

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

AMR AES DERHEM NAJI,

Petitioner,

v.

WARDEN, Folkston ICE Processing
Center, et al.,

Respondents.

Civil Action No.: 5:25-cv-26

**PETITIONER'S RESPONSE IN
OPPOSITION TO MOTION TO DISMISS**

INTRODUCTION

Respondents attempt to justify Petitioner's continued detention by citing §1225(b) of the Immigration and Nationality Act and by denying the applicability of *Zadvydas* and TPS-related protections. Their arguments are both factually and legally flawed. Petitioner has established prima facie eligibility for Temporary Protected Status (TPS), and pursuant to 8 U.S.C. § 1254a(d)(4) and 8 C.F.R. § 244.5, he is statutorily entitled to temporary treatment benefits, including a stay of removal and protection from detention based solely on his immigration status.

Moreover, even under § 1225(b), detention cannot persist indefinitely when removal is not reasonably foreseeable, a constitutional principle articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and further developed in *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020). *see also Clark v. Martinez*, 543 U.S. 371, 378 (2005) (holding that indefinite detention of noncitizens violates due process when removal is not reasonably foreseeable)

Petitioner's continued detention violates both statutory TPS protections and due process. He seeks immediate release, not based on a generalized objection to immigration detention, but

because the government is defying legal mandates specific to TPS eligibility and constitutional limits on prolonged civil detention.

ARGUMENTS

I. PETITIONER HAS MADE A PRIMA FACIE SHOWING OF TPS ELIGIBILITY ENTITLING HIM TO TEMPORARY PROTECTIONS, INCLUDING RELEASE

Respondents mistakenly argue that Petitioner is not entitled to protections under TPS because he has merely filed an application and not yet received a final decision. However, 8 C.F.R. § 244.5 plainly states that once an applicant makes a prima facie showing of eligibility, the Department of Homeland Security must not detain the individual solely on the basis of immigration status. Petitioner has submitted unrefuted evidence of (1) Yemeni nationality, (2) continuous physical presence, and (3) a lack of disqualifying criminal history or conduct, satisfying the prima facie criteria outlined in 8 C.F.R. § 244.2.

Respondents fail to address this regulatory entitlement and instead focus on the absence of a TPS grant. That misstates the law. The statutory and regulatory scheme ensures that individuals like Petitioner, who have satisfied the prima facie threshold, receive temporary benefits, including protection from removal and detention, while their applications are pending.

This mischaracterization undermines the very purpose of the TPS framework, which is to provide immediate, albeit provisional, protection to individuals who meet the basic eligibility criteria. By ignoring the regulatory safeguards afforded to prima facie eligible applicants, Respondents disregard both the letter and the spirit of the law. Thus, the Court should reject this flawed interpretation and reaffirm that Petitioner's demonstrated prima facie eligibility entitles him to the protections guaranteed under 8 C.F.R. § 244.5 while his application remains pending.

II. PETITIONER'S DETENTION IS UNLAWFUL UNDER DUE PROCESS

PRINCIPLES AND *ZADVYDAS*

Respondents assert that Petitioner's detention under § 1225(b) renders *Zadvydas* inapplicable. This argument disregards both the factual context and constitutional implications. Courts have long recognized that even mandatory detention statutes are subject to constitutional constraints, particularly where detention becomes prolonged and removal is not reasonably foreseeable. See *Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (holding that the statute does not bar constitutional challenges); *Velasco Lopez*, 978 F.3d at 855–56.

Petitioner has been detained for more than six months, and Respondents offer no evidence that removal to Yemen, or to any alternative country, is likely to occur in the reasonably foreseeable future. Indeed, they admit removals to Yemen are exceedingly rare and suggest, without specificity or evidence, that third-country removal might be possible. Such speculative assertions fail to rebut the constitutional presumption against prolonged detention where removal is not imminent.

III. RESPONDENTS MISCHARACTERIZE THE MANDATORY NATURE OF § 1225(b) DETENTION

The government claims that §1225(b) mandates Petitioner's detention and strips the Court of authority to review it. This is incorrect. Although §1225(b) authorizes detention during initial removal proceedings, it does not override constitutional protections. However, detention should be in limited periods, not indefinite or unjustified confinement where statutory and constitutional norms have been violated.

Here, Petitioner's status as a TPS applicant with prima facie eligibility places him outside the typical scope of § 1225(b), and even if it did not, the continued detention in the absence of foreseeable removal is unconstitutional under *Zadvydas* and *Jennings*.

IV. THE MANDAMUS CLAIM ADDRESSES A CLEAR NONDISCRETIONARY DUTY

Respondents argue Petitioner fails to state a mandamus claim because he has not demanded a specific action or identified a clear duty. However, the duty is express in the TPS statute and regulations: upon a showing of prima facie eligibility, DHS must provide temporary treatment benefits. 8 U.S.C. § 1254a(b)(4); 8 C.F.R. § 244.5. This duty is non-discretionary and therefore must release the Petitioner from detention.

Petitioner seeks enforcement of these clear statutory rights. The delay and failure to act on this duty constitute agency inaction that supports mandamus relief. While habeas is the primary vehicle for securing release, mandamus appropriately supplements that relief by compelling the agency to comply with its regulatory obligations.

V. PETITIONER IS NOT CHALLENGING HIS REMOVAL ORDER BUT HIS UNLAWFUL DETENTION

Respondents suggest Petitioner is challenging a removal order. He is not. The habeas petition squarely targets unlawful and indefinite detention in violation of TPS protections and due process. The Court retains jurisdiction under 28 U.S.C. § 2241 to consider such challenges, even in the context of § 1225(b) custody.

CONCLUSION

Respondents' Motion to Dismiss fails to overcome the legal and constitutional grounds asserted in the habeas petition. Petitioner has set forth a clear entitlement to relief based on statutory protections for individuals who have established prima facie eligibility for Temporary Protected Status, as well as binding precedent limiting prolonged immigration detention without individualized review. Accordingly, this Court should deny Respondents' Motion to Dismiss and:

1. Grant the habeas petition and order Petitioner's immediate release from custody;

2. Declare Respondents' denial of protections under the TPS framework unlawful; and
3. Grant such other and further relief as the Court deems just and proper.

Dated: May 9, 2025

Respectfully Submitted,

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AFFIDAVIT OF SERVICE

I, Rafael Urena, Esq., hereby certify that on May 9, 2025, a copy of the attached was made to all counsels of record through the court's electric case filing system.

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