

United States District Court
Western District of Texas
San Antonio Division

Wael Farashi,
Petitioner,

v.

Warden,¹ South Texas ICE Processing
Center;
Respondent.

No. 5:25-CV-00956-XR

**Response to Petition for Writ of Habeas Corpus
Pursuant to 28 U.S.C. § 2241**

Defendants respectfully submit this response to this petition for writ of habeas corpus under 28 U.S.C. § 2241 (the "Petition"), per this Court's Order for Service dated October 22, 2025 (ECF No. 4). In his petition, Wael Farashi ("Petitioner"), requests the Court grant his writ of habeas corpus and order his immediate release, or in the alternative, order ICE to provide him with a bond hearing where ICE bears the burden of proof at a heightened standard. *See* ECF No. 1 at 13-13. Petitioner is not entitled to this relief, as his detention is mandatory under 8 U.S.C. § 1225(b) until he is removed, and he has not shown that his detention under this mandatory

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. While Petitioner did not name any Federal Respondents, he did request in the body of his petition that the Court join them into the suit if the Court deemed it appropriate. The Court ordered service on the United States Attorney's Office, but it is not clear which Federal Respondents, if any, have been joined as parties to this action. Petitioner is not *pro se*. In the abundance of caution, the Department of Justice responds herein on behalf of any Federal Respondents who may have been joined to this litigation.

provision is unconstitutional as applied to him. ICE attempted to remove Petitioner to Syria on a validly issued travel document on September 30, 2025, but Petitioner refused to board the commercial removal flight. Ex. A at ¶ 14 (Pena Declaration).

Petitioner is an applicant for admission with a final order of removal dated February 24, 2025, which mandates his detention until his removal order is executed. *See* ECF No. 1 ¶ 5; Ex. A (Pena Declaration) ¶7; 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 is unlawful and violates his substantive and procedural due process rights under the Constitution's Fifth Amendment. ECF No. 1 at 9. Finally, he claims he cannot be returned to Syria, as there is no diplomatic coordination between the United States and Syria. *Id* at ¶ 47. Petitioner also argues that he does not possess a travel document. *Id* at ¶ 53. These arguments are not only inaccurate, but they 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 Syria is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Relevant Facts and Procedural History.

Petitioner filed this habeas petition on or about August 6, 2025, seeking release from civil immigration detention, claiming that he was ordered removed by an

immigration judge in February 2025, but that ICE has been unable to remove him under the order. ECF No. 1 at ¶ 40. Petitioner claims that the United States has been unable to remove anyone to Syria in the past ten years. ECF No. 1 at ¶¶45–52. This statement is false.

Following the filing of this habeas petition, however, ICE *secured* a travel document on Petitioner's behalf on June 2, 2025. Ex. A at ¶ 9 (Pena Declaration). On a September 30, ERO secured a second travel document, following the expiration of the first, and attempted to remove him via commercial aircraft. Ex. A at ¶ 14 (Pena Declaration). Petitioner, however, refused to board the aircraft, causing ICE to return him to the detention facility. *Id.* The travel document has since expired, but ICE is working to obtain a renewal. *Id.* ICE anticipates no impediments to that request. *Id.*

Petitioner seeks release from civil immigration detention, claiming that his detention is unlawful because he believes he has been detained beyond the 90-day removal period. ECF No. 1 at ¶ 6. Federal Respondents, however, deny that the 90-day removal period is applicable to Petitioner, as he is detained under § 1225(b), not under § 1231(a). Even if § 1231(a) applied, ICE is permitted to continue Petitioner's detention unless or until he shows that his removal is not imminent. 8 U.S.C. § 1231(a)(6). Respondents are preparing to execute Petitioner's final removal order for a third time, assuming that Petitioner cooperates in the removal efforts. Ex. A at ¶¶ 17, 18 (Pena Declaration).

Petitioner's claims lack merit because he is lawfully detained with a final order of removal while ICE arranges his imminent removal to Syria. *See* Exh. A (Pena

Declaration). Because Petitioner entered the United States as an applicant for admission, his detention is governed by § 1225(b) until his removal order is executed. Even if the broader § 1231(a) statute applied here, any constitutional challenge to continued detention is not ripe until the alien has been detained in post-order custody for at least the presumptively reasonable period of six months. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner’s order of removal became final on February 24, 2025. His *Zadvydas* claim, therefore, should not have been filed until on or after August 24, 2025. Regardless, Petitioner would have been removed from the United States on September 30, 2025, but for his failure to comply.

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

Petitioner is lawfully detained until removal as an applicant for admission. 8 U.S.C. § 1225(b)(1). Petitioner was apprehended and placed into expedited removal proceedings pursuant to 8 U.S.C. § 1225(b). Ex. A (Pena Declaration) at ¶5. “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” aliens, like Petitioner here, who are “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). This is the process Petitioner went through. Ex. A. at ¶ 6. *See also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (2020). 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). 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). Petitioner’s apprehension and process through the immigration system, fits squarely within the statutory structure. Ex. A. (Pena Declaration). *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.”). 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)).

Petitioner’s current detention is governed 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.

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

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 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 Syria 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 February 24, 2025, Ex. A (Pena Declaration) at ¶7; *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 Amendment, because of an alleged lack of diplomatic ties with Syria. ECF No. 1 at 7–8. 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*. As such, 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 10 Syrian nationals were successfully removed in FY2024. *See ICE Enforcement and Removal Operations Statistics | ICE supra*. Prior to FY2024, 6 Syrian nationals were successfully removed in FY2023, and 2 in FY2022 showing an overall increase in successful removals to Syria 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 Syria who, not once, but twice issued a travel document. *See Exh. A at ¶¶9, 13*.

In other words, until Syria refuses to issue a travel document to Petitioner, there is no reason to believe that Syria is unlikely to accept him for repatriation. It has just not happened yet. Once a travel document is issued, ERO sees no impediment (other than Petitioner's own refusal to cooperate) to executing this final order of removal. As such, removal is likely in the reasonably foreseeable future, and his continued detention is lawful. The only impediment to removal has been Petitioner's own refusal to board the flight. *See Exh. A at ¶14*. 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 *Thuraissigiam*, *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 conducted a custody review of his detention on July 25, 2025, and determined that continued detention was warranted. Exh. A at ¶ 11. 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.

III. Conclusion

Petitioner’s continued detention is mandatory under 8 U.S.C. § 1225(b)(1) 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 is lawful. Petitioner fails to show good reason to believe that there is no significant likelihood of removal to Syria 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. ICE has secured travel documents twice now,

and when the time came for Petitioner's removal, it was Petitioner's own refusal to board the commercial aircraft that impeded removal.

Additionally, ICE has afforded Petitioner procedural due process, including post-order custody review during his final order detention. Petitioner's continued detention, therefore, comports with the statute 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,

Justin R. Simmons
United States Attorney

By: /s/ Fidel Esparza, III
Fidel Esparza, III
Assistant United States Attorney
Texas No. 24073776
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7026 (phone)
(210) 384-7312 (fax)
Fidel.Esparza@usdoj.gov

Attorneys for Federal Respondents