

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT TEXAS**

Wael Farashi,

Petitioner,

v.

Case No. 5:25-CV-00956-XR

Warden, South Texas Detention Facility,

Respondent.

**REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF
HABEAS CORPUS**

ORAL ARGUMENTS REQUESTED

COMES NOW the Petitioner, Wael Farashi, respectfully submits this Reply in further support of his Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. The Government's opposition fails to justify Petitioner's continued detention, which has now become prolonged, indefinite, and unlawful under 8 U.S.C. § 1231(a) and controlling Supreme Court precedent.

As explained below, Section I demonstrates that Petitioner's detention is properly governed by 8 U.S.C. § 1231(a) rather than § 1225(b), as the Government mistakenly contends. Section II shows that, even under the correct statutory framework, Petitioner's detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. Accordingly, Petitioner respectfully requests that this Court grant the writ and order his release

**I. PETITIONER'S DETENTION IS GOVERNED BY 8 U.S.C. § 1231(a), NOT 8
U.S.C. § 1225(b)**

a) *Detention Under 8 U.S.C. § 1225(b) Is Limited to the Period While Removal Proceedings Are Pending*

8 U.S.C. § 1225(b) governs detention of “applicants for admission” during the pendency of expedited removal proceedings. It provides that individuals deemed inadmissible upon arrival are subject to mandatory detention while the Government considers their asylum or other protection claims. See *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Thuraissigiam v. U.S.*, 591 U.S. 103, 111 (2020).

Once an Immigration Judge issues a final order of removal, the statutory basis for detention transitions from 8 U.S.C. § 1225(b) to 8 U.S.C. § 1231(a). At that point, the individual is no longer an “applicant for admission” within the meaning of § 1225(b), but rather an alien subject to a final order of removal.

b) *Post-Removal-Order Detention Is Governed by 8 U.S.C. § 1231(a)*

The Supreme Court has made clear that 8 U.S.C. § 1231(a) governs detention after a removal order becomes administratively final. See *Johnson v. Guzman-Chavez*, 594 U.S. ____ (2021); *Clark v. Martinez*, 543 U.S. 371, 376–77 (2005).

8 U.S.C. § 1231(a)(1) establishes a 90-day removal period during which the Attorney General must remove the alien, and § 1231(a)(2) authorizes detention during that period. Section 1231(a)(6) further allows detention beyond ninety days only under limited circumstances. The statute therefore explicitly governs the scope, duration, and limitations of post-removal-order detention.

This principle has also been recognized by the Fifth Circuit. See *Texas v. United States*, No. 22-40367 (5th Cir. July 6, 2022) (quoting § 1231(a)(2): “the Attorney General shall detain an alien ordered removed ‘[d]uring the removal period’”). While the Government relies on § 1225(b)

cases concerning pre-final-order detention, the Fifth Circuit acknowledges that § 1231(a) controls once a final order of removal has been issued.

Although Petitioner Wael Farashi initially entered the United States as an applicant for admission and was detained pursuant to 8 U.S.C. § 1225(b), his detention status changed following the completion of his immigration proceedings.

On February 24, 2025, an Immigration Judge issued a final order of removal against Mr. Farashi. That order was not appealed and thus became final under the Immigration and Nationality Act. From that date forward, Petitioner has been detained pursuant to 8 U.S.C. § 1231(a), which governs post-final order detention for individuals awaiting removal.

c) The Government Conflates Pre- and Post-Removal Detention

The Government's reliance on 8 U.S.C. § 1225(b) and associated cases such as *Jennings* and *Thuraissigiam* is misplaced in the post-removal context. Section 1225(b) applies only to individuals awaiting the resolution of removal proceedings. Once the removal order becomes final, detention is governed exclusively by 8 U.S.C. § 1231(a).

This statutory distinction carries significant consequences. Under 8 U.S.C. § 1231(a), detention must remain reasonably necessary to effectuate removal, and prolonged detention beyond the ninety-day removal period is constitutionally and statutorily limited. See *Clark v. Martinez*, 543 U.S. at 386–87. The Government's attempt to justify continued, indefinite detention under § 1225(b) disregards both statutory text and Supreme Court precedent.

Petitioner was initially detained under 8 U.S.C. § 1225(b) as an applicant for admission. However, upon issuance of a final order of removal, the statutory basis for detention shifted to 8 U.S.C. § 1231(a). The Government's position that Petitioner remains detained under § 1225(b) is

legally erroneous. Accordingly, Petitioner's detention must be evaluated under the framework and limitations set forth in 8 U.S.C. § 1231(a) and the controlling precedent interpreting that provision.

II. PETITIONER'S DETENTION IS UNLAWFUL UNDER 8 U.S.C. § 1231(a)

a) *Detention Under 8 U.S.C. § 1231(a) Must Be Limited to a Period Reasonably Necessary to Effectuate Removal*

Under 8 U.S.C. § 1231(a)(1), the Government is granted a 90-day period to execute removal following the date the removal order becomes administratively final. The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) held that detention beyond this 90-day period is permissible only so long as it is "reasonably necessary to bring about that alien's removal." The Court further established a six-month presumptive limit on post-order detention, after which continued confinement becomes constitutionally suspect absent evidence that removal is significantly likely in the reasonably foreseeable future.

Petitioner Wael Farashi has now been detained well beyond the 90-day removal period. In fact, he has been confined for 225 days, nearly 10 months, far exceeding the six-month presumptive limitation established in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

b) *The Government Has Failed to Rebut the Showing That Removal Is Not Reasonably Foreseeable*

Once a petitioner has been detained beyond the six-month presumptive period articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001), a presumption arises that continued confinement is no longer reasonably necessary to effectuate removal. At this juncture, the burden shifts to the Government to present specific and concrete evidence demonstrating that removal is substantially likely in the reasonably foreseeable future.

Here, the Government cannot meet this burden. The Government cannot rebut Petitioner's showing that removal to Syria is not reasonably foreseeable. Removal is not imminent. In fact, the Government itself has attempted multiple times to effectuate Petitioner's removal, including twice securing travel documents and arranging commercial flights, yet these efforts were unsuccessful.

As the Government concedes, there are currently no charter flights available to Syria. Petitioner does not possess a valid travel document at this time, and even if the Government were to obtain one, past experience demonstrates that removal would still not be feasible. The ongoing war and logistical barriers make it extremely unlikely that Petitioner could be removed from the United States in the foreseeable future.

These facts make clear that continued detention is indefinite and unjustified. The Government's claims that removal might occur someday are speculative and legally insufficient to overcome Petitioner's showing under *Zachrydas v. Davis*, 533 U.S. 678 (2001), which requires that detention be limited to a period reasonably necessary to effectuate removal.

c) Accordingly, Petitioner's Continued Detention Violates Both Statutory and Constitutional Limits

Because 8 U.S.C. § 1231(a) authorizes only detention that is reasonably necessary to effectuate removal, and because the Government has failed to demonstrate any likelihood that removal will occur in the foreseeable future, Petitioner's ongoing detention is unlawful. The Court should therefore grant the writ and order Petitioner's immediate release.

III. PRAYER FOR RELIEF

WHEREFORE, Petitioner Wael Farashi respectfully requests that this Court grant the following relief:

- A. **ISSUE** a Writ of Habeas Corpus (28 U.S.C. § 2241) or an order in the nature of a writ, directing Respondent to immediately **RELEASE** Petitioner from ICE custody. Petitioner is prepared to comply with any appropriate conditions of release, such as reporting or monitoring, that the Court or ICE may require to reasonably assure public safety and future appearance.
- B. **ORDER**, in the alternative to outright release, Respondent to provide Petitioner with a prompt individualized bond hearing before an immigration judge (or, if that is not available, before this Court), to take place within 14 days of the Court's order. At that hearing, the government should bear the burden of proving by clear and convincing evidence that Petitioner's continued detention is justified (i.e., that he poses a flight risk or danger that cannot be mitigated). If the government cannot meet that burden, Petitioner should be released on appropriate terms.
- C. **DECLARE** that Petitioner's continued detention is unlawful and unconstitutional. Specifically, declare that Petitioner's detention beyond five months without a foreseeable removal or a bond hearing violates the Due Process Clause of the Fifth Amendment and exceeds statutory authority.
- D. **ENJOIN** Respondent, his agents, employees, and all persons acting under his direction or control, from continuing to detain Petitioner in violation of the law. This may include a permanent injunction against Petitioner's further detention on the same basis absent a significant change in circumstances (such as securing of travel documents and a likelihood of immediate removal).

- E. **AWARD** Petitioner his reasonable attorneys' fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, or other applicable law, if Petitioner prevails in this action.
- F. **GRANT** such other and further relief as the Court deems just and proper in the interests of justice. This includes any relief necessary to ensure Petitioner's rights are protected during the pendency of this action (such as an order for periodic status reports on efforts to remove Petitioner).

Dated: November 6, 2025

Respectfully Submitted,

/s/Jana Al-Akhras

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VERIFICATION

Counsel for Petitioner (Counsels for Petitioner certify that, pursuant to 28 U.S.C. § 2242, this Petition is verified by the undersigned counsel upon information and belief, as Petitioner is in custody and unable to personally sign. The facts stated herein have been either directly witnessed by counsel or reliably reported by Petitioner and documentary evidence.)