

ALINA HABBA
Acting United States Attorney
Special Attorney
ALEX SILAGI
FRANCES BAJADA
Assistant U.S. Attorneys
970 Broad Street
Newark, NJ 07102
Attorneys for Respondents

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IMRAN KHAN,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Respondents.

HON. JAMEL K. SEMPER, U.S.D.J.

Civil Action No. 25-14246 (JKS)

**RESPONDENTS' ANSWER TO FIRST AMENDED VERIFIED PETITION
FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

On the Brief:

Alex Silagi
Frances Bajada
Assistant U.S. Attorneys

Table of Contents

Preliminary Statement..... 1
Background 2
 I. Petitioner’s Immigration History 2
 II. Habeas Action and Procedural History 4
 III. Relevant Statutory and Regulatory Backdrop 5
 A. Removal and Detention under 8 U.S.C. § 1231(a)..... 5
Legal Argument 6
 I. Petitioner’s Removal Is Reasonably Foreseeable..... 6
 II. The Court Lacks Jurisdiction to Stay Petitioner’s Removal Order 9
Conclusion 11

Table of Authorities

Cases

Alfaro-Mejia v. Holder,
 No. 13-795, 2013 WL 599876 (C.D. Cal. Feb. 15, 2013)..... 9

Arce v. Holder,
 No. 12-4063, 2012 WL 3276994 (N.D.Cal.2012) 9

Barenboy v. Atty. Gen.,
 150 F. App’x 258 (3d Cir. 2005) 7

Castellanos v. Holder,
 337 F. App’x 263 (3d Cir. 2009) 7, 8

Ivan A. v. Anderson,
 No. 20-2796 (KM), 2021 WL 858608 (D.N.J. Mar. 8, 2021)..... 10

James v. Lowe,
 No. 23-1862, 2024 WL 1837216 (M.D. Pa. Apr. 26, 2024) 7

Johnson v. Arteaga-Martinez,
 596 U.S. 573 (2022) 6

Johnson v. Guzman Chavez,
 594 U.S. 523 (2021) 5

M’Bagoyi v. Barr,
 423 F. Supp. 3d 99 (M.D. Pa. 2019)..... 9

Mejia–Espinoza v. Mukasey,
 No. 08-7984, 2009 WL 235625 (C.D. Cal.2009)..... 9

Ramos Meza v. Nielsen,
 No. 18-660, 2018 WL 11450717 (D. Nev. Apr. 20, 2018) 10

Rene v DHS,
 06-336 (JAG), 2007 WL 708905 (D.N.J. Mar. 5, 2007) 7

Sheiko v. Giles,
 No. 19-1859, 2019 WL 7166058 (C.D. Cal. Oct. 23, 2019)..... 10

Singh v. Gonzalez,
 499 F.3d 969 (9th Cir. 2007) 9

Soberanes v. Comfort,
388 F.3d 1305 (10th Cir. 2004) 8

Zadvydas v. Davis,
533 U.S. 678 (2001) passim

Statutes

8 U.S.C. § 1182..... 5

8 U.S.C. § 1231(a) 5

8 U.S.C. § 1231(a)(1) 5

8 U.S.C. § 1231(a)(1)(B) 5

8 U.S.C. § 1231(a)(1)(C) 5

8 U.S.C. § 1227(a)(1)(C)(i) 2

8 U.S.C. § 1231(a)(2) 5

8 U.S.C. § 1231(a)(3) 5

8 U.S.C. § 1231(a)(6) 3, 5, 6, 9

8 U.S.C. § 1252..... 1

28 U.S.C. § 2241..... 4

PRELIMINARY STATEMENT

Petitioner is subject to a final order of removal permitting his removal to his native country of Bangladesh. On July 3, 2025, U.S. Immigration and Customs Enforcement and Removal Operations (“ICE-ERO”) revoked his supervised release and arrested Petitioner to execute his removal order. Petitioner remains in detention while ICE-ERO continues efforts to remove him to Bangladesh.

Petitioner now brings this habeas action seeking immediate release. He argues that his detention is unconstitutionally prolonged under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Court should stay his removal until the Board of Immigration Appeals (“BIA”) issues a decision on a motion to reopen that he filed on July 18, 2025. The Court should dismiss the habeas action for two reasons.

First, Petitioner is lawfully detained while ICE-ERO is actively working to remove him to Bangladesh. On September 1, 2025, ICE-ERO requested that the Bangladesh embassy issue a travel document for Petitioner. The embassy issued a travel document for Petitioner in 2021. In juxtaposition, Petitioner offers no evidence that his removal is not reasonably foreseeable.

Second, the Court lacks jurisdiction to stay Petitioner’s removal pending a decision on his motion before the BIA, as that would be a direct challenge to his removal order prohibited by 8 U.S.C. § 1252. ICE-ERO may lawfully remove Petitioner notwithstanding his pending motion.

BACKGROUND

I. Petitioner's Immigration History

Petitioner is a native and citizen of Bangladesh who last entered the United States on July 18, 1999, pursuant to a non-immigrant student visa. Ex. A (NTA); Ex. C (Dec. 12, 2005 BIA Decision attaching Sep. 24, 2004 Oral Decision of IJ) at 3. On June 12, 2003, the U.S. Immigration and Naturalization Service served Petitioner a Notice to Appear charging him with being removable under 8 U.S.C. § 1227(a)(1)(C)(i), Immigration and Nationality Act (“INA”) § 237(a)(1)(C)(i), because he failed to comply with conditions of his non-immigrant student visa. NTA at 2-3.

On September 24, 2004, an Immigration Judge denied Petitioner's applications for withholding of removal and protection under the Convention Against Torture and granted his request to voluntarily depart the United States for Bangladesh. Ex. B, Sep. 24, 2004 Order of IJ; Dec. 12, 2005 BIA Decision attaching Sep. 24, 2004 Oral Decision of IJ at 9-10. The Immigration Judge ordered Petitioner to depart within 60 days and, if he did not depart, Petitioner was to be removed to Bangladesh. *Id.* at 10.

On December 12, 2005, the Board of Immigration Appeals (“BIA”) affirmed the Immigration Judge's September 24, 2004 order denying Petitioner's applications for withholding of removal and relief under the Convention Against Torture. Dec. 12, 2005 BIA Decision at 2. The BIA ordered Petitioner to voluntarily depart the United States within 60 days or be removed if he failed to depart. *Id.*

On February 16, 2007, the Third Circuit affirmed the BIA's December 12, 2005 decision denying Petitioner's applications for withholding of removal and protection

under the Convention Against Torture. Ex. D (Feb. 16, 2007 Third Circuit Decision). On July 18, 2025, Petitioner filed an Emergency Motion to Reopen and Emergency Stay of Removal with the BIA. ECF 4, Amended Petition (“Am. Pet.”), ¶ 5. On September 9, 2025, the U.S. Department of Homeland Security opposed the motion and stay, Ex. E (DHS’s Opposition to Respondent’s Motion to Reopen), which is pending before the BIA.

Petitioner does not dispute that he is subject to a final order of removal. *See generally*, Am. Pet. From September 25, 2008 through January 27, 2009, U.S. Immigration and Customs Enforcement (“ICE”) detained Petitioner pursuant to the final order of removal. Sep. 25, 2025 Declaration of Jose P. Ortez (“Ortez Decl.”) ¶¶ 6-8. After spending four months in custody pending execution of the final removal order, ICE released Petitioner subject to an order of supervision. *Id.* ¶ 8. On August 12, 2021, U.S. Immigration and Customs Enforcement and Removal Operations (“ICE-ERO”) received a travel document for Petitioner from the Embassy of the People’s Republic of Bangladesh. *Id.* ¶ 9.

On July 3, 2025, ICE-ERO served Petitioner with a Notice of Revocation of Release revoking his supervised release and re-arresting Petitioner pursuant to the final removal order under 8 U.S.C. § 1231(a)(6). *Id.* ¶ 10. Petitioner remains in immigration detention while ICE continues efforts to remove him to Bangladesh.¹ *Id.*

¹ Petitioner is currently detained at the Otero County Processing Center in Chaparral, New Mexico. Ortez Decl. ¶ 10. On September 12, 2025, ICE-ERO transferred Petitioner from the El Paso Camp East Montana Processing Center to the Otero County Processing Center to meet operational needs. *Id.*; ECF 10 (Sep. 18,

¶ 12. On September 1, 2025, ICE-ERO submitted a travel document request to the Embassy of the People’s Republic of Bangladesh. *Id.* ICE-ERO expects Bangladesh will issue a travel document for Petitioner. *Id.*

II. Habeas Action and Procedural History

On September 8, 2025, Petitioner filed this habeas action under 28 U.S.C. § 2241, challenging his present detention pursuant to the final removal order. Petitioner argues that his detention violates the Due Process Clause because it is unconstitutionally prolonged under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and because Petitioner is in the process of pursuing an emergency motion to reopen and stay his order of removal with the BIA, which he filed July 18, 2025. *See* Pet. ¶¶ 60-68. As to the latter, Petitioner claims he “has a protected due process interest in his ability to pursue motion practice before the BIA,” which he would be deprived of if removed. *Id.* ¶ 65. Petitioner relatedly claims that “detention and removal from the United States without allowing him to exhaust his options with the BIA—whether successful or not—will violate” unidentified provisions of “the INA and the applicable regulations.” *Id.* ¶ 67. As a result, through this habeas action, Petitioner seeks not only immediate release, but also a stay of his removal from the United States pending resolution of his newly-filed BIA appeal. *See id.* ¶ 6; *see also* Prayer For Relief, ¶ 1, 10. The Court ordered Respondents to show cause as to why the Petition should not be granted. ECF 8 (Sep. 10, 2025 Text Order).

2025 Letter from USAO). The ICE-ERO El Paso Field Office is responsible for both detention facilities. Ortez Decl. ¶ 10.

III. Relevant Statutory and Regulatory Backdrop

A. Removal and Detention under 8 U.S.C. § 1231(a)

Where, as here, an alien is subject to a final order of removal, there is a 90-day “removal period,” during which the government “shall” remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2).² There are at least three potential outcomes in the event the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories of aliens, including those “inadmissible” under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as the “post-removal-period.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

² The removal period begins on the latest of three possible dates:

- (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.
- (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).

The INA does not place an explicit time limit on how long detention during the “post-removal-period” can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only detain aliens in the post-removal-period for the time “reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). And the Supreme Court further clarified that a six-month period of detention is “presumptively reasonable.” *Id.* at 701. “After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

LEGAL ARGUMENT

I. Petitioner’s Removal Is Reasonably Foreseeable

In *Zadvydas*, the Supreme Court interpreted 8 U.S.C. § 1231(a)(6) to limit an alien’s detention beyond the period “reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689. The Court held that a detention for six months, pursuant to a final removal order, is “presumptively reasonable.” *Id.* Here, Petitioner was in post-final-order detention from September 25, 2008 through January 27, 2009, before being released on an order of supervision until July 3, 2025, when ICE revoked supervised release to effectuate his removal. Ortez Decl. ¶¶ 3-10.

Although Petitioner has been in post-final-order detention for a total period of just beyond six months, that “does not mean that [he] must be released. . . To the contrary, [he] may be held in confinement until it has been determined that there is

no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. And according to the Supreme Court, Petitioner bears the initial burden to demonstrate “good reason to believe” that is the case. *Id.* at 701.; see *Barenboy v. Atty. Gen.*, 150 F. App’x 258, 261 n.2 (3d Cir. 2005) (“Once the six-month period has passed, the burden is on the alien to provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” (quotation omitted)).

Here, Petitioner has failed to carry this initial burden. The Petition offers no “good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Petitioner fails to provide any explanation as to why he believes his removal is not reasonably foreseeable. See *Rene v DHS*, No. 06-336 (JAG), 2007 WL 708905, at *4 (D.N.J. Mar. 5, 2007) (“To carry his burden, Petitioner must present evidence beyond his own speculation.”); cf. *James v. Lowe*, No. 23-1862, 2024 WL 1837216, at *3 (M.D. Pa. Apr. 26, 2024) (rejecting “unsupported contentions” and speculation that “it could take ‘years’ for” removal).

And, his filing of an emergency motion with the BIA on July 18, 2025, does not undermine the conclusion that there is still a significant likelihood of removal in the reasonably foreseeable future. The Third Circuit has specifically held that removal remains “reasonably foreseeable” under *Zadvydas* even when the detention lacks a specific end date. See *Castellanos v. Holder*, 337 F. App’x 263 (3d Cir. 2009). In *Castellanos*, the petitioner’s removal order was reinstated, and his case was remanded to an immigration judge to conduct full withholding-of-removal

proceedings. *See id.* at 264-67. The Third Circuit upheld the district court’s rejection of the petitioner’s *Zadvydas* claim that his removal was no longer reasonably foreseeable (he had been detained for over six months) simply because the execution of his removal order was contingent on the resolution of a claim for humanitarian protection, the end date of which was unknown. *See id.* at 268 (“While Castellanos’ detention lacks a certain end date, the end is still reasonably foreseeable—completion of removal proceedings.”). The same conclusion should apply here.

As discussed above, the Supreme Court requires the alien to first make the initial showing that his removal is not significantly likely in the reasonably foreseeable future before ICE must “respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1310-11 (10th Cir. 2004) (stating “onus is on the alien to provide [] good reason to believe that there is no [such] likelihood’ before ‘the Government must respond with evidence sufficient to rebut that shown.’ (internal citation omitted)). Here, even if the Court were to conclude Petitioner has satisfied his burden, Respondents have rebutted that showing because the evidence establishes that there is a significant likelihood of Petitioner’s removal in the reasonably foreseeable future. Indeed, the Embassy of the People’s Republic of Bangladesh issued a travel document for Petitioner in August 2021, Ortez Decl. ¶ 9, and ICE-ERO anticipates that it will receive a travel document in response to its September 1, 2025 request, *id.* ¶¶ 12-13.

II. The Court Lacks Jurisdiction to Stay Petitioner's Removal Order

As discussed above, Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(6) and not unconstitutionally prolonged, notwithstanding Petitioner's filing of a motion for a stay of removal with the BIA. To the extent that Petitioner asks this Court to "assume jurisdiction" over that BIA appeal and issue a stay of removal, the Court should reject that request because it lacks jurisdiction to do so.

First, the Court lacks jurisdiction over habeas claims seeking to halt a removal order. *See, e.g., M'Bagoyi v. Barr*, 423 F. Supp. 3d 99, 106 (M.D. Pa. 2019) ("[T]o the extent that the petitioner seeks a stay of his removal until he exhausts his remedies with respect to his motion to reopen his immigration proceedings, that would be a direct challenge to his removal order and the court does not have jurisdiction over that aspect of the petitioner's filing under § 1252."); *Alfaro-Mejia v. Holder*, No. 13-795, 2013 WL 599876, at *2 (C.D. Cal. Feb. 15, 2013) (collecting cases).

Moreover, even if the Court had jurisdiction to hear his claim, it would fail because ICE may lawfully remove a noncitizen with a motion to reopen pending before the BIA. *See, e.g., Arce v. Holder*, No. 12-4063, 2012 WL 3276994, *2 (N.D. Cal. 2012) (dismissing for lack of jurisdiction a habeas petition seeking a stay of deportation pending the BIA's adjudication of a motion to reopen; distinguishing *Singh v. Gonzalez*, 499 F.3d 969 (9th Cir. 2007) because "a successful habeas petition would directly lead to a stay of execution of a pending order of deportation"); *Mejia-Espinoza v. Mukasey*, No. 08-7984, 2009 WL 235625, *3 and n. 2 (C.D. Cal. 2009) (holding that the district court lacked jurisdiction under the REAL ID Act where the

petitioners sought to enjoin the government from executing their removal orders while their motion to reopen was pending before the BIA because such relief would require the district court to review their final removal orders). *See also Ivan A. v. Anderson*, No. 20-2796 (KM), 2021 WL 858608, at *1 (D.N.J. Mar. 8, 2021) (reconsidering prior ruling and holding court lacks jurisdiction to issue stay pending appeal of motion before BIA); *Ramos Meza v. Nielsen*, No. 18-660, 2018 WL 11450717, at *1 (D. Nev. Apr. 20, 2018) (“Ramos Meza has not shown a likelihood of success on his claim that removing him before his motion to reopen is adjudicated would deprive him of due process.”).

These cases recognize that noncitizens may still litigate the motion to reopen, once the BIA decides it, and that pending motions do not undermine the government’s ability to enforce a final order of removal. *Sheiko v. Giles*, No. 19-1859, 2019 WL 7166058, at *3 (C.D. Cal. Oct. 23, 2019) (describing due process considerations and holding detention and removal, while motion to reopen is pending, does not violate due process).

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

TODD BLANCHE
U.S. Deputy Attorney General

ALINA HABBA
Acting United States Attorney
Special Attorney

By: *s/Alex Silagi*
ALEX SILAGI

s/Frances Bajada
FRANCES BAJADA
Assistant U.S. Attorneys
Attorneys for Respondents

Dated: September 26, 2025