United States District Court
Western District of Texas
San Antonio Division

Hadi Najafi Petitioner, v. Pam Bondi, U.S. Attorney General, *et al*, Respondents.	No. 5:25-CV-1110-FB

Federal[1] Respondents' Response to Petition of Writ for Habeas Corpus

Respondents submit this response per this Court's Order dated September 16, 2025, ordering a response within thirty 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 six months after being ordered removed. ECF No. 1 at 2. Petitioner believes there are no diplomatic ties with Iran and further 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 2, 6.

Petitioner's claims fail. He is detained on a mandatory basis as an applicant for admission under § 1225(b)(1) with a final order of removal until his removal order is executed. Even under 8 U.S.C. § 1231(a), Petitioner's claims would fail, as there is 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

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

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 12, 2023, 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 ¶ 9–10; 8 U.S.C. §§ 1182(a)(6)(A)(i); 1182(a)(7)(A)(i)(I). On September 9, 2024, the immigration judge ordered Petitioner removed to Iran. Exh 1. at ¶ 11.

On January 23, 2025, ERO submitted a travel document request to the government of Iran through ICE's Headquarters Removals and International Operations (HQ-RIO). Exh 1. at ¶ 12. On March 21, 2025, ERO served the 180-day post order custody review (POCR) informing Petitioner he would continue to be detained. Exh 1. at ¶ 13. On June 10, 2025, ERO contacted HQ-RIO about the status of Petitioner's travel document request. Exh 1. at ¶ 14. On July 25, 2025, ERO interviewed Petitioner as part of ERO's custody review. Exh 1. at ¶ 17. On July 25, 2025, ERO served ICE's decision to continue detention on Petitioner as ERO is pending Petitioner's Iranian travel document. *See* Exh 1. at ¶ 17. On August 7, 2025, ERO contacted HQ-RIO again about the status of Petitioner's travel document request. Exh 1. at ¶ 18. Petitioner's travel document request remains pending. Exh 1. at ¶ 20. Upon receipt, ICE will proceed with removing Petitioner. Exh 1. at ¶ 20.

On September 2, 2025, Petitioner filed his writ of habeas corpus under 28 U.S.C. § 2241, arguing his detention is baseless under the Constitution's Fifth and Fourteenth Amendment. ECF

No. 1 at 6. He seeks release from ICE custody and argues he cannot be removed to Iran because there are no diplomatic ties. *Id.* at 2; 7. ICE's FY2024 annual report documents 27 Iranian nationals were removed from the United States, the highest number of removals in the past five years. *See* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf (last accessed October 20, 2025). In FY2025, as of January 2025, 10 Iranian nationals were removed. *See* ICE Enforcement and Removal Operations Statistics | ICE (filtered by nationality and last accessed October 20, 2025). Most recently, in September 2025, ICE coordinated a removal charter flight of Iranian nationals. Exh 1. at ¶ 19

II. Petitioner, As an Applicant for Admission with a Final Order of Removal, 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" 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 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.

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, 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 removal order has been final since September 9, 2024. Exh 1 at ¶ 11; 8 C.F.R. §§ 241.1; 1241.1(b). Petitioner urges this Court to order that his continued detention pending removal is contrary to his substantive and procedural rights under the Fifth and Fourteenth Amendment, because he claims a lack of diplomatic ties with Iran and the fact that he has no criminal history.[2] ECF No. 1 at 2, 7. Petitioner fails to allege any reason, much less a "good

[2] Petitioner claims no criminal history; however, Petitioner was convicted of Improper Entry by Alien, a violation under 8 U.S.C. § 1325 and sentenced to five-month confinement. Exh. A at ¶ 7.

reason," to believe that there is no significant likelihood of removal in the foreseeable future. These claims are also insufficient under *Zadvydas*.

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 successfully removed in FY 2025 (current as of January 2025). *See* ICE Enforcement and Removal Operations Statistics | ICE *supra*. Prior to FY2025, 27 Iranian nationals were removed from the United States, the highest number of removals in the past five years. *See* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf *supra*. Specific to Petitioner, ICE submitted a travel document request to the government of Iran. *See* Exh 1 at ¶ 12. ICE's removal of Iranians, including into FY 2025 shows there are some diplomatic relations between Iran and the United States, contrary to Petitioner's argument. *Compare* ECF No. 1 at 2 *with* https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf, *supra*. Furthermore, in September 2025, ICE coordinated with the government of Iran a successful removal charter flight of Iranian nationals. Exh 1 at ¶ 19

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

Exh 1 at ¶ 20. 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 credible fear interview to his Notice to Appear in removal proceedings, to ICE's continued review of Petitioner's post-order detention.

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.[3] On March 21, 2025, the 180-day POCR was served on Petitioner and resulted in a decision

[3] 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

to continue his detention as ICE believed there was significant likelihood that his removal will occur. Exh. A at ¶ 13. On July 24, 2025, ICE conducted another custody review and continues to detain Petitioner as ICE expects to receive his travel document to effectuate removal. Exh A at ¶ 17.

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*, , 2016 WL 8674354 at *6 n. 6. 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.

---

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)).

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: */s/ Anne Marie Cordova*

Anne Marie Cordova
Special Assistant United States Attorney
Texas Bar No. 24073789
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7100 (phone)
(210) 384-7118 (fax)
Anne.Marie.Cordova@usdoj.gov

Attorneys for Federal Respondents

Certificate of Service

On October 20, 2025, I caused a copy of this filing to be served by mail on Petitioner, *pro se*, at the following address:

Hadi Najafi
A#XXX-XXX-[redacted]
South Texas ICE Processing Center
566 Veterans Drive
Pearsall, Texas 78061

/s/ Anne Marie Cordova
Anne Marie Cordova
Special Assistant United States Attorney