United States District Court
Western District of Texas
San Antonio Division

Jehad Alnajjar
Petitioner,

v.

Kristi Noem, Secretary of United States Department of Homeland Security et. al.,
Respondents.

No. 5:25-cv-000822-JKP

Response to Petitioner's Writ of Habeas Corpus

Federal[1] Respondents timely submit this response per this Court's Order dated July 24, 2025, directing service and ordering a response within 30 days of the order. *See* ECF Nos. 4, 5, and 6.[2] In his petition, Mr. Jehad Alnajjar ("Petitioner") challenges his continued detention, claiming that he is stateless, and that as a result, his removal from the United States is not likely. ECF No. 1 at 1-2. Petitioner lodges only one substantive ground for relief: that Respondents are violating the Due Process Clause by continuing to detain him without a bond hearing as a "stateless" person. *Id.* ¶¶ 18–22.

In his Prayer for Relief, Petitioner seeks immediate release from custody under reasonable conditions of supervision, or in the alternative, a "constitutionally adequate" custody hearing where the burden is on Respondents to justify continued detention. *Id.* at 8. Petitioner also requests an order prohibiting his removal "to any country" and a declaration that his continued detention violates both the Immigration and Nationality Act ("INA") and the Due Process Clause. *Id.*

---

[1] The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action. Federal Respondents, however, have detention authority over aliens detained under Title 8 of the U.S. Code.

[2] Federal Respondents acknowledge that the U.S. Attorney's Office received service by certified mail on July 28, 2025.

Petitioner is not entitled to any of the relief he seeks. This case is squarely controlled by the U.S. Supreme Court's 2020 decision in *Dep't. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140-41 (2020), which held that aliens detained un 8 U.S.C. § 1225(b) shortly after unlawful entry, even if subsequently released on parole, lack any due process rights beyond what Congress permitted INA. The *Zadvydas* decision's six-month presumptively reasonable period of post-removal-order detention is inapplicable here, because *Zadvydas* interpreted the detention authority of a different statute, 8 U.S.C. § 1231, not the statute under which Petitioner is detained, § 1225(b). *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Petitioner is mandatorily detained until he is removed under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). He has a final order of expedited removal and two affirmed negative credible fear findings. *See* ECF Nos. 1 ¶ 20; 2-1 at 6–7 (orders affirming negative credible fear review). At the time he filed this petition, Petitioner had been detained only thirty days following two years of supervised release. *See* ECF No. 1 ¶ 13. Petitioner's continued detention without a bond hearing is mandated by statute until removal; it is not unreasonable, indefinite, or unconstitutionally prolonged. This petition should be denied.

I. Facts and Relevant Background

Petitioner claims to be "ethnically Palestinian" and stateless. ECF No. 1 ¶ 10. He claims birth in Saudi Arabia but avers that no country has ever recognized his citizenship. *Id.* Petitioner concedes that U.S. immigration officials detained him upon his unlawful entry into the United States in 2022 and charged him criminally with violating 19 U.S.C. § 1459. *Id.* He pled guilty and was sentenced to eight months imprisonment with one year of supervised release. *Id.*

Upon release from criminal custody, Petitioner admits that he was immediately taken into ICE custody and given a credible fear interview with an asylum officer. *Id.* ¶ 11. The asylum

officer found that Petitioner had no credible fear of returning to Saudi Arabia. *Id.* Petitioner requested and received review by an Immigration Judge of that decision, and the court affirmed the negative credible fear finding. *Id.* Petitioner repeated the process a second time regarding a fear claim to Israel. *Id.* The court similarly affirmed the negative credible fear finding and returned the case to DHS to execute the removal order. *Id.*; *see also* ECF No. 2-1 at 6–7. ICE subsequently released Petitioner from custody in the exercise of discretion via an Order of Supervision ("OSUP") in July 2023. ECF No. 2-1 at 1–5. In June 2025, ICE revoked the OSUP and brought Petitioner back into custody to execute his expedited removal order. ECF No. 1 ¶ 13.

Despite his valid expedited removal order, Petitioner claims that his detention is unlawful because he is stateless and is being impermissibly held without access to a bond hearing. *See* ECF No. 1 at 2. He further claims that he is protected from removal under Deferred Enforced Departure, but he concedes that protection ended August 13, 2025. *See id.* ¶¶ 17, 19; *see also* Deferred Enforced Departure | USCIS (last accessed August 25, 2025).

II. Expedited Removal under 8 U.S.C. § 1225(b)

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 otherwise claims 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 Thuraissigiam*, 591

U.S. 140-41. 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).

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). Petitioner here makes no showing that he is lawfully admitted for permanent residence.

III. This Court Lacks Jurisdiction to Review Claims Related to the Validity or the Execution of an Order of Removal.

Petitioner bears the burden of establishing this Court's jurisdiction to hear these claims for relief. 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); *see also, e.g.,* 8 U.S.C. §§ 1252(g); 1252(a)(2)(B); 1226(e). The government's detention decisions are not subject to review. 8 U.S.C. § 1226(e). No court, even in habeas review, may set aside any decision regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole. *Id.* § 1252(a)(5). Additionally, "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. § 1252(g). Section 1252(g) applies "to three discrete actions that the Attorney General may take:

[the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

The decision to detain Petitioner is intertwined with the decision to execute his removal order. *See, e.g., Zuniga v. Bondi*, No. 24-60368, 2025 WL 958259 at *1 (5th Cir. Mar. 31, 2025) (citing *Thuraissigiam*). Additionally, there is no district court jurisdiction to review a removal order or to stay an order of removal once it becomes final. *Westley v. Harper*, No. 25–229, 2025 WL 592788 at *4–6 (E.D. La. Feb. 24, 2025) (denying preliminary injunction and dismissing case for lack of jurisdiction where district court lacked jurisdiction to stay removal). As such, this habeas petition should be denied for lack of jurisdiction. *See Thuraissigiam*, 591 U.S. 140-41.

IV. Petitioner's Mandatory Detention under 8 U.S.C. § 1225(b) Comports with Due Process.

Detention during removal proceedings is "a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). As an applicant for admission subject to an expedited removal order, detention is mandated by statute, absent the issuance of humanitarian parole under 8 U.S.C. § 1182(d)(5).[3] *Jennings v. Rodriguez*, 583 U.S. 281, 289, 306 (2018). Release on parole is both discretionary and temporary. *Id.* at 288. The government's discretionary detention decisions are not subject to review. 8 U.S.C. § 1226(e). No court, even in habeas review, may set aside any decision regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole. *Id.*

In other words, an alien subject to expedited removal proceedings is not entitled to a bond

[3] Based on the paperwork attached to the petition, ICE released Petitioner on an OSUP, as opposed to a humanitarian parole. ECF No. 2-1 at 1–5. Regardless of whether the OSUP paperwork was properly issued, ICE's decision to release Petitioner from custody despite his mandatory detention status was nonetheless discretionary, revocable, and not subject to judicial review.

hearing before an immigration judge. *See Thuraissigiam,* 591 U.S. at 140 (arriving aliens have "only those rights regarding admission that Congress has provided by statute"). As an alien subject to expedited removal, detention is authorized until the alien is either physically removed from the United States, released from custody in the exercise of ICE's discretion, or granted relief from removal that mandates their release. *Id.* at 139 (finding that "aliens who arrive at ports of entry–even those paroled elsewhere in the country for years pending removal–are 'treated' for due process purposes 'as if stopped at the border'").

Petitioner is due only minimal process in expedited removal proceedings. *See Baltazar v. Barrientos*, No. 24–CV–00005, 2024 WL 5455686 at *5 (S.D. Tex. Dec. 18, 2024) (collecting cases). Indeed, an "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983). 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. Petitioner has been in DHS custody for less than 90 days following a two-year discretionary release from custody. Petitioner claims no lawful status that would entitle him to release from custody. He took full advantage of the opportunity to express his fear claims multiple times before multiple agencies, starting from his initial claim to DHS in ICE detention, followed by his credible fear interview with the asylum officer, and ending with his negative credible fear review hearing in immigration court. The statute does not afford Petitioner a custody review hearing before a neutral arbiter, and the constitutionality of continued detention under § 1225(b) until physical removal has been upheld by the Supreme Court. *Thuraissigiam,* 591 U.S. at 140.

To the extent Petitioner challenges adequate procedural due process related to the revocation of his supervised release, his claim fails as a matter of law. The regulations governing OSUP revocation apply only to aliens detained under 8 U.S.C. § 1231, not to aliens subject to an expedited order of removal under 8 U.S.C. § 1225(b). *See, e.g.*, 8 C.F.R. § 241.13(b)(3)(i). In any event, 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). Because the expedited removal statute affords no right to any individualized review of a request for release from custody, any alleged procedural due process violations with respect to the revocation of his supervised release lack merit.

CONCLUSION

The Court should deny this habeas petition, as Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b), and his detention comports with the limited due process he is owed by statute. Any other claims alleged in this Petition are either expressly denied, are not cognizable in habeas, or should be dismissed for lack of jurisdiction.

Respectfully submitted,

Justin R. Simmons
Acting United States Attorney

By: */s/ Lacy L. McAndrew*

Lacy L. McAndrew
Assistant United States Attorney
Florida Bar No. 45507
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (phone)
(210) 384-7312 (fax)
lacy.mcandrew@usdoj.gov