United States District Court
Western District of Texas
San Antonio Division

Reza Abbasi-Jogi Petitioner, v. Sylvester M. Ortega, Field Office Director, *et al*, Respondents.	No. 5:25-CV-01018-FB

Federal[1] Respondents' Response in Opposition to Petitioner's Writ of Habeas Corpus

Respondents timely submit this response per this Court's Order dated October 6, 2025, directing service and ordering a response within thirty days of service. *See* ECF Nos. 9; 12 (confirming CMRRR delivery). In his petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr. Abbasi-Jogi ("Petitioner"), seeks release from civil immigration detention, claiming that his detention has become unreasonably prolonged, contrary to statute and the Due Process Clause. *See* ECF No. 1. Petitioner's claims lack merit, and this petition should be denied.

Despite his allegation that there is "no basis" for his continued detention, Petitioner is an applicant for admission with a final order removal dated July 23, 2024, which mandates his detention. *See* ECF No. 1 ¶ 10; Exh. A (ERO Declaration) ¶¶ 10, 11; Exh. B (Notice to Appear) 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 baseless and violates his substantive and procedural rights under the Constitution's Fifth and Fourteenth Amendments. ECF No. 1 at 4–7. Finally, he claims he

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

cannot be returned to Iran, as diplomatic relations are more strained between the United States and Iran since the United States bombed Iran's nuclear facilities on June 21, 2025. *Id.* at 4. 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 Iran or a third country is, in fact, likely in the reasonably foreseeable future. For these reasons, the Court should deny this habeas petition.

I. Facts and Procedural History

Petitioner is a native and citizen of Iran. Exh. A at ¶ 8; Exh. B at 1. On July 1, 2023, Petitioner entered the United States, without inspection. Exh. A. at ¶ 7. On January 24, 2024, DHS issued Petitioner a Notice to Appear (NTA) alleging he is inadmissible to the United States as an alien present without admission or parole under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and lacking required entry documents under after INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), after Petitioner established a credible fear of persecution or torture. Exh. B at 1; INA §§ 235(b)(1)(A)(ii); 235(b)(1)(B)(ii); 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii). On November 7, 2023, Petitioner was convicted of 8 U.S.C. § 1325 and sentenced to five months imprisonment. Exh. A at ¶ 9.

On July 23, 2024, an immigration judge ordered Petitioner removed from the United States. *Id.* at ¶ 12. On September 6, 2024, ICE San Antonio submitted a travel document request to ICE headquarters. *Id.* at ¶ 13. The request was forwarded to the Interests Section of the Islamic Republic of Iran. Exh. A at ¶ 14. On September 16, 2024, Iranian identity documents were forwarded to ICE HQ. *Id.* at ¶ 15. On November 12, 2024, the 90-day post-order custody review (POCR) decision

to continue detention was served on petitioner. *Id.* at ¶ 17. On January 22, 2025, the 180-day decision to continue detention was received. Exh. A at ¶ 19. On February 2, 2025, ICE headquarters requested another TDR packet which was submitted a second time. *Id.* at ¶ 20. On March 24, 2025, ICE requested approval for El Salvador to accept Petitioner. *Id.* at ¶ 22. On May 19, 2025, another travel document request was submitted to Iran's Interests Section. Exh. A at ¶ 24. On July 25, 2025, a 270-day POCR checklist was completed pending ICE headquarter's decision. *Id.* at ¶ 25. On November 7, 2025, Petitioner's case officer followed up on the travel document request. *Id.* at ¶ 26. If Petitioner's travel document is received, he is tentatively scheduled to be removed to Iran the first week of December 2025. Exh. A at ¶ 27.

ICE's FY2024 annual report documents 27 Iranian nationals were removed from the United States, the highest number of removals in the past six years. *See* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (last accessed November 10, 2025). In FY2025, first quarter, as of January 2025, 10 Iranian nationals were removed. *See* ICE Enforcement and Removal Operations Statistics | ICE (filtered by nationality and last accessed November 10, 2025).

II. Petitioner 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. 8 U.S.C. §§ 1225(b)(1)(A)(ii); 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 (b)(1) applies to Petitioner. 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 "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removal from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV). *See also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (2020).

[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.

In this case, an asylum officer determined Petitioner had a credible fear of persecution or torture and issued a Notice to Appear. Exh. B at 1; 8 U.S.C. §§ 1225(b)(1)(A)(ii); 1225(b)(1)(B)(ii). Petitioner squarely falls within § 1225(b)(1)(A)(ii) and "shall" be detained for further consideration of the application for asylum. 8 U.S.C. § 1225(b)(1)(B)(ii).

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 *Thuraissgiam*. 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, 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 Iran 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 urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and the Fourteenth Amendment, because of no discernable progress towards removal and strained diplomatic relations between Iran and the United States. ECF No. 1 at ¶ 14. Petitioner fails to allege a "good reason" to believe that there is no significant likelihood of removal in the foreseeable future. These claims are insufficient under *Zadvydas*. *See Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 at *1 (5th Cir. Mar. 22, 2022) (citing *Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021)); *Akbar v. Barr*, SA-

20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021); *see also 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).

As such, even applying the prior interpretation of the detention authority at issue here, 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 Iranian nationals were removed. *See* ICE Enforcement and Removal Operations Statistics | ICE *supra*. Prior to FY2025, 27 Iranian nationals were removed from the United States, *See* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf *supra*. Specific to Petitioner, ICE San Antonio is working with ICE HQ to obtain Petitioner's travel document. Once received, Petitioner would be removed in December. Exh. A.

In other words, until Iran refuses to issue a travel document to Petitioner, there is no reason to believe that Iran is unlikely to accept him for repatriation. It has just not happened yet. Rather than delay while waiting for a response from Iran, however, ERO has taken affirmative steps to secure acceptance from a third country.

Once a travel document is issued, ERO sees no impediment to executing this final order of removal. 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.

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 *Thuraiissigiam*, *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 has conducted custody reviews of his detention, most recently in July 2025. Exh. A at ¶¶ 17, 19, 25. 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.

IV. 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 here would be considered lawful. Petitioner fails to show good reason to believe that there is no significant likelihood of removal to Iran 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. Additionally, ICE has afforded Petitioner procedural due process through his mandatory detention, including post-order custody reviews. Petitioner's continued detention, therefore, is comports with the law 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,

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