

**United States District Court
Western District of Texas
San Antonio Division**

Danesh Shamsi
Petitioner,

v.

Pam Bondi, *et al*,
Respondents.

No. 5:25-CV-00950-OLG

Federal¹ Respondents' Response to Petition of Writ for Habeas Corpus

Respondents submit this response per this Court's Order dated August 11, 2025, ordering a response within sixty days from the date of service. ECF No. 3, 5 (confirming CMRRR delivery). In his writ of habeas corpus, Petitioner, *pro se*, seeks release from civil immigration detention, because he has been detained more than ninety days after being ordered removed. He was granted withholding of removal to Iran, and ICE is working to execute his removal order to a third country. ECF No. 1 at 2. Petitioner's claims lack merit, and this petition should be denied.

Despite being granted relief from removal, referred to as withholding of removal (WHO) under Immigration and Nationality Act § 241(b)(3), 8 U.S.C. § 1231(b)(3), such relief extends only to the country where Petitioner was found to have a reasonable fear of being persecuted: Iran. *See* 8 C.F.R. §§ 208.16–208.17, 1208.16; 1208.17; 208.31(a); 1208.31(a); 8 U.S.C. § 1231(b)(3)(A).

In other words, nothing prevents DHS from removing Petitioner to a third country. *See e.g.*, *Guzman Chavez*, 594 U.S. at 531–32, 535–36; 8 U.S.C. § 1231(b)(1)(c)(iv); 8 C.F.R.

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action.

§§ 208.16(f); 1208.16(f); 208.17(b)(2); 1208.17(b)(2). There are numerous removal options for ICE to consider under this statute, including any country willing to accept the alien. *Guzman Chavez*, 594 at 536–37; 8 U.S.C. § 1231(b)(2).

Petitioner argues his continued detention is unlawful and violates his substantive and procedural rights under the Constitution’s Fifth and Fourteenth Amendments. *See e.g.*, ECF No. 1 at 6. Finally, he argues he argues no removable is foreseeable and that he fears removal to Nicaragua, but that claim has been determined to not be credible. ECF No. 1 at 2; 7; Exh. 1 at ¶ 13. 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 a third country is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Relevant Facts

Petitioner is a citizen and native of Iran. Exh 1. at ¶ 2. On October 13, 2024, he entered the United States without inspection, near Eagle Pass, Texas. *Id.* at ¶ 4. After expressing a credible fear of removal to Iran, he was issued a Notice to Appear charging inadmissibility under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I), allowing him to seek asylum before an immigration judge in “full” removal proceedings under INA § 240, 8 U.S.C. § 1229a. *See* Exh 1. at ¶ 5; 8 U.S.C. §§ 1182(a)(6)(A)(i); 1182(a)(7)(A)(i)(I). On May 12, 2025, the immigration judge ordered Petitioner removed to Iran and granted WHO to Iran under INA § 241(b)(3). Exh 1. at ¶ 8; ECF No. 1-3 at 2.

On or about May 16, 2025, ICE notified Petitioner notice of removal to a third country, Nicaragua. Exh 1. at ¶ 9. On May 19, 2025, Petitioner filed a motion to reopen and a motion for stay of removal to contest removal to Nicaragua. Exh 1. at ¶ 10. The immigration judge denied these motions. Exh 1. at ¶ 10. On or about May 27, 2025, Petitioner was referred to an asylum officer with Citizenship and Immigration Services about his fear of removal to Nicaragua. Exh 1. at ¶ 12. He received a negative fear determination. Exh 1. at ¶ 13.

ICE possesses Petitioner's Iranian passport and a Nicaraguan travel document. Exh 1. at ¶ 14. DHS avers that removal to Nicaragua is imminent. Exh 1. at ¶ 16.

II. Petitioner, As an Applicant for Admission, 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 who was apprehended within 100 miles of the border within two years of his unlawful entry. 8 U.S.C. § 1225(b)(1). 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 who are placed into “full” removal proceedings are subject to mandatory detention as applicants for admission until removed. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). If, like Petitioner, they are initially placed into expedited removal proceedings but subsequently placed into “full” removal proceedings after establishing a credible fear, detention is mandatory during those removal proceedings. 8 U.S.C. § 1225(b)(1)(B)(ii).

“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”² 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, like Petitioner here, “with a credible fear of

² 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.

persecution” is “detained for further consideration of the application for asylum” in “full” removal proceedings. *Id.* § 1225(b)(1)(B)(ii).

Section 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). 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); *Jennings*, 583 U.S. at 287.

“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. 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)).

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, however, Petitioner’s detention is lawful. In addition to the detention authority in § 1225(b), 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 a 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 a third country 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 substantive due process claim is not ripe because he has not been detained ‘post-order’ for more than six months. *Compare* ECF No. 1-3 at 5 *with* Exh 1. at 8 (On May 12, 2025, the Immigration Judge granted Petitioner WHO). Therefore, he cannot 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).

Petitioner is subject to a final order of removal, but he, nonetheless, urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth Amendment. Petitioner is aware ICE is attempting to remove him to Nicaragua and claims he has not heard a response from the outcome of his fear-based interview addressing removal to Nicaragua. ECF Nos. 1 at 2, 6, 1-2 at 9. 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 wholly insufficient under *Zadvydas. 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); *see also 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. ICE is in possession of a Nicaraguan travel document for Petitioner. Exh 1. at ¶ 14. ICE has plans to remove Petitioner this month.³ 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.

Petitioner cannot show a procedural due process violation here. 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). Petitioner has received procedural due process in this case, from his initial

³ Federal Respondents will update the Court when Petitioner is removed.

credible fear interview to his Notice to Appear in removal proceedings to his notice of third country removal to his fear interview based on his alleged fear of being sent to Nicaragua.

The Fifth Circuit, however, 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).

Even though ICE is detaining Petitioner under § 1225(b), ICE nonetheless conducts post-order custody reviews of an alien's detention as required by regulation for aliens detained under § 1231.⁴ Once the 90-day removal period concluded in this case, ICE performed a post-order custody review ("POCR") under 8 C.F.R. § 241.4 to determine whether Petitioner should remain detained or whether he should be released in the exercise of discretion under an Order of Supervision. At or around the 180-day mark, Petitioner will receive another POCR if he remains detained, wherein ICE will determine whether he should remain detained. *See* ECF No. 1 ¶ 23; 8 C.F.R. § 241.13. POCRs are set to occur at the 270-day and the one-year marks, as well. *Id.*

⁴ 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. 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)).

The POCR process addresses constitutional concerns that were identified in *Zadvydas*, providing safeguards and allowing the alien notice and opportunity to be heard regarding continued detention pending removal. *See, e.g.*, 8 C.F.R. § 241.13. ICE is in compliance with these regulatory provisions. Courts have found that these regulatory deadlines are not firm, so long as the review itself has occurred. *See Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354 at *6 n. 6 (W.D. Tex. May 24, 2016). Even if Petitioner had alleged such a violation, the remedy is not immediate release from custody, but an opportunity for the government to provide substitute process. *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172 at *12 (W.D. Tex. Mar. 23, 2020). As such, Petitioner's procedural due process claim, like his substantive one, should be denied.

C. Conclusion

Petitioner is lawfully detained by statute until his removal, and his detention comports with the limited due process he is owed. This Court should deny the petition.

Respectfully submitted,

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Certificate of Service

On October 14, 2025, I caused a copy of this filing to be served by mail on Petitioner, *pro se*, at the following address:

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