

United States District Court
Western District of Texas
San Antonio Division

Nad Ali Ibrahimi,
Petitioner,

v.

No. 5:25-CV-00768-XR

Pam Bondi, in her official capacity as
Secretary, U.S. Department of
Justice, *et al*,
Respondents.

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

Respondents timely submit this response per this Court's Order dated July 10, 2025, directing service and ordering a response within sixty days of service. *See* ECF Nos. 3; 5 (confirming CMRRR delivery on July 14, 2025). In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Ibrahimi ("Petitioner"), *pro se*, seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Despite his allegation that there is "no basis" for his continued detention, Petitioner is an applicant for admission with a final order removal dated May 30, 2024, which mandates his detention. *See* ECF No. 1 ¶ 6; Ex. A (ERO Declaration) ¶¶ 4, 8; 8 U.S.C. §§ 1225(b); *see also* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner argues his continued detention

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. The Federal Respondents are lawfully detaining Petitioner on a mandatory basis and have direct authority under Title 8 over custody decisions in his case.

is baseless and violates his substantive and procedural rights under the Constitution's Fifth and Fourteenth Amendments. ECF No. 1 at 6. Finally, he claims he cannot be returned to Afghanistan, as there are no diplomatic ties between the United States and Afghanistan. *Id.* at 2. These arguments are insufficient reason to believe that removal is unlikely in the foreseeable future, which means the burden of proof does not shift to ICE to show the likelihood of removal. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills*, No. 20-60547, 2022 WL 1056099 at 1 (5th Cir. Apr. 8, 2022). Even if the burden has so shifted, Respondents can show that removal to Afghanistan or a third country is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native of Russia and citizen of Afghanistan. Exh. A (ERO Declaration) ¶ 2. On February 15, 2023, Petitioner entered the United States, without inspection, near Eagle Pass, Texas. *Id.* at ¶ 4. On February 17, 2023, DHS issued Petitioner a Notice to Appear (NTA) alleging he is inadmissible to the United States as an alien present without admission or parole under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* at ¶ 8. On February 15, 2023, Petitioner was charged in the U.S. District Court, Western District of Texas, Del Rio Division, with 19 U.S.C. § 1459 and on November 7, 2023, sentenced² to eight months imprisonment. Exh. A. at ¶ 5–6.

On March 27, 2024, an immigration judge ordered Petitioner removed from the United States. *Id.* at ¶ 9. On May 30, 2024, the Board of Immigration Appeals (Board) summarily dismissed Petitioner's untimely³ filed appeal. *See id.* at ¶ 10–11. On August 5, 2024, ICE's

² Petitioner claims he has no criminal history. ECF No. 1 at 2.

³ Petitioner filed his appeal with the Board on May 13, 2024, more than 30 days after the entry of the removal order. Ex. A at ¶ 8. The immigration judge's removal order became final upon dismissal of the appeal by the Board. 8 C.F.R. §§ 241.1; 1241.1(a).

headquarters Removals and International Operations (HQ-RIO) determined Petitioner's Russian passport contained insufficient information to repatriate him to Russia. Exh. A at ¶ 12. On August 26, 2024, ICE served Petitioner with a Form I-229A, Warning for Failure to Depart. *Id.* at ¶ 13. On September 30, 2024, ICE served on Petitioner the 90-day Post Order Custody Review (POCR). *Id.* at ¶ 14. ICE determined to continue detention in the exercise of discretion pending removal. Exh. A at ¶ 14.

On February 3, 2025, ICE HQ-RIO submitted a travel document request packet to the Government of Afghanistan. *Id.* at ¶ 15. On March 24, 2025, ICE was notified Afghanistan will not issue a travel document without a physical passport. *Id.* at ¶ 16. ICE submitted a Form I-269, Certificate of Identity, to facilitate issues of Petitioner's travel document. Exh. A at ¶ 16.

On July 3, 2025, ICE submitted Form I-241, Request for Acceptance of Alien, to the governments of Mexico, Panama and Costa Rica. *Id.* at ¶ 17. Those countries declined to accept Petitioner. *Id.* at ¶ 17.

On July 18, 2025, while waiting for Afghanistan to issue Petitioner's travel document, ICE initiated, as an alternative option, efforts to remove Petitioner to Brazil. Exh. A at ¶ 18. On July 23, 2025, ICE conducted a 270-day POCR on Petitioner. *Id.* at ¶ 19. On August 4, 2025, ICE served Petitioner the decision to continue detention, informing him he will remain detained due to a significant likelihood that removal would occur in the reasonable future. *Id.* at ¶ 20. As of September 12, 2025, ICE is pending a response from Afghanistan and Brazil and has not received an indication that either will refuse to issue a travel document for Petitioner. *See* Exh. A at ¶ 21.

On June 30, 2025, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, arguing his detention is baseless under the Constitution's Fifth and Fourteenth Amendment. ECF No. 1 at 6. He seeks release from ICE custody and argues he cannot be removed to

Afghanistan because there are no diplomatic ties. *Id.* at 2; 7. ICE's FY2024 annual report documents 132 Afghanistan nationals were removed from the United States, the highest number of removals in the last past five years.

See <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last accessed September 12, 2025). In FY2025, first quarter, 60 Afghanistan nationals were removed. See ICE Enforcement and Removal Operations Statistics | ICE (filtered by nationality and last accessed September 12, 2025)

II. Petitioner Is Detained Until Removal on a Mandatory Basis Under 8 U.S.C. § 1225(b).

This petition should be denied. Petitioner is lawfully detained until removal as an applicant for admission. 8 U.S.C. § 1225(b)(2). While there has been a noticeable change in the interpretation of the detention authority governing applicants for admission who are placed into “full” removal proceedings rather than expedited, there is no longer any doubt as to which statute governs the detention of aliens present in the United States without admission or parole. On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision finding that aliens present in the United States without having been admitted or paroled, like this Petitioner, are subject to mandatory detention under § 1225(b)(2) as applicants for admission until removed. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.” *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Section 1225 governs inspection, the initial step in this process, *id.*, stating that all alien “applicants for admission . . . shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3). The statute—in a provision entitled “ALIENS TREATED AS APPLICANTS FOR ADMISSION”—dictates who “shall be deemed for purposes of this chapter an applicant for admission,” defining that term to encompass *both* an alien “present in the United States who has

not been admitted *or* [one] who arrives in the United States” *Id.* § 1225(a)(1) (emphasis added).

Paragraph (b) of § 1225 governs the inspection procedures applicable to all applicants for admission. They “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to those “arriving in the United States” and “certain other”⁴ aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.* § 1225(b)(1)(A)(i), (iii). Aliens falling under this subsection are generally subject to expedited removal proceedings “without further hearing or review.” *See id.* § 1225(b)(1)(A)(i). But where the applicant “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer him for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An applicant “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is “found not to have such a fear,” he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV). *See also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (2020).

Section 1225(b)(2) is “broader” than (b)(1), “serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, “if the examining immigration officer determines that the alien

⁴ The “certain other aliens” referred to are addressed in § 1225(b)(1)(A)(iii), which gives the Attorney General sole discretion to apply (b)(1)’s expedited procedures to an alien who “has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility,” subject to an exception inapplicable here. The statute therefore explicitly confirms application of its inspection procedures for those already in the country, including for a period of years.

seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299). DHS retains sole discretionary authority to temporarily release on parole “any alien applying for admission” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

Petitioner cannot dispute that he is deemed an “applicant for admission” under § 1225(a)(1). *First*, consider the plain text. Statutory language “is known by the company it keeps.” *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). “Seeking admission” and “appl[ying] for admission,” in this context, are plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all aliens “who are applicants for admission or otherwise seeking admission” to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word “or” here “introduce[s] an appositive—a word or phrase that is synonymous with what precedes it (‘Vienna or Wien,’ ‘Batman or the Caped Crusader’).” *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person “seeking admission” is just another way of saying someone is applying for admission—that is, he is an “applicant for admission”—which includes both those individuals arriving in the United States and those already present without admission. *See* 8 U.S.C. § 1225(a)(1); *Lemus-Losa*, 25 I. & N. Dec. at 743.

Congress used the simple phrase “arriving alien” throughout § 1225. *E.g.*, 8 U.S.C. § 1225(a)(2), (b)(1), (c), (d)(2). That phrase plainly distinguishes an alien presently or recently “arriving” in the United States from other “applicants for admission” who, like Petitioner, have been present in the United States without having been admitted. But Congress *did not* use the word “arriving” to limit the scope of § 1225(b)(2)’s mandatory-detention provision. If Congress meant to limit § 1225(b)(2)’s scope to “arriving” aliens, it could have simply used that phrase, like it did in § 1225(b)(1). Instead, Congress used the phrase “alien seeking admission” as a plain synonym for “applicant for admission.”

Second, consider the statutory structure of § 1225(b). To be sure, § 1225(b)(1) applies to applicants for admission who are “arriving in the United States” (or those who have been present for less than two years) and provides for expedited removal proceedings. It also contains its own mandatory-detention provision applicable during those expedited proceedings. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Section 1225(b)(2), by contrast, applies to “other” aliens—“in the case of an alien who is an applicant for admission”—those *not* subject to expedited removal under (b)(1). They too must “be detained” but instead for a more typical removal “proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). Properly understood, § 1225(b) applies to two groups of “applicants for admission”: (b)(1) applies to “arriving” or recently arrived aliens who must be detained pending *expedited* removal proceedings; and (b)(2) is a “catchall provision that applies to all applicants for admission not covered by § 1225(b)(1),” *Jennings*, 583 U.S. at 287, who, like Petitioner, must be “detained for a [*non-expedited*] proceeding under section 1229a of this title,” 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting (b)(2) to “arriving” aliens would render it redundant and without any effect.

And *third*, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is narrower, applying only to aliens who are "applicants for admission,"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) ("§ 1225(a) treats a specific class of aliens as 'applicants for admission,' and § 1225(b) mandates detention of these aliens throughout their removal proceedings. Section 1226(a), by contrast, states in general terms that detention of aliens pending removal is discretionary unless the alien is a criminal alien."). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs until removal.

When the plain text of a statute is clear, that meaning is controlling, and courts "need not examine legislative history." *Doe v. Dep't of Veterans Affs. of U.S.*, 519 F.3d 456, 461 (8th Cir. 2008). Indeed, "in interpreting a statute a court should always turn first to one, cardinal canon before all others." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Supreme Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citations omitted). Thus, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* (citing *Rubin v. United States*, 449 U.S. 424 at 430 (1981)).

Even if legislative history were relevant, nothing within it “refutes the plain language” of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat aliens arriving at ports of entry worse than those who successfully entered the nation’s interior without inspection. Congress passed IIRIRA to correct “an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by*, *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It “intended to replace certain aspects of the [then-]current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). Any other interpretation would put aliens like Petitioner who crossed the border unlawfully in a better position than those who present themselves for inspection at a port of entry. *Id.* Aliens who presented at ports of entry have always been subject to mandatory detention under § 1225, while those who successfully evaded detection and crossed without inspection have been until recently interpreted to be eligible for bond under § 1226(a).

Given the updates in the law, Petitioner’s current detention is governed, still, by § 1225(b) until he is successfully removed from the United States. He is not entitled to a bond hearing, and the Supreme Court has already upheld the constitutionality of this mandatory detention provision in both *Jennings* and *Thuraissigiam*. Those cases, rather than the *Zadvydas* decision, control the constitutional analysis here. *See Thuraissigiam*, 591 U.S. at 140. As the Supreme Court noted, aliens detained under § 1225(b) are afforded only the process that Congress provided them by

statute. *Id.* Congress intended to mandate the detention of aliens like Petitioner until removal. To the extent Petitioner was owed any process during this time, he has already exhausted the administrative remedies available to him under the statute. His detention until removal comports with due process.

III. Alternatively, Detention Is Lawful Under 8 U.S.C. §1231(a)(6).

Federal Respondents acknowledge that this interpretation of detention authority has shifted from prior interpretations of aliens similarly situated to this Petitioner. Even under the prior interpretation, Petitioner's detention is lawful. The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas*, 533 U.S. at 701. Under §1231, the removal period can be extended in at least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

a. There Is No Good Reason to Believe That Removal is Unlikely in the

Reasonably Foreseeable Future.

Petitioner cannot show “good reason” to believe that removal to Afghanistan is unlikely in the reasonably foreseeable future. In *Zadvydas*, the U.S. Supreme Court held that § 1231(a)(6) “read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States” but “does not permit indefinite detention.” 533 U.S. at 689. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute.” *Id.* at 699. The Court designated six months as a presumptively reasonable period of post-order detention but made clear that the presumption “does not mean that every alien not removed must be released after six months.” *Id.* at 701.

Once the alien establishes that he has been in post-order custody for more than six months at the time the habeas petition is filed, the alien must provide a “good reason” to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006); *Gonzalez v. Gills*, No. 20–60547, 2022 WL 1056099 at *1 (5th Cir. Apr. 8, 2022). Unless the alien establishes the requisite “good reason,” the burden will not shift to the government to prove otherwise. *Id.*

The “reasonably foreseeable future” is not a static concept; it is fluid and country-specific, depending in large part on country conditions and diplomatic relations. *Ali v. Johnson*, No. 3:21–CV–00050–M, 2021 WL 4897659 at *3 (N.D. Tex. Sept. 24, 2021). Additionally, a lack of visible progress in the removal process does not satisfy the petitioner’s burden of showing that there is no significant likelihood of removal. *Id.* at *2 (collecting cases); *see also Idowu v. Ridge*, No. 3:03–CV–1293–R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003). Conclusory allegations are also insufficient to meet the alien’s burden of proof. *Nagib v. Gonzales*, No. 3:06–CV–0294–G, 2006

WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-CV-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)). One court explained:

To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that “the circumstances of his status” or the existence of “particular individual barriers to his repatriation” to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4 (citation omitted).

Petitioner’s removal order has been final since May 30, 2024. Exh. A at ¶ 9; *see* 8 C.F.R. § 241.1; 1241.1(a). Petitioner, nonetheless, urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and the Fourteenth Amendment, because of a lack of diplomatic ties with Afghanistan and the fact that he has no criminal history. ECF No. 1 at 2, 6. Beyond these conclusory allegations, Petitioner fails to allege any reason, much less a “good reason,” to believe that there is no significant likelihood of removal in the foreseeable future. These claims are not only false, but they are also wholly insufficient under *Zadvydas*. *See Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also Andrade*, 459 F.3d at 543–44; *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180, at *3 (N.D. Tex. Dec. 3, 2014).

As such, even applying the prior interpretation of the detention authority at issue here, Petitioner cannot meet his burden to establish no significant likelihood of removal in the reasonably foreseeable future. *See Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) (denying habeas relief where government was taking

affirmative steps to obtain Vietnamese travel documents). The burden of proof, therefore, does not shift to Respondents to prove that removal is likely.

Even if the burden did shift to ICE in this analysis, ICE could show that removal is likely in the foreseeable future. Publicly available statistics show that sixty (60) Afghanistan nationals were successfully removed in FY2025 (current as of January 2025). *See ICE Enforcement and Removal Operations Statistics | ICE supra*. Prior to FY2025, 127 Afghanistan nationals were successfully removed in FY2024, showing an overall increase in successful removals to Afghanistan since FY 2022. *See <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> supra*. Specific to Petitioner, ICE submitted a travel document request to the government of Afghanistan who notified ICE Petitioner must have a physical passport before issuance of a travel document. *See* Exh. A at ¶ 15–16. In March 2025, ICE submitted a Form I-269, Certificate of Identity to assist in obtaining the Afghanistan travel document. This communication does support there are some diplomatic relations between Afghanistan and the United States, contrary to the Petitioner’s conclusory argument. *Compare* Exh. A at ¶ 15–16 with ECF No. 1 at 2.

In other words, until Afghanistan refuses to issue a travel document to Petitioner, there is no reason to believe that Afghanistan is unlikely to accept him for repatriation. It has just not happened yet. Rather than delay while waiting for a response from Afghanistan, however, ERO has taken affirmative steps to secure acceptance from third countries. Although ERO has received refusals from certain third countries for this Petitioner, other third country requests remain pending.

Once a travel document is issued, either to Afghanistan or a third country, ERO sees no impediment to executing this final order of removal. As such, removal is likely in the reasonably

foreseeable future, and his continued detention is lawful. Petitioner's substantive due process claim fails and should be denied.

b. ICE Has Afforded Petitioner Procedural Due Process.

To establish a procedural due process violation, Petitioner must show that he was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit has not provided guidance to lower courts, post-*Arteaga-Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231, but the Fourth Circuit, post-*Arteaga-Martinez*, used the *Zadvydas* framework to analyze a post-order-custody alien's due process claims. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is required beyond the constitutional analysis outlined in *Jennings* and *Thuraiissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

Additionally, the Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

As an applicant for admission, Petitioner has received the maximum process afforded by Congress under the statutes, to include placement in “full” removal proceedings before an immigration judge. Such process included notice and an opportunity to be heard, including judicial review through the appellate court. Even after that process ran its course, ICE has conducted custody reviews of his detention, most recently in August 2025. Exh. A at ¶¶ 14, 19, 20. This process addresses constitutional concerns that were identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. This process comports with Petitioner’s limited due process rights as an applicant for admission subject to a final order of removal. Petitioner’s procedural due process claim, like his substantive one, should be denied.

IV. Conclusion

Petitioner’s continued detention is mandatory under 8 U.S.C. § 1225(b)(2) until his removal order is executed, and he has not shown that it has become unconstitutional. In the alternative, even under § 1231(a)(6), detention here would be considered lawful. Petitioner fails to show good reason to believe that there is no significant likelihood of removal to Afghanistan in the reasonably foreseeable future. As such, the burden has not shifted to ICE to show the opposite. Even if the burden had shifted, ICE could establish that removal is foreseeable. Additionally, ICE has afforded Petitioner procedural due process through his mandatory detention, including post-order custody reviews. Petitioner’s continued detention, therefore, is comports with the law and with due process. It is not unreasonably prolonged, nor is it in violation of the INA or the Constitution. Accordingly, the Court should deny this petition.

Respectfully submitted,

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Certificate of Service

I certify that on September 12, 2025, I mailed a copy of Response in Opposition to Petition for Writ of Habeas Corpus to Petitioner (*pro se*) at the following address:

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