

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MANUEL QUIZHPI CAGUANA
PETITIONER,

V.

KRISTI NOEM, SECRETARY OF
UNITED STATES HOMELAND
SECURITY ET AL,
RESPONDENTS.

NO. 3:25-CV-00534-KC

**FEDERAL¹ RESPONDENTS' RESPONSE TO PETITION OF WRIT FOR HABEAS
CORPUS**

Respondents submit this response per this Court's Order dated November 12, 2025, ordering a response by November 24, 2025. ECF No. 3. In his writ of habeas corpus, Petitioner, *pro se*, seeks release from civil immigration detention, because he feels he is being detained pursuant to the incorrect authority. ECF No. 1. Petitioner makes similar arguments that this Court has seen repeatedly lately. *Id.* However, Petitioner's claims are incomplete and incorrect. Petitioner fails to mention a prior identity, and removal order. *See* Exh. C (*In Absentia* Order). As such Petitioner's claims fail as this is not a case involving statutory interpretation between 8 U.S.C. 1225 and 1226. Petitioner's claim is misplaced. Petitioner's claims are more akin to those subject to a final order who are detained and are claiming violations pursuant to the six-month benchmark found in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Even under that standard, 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

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

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 the burden has so shifted, Respondents can show that removal 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 native and citizen of Ecuador who after unlawfully entering the country in or around 2004-2005. ECF No. 1 at ¶¶ 1,19. Petitioner was apprehended under a different name and issued a different alien registration number. *See* Exh. A (I-213 2004) & Exh. B (I-213 2025). On April 21, 2004, U.S. Immigration and Customs Enforcement issued Petitioner a Notice to Appear (NTA). *See* Exh. D (NTA). On September 30, 2004, Petitioner was ordered removed *in absentia* under the prior identity and alien registration number. *See* Exh. C (*In Absentia* Order). Petitioner, using his current identity, applied for a U-Visa as the parent of a child who was a victim of a crime. ECF No. 1 at ¶ 20. Petitioner then received a Bona Fide Determination finding providing him with employment authorization and a deferred action. *Id.* On November 4, 2025, Petitioner was arrested and taken into custody by Border Patrol, and turned over to ICE. *See* Exh. B (I-213 2025).

Any transfer of Petitioner within ICE custody is a discretionary operational call by the agency based on available resources.

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 *Thuraissigiam*. 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.

In this case Petitioner has been detained for less than 30 days, as such the 90 day removal period has not expired, nor has the 6month benchmark set forth in *Zadvydas*.

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 April 2004. *See* Exh. C (*In Absentia* Order); 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, but fails to acknowledge his *in absentia* removal order. *Compare* ECF No. 1 at ¶¶19-24 with Exh. C (*In Absentia* Order). Petitioner fails to allege any reason, *or his removal order*, much less a “good 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 2,443 Ecuadoran nationals were successfully removed in FY 2025 (current as of January 2025). *See ICE Enforcement and Removal*

Operations Statistics | ICE *supra*. Prior to FY2025, 12,921 Ecuadoran nationals were removed in FY2024. *Id.*

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 failed to avail himself of the due process that would have been provided in removal proceedings, because he chose not to appear to his proceedings. Exh. C (*In Absentia* Order). Respondents can not be held at fault for Petitioner's failure to aver himself to removal proceedings.

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.

Respectfully submitted,

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