

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

PATRICK STARZENSKI

PETITIONER

A 

v.

CIVIL ACTION NO. 5:25-cv-00063-DCB-BWR

WARDEN A.W. LEE

RESPONDENT

RESPONSE IN OPPOSITION TO PETITION
FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Respondent Warden A.W. Lee, by and through the United States Attorney for the Southern District of Mississippi, and the undersigned Assistant United States Attorney, submits this response in opposition to Petitioner Patrick Starzenski's petition for writ of habeas corpus under 28 U.S.C. § 2241. *See* Dkt. No. 1, *Pet.*

I. INTRODUCTION

Petitioner Patrick Starzenski has filed a petition for writ of habeas corpus under 28 U.S.C. § 2241, challenging his final order of removal and his continued detention within the institutional custody of Immigration and Customs Enforcement ("ICE"). *See* Dkt. No. 1, at 1, 2, *Pet.* The Court lacks jurisdiction over Starzenski's claims, however, because he entered the United States through the Visa Waiver Program ("VWP"), which required him to waive his right to assert any non-asylum objection to his removal. The Court

further lacks jurisdiction because the REAL ID Act divested district courts of jurisdiction over removal orders and made courts of appeals the exclusive means of judicial review. Additionally, as Starzenski's removal order became final less than 90 days ago, he is currently subject to mandatory detention under 8 U.S.C. § 1231(a)(2)(A). *See* Ex. A, *Immigration Judge Order dated Oct. 17, 2025*. After the 90-day removal period, there is a six-month period of presumptively reasonable post-removal detention under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Thus, Starzenski's request for release is unripe for review. Starzenski's petition should be dismissed.

II. BACKGROUND

Petitioner Starzenski, a native and citizen of Poland, was admitted to the United States on July 5, 2024, through the VWP with authorization to remain in the United States until October 1, 2024. *See* Dkt. No. 1, at 3. Shortly thereafter, on July 16, 2024, Starzenski filed for asylum, and was issued a Notice of Action, Form I-797C, acknowledging receipt of the asylum application. *See* Dkt. No. 22-1, at 3; Ex. B, at 3, *Form I-213*. Importantly, the Notice of Action informed Starzenski that the Notice did not grant immigration status or preclude him from being placed in removal proceedings. *See* Dkt. No. 22-1, at 3.

In April 2025, Starzenski was arrested in New Orleans, Louisiana and charged with criminal trespass. *See* Ex. B, at 3. He was subsequently taken into ICE custody on April 24, 2025, and issued a Notice of Intent to Issue a Final Administrative Removal Order for remaining in the United States for longer than permitted. *See* Dkt. No. 1, at 3.

A Final Administrative Removal Order was also entered, removing Starzenski to Poland.

See id. at 5.

Starzenski filed the instant habeas petition on May 27, 2025. *See* Dkt. No. 1.

On October 17, 2025, the immigration judge entered an Order denying Starzenski's requests for asylum, withholding of removal under Immigration and Nationality Act § 241(b)(3), withholding of removal under the Convention Against Torture, deferral of removal under the Convention Against Torture. *See* Ex. A. Starzenski did not appeal. *See id.* at 1 (indicating Starzenski had 30 days to appeal the decision to the Board of Immigration Appeals ("BIA")).

III. LAW AND ANALYSIS

A. This Court does not have jurisdiction to review Starzenski's removal order.

"The VWP permits eligible nationals from certain designated countries to apply for admission to the United States for ninety days or less as non-immigrant visitors without first obtaining a visa." *McCarthy v. Mukasey*, 555 F.3d 459, 460 (5th Cir. 2009) (citing 8 U.S.C. § 1187(a)). "VWP entrants must waive certain procedural rights related to removal that are afforded other aliens within the United States." *Bacuku v. Aviles*, No. CV 15-2543 (MCA), 2016 WL 818894, at *4 (D.N.J. Mar. 2, 2016). Specifically, § 1187(b) provides:

An alien may not be provided a waiver under the [VWP] program unless the alien has waived any right –

- (1) to review or appeal under this chapter of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or
- (2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

8 U.S.C. § 1187(b); *see also Bradley v. Att'y Gen.*, 603 F.3d 235, 238 (3d Cir. 2010) (“Most significantly, a VWP visitor must waive his or her rights to contest the government's admissibility determinations and removal actions, except that the alien may contest removal actions on the basis of asylum.”).¹

Asylum applications are governed by 8 U.S.C. § 1158. *See Bacuku*, 2016 WL 818894, at *5 (citing 8 C.F.R. § 208.2(c)(iv)) (“VWP entrants, like Petitioner, who apply for asylum, are granted ‘asylum-only’ hearings.”). Immigration judges have exclusive jurisdiction over asylum applications filed by aliens who have been admitted pursuant to the VWP. *See* 8 C.F.R. § 1208.2(c)(1)(iv). “The denial of asylum and withholding of removal under 8 U.S.C. § 1158(a) constitutes a final order of removal for purposes of 8 U.S.C. § 1231(a).” *Malets v. Horton*, No. 4:20-cv-01041-MHH-SGC, 2021 WL 11549981, at *3 (N.D. Ala. Jan. 11, 2021); *see also Nreka v. Att'y Gen.*, 408 F.3d 1361, 1367 (11th Cir. 2005) (“The denial of an asylum application in a [VWP] proceeding is so closely tied to the removal of the alien that it can be deemed—in conjunction with the referral to the immigration judge—as a

¹ Under the VWP, a qualifying visitor must also execute certain immigration forms, present a passport from a qualifying country, and possess a round-trip ticket. *Bradley*, 603 F.3d at 238 (citing 8 U.S.C. § 1187(a)).

final order of removal, subject to § 1252(a)(1).”); *Shehu v. Att’y Gen. of U.S.*, 482 F.3d 652, 656 (3d Cir. 2007) (“We hold that a denial of a VWP applicant’s petition for asylum, withholding of removal, and relief under the CAT constitutes “a final order of removal” within the meaning of the statute, as the alien is entitled to no further process before deportation.”).

Here, Starzenski asks the Court to review the Final Administrative Order of Removal from April 24, 2025, arguing that his employment authorization document and pending asylum application granted him lawful status in the United States.² See Dkt No. 1, at 1-2. Starzenski is incorrect.

The Fifth Circuit has made clear that the “[r]eceipt of temporary benefits such as employment authorization or a temporary stay of removal does not render an otherwise illegal alien’s presence lawful.” *United States v. Orellana*, 405 F.3d 360, 370 (5th Cir. 2005); see also *United States v. Arrieta*, 862 F.3d 512, 515–16 (5th Cir. 2017) (finding that defendant who was granted a work authorization, temporary stay of removal, and authorization to hold a social security card and driver’s license did not have lawful status); *Guevara v. Holder*, 649 F.3d 1086, 1092 (9th Cir. 2011) (“There is nothing in case law, statutes, or administrative regulations which supports a finding that a grant of employment authorization (to an alien not previously admitted) is the equivalent to being admitted.”).

² As noted above, the asylum application is no longer pending.

Accordingly, Starzenski's employment authorization document and application for asylum did not confer any lawful status. But even if they would have granted lawful status, both § 1187(b) and the REAL ID Act prevent the Court from reviewing Starzenski's removal order.

When Starzenski entered the United States as a nonimmigrant under the VWP on July 5, 2024, "he waived his rights to anything but an application for asylum." *Novak v. Dep't of Homeland Sec.*, No. CV-18-01330-PHX-RCC (BGM), 2019 WL 4372347, at *5 (D. Ariz. Aug. 9, 2019); see also *Nose v. Att'y Gen. of U.S.*, 993 F.2d 75, 80 (5th Cir. 1993) (indicating that § 1187(b) unambiguously states that a VWPP-alien may only apply for asylum relief as a means of contesting deportation); *Kim v. Obama*, No. EP-12-CV-173-PRM, 2012 WL 10862140, at *2 (W.D. Tex. July 10, 2012) (finding petitioner ineligible for a bond redetermination because he "entered the United States under the VWP" and "waived all statutory rights to contest his deportation, except on the basis of asylum"). As set forth above, Starzenski's asylum proceedings concluded on October 17, 2025, when he failed to appeal the immigration judge's denial of his asylum application. See Ex. A. Thus, under 8 U.S.C. § 1187, Starzenski has already received all the relief to which he is presently entitled. See *Nose*, 993 F.2d at 80 (concluding that besides asylum relief, § 1187(b) forbids *Nose* from applying for other forms of relief from deportation); *Vargas v. U.S. Dep't of Homeland Sec.*, No. 1:17-cv-00356, 2017 WL 962420, at *2 (W.D. La. Mar. 10,

2017) (“[T]his Court does not have jurisdiction to consider Vargas’s challenge to her removal order concerning her admission pursuant to the Visa Waiver Program.”).

Further, under the REAL ID Act, “a petition for review filed with an appropriate court of appeals. . . shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this [Act].” 8 U.S.C. § 1252(a)(5).³ “The REAL ID Act stripped the district courts of jurisdiction over § 2241 petitions attacking removal orders.” *Castillo-Perales v. Holder*, No. 10-40200, 2011 WL 72190, at *1 (5th Cir. Jan. 6, 2011); *Singh v. Att’y Gen.*, No. 5:14-cv-41-DCB-MTP, 2014 WL 2805091, at *3 (S.D. Miss. June 20, 2014) (finding the court was precluded from considering the petitioner’s claims challenging his removal order and the order of the immigration judge denying his motion for bond). Therefore, this Court lacks jurisdiction to consider Starzenski’s challenge of his removal order.

B. Starzenski’s request for release is not ripe for review.

Starzenski requests the Court to order his release from ICE custody. *See* Dkt. No. 1, at 2. This request is not ripe for review.

The statute applicable to the detention of aliens under final orders of deportation is 8 U.S.C. § 1231(a). It provides that the Attorney General “shall detain the alien” during

³ Any petition for review of the immigration judge’s Order would also be subject to dismissal for lack of exhaustion because Starzenski failed to appeal the denial of his asylum application to the BIA. *See* 8 U.S.C. § 1252(d)(1); *Amaya-Artunduago v. U.S. Att’y Gen.*, 463 F.3d 1247, 1250 (11th Cir. 2006) (indicating the Court lacks jurisdiction to consider claim that was not presented to the BIA).

the “removal period.” 8 U.S.C. § 1231(a)(2)(A); see *D’Ambrosio v. McDonald*, 793 F. Supp. 3d 271, 275 (D. Mass. 2025) (noting the petitioner was subject to mandatory detention during the removal period); *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070-JSC, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025) (“During the removal period, detention is mandatory.”); *Texas v. United States*, 555 F. Supp. 3d 351, 391 (S.D. Tex. 2021) (“Section 1231(a)(2) requires DHS to detain all aliens with final orders of removal ‘during the removal period.’”). The removal period is the 90-day period beginning on the latest of: (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”; or (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). Post-removal-period detention is limited “to a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court, in *Zadvydas*, recognized six months as a “presumptively reasonable” period of detention for alien detainees following a final order of removal. *Id.* at 701.

Here, Starzenski’s removal order became administratively final on October 17, 2025. See Ex. A; see also *Khalilova v. Smith*, No. 25-CV-2140-JLS-DDL, 2025 WL 3089522, at *3-4 (S.D. Cal. Nov. 5, 2025) (finding the petitioner’s removal order became administratively final when the immigration judge entered an order denying asylum).

Accordingly, neither Starzenski's 90-day mandatory detention period under 8 U.S.C. § 1231(a)(2)(A), nor the six-month period of presumptively reasonable post-removal detention have expired. His petition is premature. *See Khalilova v. Smith*, No. 25-CV-2140-JLS-DDL, 2025 WL 3089522, at *3-4 (S.D. Cal. Nov. 5, 2025) (finding petitioner's claim was not ripe for review where she filed her habeas petition less than six months after the immigration judge's order of removal and granting of withholding of removal); *see also Erumevwa v. Kelly*, No. CV H-17-1937, 2017 WL 6060672, at *4 (S.D. Tex. Dec. 6, 2017) ("Erumevwa has been detained ... approximately twelve months. Based upon the short duration of his detention, the fact that there is no indication of irregularity in the manner and timeliness of ICE's removal proceedings, and the fact that the current delay is due to Petitioner's own appeal, the court concludes that Petitioner's continued detention during removal proceedings is not unreasonable."). Therefore, Starzenski's request for release should be denied.

IV. CONCLUSION

For the reasons set forth above, the Court should deny and dismiss Petitioner Patrick Starzenski's Petition for Writ of Habeas Corpus.

Respectfully submitted,

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Dated: December 1, 2025

CERTIFICATE OF SERVICE

I, Jessica Bourne Williams, Assistant U.S. Attorney, hereby certify that, on this day, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I further certify that, on this day, I caused a true copy of the foregoing document to be mailed *via* United States Postal Service, postage prepaid, to the *pro se* petitioner at the following address:

Pro Se Petitioner

Patrick Starzenski



Adams County Correctional Center

20 Hobo Folk Road

Natchez, MS 39120

December 1, 2025

/s/ Jessica Bourne Williams

JESSICA BOURNE WILLIAMS

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