus relief can obtain only release; no other relief is available. *Pierre v. Rivkind*, 825 F.2d 1501, 1504 (11th Cir. 1987) (“The writ of habeas corpus extends only to custody and detention; it cannot address collateral

or ancillary forms of administrative relief.”). Conversely, the sole remedy for a petitioner who seeks release is under habeas corpus. *Cordova v. Tarver*, No. 4:16-cv-76, 2016 WL 3636105, at *1 (S.D. Ga. Apr. 15, 2016) (Smith, J.), *report and recommendation adopted*, No. 4:16-cv-76, 2016 WL 3640690 (S.D. Ga. June 29, 2016).

Here, although Petitioner mentions a mandamus cause of action under the heading of “causes of action,” his Petition does not actually seek any mandamus relief.³ See Doc. 1 at 11. Other than a declaratory judgment, he asks only for immediate release. *Id.* Immediate release is not an available mandamus relief, since it is available only under habeas corpus. Since Petitioner *does* seek immediate release, and since he is plainly able to bring a habeas claim, this further undermines his mandamus claim—alternative relief is available to him. See *Smith v. West*, No. 3:12-cv-82, 2013 WL 596321, at *2 (S.D. Ga. Jan. 24, 2013) (Barfield, J.) (describing mandamus and habeas corpus as distinct forms of relief), *report and recommendation adopted*, No. 3:12-cv-82, 2013 WL 596347 (S.D. Ga. Feb. 15, 2013); *York v. Terrell*, 344 F. App’x 460, 461–62 (10th Cir. 2009) (finding mandamus unavailable because petitioner also filed habeas corpus claim).

Second, this Court lacks jurisdiction over his mandamus claim. Petitioner fails to identify any specific action he wants taken or any federal official he wants to take this action. Mandamus relief requires making such a showing. *Serrano*, 655 F.3d at

³ The docket indicates that Petitioner may not have actually filed a mandamus action at all. He paid only a \$5.00 filing fee, the appropriate fee for a habeas action, 28 U.S.C. § 1614(a). But he has not paid the full filing fee necessary to bring a mandamus action. See, e.g., *Miller v. Wilkes*, No. 1:17-cv-151, 2018 WL 703425, at *1 (S.D. Ga. Feb. 2, 2018) (Hall, J.) (requiring a habeas petitioner who sought mandamus relief to pay the ordinary \$400.00 filing fee).

1263. The burden of this showing falls on the party seeking mandamus relief. *See, e.g., Storey v. Rubin*, 976 F. Supp. 1478, 1482 (N.D. Ga. 1997) (citing *Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296, 309 (1989)), *aff'd*, 144 F.3d 56 (11th Cir. 1998). Since Petitioner has not identified any action he wishes taken or identified any official who has purportedly failed to take some required action, he has failed to show any entitlement to mandamus relief.

Therefore, Petitioner's mandamus claim should be dismissed.

III. Removal cannot be challenged in a habeas action.

It is not clear whether Petitioner is challenging a potential future removal from the United States. *See* Doc. 1, ¶ 9. Even if he is, such a challenge should be dismissed.

When Congress passed the REAL ID Act in 2005, it expanded the jurisdiction of federal courts of appeals to review errors in removal errors, but it precluded relief under 28 U.S.C. § 2241 in federal district courts. *Fagan v. United States*, No. 21-13524, 2023 WL 2663239, at *2 (11th Cir. Mar. 28, 2023) (affirming United States District Court for the Southern District of Georgia). The statute is explicit:

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 shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C.A. § 1252(g). A petition for review in a court of appeals is the “exclusive means” for reviewing an order of removal. *Alexandre v. U.S. Att’y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006). An expedited order of removal is further not subject to judicial

review, “even by a court of appeals.” *H.C.*, 2023 WL 2745176, at *3. Thus, challenges to removal proceedings are not cognizable under § 2241. *Themeus v. U.S. Dep’t of Just.*, 643 F. App’x 830, 832 (11th Cir. 2016).

Here, Petitioner is currently in ICE detention, pursuant to the authority of 8 U.S.C. § 1225(b). Doc. 1, ¶ 43. He does not have TPS status, *see id.*, ¶ 30, and thus the benefits of TPS do not apply. Petitioner does not explicitly challenge the removal process, but regardless, challenges to Petitioner’s removal cannot be brought in this Court under 28 U.S.C. § 2241.

Therefore, this Court should dismiss any construed challenge to Petitioner’s removal.

CONCLUSION

For the reasons set forth above, this Court should dismiss this Petition.

Respectfully submitted, this 25th day of April, 2025,

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