

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

TAREK ALKHATIB,

PETITIONER

v.

CIVIL ACTION NO. 4:25-cv-00139-GNS

KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
SAMUEL OLSON, Interim Field Office Director,
Chicago Field Office, Immigration and
Customs Enforcement;
MIKE LEWIS, Jailer,
Hopkins County Jail

RESPONDENTS

UNITED STATES'S RESPONSE DISCUSSING EXPEDITED REMOVAL

On November 24, 2025, the Court ordered the Parties to brief whether Petitioner Tarek Alkhatib may be subject to expedited removal proceedings. This is not in dispute. The Parties agree that Alkhatib is in removal proceedings, under 8 U.S.C. § 1229a. Counsel for Alkhatib authorized undersigned counsel to make this assertion to the Court.

The statutory framework for his removal proceedings, however, does not dictate the statutory framework for his detention. Rather, this petition requires the Court to resolve the Parties' dispute as to the statutory authority for Alkhatib's detention. Is he detained under 8 U.S.C. § 1225(b)(2) or 8 U.S.C. § 1226?? In addition to the arguments submitted in support of its Motion to Dismiss and Response to Order to Show Cause, the United States respectfully requests the Court hold that Alkhatib is detained under the framework of 8 U.S.C. § 1225(b)(2). Should the Court, however, disagree, the United States respectfully requests the Court decline to order Alkhatib's immediate release. Instead, the United States requests the Court order the

Immigration Judge to reconsider his application for a bond under the statutory framework of 8 U.S.C. § 1226.

I. While Alkhatib Had an Expedited Order of Removal, the Order Was Vacated, And He is in Removal Proceedings Under 8 U.S.C. § 1229a.

Alkhatib received an expedited order of removal, on January 31, 2022. [Exhibit 1, 2025 I-213 Narrative]. As required by the statute and regulations,¹ he subsequently received a credible fear interview, on February 17, 2022. *Id.* On February 25, 2022, the Agency rendered a negative decision and then, on February 28, 2022, forwarded the Record of Negative Credible Fear Finding and Request for Review by an Immigration Judge to the Executive Office of Immigration Review. *Id.* Thereafter, on March 1, 2022, an Immigration Judge found likelihood that Alkhatib would be tortured if returned to Syria and, thus, vacated his expedited order of removal. *Id.* The next day, on March 2, 2022, the Agency commenced removal proceedings under 8 U.S.C. § 1229a by issuing the Notice to Appear, charging him as inadmissible for being

¹ Individuals in expedited removal proceedings who express a fear of returning to their country of origin or a desire to apply for asylum and related protections may seek protection through a process known as a credible fear interview, which can include review before an Immigration Judge. *See generally* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. §§ 235.3(b)(4), 235.6(a)(2), 235.15(b)(4), 208.30, 208.33, 208.35, 1003.42, 1208.30, 1208.33, 1208.35. These individuals are screened for a “credible fear of persecution,” which “means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish” asylum eligibility. 8 U.S.C. § 1225(b)(1)(B)(v). If an asylum officer finds that an individual has a credible fear, the individual is placed into removal proceedings before an Immigration Judge, under 8 U.S.C. § 1229a. *See, e.g.,* 8 C.F.R. §§ 208.30(f), 208.33(b)(2)(v)(B), 1208.30(g)(2)(iv)(B), 1208.33(b)(4); *see also* 8 C.F.R. §§ 208.33(b)(2)(v)(A), 208.35(b)(2)(v)(A). If, however, an asylum officer makes a negative fear determination, the officer creates a record of the determination, provides the individual with a copy of the decision, and asks whether the individual would like an Immigration Judge to review the determination. *See* 8 C.F.R. §§ 208.30(g)(1), 208.33(b)(2)(iii), (v), 208.35(b)(2)(iii), (v), 1208.30(g)(2). When the alien seeks review of that determination, the Agency files Form I-863, Notice of Referral to Immigration Judge, and jurisdiction is conferred to an Immigration Judge for further consideration. 8 C.F.R. § 1003.42(a). If the Immigration Judge affirms the negative determination, the case will be remanded to ICE for execution of the expedited removal order, and there is no right to appeal the IJ’s decision to the Board of Immigration Appeals. 8 C.F.R. §§ 208.33(b)(2)(v)(C), 208.35(b)(2)(v)(B), 1208.30(g)(2)(iv)(A). If, however, the immigration judge reverses the decision, and makes a positive credible fear determination, the Immigration Judge vacates the expedited removal order. *See* 8 C.F.R. § 1208.30(g)(2)(iv)(B); *see also* 8 C.F.R. §§ 208.35(b)(2)(v)(A), 208.33(b)(2)(v)(A), 1208.33(b)(3), 1208.35(b)(3). At that point, DHS will commence removal proceedings before the Immigration Judge under 8 U.S.C. § 1229a. *See* 8 C.F.R. § 1208.30(g)(2)(iv)(B).

present without admission or parole and for not having valid entry docs. *Id.* Those proceedings are ongoing. *Id.*

While those proceedings have been pending, Alkhatib filed a Form I-589, seeking relief from removal. *Id.* That application remains pending and is being adjudicated by the Immigration Judge overseeing his 8 U.S.C. § 1229a removal proceedings. *See* 8 C.F.R. § 208.2(b). This same Immigration Judge issued the June 3, 2025 decision taking no action on Alkhatib’s request for release on bond, because he “was the subject of expedited removal proceedings.”²

II. The Statutory Framework for Removal Proceedings Does Not Dictate the Statutory Framework for Detention During Those Proceedings.

Contrary to the Court’s dicta in *Patel v. Tindall*, the statutory authority for a removal proceeding does not necessarily govern detention. *See* 2025 WL 2823607, at 3 (W.D. Ky. Oct. 3, 2025 (Stating “the parties are in dispute about which removal proceedings govern [Petitioner’s] detention, the standard removal proceedings of Section 1229a or expedited removal proceedings of Section 1225”). First, the statutory framework for formal removal proceedings is found in 8 U.S.C. § 1229a, which only addresses formal removal proceedings. *Id.* It says nothing about detention. *Id.* Whereas 8 U.S.C. § 1225 houses the statutory authority for expedited removal proceedings, under 8 U.S.C. § 1225(b)(1), it “does not *only* contain the expedited removal provisions.” *Coal. for Humane Immigrant Rts. v. Noem*, 2025 WL 2192986, at 26 (D.D.C. Aug. 1, 2025) (emphasis in original). “Rather, as its title suggests, section [1225] governs inspection by immigration officers generally.” *Id.* (cleaned up). The statute goes on to provide that all “other aliens” who are “applicant[s] for admission” and who do not “clearly and beyond a doubt” meet the criteria for admission “shall be detained for a proceeding under section 1229a of this

² As this description of Alkhatib’s removal proceedings is past tense, it accurately reflects the posture of his removal proceedings.

title.” *Id.* (cleaned up).³ Accordingly, 8 U.S.C. § 1225 is a statute that governs expedited removal proceedings, detention therein, and (separately) the detention of inadmissible aliens during formal removal proceedings. Based on this and the reasons submitted in our Motion to Dismiss and Response to the Order to Show Cause, the Court should hold that Alkhatib is lawfully detained under the statutory framework of 8 U.S.C. § 1225(b)(2).

Should the Court disagree, the United States respectfully requests the Court order the Immigration Judge to reconsider Alkhatib’s bond petition under the statutory framework of 8 U.S.C. § 1226—without first ordering his release. As the Supreme Court held in *Boumediene v. Bush*, habeas is an “adaptable remedy,” and that the “precise application and scope” of the Clause “change[s] depending upon the circumstances.” 553 U.S. 723, 779 (2008) (“[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted.”). Here, release should not be “the exclusive result of every writ,” because “it is often appropriate to allow the executive to cure defects in a detention.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 137 (2020). “Habeas is governed by equitable principles.” *Munaf v. Geren*, 553 U.S. 674, 128 S. Ct. 2207, 2211, 171 L. Ed. 2d 1 (2008); *see also Nunes v. Mueller*, 350 F.3d 1045, 1057 (9th Cir. 2003) (“Conceptually, any habeas remedy should put the defendant back in the position he would have been in if the . . . [constitutional] violation never occurred” (quotations omitted)). Thus, the Court should put Alkhatib in the position he would have been in had the alleged violation never occurred and order the Immigration Judge to reconsider his bond request under 8 U.S.C. § 1226.

³ *Make the Road N.Y. v. Noem*, No. 25-CV-190 (JMC), 2025 WL 2494908, at 12-18 (D.D.C. Aug. 29, 2025) addresses the lawfulness of utilizing the expedited removal process in the interior of the United States. As Alkhatib is not subject to expedited removal proceedings, the case is not applicable here.

CONCLUSION

As Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2) and the Agency has afforded him his due process rights, the Court should deny this petition. Alternatively, the Court should order to the Immigration Judge to reconsider his bond request under 8 U.S.C. § 1226.

Respectfully submitted,

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Jessica R. C. Malloy
JESSICA R. C. MALLOY
Timothy D. Thompson
Assistant United States Attorneys
717 W. Broadway
Louisville, KY 40202
(502) 779-2765
Jessica.Malloy@usdoj.gov
Counsel for Respondents

CERTIFICATE OF SERVICE

On December 1, 2025, the foregoing was filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Petitioner.

/s/ Jessica R. C. Malloy
JESSICA R. C. MALLOY
Assistant United States Attorney