United States District Court
Western District of Texas
El Paso Division

Liao Kun, Petitioner, v. Angel Garite, Assistant Field Office Director for Enforcement and Removal Operations, Respondents.	Case No. 3:25-CV-00418-LS

Respondents' Response to
Petition for Writ of Habeas Corpus

Respondents provide the following timely response to Petitioner's habeas petition. Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief[1] he seeks, and this Court should deny this habeas petition without the need for an evidentiary hearing.

Despite his allegation there is "no basis" for his continued detention, Petitioner is an applicant for admission with a final order of removal dated April 10, 2025, which mandates his detention. *See* ECF No. 9 at 16–21. The Fifth Circuit granted Petitioner's motion to stay his removal pending resolution of the petition for review. ECF No. 72 (Sept. 5, 2025), *Liao v. Bondi*, No. 25-60427 (5th Cir.) Petitioner's petition for review is before the Fifth Circuit and briefing is

[1] Additionally, Petitioner seeks relief for non-habeas claims, but Petitioner did not pay the filing fee for non-habeas claims. ECF No. 9 at 7 ($155,000 monetary payment, an investigation into any negligent mishandling of his case and a revision of ICE methods and practices); *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). "When a filing contains both habeas and on-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3.

complete. ECF No. 106 (Nov. 10, 2025), *Liao v. Bondi*, No. 25-60427 (5th Cir.). Petitioner argues his continued detention violates his substantive and procedural rights under the Constitution's Fifth and Fourteenth Amendment. ECF No. 9. Ultimately, his 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* 1231(a)(6); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Even if the burden has so shifted, Respondents can show that removal to China 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 is a citizen of China who was apprehended upon his unlawful entry into the United States and served with a Notice to Appear (NTA). Exh. A at 1. On February 1, 2024, an immigration judge ordered Petitioner removed from the United States. *See* ECF No. 9 at 17, 20. On July 2, 2024, the Board of Immigration Appeals (Board) remanded[2] the case to the immigration judge to evaluate Petitioner's mental competency. ECF No. 9 at 16. On January 24, 2025, the immigration judge denied Petitioner's request for a bond. ECF No. 9 at 15. On April 10, 2025, the Board dismissed[3] Petitioner's appeal of the immigration judge's decision. ECF No. 9 at 21. On June 3, 2025, the Board dismissed Petitioner's appeal of the immigration judge's bond (denial) decision because the administratively final removal order rendered the bond appeal moot. Exh. C. On July 2, 2025, the Board denied Petitioner's motions to reopen, expedite, and stay removal. ECF No. 9 at 24.

[2] 8 C.F.R. § 1003.1(d)(7). The Board may return a case to an immigration judge for such further action as may be appropriate without entering a final decision on the merits of the case. *Id.*
[3] The immigration judge's order of removal became a final order at the dismissal of the appeal by the Board. 8 C.F.R. § 1241.1(a).

On August 11, 2025, the Fifth Circuit dismissed Petitioner's petition for review when he failed to file a brief. Exh. B at 1. On August 11, 2025, Petitioner filed his second petition for review with the Fifth Circuit. ECF No. 1 (August 13, 2025), *Liao v.* Bondi, No. 25-60427 (5th Cir.) On August 19, 2025, ICE transported Petitioner to Los Angeles to attempt to remove Petitioner to China via airplane. ECF No. 9 at 9. However, Petitioner refused to get on the plane. *Id.* On September 5, 2025, the Fifth Circuit entered a temporary stay of removal. ECF No. 3-5 at 1. The petition for review is pending, and briefing has concluded. ECF No. 106 (Nov. 10, 2025), *Liao v. Bondi*, No. 25-60427 (5th Cir.). While Petitioner was seeking judicial review of the removal order he requested another bond hearing from the immigration judge, which was denied on October 1, 2025. Exh. D; *see generally,* Imm. Crt. Practice Man. Ch. 9.3(d) (generally the immigration court will schedule the hearing for the earliest possible date after receiving a request for a bond hearing).

ICE's FY2024 annual report documents 517 Chinese 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 November 10, 2025). In FY2025, first quarter, as of January 2025, 297 Chinese 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, intercepted at or near the port of entry shortly after unlawfully entering, and he is properly described under § 1225(b)(1)(A)(iii)(II). Petitioner is inadmissible under (b)(1) because he was apprehended within two years of unlawful entry and DHS has the discretion to either place him into expedited removal proceedings or issue a NTA to place him in "full" removal

proceedings. *See* § 1225(b)(1)(A)(iii)(I); *see also* 8 C.F.R. § 239.1 (DHS has the discretion to issue a NTA at the port of entry in lieu of expedited removal proceedings). Petitioner was apprehended after he unlawfully entered the United States and issued a NTA in the exercise of discretion. *See* Exh. A; ECF No. 9 at 8 (Petitioner has been detained in CBP custody from May 7, 2023 to May 30, 2023). As such, he is detained under § 1225(b)(1)(A)(iii)(II).

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, like this Petitioner, are subject to mandatory detention under § 1225(b)(2) as applicants for admission until removed. *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

"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"[4] 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).

Section 1225(b)(2) is "broader" than (b)(1), "serv[ing] as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. Subject to exceptions not applicable here, "if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained for a removal proceeding." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Matter*

[4] 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.

of Q. Li, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). 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). *First*, consider the plain text. Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). "Seeking admission" and "appl[ying] for admission," in this context, are plainly synonymous. Congress linked these two variations of the same phrase in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). As a result, a person "seeking admission" is just another way of saying someone is applying for admission—that is, he is an "applicant for admission"—which includes both those individuals arriving in the United States and those already present without admission. *See* 8 U.S.C. § 1225(a)(1); *Lemus-Losa*, 25 I. & N. Dec. at 743.

Congress used the simple phrase "arriving alien" throughout § 1225. *E.g.*, 8 U.S.C. § 1225(a)(2), (b)(1), (c), (d)(2). That phrase plainly distinguishes an alien presently or recently "arriving" in the United States from other "applicants for admission" who, like Petitioner, have

been present in the United States without having been admitted. But Congress *did not* use the word "arriving" to limit the scope of § 1225(b)(2)'s mandatory-detention provision. If Congress meant to limit § 1225(b)(2)'s scope to "arriving" aliens, it could have simply used that phrase, like it did in § 1225(b)(1). Instead, Congress used the phrase "alien seeking admission" as a plain synonym for "applicant for admission."

Second, consider the statutory structure of § 1225(b). To be sure, § 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). Section 1225(b)(2), by contrast, applies to "other" aliens—"in the case of an alien who is an applicant for admission"—those *not* subject to expedited removal under (b)(1). They too must "be detained" but instead for a more typical removal "proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Properly understood, § 1225(b) applies to two groups of "applicants for admission": (b)(1) applies to "arriving" or recently arrived aliens who must be detained pending *expedited* removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, who, like Petitioner, must be "detained for a [*non-expedited*] proceeding under section 1229a of this title," 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting (b)(2) to "arriving" aliens would render it redundant and without any effect.

And *third*, compare § 1225's mandatory-detention provisions alongside the discretionary-detention provisions of § 1226. "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.

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)).

Even if legislative history were relevant, nothing within it "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Indeed, the legislative history and evidence regarding the purpose of § 1225(b)(2) show that Congress did not mean to treat aliens arriving at ports of entry worse than those who successfully entered the nation's interior without inspection. Congress passed IIRIRA to correct "an anomaly whereby

immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc), *declined to extend by, United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). It "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). Any other interpretation would put aliens like Petitioner who crossed the border unlawfully in a better position than those who present themselves for inspection at a port of entry. *Id.* 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,[5] 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

[5] In this case, Petitioner requested bond from the immigration judge, which was denied because the immigration judge found Petitioner to be a flight risk. Exh. D at 2; ECF No. 9 at 15. A subsequent bond request was denied in October 2025, after the immigration judge determined there was no jurisdiction. Exh. E.

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).

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 China 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 April 10, 2025. ECF No. 9 at 21; *see* 8 C.F.R. § 241.1; 1241.1(a). Within six months, ICE attempted to remove Petitioner via airplane in Los Angeles, but Petitioner refused. ECF No. 9 at 9. Additionally, the Fifth Circuit ordered a temporary stay of removal pending adjudication of the petition for review. ECF No. 3-5 at 1. The petition for review is pending, and briefing has concluded. ECF No. 106 (Nov. 10, 2025), *Liao v. Bondi*, No. 25-60427 (5th Cir.). Until the temporary stay of removal is removed, ICE cannot remove Petitioner. However, this does not mean Petitioner's petition should be granted. The fact there is no date certain for the resolution of Petitioner's petition for review does not render his detention indefinite or suggest there is no likelihood of removal in the reasonably foreseeable future. *Linares v. Collins*, 1:25-CV-584-RP *16 (W.D.T.X. Sept. 24, 2025). Both Petitioner and the Attorney General have filed their responsive briefing, which is a step towards resolution. *Id.*; ECF No. 106 (Nov. 10, 2025), *Liao v. Bondi*, No. 25-60427 (5th Cir.).

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 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. First, in August 2025, ICE attempted to remove Petitioner, and had he not refused, he would already be removed. *See* ECF No. 9 at 9. In addition, publicly available statistics show that 297 Chinese nationals were successfully removed in FY 2025 (current as of January 2025). *See* ICE Enforcement and Removal Operations Statistics | ICE *supra*. Prior to FY 2025, 517 Chinese 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*. Once the Fifth Circuit, ICE can resume Petitioner's removal efforts. 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. In fact, Petitioner has received due process by seeking administrative and now judicial review of the immigration judge's decision.

IV. Regarding Conditions of Confinement Do Not Provide a Basis for Release.

Petitioner raises numerous complaints regarding the conditions of confinement. ECF No. 9 at 10–14. His allegations do not provide a basis for release in habeas. *See Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021) (rejecting a habeas petitioner's argument that alleged deficiencies in the conditions of confinement would entitle him to release, with the explanation that "[s]imply stated, habeas is not available to review questions unrelated to the cause of detention," and its "sole

function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose" (internal quotation marks and citation omitted)); *Ahmed v. Warden*, No. 1:24-CV-1110, 2024 WL 5104545, at *1 (W.D. La. Sept. 25, 2024) (applying this rule to an immigration detainee's claims of religions discrimination in custody as well as other alleged deficiencies in the conditions of confinement). These claims should be rejected.

V. Conclusion

Petitioner's continued detention is mandatory under 8 U.S.C. § 1225(b)(1)(A)(iii)(II) 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 China 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. 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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Certificate of Service

On November 12, 2025, I directed a copy of this filing to be served by mail on Petitioner, *pro se*, at the following address:

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El Paso, Texas 79925

/s/ Anne Marie Cordova
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